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DALLAS COUNTY, IOWA

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**AMENDED AND SUBSTITUTED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR**

DIAMOND BROOKE TOWNHOMES PLAT 1

KNOW ALL MEN BY THESE PRESENTS:

That Diamond Brooke, Inc., an Iowa Corporation ("Declarant"), as developer of Diamond Brooke Townhomes Plat 1, in the City of West Des Moines, Dallas County, Iowa, desires to establish and place residential covenants, conditions and restrictions and does hereby reserve certain easements, all as hereinafter specifically set forth, on the following described real property:

Lots 1 through 66, inclusive, Lots A, B, and C, and Outlot "X", DIAMOND BROOKE TOWNHOMES PLAT 1, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa (hereinafter the "Properties");

This Declaration amends, replaces and supersedes an earlier Declaration dated October 15, 1999, filed December 3, 1999, in Book 1999, Page 13474, of the Dallas County Recorder's Office.

NOW, THEREFORE, Declarant hereby declares that the Properties shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any rights, title, or interest in the Properties or any part

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thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to **Diamond Brook Townhome Association**, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa, as amended.

Section 2. "Association Responsibility Elements" shall mean the following:

- a) The exterior surface of the Building upon a Lot, excluding windows, doors, patios, and decks.
- b) The structural portion of the Building upon a Lot.
- c) The roof, gutters, downspouts, and foundations of the Building upon a Lot.
- d) Any common wall between residential structures upon Lots, except the interior surfaces thereof.
- e) The yard surrounding the residential structure upon a Lot.
- f) Driveways, sidewalks and private drives.
- g) Conduits, ducts, plumbing, wiring, pipes, and other facilities within the attic or basement of a residential structure which are carrying any service to more than one Living Unit.

h) Lots A, B, and C, and Outlot "X", DIAMOND BROOKE TOWNHOMES PLAT 1, an Official Plat, West Des Moines, Dallas County, Iowa.

Section 3. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 4. "Building" shall mean and refer to any structure containing one or more single-family dwelling units that may be constructed on a Lot or on several Lots.

Section 5. "Common Elements" shall mean all common water lines, sewers, gas lines, electric lines, all private drives, and other utility service facilities located within the properties that serve more than one Living Unit.

Section 6. "Declarant" shall mean and refer to **Diamond Brooke, Inc., an Iowa Corporation**, its successors and assigns.

Section 7. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions to which the Properties are subject.

Section 8. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Properties, or any portion thereof, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, or successors to their interests.

Section 9. "Living Unit" shall mean and refer to any portion of a building situated upon a Lot and designed and intended for use and occupancy as a residence by a single family.

Section 10. "Lot" shall mean and refer to any of the numbered Lots in **DIAMOND BROOKE TOWNHOMES PLAT 1, West Des Moines, Dallas County, Iowa.**

Section 11. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 12. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot, or part thereof, which is a part of the Properties, including contract sellers and vendees (deemed co-owners), but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the property by provision or operation of law.

Section 13. "Properties" shall have the meaning set forth on Page 1 hereof.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership and Voting. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership. Subject to provisions of Section 2 of this Article, the owners of a Lot other than the Declarant shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as

they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 2. Declarant as Sole Voting Member. Declarant shall be the sole voting member of the Association for so long as it holds title to any Lot.

Section 3. Board of Directors. The Voting Members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against his/her/its Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

Section 5. Notice of Member's Meetings. Unless the Articles of Incorporation or the By-Laws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary, or the officer or persons calling the meetings, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at his/her/its address as it appears on the records of the Association, with postage thereon prepaid. So long

as Declarant is the sole voting member of the Association, no regular or special membership meeting of the Association shall be held.

Section 6. Duration. No dissolution of the Association shall occur without the prior approval and consent of the City of **West Des Moines, Iowa.**

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges, and (2) special assessments for capital improvements and operating deficits; and special assessments as provided in this Article III, Article V and Article VI; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the joint and several personal obligation of each person who was the Owner of such property at the time when the assessment fell due.

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Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Elements and the Living Units situated on the Properties and for other purposes specifically provided herein.

Section 3. Maximum Monthly Assessment. Until January 1, 2001, the maximum monthly assessment for each Unit Owner shall be One Hundred Twenty-five Dollars (\$125.00) per Lot.

- a) From and after January 1, 2001, and without a vote of the Membership, the maximum monthly assessment may be increased effective January 1, of each year not more than 20% above the maximum assessment for the previous year.
- b) From and after January 1, 2002, the maximum monthly assessment may be increased above 20% by vote of a majority of Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- c) The Board of Directors shall fix the monthly assessment at an amount not in excess of the maximum.
- d) A portion of such monthly assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Elements, the Association Responsibility Elements, or of any capital improvement that the Association is required to maintain.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement that the Association is required to maintain or for operating deficits that the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of all classes of Members who are voting in person or by proxy at a meeting duly called for this purpose, with regard to class designation.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than 5 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots

and may be collected on a monthly, quarterly, semi-annual or annual basis, as determined by the Board of Directors.

Section 7. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to an Owner of a Lot with completed Living Unit constructed thereon and for which a certificate of occupancy has been issued. LOTS OWNED BY THE DECLARANT THAT DO NOT HAVE COMPLETED LIVING UNITS CONSTRUCTED THEREON AND COMPLETED UNITS THAT ARE NOT SOLD, LEASED OR OCCUPIED SHALL BE EXEMPT FROM THE ASSESSMENTS DESCRIBED IN THIS ARTICLE III AND THE ASSESSMENTS DESCRIBED IN ARTICLE VI. The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of monthly assessments. The insurance assessment provided for in Article VI shall commence as to each Lot on the first day of the first month following the date of conveyance of said Lot to Owner. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified

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Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment all cost and expenses incurred by the Association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his/her/its Lot.

Section 9. Subordination of Assessment Liens. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the

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necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

ARTICLE IV

DECLARANT'S RIGHTS

Declarant reserves the right to use any of the Lots as models and to sell, assign, or conduct other businesses in connection with the construction and development of the project from any of such lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the number, location, or manner of construction of buildings and other improvements on the Properties including, without limitation, the size, number, and location of Lots still owned by Declarant, and the substitution of screened-in porches and/or decks for patios on certain Lots designated by Declarant; provided, that in all cases, such changes shall be accomplished in a manner consistent with applicable laws and ordinances.

ARTICLE V

MAINTENANCE

Section 1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at his/her/its own expense,

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all maintenance and repairs of his/her/its Lot and all structures, improvements, and equipment located thereon including decorating and replacements within his/her/its residence, including the heating and air conditioning systems and any partitions and interior walls appurtenant to such residence, but except for the Association Responsibility Elements. He/she/it shall be responsible for the maintenance repair, and replacement of all windows in his/her/its residence, the doors leading into the residence, and all electrical fixtures located on the exterior of the residence, and any and all other maintenance, repair, and replacements of the improvements, including decks, on his/her/its Lot unless otherwise provided herein. He/she/it shall also be responsible for the maintenance, repair, and replacement of all electrical wiring from the main electrical box to his/her/its residence, notwithstanding the fact that such wiring crosses a Common Element or is located off-premises from the Owner's Lot.

To the extent that equipment, facilities, and fixtures (including fences) within any Lot shall be connected to similar equipment, facilities, or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs, or replacements of or to any equipment, facilities, or fixtures affecting or serving other Lots.

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Any repair or replacement of an exterior structure, improvement, or equipment (including, without limitation, electrical fixtures) shall match the original item that it repairs or replaces.

Section 2. Maintenance of Driveways and Private Street. The Association shall be responsible for the maintenance, including snow removal, repair, and repaving of all driveways and private streets, and for the maintenance and repair of any pedestrian walkways or sidewalks constructed or to be constructed within the Properties by Declarant for the benefit of all Owners of Lots. Driveways shall be maintained at all times in such manner as to provide ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street, highway or private drive.

Section 3. Maintenance Obligations of Association. In addition to maintenance upon the driveways, private streets, and sidewalks, the Association shall provide all maintenance, repair, or replacement of the Association Responsibility Elements and Common Elements, including but not limited to maintenance upon each Lot that is subject to assessment hereunder as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces and other exterior improvements, lawns, shrubs (but excluding any gardens, plants, or flowers installed by any Owner and excluding patios and decks and any enclosed patio areas and decks and excluding any lawns, shrubs, etc., within any fenced area), trees, trash removal and snow removal from the paved portions of the front walks. In the case of lawns, shrubs, trees,

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and other elements of landscaping, the Association shall perform all necessary repairs, replacements, and maintenance thereof in a manner consistent with the level of maturity and development of the landscaping at the time that the repair, replacement, or maintenance activity occurs. The Association shall paint the exterior building surfaces of all Association Responsibility Elements and Common Elements that require paint no less often than every five (5) calendar years, initially measured from calendar year 2000. Such exterior maintenance shall not include glass surfaces, doors, and doorways, windows, and window frames, or the operability of any garage doors.

In the event that the need for maintenance or repair is caused through the willful or negligence act of the Owner, his/her/its family, guests, invitees, agents, or contractors, the cost of such maintenance or repairs shall be added to and become a part of the assessments to which such Lot is subject.

ARTICLE VI

INSURANCE

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy or policies affording fire and extended coverage insurance for the Association Responsibility Elements in an amount consonant with the full replacement value of any such Elements. If the Association can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage. The Association shall be responsible for reviewing at least annually the amount and type of such insurance

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and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Association, it may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the monthly maintenance assessment for each Lot on a pro rata basis. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first Mortgagee of each Lot.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provision that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on invalidity based upon the acts of the insured; and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted.

Section 2. Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or

employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy any Lot.

The Association shall also obtain any other insurance required by law to be maintained, including but not limited to, worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his/her/its right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 3. Monthly Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the Association and the pro rata cost thereof shall become a separate monthly assessment (over and above the assessments described in Article III, Sections 3 and 4 herein) to which each Lot conveyed by Declarant shall be subject under the terms and provisions of Article VII. Each Owner shall prepay to the Association at the time his/her/its Lot is conveyed to such Owner an amount equal to thirteen (13) monthly insurance assessments and shall maintain such prepayment account at all times. The Association shall hold such funds in escrow for the purchase of insurance as herein provided or shall use such funds to prepay the premiums of the required

insurance. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

Section 4. Distribution to Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event, any remittances shall be to the Owner and his/her/its mortgagee jointly, or in accordance with the terms of any endorsement in favor of said mortgagee.

Section 5. Additional Insurance. Each Owner shall be solely responsible for and should obtain such additional insurance as he/she/it deems necessary or desirable at his/her/its own expense affording coverage upon his/her/its personal property, the contents of his/her/its residence, and all components of the Living Unit not included in the Association Responsibility Elements (including but not limited to, all floor, ceiling, and wall coverings and fixtures, betterments, and improvements) and his/her/its personal property stored elsewhere on the Properties, and for his/her/its personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty

insurance at his/her/its own expense upon his/her/its Lot but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

Section 6. Casualty and Restoration. Damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. If for any reason the Association chooses not to repair or reconstruct any Building damaged or destroyed by fire or other casualty, the Declarant shall have the right, but not the obligation, to perform such repair or reconstruction and to collect the cost thereof from the Association.

Section 7. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area or any Building or Buildings so damaged or destroyed (or the costs thereof in excess

of insurance proceeds received, if any) shall be paid by the Association, which shall then have the right to levy a special assessment against all Lots for the amount of such deficiency.

For the purposes of Section 6 above, repair, reconstruction, and restoration shall mean construction or rebuilding of any Building or Buildings to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

Section 8. Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Properties, or, in the discretion of the Board of Directors, may be distributed to the Owners of the Building affected and their Mortgagees who are the beneficial owners of the fund. The action of Directors in proceeding to repair or reconstruct damages shall not constitute a waiver of any rights against Owner for committing willful or malicious damage.

ARTICLE VII

EASEMENTS

Section 1. Drainage, Utility, and Sewer Easements. Declarant hereby reserves certain areas of the Lots for public utility and sewer easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Lots and Owners, to properly install and allow to be maintained and

read all electrical, telephone, water, gas, sewer, and other utility services (including all lines, pipes, wires, cables, ducts, etc.) to the Living Units constructed on the various Lots. No other improvements or permanent structures (excluding walkways, driveways, and fences) shall be placed within such utility easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair, or remove any necessary facilities and the right of Declarant and the Association to provide for and maintain appropriate drainage. Regardless of whether shown on the recorded plat, each Lot shall accept surface water drainage from adjacent Properties whether or not located within the Properties and each Lot shall have the right to drain its surface water to the adjacent Lots located within the Properties.

Section 2. Additional Easement Rights. Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement and full right, title, and authority to relocate, alter, or otherwise change the location of any drainage, utility, and sewer easement and to grant such further easements, licenses, and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of the Properties. Declarant further reserves the right to more specifically describe or to change the

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description of any such drainage, utility, and sewer easement, or other easement, license, or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Dallas County, Iowa, and any Owner of any Lot shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section 2 shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section 2 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Lot within the Properties or on June 1, 1999, whichever last occurs.

Section 3. Easement for Access and Maintenance. The Association, its agents, and contractors and each Owner shall have an easement and license to, in and over each Lot for the purpose of performing its maintenance obligations and for access to the rear of the Lot owned by such Owner.

Section 4. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon all Lots for benefit of others and any pedestrian walkways, sidewalks or private drives.

Section 5. Easement for Signs. Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to the Owners by and through the Association, the right and easement to erect and maintain an entryway sign or signs.

Section 6. Driveways and Entrances. An easement is hereby reserved and granted for the use of all Lots served by one driveway over said driveway. To the extent that a driveway serving a Living Unit is located partially or wholly on another Lot or Lots, the Living Unit owners served by such driveway shall have the benefit of any easement over that portion of the other Lot or Lots covered by the driveway. This driveway easement shall be for ingress and egress purposes and no Lot Owner shall park or allow to be parked any vehicular or other obstruction within the driveway area so as to prevent access to the Living Units that such driveway serves. Further, there is hereby reserved and granted an easement for the benefit of each Lot served by a sidewalk and pedestrian walkway located partially or wholly on another Lot or Lots. In the event Living Units are served by a shared front entry stoop and to the extent of such shared stoops a reciprocal easement is granted for the benefit of each served by such shared entry stoop. No unit Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walk or shared entry stoop which would impair use and access by the Living Unit Owner which such sidewalk or entry stoop serves.

Section 7. General Easements. Each Lot shall be subject to the following easements in favor of the Association and the other Owners:

- (a) Every portion of a structure upon a Lot which contributes to the support of any structure not on the same Lot is burdened with an easement of such support.
- (b) Each Lot is burdened with an easement through the Lot and through the attic and basement of any structure thereon for conduits, ducts, plumbing, wiring, pipes, and other facilities for the furnishing of utilities and services to other Lots, including the location of utility meters on one Lot for service to other Lots.
- (c) Each Lot is burdened with an easement of ingress and egress for maintenance, repair, and replacement of Association Responsibility Elements by the Association.
- (d) Each Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting, or inexact location during construction.
- (e) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.

ARTICLE VIII

PARKING RIGHTS

Subject to the provisions of Article VII, Section 6, above, the paved driveway in front of each Owner's garage shall be for the exclusive benefit of such Owner and his/her/its guests. No

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one shall use these parking spaces for parking or storing of boats, snowmobiles, trailers, camping vehicles, or other recreational vehicles, or for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickup and deliveries to neighboring Lots. No bicycles, toys, or other private property shall be allowed to obstruct any driveway, nor shall the same be stored in the open alongside building walls or other locations of public view. No vehicles shall be parked as to impede access from or to any Lot, public or private drive. No fence, barrier, or other obstruction of any kind shall ever be placed or constructed so as to impede access from or to any Lot or public street.

ARTICLE IX

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners

thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his/her/its negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right of Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE X

ARCHITECTURAL CONTROL

No building, fence, wall, or other structure, except as originally constructed by or on behalf of Declarant, shall be commenced, erected, altered, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee

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composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence (including the exterior items for which the Owner is responsible for maintenance pursuant to Article V, Section 1, hereof) shall be deemed a change thereto and shall require the approval therefor as above provided.

ARTICLE XI

SIGNS AND HOME OCCUPATIONS

Section 1. Signs. No signs of any kind, including rental signs (other than interior window signs), and further including signs of any nature, kind, or description that identify, advertise, or in any way describe the existence or conduct of a home occupation, shall be displayed on any Lot without the prior written approval of Declarant; provided, however, that an Owner shall be entitled to display on his/her/its Lot one (1) "for sale" sign of standard and customary size and materials in connection with attempts by the Owner to market that Lot. Nothing in this Article shall affect the rights of Declarant provided in Article IV.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incident to a business, profession, or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot. No child-care service or activity shall be regularly conducted on any Lot, except for incidental child care activities for the sole benefit of the Owner of a Lot. Nothing contained herein shall be construed or

interpreted to affect the activities of Declarant in the sale of Lots or single-family dwellings as a part of the development of the Properties.

ARTICLE XII

ENCROACHMENTS AND EASEMENTS FOR BUILDINGS

Section 1. Encroachment. If, by reason of the location, construction, settling, or shifting of a Building, any part of a Building consisting of single-family residence appurtenant to a Lot (hereinafter in this Article XII referred to as the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use, and enjoyment of the Encroaching Unit and all appurtenances thereto, for the period during which the encroachment exists.

Section 2. Easements. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines, and other common facilities located in or on any other Lot or dwelling unit and serving his/her/its Lot.

ARTICLE XIII

ADDITIONAL RESTRICTIONS

Section 1. No Lot shall be used except for residential purposes, as defined in the **West Des Moines Zoning Ordinance**, except for rights of Declarant as provided in Article IV. No buildings, structures, or sheds shall be erected on any Lot other than the Living Units or replacements thereof.

Section 2. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that no more than

one (1) dog or one (1) cat may be kept, provided that they are not kept, bred, or maintained for any commercial purpose, and further provided that said pet does not weigh more than 25 lbs. The Association may, by rules and regulations, prohibit or further limit the raising, breeding, or keeping on any Lot, front lot, or rear lot of any pet.

Section 3. No noxious or offensive activities not involving the maintenance of Lots shall be carried on upon any Lot nor shall anything be done thereon that may be or may become an annoyance or a nuisance to the neighborhood; nor shall any Lot be used for any unlawful purpose. Nor shall any Owner cause, or suffer or harbor the source of, any noise or activity that disturbs the peace, comfort, and quiet enjoyment of other Owners or those claiming under or through other Owners.

Section 4. The Owner of each Lot shall keep the same free of weeds and debris.

Section 5. No trash receptacles and garbage cans shall be permitted to be placed outside of a building or a structure on any Lot unless hidden by an attractive screen of suitable heights, or unless sunken to ground level in a hole lined with permanent cribbing. This restrictions shall not preclude the placement of waste containers outside of such area on a temporary basis if so required by governmental regulation.

Section 6. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other building shall be

used on any Lot at any time as a residence, either temporarily or permanently.

Section 7. No television or radio antennae shall be placed upon the exterior of a Lot or Living Unit.

Section 8. No basketball goal (whether attached to the exterior of a Living Unit or affixed to a free-standing pole), soccer goal, baseball backstop, or other similar sporting equipment shall be constructed upon any Lot.

Section 9. All unattached sporting equipment, toys, outdoor cooking equipment, and other equipment and supplies necessary or convenient to residential living shall be stored on the patio or deck of the Living Unit. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weed or other noxious substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort, and serenity of Owners is prohibited.

Section 10. Unit Owners shall be individually responsible for utility charges which they incur for water and sewer services, in the same manner as persons occupying single-family, detached houses.

Section 11. No fence shall be allowed to be constructed on any Lot unless prior written approval from the Board of Directors of the Association has been granted. Any such fence so approved by the Association shall be limited to privacy or decorative fences located around the decks or patios of the Living Units.

Section 12. No personal property shall be stored or left upon a Lot except within the residential structure or garage located upon the Lot. Garage doors shall be kept closed except during times of access to the garage.

Section 13. Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association.

Section 14. No boat, snowmobile, recreational vehicle, trailer, or other vehicle other than automobiles shall be stored or parked in any driveway or street. The Association may, by regulation or rule, limit or prohibit the parking of automobiles on any driveway. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreational vehicle, trailer, or other vehicle.

Section 15. No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

Section 16. Nothing shall be done or kept in any Lot or in the Common Area which will increase the rate of insurance on the Common Area or the Association Responsibility Elements, without the proper written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his/her/its Lot or in the Common Area which will result in the cancellation of insurance on any Lot or any part of the Common

Area or the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.

Section 17. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies that require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned.

Section 18. The Board of Directors of the Association shall have the authority to adopt rules and regulations governing the use of Lots, the Common Area, and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns, and licensees.

Section 19. Agents of or contractors hired by the Board of Directors of the Association may enter any Lot when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable.

Section 20. Neither the Owners nor the Association shall interfere with the completion of the contemplated improvements and the sale of the Lots by the Declarant. The Declarant may make such use of the unsold Lots and the Common Area as may facilitate such completion and sale, including, but not limited

to, the maintenance of a sales office, model home, the showing of the property and the display of signs.

Section 21. No Waiver. Failure of the Association or any Owner to enforce any covenant, condition, or restriction, this Declaration, the Articles of Incorporation, or Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

ARTICLE XIV

GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions, and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them, the Association, and the City of **West Des Moines**, (if it so elects by approval of its City Council) shall have the right to enforce the covenants, conditions, and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed at any time within ten (10) years following the date of recordation by an instrument recorded in the Office of the Recorder of **Dallas** County, Iowa, signed or approved in writing by a majority of the then Owners; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may

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be amended or changed without Declarant's prior written approval. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time within four (4) years after the recordation hereto in order to satisfy the requirements of any of the Federal Mortgage Agencies. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-one (21) years from the date of recordation in the Office of the Recorder of Dallas County, Iowa, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions, and restrictions of this Declaration by judgment or decree shall in no way affect any of the provisions hereof, but the same shall remain in full force and effect.

Section 3. Notice to Mortgagees. The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents which default has not been cured within sixty (60) days.

IN WITNESS WHEREOF, **Diamond Brooke, Inc.**, has caused this Declaration to be executed this 29th day of December, 1999.

DECLARANT:

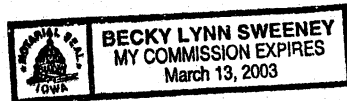
DIAMOND BROOKE, INC.

BY: Susan R Moyer
BY: Susan R Moyer

STATE OF IOWA)
) ss
COUNTY OF POLK)

On this 29th day of December, 1999, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Susan R. Moyer and Susan R. Moyer, to me personally known, who being by me duly sworn, did say that they are the President and Secretary, respectively, of the corporation executing the within and foregoing instrument, that no seal has been procured by the corporation; that said instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Susan R. Moyer and Susan R. Moyer as officers acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Becky Lynn Sweeney
NOTARY PUBLIC IN AND FOR THE STATE
OF IOWA



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