

12/8/08 JMS

When recorded return to:
Jeremy C. Sharpe
666 Walnut Street, 2000 Financial Center
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FILED FOR RECORD
POLK COUNTY, IOWA

98 SEP 28 A 9: 32.6

TIMOTHY J. BRIEN
RECORDER

INST # 028053
RECORDING FEE 106.00
AUDITOR FEE _____

Prepared by: Jeffrey E. Lamson, Belin Lamson McCormick Zumbach Flynn, 666 Walnut, 2000 Financial Center, Des Moines, Iowa 50309, 515-243-7100

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VALLEY GREEN TOWNHOMES**

THIS DECLARATION, made on the date hereinafter set forth by **SAVANNAH HOMES, INC.**, with its principal place of business in Polk County, Iowa, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Polk County, Iowa, which is more particularly described as:

Lots 1 through 11, Lots G-1 through G-11, and Outlot X, in Valley Green Townhomes, an Official Plat, now included in and forming a part of the City of West Des Moines, Iowa.

NOW THEREFORE, Declarant hereby declares that all of the real property described above 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 described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

1. DEFINITIONS.

- A. "Association" shall mean and refer to Valley Green Townhomes Owners Association, Inc., its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa as amended.
- B. "Association Responsibility Elements" shall mean the following, whether located upon a Townhome Lot or upon the Common Area:
 - (1) The exterior surface of the Buildings upon a Townhome Lot, excluding windows, doors, patios and decks.
 - (2) The structural portion of the Building upon a Townhome Lot.

- (3) The roof, gutters, downspouts, and foundations of the Buildings upon a Townhome Lot.
 - (4) Any common wall between residential or garage structures upon Townhome Lots, except the interior surfaces thereof.
 - (5) The yard surrounding the residential or garage structure upon a Townhome Lot, except for trees and shrubbery.
 - (6) Streets, driveways and sidewalks upon a Townhome Lot or the Common Area.
 - (7) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a residential or garage structure which are carrying any service to more than one Townhome Lot.
 - (8) The Common Area, including but not limited to any private storm and sanitary sewers, private water mains and storm water drainage and detention areas located thereon.
- C. "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- D. "Building" shall mean and refer to any single-family attached or detached dwelling unit that may be constructed on a Townhome Lot or a part of more than one Townhome Lot, and shall include any attached or detached garage building conveyed with the lot.
- E. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is described as:
- Outlot X in Valley Green Townhomes, an Official Plat now included in and forming a part of the City of West Des Moines, Polk County, Iowa.
- Declarant will convey the Common Area to the Association at or about the time of conveyance of the first lot.
- F. "Declarant" shall mean and refer to Savannah Homes, Inc., an Iowa corporation and its successors and assigns, if such successors or assigns acquire all Townhome Lots owned by the Declarant for the purpose of resale or development.
- G. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject.
- H. "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 interest.

- I. "Living Unit" shall mean and refer to any portion of a Building situated upon a Townhome Lot and designed and intended for use and occupancy as a resident by a single family or individual.
- J. "Townhome Lot" shall mean and refer to the 11 numbered lots and the 11 lots designated with the letter G shown on the recorded plat of the Properties, with the exception of the Common Area. In the event any part of the Properties is replatted and a subsequent Plat is recorded then "Townhome Lot" shall refer to the numbered lots shown on such replatting and such subsequent recorded Plat. With respect to any single-family portion of any Building that may be constructed on a part of more than one of such lots, "Townhome Lot" shall mean and refer to the real estate conveyed in connection with such dwelling unit. The lots designated with the letter "G" shall be used only for garage and/or parking purposes. The conveyances of each numbered lot shall also include and specifically describe in the conveyance the corresponding numbered "G" designated garage lot. The garage lots may not be conveyed separately from the corresponding numbered lots.
- K. "Member" shall mean and refer to those persons entitled to membership as provided in the Articles of Incorporation of the Association and the Bylaws of the Association.
- L. "Owner" shall mean refer to the record owner, whether one or more persons or entities, including the Declarant, of a fee simple title to any Townhome Lot, 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. A vendee in possession under a recorded contract of sale of a Townhome Lot shall be deemed the owner of the Townhome Lot.
- M. "Properties" shall mean and refer to that certain real property described above, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

IA. SENIOR HOUSING PROVISIONS.

The Properties are intended to be used for the housing of senior citizens. To this end, the following restriction shall apply:

- (1) All permanent residents of the Living Unit must be fifty-five years or older, or the spouse of a permanent resident who is fifty-five years or older, or the surviving spouse of a former deceased permanent resident who was fifty-five years or older.

- (2) All Owners of each Living Unit must be either a permanent resident of the Living Unit qualifying under (1) above, or be a descendant of a permanent resident of the Living Unit qualifying under (1) above. The provisions of this subparagraph (2) shall expire as to each Living Unit ten years from the date of first occupancy of the Living Unit.

2. PROPERTY RIGHTS IN COMMON AREAS.

A. Management and Maintenance by the Association

The Association, subject to the rights of the Owners as set forth in the Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Common Area conveyed to it and all improvements thereon, and the Association Responsibility Elements, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.

No person other than the Owner of a Townhome Lot and his invitees shall have the right to enter upon, use or affect an Association Responsibility Element located within a Townhome Lot, except that the Association and its designates may enter upon and within a Townhome Lot and the Buildings and Living Unit located thereon at reasonable times for the following purposes:

- (1) Installation, repair, removal, replacement, maintenance or inspection of an Association Responsibility Element.
- (2) Enforcement of any provision of this Declaration or the Articles of Incorporation or the Bylaws of the Association.
- (3) Mowing and maintenance of grass and landscaped areas.

In the event that the need for maintenance, replacement or repair of any portion of the Common Area, the improvements thereon, or of any Association Responsibility Elements is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the cost of such maintenance, replacement or repair shall be added to and become part of the assessment to which the Owner is subject and a lien upon the Townhome Lot and Living Unit of such Owner and shall become due and payable upon demand.

B. Owner's Easement and Right of Enjoyment.

Every Owner of a Townhome Lot shall have a right and easement of enjoyment in and to the Common Area which rights may be delegated to family members, lessees and guests of every Owner (subject to any reasonable and non-discriminatory rules and regulations which may be enacted by the Association),

which shall be appurtenant to and shall pass with the title to every Townhome Lot, subject to the following provisions:

- (1) The right of the Association to suspend the voting rights of the Owner for any period during which any assessment against his Townhome Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations; provided, however, that nothing contained in this paragraph shall be deemed to deny an Owner access to and from his Townhome Lot.
- (2) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless approved by 2/3rds the Members entitled to vote.
- (3) The right and obligation of the Association to maintain sewer and other underground utilities located within the Properties.
- (4) The right of the Declarant or the Association to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Area;
- (5) The right of Declarant or the Association to provide in the Common Area, landscaping, outdoor furniture and recreational equipment, signs, decorative structures and necessary appurtenant utilities;
- (6) The provisions of this Declaration and of Rules and Regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation and Bylaws and those accompanying the Declaration; and
- (7) The right of the Association to mortgage any or all of the Common Area with the assent of two-thirds (2/3rds) of the votes of the Members entitled to vote.

C. Title to Common Area.

The Declarant hereby covenants for itself, its successors and assigns, that it shall convey to the Association from time to time and as it is subsequently determined, the fee title to all Common Area, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions created by this Declaration, or granted to the City of West Des Moines, Iowa. The transfer of title to the Common Area shall be accomplished on or before the recorded conveyance of the first Lot by the Declarant.

Until the construction work on all Living Units within the Properties, and appurtenant improvements incidental to said Living Units, is completed, Declarant or its assignee shall have the right to enter upon the Common Area, any Townhome Lot or Living Unit for the purpose of completing such work and performing under applicable guarantees.

D. Use of the Common Area.

The Common Area shall be used strictly in accordance with the provisions of the Declaration. No Owner shall obstruct or interfere whatever with the rights and privileges of other Owners or the Association in the Common Area, and nothing shall be planted, altered, constructed upon, or removed from the Common Area, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the Common Area to the prior condition and charge and assess the cost thereof against the Owner who violates this section and such cost shall become a special assessment and a lien upon the Townhome Lot and Living Unit of such Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of such restoration as provided in Article 4 for the collection of delinquent assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Area, the Association or the offended Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorneys' fees as the Court may allow together with all necessary costs and disbursements incurred in connection therewith.

E. Duration.

The Common Area as described in Section 1 E shall not be changed and shall continue in perpetuity except by approval of all members of the Association subject to the provisions for dedication or transfer in Section B(2) above and the right to mortgage in Section B(7) above.

3. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.

Membership and voting rights shall be determined in accordance with the Articles of Incorporation and Bylaws of the Association, subject to the right of the Association to suspend the voting rights of an owner pursuant to Paragraph 2B(1) above.

4. COVENANT FOR ASSESSMENTS.

A. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Townhome Lot owned within the Properties, and improved with a Living Unit for which a Certificate of Occupancy has been issued, hereby covenants, and each other Owner of any Townhome Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed,

is deemed to covenant and agrees, to pay to the Association: (1) monthly assessments or charges, and (2) special assessments for capital improvements and operating deficits, and other special assessments as provided in this Declaration; 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 Townhome Lot against which each such assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Townhome Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

B. 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 Area and Association Responsibility Elements (including snow removal) and the Living Units upon Townhome Lots, and for other purposes specifically provided herein. In addition, the annual assessment shall include repayment of sums advanced by the Declarant on behalf of the Association.

C. Special Assessments for Capital Improvements and Operating Deficits.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, which the Association is required to maintain, or for operating deficits which the Association may from time to time incur.

D. Date of Commencement of Annual Assessments: Due Dates.

The monthly assessments provided for herein shall commence as to each respective Townhome Lot on the first day of the first month following the date of conveyance of the Townhome Lots to an Owner with a completed Living Unit constructed thereon and for which a Certificate of Occupancy has been issued. Townhome Lots owned by the Declarant which do not have completed Living Units constructed thereon and for which certificates of occupancy have not been issued shall be except from assessments. The maintenance responsibilities of the Association as to each Townhome Lot shall commence concurrently with the commencement of the monthly assessments. The Board of Directors shall fix the amount of the monthly assessment against each Townhome Lot at least thirty (30) days in advance of each annual assessment period. The due dates for all

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

H. 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 Townhome Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the cost of preparing and filing the petition in such action, including reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Townhome Lot.

I. Subordination of Assessments Liens.

If any Townhome Lot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this

shall not derogate the Association's right to collect said sums from the defaulting owner personally.

5. DECLARANT'S RIGHTS.

Until the Declarant no longer owns any Townhome Lots, it shall have the following rights in addition to any other rights specifically granted elsewhere in this Declaration:

A. Use Of And Entry Upon Townhome Lots.

Declarant reserves the right to use any of the Townhome 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 Townhome 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 Townhome Lots then unsold. Declarant retains the right to be considered an Owner of any Townhome Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of Buildings and other improvements. Declarant reserves the right to enter upon and within any Living Unit, Townhome Lot, and Common Area in connection with any construction activity.

B. Common Area Landscaping.

Declarant reserves the right and is hereby vested with the sole control over all Common Area landscaping, plantings and the like. Declarant shall have the right to change the plantings and other landscaping elements within the Common Area from time to time in its sole discretion.

6. MAINTENANCE OF TOWNHOME LOTS.

A. Maintenance by Owners of Townhome Lots.

The Owner of each Townhome Lot shall furnish and be responsible for, at his own expense, all maintenance, and repairs of his Townhome Lot and all structures, improvements and equipment located thereon, except for the Association Responsibility Elements. Specifically, the Owner shall be responsible for decorating and replacements within his Living Unit, including the heating and air conditioning systems and any partitions and interior walls. He shall be responsible for the maintenance, repair and replacement of all windows in his Living Unit, the doors leading into the Living Unit, all decks and patios attached to or adjacent to his Living Unit, all windows, doors and interior surfaces of his garage and any and all other maintenance, repair, and replacements of the improvements on his Townhome Lot unless otherwise provided herein.

B. Maintenance Obligations of Association.

In addition to maintenance of the Common Areas and any improvements located thereon, the Association shall provide all maintenance, repair and replacement of the Association Responsibility Elements.

C. Responsibility for Willful or Negligent Acts.

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

D. Snow Removal.

The Association shall be responsible for snow removal from the driveways and walkways in the Common Area. Unless and until otherwise determined by the Board of Directors of the Association, the Association shall be responsible for snow removal from all Townhome Lots and from the driveway servicing each Townhome Lot, including any portions of the driveways within the Common Area, serving the Townhome Lots.

7. INSURANCE AND INSURANCE ASSESSMENT FOR TOWNHOME LOTS

A. Insurance and Insurance Assessment.

In addition to the monthly assessments and the special assessments for capital improvements, the Association may levy assessments for insurance purchased by the Association. The Association shall obtain liability and casualty insurance for the Common Area and any other real or personal property owned by the Association, and for the Association Responsibility Elements. The casualty insurance shall be "all risk" coverage for 100% of the insurable value of the fixtures and improvements in the Common Areas, or which are included in the Association Responsibility Elements or otherwise owned by the Association, providing for loss or damage settlement on a replacement cost basis. The insurance coverage obtained by the Association shall be written in the name of and the proceeds thereof shall be payable to the Association. Unless otherwise determined by the Board of Directors of the Association, each Owner of a Townhome Lot shall be responsible for obtaining homeowner's liability insurance and casualty insurance for property which is not part of the Association Responsibility Elements from insurers approved by the Board of Directors of the Association; the Board of Directors may require an Owner's casualty insurance to be obtained from the same insurer as the insurer under the Association's casualty insurance for the Association Responsibility Elements. All insurers must be authorized to conduct business in the State of Iowa. In the event of casualty loss, the Association shall be responsible for repair and restoration of the Common Area and Association Responsibility Elements, and the Owner shall be responsible for repair and restoration of all other portions of the buildings and improvements upon his Townhome Lot, except to the extent that the Board of

Directors of the Association has determined to obtain casualty insurance for such portions which are not part of the Association Responsibility Elements in which case the Association shall apply any insurance proceeds received for such portions to such repair and restoration of such portions. If the insurance proceeds of the insurance obtained by the Association is insufficient to cover the costs of repair or replacement of the insured property damaged or destroyed, the Association shall make a reconstruction assessment against all Townhome Lots Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds.

B. Distribution to Mortgagee.

In no event shall any distribution of insurance 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 mortgagee jointly.

C. No Limitation.

This Article shall not limit the right of the Association to purchase insurance for the Common Area and make assessments therefor.

D. Annual Review of Policies.

All insurance policies acquired by the Association shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

E. Other Insurance Requirements to Satisfy FHLMC.

The Association must also obtain any additional coverage commonly required by private mortgage investors for developments similar in construction, location and use, including the following where applicable and available:

- Agreed amount
- Demolition cost
- Increased cost of construction
- Boiler and machinery

The insurer's minimum liability per accident under boiler and machinery coverage must equal the insurable value of the building housing such boiler or machinery or \$2 million, whichever is less.

Deductibles may not exceed the lower of \$10,000 or 1 percent of the applicable amount of coverage. Funds for such deductibles must be included in the association's reserves and be so designated.

The Association's insurance policy must name the insured in substantially the same language indicated below:

Association of Owners of the Valley Green Townhomes
for the use and benefit of the individual owners.

The Association must carry comprehensive general liability (CGL) insurance covering all Common Areas.

If not already included in the terms of the CGL coverage, there must be a "severability of interest" endorsement precluding the insurer's denial of an Owner's claim because of negligent acts by the Association or other Owners.

The Association must also carry any additional coverage commonly required by private Mortgage investors for developments similar in construction, location and use, including the following where applicable and available:

- (1) Comprehensive automobile liability
- (2) Bailee's liability
- (3) Elevator collision liability
- (4) Garage keeper's liability
- (5) Host liquor liability
- (6) Worker's compensation and employer's liability
- (7) Contractual liability.

The insurer's limit of liability per occurrence for personal injury or property damage under the terms of the above coverages must be at least \$1 million.

All policies documenting insurance coverage(s) obtained in accordance with FHLMC requirements for property insurance must have the insurance industry's standard mortgage clause. Such clause must provide that the insurer will notify the named mortgagee at least 10 days before any reduction in coverage or cancellation of the policy.

If a Mortgage on a Townhome Lot is owned in whole by FHLMC "(name of Seller/Service), its successors and assigns" should be named as mortgagee instead of Federal Home Loan Mortgage Corporation.

The mortgage clause of insurance policies obtained by the Association must be endorsed to fully protect the interest of FHLMC or the interests of FHLMC and the Seller/Service where applicable.

When a mortgage clause is not applicable (e.g., in a separate policy of comprehensive general liability), a certificate of insurance must be provided to the Seller/Service. This certificate must contain the information required for certificates or other evidence of insurance in the FHLMC single family

Seller/Service Guides, with the Seller/Service named as certificate holder instead of the mortgagee.

8. EASEMENTS AND ENCROACHMENTS.

A. General Easements.

Each Townhome Lot shall be subject to the following easements in favor of the Association and the other Owners of Townhome Lots:

- (1) Every portion of a structure upon a Townhome Lot which contributes to the support of any structure not on the same Townhome Lot is burdened with an easement of such support.
- (2) Each Townhome Lot is burdened with an easement through the Townhome 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 Townhome Lots, including the location of utility meters on one Townhome Lot for the service to other Townhome Lots.
- (3) Each Townhome Lot is burdened with an easement of ingress and egress for construction, maintenance, repair and replacement of Association Responsibility Elements by the Association and the Declarant.
- (4) Each Townhome Lot is burdened with an easement for surface drainage for the benefit of all other Townhome Lots and the Common Area.
- (5) Each lot is burdened with encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.
- (6) Each Townhome Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.
- (7) Each Townhome Lot is burdened with an easement through the Townhome Lot but outside of any structure thereon for purposes of reasonable ingress and egress by other Owners of Townhome Lots to the front and rear of the other Owners' Townhome Lots.

B. Drainage, Utility and Sewer Easements.

As may be noted on the Plat, Declarant may reserve certain areas of the Townhome Lots and Common Area for drainage, 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 Townhome Lots and Owners, to properly install and allow to be maintained 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 Townhome 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.

C. Additional Easement Rights of the Declarant.

Declarant reserves unto itself, for the benefit of all Townhome Lots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise move 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 Townhome Lot or Townhome Lots or any portion of Common Area. Declarant further reserves the right to more specifically describe or to change the 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 Polk County, Iowa and any Owner of any Townhome Lot shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section C shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Townhome Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Townhome Lot. The rights and easements reserved by Declarant in this Section C 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 Townhome Lot within the Properties.

D. Easement for Emergency Purposes.

An easement is hereby dedicated and granted for use in case of emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Common Area and pedestrian walkways or sidewalks.

E. Easement for Signs.

Declarant reserves unto itself for so long as it owns any Townhome Lot, the right and easement to erect and maintain such entryway, identification and "For Sale" sign or signs within the Properties as Declarant deems reasonably necessary.

F. Encroachment on Townhome Lots.

If, by reason of the location, construction, settling or shifting of a Building, any part of a Building containing a Living Unit upon a Townhome Lot the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Townhome 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. Upon the written demand from the Owner of an Encroaching Unit, the owner of the Townhome Lot upon which said unit encroaches shall deed to the Owner of the Encroaching Unit that portion of the Townhome Lot upon which the Encroaching Unit is located. The deed shall be by quit claim deed free and clear of any mortgages and encumbrances. All costs of abstracting, releases of mortgages, recording fees, engineering fees and legal fees shall be paid by the owner of the Encroaching Unit.

G. Driveways and Access for Townhome Lots.

An easement is hereby reserved and granted to each Townhome Lot for driveway and access purposes over any portion of the Common Area wherein driveways are located. This easement shall extend from the Townhome Lot to the dedicated public street. This driveway easement shall be for ingress and egress purposes and no Townhome Lot Owner shall park or allowed to be parked any vehicle or other obstruction within the driveway area, except within delineated parking stalls. Further, an easement is hereby reserved and granted for the use of all Townhome Lots served by one common driveway. To the extent that a driveway or portion thereof serving a Townhome Lot is located partially or wholly on another Townhome Lot or Lots, the Lot Owners served by such driveway shall have the benefit of an easement over that portion of the other Townhome Lot or Lots covered by the driveway. Further, there is hereby reserved and granted an easement for the benefit of each Townhome Lot served by a sidewalk and pedestrian walkway located partially or wholly on the Common Area or another Townhome Lot. This latter easement is for the purpose of allowing pedestrian access from the public or private street to the Townhome Lot served by such sidewalk or pedestrian walkway. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walkway which would impair the use or access by the Townhome Lot Owner which such sidewalk or pedestrian walkway serves. As long as any ingress or egress by driveway or sidewalk to any Townhome Lot is through the Common Area, any conveyances or encumbrance of the Common Area shall be subject to the easement right granted to Owners in this Declaration.

H. Sidewalks.

An easement is hereby reserved and granted to each Owner and his invitees for pedestrian use over any sidewalk upon any Townhome Lot.

9. PARKING RIGHTS.

No one shall use any 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 Townhome 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 so as to impede access from or to any Townhome Lot or public street. No fence, barrier or other obstruction of any kind shall ever be placed or constructed so as to impede access from or to any Townhome Lot or public street. The Association shall have the right to adopt rules and regulations concerning parking on the private driveways located in the Common Area, including rules prohibiting all parking on such private driveways. The open parking spaces located in the Common Area are for the use of the general public and the guests and invitees of the Owners. The Association shall have the right to adopt rules and regulations concerning parking in these open spaces.

10. Party Walls.

- A. Each wall which is built as a part of the original construction of the homes and garages upon the Properties and placed on the dividing lines between the Townhome Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration and the rights of the Association, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- B. 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.
- C. 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.
- D. Notwithstanding any other provision of this Article, an Owner who by his 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.
- E. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Townhome Lot and shall pass to such Owner's successors in title.

11. 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 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 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 shall be deemed a change thereto and shall require the approval therefor as above provided. This paragraph shall not apply to any construction, improvements or alterations made by Declarant, including the construction of fences on the Common Area.

12. GENERAL USE RESTRICTIONS.

The following use restrictions are in addition to use restrictions previously filed of record and applicable to the Townhome Lots and also in addition to all requirements of the City of West Des Moines, Iowa, including the City's Planned Unit Development Ordinance and the Planned Unit Development in effect with respect to the Properties.

- A. All Townhome Lots shall be known, described and used solely as residential lots and no structure shall be erected on any Townhome Lot except by the Declarant or the Association.
- B. Building setback lines as shown on the plat of record shall be strictly followed.
- C. The public utility easements shown on the recorded plat are hereby reserved for utility installation and maintenance.
- D. No Townhome Lot shall be subdivided in any manner.
- E. No Townhome Lot shall be used for any kind of trade, business, or employment except as allowed herein, nor shall any Townhome Lot be used for a multi-family dwelling, boarding house, or rooming house.
- F. The use of any open carport, driveway or parking area which may be in front of, adjacent to, or part of any Townhome Lot as a parking place for recreational or commercial vehicles or articles, including boats, is prohibited. All of said types of vehicles or articles shall be stored inside a garage at all times. No inoperable, dismantled or wrecked motor vehicles, trailers, automobiles or other vehicles or machinery or parts thereof including scrap metals of any type shall be permitted to be upon or remain upon any part of a Townhome Lot. This restriction shall furthermore apply to any vehicle, which though operable, is not in active use. This provision is intended to specifically prohibit vehicles which are not in active use from being left parked outside a garage for an extended period of time.
- G. No television or radio antenna, or tower shall be erected upon the roof of any Building or upon any Townhome Lot or building in such a manner as to be visible from the exterior of the Building.
- H. Fencing may be erected on any part of a Townhome Lot with Declarant approval.

- I. No swimming pools, tennis courts or similar structures shall be installed on any Townhome Lot.
- J. No Owner shall construct or modify any Association Responsibility Element.
- K. No rubbish container shall be visible from the street except on pick-up day and one day before and one day after pick-up day.
- L. All utility connection facilities and services shall be under ground. No individual water supply system or individual sewage disposal system shall be permitted on any Townhome Lot.
- M. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Townhome Lot except that dogs and cats weighing less than 25 pounds at full growth may be kept, provided that they are not kept, bred or maintained for any commercial purposes. The Association may, by rules and regulations, prohibit or further limit the raising, breeding or keeping of any pet on any Townhome Lot. Any person owning or keeping a pet dog or cat shall be responsible for and shall at all times clean up any waste or excrement from such pet(s) on the Common Areas. Failure to do so in a prompt or responsible manner shall result in a fine or special assessment by the Association against such Townhome Lot.
- N. No noxious or offensive activities not involving the maintenance of Townhome Lots or Common Area shall be carried on upon any Townhome Lot nor shall anything be done thereon which may be or may become an annoyance or a nuisance; nor shall any Townhome Lot be used for any unlawful purpose. Nor shall any Owner cause, or suffer or harbor the source of, any noise or activity which disturbs the peace, comfort and quiet enjoyment of other Owners or those claiming under or through other Owners.
- O. No personal property shall be stored or left upon a Townhome Lot except within the Living Unit or garage located upon the Townhome Lot. Garage doors shall be kept closed except during times of access to the garage.
- P. Nothing shall be altered in, constructed in, or removed from the Common Area or the Association Responsibility Elements, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association.
- Q. No boat, snowmobile, recreational vehicle, trailer or other vehicle other than automobiles shall be stored or parked in 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.
- R. 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.

- S. Nothing shall be done or kept in any Townhome 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 Townhome Lot or in the Common Area which will result in the cancellation of insurance on any Townhome 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.
- T. The Board of Directors of the Association shall have the authority to adopt rules and regulations governing the use of Townhome Lots, the Common Area and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guest, lessees, assigns and licensees.
- U. 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.
- V. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

13. SIGNS AND HOME OCCUPATIONS

A. Signs.

So long as Declarant is a member of the Association, no advertising signs of any kind including sale or "for sale" signs or rental or "for rent" signs (other than interior window signs) shall be displayed, except by the Declarant, on any Townhome Lot or upon the Common Area without the prior written approval of Declarant. Further, no signs of any nature, kind or description shall be erected, placed or maintained on any Townhome Lot or upon the Common Area which identify, advertise or in any way describe the existence or conduct of a home occupation.

B. Home Occupations.

No home occupation shall be conducted or maintained on any Townhome Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Townhome Lot and which is generally or regularly conducted in another location away from such Townhome Lot, provided the same is permitted under applicable ordinances.

14. PUBLIC ACCESS.

Officers, employees or contracted agents of any governmental unit shall have the right and authority to enter upon the Common Area and any Townhome Lot for the administration of

general public services including fire protection, law enforcement, water service and animal control.

15. [NO PROVISION]

16. GENERAL PROVISIONS.

A. Duration.

This Declaration shall run with the land and shall be binding upon all Townhome Lots and Townhome Lot Owners for a period of twenty-one (21) years from the date of recordation in the office of the Polk County Recorder, at which time said covenants shall be automatically extended for successive additional periods of ten years each, unless prior to the expiration of any such ten year period it is amended or changed in whole or in part as hereinafter provided. Invalidation of the covenants, conditions and restrictions of the Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

B. Enforcement.

If the Owner or person in possession of any Townhome Lot or portion of a Townhome Lot violates or attempts to violate any of the covenants or restrictions herein established it shall be lawful for any person or persons owning any other Townhome Lots in said plat to prosecute any proceedings in law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions, and either to prevent him or them from so doing or to require removal of any violating structure or improvement or to recover damages for such violation, and shall be entitled to recover reasonable attorneys fees and costs and expenses as a result thereof.

C. Amendment.

This Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder of Polk County, Iowa, signed or approved in writing by two-thirds (2/3) of the then Owners entitled to vote in the Association; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may 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 five (5) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies or to correct any of the provisions of this Declaration. 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.

D. Notice to Mortgagees.

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

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this 15 day of September 1998.

SAVANNAH HOMES, INC.

By: Ted A. Grob
Ted A. Grob, President

DECLARANT

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 15th day of September, 1998, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Ted A. Grob, to me personally known, who being by me duly sworn did say that he is the President and Secretary of the corporation executing the within and foregoing instrument; that said instrument was signed on behalf of the company by authority of its managers; and that Ted A. Grob as such officers acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the company, by it and by him voluntarily executed.



Jeffrey E. Larson
Notary Public in and for the State of Iowa