

**DECLARATION OF
COVENANTS, CONDITIONS, REGULATIONS,
AND RESTRICTIONS
FOR
ASPEN GLEN TOWNHOMES**

The undersigned Declarant, Rogers Enterprises, Inc., is the Owner of certain real property located in the City of Ankeny, County of Polk, State of Iowa, the legal description of which is:

A PART OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 80 NORTH, RANGE 23 WEST OF THE 5TH P.M., LYING WEST OF INTERSTATE HIGHWAY 35, ALL IN THE CITY OF ANKENY, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID 19; THENCE NORTH 0°14'20" WEST (ASSUMED FOR PURPOSES OF THIS DESCRIPTION) ALONG THE WEST LINE OF SAID SOUTHWEST 1/4, 905.73 FEET; THENCE NORTH 90°00'00" EAST, 50.00 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE EAST RIGHT OF WAY LINE OF SOUTHEAST DELAWARE AVENUE, ALSO BEING THE SOUTHWEST CORNER OF DELAWARE CROSSING PLAT 1, BEING AN OFFICIAL PLAT; THENCE NORTH 90°00'00" EAST ALONG THE SOUTH LINE OF SAID DELAWARE CROSSING PLAT 1, 1068.89 FEET TO THE SOUTHEAST CORNER OF SAID DELAWARE CROSSING PLAT 1, SAID POINT ALSO BEING ON THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY 35; THENCE SOUTH 1°09'10" EAST ALONG SAID WESTERLY RIGHT OF WAY LINE, 52.83 FEET; THENCE SOUTH 3°18'24" WEST CONTINUING ALONG SAID WESTERLY RIGHT OF WAY LINE 351.15 FEET TO THE NORTHEAST CORNER OF VILLAS OF MEADOW RIDGE, BEING AN OFFICIAL PLAT; THENCE SOUTH 90°00'00" WEST ALONG THE NORTH LINE OF SAID VILLAS OF MEADOW RIDGE, 536.36 FEET; THENCE SOUTH 15°00'00" WEST CONTINUING ALONG SAID NORTH LINE, 74.73 FEET; THENCE SOUTH 89°45'40" WEST CONTINUING ALONG SAID NORTH LINE, 492.00 FEET TO THE NORTHWEST CORNER OF SAID VILLAS OF MEADOW RIDGE, SAID POINT ALSO BEING ON THE EAST RIGHT OF WAY LINE OF SOUTHEAST DELAWARE AVENUE; THENCE NORTH 0°14'20" WEST ALONG SAID EAST RIGHT OF WAY LINE, 477.62 FEET TO THE POINT OF BEGINNING AND CONTAINING 10.66 ACRES (464,408 S.F.),

and is desirous of protecting the value and desirability of the whole of said property.

NOW THEREFORE, Declarant hereby declares that said real property described above, which has been or will be platted as a part of ASPEN GLEN PLAT 1, and known as Lots one (1) through eight (8), inclusive, in Block "A"; Lots one (1) through eight (8), inclusive, in Block "B"; Lots one (1) through four (4), inclusive, in Blocks "C", "D" and "E"; and Lots one (1) through eight (8), inclusive, in Block "F"; and Lots A, B, C, D, E, and F, (Common Element) all within ASPEN GLEN PLAT 1, shall be held, acquired, sold, transferred, encumbered, and conveyed subject to the following covenants, conditions, regulations and restrictions which are for the purpose of protecting the value and desirability of said property, and which shall run with the real properties or any part thereof and be binding on all parties having any right, 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.

ARTICLE I

DEFINITIONS

A. **“Association”** shall mean and refer to ASPEN GLEN TOWNHOME ASSOCIATION, an Iowa non-profit corporation, organized pursuant to chapter 504A of the code of Iowa, as amended.

B. **“Association Responsibility Elements”** shall mean and refer to the following whether located upon a Lot or upon the Common Element.

- (1) The Common Element, including but not limited to the private storm and sanitary sewers, private water service lines and storm water drainage and detention areas located thereon;
- (2) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a living unit which are carrying any service to more than one Lot;
- (3) Downspouts and foundations of the Buildings upon a Lot;
- (4) Driveways and sidewalks;
- (5) The exterior surface of the Buildings upon a Lot, excluding windows, doors, garage doors, patios, decks, porches, and stoops;
- (6) The structural portion of the Buildings upon a Lot;
- (7) The yard surrounding the residential structure within a Lot;
- (8) Any common wall between residential structures within a Lot.

C. **“Board”** or **“Board of Directors”** shall mean and refer to the Board of Directors of the Association.

D. **“Building”** shall mean and refer to a structure that has single-family dwelling units erected in a row as a single building on adjoining Lots, each unit being separated from an adjoining unit or units by a party wall or walls extending from the basement floor to the roof along the dividing Lot line, and each such building being separated from any other building by space on all sides.

E. **“Bylaws”** shall mean and refer to the Bylaws of the Association, as amended from time to time.

F. **“Common Element”** shall mean and refer to all real property, lying within the properties, including all improvement thereto, owned by the Association for the common use and enjoyment of the Lot Owner(s) and/or Unit Occupant(s). The Common Element to be initially owned by the Association is described as:

Lots A, B, C, D, E, and F, (Common Element) in ASPEN GLEN PLAT 1, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa.

Declarant will convey to the Association by deed Lots within the Common Element at or about the time of the conveyance of the first Lot in each Block.

G. **"Common Expense"** shall mean and refer to all expenses for the administration and management, maintenance, operation, repair or replacement of and additions to the Common Elements and the Association Responsibility Elements including reserve funds for maintenance, repair and replacement of those Common Elements and Association Responsibility Elements that must be replaced on a periodic basis; expenses for common utility services being primarily gas, electric, and water other than utilities charged by suppliers directly to individual units; expenses agreed upon as Common Expenses by the Lot Owners; and expenses declared to be Common Expenses by this Declaration or by the Bylaws of the Association.

H. **"Declarant"** shall mean and refer to Rogers Enterprises, Inc., its successors or assigns.

I. **"Declaration"** shall mean and refer to this Declaration of Covenants, Conditions, Regulations and Restrictions, as may be amended from time to time, to which the Properties are subject.

J. **"Developer"** shall mean and refer to Rogers Enterprises, Inc., its successors or assigns.

K. **"Family"** shall mean and refer to a collective body of persons consisting of:

- (1) No more than two persons per bedroom per unit; or
- (2) A person and such person's natural or legally adopted children and such person's spouse and the spouse's natural or legally adopted children.

L. **"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 in interests.

M. **"Living Unit", "Dwelling Unit", or "Unit"** shall mean and refer to any portion of a building, including an attached garage, situated upon a Lot and designed and intended for use and occupancy as a residence by a single family or individual.

N. **"Lot"** shall mean and refer to Lots one (1) through eight (8), inclusive, in Block "A"; Lots one (1) through eight (8), inclusive, in Block "B"; Lots one (1) through four (4), inclusive, in Blocks "C", "D" and "E"; and Lots one (1) through eight (8), inclusive, in Block "F"; in Aspen Glen Plat 1, shown upon the recorded Plat of the Properties specifically excluding the Common Element. In the event any part of the Properties is replatted and a subsequent Plat is recorded or in the event additions to the Properties may hereafter be brought within the jurisdiction of the Association, then "Lot" shall refer to the numbered Lots shown on such replatting and such subsequent recorded Plat or such additions to the Properties. With respect to any single-family portion of any Building that may be constructed on a part of more than one of such Lots, "Lot" shall mean and refer to the real estate conveyed in connection with such dwelling unit.

O. **“Member”** shall mean and refer to those persons entitled to membership as provided in this Declaration, the Articles of Incorporation of the Association and the Bylaws of the Association.

P. **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, whose estates or interests, individually or collectively, aggregate fee simple ownership of a Lot, but shall not include those having an interest in a Lot merely as security for the performance of an obligation.

Q. **“Properties”** shall mean and refer to that certain real property to be platted or which has been platted as a part of ASPEN GLEN PLAT 1, and such other additional contiguous parcels as may hereafter be brought within the jurisdiction of the Association.

R. **“Agent” or “Registered Agent”** shall mean and refer to the person selected and appointed by the owner(s) of a Lot and registered with the Association to receive notices for and to cast a vote on behalf of the said lot owner(s) on all matters requiring a notice to and/or a vote by the members of the Association.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

A. **Membership.** Every Lot owner shall automatically, upon becoming the Owner of a Lot which is subject to assessment, be a member of the Association and shall remain a member of said Association until such time as his or her ownership shall cease or terminate. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

B. **Classes of Membership.** The Association shall have two classes of membership:

(1) **Class A.** Class A members shall be all Lot Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. The vote for each Lot shall be exercised as the Owners of such Lot may determine among themselves. Each vote shall be cast by the Registered Agent for the Owners of a Lot, but in no event shall more than one vote be cast with respect to any Lot.

(2) **Class B.** The Class B member shall be the Declarant, its successors or assigns, and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or,
- (b) On August 1, 2012.

C. **Agent Registration.** The owner(s) of each Lot shall, at the time the owners receive title to a Lot, select and appoint an individual as registered agent for said Lot. The name and mailing address of the agent so selected and appointed shall be registered in writing, signed by all owners, with the Association. The registered agent shall be the only person who may cast a vote for said Lot on any matter requiring a vote of the membership. The registered agent shall be the person upon whom notice shall be served, whenever notice is required to be given a member. Notice to a registered agent shall be deemed to be effective and completed notice to all members/owners of the respective Lot. A change in the registration of an agent and/or the agent's mailing address shall be effective only if such change is made in writing to the Association and signed by all members/owners of the affected Lot.

D. **Notice of Member's Meetings.** Unless the Articles of Incorporation or the Bylaws 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 registered agent of each Lot 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 registered agent of each Lot at his or her address as it appears on the records of the Association, with postage thereon prepaid.

E. **Suspension of Voting Rights.** The Association shall suspend the voting rights of a Member for any period during which any assessment against his or her Lot remains unpaid; and may suspend, for a period not to exceed sixty (60) days, for any infraction of the Declaration, the Articles of the Association, the Bylaws of the Association, and/or the published Rules and Regulations of the Association.

ARTICLE III

RIGHTS AND OBLIGATIONS IN COMMON ELEMENT

A. **Title to Common Element.** 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 Element, free and clear of all mechanic's liens or liens or encumbrances whatsoever except covenants, easements, conditions and restrictions of record or created by this Declaration, or granted to the City of Ankeny, Iowa. The transfer of title to the Common Element shall be accomplished at or before the time of the conveyance of the first Lot within each of the properties dedicated to the jurisdiction of this Declaration by Declarant.

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

B. **Use of the Common Element.** The Common Element shall be used strictly in accordance with the provisions of the Declaration, the Articles of the Association, the Bylaws of the Association, and the Rules and Regulations published by the Association. No Owner or Occupant shall obstruct or interfere whatever with the rights and privileges of other Owners or Occupants or

the Association in the Common Element. No owner or occupant nor any agent, employee, guest, or invitee of any owner or occupant shall have the right to plant, alter, trim, install, construct upon, or remove from the Common Element, except by prior written consent of the Association, any tangible property, including but not limited to grass, flowers, trees, shrubs, or structures. If an Owner or Occupant violates this provision, the Association shall have the right to restore the Common Element to the prior condition and charge and assess the cost thereof against the Owner and/or Occupant who violates this provision and such cost shall become a special assessment and a lien upon the Lot and Living Unit of such Owner or Occupant and shall become due and payable upon demand. If an Owner or Occupant interferes with the rights and privileges of another Owner or Occupant in the use of the Common Element, the Association or the offended Owner or Occupant 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.

C. **Obligations of 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 Element conveyed to it and all improvements thereon, 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 Lot or an Occupant of a unit and their invitees shall have the right to enter upon, use or affect an Association Responsibility Element located within a Lot except that the Association and its designates may enter upon and within a Lot and the buildings located thereon at reasonable times for the following purposes:

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

D. **Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Element which may be delegated to family members, lessees and guests of every Owner (subject to the Declaration, the Articles, the Bylaws, and, any reasonable and nondiscriminatory published rules and regulations which may be enacted by the Association) which shall be appurtenant to and shall pass with the title to every 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/her Lot remains unpaid; and, the right of the Association to suspend the voting rights of the Owner for a period not to exceed sixty (60) days for any infraction of the Declaration, the Articles of the Association, the Bylaws of the Association, and/or the Association's published Rules and Regulations; provided, however, that nothing contained in this paragraph shall be deemed to deny an Owner access to and from his/her Lot;

- (2) The right of the Association to dedicate or transfer all or any part of the Common Element to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless agreed to by two-thirds of each class of members who vote in person or by proxy at a meeting duly called for this purpose;
- (3) The right and obligation of the Association to maintain underground utilities located within the Properties;
- (4) The right of the Declarant, its successors and assigns to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Element;
- (5) The right of the Declarant to maintain within the Properties a sales office; to maintain and use any number of unsold living units as models and/or sales office; and, to maintain easements for Declarant and Declarant's invitees for construction on undeveloped Lots;
- (6) The right of Declarant, but not the obligation, to provide in the Common Element landscaping, outdoor furniture and recreational equipment, signs, decorative structures and necessary appurtenant utilities;
- (7) The rules and regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation and the Bylaws of the Association and those accompanying this Declaration; and,
- (8) The right of the Association to mortgage any or all of the Common Element with the assent of two-thirds of each class of members who vote in person or by proxy at a meeting duly called for this purpose.

E. **Duration.** The Common Element, as described in Article I, paragraph F, shall not be changed with respect to the Properties and shall continue in perpetuity except by approval of all members of the Association and subject to the provisions for dedication or transfer in paragraph D(2) above and right to mortgage in D(8) above. This provision shall not preclude Declarant from adding adjacent properties with a Common Element.

ARTICLE IV

MAINTENANCE

A. **Maintenance by Owners.** The Owner of each Lot shall furnish and be responsible for, at Owner's expense, all maintenance and repairs of the Owner's Lot and structures; improvements and equipment located thereon including decorating and replacements within the Owner's unit, including the heating and air conditioning systems and any partitions and interior walls except for the Association Responsibility Elements. The Owner shall be responsible for the maintenance, repair, and replacement of all windows in the Owner's living unit; the doors leading into the living unit; all decks, patios, porches and stoops attached or adjacent to the Owner's living unit; all window, doors and interior surfaces of any garage located on the Owner's Lot; and, any and all other maintenance, repair and replacements of the improvements on the Owner's Lot unless otherwise provided herein.

B. **Maintenance Obligations of Association.** In addition to maintenance of the Common Elements 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 of any portion of the Common Element, the improvements thereon, or of any Association Responsibility Elements is caused through the willful or negligent acts of an Owner or unit Occupant, or through the willful or negligent acts of the family, guests, or invitees of an Owner or unit Occupant, the cost of such maintenance or repair shall be added to and become part of the assessment to which the Owner is subject and a lien upon the Lot and living unit of such Owner and shall become due and payable upon demand.

D. **Snow Removal.** The Association shall be responsible for removing snow from entry stoops, steps, walkways, all driveways servicing the owner's Lot, sidewalks and streets.

E. **Trash Removal.** The Association shall contract with a waste collection and disposal service provider for the regular collection and disposal of all garbage and waste deposited at each designated collection site within the regime. All unit owners and/or occupants shall be and are hereby required to take all garbage and waste material to designated collection sites within the regime and deposit the same in the container or dumpster provided for that purpose. No garbage or waste shall be left outside a container or dumpster and shall not be left exposed to the elements or animal intrusion. All unit owners and/or occupants shall be responsible for and assist in preventing garbage, trash, waste and other debris from being blown, strewn, deposited or distributed upon or across the common elements of the regime. No unit owner or occupant shall be permitted to contract privately for the collection and removal of garbage, trash, or waste within the regime.

ARTICLE V

COVENANT FOR ASSESSMENTS

A. **Creation of the Lien and Personal Obligation of Assessments.** The Declarant and each owner of any Lot by acceptance of a deed therefore, 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 Article IV, Article V, and Article VI; such assessments to be established and collected as hereinafter provided. The monthly assessments and the 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 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 property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors entitled unless expressly assumed by them.

A Lot Owner may not exempt the Lot or the unit located thereon from liability for any assessment levied by the Association as a result of the owner, the owner's family, or the owner's lessee, waiving the use or enjoyment of any of the Common Elements or by the abandonment of the owner's Lot or unit.

Except for its responsibilities as a unit owner as provided herein or other responsibilities expressly undertaken elsewhere in this Declaration, the Declarant shall not have any personal responsibility for the maintenance, repair, or replacement of any part of the Common Elements or the Association Responsibility Elements after the date on which this Declaration is recorded.

The assessment(s) against a Lot shall commence on the first day of the month following the issuance of a certificate of occupancy by the City of Ankeny for the Lot. 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 the first Lot to an owner. The Board of Directors shall fix any increase in the amount of the monthly assessments 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 registered agent 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 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.

B. Monthly Assessment. The Board of Directors shall fix the monthly assessment in an amount reasonably calculated to pay all projected and budgeted common expenses before they become delinquent. The monthly assessment must be fixed at a uniform rate for all Lots and shall be collected on a monthly basis. The monthly assessment shall not be increased more than ten percent (10%) in any twelve month period without Class A membership approval.

C. Special Assessments. In addition to the monthly assessments authorized above, the Board of Directors 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 which the Association is required to maintain, or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of each class of members.

D. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date shall bear interest from the due date at the rate of fifteen percent (15%) per annum, or at the highest rate allowed by 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 the costs of preparing and filing the petition in such action including reasonable attorney's fees. In any such foreclosure, the Lot owner shall be required to pay a reasonable rental for the unit during foreclosure proceedings and the plaintiff in such a foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Association, acting on behalf of all other Lot owners, shall have the power to bid on the Lot at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Failure to pay assessments does not constitute a default under an insured mortgage.

E. **Subordination of Assessment Liens.** If any 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 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.

F. **Liability for Assessments After Conveyance.** In a voluntary conveyance of a Lot, the Grantee of the Lot shall be jointly and severally liable with the Grantor for all unpaid assessments assessed by the Association against the latter for his/her share of the Common Expenses and other assessments up to the time of the grant or conveyance without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid assessments against the Grantor due the Association and such Grantee shall not be liable, nor shall the Lot conveyed be subject to the Association's rights against the Grantor in excess of the amount therein set forth as of the date of the statement.

ARTICLE VI

INSURANCE AND CASUALTY

A. **General Liability and Property Damage.** Comprehensive general liability and property damage insurance shall be purchased by the Association, and shall be maintained in force at all times, the premiums thereon to be paid from the monthly and/or special assessments. The insurance shall be carried with reputable companies authorized to do business in the State of Iowa in such amounts as the Board may determine. The policy or policies shall name as insured all the members of the Association. Declarant shall be named as an additional insured on such policy or policies until such time as Declarant shall have conveyed all of the Lots in the project. The policy or policies shall insure against loss arising from perils in both the common areas and the units and may include contractual liability coverage to protect against such liabilities as may arise under the contractual exposures of the Association, and/or the Board.

B. **Fire and Casualty.** Fire and other hazard insurance shall be purchased by the Association. The premiums thereon are to be paid out of the monthly and/or special assessments. The policy or policies shall provide for the issuance of certificates or such endorsement evidencing the insurance as may be required by the respective mortgagees. The policy or policies, and certificates so issued, will bear a mortgage clause naming the mortgagee's interest in said property. The policy or policies shall insure against loss from perils therein covered to all of the improvements in the project, except as may be separately insured. Such policy or policies shall contain extended coverage, vandalism, and malicious mischief endorsements. The improvements to be insured under this clause shall be continually insured to value, and the policy or policies shall contain replacement cost insurance. If reasonably available, the policy or policies may contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild. The policy or policies shall name as insured all of the members of the Association and Declarant, so long as Declarant is the owner of any of the Lots in the project. The policy or policies shall also cover personal property owned by the Association.

C. **Fire and Casualty on Individual Units.** Except as expressly provided in this Article, no owner shall separately insure his or her unit, or any part thereof, against loss by fire or other casualty covered by the insurance carrier under Section B. Should any owner violate this provision, any diminution in insurance proceeds resulting from the existence of such other insurance, and/or failure to have the proceeds of such other insurance payable pursuant to the provisions of Section B, shall be chargeable to the owner who acquired such other insurance, who shall be liable to the Association to the extent of any such diminution and/or loss of proceeds.

D. **Personal Liability on Individual Units.** An owner may carry such personal liability insurance, in addition to that herein covered, as he may desire. In addition, any improvements made by an owner to the real property within a unit, as well as the personal property of the owner, may be separately insured by such owner, such insurance to be limited to the type and nature of coverage often referred to as "tenants improvements and betterments." All such insurance separately carried shall contain waiver of subrogation rights by the carrier as to negligent owners.

E. **Additional Coverage.** The Association may purchase and maintain in force, at the expense of the assessment fund, debris removal insurance, fidelity bonds, and other insurance and/or bonds that it deems necessary. The Association shall purchase and maintain workmen's compensation insurance to the extent that the same shall be required by law respecting employees of the corporation. The Board shall also maintain "all risk" insurance coverage on the project to insure against water damage and like kind of casualties.

F. **Loss Adjustment.** The Board of Directors of the Association is hereby appointed the attorney-in-fact for all owners to negotiate loss adjustment on the policy or policies carried under Sections A, B, C and E above.

G. **Association as Trustee for Proceeds.** In the event of damage or destruction by fire or other casualty affecting a unit or units, and/or if any portion of the common elements are damaged or destroyed by fire or other casualty, all insurance proceeds paid in satisfaction of claims for said loss or losses shall be segregated according to losses suffered by each unit or units and/or the common elements, and shall be paid to the Association as trustee for the owner or owners and for the encumbrancer or encumbrancers, as their interest may appear. Said insurance proceeds, and the proceeds of any special assessments as hereinafter provided, whether or not subject to liens or mortgages or deeds of trust, shall be collected and disbursed by said trustee through a separate trust account on the following terms and conditions:

(1) **Common Elements.** If the damaged improvement is a common element, the Board of Directors of the Association shall immediately contract to repair or rebuild the damaged portion of the common element substantially in accordance with the original plans and specifications thereof.

(2) **Partial Destruction.** In the event of damage to, or destruction of, any unit or units without any accompanying damage to the common elements, or if there is accompanying damage to the common elements but the total destruction or damages does not represent fifty percent (50%) or more of all buildings in the project and the cost of repairing or rebuilding said damaged area does not exceed the amount of available insurance proceeds for said loss by more than \$10,000, the Board of Directors of the Association shall immediately contract to repair or rebuild the damaged portion of the unit or units and the common elements substantially in accordance with the original plans and specifications. If the cost to repair or rebuild exceeds available insurance by \$10,000, then owners of the individual units, by a vote of not less than a majority of those present and entitled to vote, in person or by proxy, at a duly constituted owners' meeting held within thirty (30) days from the date of such damage or destruction, shall determine whether the Board of Directors shall be authorized to proceed with repair or reconstruction.

(3) **Total Destruction.** In the event of fifty percent (50%) or more damage to, or destruction of, the project by fire or other casualty, the owners of the individual units, by a vote of not less than a majority of those present and entitled to vote, in person or by proxy, at a duly constituted owners' meeting held within thirty (30) days from the date of such damage or destruction, shall determine whether the Board of Directors shall be authorized to proceed with repair or reconstruction, or whether said project shall be sold; provided, however, that the determination shall be subject to the express written approval of all record owners of mortgages upon any part of the regime.

In the event of a determination to rebuild or repair, the Board shall have prepared the necessary plans, specifications, and maps, and shall execute the necessary documents to effect such reconstruction or repair as promptly as practicable and in a lawful and workmanlike manner.

In the event of a determination not to rebuild, the Board shall have prepared and filed, as promptly as practicable, a corrected subdivision map converting the project into an unimproved parcel of land which shall be offered for sale forthwith at the highest and best price obtainable, either in its damaged condition or after damaged structures have been razed; the net proceeds of such sale, and the proceeds, if any, of insurance carried by the Association and/or by the owners as a whole on the project, including coverage on the units and the common elements, shall be distributed to the unit owners in proportion to their units of ownership, except that where there is a mortgage of record or other valid encumbrance on any one unit then, and in that event, with respect to said unit, the Association will distribute said proceeds as follows: First to the record owners of mortgages upon units and common elements in the regime in satisfaction of the balance currently due on said encumbrances; and then, the remaining proceeds, if any, to satisfy any individual encumbrance executed in good faith and for value, with that portion remaining, if any, to the unit owner of record.

(4) In the event that the common elements are repaired or reconstructed pursuant to the provisions of paragraphs (1), (2), or (3) of this clause, and there is any deficiency between the insurance proceeds paid for the damage to the common elements and the contract price for repairing or rebuilding the common elements, the Board shall levy a special assessment against each unit owner in proportion to all units to make up such deficiency. If any unit owner shall fail to pay said special assessment or assessments within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the assessment, and the remaining owners shall be entitled to the same remedies as those provided in Article V of this Declaration, covering a default of any owner in payment of assessments or charges.

(5) In the event of a dispute among the owners and/or mortgagees respecting the provisions of this Article, any such party may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association.

In the event of arbitration; the party requesting the arbitration will give immediate notice thereof to the Board, which shall notify all other owners and mortgagees as promptly as possible after the reference to arbitration is made, giving all such parties an opportunity to appear at such arbitration proceedings. The decision of the arbitrator in this matter shall be final and conclusive upon all of the parties. The arbitrator may include in his determination an award for costs and/or attorney fees against any one or more parties to the arbitration.

H. **Abatement of Common Expenses.** The Board is authorized to provide coverage for payment of monthly assessments and charges which are abated hereunder on behalf of an owner whose unit is rendered uninhabitable for a peril insured against.

I. **Distribution of Proceeds.** In no event shall any distribution of proceeds be made by the Association directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such an event, any remittances shall be to the Owner and the owner's mortgagee jointly.

ARTICLE VII

EASEMENTS AND ENCROACHMENTS

A. **General Easements.** Each Lot shall be subject to the following easements in favor of the Association and the other owners:

- (1) 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.

- (2) Each Lot is burdened with an easement through the Lot and through the attic and basement of any structure 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 the service to the other Lots.
- (3) Each Lot is burdened with an easement of ingress/egress for maintenance, repair, and replacement of Association Responsibility Elements by the Association.
- (4) Each Lot is burdened with an easement for surface drainage for the benefit of all other Lots in the Common Element.
- (5) Each Lot is burdened with an encroachment easement for encroachments of common walls due to settling, shifting, or in exact location during construction.
- (6) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded plat.
- (7) Each Lot is burdened with an easement through the Lot, but outside of any structure thereon, for purposes of reasonable ingress/egress by other Lot Owners to the front and rear of the Owner's Lot.
- (8) Each Lot is burdened with any and all recorded easements including any easements reserved or dedicated on the recorded plat.
- (9) Each Lot and Common Element is burdened with an easement to the City of Ankeny for ingress and egress over, across and through the Common Elements and Lots for the purpose of operating any water line shut off valve box, and for providing fire and police protection.
- (10) The common elements are burdened with an easement to each Lot owner for ingress and egress across, over, and through the common elements to each respective Lot owner's Lot.

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~~Drainage, Utility and Sewer Easements as Noted on the Plat.~~ There are reserved certain areas of the Lots and Common Element for drainage, public utility and sewer easements. In doing so, it is the intention of Declarant to provide the need and flexibility to itself for the benefit of 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 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 to provide for and the Association to maintain appropriate drainage.

C. **Additional Easement Rights.** Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement in full right, title and authority to relocate, alter or otherwise leave 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 Common Elements. 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 Lot shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in this paragraph C 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/egress to any Lot. The rights and easements reserved by Declarant in this paragraph C shall run with the land and the Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Lot within the Properties.

D. **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 the Common Elements and any pedestrian walkways or sidewalks.

E. **Easement for Signs.** Declarant reserves unto itself, for so long as it owns any 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.** If, by reason of the location, construction, settling, or shifting of a Building, any part of a Building consisting of a single-family residence appurtenant to a Lot (hereinafter in this Article VII referred to as the "Encroaching Unit") encroaches upon any 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. Upon the written demand from the owner of an Encroaching Unit, the owner of the Lot upon which said unit encroaches shall deed to the owner of the Encroaching Unit that portion of the 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.** An easement is hereby reserved and granted to each Lot for driveway and access purposes over the Common Element wherein the private common driveways and the driveway serving such Lot is located. This easement shall extend from the Lot to the street. Further, an easement is hereby reserved and granted for the use of all Lots served by one common driveway. To the extent that a driveway or a portion of a driveway serving a Lot is located partially or wholly on another Lot or Lots, the Lot Owners served by such driveway shall have the benefit of an 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 vehicle or other obstruction within the driveway area so as to prevent access to the other Lot or Lots which 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 the Common Element or another Lot or Lots. This latter easement is for the purpose of allowing pedestrian access from the street to the 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 Lot Owner which such sidewalk or pedestrian walkway serves.

H. **Ingress and Egress Easement.** There is hereby granted to the City of Ankeny a reasonable ingress and egress easement over, across, and through Lots "A", "B", "C", "D", and "E" (the Common Element) for the sole purpose of reading water meters and accessing water shut off boxes. Each lot owner shall be subject to the City of Ankeny water ordinances and any amendments thereto.

I. **Ingress and Egress Easement.** There is hereby reserved and granted unto the Declarant, its licensees, invitees, agents, grantees, and guests, and unto the general public a reasonable ingress and egress easement over, across, and through the streets within the regime for the purpose of accessing adjoining lands.

ARTICLE VIII

PARKING RIGHTS

Subject to the provisions of Article VII, paragraph G, above, the paved driveway in front of each Owner's garage shall be for the exclusive benefit of such Owner and his guests. No one shall use these parking spaces for parking or storing of inoperative motor vehicles, boats, snowmobiles, trailers, camping vehicles, or other recreational vehicles or for the 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 so as to impede access from or to any Lot or 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 Lot or street. The Association shall have the right to adopt rules and regulations concerning parking on the street located in the Common Element, including rules prohibiting all parking on such street.

ARTICLE IX

PARTY WALLS

A. **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 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. **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.

C. **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 any restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

D. **Weatherproofing.** Notwithstanding any other provisions of this Article, an Owner who, by his or her 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. **Right of Contribution Runs With the 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 the Declarant or Original Builder, 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, color 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 Article shall not apply to any construction, improvements or alterations made by Declarant, including the construction of fences on the Common Element. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE XI

SIGNS AND HOME OCCUPATIONS

A. **Signs.** 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 on any Lot without prior written approval of the Board. Further, no signs of any nature, kind or description shall be erected, placed or maintained on any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation. Nothing in this Article shall affect the rights of Declarant provided in Article VII, paragraph E.

B. **Home Occupation.** No home occupation or business shall be conducted or maintained on any Lot other than one which is incidental 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, provided the same is permitted under the ordinances of the City of Ankeny. 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

USE RESTRICTIONS

A. **Subjection of the Property to Certain Provisions.** The ownership, use, occupation, and enjoyment of each Lot and the Common Element shall be subject to the provisions of the Articles of Incorporation and Bylaws of the Association; this Declaration; and, the published Rules and Regulations promulgated by the Board, all of which provisions irrespective of where set forth or classified shall have equal status and shall be enforceable and binding as a covenant, condition, restriction or requirement running with the land and shall be binding on and enforceable against each and all Lots and the Owner thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

B. **Insurance Compliance.** Nothing shall be done or kept in any Lot or in the Common Element which will increase the rate of insurance on the Common Element or the Association Responsibility Elements without the proper consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Lot or in the Common Element which will result in the cancellation of insurance on any Lot or any part of the Common Element 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.

C. **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 Published Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

ARTICLE XIII

GENERAL PROVISIONS

A. **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 shall have the right to enforce the covenants, conditions, regulations, and restrictions contained herein or by reference included herein and pursue any and all remedies at law or in equity available under Iowa law with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions, regulations, and restrictions contained herein or by reference included herein, and shall be entitled to recover reasonable attorney's fees and costs and expenses incurred as a result thereof.

B. **Amendment.** This Declaration may be amended or changed at any time by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners and recorded in the Office of the Recorder of Polk County, Iowa; provided, however, none of the rights or duties of Declarant reserved or set out herein may be amended or changed without Declarant's prior written approval. This Declaration may also be amended by Declarant, if it then has an ownership interest in the Properties, at any time after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies or to correct or modify 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, and the City of Ankeny, Iowa.

C. **Time of Declaration.** This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty (20) years from the date of recordation in the Office of the Recorder of Polk 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 covenant, condition, regulation, or restriction of this Declaration, the Articles, the Bylaws, or the Rules and Regulations by judgment or decree shall in no way affect any of the other provisions hereof, but the same shall remain in full force and effect.

D. **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, the Bylaws, the Rules and Regulations, or any other applicable documents which default has not been cured within the time allowed herein.

E. **Restriction on Rental.** In order to protect the integrity of this development and to insure that those persons residing therein have similar proprietary interests in their Lots and Living Units, no Lot and the Living Unit located thereon shall be leased or rented to any person not having an ownership interest therein, unless and until the unit has been occupied for a period of one year by the Owner or Owners thereof. Thereafter, no Lot and Living Unit located thereon shall be leased or rented for a period of time of less than one year, and no lease or rental agreement to any such tenants or lessees shall be extended or renewed for a shorter period of time. All leases must be in writing and a signed copy thereof filed with the Association. The restrictions contained herein shall not apply to the Declarant or Living Units owned by it. All Lot Owners shall be responsible for their respective tenant's compliance with and adherence to this Declaration, the Articles, By-Laws, and published Rules and Regulations. Any breach or default by a tenant shall be deemed to be a breach or default by the respective Lot Owner.

F. **Non-liability of the Board of Directors, Officers and Declarant.** Neither the members of the Board of Directors, nor the Officers of the Association, nor Declarant shall be personally liable to the Lot Owners for any mistake of judgment or for any acts or omissions of any nature whatsoever as such members of the Board of Directors, Officers, or Declarant, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Lot Owners shall indemnify and hold harmless the members of the Board of Directors, Officers, or Declarant, and their respective heirs, executors, administrators, successors and assigns in accordance with the provisions of the Bylaws of the Association.

G. **Board's Determination Binding.** In the event of any dispute or disagreement between any Lot Owners relating to the property, or any questions of interpretation or application of the provisions of the Declaration, Articles, Bylaws, or Rules and Regulations, such dispute or disagreement shall be submitted to the Board of Directors. The determination of such dispute or disagreement by the Board shall be binding on each and all such Lot Owners, subject to the right of Lot Owners to seek other remedies provided by law after such determination by the Board.

H. **Future Development and Supplemental Declarations.** Additional land within the areas described in the Warranty Deed, recorded in Book 9094, Page 552, in the office of the Polk County Recorder, may be annexed at any time prior to August 1, 2012, by the Declarant without the consent of members, provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them. Declarant, however, shall not be

required to submit any or all of said property to the project. If and as Declarant determines to submit additional parcels to this project, Declarant reserves the right to execute and record supplemental/amended Declarations to such effect for the purpose of establishing the size, location, and character of the further lands, buildings, and units to be submitted, and for the purpose of amending the Declaration in any manner which will, in the sole discretion of the Declarant, enhance or clarify the project established herein. Such supplemental/amended Declarations, when filed for record, are and shall be automatically incorporated herein by reference and made a part hereof with like effect as though the buildings, lands, and units had been constructed and/or submitted at the time of the execution of this Declaration. Supplemental/amended Declarations are to be executed solely by the Declarant, its successors or assigns, notwithstanding the ownership of the Lots by others, or the existence of holders, insurers and guarantors of mortgages that are secured by units in the project, and Declarant shall have and exercise such right and power not only in its individual capacity, but also as agent for all existing (at the time of filing such supplemental/amended Declaration) Lot Owner(s), and/or holder(s), insurer(s), mortgagee(s) and guarantor(s) of any mortgage(s) secured by units in this project, and each Lot Owner and holder, insurer, mortgagee and guarantor of any mortgage secured by units in the project does therefore irrevocably appoint Declarant as his, her or its agent for the purpose of supplementing and/or amending this Declaration as may be required to add such additional land, buildings, units and facilities to this project; and to amend the Declaration from time to time to enhance or clarify, in the sole discretion of the Declarant, the use, restrictions, and obligations established herein; and such additional construction by Declarant or their assignees shall in no way be deemed an interference with the use or enjoyment of owners of units previously constructed or occupied by them; nor shall such supplementation and/or amending of this Declaration by the Declarant be deemed an amendment of a material nature.

I. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Nothing herein contained shall be construed to prevent the Declarant from submitting additional parcels to this project at any time; nor to compel the Declarant to submit additional parcels to this project; nor to prevent the use of any contiguous parcels not hereby or hereafter incorporated into this project for such purposes as desired and as may be otherwise lawful.

THIS DECLARATION is adopted for recordation this 22nd day of August, 2002, by Rogers Enterprises, Inc., as Declarant and Owner of the parcel.

ROGERS ENTERPRISES, INC.,
Declarant
By Douglas W. Rogers
Douglas W. Rogers, President

STATE OF IOWA, COUNTY OF POLK) ss.

On this 22nd day of August, 2002, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Douglas W. Rogers, to me personally known, who, being by me duly sworn, did say that he is the President of the corporation executing the foregoing instrument; that no seal has been procured the corporation; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; that Douglas W. Rogers acknowledged the execution of the instrument to be the voluntary act and deed of the corporation and of the fiduciary, by it, by him, and as the fiduciary voluntarily executed.

Scott M Wood
Notary Public in and for said State



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