

Recorder's Cover Sheet
Master Declaration of Covenants, Conditions and Restrictions for
Autumn Valley Townhomes, Waukee, Dallas County, Iowa.

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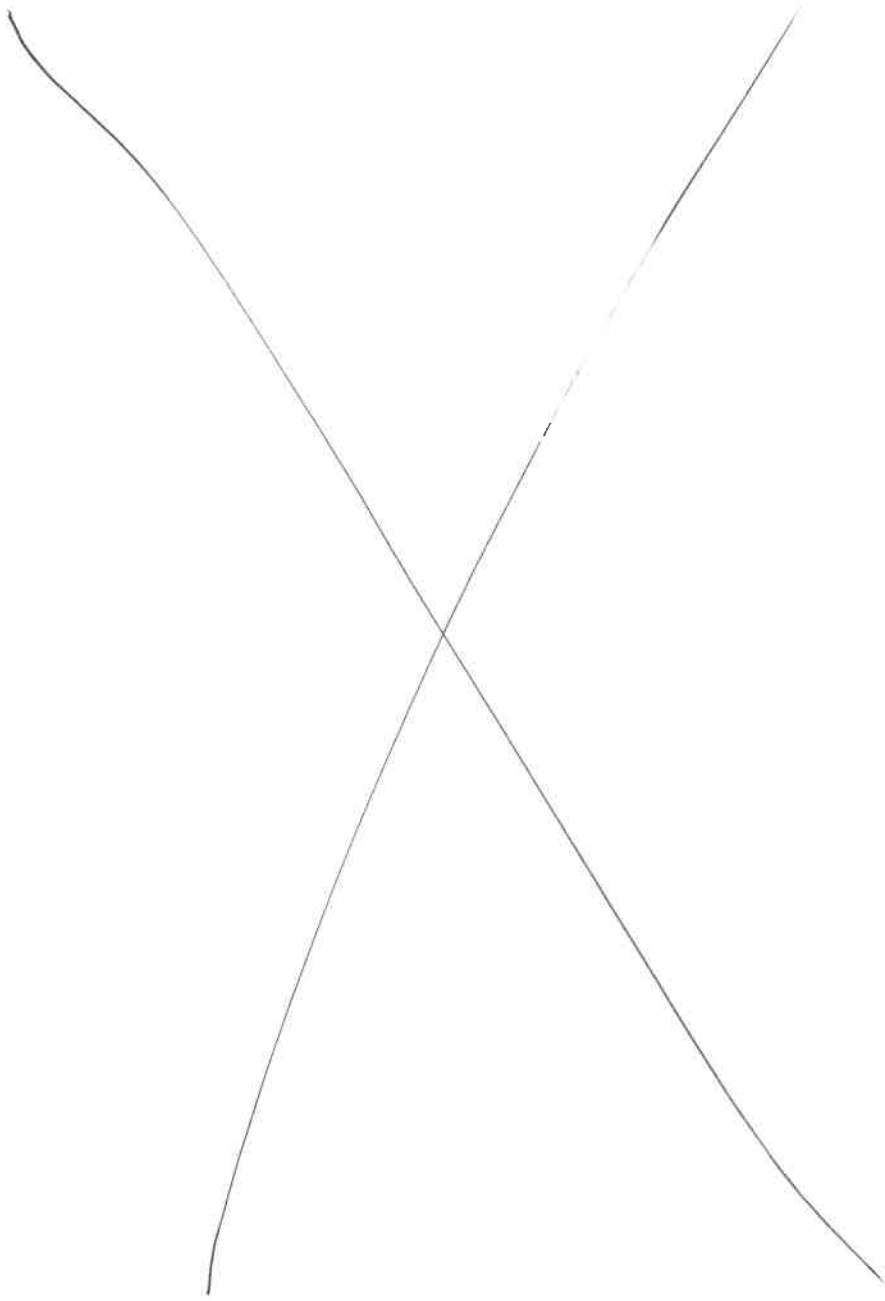
Legal Description: **See Attached Exhibit A**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

AUTUMN VALLEY TOWNHOMES

A Subdivision located in Waukee, Dallas County, Iowa



**Master Declaration of Covenants, Conditions and Restrictions for
Autumn Valley Townhomes, Waukee, Dallas County, Iowa.**

THIS Declaration of Covenants, Conditions and Restrictions of Autumn Valley Townhomes (“Declaration”) is made on this _____ day of _____, 20____, by Forestar (USA) Real Estate Group, Inc., a Delaware corporation (“Declarant”),

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in Waukee, Dallas County, Iowa, which is more particularly described in Exhibit “A” (hereafter “Real Estate”) attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision.

WHEREAS, Declarant desires to subdivide and develop the Real Estate, as hereinafter provided.

WHEREAS, the term “Property” shall hereafter mean and refer to the Real Estate.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots (as defined in Article II below) in the Property, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. The restrictions shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its respective successors entitled to the Property or any part or parts thereof.

The Owner of any Lots subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained. By acceptance of such deed, execution of such contract, and/or actively occupying such Lot, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to these restrictions and also for itself, its heirs, personal representatives, successors, and assigns covenants and agrees to keep, observe and comply with the terms and conditions hereof. The covenants, conditions, restrictions, and easements of this Declaration shall supplement the Master Declaration of Covenants, Conditions, and Restrictions for Autumn Valley filed contemporaneous with this Declaration in the Office of the Recorder of Dallas County, Iowa (“Master Declaration”), and shall be considered as applying in addition to the Master Declaration, not in lieu of the Master Declaration. In the event of any conflict between any term or provision of this Declaration and the Master Declaration, the more restrictive term shall apply. As of the date of execution hereof, the Property consists solely of the Real Estate. However, notwithstanding anything herein to the contrary, the Declarant shall have the right, and hereby reserves to itself,

the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to add to the Property and subject to this Declaration additional contiguous real property ("Additional Real Estate"). Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations, and privileges herein, when Declarant places of record in Dallas County, Iowa a supplemental declaration ("Supplemental Declaration") so declaring the same to be part of the Property, which Supplemental Declaration may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Such Supplemental Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate. Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the sole discretion of the Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

ARTICLE I

Name

The subdivision of the Property created by this Declaration shall be known and designated as **Autumn Valley Townhomes** (hereinafter "Subdivision").

ARTICLE II

Definitions

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of Iowa, as the same are or hereafter may be amended from time to time.

Section 2.2 "Association" means the **AUTUMN VALLEY TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**, a non-profit corporation, its successors and assigns. This Association shall be separate from, and in addition to, the homeowners association referenced in the Master Declaration, but the homeowners' association referenced in the Master Declaration shall also have concurrent jurisdiction over the Real Estate.

Section 2.3 "Association Responsibility Elements" shall mean the following, whether located upon a Lot or upon any Common Area: a) the exterior surface of the Buildings upon a Lot, excluding windows, doors, patios and decks; b) the structural portion of a Lot, excluding windows, doors, patios and decks; c) the roof, gutters, downspouts, and foundations of the Buildings upon a Lot; d) any common wall between residential or garage structures upon Lots, except the interior surfaces thereof; e) the yard surrounding the residential or garage structure upon a Lot, except for trees and shrubbery; f) private streets, driveways and sidewalks upon a Lot or the Common Area; g) conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a residential or garage structure which are carrying any of a residential or garage structure which are carrying any service to more than one Lot; h) 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, and as described in Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement to which the Property is subject.

Section 2.4 "Board of Directors" means the Board of Directors of the Association.

Section 2.5 "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot (as hereinafter defined).

Section 2.6 "Building" shall mean and refer to any single-family attached or detached dwelling unit that may be constructed on a Lot on a part or more than one Lot and shall include an attached garage.

Section 2.7 "Bylaws" shall mean and refer to the Bylaws of the Autumn Valley Townhomes Homeowners' Association, Inc., as adopted by the Board of Directors, as same may be amended from time to time.

Section 2.8 "Common Area" means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined) and (2) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereinafter defined) as a "Block", "Outlot," "Common Area, "C.A", or such other areas within the Property that are not otherwise identified on the Plat (as hereinafter defined) as a lot or street. The Common Area to be conveyed to the Association at the time of conveyance of the first Lot (as hereinafter defined) to an Owner (as hereinafter defined) is described in the Plat (as hereinafter defined).

Section 2.9 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area (or any part thereof) and Association Responsibility Elements, and all sums lawfully assessed against the Owners (as hereinafter defined) by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses. Common Expenses shall include, without limitation, payment of legal liabilities, taxes, fees, costs, debts, or other obligations of the Association, insurance premiums, insurance deductibles, all taxes imposed upon any facilities or the underlying land, leasehold, easement or right-of-way, fees payable to a professional management firm, accounting fees, and attorney fees.

Section 2.10 “Declarant” means FORESTAR (USA) REAL ESTATE GROUP, INC., a Delaware corporation, and its successors and assigns.

Section 2.11 “Development Period” means the period of time commencing with Declarant’s acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot (as hereinafter defined) or any other portion of the Property.

Section 2.12 “Dwelling Unit” means any single-family residence situated upon a Lot (as hereafter defined).

Section 2.13 “Living Area” shall mean and refer to any portion of a Building situated upon a Lot and designed and intended for use and occupancy as a residence by a single family or individual.

Section 2.14 “Lot” or “Lots” means, as the context requires, any plot of land created by and shown on a lawfully recorded subdivision plat of the Property upon which a Dwelling Unit could be constructed in accordance with applicable zoning ordinances, with the exception of the Common Area and streets dedicated to public use. Each Lot shall include such property to the centerline of any party wall separating the Dwelling Units in the same Structure (as herein after defined) and shall include an area equal to the exterior face of the real wall of each Dwelling Unit.

Section 2.15 “Owner” means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term “Owner” shall include the Declarant.

Section 2.16 “Park” shall mean any portion of the Real Estate which the Declarant, in the Declarant’s sole and absolute discretion designates on a Plat as a “Reservation” to be dedicated or donated to any local governmental entity, as a public park for public use or for other purposes.

Section 2.17 “Plat” means the subdivision plats of the Property, which are recorded with the Dallas County Recorder’s Office, as the same may be hereafter amended or supplemented pursuant to this Declaration.

Section 2.18 “Provider” shall mean and refer to the entity or entities, which provides Provider Services (as hereinafter defined).

Section 2.19 “Provider Services” shall mean, without limitation, television, cable, computer connection and/or internet connection by line, wire, cable, fiber optic, main, duct, pipe conduit, pole, antenna, microwave, satellite dish, or wire or wireless technology.

ARTICLE III

Property Rights, Easements and Encroachments

Section 3.1 **Owners’ Easements of Enjoyment of Common Area.** Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any

Common Area, which nonexclusive right and easement of enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;

(b) Subject to the requirements of the Revised Iowa Non-Profit Corporation Act regarding notice and due process, the right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner for any period during which any assessment remains unpaid;

(c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;

(d) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;

(e) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;

(f) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;

(g) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by (i) the Declarant during the Development Period; or (ii), after the Development Period, seventy five percent (75%) of the membership of each class of members of the Association;

(h) If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to such Lot Owner's easement for ingress and egress;

(i) The right of the Declarant to erect any signs (i) advertising the sale of the Property or any Lot and/or (ii) identifying the Subdivision; and

(j) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

Section 3.3 Certain Obligation and Access Rights to the Common Area.

(a) The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant and Builder, so long as Declarant, Builder, or their affiliates own any portion of the Property and for so long as those entities may be liable under any builder's warranty. No person other than an Owner of a Lot and his invitees shall have the right to enter upon, use or affect an Association Responsibility Element located within or upon a Lot, except that the Association and its designees may enter within and upon a Lot, the Buildings, and the Living Unit located thereon at reasonable times for the following purposes: a) installation, repair, removal, replacement, maintenance or inspection of an Association Responsibility Element; b) enforcement of any provision of this Declaration or the Articles or Bylaws of the Association; and c) 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 or the improvements thereon or of any Association Responsibility Elements is caused by the willful or negligent acts of an Owner, or by the willful or negligent acts of the Owner's family, guests, licensees, or invitees, 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 Lot and Living Unit of the Owner and shall become due and payable upon demand. Until the construction work on all Living Units within the Property and appurtenant improvements incidental to said Living Units, are completed, Declarant, any Builder, or their respective designees or assignees shall have the right to enter upon any Lot or Living Unit for the purpose of completing such work and performing under applicable sureties.

Section 3.4 General Drainage, Utility, Sewer and Other Development Easements. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements

shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property unless otherwise set forth herein.

(a) Declarant hereby reserves unto itself and unto any public or private utility, a general easement (“General Drainage, Utility, and Sewer Easement”) for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas and sanitary and storm sewer, to serve any Dwelling Unit constructed on the Property; provided, however, that only those Providers which receive the Declarant’s explicit written permission shall be permitted within the General Drainage, Utility, and Sewer Easement. This General Drainage, Utility, and Sewer Easement shall include all areas of the Property outside any Dwelling Units, except for any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) During the Development Period, Declarant reserves unto itself and/or any Builder the right to use any of the Lots as models. The reservation of this right or privilege in Declarant and/or Builder includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant retains the right to make changes in the location and manner of construction of Buildings and other improvements. Declarant reserves the right to enter upon and within any Living Unit, Lot, and Common Area in connection with any construction activity.

(c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an undefined sign and facilities easement (“Sign and Facilities Easement”) to install, erect, construct and maintain an entryway sign or signs, directional signs, signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(d) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer, Sign and Facilities Easement, or any facility at any time located therein or thereon;

(ii) 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 and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or to change the description of any drainage, Flowage, Utility, Sewer, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended plat or amendment to the Plat recorded in the Office of the Recorder of the County in which the Property is located.

(e) During the period that Declarant owns any Lot, Declarant and its agents shall have an easement for access to Common Areas for the purpose of constructing structures and other improvements in and to the Lots and for installing, maintaining, repairing, and replacing such other improvements to the Property (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Lot, Declarant and its agents shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of owners in the Subdivision.

(f) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 3.5 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 and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.6 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the Declarant to be conveyed to the Association for the common enjoyment of all residents in the Subdivision.

Section 3.7 Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, flowage easements, detention easements, public utility easements, water easements, private sanitary sewer easements and/or sanitary or storm sewer easements, or any combination thereof (hereafter collectively "D&UE Easements"), which are hereby reserved for the non-exclusive use for such purposes by the appropriate governmental entities, public utilities, private utilities and Provider(s) for the installation and

maintenance of swales, ditches, mains, ducts, poles, lines, wires, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities, and for ingress and egress to accomplish such maintenance and installation; provided, however, that only Providers which receive the Declarant's explicit written permission shall be permitted to be within the D&UE Easement. No permanent structure of any kind, including patios, decks, driveways, walkways, landscaping, and trees, shall be built, erected or maintained on or within any such drainage easements, utility easements, and/or sanitary or storm sewer easements, except by the Declarant or its assigns. Fences may be permitted, however any fence located within the D&UE Easement shall not impede the flow of water, and Owner shall be responsible for removing the fence if there is an issue that needs to be addressed within the D&UE Easement. Purchasers of Lots in this Subdivision shall take title subject to all such easements hereby created and subject at all times to (i) the rights of proper authorities to service and maintain all such drainage, utility and sanitary or storm sewer facilities and easements and (ii) the rights of such governmental entities, public utilities, and private utilities of ingress and egress to access all said easements. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to all such easement areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. The drainage easements hereby created are reserved (i) for the use of Declarant during the Development Period, for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations for the Property and adjoining properties and (ii) for the non-exclusive use of the Association, or any applicable governmental authority for access to and maintenance, repair and replacement of such drainage system. It shall be the responsibility of the Association and the Owners of the areas enclosed within drainage easements to maintain any drainage areas in such condition that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department of any private or public utility. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners or other land contained within the Plat upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 3.8 Designated Easements for Landscaping, Mounding, Screening and Signage. Within any strips of ground shown or designated on a Plat as a landscape easement, landscape buffer easement, landscape maintenance easement, landscape maintenance access easement, or by any similar language indicating a landscaping purpose, Declarant hereby reserves unto itself, its affiliates, or any designated Builder during the Development Period, and thereafter

unto the Association, the exclusive and sole right to (i) erect signs which advertise the Property or availability of Lots, and/or identify the Subdivision and (ii) install landscaping, mounding, walls, and screening. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected between (i) the area of any such easements and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

Section 3.9 Ingress-Egress Easements. Ingress-Egress Easements are created for the use of Declarant, the Association and the Owners of all Lots, and each of their guests, tenants, contractors, subcontractors, licensees, agents, or members of their families for purposes of ingress and egress to Lots and for the use of the Association for the purpose of gaining access to the Common Areas in the course of maintenance, repair or replacement thereof and for the use of Owners for the purpose of gaining access to such Common Area to enjoy the use thereof to the extent authorized herein. Such right and easement as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted

Section 3.10 General Easement Rights. The Declarant hereby grants a blanket easement over, across, through and under the Property to the Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, fire, ambulance personnel and all similar persons, to enter upon the Property, in the exercise of the functions provided for by this Declaration, Articles, Bylaws and rules of the Association, and in the event of emergencies and in the performance of governmental functions. Declarant further grants a blanket easement over, across, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewer, gas telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Property and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated except as proposed and approved by Declarant. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on the Property without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Property, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Dwelling Unit has been constructed.

Section 3.11 Limitation on General Easement Rights. When not an emergency situation or a governmental function, the rights accompanying the easements provided for below shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, any Owner or tenant directly affected.

Section 3.12 Easement for Signs. Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to the Owners, the right and easement to erect and maintain an entryway sign or signs.

Section 3.13 Driveways and Access for Lots. An easement is hereby reserved and granted to each Lot for driveway and access purposes over any portion of the Common Area wherein driveways or private streets are located. This easement shall extend from the Lot to the dedicated public street. This driveway easement shall be for ingress and egress purposes and not Lot Owner shall park or allow to be parked any vehicle or other obstruction within the driveway area, except as provided in in this Declaration. 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 portion thereof serving a Lot is located partially or wholly on another Lots 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. Further there is hereby reserved and granted an easement for the benefit of each Lot served by a sidewalk and pedestrian walkway located partially of wholly on the Common Area or another access from the public or private streets to the Lot served but such sidewalk or pedestrian walkway No Owner shall obstruct or allow obstructions on an sidewalk or pedestrian walkway which would impair the use of access by the Lot Owner which such sidewalk or pedestrian walkway serves. As long as any ingress or egress by driveway or sidewalk to any Lot is through the Common Area, any conveyance or encumbrance of the Common Area shall be subject to the easement right granted to Owners in this Declaration.

Section 3.14 Street Dedication. 10th Street shown on the Plat is hereby dedicated to the public. Maywood Lane and Underwood Lane shall remain private streets, and the Association will specifically be responsible for maintenance, repairs and replacement of Maywood Lane, Underwood Lane, and any and all other private streets which may be shown on any subsequent plat, including but not limited to snow removal, repair and replacement of concrete, street cleaning, and any other maintenance as the Association shall deem appropriate. Maywood Lane, Underwood Lane, and any and all other private streets which may be shown on any subsequent plat, shall be subject to the ingress-egress easement granted in Section 3.9.

Section 3.15 Encroachments. If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (a) the original construction thereof by the Declarant or its assigns, which shall include, but not be limited to, any party wall or driveway which encroaches over a Lot's boundary line and any drainage of stormwater from roofs and gutters, (b) deviations within normal construction tolerances in the maintenance, repair, replacement or reconstruction of any improvement, or (c) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The owner of the encroaching improvement shall also have an easement for the limited purpose of maintenance of the encroaching improvement. This easement does not relieve any Owner or any other person from liability for such Owner's or other person's negligence or willful misconduct.

Section 3.16 Reciprocal Cross-Easements for Adjoining Dwelling Units. There is hereby created a reciprocal cross-easement and right of entry for all adjoining Dwelling Units covering all encroaching party walls, roofs, roof overhangs, eaves, downspouts, gutters, and splash blocks for the purposes of repairing and maintaining same at reasonable times; provided, however, that the Owner exercising the right of entry upon the adjoining Owner's Lot shall be responsible for

preserving and restoring the adjoining Owner's Lot to the same condition prior to the exercise of the right of entry.

Section 3.17 Easement Work. Notwithstanding any architectural approval under Section 9.2 below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.7, Section 3.8, and Section 3.9 above.

Section 3.18 No Access. There may be strips of ground designated on the Plat as "no access strips", "no access", "no access easement", "no access esmt", or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress and egress and/or traveling, is prohibited on, over, or across any such strips or areas.

Section 3.19 Reservation of Right to Grant Easement. The Declarant hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements, upon, under, over and across the real estate which is adjacent to the Property.

Section 3.20 Bonds and/or Dedication Requirements. There is reserved to the Declarant an easement and the right to grant and reserve easements or to vacate or terminate easements across all Lots and Common Area as may be required by any governmental agency or authority or utility in connection with the release of improvement bonds or the acceptance of public streets for state maintenance with respect to the Property.

Section 3.21 Easements for Corrective Work. There is reserved to the Declarant a non-exclusive easement over all Lots and the Common Area for the purposes of correcting drainage, regrading, maintenance, landscaping, mowing and erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, and for the purpose of executing any of the powers, rights, or duties granted to or imposed on the Association herein. This easement shall automatically expire as to any Lot seven (7) years from the date of submission of such Lot to this Declaration.

ARTICLE IV Parking Rights

Subject to the provisions of this Declaration, 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 boats, snowmobiles, trailers, camping vehicles or other recreational vehicles, or for parking of truck or other commercial vehicles except temporarily or incidentally for the making of pick-up or deliveries to neighboring Lots. No vehicles shall be parked so as to impede access from or to a Lot or any private 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 Lot or private or public street. Parking shall be limited to driveways and designated parking areas, no parking shall be permitted on the private streets.

ARTICLE V
Party Walls

Section 5.1 **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between 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.

Section 5.2 **Use of Party Walls.** The Owners shall each have the right to use the Party Wall jointly. Neither Owner shall take any action or suffer any condition so as to deprive the other party wall Owner of full and complete use and enjoyment of the Party Wall.

Section 5.3 **Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty.** If any such party wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the non-structural components of such wall in proportion to their respective uses of the party wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed such party wall, unless a longer period of time is approved of by the Association. If the damage is of such a nature that it has resulted, or will (if left uncorrected) result in damage or destruction of such party wall, the reconstruction and/or repairs will be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in compliance with all requirements of local governing authorities and otherwise in compliance with all applicable laws, to the same or better condition as existed prior to such damage or destruction. Each Owner grants to the other party wall Owner, their successors, and/or assigns, such rights of access and/or temporary easements for ingress or egress as may be necessary or desirable to affect such repair, maintenance, or replacement of the Party Wall, or any portion thereof, or to inspect the Party Wall from time to time.

Section 5.4 **Repairs for Damage Caused by One Owner.** If any such party wall is damaged or destroyed through the act of one or more adjoining Owners, or their respective agents, families, households or guests (collectively the "Offending Parties"), whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the full use and enjoyment of the wall, then the Owner(s) of the Dwelling Unit(s) from whence the Offending Parties committed the act that caused the damage or destruction, shall forthwith proceed to rebuild and repair the same, in the manner required under Section 5.3, above, without cost to the adjoining Owner.

Section 5.5 **Other Changes.** In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which requires the

extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed received.

Section 5.6 **Right to 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.

Section 5.7 **Dispute.** In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute in the capacity as arbitrators.

ARTICLE VI

Association Membership, Voting Rights, Board of Directors, and Professional Management

Section 6.1 **Membership.** Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Iowa Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 6.2 **Classes of Membership and Voting Rights.** The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot on the Property until such time as Declarant owns no Lots or decides to surrender its Membership and turn over complete control of the Association to the Class A members, whichever date is earlier.

Section 6.3 **Board of Directors.** The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 6.4 **Professional Management.** Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have the exclusive right to manage or designate a Managing Agent for the Property and to perform all or any of the functions of the Association until the expiration of the Development Period. Declarant may, at its option, engage the services of a

Managing Agent, including a Managing Agent affiliated with Declarant, to perform such functions, and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

Section 6.5 **Suspension of Voting Rights.** In the event any Owner shall be in arrears in the payment of assessments for a period of sixty (60), such Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments are brought current. In the event any Owner shall be in default of the performance of any of the terms of this Declaration for a period of thirty (30) days, such Owners right to vote as a member of the Association shall be suspended and shall remain suspended until all defaults are remedied

Section 6.6 **Budget.** The Association shall prepare an annual budget.

Section 6.7 **Proxy.** Any proxy given by a Member shall comply with the requirements of Iowa law.

ARTICLE VII **Maintenance of Lots**

Section 7.1 **Maintenance by Owners.** The Owner of each Lot shall furnish and be responsible for, as his own expense, all maintenance, and repairs of his 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 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 Lot unless otherwise provided herein.

Section 7.2 **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.

Section 7.3 **Responsibility for Willful or Neglectful Acts.** In the event that the need for maintenance, repair, or replacement to any Association Responsibility Element is cause through the willful or negligent act of the Owner, his family, guests, invitees, the costs of such maintenance or repairs shall be added to and become a part of the assessments to which such Lot is subject, without regard to whether such item or maintenance, repair, or replacement is located on that Owner's lot or another.

ARTICLE VIII
Covenant for Maintenance Assessments

Section 8.1 **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed therefore (except Declarant, as more specifically provided in Section 5.6 below), whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses); and
- (b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration.
- (c) A working capital contribution upon the sale or transfer of any Lot in an amount set forth in the annual budget which shall be due at the time of such sale or transfer.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eighteen percent (18%) per annum (or, if such rate exceed the highest rate permissible by applicable law, then the highest rate permissible by applicable law), costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' 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 such Owner's successors in the title unless expressly assumed by them.

Section 8.2 **Purposes or Regular Yearly Assessments.** The Regular Yearly Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein; provided, however, that notwithstanding the levy of assessment provided in this Section 5.2, the Board of Directors shall have no obligation or liability to any person with respect to health, safety and welfare, all as provided in the Association's organizational documents. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 8.3 **Maximum Regular Yearly Assessments.**

- (a) The maximum Regular Yearly Assessment on any Lot shall be set forth in the annual budget. At least thirty (30) days before the beginning of each fiscal year, the

Board of Directors shall prepare a budget fixing the uniform rate for the Regular Yearly Assessment as to all Lots.

(b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than ten percent (10%) above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership.

(c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than twenty percent (20%) above the maximum Regularly Yearly Assessment for the previous year, by a vote of two-thirds (2/3) of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) So long as such action complies with Iowa law, the Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 8.4 Special Assessments for Capital Improvements and Operating Deficits.

In addition to the Regular Yearly Assessments authorized above, the Association may levy 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 any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the approval of two-thirds (2/3) of the votes entitled to be cast by those Members who cast votes in person or by proxy at a meeting duly called for this purpose. Notwithstanding the fact that in some instances this Declaration may provide that certain items of routine and ordinary repair and maintenance should be performed by the Association, the Association shall nevertheless retain the right to assess the costs thereof to any Owner or group of Owners as a Special Assessment.

Section 8.5 Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8.6 Uniform Rate of Assessment. Regular Yearly Assessments capital improvements and to recover operating deficits must be fixed as a uniform rate for all Lots. Declarant and any individual or entity purchasing a Lot or Lots solely for the purposes of construction of a for-sale Dwelling Unit thereon (a "Builder") shall not be obligated to pay any Regular Yearly Assessments and Special Assessments.

Section 8.7 Date of Commencement of Yearly Assessments: Due Dates. The Regular Yearly Assessment provided for herein shall commence as to each Lot within a recorded Plat on the date of closing, on a pro-rated basis, on the conveyance of a Lot by the Declarant to an Owner (other than Builder), or by Builder to an Owner who is an end-user. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. Regular Assessments shall be due in 1/12th increments on a monthly basis. The due dates for all assessments, and the assessment and collection periods (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in 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 for any Lot shall be binding upon the Association as of the date of its issuance. Any assessment by the Association may be collected on a different schedule or may coincide with other assessment obligations of any other neighborhood homeowners associations under other Plats that make up the Property.

Section 8.8 Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefore pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and reasonable attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his/her heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum (or, if such rate exceeds the highest rate permissible by applicable law, then the highest rate permissible by applicable law), and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot.

Section 8.9 Subordination of the Lien to Mortgages: Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the

extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

Section 8.10 Declarant/Builder Loan. In the event the Association is operating at a deficit, the Declarant and/or Builder may, at Declarant and/or Builder's option, contribute toward the Association budget in order to assist with the operating costs. Any such advances made by Declarant and/or Builder shall be treated as a loan, payable on demand by Declarant and/or Builder. This Section shall be subject to the limitations established by Iowa law.

Section 8.11 Fines and Penalties. In addition to the remedies described elsewhere in this Declaration, the Association is hereby authorized to levy against any Lot in violation of this Declaration an assessment penalty not to exceed \$100 for each day a violation of the this Declaration continues beyond thirty (30) days after notice of a violation has been given by the Association to the Owner of said Lot by certified mail, return receipt requested, or delivered in writing in by personal service. If the Owner of the Lot cannot be located after a diligent search or inquiry, the Association shall publish notice of the violation for two (2) successive weeks in a newspaper of general circulation in Dallas County, Iowa. If the Owner has not fully complied with the terms of this Declaration within thirty (30) days after receiving notice, or thirty (30) days after second publication of notice, the Association shall have the authority to levy an assessment penalty as described herein. This assessment shall be a lien on the Lot and shall have the same status as any other assessment levied by the Association. Any Lot Owner objecting to the notice of violation shall have the right within thirty (30) days of receiving notice to request a hearing before the Association Board of Directors. Assessment of the penalty shall be stayed pending a hearing and final decision by the Association Board of Directors.

Section 8.12 Reserves for Replacements. After the Development Period, the Association shall establish and maintain a reserve fund for the maintenance, repair and replacement of the Common Area, the Association Responsibility Elements, and improvements located within and thereon by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors, which reserve fund shall be sufficient, in the sole opinion of the Board of Directors, to accommodate such future maintenance, repair and replacement and which shall be a component of the Regular Assessment. Such fund shall be conclusively deemed to be a Common Expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacement of the Common Area may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance of any improvements within the Common Area, including but not limited to, Association Responsibility Elements, sidewalks, parking areas, landscape improvements, street or common area lighting, streets or roadways developed as a part of the Property, equipment replacement, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Area. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

ARTICLE IX
Use Restrictions and Architectural Control

Section 9.1 Lot Use and Conveyance. All Lots shall be used exclusively for residential purposes, and no structure shall be erected on any Lot except by the Declarant or the Association. The Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association, and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein. The Declarant reserves the right, pursuant to a recorded subdivision or re-subdivision plat, to alter, amend, and change any Lot line or subdivision plan or plat. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one Dwelling Unit and appurtenant structures, approved by the Association and appropriate local governing authorities, for use solely by the occupant of the Dwelling Unit. Except as provided in this Section, no Lot shall be subdivided in any manner.

Section 9.2 Architectural Control. No improvement or structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, 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 Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Committee. 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 therefore as above provided. However, there shall be no such approval of Structures and/or other improvements prohibited under this Declaration, and any such approval shall be null and void. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, then the request for approval shall be deemed denied.

Declarant intends that the members of the Architectural Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Committee, could only conclude that such determination constituted an abuse of discretion.

The Architectural Committee may inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Neither the Architectural Committee nor any agent thereof, nor the Declarant, or Association shall be liable in any way for costs, fees, damages, delays or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Committee, Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further the Architectural Committee, Association and/or Declarant make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used. All parties should seek professional construction advice, engineering, and inspections on each Lot prior to proposing construction.

Section 9.3 **Non-Residential Use.** No Lot shall be used for any kind of trade, business, or employment except as allowed herein, nor shall any Lot be used for a multi-family dwelling, boarding house or rooming house.

Section 9.4 **Leasing.** All lease or rental agreement must be in writing, and they must be immediately provided to the Association. Dwelling Units shall not be leased for an initial term of less than one year nor for less than thirty (30) days for any term thereafter. Such leases and rental agreements must further be subject to the rules and regulations set forth in this Declaration and in the other Association documents. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with the terms of this Declaration shall be a default under the rental agreement, and the Owner shall be responsible for enforcing that provision; provided, however, that the Association shall also have the right to enforce any of these Restrictions against the Owner or any tenant, or both, in its sole discretion, without regard to whether the Declarant or the Association were or are in privity with such tenant, and is not herein waiving its rights hereunder to enforce these Restrictions against a tenant or any other Person in possession of the Property or any part thereof.

Section 9.5 **Animals.** No domesticated or wild animal shall be kept or maintained on any Lot, except that no more than three (3) common household pets such as dogs and cats may be kept or maintained, provided that they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are kept in compliance with applicable laws and ordinances of the Local Governing Authority. All pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of dog(s) or vicious animals shall constitute a nuisance and may be ordered removed from the Property by the Association. Pets will not be permitted outside of a Dwelling Unit unless on a leash and any Owner walking a pet within the Community or on any Common Area will immediately clean up any solid animal waste and properly dispose of the same. Failure to remove any solid animal waste shall subject the owner to a fine not to exceed \$50.00 per occurrence as determined by the Board of Directors. Law enforcement and animal control personnel shall have the right to enter the Property to enforce local animal control ordinances.

Section 9.6 **Outside Storage.** All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish,

trash or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

Section 9.7 Trash Storage. Trash shall be collected and stored in trash receptacles only and not solely in plastic bags. Trash and garbage receptacles shall not be permitted to remain in public view and shall remain inside of each Owner's garage except on days of trash collection, except those receptacles designed for trash accumulation located in the Common Area. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot or Common Area. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse on any Lot or Common Area.

Section 9.8 Front Setback Lines. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the rights-of-way lines there shall be erected, placed or altered no structure or part thereof. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 9.10 Side and Rear Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances, subject to variances granted to Declarant by applicable zoning authorities.

Section 9.11 Temporary Structures and Outbuildings. No tent, shack, basement (other than as part of a Dwelling Unit constructed on a Lot), detached garage, barn, storage shed, mini-storage barn or other out-building shall be erected, placed, or constructed upon any Lot.

Section 9.12 Motor Vehicle Repairs. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Declaration. This restriction shall further apply to any vehicles which, though operable, are 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.

Section 9.13 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. No activity shall be allowed which constitutes a fire hazard or unduly interferes with the peaceful possession and use of the property by the Owners. Any structure or building permitted to be constructed on a Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot. Nothing which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Subdivision or which result in a cancellation of any insurance for any portion of the Subdivision, or which would be in violation

of any law or governmental code or regulation shall be permitted in the Subdivision. Without limiting the generality of the foregoing provisions, no horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Subdivision. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Subdivision shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject.

Section 9.14 Permitted Uses. No use shall be made of any Lot except as permitted by this Declaration and the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 9.15 Drains and Vents. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 9.16 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 9.17 Personal Property. No personal property shall be stored or left upon a Lot except within the Living Unit or garage located upon the Lot. Garage doors shall be kept closed except during times of access to the garage.

Section 9.18 Insurance Risk. Nothing shall be done or kept in any Lot or in the Common Area which will increase the rate of insurance on the Common Area or the Association Responsibility Elements, without the property written consent of the Board of Directors. No Owner shall permit anything to be done or kept in his Lot or in the Common Area which will result in the cancellation of insurance on any Lot or any part of the Common Area or the Association Responsibility Elements, which would be in violation of any law or which may be or come a nuisance or annoyance to the other Owners.

Section 9.19 Commercial Vehicles. Except upon the prior written approval of the Architectural Committee, no commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on the Property, nor shall any such vehicle be located on the Property for longer than twenty-four (24) hours.

Section 9.20 Recreational Vehicles. No recreational vehicles or equipment, such as but not limited to boats, boating equipment, jet-skis, wave runners, snowmobiles, travel trailers, fuel tanks, camping vehicles or camping equipment shall be parked on the Property. The Association shall not be required to provide a storage area for these vehicles.

Section 9.21 Towing. The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the terms and provisions of this Declaration or any rule or regulation adopted by the Board of Directors upon twenty-four (24) hours' notice and at the vehicle owner's sole expense.

Section 9.22 Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one sign with an area of not more than six (6) feet may be displayed with the purpose of advertising the Lot for sale. The Association reserves the right to adopt sign restrictions pursuant to Iowa law.

Section 9.23 Laundry. No clothing, sheets, blankets, rugs, laundry or wash shall be hung out, exposed, aired or dried on any portion of the Property within public view.

Section 9.24 Additions to Landscape Improvements. No tree, shrub, or other vegetation or landscape improvement shall be removed or altered except by the Association. Owners are not permitted to add to the landscape features to any Lot, and gardening is not permitted, except when conducted by the Association.

Section 9.25 Alterations of Association Responsibility Elements. No Owner shall construct, remove, modify, or alter any Association Responsibility Element.

Section 9.26 Painting. No Owner shall cause or permit any alterations or changes of the exterior design and/or color scheme of any Dwelling Unit, Structure or Building, or any part thereof. No person shall paint the exterior of any building, or portion thereof, except contractors and agents employed by Declarant or the Association. Any and all such painting of the exterior of any Building or any portion thereof shall be done by the Association, and the costs thereof will be assessed to the Owners either as a part of the Regular Assessments due hereunder or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion. To the extent that the Association should deem it necessary to paint only a portion of a Building, by way of example, without limitation, in the case of damage affecting only one Dwelling Unit, and, if a matching paint cannot be located or if, when applied, the paint does not match the finish on the adjacent Dwelling Units, the Association, in its sole discretion to paint the exteriors of the entire Building, with the costs thereof being assessed to the Owners either as a part of the Regular Assessments due hereunder, or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion.

Section 9.27 Fences. No fence or similar enclosure shall be erected or built on the Property.

Section 9.28 Garage/Driveway Usage. Any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owners shall keep their garages at all times in a manner that will permit the usage of such garage for parking of passenger automobiles, vans and/or trucks.

Section 9.29 Storage Facilities. No permanent or temporary or portable storage facilities shall be permitted on any Lot; provided, however, that portable storage facilities are permitted so long as they located wholly within the Owner's garage area and are removed within twenty-four (24) hours. No portable storage facility is permitted in any driveway, Common Area, or public right-of-way.

Section 9.30 Mailboxes. No individual mailboxes at curb or on any Dwelling Unit shall be allowed or permitted. Declarant shall install a common postal facility, with individual

mailboxes, for all Dwelling Units within a single Building. The mailboxes shall be maintained by the Association as part of the Common Area.

Section 9.31 Address Markers. Declarant shall install uniform address markers on each Lot and no person, except the Association, shall remove, alter, change, or add to such address markers.

Section 9.32 Pools and Hot Tubs. No pools or hot tubs shall be permitted on any Lot.

Section 9.33 Play Equipment. No children's play equipment such as playhouses, sandboxes, swing and slide sets, and trampolines, shall be permitted on any Lot.

Section 9.34 Basketball Goals. No basketball goals, hoops, or backboards shall be permitted on any Lot.

Section 9.35 Antennae Systems. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Committee. The Architectural Committee shall adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible and only when fully screened from public view on the rear and above the eave line of any Dwelling Unit. To the extent not inconsistent with federal law, satellite dishes will not exceed 18 inches in diameter. It is the intent of this provision that the Architectural Committee shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Committee conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect. Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board of Directors to all Owners at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 9.36 Development and Sale Period. Nothing contained in this Article shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residence, construction offices, sales offices and business offices.

Section 9.37 Notice of Zoning Commitments. Notice is hereby given that certain written commitments may have been made in connection with the zoning of all or part of the Property (hereafter "Commitments"). The Commitments may pertain, without limitation, to Common Areas, tree preservation areas, mounding, buffers, architectural commitments, and landscape buffers. Unless and until any such Commitments are vacated or released per their terms, the Association shall comply with the terms and conditions thereof. The Property shall be subject to the Commitments and all covenants, conditions, easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Property, all of which are incorporated herein by reference.

Section 9.38 Occupations. No Lot or Dwelling Unit located thereon shall be used for any purpose other than as a single-family residence, except a home occupation which is both permitted under local ordinance and the guidelines below:

- (a) Any home occupation must be conducted entirely within the residence and conducted solely by a member of the immediate family residing in said Dwelling Unit;
- (b) Any home occupation must be clearly incidental and secondary to the use of the Dwelling Unit for residential purposes;
- (c) There can be no sign or display that will indicate from the exterior of the Dwelling Unit that the Dwelling Unit is being used, in whole or in part, for any purpose other than that of a residential dwelling;
- (d) No commodity can be sold from the Lot or Dwelling Unit located thereon;
- (e) No person can be employed on the Lot or Dwelling Unit other than a member of the immediate family residing in the Dwelling Unit;
- (f) No manufacturer or assembly operations can be conducted; and
- (g) Customers cannot enter upon the Lot or Dwelling Unit for the purpose of conducting business.

In no event shall the following similar activities be conducted for business purposes; childcare, barber shop, styling salon, animal hospital, kennel, any form of animal care or treatment such as dog training, or any similar activities.

Section 9.39 Nonapplicability to Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth herein shall not apply to or be binding upon the Association in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Common Areas.

ARTICLE X
Maintenance, Repairs and Replacements

Section 10.1 By Owners. Except as specifically provided in this Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his/her Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 10.2 Common Properties and Lawns by the Association.

(a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:

(i) Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area;

(ii) Maintenance of the Association Responsibility Elements;

(iii) Maintenance of the entry signs, permanent subdivision identification signs, and landscaping installed by the Declarant in any Common Area, or any Landscape Easement, Landscape Maintenance Easement, Landscape Maintenance Access Easement or similar easement;

(iv) The maintenance of any street lights which are installed by Declarant and which are not located upon any Lot; and

(v) The maintenance of any brick surface installed by Declarant on any internal street or entryway.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

(b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area owned by the Association (or any items deemed as such for