

WHEN RECORDED RETURN TO: EUGENE E. OLSON, ATTORNEY AT LAW, 317 SIXTH AVENUE,  
SUITE 300, DES MOINES, IOWA 50309-4127; PHONE: 515-243-8157

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR LOTS 1 THROUGH 59, INCLUSIVE, IN**  
**GRACEWOOD,**  
**AN OFFICIAL PLAT, WAUKEE, DALLAS COUNTY, IOWA**  
**(SINGLE FAMILY)**

THIS DECLARATION, made this 24<sup>th</sup> day of June, 2005, by **GRACE  
WOOD JOINT VENTURE** ("Declarant").

WITNESSETH:

**WHEREAS**, Declarant is the owner of certain real estate in the City of Waukee, Dallas County, Iowa, described as Lots 1 through 59, inclusive, in Gracewood, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa ("Property"); and

**WHEREAS**, Declarant wishes to establish certain Covenants, Conditions and Restrictions for the benefit of Owners within the Property;

**NOW, THEREFORE**, Declarant, by the execution and recording of this document, hereby declares that the Property shall be held, occupied, sold and conveyed subject to the Covenants, Conditions and Restrictions set forth herein.

**ARTICLE I.**

**General Use Restrictions and Building Specifications**

Lots 1 through 59, inclusive, in Gracewood, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa ("Property") shall be held,

maintained, occupied, sold and conveyed subject to the following Covenants, Conditions and Restrictions, as well as those Covenants, Conditions and Restrictions set forth elsewhere in this Declaration:

A. Single Family Residence.

The use of Lots shall be limited to single family residential use. The term "single family" shall have the same meaning under this Declaration as contained in the City of Waukee, Iowa, Zoning Ordinance. Uses of land or structures customarily incidental and subordinate to the single family residential use as permitted by the City of Waukee ("City") Zoning Ordinance are permitted unless prohibited or otherwise regulated by this Declaration.

B. Playhouses and Sheds.

No playhouse, utility building, tool shed, storage shed, lean-to or other similar structure shall be permitted; provided, however, that a child's playhouse may be permitted if the floor area does not exceed sixty-four (64) square feet and if the exterior and the roof are constructed of the same material and have the same color and appearance as the residential dwelling on the same Lot and if it is constructed in an attractive and workmanlike manner. The structure shall be at least twenty (20) feet away from any Lot line but in no event shall it be located within any required yard setback area.

C. Garages.

No detached garages shall be permitted.

D. Fences and Hedges.

No fences, walls, hedges or barriers shall be permitted upon Lots or property lines except as follows:

- (i) Walls, fences, or hedges shall be permitted only along rear Lot lines and side Lot lines behind the front yard setback lines but they shall not exceed six (6) feet in height; provided, however, that no walls, fences or hedges shall be permitted within twenty (20) feet of any bike or pedestrian path or in the rear yards of Lots 46, 48-59 and Lots 29-44 and Lot 25 except for a chain link fence meeting the criteria of subparagraph (ii) below and except for a wood privacy fence within twenty (20) feet of the rear of the house on any such Lot.

- (ii) The fence fabric, or fence screening material, shall be mounted on the exterior face of the fence posts or fence framing. No chain link fence, including a chain link fence around a dog run, shall be permitted unless it is a black vinyl clad or black aluminum/iron fence. All fences shall be kept in good repair and attractive appearance.

E. Trees.

A minimum of one (1) tree shall be required per one thousand three hundred (1,300) square feet of space unoccupied by structures, parking, sidewalks or driveways. At least forty percent (40%) of the trees shall have a minimum of two-inch (2") trunk diameter measured two (2) feet vertically from the ground level. This tree requirement shall be the responsibility of the initial and subsequent homeowners on Lots and shall not be the responsibility of any developer or builder within the property. Street trees are included for the purposes of computing the above minimum requirements.

F. Utility Meters.

Utility meters shall be hidden architecturally or through the use of remote reading devices.

G. Mailboxes.

All mailboxes shall be uniform; shall be rural in style; and shall be approximately nineteen inches (19") long by six and one-half inches (6½") wide by eight and three-quarters inches (8¾") high. All mailboxes shall be mounted on a two inch (2") I.D. vertical steel pipe. The pipe base shall be imbedded in concrete with the bottom of the mailbox door placed forty-two inches (42") above the street and six inches (6") behind back of curb. A metal newspaper receptacle shall be mounted on the pipe directly under the mailbox. The mailbox, pipe and newspaper holder shall be all painted black or other equivalent as approved by the Executive Committee described below in Article IV. Identification on the mailbox shall be one and one-half inches (1½") high, white Helvetica medium style vinyl numbers mounted horizontally on the lower rear corner of the mailbox only. Name plates, plaques or similar devices shall not be permitted. In the event of a conflict between the requirements in this section and the requirements of the United States Postal Service, the requirements of the United States Postal Service shall govern. This mailbox requirement shall be the responsibility of the initial and subsequent homeowners on the Lots and not the responsibility of any developer or builder.

H. Measurement of Setbacks.

The minimum setbacks as specified in this Declaration shall be measured from the Lot line from which the setback is being measured to the nearest building or structure. No buildings or structures (except for permitted fences or mailboxes) shall be constructed or maintained within the required minimum setback area. The definition of the terms "front yard", "side yard", "rear yard", "building", "structure" or other similar term relating to setbacks shall be the same as that definition contained in the City's Zoning Ordinance now or in the future.

I. Utilities.

All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and maintained underground except for that portion which utility companies customarily require to be above ground in the immediate proximity of any exterior utility meter.

J. Security Lighting.

Security lighting for driveways, parking and other areas shall be designed, located and directed in a fashion which will avoid direct lighting onto adjoining Lots.

K. Paving of Driveways.

All parking and driveway areas shall be hard surfaced, using a suitable thickness of Portland concrete cement.

L. Sodding or Seeding.

All portions of a Lot (except Common Areas and except areas designated in a plat or this Declaration as No-Mow Areas) not occupied by structures, walkways, driveways, parking or landscaping shall be sodded, or seeded as described below, within ninety (90) days after completion of the house upon the Lot unless weather conditions make this requirement impossible to meet. The developer of or builder on any Lot shall be responsible for sodding the front yard of the Lot and thirty (30) feet to the rear of the house situated on the Lot and the Owner of the Lot thereafter shall be responsible for sodding or seeding the balance of the Lot as required by this paragraph.

M. Garbage Cans and Equipment.

Items such as garbage cans, clotheslines, lawn or garden equipment, building materials and other similar items shall be placed out of public view. Firewood shall not be stored on the front side of a house. Furthermore, any repair of motorcycles, automobiles, vehicles or boats shall be done out of public view.

N. Tents and Trailers.

No tent, trailer, boat, personal watercraft, camper, motor home, recreational vehicle or truck rated larger than three-quarter ton or other movable or temporary structure or enclosure or inoperative motor vehicle shall be maintained or parked on any Lot or street within public view for more than a cumulative of seven (7) days in any calendar year.

O. Temporary Structures; Mobile Homes.

There shall be no occupancy of temporary structures or partially completed structures. No home or other building shall be moved onto any Lot. No mobile homes, prefabricated homes, modular or factory manufactured homes shall be permitted at any time.

P. Architectural Character.

The architectural character of any structure shall be in harmony with, and compatible with, other structures located on the Property as well as the neighboring area and environment.

Q. Exterior Foundations.

Exterior foundations exposed above finish grade which are not faced with brick or stone shall be painted to match the rest of the structure; provided, however, that in no event shall any exterior foundation be exposed more than twelve (12) inches above finish grade which is not faced with brick or stone unless topographic conditions leave no other alternative and the Gracewood Homeowners' Association has approved such an exception.

R. Roof Material.

Roof materials shall be slate, tile, medium to thick butt wood shingles or high quality asphalt shingles with a weight rating of at least 230 pounds.

S. Swimming Pools.

Above-ground swimming pools or non-permanent swimming pools are prohibited, except for small wading pools for infants or toddlers.

T. Satellite Dish.

A satellite earth station antenna or parabolic device used to receive television or telecommunication signals from satellites ("Satellite Dish") shall be permitted only if it meets the following requirements:

- (i) The Satellite Dish shall not be mounted on a trailer or other temporary or portable device, but shall be permanently installed;
- (ii) The Satellite Dish shall not exceed one meter in diameter or as measured diagonally;
- (iii) The Satellite Dish shall be installed and maintained in accordance with reasonable safety regulations as may be adopted from time to time by the Gracewood Homeowners' Association. In no event, however, shall the regulation of satellite dishes conflict with The Telecommunications Act of 1996, as amended, or other applicable Federal Act as well as any Federal Rules promulgated pursuant thereto. If there is a conflict between Federal law and the terms of this subparagraph T or the terms of any regulations adopted by the Gracewood Homeowners' Association, the terms of the Federal law shall control.
- (iv) The Satellite Dish shall be located to the rear of the home it serves and be appropriately landscaped and screened but in no event shall it be located in any required yard setback area unless this standard would prohibit adequate reception, in which event the Gracewood Homeowners' Association shall have the right and authority to grant reasonable exceptions to this standard.

U. Dog Runs and Houses.

Dog runs shall not be permitted unless they are located at the rear of the house or garage and extend toward the rear of the Lot from that portion of the house or garage which is closest to the rear Lot line. Any dog house shall have the same external appearance, color and roof material as the home situated on the Lot, and shall be constructed and maintained in an attractive and workmanlike manner. No dog house shall exceed twenty (20) square feet in area nor be located closer than twenty (20) feet from any Lot line; provided, however, that in no event shall it be located in any required yard setback area.

V. Building Plan.

When a building plan is filed with the City of Waukee by an Owner or developer of a Lot, a duplicate shall be filed at the same time with the Declarant. These plans will be handled as confidential information and shall be used for the sole purpose of monitoring compliance with these Covenants, Conditions and Restrictions.

W. Towers.

No radio or communication tower, mast or pole of any kind shall be constructed or maintained on any Lot; provided, however, that a video communication tower or mast may be constructed and maintained on a house if the tower, mast or antenna does not extend higher than twelve (12) feet above the roof line of the house. If there is a conflict between The Telecommunication Act of 1996, as amended, and the Federal Regulations promulgated pursuant thereto and the terms of this subparagraph W, the terms of the Federal law shall control.

X. Noxious Activities; Livestock.

No noxious or offensive activity, sound, vibration, noise or odors shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance, offensive or a nuisance either temporarily or permanently. No animals, livestock, pigs, snakes or poultry of any kind shall be raised, bred or kept on any Lot or within any house or structure on a Lot except that domestic dogs, cats, and other small commonly accepted domestic pets may be kept so long as they are not kept, bred or maintained for commercial purposes or sale to the public and so long as they do not present any health or safety hazard or cause any offensive activity, sound, noise or odor. In no event, however, shall more than three (3) dogs be maintained on any one Lot. Dogs shall be tied, kept on a leash, fenced or kept in a dog run at all times. Pet owners shall

promptly pick up any waste from their pets on any Lot, Common Areas, easement areas, street right-of-way or sidewalks.

Y. Maintenance of Lot.

After the initial sodding or seeding has been completed on any Lot as described above in paragraph L of this Article I, the Owner or person in possession of any Lot, whether vacant or improved, shall keep the Lot free of trash, litter and debris and shall keep the Lot attractively mowed so that the grass or weeds do not exceed six (6) inches in height. Each Owner of a Lot agrees that after he or she receives written notice given by certified mail, return receipt requested, or delivered in person by written notice, by any Lot Owner within five hundred (500) feet of any such Lot or by the Declarant or the Gracewood Homeowners' Association, such grass or weeds shall be cut and trash, litter and debris removed within fifteen (15) days of receipt of the notice. If the appropriate corrective action is not taken within fifteen (15) days of receiving notice, any Lot Owner within five hundred (500) feet of the offending Lot, the Association or Declarant shall have the right (but not the duty) and easement to enter upon the premises and mow or cut the weeds or grass or remove the offending trash, litter and debris. If the Association elects to mow or remove the trash, litter and debris from the offending Lot after giving the above-described notice, the Association shall have the right to assess the actual cost thereof against the offending Lot in the same fashion as other assessments are imposed on Lots by the Association.

Z. Signs.

During the development of the Lots and building of homes thereon, Declarant shall not interfere with the placement of any signs advertising lots or homes for sale or the development of the Lots which are placed in or near the City of Waukee right-of-way; provided, however, any developer or builder shall use its best efforts to place such signs in or near the City of Waukee right-of-way in such a manner which will not obstruct the view of motor vehicular traffic. Nothing contained in these Covenants, however, is intended to abrogate or restrict the authority of the City of Waukee to regulate signs. A developer or builder may place any signs advertising homes or lots for sale within Common Areas owned by the Homeowners' Association provided that permission has been given by the Association, which permission shall not be unreasonably denied, delayed or withheld. Declarant and the Homeowners' Association shall take appropriate action to foster an environment of tolerance with respect to signs placed by developers or builders while the Lots are being developed.

AA. Open Spaces.

No Lot Owner or any person shall erect or place any fence, structure or material of any kind within, or on any area designated as "open space"; in any easement reserved by Declarant; or as shown on the Plat of Gracewood. The open space and easements shall be maintained by the Gracewood Homeowners' Association where so indicated in the easement document and shall be subject to rules and regulations of the Association.

BB. Lawn Fertilizer; Phosphorus Prohibited.

In recognition of the fact that the water quality of the lakes within the Property should be preserved and protected, no Lot Owner or any other person shall apply any fertilizer containing phosphorus on lawns or other vegetation. The Gracewood Homeowners' Association shall have the authority to adopt rules and regulations regarding the application of fertilizer within the Property and to also adopt a "no fertilizer" zone within the proximity of the lakes as deemed advisable by the Association.

**ARTICLE II.**  
**Special Use Restrictions**

In addition to the general use restrictions and building specifications set forth in Article I above, the following specific use restrictions and building specifications shall apply and shall be subject to the Waukee City Code requirements:

- (i) The front yard setback shall be at least thirty (30) feet.
- (ii) The side yard setbacks shall be a total of at least fifteen (15) feet with a minimum setback of seven (7) feet on any one side.
- (iii) The rear yard setback shall be at least thirty-five (30) feet.

**ARTICLE III**  
**Enforcement of Covenants**

A. Legal Action.

These Covenants, Conditions and Restrictions shall be deemed to run with the land to which they apply and all improvements thereon. The Owner of any Lot or portion thereof to which these Covenants, Conditions and Restrictions apply, Declarant or the

Gracewood Homeowners' Association may bring an action in any court of competent jurisdiction to enforce these Covenants, Conditions and Restrictions and enjoin their violation, mandate their compliance or to recover damages for the breach thereof or for any other remedy or combination of remedies recognized at law or in equity.

B. Penalties.

In addition to the remedies described above in Paragraph A or elsewhere in this Declaration, the Gracewood Homeowners' Association is hereby authorized to levy against any Lot in violation of this Declaration of Covenants, Conditions and Restrictions an assessment penalty not to exceed \$100 for each day a violation of the Declaration continues beyond sixty (60) 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 person. 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 of Covenants, Conditions and Restrictions within sixty (60) days of receiving notice, or sixty (60) 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.

C. Delays in Enforcement.

No delay or omission on the part of the Association, Declarant, or any Owner of land to which this Declaration of Covenant, Conditions and Restrictions apply in exercising any rights, power or remedy herein allowed shall be construed as a waiver or acquiescence therein. No right, claim or action shall accrue to and no action or claim shall be brought or maintained by anyone against Declarant or any officer, employee or agent thereof on account of any action or inaction under this Declaration.

D. Conflict with Governmental Regulations.

The Property subject to this Declaration shall also be subject to any and all applicable ordinances and regulations of the City of Waukee, Iowa, and any other governmental entities having jurisdiction including, but not limited to, zoning ordinances, subdivision ordinances, life safety and building codes as well as other such regulations. Whenever there is a conflict between the provisions of this Declaration of Covenants, Conditions

and Restrictions and the ordinances, statutes or regulations of the City, County, State, or other applicable governmental entity having jurisdiction over the Property, that provision or requirement which is the most restrictive shall be binding unless otherwise prohibited or preempted by law.

**ARTICLE IV.**  
**Term of Covenants; Severability.**

A. Duration.

All of the foregoing Covenants, Conditions and Restrictions set forth in this Declaration shall continue and remain in full force and effect at all times and as to the Property, regardless of how title was acquired, from the date of filing of this Declaration until the 1<sup>st</sup> day of July 2026, unless amended by an affirmative vote of two-thirds (2/3) of the Lots within the Property, excluding Common Areas (with each Lot entitled to one (1) vote), on which date these Covenants, Conditions and Restrictions shall automatically be extended an additional ten (10) years (and extended for successive ten (10) year terms thereafter in the same fashion) unless after the 1<sup>st</sup> day of July 2025 two-thirds (2/3) of the Lot Owners within the Property (excluding Common Areas) in writing consent to terminate this Declaration or any part thereof, in which event this Declaration, or part thereof, shall be null and void effective as of the date when the Consent is filed with the Recorder of Dallas County, Iowa. Any Amendment or Consent shall be accompanied by an Affidavit by any officer of the Homeowners' Association certifying that two-thirds (2/3) of the Lot Owners within the Property (excluding Common Areas) have so consented as disclosed by the records of the Association. In determining ownership for purposes of consent, the records of the Association shall be conclusive. The Gracewood Homeowners' Association shall be the attorney in fact vested with authority to file any extension of these Covenants, Conditions and Restrictions with the Dallas County Recorder if required by law.

B. Homeowners' Association.

Termination or expiration of any or all of the Covenants, Conditions or Restrictions contained in this Declaration shall not operate in any way to terminate the Gracewood Homeowners' Association and said Association and all functions and duties pertaining thereto shall remain in full force and effect pursuant to the Declaration creating the Association.

C. Severability.

In the event that any one or more of the terms or conditions of this Declaration shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall in no way affect, modify, change, abrogate or nullify any of the remaining Covenants, Conditions or Restrictions not so expressly held to be void and the remaining parts of this Declaration shall remain in full force and effect.

D. Reasonable Period of Enforcement.

If any of the terms of this Declaration shall be held by a court of competent jurisdiction to be void or unenforceable by reason of the period of time herein stated for which the Declaration may be effective or amount of any penalty imposed, such terms or penalty shall be reduced to a reasonable period of time or amount which shall not violate the rule against perpetuities as set forth in the laws of the State of Iowa or other applicable law, all as determined by the court.

E. Minor Amendments.

So long as Declarant owns any Lot within the Property, including an interest as contract vendor, it shall have the absolute right to make minor amendments to this Declaration in order to correct any deficiencies; clarify any provision thereof; or to carry out the intent of this Declaration; or to address development issues not contemplated at the date hereof without obtaining the consent of any Lot Owner, the Homeowners' Association or any other person.

F. Erosion Control.

- (i) The Owner and/or person in possession of each Lot, whether vacant or improved, their agents, assigns, heirs, and/or building contractors shall take all necessary precautions to prevent, stabilize, and/or control erosion on their Lot and the Property, to prevent sediment migration and soil erosion from extending beyond the boundaries of their Lot and the Property, and, in the event it occurs, to promptly clean up all eroded sediment and to restore all affected areas to their original condition.
- (ii) The Owner and/or person in possession of each Lot, whether vacant or improved, shall, at closing of any sale or conveyance of a Lot to that Owner execute an agreement complying with all applicable Federal, State and local erosion control regulations, laws and ordinances and permits which pertain to the Property including, but not limited to, becoming a transferee of the Iowa Department of

Natural Resources NPDES General Permit No. 2 ("the Permit") and maintaining a Storm Water Pollution Prevention Plan ("SWPPP") as required by E.P.A. during the time any construction or grading takes place on the Owner's Lot.

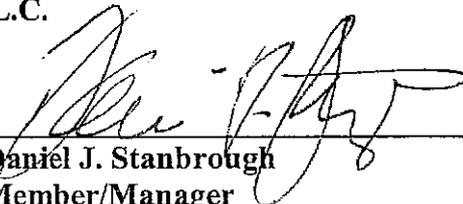
- (iii) If Declarant or any Lot or Lot Owner is cited by any governmental agency for an alleged violation of any erosion control regulations, laws, ordinance provision or the Permit, which occurs after closing of any sale or conveyance by Declarant of a Lot for a condition on or from the Property, the Owner shall indemnify and hold Declarant harmless from any and all claims, damages, fines, attorney fees, assessments, levies, and/or costs incurred by Declarant related to the citation.

G. Successors.

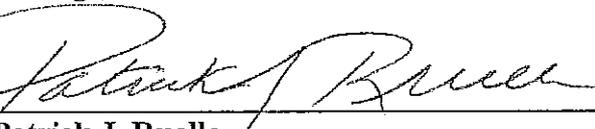
The term "Declarant" shall include not only Grace Wood Joint Venture but also any of its successors in interest or assignees.

**GRACE WOOD JOINT VENTURE**

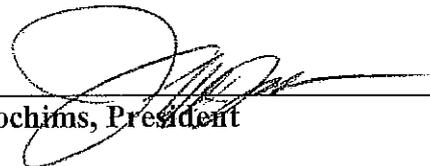
By: DTS, L.C.

By   
\_\_\_\_\_  
Daniel J. Stanbrough  
Member/Manager

By: Colt Holdings, L.L.C.

By   
\_\_\_\_\_  
Patrick J. Ruelle  
Member/Manager

By: Jeff Jochims Investment Co.

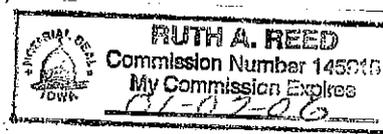
By   
\_\_\_\_\_  
Jeff Jochims, President

STATE OF IOWA )  
 )ss  
COUNTY OF POLK )

On this 24<sup>th</sup> day of June, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Daniel J. Stanbrough, to me personally known, who being by me duly sworn, did say that he is the Manager of DTS, L.C.; that said instrument was signed on behalf of said company by authority of its Members; and that the said Daniel J. Stanbrough as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said company by it and by him voluntarily executed.

Ruth A Reed  
Notary Public in and for the State of Iowa  
My commission expires: 01-07-06

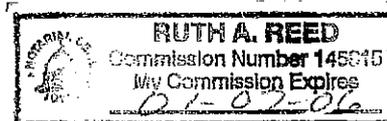
STATE OF IOWA )  
 )ss  
COUNTY OF POLK )



On this 27<sup>th</sup> day of June, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Patrick J. Ruelle, to me personally known, who being by me duly sworn, did say that he is the Manager of Colt Holdings, L.L.C.; that said instrument was signed on behalf of said company by authority of its Members; and that the said Patrick J. Ruelle as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said company by it and by him voluntarily executed.

Ruth A Reed  
Notary Public in and for the State of Iowa  
My commission expires: 01-07-06

STATE OF IOWA )  
 )ss  
COUNTY OF POLK )



On this 27<sup>th</sup> day of June, 2005 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jeff Jochims, to me personally known, who being by me duly sworn, did say that President of the corporation executing the within and foregoing instrument; that said instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Jeff Jochims as President, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Ruth A Reed  
Notary Public in and for the State of Iowa  
My commission expires: 01-07-06

