

Ashley & Victory

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HAWTHORNE RIDGE TOWNHOMES

THIS DECLARATION, made on the date hereinafter set forth by Accurate Development, Inc., with its principal place of business in Polk County, Iowa, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Dallas County, Iowa (the "Properties"), which is more particularly described as:

Lots 1 through 37 in Hawthorne Ridge Townhomes, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa.

NOW THEREFORE, Declarant hereby declares that all of the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

1. DEFINITIONS.

- A. "Association" shall mean and refer to Hawthorne Ridge Townhome Owners Association, Inc., its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa as amended.
- B. "Association Responsibility Elements" shall mean the following:
- (1) The exterior surface of the Buildings upon a Townhome Lot, excluding windows, doors, patios and decks.
 - (2) The structural portion of the Building upon a Townhome Lot.
 - (3) The roof, gutters, downspouts, and foundations of the Buildings upon a Townhome Lot.
 - (4) Any common wall between residential or garage structures upon Townhome Lots, except the interior surfaces thereof.
 - (5) The yard surrounding the residential or garage structure upon a Townhome Lot, except for trees and shrubbery.
 - (6) Streets, driveways and sidewalks upon a Townhome Lot, except streets dedicated to the City of Waukee for public use.
 - (7) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a residential or garage structure which are carrying any service to more than one Townhome Lot.

- C. "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- D. "Building" shall mean and refer to any single-family attached or detached dwelling unit or garage that may be constructed on a Townhome Lot or a part of more than one Townhome Lot".
- E. "Declarant" shall mean and refer to Accurate Development, Inc., its successors and assigns. Any entity acquiring all Townhome Lots then owned by the Declarant, if acquiring more than three Townhome Lots, shall be deemed a successor and assign of the Declarant.
- F. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject.
- G. "Living Unit" shall mean and refer to any portion of a Building situated upon a Townhome Lot and designed and intended for use and occupancy as a resident by a single family or individual.
- H. "Townhome Lot" shall mean and refer to the numbered lots shown upon any recorded Plat of the Properties. In the event any part of the Properties is replatted and a subsequent Plat is recorded then "Townhome Lot" shall refer to the numbered lots shown on such replatting and such subsequent recorded Plat. With respect to any single-family portion of any Building that may be constructed on a part of more than one of such lots, "Townhome Lot" shall mean and refer to the real estate conveyed in connection with such dwelling unit.
- I. "Member" shall mean and refer to those persons entitled to membership as provided in the Articles of Incorporation of the Association.
- J. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, Declarant, of a fee simple title to any Townhome Lot, but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the Property by provision or operation of law. A vendee in possession under a recorded contract of sale of a Townhome Lot shall be deemed the Owner of the Townhome Lot.

2. MANAGEMENT AND MAINTENANCE BY THE ASSOCIATION

- A. No person other than the Owner of a Townhome Lot and his invitees shall have the right to enter upon, use or affect an Association Responsibility Element located within a Townhome Lot except that the Association and its designates may enter upon and within a Townhome Lot and the Buildings and Living Unit located thereon at reasonable times for the following purposes:
 - (1) Installation, repair, removal, replacement, maintenance or inspection of an Association Responsibility Element.
 - (2) Enforcement of any provision of this Declaration or the Articles of Incorporation or the Bylaws of the Association.
 - (3) Mowing and maintenance of grass areas.

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

3. **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.**

A. **Membership.**

Membership and voting rights shall be determined in accordance with the Articles of Incorporation and Bylaws of the Association.

B. **Suspension of Voting Rights.**

The Board of Directors of the Association may suspend the voting rights of a member for any period during which any assessment against his Townhome Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

4. **COVENANT FOR ASSESSMENTS.**

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

The Declarant, for each Townhome Lot owned within the Properties, and improved with a Living Unit for which a certificate of occupancy has been issued, hereby covenants, and each other Owner of any Townhome Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) monthly assessments or charges, and (ii) special assessments for capital improvements and operating deficits, and other special assessments as provided in this Declaration; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Townhome Lot against which each such assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Townhome Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

B. **Purpose of Assessments.**

The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Association Responsibility Elements and for other purposes specifically provided herein. In addition, the monthly assessment shall include repayment of sums advanced by the Declarant on behalf of the Association.

C. **Special Assessments for Capital Improvements and Operating Deficits.**

In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, which the Association required to maintain or for operating deficits which the Association may from time to time incur.

D. **Date of Commencement of Monthly Assessments: Due Dates.**

The monthly assessments provided for herein shall commence as to each respective Townhome Lot on the first day of the first month following the date of conveyance to an Owner of a Townhome Lot with completed Living Unit constructed thereon and for which a certificate of occupancy has been issued. Townhome Lots owned by the Declarant which do not have completed Living Units constructed thereon and for which certificates of occupancy have not been issued, shall be exempt from assessments. The maintenance responsibilities of the Association as to each Townhome Lot shall commence concurrently with the commencement of monthly assessments. The insurance assessment provided for in Article 7 shall commence as to each Townhome Lot on the first day of the first month

following the date of conveyance of said Townhome Lot by the Declarant to an Owner. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Townhome Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Townhome Lot shall be binding upon the Association as of the date of its issuance.

E. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is higher. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Townhome Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the cost of preparing and filing the petition in such action, including reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Townhome Lot.

F. Subordination of Assessments Liens.

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

5. DECLARANT'S RIGHTS.

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

A. Use Of And Entry Upon Townhome Lots.

Declarant reserves the right to use any of the Townhome Lots as models and to sell, assign, or conduct other businesses in connection with the construction and development of the project from any of such Townhome Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to show Townhome Lots then unsold. Declarant retains the right to be considered an Owner of any Townhome Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of Buildings and other improvements. Declarant reserves the right to enter upon and within any Living Unit and Townhome Lot in connection with any construction activity.

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B. Townhome Landscaping.

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

6. MAINTENANCE OF TOWNHOMEE LOTS.

A. Maintenance by Owners of Townhome Lots.

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

B. Maintenance Obligations of Association.

The Association shall provide all maintenance, repair and replacement of the Association Responsibility Elements.

C. Responsibility for Willful or Negligent Acts.

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

D. Snow Removal.

The Association shall be responsible for snow removal from all Townhome Lots and from the driveway servicing each Townhome Lot. The Association shall pile the snow in areas other than the parking area of the public street.

7. INSURANCE AND INSURANCE ASSESSMENT FOR TOWNHOME LOTS

A. Insurance and Insurance Assessment.

In addition to the annual assessments and the special assessments for capital improvements, the Association may levy assessments for insurance purchased by the Association. The Association shall obtain liability and casualty insurance for the Association Responsibility Elements. Unless otherwise determined by the Board of Directors of the Association, each Owner of a Townhome Lot shall be responsible for obtaining homeowner's liability insurance and casualty insurance for property which is not part of the Association Responsibility Elements; the Board of Directors may require an Owner's casualty insurance to be obtained from the same insurer as the insurer under the Association's casualty insurance for the Association Responsibility Elements. In the event of casualty loss, the Association shall be responsible for repair and restoration of the Association Responsibility Elements, and the Owner shall be responsible for repair and restoration of all other portions of the buildings and improvements upon his Townhome Lot, except to the extent that the Board of Directors of the Association has determined to obtain casualty insurance for such portions which are not part of the Association Responsibility Elements in which case the Association shall apply and insurance proceeds received for such portions to such repair and restoration of such portions.

received for such portions to such repair and restoration of such portions.

B. Distribution to Mortgagee.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his mortgagee jointly.

8. EASEMENTS AND ENCROACHMENTS.

A. General Easements.

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

- (1) Every portion of a structure upon a Townhome Lot which contributes to the support of any structure not on the same Townhome Lot is burdened with an easement of such support.
- (2) Each Townhome Lot is burdened with an easement through the Townhome Lot and through the attic and basement of any structure thereon for conduits, ducts, plumbing, wiring, pipes and other facilities for the furnishing of utilities and services to other Townhome Lots, including the location of utility meters on one Townhome Lot for the service to other Townhome Lots.
- (3) Each Townhome Lot is burdened with an easement of ingress and egress for construction, maintenance, repair and replacement of Association Responsibility Elements by the Association and the Declarant.
- (4) Each Townhome Lot is burdened with an easement for surface drainage for the benefit of all other Townhome Lots.
- (5) Each Townhome Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.
- (6) Each Townhome Lot is burdened with an easement through the Townhome Lot but outside of any structure thereon for purposes of reasonable ingress and egress by other Owners of Townhome Lots to the front and rear of the other Owners' Townhome Lots.

B. Drainage, Utility and Sewer Easements.

As may be noted on the Plat, Declarant may reserve certain areas of the Townhome Lots for easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Townhome Lots and Owners, to properly install and allow to be maintained all electric and other utility services, (including all lines, pipes, wires, cables, ducts, etc.,) to the Living Units constructed on the various Townhome Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such utility easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant and the Association to provide for and maintain appropriate drainage.

C. Additional Easement Rights of the Declarant.

Declarant reserves unto itself, for the benefit of all Townhome Lots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise leave the location of any drainage, utility, and

sewer easement and to grant such further easements, licenses and rights of way, temporary or permanent, exclusive or nonexclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Townhome Lot or Townhome Lots. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement or other easement, license or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Dallas County, Iowa and any Owner of any Townhome Lot shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section C shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Townhome Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Townhome Lot. The rights and easements reserved by Declarant in this Section C shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Townhome Lot within the Properties.

D. Easement for Signs.

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

E. Encroachment on Townhome Lots.

If, by reason of the location, construction, settling or shifting of a Building, any part of a Building containing a Living Unit upon a Townhome Lot (the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Townhome Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all appurtenances thereto. Upon the written demand from the Owner of an Encroaching Unit, the owner of the Townhome Lot upon which said unit encroaches shall deed to the Owner of the Encroaching Unit that portion of the Townhome Lot upon which the Encroaching Unit is located. The deed shall be by quit claim deed free and clear of any mortgages and encumbrances. All costs of abstracting, releases of mortgages, recording fees, engineering fees and legal fees shall be paid by the owner of the Encroaching Unit.

F. Driveways and Access for Townhome Lots.

There is hereby reserved and granted an easement for the benefit of each Townhome Lot served by a sidewalk and pedestrian walkway located partially or wholly on the Townhome Lots. This easement is for the purpose of allowing pedestrian access from the public or private street to the Townhome Lot served by such sidewalk or pedestrian walkway. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walkway which would impair the use or access by the Townhome Lot Owner which such sidewalk or pedestrian walkway serves.

G. Sidewalks.

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

9. GENERAL USE RESTRICTIONS.

The following use restrictions are in addition to use restrictions previously filed of record and applicable to the Townhome Lots.

- A. All Townhome Lots shall be known, described and used solely as residential lots and no structure shall be erected on any Townhome Lot except by the Declarant or the Association.

- B. Building setback lines as shown on the plat of record shall be strictly followed.
- C. The public utility easements shown on the recorded plat are hereby reserved for utility installation and maintenance.
- D. No Townhome Lot shall be subdivided in any manner.
- E. No Townhome Lot shall be used for any kind of trade, business, or employment except as allowed in Article 10, nor shall any Townhome Lot be used for a multifamily dwelling, boarding house, or rooming house.
- F. The use of any open carport, driveway or parking area which may be in front of, adjacent to, or part of any Townhome Lot as a parking place for recreational or commercial vehicles or articles, including boats, is prohibited. All of said types of vehicles or articles shall be stored inside a garage at all times. No inoperable, dismantled or wrecked motor vehicles, trailers, automobiles or other vehicles or machinery or parts thereof including scrap metals of any type shall be permitted to be upon or remain upon any part of a Townhome Lot. This restriction shall furthermore apply to any vehicle, which though operable, is not in active use. This provision is intended to specifically prohibit vehicles which are not in active use from being left parked outside a garage for an extended period of time.
- G. No television or radio antenna or tower shall be erected upon the roof of any Building or upon any Townhome Lot or Building in such a manner as to be visible from the exterior of the Building. This shall not prohibit satellite dishes one meter in width or smaller.
- H. Fencing shall not be erected on any part of a Townhome Lot.
- I. No swimming pools, tennis courts or similar structures shall be installed on any Townhome Lot.
- J. No Owner shall construct or modify any Association Responsibility Element.
- K. No rubbish container shall be visible from the street except on pick-up day and one day before and one day after pick-up day.
- L. All utility connection facilities and services shall be under ground. No individual water supply system or individual sewage disposal system shall be permitted on any Townhome Lot.
- M. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Townhome Lot except that dogs weighing less than 70 pounds and cats weighing less than 25 pounds at full growth may be kept, provided that they are not kept, bred or maintained for any commercial purposes. The Association may, by rules and regulations, prohibit or further limit the raising, breeding or keeping of any pet on any Townhome Lot. Any person owning or keeping a pet dog or cat shall be responsible for and shall at all times clean up any waste or excrement from such pet(s) on the Townhome Lots. Failure to do so in a prompt or responsible manner shall result in a fine or special assessment by the Association against such Townhome Lot.
- N. No noxious or offensive activities not involving the maintenance of Townhome Lots shall be carried on upon any Townhome Lot nor shall anything be done thereon which may be or may become an annoyance or a nuisance; nor shall any Townhome Lot be used for any unlawful purpose. Nor shall any Owner cause, or suffer or harbor the source of, any noise or activity which disturbs the peace, comfort and quiet enjoyment of other Owners or those claiming under or through other Owners.
- O. No personal property shall be stored or left upon a Townhome Lot except within the Living Unit or garage located upon the Townhome Lot. Garage doors shall be kept closed except during times of access to the garage.

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- P. Nothing shall be altered in, constructed in, or removed from the Association Responsibility Elements, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association.
- Q. No boat, snowmobile, recreational vehicle, trailer or other vehicle other than automobiles shall be stored or parked in any driveway. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreational vehicle, trailer or other vehicle.
- R. No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.
- S. Nothing shall be done or kept in any Townhome Lot which will increase the rate of insurance on the Association Responsibility Elements, without the proper written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Townhome Lot which will result in the cancellation of insurance on any Townhome Lot or any part of the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.
- T. The Board of Directors of the Association shall have the authority to adopt rules and regulations governing the use of Townhome Lots and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns and licensees.
- U. Failure of the Association or any Owner to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.
- V. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

10. SIGNS AND HOME OCCUPATIONS.

A. Signs.

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

B. Home Occupations.

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

11. PUBLIC ACCESS.

Officers, employees or contracted agents of any governmental unit shall have the right and authority to enter upon any Townhome Lot for the administration of general public services including fire protection, law enforcement, water service and animal control.

12. RESTRICTION ON RENTAL.

In order to protect the integrity of this development and to insure that those persons residing therein have similar proprietary interests in their Townhome Lots, no Townhome Lot and no portion of any Living Unit shall be leased or rented to any person not having an ownership interest therein, unless and until the unit has been occupied for a period of one year by the Owner or Owners thereof Thereafter, no Townhome Lot and no portion of any structure located thereon shall be leased or rented for a period of time of less than one year, and no lease or rental agreement to any such tenants or lessees shall be extended or renewed for a shorter period of time.

13. COVENANTS WITH CITY.

A. Right of Public Access.

Officers, employees or contracted agents of the City of Waukee, Iowa ("City") shall have the right and authority to enter upon the easements reserved or granted for the benefit of the Association for the administration of general public services including Emergency Fire Protection, Law Enforcement and administration of the Water Works Rules and Regulations and any applicable agreements for providing water service.

B. Indemnification and Hold Harmless of the City.

The Association, its successors or assigns, agree to defend, indemnify, protect and save harmless the City and its political subdivisions, including any of its elected officials, officers, employees or agents, from and against any judgments, awards, claims or expenses or other things whatsoever, including attorney fees, costs or disbursements, arising out of or in connection with any act or act of negligence, causes omissions, fault, misconduct, claims, damages, suits or other actions developed, brought or asserted by any person, firm, corporation, entity or estate, against the said City by reason of, in connection with, related to or growing out of, directly or indirectly, the duties and responsibilities which are imposed upon the Owners or the Association, its successors and assigns, with respect to its duties or obligations under this Declaration, including any rules or regulations in existence pursuant to this Declaration, or related to or growing out of, directly or indirectly, the existence of this Declaration and the purposes for which this Declaration is executed or the approval of this Declaration.

Declarant, its successors and assigns, including all subsequent owners in the Properties, hereby covenant not to sue, demand or claim any damages or other remedies against the City, its political subdivisions and its elected officials, officers, employees or agents by reason of, in connection with, related to or growing out of, directly or indirectly, the failure of the City to exercise any rights afforded to it under this Declaration, the approval of this Declaration, the approval of any site plan, the issuance of a building permit for such purposes, any inspections performed relating to said permit or permits or any certification issued indicating compliance with any City ordinance regulating the issuance of said building permit or approvals.

C. Liability of City.

Neither the Declarant, Owners, Association nor any other person or other entity shall place any reliance upon the approval of this Declaration by the City, the approval of the Site Plan and related improvements, the issuance of a Building Permit for such purposes, any inspections performed relating to said Permit or any certification issued indicating compliance with any City ordinance regulating the issuance of said Building Permit or approvals, as indicating the safety or quality of construction of any improvements located within the Properties.

D. Amendment

This Article shall not be amended without the prior written approval of the City.

E. Right of Enforcement

In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions

herein enumerated, the City shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. City is hereby declared to be a third party beneficiary of the provisions of this Declaration.

14. **GENERAL PROVISIONS.**

This Declaration shall run with the land and shall be binding upon all Townhome Lots and Townhome Lot owners until January 1, 2016, at which time said covenants shall be automatically extended for successive additional periods of ten years each. This Declaration may be amended at any time by the Declarant in its sole discretion until such right is relinquished by the Declarant. Thereafter, this Declaration may be amended by an instrument recorded in the Office of the Recorder of Dallas County, Iowa, and signed by a two-thirds or more of the then Owners.

Dated this 26th day of ~~September~~ ^{October}, 1999.

ACCURATE DEVELOPMENT, INC.

By: *Kevin J. Johnson*
Kevin J. Johnson, President and Secretary

STATE OF IOWA)
) ss.
COUNTY OF POLK)

This instrument was acknowledged before me on ~~September~~ ^{October} 26th, 1999, by Kevin J. Johnson, as President and Secretary of Accurate Development, Inc.

Janel Johnson
Notary Public
in and for said State

My commission expires: 8-13-02