

Prepared by & Return to: Nathan Barber, 3101 Ingersoll Avenue, Des Moines IA 50312 (515) 279-9059

**FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS FIRST AMENDMENT is made this 14th day of November, 2005, by **WILLOW BROOK TOWNHOMES, L.C.**, an Iowa limited liability company, as successor to Eastpark Development, L.L.C., Declarant of the Declaration of Covenants, Conditions and Restrictions recorded November 7, 2003 in Book 2003 at Page 22373, in the records of Dallas County, Iowa (the "Declaration").

WHEREAS, pursuant to the Declaration, Declarant has established and placed certain covenants, conditions, restrictions and easements on the following described real estate:

Lots 101 - 160 and 201 - 268 in WILLOW BROOK PLAT 1, an Official Plat, now included in and forming a part of Waukee, Dallas County, Iowa (the "Properties").

WHEREAS, that portion of the Properties described as Lots 223 - 256 and part of Lot 'Y' has been subsequently replatted and is now known as:

Lots 1 - 24 and Lot 'Z' in WILLOW BROOK PLAT 5, an Official Plat, now included in and forming a part of Waukee, Dallas County, Iowa.

WHEREAS, pursuant to Article XIV of the Declaration, Declarant has the right to make amendments to the Declaration without approval by the other Owners so long as Declarant has an ownership interest in any Lot subject to the Declaration.

WHEREAS, Declarant owns certain Lots subject to the Declaration.

WHEREAS, the Declarant desires to amend the Declaration to more accurately describe the real estate to be subjected to the Declaration.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. The following property has been replatted as WILLOW BROOK PLAT 5 and all references to the following property are thereby null:

Lots 223 - 256 in WILLOW BROOK PLAT 1, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa and a part of Lot 'Y' in WILLOW BROOK PLAT 1 that is more particularly described as follows:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 'Y' IN WILLOW BROOK PLAT 1, THENCE N89°58'27"W, 425.34 FEET ALONG THE SOUTH LINE OF LOT 'Y' TO A POINT, THENCE N04°02'37"E, 369.69 FEET TO A POINT, THENCE N89°49'49"E, 399.44 FEET TO A POINT ON THE EAST LINE OF SAID LOT 'Y', THENCE S00°01'33"W, 370.15 FEET ALONG THE SAID EAST LINE TO THE POINT OF BEGINNING. CONTAINING 3.498 ACRES MORE OR LESS

- 2. "Common Area" as defined in Article I of the Declaration shall be amended to include the following described real estate:

Lot 'Z' in WILLOW BROOK PLAT 5, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa.

- 3. "Lot" and "Properties" as defined in Article I of the Declaration shall be amended to include the following described real estate:

Lots 1 - 24 in WILLOW BROOK PLAT 5, an Official Plat, now included in and forming a part of Waukee, Dallas County, Iowa.

- 4. Except as expressly amended hereby, all of the terms and conditions of the Declaration shall continue in full force and effect and are hereby ratified and confirmed.

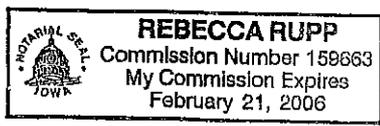
IN WITNESS WHEREOF, the undersigned has executed this First Amendment as of the date and year first above written.

WILLOW BROOK TOWNHOMES, L.C.,
an Iowa limited liability company

By: [Signature]
James M. Myers, President

STATE OF IOWA)
)ss:
COUNTY OF DALLAS)

On this 14th day of November, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared JAMES M. MYERS, to me personally known who, being by me duly sworn, did say that he is President of the Iowa limited liability company executing the foregoing instrument; that no seal has been procured by the limited liability company; that the instrument was signed on behalf of the limited liability company by authority of its managers and that JAMES M. MYERS acknowledged execution of the instrument to be the voluntary act and deed of the limited liability company by it voluntarily executed.



By: [Signature]
Printed Name: _____
Notary Public

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

KNOW ALL PERSONS BY THESE PRESENTS:

Eastpark Development, L.L.C., an Iowa limited liability company ("Declarant"), as developer of Willow Brook Townhomes in the City of Waukee, Dallas County, Iowa, desires to establish and place residential covenants, conditions and restrictions and does hereby reserve certain easements, all as hereinafter specifically set forth, on the following described real property:

Lots 101 - 160 in WILLOW BROOK PLAT 1, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa,

AND

Lots 201 - 268 in WILLOW BROOK PLAT 1, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa

(hereinafter collectively the "Properties").

NOW, THEREFORE, Declarant hereby declares that 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 Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to Willow Brook Townhomes Association, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa, 2003, as amended.

Section 2. "Association Responsibility Elements" shall mean the following:

- (a) The exterior surface of the Building upon a Lot, excluding windows, doors, stoops, patios, decks,

unattached personal property and any additions made to the Living Units whether or not approved by the Association (for example, flags or barbeque grills).

- (b) The structural portion of the Building upon a Lot.
- (c) The roof, gutters, downspouts, and foundations of the Building upon a Lot.
- (d) Any common wall between residential structures upon Lots, except the interior surfaces thereof.
- (e) The yard surrounding the residential structure upon a Lot, excluding any gardens, plants or flowers installed by any Owner.
- (f) Private streets, driveways and sidewalks.
- (g) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a residential structure which are carrying any service to more than one Lot or more than one Living Unit.
- (h) Irrigation system.
- (i) Entrance sign.
- (j) Common Area.
- (k) Pond (subject to Section 2 of Article III below).

Section 3. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 4. "Building" shall mean and refer to any structure containing one or more single-family dwelling units that may be constructed on a Lot or on several Lots.

Section 5. "Common Area" shall mean and refer to Lot W and Lot Y in Willow Brook Plat 1, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa as shown on the Official Plat thereof.

Section 6. "Common Elements" shall mean all common water lines, sewers, gas lines, electric lines and other utility service facilities located within the Properties that serve more than one Living Unit.

Section 7. "Declarant" shall mean and refer to Eastpark Development, L.L.C., its successors and assigns. All rights of Declarant shall be deemed assigned to Willow Brook Townhomes, L.C., an Iowa limited liability company, upon conveyance of the Lots thereto.

Section 8. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject.

Section 9. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Properties, or any portion thereof, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or successors to their interests.

Section 10. "Living Unit" shall mean and refer to any portion of a building situated upon a Lot and designed and intended for use and occupancy as a resident by a single family.

Section 11. "Lot" shall mean and refer to any of the lots in Lots 101 - 160 and Lots 201 - 268 in Willow Brook Plat 1, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa as shown on the Official Plat thereof and any Lots created by the division of such Lots. The rights and obligations under this Declaration relating to ownership of the Lots shall apply equally to each Lot regardless of the size or design of the Living Unit situated thereon.

Section 12. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 13. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and vendees (deemed Co-owners), 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.

Section 14. "Properties" shall have the meaning set forth on Page 1 hereof.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership and Voting. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership. Subject to provisions of Section 2 of this Article, the Owners of a Lot shall be entitled to one 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 they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 2. Declarant as Sole Voting Member. Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Association until Declarant no longer owns any portion of any Lot, or until Declarant waives, in writing, its right to be the sole voting member, Declarant shall have the right to elect all Directors and to cast all votes as it deems appropriate. Each Owner by acceptance of a deed to a Lot shall be deemed to have released Declarant from all claims with respect to actions taken or not taken while Declarant controls the Association.

Section 3. Board of Directors. The voting Members shall elect a Board of Directors of the Association as prescribed by the Bylaws of the Association. The Board of Directors shall manage the affairs of the Association.

Section 4. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against his/her/its Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

Section 5. Notice of Meetings of Members. Unless the Articles of Incorporation or the Bylaws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the President or Secretary, or the officer or persons calling the meetings, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at his/her/its address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Duration. No dissolution of the Association shall occur without the prior approval and consent of the City of Waukee, Iowa.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges, (2) special assessments for capital improvements and operating deficits and (3) special assessments as provided in this Article III, Article V and Article VI; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with late

fees, interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the joint and several personal obligation of each person who was the Owner of such property at the time when the assessment became due.

Section 2. 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 insurance, improvement, maintenance, repair, replacement, removal and demolition of the Association Responsibility Elements, the Common Elements and the Living Units situated on the Properties and for other purposes specifically provided herein. **The Association shall be responsible for fifty percent (50%) of the cost, operation, maintenance, repair, construction, restoration, replacement, or improvement of the pond shared by the neighboring Westgate Business Park.**

Section 3. Maximum Monthly Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be Eighty Dollars and 00/100 (\$80.00) per Lot plus a pro rata portion of the amount of real estate taxes and special assessments payable by the Association. Thereafter, the maximum monthly assessment may be increased effective January 1 of each year, but such increase shall not be more than 10% greater than the maximum assessment for the previous year without a vote of a majority of Members who are voting in person or by proxy at a meeting duly called for this purpose. The Board of Directors shall fix the monthly assessment at an amount not in excess of the maximum.

A portion of such monthly assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair, replacement, removal and demolition of the Common Elements, the Association Responsibility Elements and any capital improvement that the Association is required to maintain. Notwithstanding the foregoing, Declarant may use any reserve funds, if established, to defray operating costs as it deems appropriate.

A Lot shall not be subject to assessment until the first day of the month following the date of occupancy as a residence or date of closing, whichever comes first.

Declarant shall not be liable for annual or special assessments upon Lots owned by it. Declarant is not responsible for the establishment of a budget as long as Declarant is the sole voting member of the Association.

The Association and Declarant are not required to submit statements for assessments to any Owner. All monthly payments shall be made on the first of each month, or any Owner may pay each

assessment in one payment but not less frequently than monthly.

Section 4. 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, replacement, removal or demolition of a capital improvement that the Association is required to maintain or for operating deficits that the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than five (5) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of twenty-five percent (25%) of the Members or proxies entitled to cast votes 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 fifty percent (50%) 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 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to an Owner of a Lot with a completed Living Unit constructed thereon and for which a certificate of occupancy has been issued. **LOTS OWNED BY THE DECLARANT THAT DO NOT HAVE COMPLETED LIVING UNITS CONSTRUCTED THEREON AND COMPLETED UNITS THAT ARE NOT SOLD, LEASED OR OCCUPIED SHALL BE EXEMPT FROM THE ASSESSMENTS DESCRIBED IN THIS ARTICLE III AND THE ASSESSMENTS DESCRIBED IN ARTICLE VI.** The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of monthly assessments. The insurance assessment provided for in Article VI shall commence as to each Lot on the first day of the first month following the date of conveyance of the Lot to an Owner (See Article VI, Section 3). The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon

demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of said assessment all cost and expenses incurred by the Association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of the Owner's Lot.

Section 9. Subordination of Assessments Liens. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The assessment shall be paid prior to or at the closing of sale or transfer of any Lot. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, 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. The failure of an Owner to pay assessments as provided in this Article III shall not constitute a default under a mortgage insured by the Federal Mortgage Agencies.

ARTICLE IV **DECLARANT'S RIGHTS**

Declarant reserves the right to use any of the 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 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 Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the number, location, or manner of construction of buildings and other improvements on the Properties including, without limitation, the substitution of screened-in porches for decks on certain Lots

designated by Declarant; provided, that in all cases, such changes shall be accomplished in a manner consistent with applicable laws and ordinances.

ARTICLE V
MAINTENANCE

Section 1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at the Owner's own expense, all maintenance and repairs of the Owner's Lot and all structures, improvements, and equipment located thereon including decorating and replacements within the Owner's Living Unit, the heating and air conditioning systems and any partitions and interior walls appurtenant to the Living Unit, but excluding the Association Responsibility Elements. The Owner shall be responsible for the maintenance, repair, and replacement of all windows in the Owner's Living Unit, the doors leading into the Living Unit, all electrical fixtures located on the exterior of the Living Unit, and any and all other maintenance, repair, and replacements of the improvements, including decks, patios and stoops, including snow removal therefrom, shrubs, flowers, trees, plantings, gardens, and other landscaping, on the Owner's Lot unless otherwise provided herein. The Owner shall also be responsible for the maintenance, repair and replacement of all electrical wiring from the main electrical box to the Owner's Living Unit, notwithstanding the fact that such wiring crosses a Common Element or is located off-premises from the Owner's Lot. The Owner shall be responsible for maintaining exterior light fixtures of the Living Unit, including replacement of the light bulbs, and the Owner shall keep such light fixtures illuminated from dusk to dawn daily.

To the extent that equipment, facilities and fixtures (including fences) within any Lot shall be connected to similar equipment, facilities, or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to any equipment, facilities or fixtures affecting or serving other Lots.

Any repair or replacement of an exterior structure, improvement or equipment (including, without limitation, electrical fixtures) shall match the original item that it repairs or replaces. All exterior structures, improvements and equipment (including, without limitation, decks and fences) shall be constructed in accordance with local ordinances and building codes.

Section 2. Maintenance of Private Streets and Driveways.

The Association shall be responsible for the maintenance, including snow removal, repair and repaving of all private streets and driveways and for the maintenance and repair of any pedestrian walkways or sidewalks, excluding the stoops located at entrances of any Living Unit, constructed or to be constructed within the Properties by Declarant for the benefit of all Owners of Lots. Private streets and driveways shall be maintained at all times in such manner as to provide ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street or highway. The specification for replacement of any private streets, driveways, walkways or sidewalks shall be determined by the Board of Directors, or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors.

Section 3. Maintenance Obligations of Association.

In addition to maintenance upon the driveways and sidewalks, the Association shall provide all maintenance, repair, replacement, removal and demolition of the Association Responsibility Elements and Common Elements, including but not limited to, maintenance up each Lot that is subject to assessment hereunder as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces and other exterior improvements, lawns, shrubs and decks and excluding any lawns, shrubs, etc. within any fences area, trees, trash removal and snow removal (but excluding the stoops located at the entrances of any Living Unit). In the case of lawns, shrubs, trees, and other elements of landscaping, the Association shall perform all necessary repairs, replacements and maintenance thereof in a manner similar to and in accordance with the appearance of the existing landscaping, taking into account determining factors such as availability, age, and reasonableness as regard to the level of maturity and development of the landscaping at the time of the repair, replacement, of maintenance activity.

**ARTICLE VI
INSURANCE**

Section 1. Casualty Insurance. The Association shall obtain a master casualty insurance policy or policies affording fire and extended coverage insurance for the Association Responsibility Elements in an amount equal to the full replacement value thereof. The Association may obtain "all risk" coverage for the Association Responsibility Elements. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. The Association may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the monthly maintenance assessment for each Lot on a pro rata basis. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first Mortgagee of each Lot.

The master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provision that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, the Owners and their respective agents and guests, and (b) waives any defense based on invalidity based upon the acts of the insured; and providing further that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by any Owner as hereinafter permitted.

Section 2. Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organization of the Association or Board of Directors, its agents and employees, the Owners and all other persons entitled to occupy any Lot. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to, worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf to the Association. Each Owner shall be deemed to have delegated to the Board of Directors the Owner's right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 3. Monthly Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the Association and the pro rata cost thereof shall become a part of the monthly assessment (over and above the assessments described in Article III, Sections 3 and 4 herein) to which each Lot conveyed by Declarant shall be subject under the terms and provisions of Article III, Section 7. Each Owner shall prepay to the Association at the time a Lot is conveyed to such Owner an amount equal to twelve (12) monthly insurance assessments and shall maintain such prepayment account at all times. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner, mortgagee, the City of whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

Section 4. Distribution to Mortgagee. In no event shall any distribution of 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 the mortgagee jointly, or in accordance with the terms of any endorsement in favor of the mortgagee.

Section 5. Additional Insurance. Each Owner shall obtain additional insurance at the Owner's expense, affording coverage upon the Owner's personal property, the contents of the Owner's Living Unit, and all components of the Owner's Living Unit not included in the Association Responsibility Elements (including, but not limited to, all floor, ceiling, and wall coverings and fixtures, betterments and improvements) in an amount equal to the full replacement value therefor. Such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner shall obtain comprehensive public casualty insurance, at the Owner's expense, affording coverage upon the Owner's Lot with a combined single limit of not less than \$300,000 per occurrence. Such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

Section 6. Casualty and Restoration. Damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. If for any reason the Association chooses not to repair or reconstruct any Building damaged or destroyed by fire or other casualty, the Owner(s) of the affected Lots shall have the right, but not the obligation, to perform such repair or reconstruction and to collect the cost thereof from the Association.

Section 7. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area or any Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association, which shall then have the right to levy a special assessment against all Lots for the amount of such deficiency.

For the purposes of Section 6 above, repair, reconstruction and restoration shall mean construction or rebuilding of any Building or Buildings to as near as possible the same condition as it existed immediately prior to the damage or destruction and with

the same or similar type of architecture.

Section 8. Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Properties, or, in the discretion of the Board of Directors, may be distributed to the Owners of the Building affected and their mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damages shall not constitute a waiver of any rights against Owner for committing willful or malicious damage.

ARTICLE VII EASEMENTS

Section 1. Drainage, Utility, and Sewer Easements. As noted on the recorded Plat of the Properties, Declarant has reserved certain areas of the Lots for public utility and sewer easements. In doing so, it is the intention of Declarant to provide the needed flexibility, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electrical, telephone, water, gas, sewer, and other utility service (including all lines, pipes, wires, cables, ducts, etc.) to the Living Units constructed on the Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such easements and any fences installed shall be 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. Regardless of whether shown on the recorded plat, each Lot shall accept surface water drainage from adjacent properties whether or not located within the Properties and each Lot shall have the right to drain its surface water to the adjacent Lots located within the Properties.

Section 2. Additional Easement Rights. Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement right, title, and authority to relocate, alter or otherwise change the location of any drainage, utility or sewer easement and to grant such further easements, licenses, and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of the Properties. 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, or amendment to the Plat recorded in the Office of the Recorder of Dallas County, Iowa. Each Owner shall take title subject to the

right and easements reserved herein; provided, however, the rights reserved in this Section 2 shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section 2 shall run with the land and Declarant's right to further alter or grant easements shall automatically transfer to the Association when Declarant shall have conveyed the last Lot within the Properties.

Section 3. Easement for Access and Maintenance. The Association, its agents, and contractors and each Owner shall have an easement and license to, in and over each Lot for the purpose of performing its maintenance obligations and for access to the rear of the Lot owned by such Owner.

Section 4. Easement for Water Usage. The Association, its agents, and contractors shall have an easement and license to use hoses, bibs and water from all Lots for the purpose of performing its maintenance obligations provided the Association shall reimburse the Owner for any water costs relating thereto in excess of \$50.00 per month.

Section 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, ambulances, etc., and emergency personnel, public and private, over and upon all Lots and any pedestrian walkways or sidewalks.

Section 6. Easement for Signs. Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to the Owners by and through the Association, the right and easement to erect and maintain an entryway sign or signs.

Section 7. Driveways and Entrances. An easement is hereby reserved and granted for the use of all Lots served by one driveway over such driveway. To the extent that a driveway serving a Living Unit is located partially or wholly on another Lot or Lots, the Owner of the Living Unit served by such driveway shall have the benefit of any easement over that portion of the other Lot or Lots covered by the driveway. This driveway easement shall be for ingress and egress purposes and no Owner shall park or allow to be parked any vehicular or other obstruction within the driveway area so as to prevent access to the Living Units that such driveway serves. Further, there is hereby reserved and granted an easement for the benefit of each Lot served by a sidewalk and pedestrian walkway located partially or wholly on another Lot or Lots. In the event Living Units are served by a shared front entry stoop and to the extent of such shared stoops a reciprocal easement is granted for the benefit of each served by such shared entry stoop. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walk or shared entry stoop which would impair use and

access to the Living Unit which such sidewalk or entry stoop serves.

Section 8. General Easements. Each Lot shall be subject to the following easements in favor of the Association and the other Owners:

- (a) Every portion of a structure upon a Lot which contributes to the support of any structure not on the same Lot is burdened with an easement of such support.
- (b) Each Lot is burdened with an easement through the 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, heating and air conditioning systems and similar services to other Lots, including the location of utility meters and equipment on one Lot for service to other Lots.
- (c) Each Lot is burdened with an easement of ingress and egress for maintenance, repair and replacement of Association Responsibility Elements by the Association.
- (d) Each Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.
- (e) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.

ARTICLE VIII
PARKING RIGHTS

Section 1. Use of Parking Spaces, Guest Parking and Parking on Public Streets. Subject to the provisions of Article VII, Section 6, above, the paved driveway in front of each Owner's garage shall be for the exclusive use of such Owner and the Owner's guests. However, no one, including the Owner and the Owner's guests, shall use these parking spaces, the designated guest parking or the public streets located within the Properties, for the parking or storage of any watercraft, snowmobiles, commercial vehicles, trailers, camping vehicles or other recreational vehicles. Automobiles of the Owner and the Owner's guests may be parked in the paved driveway in front of the Owner's garage, or in the designated guest parking for a maximum of seven (7) days. To park an automobile in such areas for a period of time longer than seven (7) days, the Owner must notify the Association. In the event of a violation of this provision, the Association may, after reasonable notice, remove any such snowmobiles, watercrafts, commercial vehicles, trailers, recreational or camping vehicles or any other vehicle.

Section 2. Storage and Access. Bicycles, toys or other personal property shall not be allowed to obstruct any driveway, nor shall the

same be stored alongside building walls or in any other location open to public view. No vehicles shall be parked so as to impede access from or to any Lot or public street. No fence, barrier or other obstruction of any kind shall be placed or constructed so as to impede access from or to any Lot or public street.

Section 3. Temporary Parking. Notwithstanding the foregoing, the temporary or incidental parking of trucks or other commercial vehicles shall be allowed for the making of pickup and deliveries to neighboring Lots. In addition, during construction of the Living Units, Declarant may use the driveways, sidewalks, public streets and similar areas within the Properties, as it deems appropriate.

ARTICLE IX PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the building upon the Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, 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 2. Sharing of Repair and Maintenance. The costs of repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, any Owner who by the Owner's negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right of Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE X ARCHITECTURAL CONTROL

No building, fence, wall or other structure, except as originally constructed by or on behalf of Declarant, shall be

commenced, erected, altered or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereof be made (including screen door, satellite dishes and similar fixtures) until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors, or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors. Any change in the appearance or the color of any part of the exterior of a building (including the exterior items for which the Owner is responsible for maintenance pursuant to Article V, Section 1, hereof) shall be deemed a change thereto and shall require the approval therefor as above provided.

ARTICLE XI
SIGNS AND HOME OCCUPATIONS

Section 1. Signs. No signs of any kind including rental signs (other than interior window signs) and further including signs of any nature, kind, or description that identify, advertise, or in any way describe the existence or conduct of a home occupation, shall be displayed on any Lot without the prior written approval of the Board of Directors; provided, however, that an Owner shall be entitled to display one (1) "for sale" sign of standard and customary size and materials in connection with attempts by the Owner to market a Lot. Nothing in this Article shall affect the rights of Declarant provided in Article IV.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incident to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot. No child-care service or activity shall be regularly conducted on any Lot, except for incidental childcare activities for the sole benefit of the Owner of a Lot. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots or single-family dwellings as a part of the development of the Properties.

ARTICLE XII
ENCROACHMENTS AND EASEMENTS FOR BUILDINGS

Section 1. Encroachment. If, by reason of the location, construction, settling or shifting of a Building, any part of a Building consisting of Living Unit appurtenant to a Lot (hereinafter in this Article XII referred to as the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use, and enjoyment of the Encroaching Unit and all appurtenances thereto, for the period during which the encroachment exists.

Section 2. Easements. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in or on any other Lot or Living Unit and serving such Owner's Lot.

**ARTICLE XIII
ADDITIONAL RESTRICTIONS**

Section 1. No Lot shall be used except for residential purposes, as defined in the Waukee Zoning Ordinance, except for rights of Declarant as provided in Article IV. No buildings, structures or sheds shall be erected on any Lot other than the Living Units or replacements thereof.

Section 2. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that no more than a total of two (2) dogs; or one (1) dog and one (1) cat; or two (2) cats, each animal weighing less than 20 pounds at full growth, may be kept, provided that they are not kept, bred or maintained for any commercial purposes. No dogs or cats shall be permitted outside of the Living Unit unless leashed and attended by the Owner. No dog runs, doghouses or unattended chains shall be permitted. The Owner shall be responsible for prompt removal and disposal of all waste from their dogs or cats. The Association may, by rules and regulations, prohibit or further limit the raising, breeding or keeping on any Lot of any pet.

Section 3. No noxious or offensive activities not involving the maintenance of Lots shall be carried on upon any Lot nor shall anything be done thereon that may be or may become an annoyance or a nuisance to the neighborhood. Nor shall any Lot be used for any unlawful purpose. Nor shall any Owner cause, or suffer or harbor the source of, any noise or activity that disturbs the peace, comfort and quiet enjoyment of other Owners or those claiming under or through other Owners.

Section 4. The Owner of each Lot shall keep the same free of weeds and debris.

Section 5. No trash receptacles and garbage cans shall be permitted to be placed outside of a Building or a structure on any Lot. This restriction shall not preclude the placement of waste containers outside of such area on a temporary basis, if so required by governmental regulation or by any private removal service, on trash pickup days only and not more than twenty-four (24) hours in advance of pickup. The Owners, individually or collectively, shall contract with only one (1) private removal service.

Section 6. No temporary structure, trailer, basement, tent, shack, garage, barn, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 7. No exterior transmission towers, antennas or television and/or microwave transmission dishes of any kind shall be constructed, installed, modified, or permitted on the ground, on Buildings, on Living Units, on Common Areas or on garages without written consent from the Association. Owners must submit a request to install said services in writing to the Association prior to installation. Requests should include type, size and location of the tower, antenna, dish, or other device Owner seeks permission to construct, install, modify, or attach. Notwithstanding the foregoing, exterior towers, antennas or television and/or microwave receiver dishes which are designed to receive direct broadcast satellite service, including direct home satellite service, and have a diameter of less than one (1) meter, or which are designed to receive video programming services by a multipoint distribution service, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and are one (1) meter or less in diameter or diagonal measurement, shall be permitted. Owner must submit notification to the Association in writing of the Owner's intent to install said services. No more than one (1) such tower, antenna or television and/or microwave receiver dish shall be permitted on each Lot. No more than one (1) penetration in the dwelling shall be permitted for the cable from such tower, antenna or television and/or microwave receiver dish. No other exterior towers or antennas shall be constructed, installed, modified or permitted on the ground, on Buildings, on Living Units, on Common Areas or on garages.

Section 8. No basketball goal (whether attached to the exterior of a Living Unit or affixed to a free standing pole), soccer goal, baseball backstop or other similar sporting equipment shall be constructed upon any Lot.

Section 9. All unattached sporting equipment, toys, outdoor cooking equipment, and other equipment and supplies necessary or convenient to residential living shall be stored on the patio or deck of the Living Unit. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weed or other noxious substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort and serenity of Owners is prohibited.

Section 10. The Owners shall be individually responsible for utility charges which they incur for water and sewer services in the same manner as persons occupying single-family detached houses.

Section 11. No fence shall be allowed to be constructed on any Lot without prior written approval from the Board of Directors. Any fence approved by the Board of Directors shall be limited to privacy or decorative fences located around the decks or patios of the Living Units.

Section 12. No personal property shall be stored or left upon a Lot except within the residential structure or garage located upon the Lot. Garage doors shall be kept closed except during times of access to the garage.

Section 13. Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors.

Section 14. No activity shall be allowed which unduly interferes with the peaceful possession and use of the Properties by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

Section 15. 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 prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in the Owner's 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 become a nuisance or annoyance to the other Owners.

Section 16. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies that require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned.

Section 17. The Board of Directors shall have the authority to adopt rules and regulations governing the use of Lots, the Common Area and the Association Responsibility Elements. Such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns, and licensees.

Section 18. Agents or contractors of the Board of Directors may enter any Lot when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable.

Section 19. Neither the Owners nor the Association nor the use of the Common Area shall interfere with the completion of the contemplated improvements and the sale of the Lots by the Declarant. The Declarant may make such use of the unsold Lots and the Common Area as may facilitate such completion and sale, including, but not limited to, the maintenance of a sales office, model home, the showing of the property and the display of signs.

Section 20. Failure of the Association or any Owner to enforce any covenant, condition or restriction of 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.

ARTICLE XIV
GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions, and restrictions herein enumerated, Declarant, the Owners and all parties claiming under them, and the City of Waukee (if it so elects by approval of its City Council) shall have the right to enforce 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.

Section 2. Amendment. This Declaration may be amended or changed by an instrument recorded in the Office of the Recorder of Dallas County, Iowa, signed or approved by at least two-thirds of the then Owners; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Notwithstanding the foregoing, this Declaration may be amended by Declarant without approval by the other Owners so long as Declarant has any ownership interest in any Lot.

This Declaration may also be amended by Declarant, if it then has any ownership interest in any Lot, at any time within four (4) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies. As long as Declarant is the sole voting member, any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof.

Section 3. Duration. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-one (21) years from the date of recordation in the Office of the Recorder of Dallas County, Iowa, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions, and restrictions of this Declaration by judgment or decree shall in no way effect any of the provisions hereof, but the same shall remain in full force and effect.

Section 4. Notice to Mortgagees. The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation or Bylaws of

the Association or any other applicable documents which default has not been cured within sixty (60) days.

Section 5. Restriction on Rental. In order to protect the integrity of this subdivision and to insure that those persons residing therein have similar proprietary interests in their Lots and Living Units, no Lot and the Living Unit located thereon shall be leased or rented for a period of time of less than one (1) year and no lease or rental agreement to any such tenants or lessee shall be extended or renewed for a period of time longer than two (2) years. No Owner shall lease his/her Living Unit more than one (1) time during his/her ownership thereof.

**ARTICLE XV
ADDITION AND REMOVAL OF PROPERTY**

Section 1. Additional Common Areas. Declarant shall have the right at any time to convey additional Common Areas to the Association from time to time within the Property. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to convey additional Common Areas to the Association in the future. The Association shall be obligated to accept any additional Common Areas so conveyed by Declarant and to hold and maintain the additional Common Areas pursuant to the terms of this Declaration.

Section 2. Subjecting Additional Land to Declaration. Declarant shall have the irrevocable right to subject additional land to the terms of this Declaration at any time in the future without the consent of the Association. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration and Owners of Lots within the additional land shall automatically become Members of the Association in the same fashion as described in this Declaration and shall be subject to the same applicable terms, conditions, duties and assessments as described in this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the Recorder of Dallas County, Iowa. No approval of the Association or any other person shall be necessary.

Section 3. Removing Land from Operation of Declaration. Declarant shall have the right now and in the future to remove any portion of the Property from the operation of this Declaration provided that the portion so removed has not yet been platted into individual lots and a plat for that portion has not been filed of record with the Auditor of Dallas County, Iowa. Declarant shall signify this removal by filing an amendment to this Declaration with the Recorder of Dallas County, Iowa. No approval of the Association or any other person shall be necessary.

