

INST # 8824 ✓
RECORDING FEE 25.00
AUDITOR FEE -
RMA FEE 1.00

DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

64 ESTATES,

A SUBDIVISION IN

THE CITY OF COUNCIL BLUFFS, IOWA

Dick Glasford Enterprises, Inc., hereinafter called Declarant, is the owner in fee simple of certain real property located in Council Bluffs, Pottawattamie County, Iowa, and known by official plat designation as 64 Estates, a subdivision in the City of Council Bluffs, Iowa, pursuant to a plat recorded on the 5th day of December, 1997, in Book 98, Page 23526 of the Records of the Pottawattamie County Recorder.

For the purpose of enhancing and protecting the value, attractiveness, and desirability of the lots or tracts constituting such subdivision, Declarant hereby declares that all of the real property described above and each part thereof shall be held, sold, and conveyed only subject to the following easements, covenants, conditions, and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE ONE

DEFINITIONS

Section 1. "Association" shall mean and refer to 64 Estates Home Owners Association, a nonprofit Iowa corporation, its successors and assigns.

Section 2. "Common area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. There will be no common area owned by the Association at the time of the initial development of the subdivision.

Section 3. "Declarant" shall mean Dick Glasford

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Enterprises, Inc., and its heirs, successors, and assigns provided such successors or assigns acquire more than one undeveloped lot from Declarant for the purpose of development.

Section 4. "Lot" shall mean any plot of land shown on the recorded subdivision plat referred to above with the exception of any common area.

Section 5. "Maintenance" shall mean the exercise of reasonable care to keep improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weedfree environment for optimum plant growth.

Section 6. "Member" shall mean every person or entity who holds membership in the Association.

Section 7. "Mortgage" shall mean a conventional mortgage or a deed of trust.

Section 8. "Mortgagee" shall mean a holder of a conventional mortgage or a beneficiary under or holder of a deed of trust.

Section 9. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the subdivision, and shall include contract sellers, but shall not include those holding title merely as security for performance of an obligation.

Section 10. "Subdivision" shall mean the subdivided real property hereinbefore described and such additions thereto as may be brought within the jurisdiction of the Association as hereinafter provided.

Section 11. "Duplex townhome" shall mean a duplex divided by a lot line coinciding with the common wall separating the two dwelling units thereof.

Section 12. "Triplex townhome" shall mean a triplex divided by two lot lines, with each lot line coinciding with a common wall separating two of the dwelling units thereof.

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Section 13. "Fourplex townhome" shall mean a fourplex divided by three lot lines, with each lot line coinciding with a common wall separating two of the dwelling units thereof.

ARTICLE TWO

MEMBERSHIP IN ASSOCIATION - VOTING RIGHTS

Section 1. 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 a lot.

Section 2. The Association shall have two classes of voting members as follows:

Class A. Class A members shall be all owners with the exception of Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in a given lot, all such persons shall be members, and the vote for such lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any lot owned by Class A members.

Class B. The Class B member shall be Declarant, who shall be entitled to exercise three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership are greater than the total votes outstanding in the Class B membership, or on January 1, 2000, whichever first occurs.

ARTICLE THREE

ASSESSMENTS

Section 1. LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Declarant hereby covenants for each lot within the subdivision, and each owner of a lot is hereby deemed to covenant by acceptance of his or her deed for such lot, whether or not it shall be so expressed in his or her deed, to pay to the Association (1) annual assessments and (2) special assessments for capital improvements. Such assessments will be established and collected as hereinafter provided. The annual and special

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assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and a continuing lien on each lot against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person or persons who owned the lot at the time the assessment fell due, but such personal obligation shall not pass to the successors in title of such person or persons unless expressly assumed by them.

Section 2. PURPOSE OF ANNUAL ASSESSMENTS. The annual assessments levied by the Association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents in the subdivision, and for the management, maintenance, repair, upkeep, and general operation of any common areas or facilities, and for the maintenance and upkeep of the yards, sidewalks, driveways, and the exterior appearance of all structures on the lots in the subdivision. Annual assessments shall include, and the Association shall acquire and pay for out of the funds derived from annual assessments, the following:

- (a) Maintenance, repair, and upkeep of any common areas or facilities.
- (b) Water, sewer, garbage, electricity, lighting, telephone, gas, and other necessary utility service for any common areas or facilities.
- (c) Acquisition of furnishings and equipment for any common areas of facilities as may be determined by the Association, including without limitation all equipment, furnishings, and personnel necessary or proper for use of any common recreational facilities.
- (d) Fire insurance covering the full insurable replacement value of any common areas or facilities with extended coverage.
- (e) Liability insurance insuring the Association against any and all liability to the public, to any owner, or to the family, guests, invitees, or tenants of any owner, arising out of their occupation and/or use of any common areas or facilities, or arising out of the Association's errors and omissions with respect to the maintenance and upkeep of the yards, sidewalks, driveways, and the exterior appearance of all structures on the lots in the subdivision.

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(f) Workmen's compensation insurance to the extent necessary to comply with applicable law, and any other insurance deemed necessary by the board of directors of the Association.

(g) A standard fidelity bond covering all members of the board of directors of the Association and all other employees of the Association in an amount to be determined by the board of directors.

(h) Maintenance and upkeep of the yards, sidewalks, driveways, and the exterior appearance of all structures on the lots in the subdivision, which shall include the following responsibilities:

(1) The maintenance of landscaping for each lot, including normal lawn care such as watering and cutting grass, trimming of trees, shrubs and hedges, and weed, insect, and disease control, but not including the care of flowers allowed to be planted by any owner within three feet of his or her residence. Incidental thereto, the Association shall maintain and repair a sprinkler system throughout the yards of all lots in the subdivision for the purpose of watering lawns; the Association shall pay for the water utility service associated with such use; each owner shall pay for the installation of a sprinkler system in the yard of his or her lot and connect to the Association's sprinkler system.

(2) The removal of the natural accumulations of snow and ice from all sidewalks (both private and public), including all stoops and porches, and from all driveways, including the private portion of the cul-de-sac, all within a reasonable amount of time.

(3) The periodic repainting of the exterior wood surfaces of all residences in the subdivision. The Association shall have sole discretion in determining the appropriate time when all residences should be repainted. All residences shall be repainted contemporaneously pursuant to a comprehensive plan determined by the Association. The Association shall have sole discretion in determining the color of paint for each residence so that the overall color schemes of the subdivision are coordinated. Nothing in this paragraph shall be construed to preclude an owner from repainting his or her own residence at a time different than the Association's periodic repainting, provided that the color is approved by the Association in advance and that such owner bears the cost of such repainting, and

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further provided that such owner shall not be allowed to except his or her residence from the Association's next periodic repainting. Nothing in this paragraph shall be construed as requiring the Association to maintain or repair the exterior appearance or condition of any brick surface, siding, roofing material, or window panes on any residence in the subdivision; nevertheless, the color and style of any brick surface, siding, roofing material, or window pane to be placed by an owner on the exterior of his or her residence shall be subject to the prior approval of the Association.

(4) The maintenance and repair of a boundary fence to be placed by the Association along the rear lot lines of all lots in the subdivision.

(5) The spraying of chemicals on the yards of each lot and around the exterior perimeters of all residences in the subdivision to control the proliferation of insects, bugs, mosquitoes, rodents, and other pests.

(i) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or the By Laws, or which shall be necessary or proper in the opinion of the board of directors of the Association for the operation of any common areas or facilities, for the maintenance and upkeep of the yards, sidewalks, driveways, and the exterior appearance of all structures on the lots in the subdivision, for the benefit of lot owners, or for the enforcement of these restrictions.

(j) In the event the need for any maintenance or repair mentioned in this section is attributable to the willful or negligent act of the owner of a lot, or of his or her 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 lot is subject.

Section 3. MAXIMUM ANNUAL ASSESSMENT. The members of the Association may vote to set a maximum amount for the annual assessment for any given year. The board of directors of the Association may fix the annual assessment at an amount not in excess of the maximum set by the members for any given year.

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Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement, including fixtures and personal property related thereto, on any common area, or on any lot if such improvement is for the collective benefit of the members and not just for the particular advantage of the owner of the lot. Any such assessment must be approved by a majority of each class of members.

Section 5. NOTICE AND QUORUM FOR ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the hereinbefore purpose of taking any action authorized by Section 3 or 4 hereinbefore shall be sent to all members not less than five (5) nor more than twenty (20) days in advance of such meeting. In the event the proposed action is favored by a majority of the votes cast at such meeting, but less than the requisite majority of each class of members, members who were not present in person or by proxy may give their assent in writing within ten (10) days after the date of such meeting.

Section 6. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all lots.

Section 7. COMMENCEMENT AND COLLECTION OF ANNUAL ASSESSMENTS. The annual assessments provided for herein shall commence as to all lots on the first day of the month following a determination by the members of the Association that such assessments shall begin. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The board of directors shall fix the amount of the annual assessment against each lot at least ten (10) days in advance of the due date thereof and shall fix the dates such amounts become due. Assessments may be made payable monthly. Notice of the annual assessments shall be sent to every owner subject thereto. The Association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessment against a specific lot has been paid.

Section 8. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall be deemed in default

and shall bear interest from the due date at the rate of ten per cent (10%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of any common areas or facilities, or by abandonment of his or her lot.

Section 9. SUBORDINATION OF ASSESSMENT LIEN TO MORTGAGES. The assessment lien provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE FOUR

PROPERTY RIGHTS

Section 1. OWNER'S EASEMENT OF ENJOYMENT. Every owner of a lot shall have a right and easement of enjoyment in and to any common areas or facilities which shall be appurtenant to and shall pass with the title to such lot, subject to the following rights of the Association:

(a) The right to charge reasonable admission and other fees for the use of any recreational facility situated within any common area.

(b) The right to suspend the right of use of any common areas or recreational facilities and the voting rights of any owner for periods during which assessments against his or her lot remain unpaid, and the right, after hearing by the board of directors, to suspend such rights for a period not exceeding sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) The right to dedicate or transfer all or any part of any common areas or facilities to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such

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dedication or transfer shall be effective unless an instrument executed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been duly recorded.

Section 2. DELEGATION OF USE. Subject to such limitations as may be imposed by the By Laws, each owner may delegate his right of enjoyment in and to any common areas and facilities to the members of his or her family, guests, tenants, and invitees.

Section 3. EASEMENTS OF ENCROACHMENT. There shall exist reciprocal appurtenant easements as between adjacent lots (and between each lot and any portion or portions of any common areas or facilities adjacent thereto) for any encroachment due to the unwillful placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction, or alteration is in accordance with the terms of this Declaration. Such easement shall exist to a distance of not more than one (1) foot as measured from any point on the common boundary between adjacent lots (or between each lot and any adjacent portion of any common areas or facilities) along a line perpendicular to such boundary at such point. No easement for encroachment shall exist as to any encroachment occurring due to the willful conduct of an owner.

Section 4. OTHER EASEMENTS AND PARTY WALLS.

(a) Easements for installation and maintenance of utilities and drainage facilities are shown on the recorded subdivision plat. In addition to the right of use thereof by the utilities, any cable television franchisee of the City of Council Bluffs is also granted the right to install and maintain its lines and equipment in such easements. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easements.

(b) No dwelling unit or other structure of any kind shall be built, erected, or maintained on any such easement, reservation, or right of way, and such easements, reservations, and rights of way shall at all times be open and accessible to public and quasi-public utility corporations and cable television

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companies, their employees and contractors, and shall also be open and accessible to Declarant, its successors, and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved.

(c) There shall exist an easement across Lot 1 (as shown on the recorded subdivision plat) to the Association, its employees and contractors for the installation, maintenance, and repair of an entrance sign to the subdivision. Within this easement, no structure, planting, or other material shall be placed or permitted to remain which may interfere with such use by the Association.

(d) Each wall which is built as a common wall separating two dwelling units of a townhome constructed in the subdivision shall constitute a party wall (or a wall in common), and the provisions of Chapter 563 of the Code of Iowa regarding walls in common shall apply thereto.

Section 5. RIGHT OF ENTRY. The Association, through its duly authorized employees and contractors, shall have the right, after reasonable notice to the owner thereof, to enter any lot at any reasonable hour on any day to perform such maintenance or repair as may be authorized herein.

Section 6. PARTITION. There shall be no judicial partition of any common area, nor shall Declarant, or any owner, or any other person acquiring any interest in the subdivision or any part thereof, seek judicial partition thereof.

ARTICLE FIVE

USE RESTRICTIONS

The subdivision shall be occupied and used only as follows:

Section 1. No structure on any lot or common area shall exceed three (3) stories in height. Each lot shall be used as a residence for a single family and for no other purpose; however, an owner may use a portion of his or her residence for an office or studio, provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other owner, and provided further that in no event shall any part of a

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residence be used as a school or music studio.

Section 2. Except as allowed in the preceding section, no business of any kind shall be conducted on any residence, with the further exception of the business of Declarant or the transferees of Declarant in developing all of the lots as provided in Section 11 hereinafter.

Section 3. No noxious or offensive activity, annoyance, or nuisance shall be carried on in or on any lot, with the exception of the business of Declarant or the transferees of Declarant in developing all of the lots as provided in Section 11 hereinafter.

Section 4. No sign of any kind shall be displayed to public view on a lot or any common area or facility without the prior written consent of the Association, except customary name and address signs, and lawn signs of not more than five (5) square feet in size advertising a property for sale or rent, and except for signs used by Declarant or the transferees of Declarant in developing all of the lots as provided in Section 11 hereinafter.

Section 5. Nothing shall be done or kept on any lot or on any common area or facility which would increase the rate of insurance relating thereto without the prior written consent of the Association, and no owner shall permit anything to be done or kept on his or her lot or on any common area or facility which would result in the cancellation of insurance on any residence or on any part of any common area or facility, or which would be in violation of any law.

Section 6. No animals, livestock, poultry, or reptiles of any kind shall be raised, bred, or kept on any lot or on any common area or facility. However, dogs, cats, or other normal household pets may be kept on lots subject to such rules and regulations as may be adopted by the Association, so long as they are not kept, bred, or maintained for commercial purposes, and provided that they are kept on leashes whenever outside, and further provided that no animal houses or runways are placed or constructed on any lot.

Section 7. No debris, rubbish, trash, garbage, or other waste material shall be kept or permitted on any lot or on any common area or facility except in sanitary containers located in appropriate areas concealed from public view. No excess or

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unused building material shall be kept, stored, or otherwise maintained on any lot in a location within public view, other than for use connected with approved or permitted construction.

Section 8. No fence, hedge, wall, or other dividing instrumentality shall be constructed or maintained on any lot in the subdivision, except that Declarant or the transferees of Declarant may construct a boundary fence along the rear lot lines of all the lots in the subdivision.

Section 9. No outbuilding, basement, tent, shack, garage, trailer, shed, or temporary building of any kind shall be used as a residence either temporarily or permanently.

Section 10. Nothing shall be altered in, constructed on, or removed from any common area or facility except on the written consent of the Association.

Section 11. Declarant or the transferees of Declarant shall undertake the work of developing all lots included within the subdivision. The completion of that work, and the sale, rental, or other disposal of residential units is essential to the establishment and welfare of the subdivision as an ongoing residential community. In order that such work may be completed and the subdivision be established as a fully occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from doing on any part or parts of the subdivision owned or controlled by Declarant, Declarant's transferees, or their representatives, whatever they determine may be reasonably necessary or advisable in connection with the completion of such work;

(b) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from constructing and maintaining on any part or parts of the subdivision property owned or controlled by Declarant, Declarant's transferees, or their representatives, such structures as may be reasonably necessary for the completion of such work, the establishment of the subdivision as a residential community, and the disposition of lots by sale, lease, or otherwise;

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(c) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from conducting on any part or parts of the subdivision property owned or controlled by Declarant, Declarant's transferees, or their representatives, the business of completing such work, of establishing the subdivision as a residential community, and of disposing of lots by sale, lease, or otherwise, or

(d) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from maintaining such sign or signs on any of the lots owned or controlled by any of them as may be necessary in connection with the sale, lease, or otherwise of subdivision lots.

As used in this section, the words "its transferees" specifically exclude purchasers of lots improved with completed residences.

Section 12. Lots 1 and 2 shall be considered together in determining the propriety of obtaining a building permit for any structure thereon, and Lot 2 may be owned separately from Lot 1 if Lot 2 contains one dwelling unit of a duplex townhome and Lot 1 contains the other dwelling unit of the duplex townhome, and Lot 2 shall not be built upon separately from Lot 1, and likewise for Lots 3 and 4, Lots 13 and 14, Lots 15 and 16, Lots 17 and 18, Lots 19 and 20, Lots 29 and 30, Lots 31 and 32, and Lots 33 and 34; Lots 5, 6, 7 and 8 shall be considered together in determining the propriety of obtaining a building permit for any structure thereon, and any of such lots may be owned separately from another if one of such lots contains one dwelling unit of a fourplex townhome and the other lots contain the other dwelling units of the fourplex townhome, and no such lot shall be built upon separately from any other such lot, and likewise for Lots 9, 10, 11 and 12, Lots 21, 22, 23 and 24, and Lots 25, 26, 27 and 28. This arrangement of townhomes on the said lots constitutes the initial plan for the subdivision; however, nothing stated in this Section shall be construed as prohibiting a change in such plan to allow construction of a single-family home upon any two lots joined together under common ownership, nor prohibiting construction of a duplex townhome upon any two lots, a triplex townhome upon any three lots, or a fourplex townhome upon any four lots, provided that any new arrangement meets with the approval of the City of Council Bluffs pursuant to the Municipal

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Code, through the issuance of a valid building permit for such, or through the approval of a property line adjustment or replat, if necessary.

Section 13. No dwelling unit or other structure of any kind shall be commenced, erected, or maintained upon any lot in the subdivision, nor shall any exterior addition thereto or any change or alteration therein be made, 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 conformity and harmony of external design with existing structures in the subdivision, and as to location in relation to topography and finished ground elevation) by the board of directors of the Association, or by an architectural committee composed of three (3) members of the Association appointed by the board. In the event said board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such approval will not be required and this section will be deemed to have been fully complied with.

Section 14. No motor vehicle, boat, houseboat, recreational vehicle, trailer, mobile home, motor home, or similar item shall be parked or stored for over a period of forty-eight (48) hours on any street, or on any parking area on any lot in the subdivision, or on any common area, unless parked in a private garage. No such items or vehicles shall have mechanical or body work performed on them anywhere in the subdivision.

Section 15. No swing set, jungle gym, sandbox, treehouse, or any other child recreational structure or equipment, shall be placed, erected, constructed, or maintained on any lot or on any common area in the subdivision, except that the Association may have such devices in any common area created specifically as a children's playground.

Section 16. No vegetable garden shall be maintained on any lot or on any common area in the subdivision. No flowers shall be planted or grown upon any lot except within three (3) feet of the residence on such lot. No trees, shrubs, or hedges shall be planted upon or removed from any lot in the subdivision without the approval of the Association.

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ARTICLE SIX

OWNER'S OBLIGATION TO REPAIR AND MAINTAIN

Except as otherwise provided in this Declaration, each owner shall, at his sole cost and expense, repair, maintain, and restore the exterior appearance of his or her premises and the improvements situated thereon, keeping the same in a condition comparable to the condition of such premises at the time of its initial construction, excepting only normal wear and tear. In the event an owner of any lot in the subdivision shall fail to do so in a manner satisfactory to the board of directors, then the Association, after approval by a two-thirds (2/3) vote of the board of directors, shall have the right, through its agents and employees, to enter upon said lot and to repair, maintain, and restore the lot and the exterior of the residence and any other improvements erected thereon. The cost of such repair, maintenance, or restoration shall be added to and become part of the assessment to which such lot is subject by this Declaration.

ARTICLE SEVEN

OWNER'S OBLIGATION TO REBUILD

If all or any portion of a residence or other structure on any lot is damaged or destroyed by fire or other casualty, it shall be the duty of the owner thereof, with all due diligence, to rebuild, repair, or reconstruct such residence or other structure in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within one (1) month after the damage occurs, and shall be completed within four (4) months after the damage occurs, unless prevented by causes beyond the control of the owner or owners.

ARTICLE EIGHT

ANNEXATION OF ADDITIONAL PROPERTY

Additional residential property and any common area may be annexed to the subdivision with the consent of two-thirds (2/3) of each class of members.

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ARTICLE NINE

GENERAL PROVISIONS

Section 1. ENFORCEMENT. Declarant, the Association, or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association, or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. AMENDMENTS. Covenants and restrictions of this Declaration may be amended by duly recording an instrument executed and acknowledged by not less than three-fourths (3/4) of each class of members.

Section 4. SUBORDINATION. No breach of any of the conditions herein contained, or reentry by reason of such breach, shall defeat or render invalid the lien of any mortgage made in good faith and for value as to the subdivision or any lot therein; provided, however, that such conditions shall be binding on any owner whose title is acquired by foreclosure, trustee's sale, or otherwise.

Section 5. DURATION. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any member thereof for a period of thirty (30) years from the date hereof, and thereafter shall continue automatically in effect for additional periods of ten (10) years, unless otherwise agreed to in writing by the then owners of at least three-fourths (3/4) of the subdivision lots.

EXECUTED at Council Bluffs, Iowa on this 8TH day of December, 1997.

