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INST # 9700
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AUDITOR FEE _____
RMA FEE 109

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JOHN SCIORTINO
RECORDER

Preparer Information: Ret Smith Peterson #41
Name: Joseph D. Thornton, P.O. Box 249, Council Bluffs, IA 51502-0249 Address: _____ Telephone: (712) 328-1833

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is made as of the 31 day of October, 2002, by Southwest Iowa Foundation, an Iowa not-for-profit corporation ("SWIF") and CMK Development, LLC ("CMK").

RECITALS:

A. SWIF is the owner of a certain parcel of land located in the City of Council Bluffs, Iowa ("Council Bluffs"), which parcel of land is more fully described as Bluffs Vision Subdivision "Bluffs Vision", see Exhibit A attached hereto. CMK has purchased Lots 3 and 4 of Bluffs Vision.

B. Bluffs Vision is intended to be developed as part of the arena and convention center development that is commonly referred to as the Mid-American Center, f/k/a the Mid-America Recreation & Convention Complex (the "Complex").

C. The Complex is intended to be developed into a 7,500 seat, multi-purpose arena, a convention/conference center and a multi-use field house/exhibit hall; Bluffs Vision is intended to be developed as a year-round restaurant and shopping destination.

D. The purpose of this Declaration is to provide reasonable restrictions and architectural guidelines on the use of Bluffs Vision real estate.

NOW, THEREFORE, SWIF as Declarant and CMK, as the sole owners of Lots 3 and 4 in Bluffs Vision, hereby covenants and declares, on behalf of themselves and its successors and assigns, that, from the date this Agreement is recorded, Bluffs Vision shall be held, conveyed, acquired, used and encumbered subject to the terms and provisions hereof, all of which shall run with the land and bind and inure to the benefit of all Persons (as defined below) who may now or hereafter own or acquire any right, title, estate or interest in or to any of Bluffs Vision, or who may now or hereafter occupy, use or enter upon any portion thereof.

**ARTICLE 1
GENERAL PROVISIONS**

Section 1.1 Definitions. Capitalized terms used herein shall have the meanings specified for such terms as follows:

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(a) "Affiliate" means any Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, any other Person. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or the policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Ownership of 10% or more of the voting securities of an entity or association shall be deemed to be control of such entity or association for the purposes of this Agreement.

(b) "Complex" means the arena and convention center development that is commonly referred to as the Mid-America Center f/k/a Mid-America Recreation & Convention Complex (the "Complex"), identified on Exhibit "B".

(c) "Declarant" means SWIF. Following recordation of a document, pursuant to Section 4.1 hereof, (i) expressly assigning to another Person all of the rights reserved to the Declarant hereunder, or (ii) identifying a successor Declarant following the resignation of a Declarant, the term "Declarant" shall mean that assignee or successor. An Owner that is not such an assignee of all or some of the Declarant's rights under this Agreement shall not be a Declarant.

(d) "Improvements" mean any Bluffs Vision Buildings, other building structures or improvements, including without limitation, loading docks, parking facilities, enclosures, roads, parking areas, sidewalks, paths, entrance ways, exit ways, curb cuts, service areas, utility lines and related facilities, screening walls, fences, signs, landscaping, lighting fixtures, any other structures, and any alterations of or additions to any of the foregoing.

(e) "Land Records" means the land records maintained in the Office of the Recording Pottawattamie County, Iowa.

(f) "Legal Requirements" means all present and future laws, ordinances, codes, orders, rules, regulations, requirements and the like of all governmental authorities having jurisdiction or otherwise applicable in a given circumstance or situation, and all proffers, special exceptions, site plans and the like with respect to Bluffs Vision or any portion thereof.

(g) "Lot Area" means the total gross area in square feet, including any portion thereof comprising all or part of any lake, pond, stream, storm water detention pond or floodplain, of a Bluffs Vision.

(h) "Mortgage" means a first mortgage encumbering a Lot held by any of the following parties (each, a "Mortgagee"): an institutional lender (e.g., a commercial or savings bank, savings and loan association, trust company, credit union, industrial loan association, insurance company, pension fund or business trust (including a real estate investment trust), any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such lender, or any combination of any of the foregoing entities) which has notified the Declarant in writing of its status as the holder thereof and that is not an Affiliate of the Owner of said lot.

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(i) "Occupant" means a Tenant, a subtenant of a Tenant, and all other individuals, entities or the like in lawful possession of any portion of Bluffs Vision.

(j) "Permittee" means (i) an Occupant, and (ii) the customers, patrons, visitors and invitees of an Occupant or an Owner.

(k) "Person" means a natural person, corporation, partnership, association, trust or other entity capable of holding title to real estate or any combination thereof.

(l) "Bluffs Vision Building" means any building or other improvement intended for occupancy or other use that is or is to be constructed upon any Bluffs Vision Lot.

(m) "Bluffs Vision" means each portion of Bluffs Vision designated as a separate subdivided lot or parcel of land shown in a plat of subdivision, resubdivision or consolidation of Bluffs Vision duly approved by the appropriate departments of the City of Council Bluffs and recorded among the Land Records.

(n) "Bluffs Vision Owner" means one or more Persons owning a Bluffs Vision Lot in fee simple.

(o) "Tenant" means a tenant of an Owner

ARTICLE 2

USE

Section 2.1 Permitted Uses.

(a) Subject to the prohibitions, restrictions and limitations set forth in this Agreement (including, without limitation, provisions of Sections 2.2 and 2.5 below), Bluffs Vision may be used solely for a restaurant, retail, amusement or entertainment uses to the extent permitted in the Planned Commercial zoning classification under the Zoning Code of Council Bluffs as restricted herein, and for no other use whatsoever. Without the prior written consent of the Declarant, no Owner or Occupant, or any one on their behalf or claiming through them, shall seek, apply for, acquiesce in, consent to or obtain or secure any amendment to or change in: the aforesaid Planned Commercial zoning classification; the ordinance or other text or regulations of such zoning classification; to any proffers, variances, special use permits, special exceptions or the like; or any development plans, site plans or the like applicable to any real property not owned in fee simple by the applicant.

(b) No Owner or Occupant may carry on any practice within its Lot, or permit any practice to be carried on, which interferes with the peaceful use and enjoyment of any other Lot or the Common Area by any other Owner or Occupant of any other Lot and their respective Permittees.

Section 2.2 Prohibited Uses. In no event whatsoever may any Owner use or permit the use of its Lot for any of the following uses:

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(a) The raising, keeping or breeding of livestock, fowl, poultry or other animals of any kind on any Lot or on the Common Area, nor shall any Owner or Occupant permit any livestock, fowl, poultry or other animals on or within its respective Lot or in any part of the Common Area, except as may be required by law (including, without limitation, the Americans with Disabilities Act of 1990 as may be necessary to assist handicapped or disabled persons);

(b) A Nuisance (as described in Section 2.4 below);

(c) Any use which requires a special permit, special exception or variance from the Planned Commercial zoning classification;

(d) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage dumpsters and compactors located in accordance with a site plan approved by Declarant);

(e) Water pumping station;

(f) Utility substation;

(g) Sewer pumping station;

(h) Motor vehicle service and repair; or

(i) Recycling drop-off collection center.

(j) Restrictions set out in Exhibit "C"

Section 2.3 Parking.

(a) Unless expressly designated as such by Declarant, no on-street parking is permitted in any part of the Bluffs Vision Area. If any car, truck or other vehicle is parked on any private street within the Bluffs Vision, then, in addition to all other rights and remedies of the Declarant, the Declarant shall have the right to cause the vehicle to be towed to a location designated by Declarant and the Owner of any Lot the operator of the vehicle visited when the car was so parked shall be obligated to reimburse Declarant for all towing charges upon Declarant's demand therefor. If any car, truck or other vehicle is parked on any public street within the Complex, then, in addition to all other rights and remedies of the Declarant, the Declarant shall have the right to request public authorities to cause the vehicle to be towed at no cost or expense to Declarant and the Owner of any Lot the operator of the vehicle visited when the car was so parked shall be obligated to pay all such costs and expenses.

(b) Nothing in this Agreement creates (nor shall be construed to create) any easement for vehicular or other parking on any Lot, except as expressly stated in this Agreement.

(c) Except in connection with construction activities permitted pursuant to this Agreement, and except as may otherwise be permitted in writing by the Declarant in specific areas of a Bluffs Vision, no cars, trucks, vans, trailers or other vehicles may remain on any part of the Bluffs Vision overnight.

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(d) No parking is permitted on within thirty-five (35) feet of any private or public road. For purposes of this Section 3.4(d), a road does not include the entranceways, drive aisles and parking areas on a Lot.

Section 2.4 Nuisances.

(a) Generally. No activity may occur on the Bluffs Vision that constitutes a Nuisance. A "Nuisance" is hereby defined as any use which is offensive, detrimental, obnoxious or bothersome to Declarant or any Owner, Occupant or Permittee with regard to the use of any Bluffs Vision Lot or the use of the Bluffs Vision Common Area for any reason, including the following:

- (i) other than in connection with construction activities permitted pursuant to this Agreement, the emission or conduction of noise, smoke, steam, dirt, dust or odors;
- (ii) vibration;
- (iii) electromechanical or electromagnetic disturbances;
- (iv) interference with telecommunications;
- (v) radiation;
- (vi) water or soil pollution;
- (vii) skating, skate boarding, roller blading, riding scooters of any type, bicycling;
- (viii) any use that emits or discharges pollutants or any hazardous or toxic materials; or
- (ix) any use that affects the health, safety or welfare of any Person on any Lot.

For purposes of illustration only, and not of limitation, no burning of trash, or other open burning, and, except in connection with construction activities, no accumulation or storage of litter, refuse, bulk materials, building materials or trash of any other kind, shall be permitted on any Lot. Other than approved dumpster or trash collection facilities, trash containers shall not be permitted to remain in public view from another Bluffs Vision Lot.

Section 2.5 Additional Use Restrictions.

Each Bluffs Vision Owner agrees that it:

- (a) will not conduct or permit to be conducted on its Bluffs Vision Lot(s) any auction, fire, bankruptcy or going out-of-business sales, or similar type sale, except those which are lawful and bona fide;

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(b) will not use or permit the use of any apparatus for sound reproduction or transmission including loud speakers, phonographs, radios or television, or of any musical instrument in such manner that the sounds so reproduced, transmitted or produced shall be audible beyond the Bluffs Vision; will not display, paint or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the Parking Area; will not distribute or cause to be distributed on any part of the Bluffs Vision any handbills or other advertising devices; and will not conduct or permit any activities that might constitute a nuisance, or which are not generally considered appropriate for shopping centers and restaurants conducted in accordance with good and generally accepted standards of operation;

(c) will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Bluffs Vision Building on its Bluffs Vision Lot; will provide sound barriers for its roof-top HVAC system and any other mechanical systems on its roof-top, if any; will not cause or permit strong, unusual, offensive or objectionable noise, odors, fumes, dust or vapors to emanate or be dispelled from its Bluffs Vision Lot or the Bluffs Vision Building on its Bluffs Vision Lot; will not burn trash or store or permit accumulations of any trash, garbage, rubbish or other refuse outside of the Bluffs Vision Building on its Bluffs Vision Lot except in compactors or other receptacles approved by Declarant in locations approved by Declarant, until removed for disposal, and will not permit undue accumulation thereof;

(d) will not load or permit the loading or unloading of merchandise, supplies or other property, nor ship nor receive outside the area and entrance designated therefor by Declarant from time to time; will not permit the parking or standing outside of said area of trucks, trailers or other vehicles or equipment; will permit such parking or standing within such designated areas only for such period of time reasonably necessary to load or unload such vehicles, as the case may be;

(e) will not paint or decorate or permit the painting or decorating of any part of the exterior of its Bluffs Vision Lot or the Bluffs Vision Building thereon, or change or permit the change of the architectural treatment thereof, without first obtaining Declarant's written approval of such painting or decoration, which approval shall not be unreasonably delayed or withheld; and will promptly upon order of Declarant remove any paint or any such decoration which has been applied to or installed upon the exterior of its Bluffs Vision Lot or the Bluffs Vision Building thereon without Declarant's prior written approval;

(f) will keep the inside and outside of all glass in the doors and windows of the Bluffs Vision Buildings clean and will replace promptly any broken glass with glass of the same kind, size and quality; will not place or maintain any merchandise, vending machines or other articles in the vestibule or entry of the Bluffs Vision Building on its Bluffs Vision Lot, on the footwalks adjacent thereto or elsewhere on the exterior thereof; will maintain the Bluffs Vision Building and the remainder of its Bluffs Vision Lot at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin, and other pests;

(g) will comply with all applicable federal, state or local environmental or other laws, rules, regulations, guidelines, judgments, or orders and all recommendations of any public or private agency having authority over insurance rates with respect to the use or occupancy of its

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Bluffs Vision Building or the remainder of its Bluffs Vision Lot; will not use or permit the use of any portion of its Bluffs Vision Lot for any unlawful purpose, and will conduct its business in the Bluffs Vision Building or on the Bluffs Vision Lot in all respects in a dignified manner and in accordance with first class standards of store operation;

(h) will keep the storefront sign and display windows in its Bluffs Vision Building lighted during all periods that the Bluffs Vision Buildings are open to the public for business and for reasonable periods before and after required business hours and for such other periods as may be reasonably required by rules and regulations established by Declarant from time to time;

(i) will comply with and observe or cause to be complied with and observed all rules and regulations established by Declarant from time to time;

(j) will not permit the use of any portion of its Bluffs Vision Lot for solicitations, demonstrations or itinerant vending, or any activities inconsistent with first class standards of shopping center operation, provided that kiosks leased by Bluffs Vision Owners shall be permitted in the Common Areas during special events;

(k) will provide or cause to be provided, without cost to Declarant, adequate lighting and security for its licensees, invitees and employees during such periods as the Bluffs Vision Building on its Bluffs Vision Lot is open for business in excess of hours of operation required under this Agreement or rules and regulations established by Declarant from time to time;

ARTICLE 3 DEVELOPMENT/CONSTRUCTION

Section 3.1 Construction Approval Process.

(a) Other than work performed by Declarant, no work shall be performed on any Bluffs Vision Lot (including without limitation, the construction, repair or alteration of any Building or other Improvement, and any site work), except in compliance with Improvement Plans (as defined in Section 3.2 below) that have been approved as provided in this Section 3.1 and in Section 3.2 below. The provisions of this Section 3.1(a) shall not apply to the construction, repair or modification to the interior of a Bluffs Vision Building which is not visible from the exterior thereof and which does not alter the character of its use, or to emergency repairs that are required to prevent the loss of or material damage to property.

(b) The Declarant's approval of plans and specifications shall not constitute the assumption of any responsibility by the Declarant for their accuracy, sufficiency or compliance with sound architectural or engineering practices or compliance with any laws, rules, orders, regulations, codes, ordinances, requirements or other Legal Requirements, and, as between the submitting Owner and the Declarant, the submitting Owner shall be solely responsible therefor.

(c) The Declarant shall not act arbitrarily or unreasonably in its review of Submissions. Approval by the Declarant shall be based, among other things, on:

(i) Adequacy of site dimensions;

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(ii) Conformity and harmony of external architectural design and materials with neighboring Buildings and structures;

(iii) Effect of location of Building, structures and site improvements upon the streets and neighboring Lots and Buildings;

(iv) Adequacy and location of parking, and vehicular and pedestrian ingress and egress;

(v) Adequacy of screening of rooftop and other mechanical components and equipment, and of loading docks and other similar areas;

(vi) Compliance with this Agreement and any Rules and Regulations;
and

(vii) Building and other Improvements shall be consistent with a first class project and modern in design and architecturally harmonious with the design of the other Buildings and Improvements on the Complex.

(A) Whenever an Owner requires an approval from Declarant to perform site or other work at or upon its Lot, the Owner requiring such approval (the "Submitting Owner") shall submit three (3) copies of the Improvement Plans (and of each subsequent submission to the Declarant) with respect to the work at issue.

(B) The Declarant shall notify the Submitting Owner whether the Declarant approves the Improvement Plans within twenty (20) days after the Declarant receives a full set of said Improvement Plans. If the Declarant disapproves the plans, or if the Declarant approves the plans with conditions, the Declarant shall describe the reasons for disapproval or the conditions, as the case may be, in sufficient detail and specificity so that the Submitting Owner knows both in what respect the Improvement Plans are not unconditionally approved and what changes to the Improvement Plans are needed for them to be so approved. The Declarant shall notify the Submitting Owner whether the Declarant approves any resubmitted Improvement Plans within fourteen (14) days after the Declarant receives the resubmitted Improvement Plans. However, the Submitting Owner need not resubmit Improvement Plans that are conditionally approved if the Submitting Owner accepts in writing the conditions of approval.

(C) If a Submitting Owner disagrees with any changes or conditions required to obtain the Declarant's approval, then, at the Submitting Owner's request, the Declarant shall meet with the Submitting Owner to seek to resolve their differences.

(D) The Declarant is deemed to accept an Improvement Plan or a change to an Improvement Plan if it does not object or propose changes or additions to the Plan within thirty (30) days after the plan or change is submitted to it.

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Section 3.2 Improvement Plans.

For the purposes of this Article 3, "Improvement Plans" shall mean accurate, sealed plans and drawings that show the following regarding the proposed work, if and to the extent applicable:

(a) Schematic drawings of the front, rear, sides and footprint of any Building or other Improvement to be constructed upon the Lot, with a three-dimensional drawing of the Building or other Improvements showing architectural details such as dimensions, slopes, colors, materials and type of construction. Such drawings shall also include all walkways and canopies, site lighting, exterior trash containers serving the Lot and other exterior details and amenities; shield rooftop structures, antennae and equipment, trash dumpsters and compactors and the like from public view by an architecturally sound method; and provide for exterior signs that comply with any sign criteria from time to time adopted by the Declarant and the Declarant and the provisions of this Agreement pertaining to signs.

(b) The compatibility of the proposed improvements with the other improvements located or to be located on the Complex;

(c) The compliance of the proposed improvements with all Legal Requirements, and if the general design standards or specific design standards otherwise applicable conflict with Legal Requirements, the Legal Requirements shall govern;

(d) The location and specifications for the primary entrance, parking areas and driveways on the subject Lot;

Section 3.3 Exterior Lighting.

All interior and exterior lighting shall avoid unreasonable or excessive glare onto any streets or adjacent Bluffs Vision Lots or adjacent Bluffs Vision Common Area. No flashing, traveling, animated or intermittent lighting shall be visible from the exterior of any Building.

Section 3.4 External Sculptures.

No exterior sculptures, fountains and the like shall be placed on any Bluffs Vision Lot without the prior written approval of the Declarant.

Section 3.5 Antennae.

Other than a roof top antenna or satellite dish (either, an "Antenna") permitted pursuant to the following provisions of this Section 3.5, no antenna, satellite dish, tower or similar structure or improvement may be located anywhere on any Lot. Each Bluffs Vision Lot shall be permitted not more than one roof top antennae or dish, provided all of the following provisions are fully complied with:

(a) The design, construction, screening and location of the Antenna have been approved in writing by the Declarant;

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(b) The Antenna is operated and maintained in such a manner as does not interfere with the operations, electronic transmissions or electronic receptions of any of the other Owners or Occupants; and

(c) The Antenna is used solely in connection with the Lot Owner's or Occupant's business conducted at the Bluffs Vision Lot, and is not constructed or used for the benefit of a third party such as a cellular or other phone carrier.

Section 3.6 Fences.

All service and sanitation facilities and all exterior mechanical and electrical equipment shall be enclosed with fences, walls and landscaping so as, to the maximum extent reasonably practicable, not to be directly or readily visible from streets or from any other Bluffs Vision Lot. No refuse collection area shall be permitted between a street and the front of a building.

Section 3.7 Signs.

Any sign on any Bluffs Vision Lot that is visible from any public or private street shall comply with all applicable Legal Requirements of those governmental authorities having jurisdiction over the size and placement of such sign. In no event shall any moving or flashing signs or sign characters be permitted, and no sign may project above a Building's roofline or parapet wall (whichever is higher). In addition, the size, dimensions, location, design, color, style, fabrication, materials, construction and type of such identification panel shall be subject to the Declarant's prior review and consent. All signs and other identification devices shall be maintained in compliance with all Legal Requirements and the provisions of this Agreement, and so as not to materially detract from the Complex's appearance as a first class retail, restaurant and entertainment destination. No sign shall be painted on an exterior surface of a Bluffs Vision Building, structure or other Improvement. At Declarant's election, all signage visible from outside of a Lot shall conform to and comply with such sign criteria as Declarant may promulgate from time to time.

Section 3.8 Underground Storage Tanks.

No underground storage tanks shall be permitted on any Bluffs Vision Lot or other portion of the Bluffs Vision Parcel.

Section 3.9 Commencement/Completion of Construction.

(a) Upon receipt of approval of the Improvement Plans by the Declarant the Submitting Owner to whom approval is given shall satisfy any and all conditions of the approval as soon as reasonably practicable and, in any event, the construction, repair or modification, as the case may be, of the Building or other Improvement and the performance of all other work shall commence within ninety (90) days after such approval is granted. If such work is not commenced within such period, the approval of the Declarant shall be deemed rescinded, unless the Declarant, pursuant to written request made by the Submitting Owner prior to the expiration of such period, extends the period for the commencement of such work.

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(b) Once the construction, repair or modification of a Bluffs Vision Building or other Improvement is commenced, such work shall be diligently pursued to completion and such work shall be completed within one hundred eighty (180) days after the approval of the Declarant is granted (or within such longer or shorter period of time approved by the Declarant at the time the Declarant's approval is granted). If such work is not completed within such period, then, in addition to all other rights and remedies of the Declarant, and unless the Declarant, pursuant to written request made by the Submitting Owner prior to the expiration of such period, extends the period for the completion of such work the Declarant may seek specific performance of the provisions of this Section 3.9. For purposes of this Section 3.9, work shall be deemed to be completed upon the substantial completion of all work (other than interior build-out) contemplated by the approved Improvement Plans. Notwithstanding the foregoing, this Section 3.9 shall not apply to the initial construction of the Buildings and other Improvements on a Lot if and to the extent the timing of the completion thereof is expressly addressed in a separate agreement between Declarant and the Owner of such Lot.

ARTICLE 4

TRANSFER OF DECLARANT'S OBLIGATIONS

Section 4.1 Transfer of Declarant's Obligations. Declarant reserves the right to assign and transfer all of its rights, powers, reservations and obligations under this Agreement to any Person that, effective as of the date of such assignment, assumes the duties of the Declarant under this Agreement, including the City of Council Bluffs, Iowa. Any such assignment and transfer shall be in writing and recorded in the Land Records. At such time as such rights are transferred, the assignor will be relieved of any liability arising out of this Agreement from and after the date of such assignment, and such liability shall be borne by the successor Declarant.

Section 4.2 Resignation. A Declarant may resign upon thirty (30) days' written notice to the Bluffs Vision Owners, provided, however, that in the absence of a valid transfer of the Declarant's rights pursuant to Section 6.1 above, the duties of the Declarant shall be fulfilled by the Bluffs Vision Owners, with decisions by the Bluffs Vision Owners to be made by the Bluffs Vision Owners owning at least seventy-five percent (75%) of the Lot Area of all Bluffs Vision Lots.

Section 4.3 No Obligations. Except as expressly set forth herein, nothing contained herein shall impose upon the Declarant or its successors or assigns any obligation of any nature to construct or provide any Improvements, or to improve, modify or otherwise develop the Bluffs Vision Common Area or any of the Bluffs Vision Lots. Neither the Declarant nor its successors or assigns shall be liable to any Bluffs Vision Owner or Occupant or other party by reason of any mistake in judgment, or for any enforcement or failure to enforce any provision of this Agreement. Every Bluffs Vision Owner and Occupant of any of the Bluffs Vision, by acquiring its interest therein, releases Declarant from any claims under or with respect to this Agreement to the fullest extent allowable under law and agrees that it will not bring any action or suit against Declarant to recover damages or to seek equitable relief by reason of any of the same.

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ARTICLE 5

REMEDIES; LIENS; ENFORCEMENT

Section 5.1 Costs and Attorneys' Fees/Jury Trial. Each Bluffs Vision Owner hereby waives trial by jury in any action, proceeding or counterclaim brought in respect of the enforcement of, or in any matter whatsoever arising out of or in any way connected with, this Agreement. Any costs, including without limitation reasonable attorneys' fees, incurred by the Declarant or a Bluffs Vision Owner as a result of a failure by any Bluffs Vision Owner or the Declarant to comply with this Agreement shall be paid by the noncompliant party in any case where a Bluffs Vision Owner is the noncompliant party, may be assessed against such Bluffs Vision Owner's Bluffs Vision Lot.

Section 5.2 No Waiver of Rights. The failure of the Declarant or a Bluffs Vision Owner to enforce any provision of this Agreement shall not constitute a waiver of the right of the Declarant or any Bluffs Vision Owner to enforce such provision in the future. All rights, remedies and powers granted pursuant to or referred to in this Agreement shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the Person exercising the same from exercising such other rights as may be granted to such Person herein, or at law or in equity.

Section 5.3 Abating and Enjoining Violations. The breach of any provision of this Agreement shall give the Declarant the right, in addition to any other rights set forth in this Agreement: (i) together with Declarant's agents or representatives, to enter the Bluffs Vision Lot on which, or as to which, such violation or breach exists without liability to any Bluffs Vision Owner (or any Occupant or Permittee) in trespass or otherwise and summarily to abate and remove, at the expense of the defaulting Bluffs Vision Owner or Occupant, any Improvement, thing or condition that may exist therein contrary to any provision of this Agreement and the Declarant shall not thereby be deemed guilty in any manner of trespass; (ii) together with Declarant's agents or representatives, to use self-help to remove or cure any violation of this Agreement on the Bluffs Vision Parcel; and (iii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that, except as otherwise expressly provided in this Agreement, before any Improvement may be altered or demolished (except in emergencies) judicial proceedings shall be instituted. The cost of any such work or act performed by the Declarant shall be assessed against such Bluffs Vision Owner's Bluffs Vision Lot upon which such work or act is done. Each Bluffs Vision Owner shall pay for any such work or act performed by the Declarant within five (5) days after receipt of a statement covering such work. Any such amounts due shall be the personal obligation of such Bluffs Vision Owner, and interest shall accrue on such amount at the Default Rate from the date that is five (5) days after such statement is given until paid. Notwithstanding anything to the contrary in this Article 6, no notice need be given in the case of an emergency or danger to Person or property prior to the commencement of work by or at the direction of the Declarant.

Section 5.4 Proceedings. Failure to comply with any of the terms of this Agreement shall be grounds for Legal relief, including without limitation an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment for all assessments, any other relief provided for in this Agreement and in Bluffs Vision Common Area Development and Maintenance Agreement, and any other relief afforded by a court of competent jurisdiction, all of

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which relief may be sought by the Declarant, or, if appropriate, by any aggrieved Bluffs Vision Owner, and shall not constitute an election of remedies.

ARTICLE 6

AMENDMENT; EXTRAORDINARY ACTIONS

Section 6.1 Amendment by the Declarant. For so long as the Declarant or its designees are engaged in development or sales activities, or other activities related thereto, anywhere on the Bluffs Vision, the Declarant may unilaterally amend any provision of this Agreement to: (1) make non-material changes; (b) satisfy the requirements of any government, governmental agency or Mortgagee; and/or (c) relocate boundary lines between Lots owned by the Declarant, provided that such relocation does not increase the Bluffs Vision Common Area.

Section 6.2 Amendment and/or Termination by Owners. This Agreement may be amended by the mutual agreement of the Declarant and Bluffs Vision Owners owning Bluffs Vision Lots equal to at least seventy-five percent (75%) of the Lot Area of all Bluffs Vision Lots.

Section 6.3 Prerequisites to Amendment. Written notice of any proposed amendment of this Agreement shall be sent to every Owner at least thirty (30) days before any action is taken. No amendment shall materially and adversely affect the rights of a Bluffs Vision Owner without the prior written consent of such Bluffs Vision Owner. No amendment shall diminish or impair the rights of the Declarant under the Agreement without the prior written consent of the Declarant. No amendment may modify this Article without the prior written consent of the Declarant and all Owners.

Section 6.4 Prerequisites to Termination. Written notice of the proposed termination shall be sent to every Bluffs Vision Owner at least sixty (60) days before any action is taken. To the extent necessary, the termination agreement shall provide for the transfer or assignment of the easements, rights of interests granted to the Declarant herein to a successor entity which is assuming the Declarant's regulatory responsibilities. The termination of this Agreement shall not have the effect of terminating any easements granted in the Agreement of Easements, Covenants Conditions and Restrictions, as amended, covering Bluffs Vision, on file in the Land Records, all of which are intended to continue in perpetuity and all of which shall survive any such termination. Any such termination shall be effective only when recorded in the Land Records. Any lien, which has arisen pursuant to the provisions of this Agreement, shall remain in full force and effect despite termination of the Agreement until the amounts secured thereby have been paid in full. No consent to the termination or amendment of this Agreement shall ever be required of any Occupant or Person other than a Bluffs Vision Owner, nor shall any Occupant or Person other than the Bluffs Vision Owners have any right to enforce any of the provisions hereof. So long as any Mortgage shall encumber any Lot, the termination of this Agreement shall not be effective unless the instrument of termination is also executed by each Person holding any such Mortgage.

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SECTION 7 MISCELLANEOUS

Section 7.1 Binding Effect. Each present and future Bluffs Vision Owner, and its Occupants, shall be subject to and comply with the provisions of this Agreement as it may be amended from time to time; and where an Occupant (or any of its Permittees) is responsible for a violation of any of the provisions of this Agreement, the Bluffs Vision Owner of the Bluffs Vision Lot in which the Occupant has an interest shall also be liable, together with the applicable Occupant, for all such violations. Unless a lease instrument provides to the contrary or unless a Mortgagee takes possession of a Bluffs Vision Lot or Bluffs Vision Building, or takes title to a Bluffs Vision Lot or Bluffs Vision Building through purchase at foreclosure sale or deed in lieu of foreclosure, nothing contained herein shall impose upon any lessee or Mortgagee any obligation which this Agreement expressly makes applicable only to Bluffs Vision Owners (including, without limitation, the obligation to pay Assessments). The acceptance of a deed or Mortgage to any Bluffs Vision Lot or Bluffs Vision Building, or the entering into occupancy of any Bluffs Vision Lot or Bluffs Vision Building, shall constitute an agreement that the provisions of this Agreement are accepted and ratified by such grantee, tenant, subtenant, occupant or Mortgagee. All of such provisions shall be covenants running with the land and, subject as aforesaid, shall bind any Person having at any time any interest or estate in a Bluffs Vision Lot or Bluffs Vision Building.

Section 7.2 Estoppel Certificate. Each Bluffs Vision Owner and the Declarant (but with respect to the Declarant, it will issue the below described estoppel certificate only with respect to those rights in this Agreement which run to the Declarant's benefit) agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of the Declarant or any other Bluffs Vision Owner, it will issue within fifteen (15) days of receipt of such request to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the issuer's knowledge as of such date:

- (a) Whether it knows of any default under this Agreement by the requesting Person, and if there are known defaults, specifying the nature thereof;
- (b) Whether this Agreement has been modified or amended in any way and if so, then stating the nature thereof;
- (c) Whether this Agreement is in full force and effect; and
- (d) Any other information reasonably requested.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon the estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information (but it shall estop such issuer from making assertions contrary to those set forth in the certificate for the period covered by the certificate).

COMPARED

Section 7.3 Notices. All notices, demands and requests (collectively the "notice") required or permitted to be given under this Agreement must be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested and postage prepaid, or a nationally recognized overnight mail service. Notices shall be deemed to have been received by the addressee upon the first to occur of (a) actual receipt thereof or (b) the date on which delivery thereof by certified mail or personal service. Notices to the Declarant shall be delivered as follows:

Declarant:

Southwest Iowa Foundation
500 West Broadway
Council Bluffs, Iowa 51503

with a copy to:

Joseph D. Thornton, Esquire
Smith Peterson Law Firm
35 Main Street, Suite 300
P.O. Box 249
Council Bluffs, Iowa 51502-0249

Any Bluffs Vision Owner may change its notice address by giving notice thereof to Declarant. Declarant may change its notice address by giving notice thereof to all of the other Bluffs Vision Owners. Notices may be sent on behalf of Declarant or any Bluffs Vision Owner by its respective counsel.

Section 7.4 Construction and Interpretation.

(a) Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

(b) The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

(c) Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the

COMPARED

other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

(d) No provision of this Agreement shall be construed against the Declarant because the Declarant, or its legal counsel, prepared this Agreement.

Section 7.5 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among Bluffs Vision Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Bluffs Vision Owner shall be considered a separate Bluffs Vision Owner, and no Bluffs Vision Owner shall have the right to act as an agent for another Bluffs Vision Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Bluffs Vision Owner to be charged.

Section 7.6 Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of riots, strikes, shortage of materials, unusual weather conditions or any other cause beyond the reasonable control of such Person (other than lack or insufficiency of funds or the intentional failure to comply with any Legal Requirement) (collectively, the "Excused Operation Conditions"), then the period for performance as herein specified shall be extended for a period that such Person is disabled by such act or governmental regulation from performing hereunder. The provisions of this Section 7.6 shall not operate to excuse any Person from the prompt payment of any monies required by this Agreement.

Section 7.7 Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall entitle any Bluffs Vision Owner to cancel, rescind, or otherwise terminate this Agreement. However, such limitation shall not affect in any manner any other rights or remedies which a Bluffs Vision Owner may have hereunder by reason of any such breach.

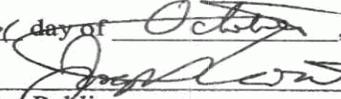
Section 7.8 Time. Time is of the essence of this Agreement.

Section 7.9 Transfer of Lots. Within ten (10) business days of each transfer of fee simple title to a Bluffs Vision Lot, the transferor Bluffs Vision Owner and the transferee Bluffs Vision Owner jointly shall send written notice to the Declarant notifying the Declarant of such transfer (together with a copy of the document transferring such title to the new Bluffs Vision Owner).

COMPARED

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that L. Paul Comeau, who is the Member of CMK Development, LLC, whose name is signed to the foregoing Agreement, has acknowledged the same before me in the aforesaid jurisdiction as the duly authorized officer of The L.L.C., on behalf of The L.L.C.

GIVEN under my hand and seal on this 30 day of October, 2002.


Notary Public (SEAL)

My commission expires: _____



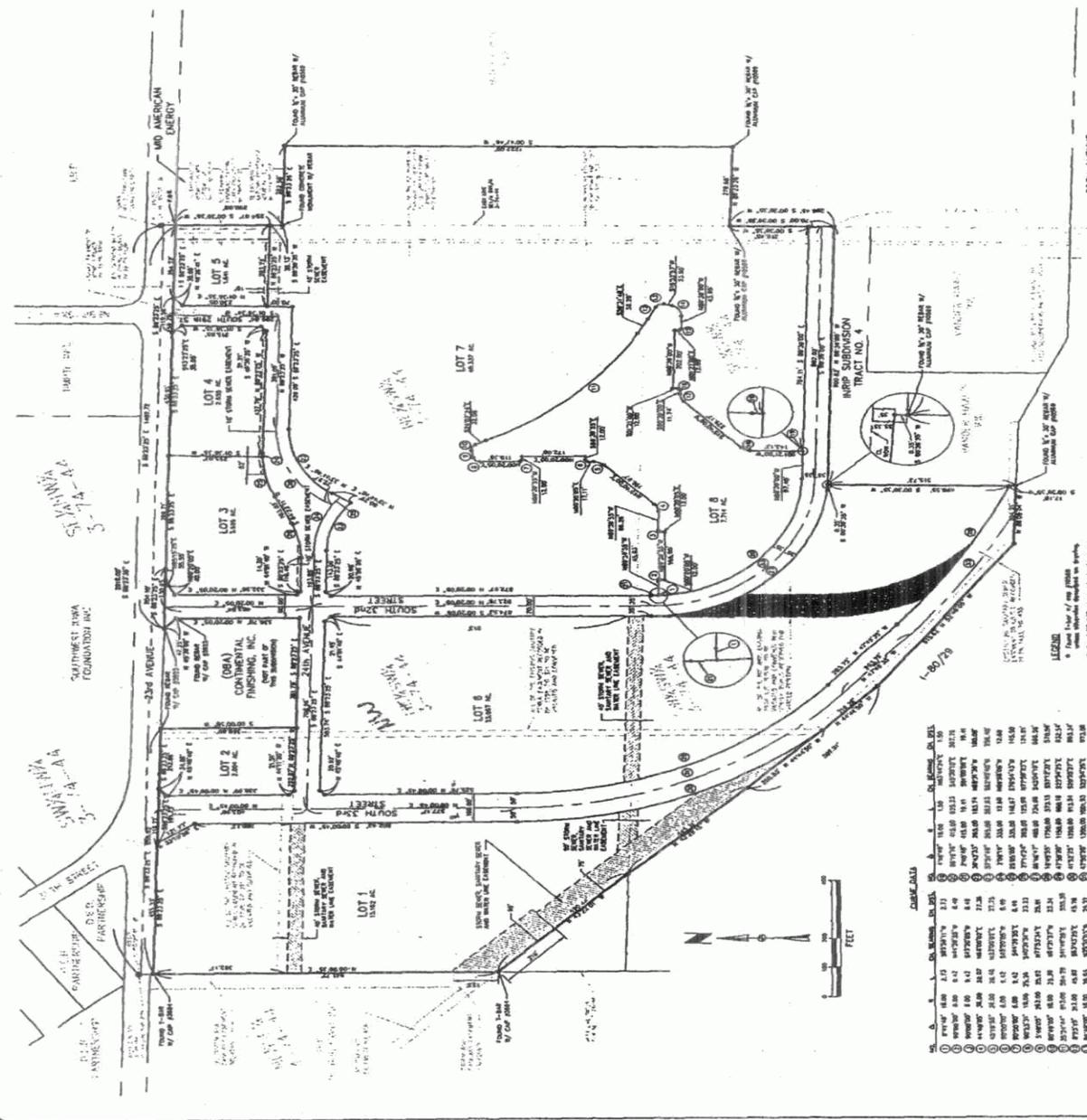
COMPLAN

hgya
ASSOCIATES INC.
ENGINEERS ARCHITECTS SURVEYORS
SPECIALTY SURVEYING

PLAT NO. _____
MCS _____
L.M. _____

BLUFFS VISION SUBDIVISION
IN PART OF THE S 1/2 OF SECTION 3, T74N, R144W OF THE 5TH P.M.
SOUTHWEST FOUNDATION
FINAL PLAT

15060
2 OF 2



ALL LOT CORNERS SHALL BE SET UPON COMPLETION OF THE SURVEY AND SHALL BE MARKED WITH IRON PIPES OR STEEL PIPES AS SHOWN ON THIS PLAT.

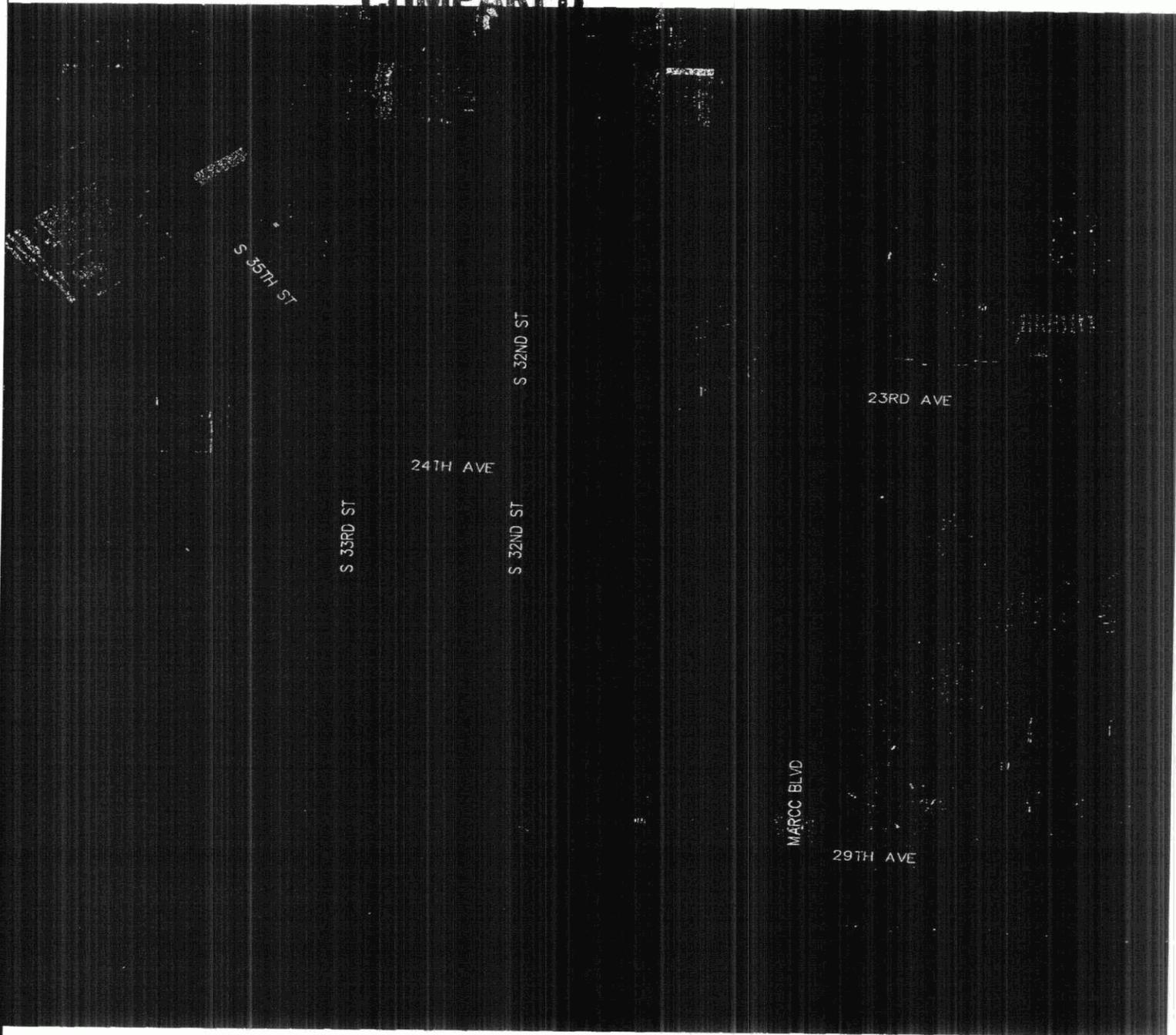
- LEGEND**
- 1. Lines shown of this plat are shown as shown.
 - 2. The plat shall be subject to the provisions of the laws of the State of Iowa.
 - 3. The plat shall be subject to the provisions of the laws of the State of Iowa.
 - 4. The plat shall be subject to the provisions of the laws of the State of Iowa.
 - 5. The plat shall be subject to the provisions of the laws of the State of Iowa.
 - 6. The plat shall be subject to the provisions of the laws of the State of Iowa.
 - 7. The plat shall be subject to the provisions of the laws of the State of Iowa.
 - 8. The plat shall be subject to the provisions of the laws of the State of Iowa.
 - 9. The plat shall be subject to the provisions of the laws of the State of Iowa.
 - 10. The plat shall be subject to the provisions of the laws of the State of Iowa.

CORNER DATA

NO.	BEARING	DISTANCE	POINT
1	N 89° 58' 00" W	100.00	1
2	S 89° 58' 00" E	100.00	2
3	S 00° 00' 00" E	100.00	3
4	N 89° 58' 00" W	100.00	4
5	S 89° 58' 00" E	100.00	5
6	S 00° 00' 00" E	100.00	6
7	N 89° 58' 00" W	100.00	7
8	S 89° 58' 00" E	100.00	8
9	S 00° 00' 00" E	100.00	9
10	N 89° 58' 00" W	100.00	10
11	S 89° 58' 00" E	100.00	11
12	S 00° 00' 00" E	100.00	12
13	N 89° 58' 00" W	100.00	13
14	S 89° 58' 00" E	100.00	14
15	S 00° 00' 00" E	100.00	15
16	N 89° 58' 00" W	100.00	16
17	S 89° 58' 00" E	100.00	17
18	S 00° 00' 00" E	100.00	18
19	N 89° 58' 00" W	100.00	19
20	S 89° 58' 00" E	100.00	20
21	S 00° 00' 00" E	100.00	21
22	N 89° 58' 00" W	100.00	22
23	S 89° 58' 00" E	100.00	23
24	S 00° 00' 00" E	100.00	24
25	N 89° 58' 00" W	100.00	25
26	S 89° 58' 00" E	100.00	26
27	S 00° 00' 00" E	100.00	27
28	N 89° 58' 00" W	100.00	28
29	S 89° 58' 00" E	100.00	29
30	S 00° 00' 00" E	100.00	30
31	N 89° 58' 00" W	100.00	31
32	S 89° 58' 00" E	100.00	32
33	S 00° 00' 00" E	100.00	33
34	N 89° 58' 00" W	100.00	34
35	S 89° 58' 00" E	100.00	35
36	S 00° 00' 00" E	100.00	36
37	N 89° 58' 00" W	100.00	37
38	S 89° 58' 00" E	100.00	38
39	S 00° 00' 00" E	100.00	39
40	N 89° 58' 00" W	100.00	40
41	S 89° 58' 00" E	100.00	41
42	S 00° 00' 00" E	100.00	42
43	N 89° 58' 00" W	100.00	43
44	S 89° 58' 00" E	100.00	44
45	S 00° 00' 00" E	100.00	45
46	N 89° 58' 00" W	100.00	46
47	S 89° 58' 00" E	100.00	47
48	S 00° 00' 00" E	100.00	48
49	N 89° 58' 00" W	100.00	49
50	S 89° 58' 00" E	100.00	50
51	S 00° 00' 00" E	100.00	51
52	N 89° 58' 00" W	100.00	52
53	S 89° 58' 00" E	100.00	53
54	S 00° 00' 00" E	100.00	54
55	N 89° 58' 00" W	100.00	55
56	S 89° 58' 00" E	100.00	56
57	S 00° 00' 00" E	100.00	57
58	N 89° 58' 00" W	100.00	58
59	S 89° 58' 00" E	100.00	59
60	S 00° 00' 00" E	100.00	60
61	N 89° 58' 00" W	100.00	61
62	S 89° 58' 00" E	100.00	62
63	S 00° 00' 00" E	100.00	63
64	N 89° 58' 00" W	100.00	64
65	S 89° 58' 00" E	100.00	65
66	S 00° 00' 00" E	100.00	66
67	N 89° 58' 00" W	100.00	67
68	S 89° 58' 00" E	100.00	68
69	S 00° 00' 00" E	100.00	69
70	N 89° 58' 00" W	100.00	70
71	S 89° 58' 00" E	100.00	71
72	S 00° 00' 00" E	100.00	72
73	N 89° 58' 00" W	100.00	73
74	S 89° 58' 00" E	100.00	74
75	S 00° 00' 00" E	100.00	75
76	N 89° 58' 00" W	100.00	76
77	S 89° 58' 00" E	100.00	77
78	S 00° 00' 00" E	100.00	78
79	N 89° 58' 00" W	100.00	79
80	S 89° 58' 00" E	100.00	80
81	S 00° 00' 00" E	100.00	81
82	N 89° 58' 00" W	100.00	82
83	S 89° 58' 00" E	100.00	83
84	S 00° 00' 00" E	100.00	84
85	N 89° 58' 00" W	100.00	85
86	S 89° 58' 00" E	100.00	86
87	S 00° 00' 00" E	100.00	87
88	N 89° 58' 00" W	100.00	88
89	S 89° 58' 00" E	100.00	89
90	S 00° 00' 00" E	100.00	90
91	N 89° 58' 00" W	100.00	91
92	S 89° 58' 00" E	100.00	92
93	S 00° 00' 00" E	100.00	93
94	N 89° 58' 00" W	100.00	94
95	S 89° 58' 00" E	100.00	95
96	S 00° 00' 00" E	100.00	96
97	N 89° 58' 00" W	100.00	97
98	S 89° 58' 00" E	100.00	98
99	S 00° 00' 00" E	100.00	99
100	N 89° 58' 00" W	100.00	100

EXHIBIT "A"

COMPARED



S 35TH ST

S 32ND ST

23RD AVE

24TH AVE

S 33RD ST

S 32ND ST

MARCC BLVD

29TH AVE

EXHIBIT "B"

COMPARED

EXHIBIT "C" RESTRICTIONS

Restrictions on use: The following principal uses shall not be permitted on the site:

- Adult entertainment
- Automobile repair, minor
- Automobile repair, major
- Automobile sales and rental
- Automobile service establishment
- Billboards
- Cellular towers
- Communication towers
- Contractor shop
- Kennel, commercial
- Local utility service
- Massage parlor
- Pawn shops/check cashing
- No more than one drive-in or fast food restaurant on Lots 3 and 4
- Second hand store
- Tattoo parlor/body piercing, excepting ear piercing
- Tavern unless part of a restaurant

Restrictions on signage: The following signs shall not be permitted on the site:

- Advertising signs for off-premises business
- Billboards
- Roof signs
- Pole signs

INST # 003492
RECORDING FEE 35.00
AUDITOR FEE -
RMA FEE 1.00 ECOM 1.00

COMPARED
FILED FOR RECORD
POTTAWATTAMIE CO., IA
2005 AUG 18 AM 8:16
JOHN SCORRING
RECORDER

Preparer Information: Matthew T. Payne, 10250 Regency Circle, Suite 300, Omaha, NE 68114-3728 402.397.5500
Name Address Telephone

**AMENDMENT TO DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS**

THIS AMENDMENT TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Amendment") is made effective of the 16th day of August, 2005, by SOUTHWEST IOWA FOUNDATION, INC., an Iowa not-for-profit corporation (the "Declarant"), CMK Development, LLC, an Iowa limited liability company ("CMK"), CITY OF COUNCIL BLUFFS, an Iowa Municipality (the "City") and CB Lodging, LLC, a Kansas limited liability company ("CBL").

PRELIMINARY STATEMENT

By Declaration of Restrictions and Grant of Easements dated October 31, 2002, and recorded at Book 103, Page 376005 of the Records of the Recorder's Office of Pottawattamie County, Iowa (herein the "Declaration"), Declarant and CMK imposed certain restrictions, easements and covenants on Lots 1-6 of the Bluffs Vision Subdivision, as that Subdivision is recorded in the Pottawattamie County, Iowa Recorder of Deeds Office by final plat on February 19, 2002 in Book 102, Page 66081 (Lots 1-6 of the Bluffs Vision Subdivision being included within the defined term "Bluffs Vision" in Section 1.1(m) of the Declaration). Pursuant to Article 6, the Declaration may be amended by the Declarant and/or the Declarant and Bluffs Vision Owners owning Bluffs Vision Lots equal to at least 75% of the Lot Area of all Bluffs Vision Lots.

CMK owns Lots 1-4 of Bluffs Vision Subdivision Replat I, a replat of all of Lots 3 and 4 of Bluffs Vision. The City owns a portion of Lot 6 of Bluffs Vision, which has been replatted as Bluffs Vision 3 Subdivision and Bluffs Vision 4 Subdivision. Declarant owns Lots 1, 2, 5 and a portion of Lot 6 of Bluffs Vision.

Declarant desires to sell a portion of Lot 6, which has been replatted as Lots 1 and 2, Bluffs Vision 4 Subdivision, a subdivision in the City of Council Bluffs, Pottawattamie County, Iowa, to CBL, for the purpose of building and operating a Marriott or comparable branded hotel and water park. Simultaneous with the recording of this Amendment, Declarant has granted an option to purchase Lot 2 of Bluffs Vision 4 Subdivision.

Declarant, CMK, City and CBL believe it is in the best interests of themselves and the community of Southwest Iowa to amend the Declarations.

NOW THEREFORE, the parties acknowledge and agree to substitute, amend and restate the Declaration in the following particulars only:

1. Section 1.1(p) is hereby added:
"Lot" means a lot within Bluffs Vision.
2. Section 2.1(a) is hereby amended as follows:

"Subject to the prohibitions, restrictions and limitations set forth in this Agreement (including, without limitation, provisions of Sections 2.2 and 2.5 below), Bluffs Vision

Return To:
Cresto Title & Escrow
13915 Gold Circle
Omaha, Nebraska 68144

BK 106PG03484

*CRS 07W94810
Record and*

may be used solely for a restaurant, retail, amusement or entertainment uses to the extent permitted in the Planned Commercial zoning classification under the Zoning Code of Council Bluffs as restricted herein, and for no other use whatsoever; PROVIDED, CBL may pursue a zoning variance in connection with the Bluffs Vision 4 Subdivision to allow for commercial outdoor recreation on the Bluffs Vision 4 Subdivision. Subject to the foregoing, Lot 1 of the Bluffs Vision 4 Subdivision may be used for a Marriott or comparable branded hotel and a commercial recreation facility that includes a water park and outdoor commercial recreation. Subject to and with the exception of the foregoing, without the prior written consent of the Declarant, no Owner or Occupant, or anyone on their behalf or claiming through them, shall seek, apply for, acquiesce in, consent to or obtain or secure any amendment to or change in the aforesaid Planned Commercial Zoning Classification; the ordinance or other tax or regulations of such zoning classification; to any proffers, variances, special use permits, special exceptions or the like; or any development plans, site plans or the like applicable to any real property not owned in fee simple by the Applicant."

3. Section 2.2(c) is hereby amended as follows:

(c) Any use which requires a special permit, special exception or variance from the Planned Commercial zoning classification, with the exception of a special permit, special exception or variance from the Planned Commercial zoning classification to allow for commercial outdoor recreation in connection with the commercial recreation facility to be constructed on Lot 1 of the Bluffs Vision 4 Subdivision;

4. Section 2.3(c) is hereby amended as follows:

(c) Except in connection with construction activities permitted pursuant to this Agreement, as may otherwise be permitted in writing by the Declarant in specific areas of a Bluffs Vision, and except as it relates to Lot 1 of the Bluffs Vision 4 Subdivision, no cars, trucks, vans, trailers or other vehicles may remain on any part of the Bluffs Vision overnight.

5. Section 2.3(d) is hereby amended as follows:

(d) No parking is permitted on within ten (10) feet of any private or public road. For purposes of this Section 2.3(d), a road does not include the entranceways, drive aisles and parking areas on a Lot.

6. Section 2.5(f) is amended as follows:

"Lot 1 of the Bluffs Vision 4 Subdivision may have merchandise, vending machines or other articles that might be located within the vestibule or entry of the hotel and recreation facility but are out of sight of the outside general public."

7. Section 2.5(i) is amended as follows:

"will comply with and observe or cause to be complied with and observed all rules and regulations reasonably established by Declarant from time to time, except that any such rules and regulations shall neither be inconsistent with nor more restrictive than the limitations and restrictions of this Declaration without the prior approval of such rules and regulations by the Bluffs Vision Owners owning at least seventy-five percent (75%) of the Lot Area of all Bluffs Vision Lots;"

8. Section 3.5(d) is hereby added:

"(d) Subject to the other requirements of this Section 3.5, including (a)-(c), and compliance with applicable laws and regulations, Lot 1 of the Bluffs Vision 4 Subdivision shall be permitted to have more than one roof top antenna or dish."

9. Exhibit "C" - Restrictions is hereby amended to add the following to "Restrictions on use: The following principal uses shall not be permitted on Bluffs Vision:"

- Except for the construction and operation of a Marriott or comparable branded hotel in respect to (i) below and/or waterpark in respect to (ii) below on Lot 1 of the Bluffs Vision 4 Subdivision, no Lot within Bluffs Vision shall have on it any: (i) lodging facilities (e.g., hotel, motel and bed and breakfast facilities, but excluding restaurants with no associated lodging facilities attached) (the "Hotel Restriction"); or (ii) recreational water or amusement water facilities, such as a swimming pool or water park (the "Waterpark Restriction"). Notwithstanding anything herein to the contrary: (a) if the Option between Declarant and CBL described in Section 7.12 terminates or expires in accordance with its terms, or (b) if CBL exercises the Option in accordance with its terms but CBL fails to complete construction of the waterpark on Lot 1 and open for business on or before December 31, 2008, then in either event, the parties hereto and their respective successors hereby appoint Declarant as their attorney-in fact and hereby authorize and direct Declarant to record with the Recorder's Office of Pottawattamie County, Iowa, a notice that the Waterpark Restriction has expired or terminated; otherwise, the Waterpark Restriction is to remain in full force and effect.

10. Section 7.10 is hereby added:

"Section 7.10. No Assessments Against CBL Property. Notwithstanding anything now or hereinafter in this Declaration to the contrary, Declarant shall not assess or cause to be assessed at any time any costs, expenses, fees, dues, taxes or assessments of any kind or nature against any Lot within the Bluffs Vision 4 Subdivision or the Owner of any such Lot, and any attempted assessment shall be null and void. This Section 7.10 cannot be waived, deleted or amended without the prior written consent of all Owners of Lot 1 of the Bluffs Vision 4 Subdivision."

11. Section 7.11 is hereby added:

"Section 7.11. No Waiver by City of Council Bluffs. Notwithstanding any provisions to the contrary contained in the Declaration, as amended, the City of Council Bluffs does not waive any right or ability to review, request modification, deny, approve or take any other action permitted in respect to variances, permits, exceptions in respect to Section 2.2(c). In addition, notwithstanding any provisions to the contrary in the Declaration, as amended, Section 7.10 shall not apply to any assessments, costs, fees, dues, taxes of any kind or nature, imposed or assessed by or through the City of Council Bluffs pursuant to any separate authority as a municipality to impose or assess any of such things against a Lot within Bluffs Vision 4 Subdivision or the Owner of any such Lot."

12. Section 7.12 is hereby added:

"Section 7.12. Recording of Amendment. Simultaneous with the recording of this Amendment, Declarant has granted an option to CBL to purchase Lot 2, Bluffs Vision 4 Subdivision (herein the "Option"). Simultaneous with the recording of this Amendment, Memorandum of the Option is being recorded in the Recorder's Office of Pottawattamie County, Iowa (the "Memorandum"). CBL is signing this Amendment to acknowledge and accept the Declaration and this Amendment and CBL's obligations, duties and rights under the Declaration and this Amendment."

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed pursuant to due and proper authority as of the date first set forth above.

WITNESS/ATTEST:

SOUTHWEST IOWA FOUNDATION,
INC. an Iowa not-for-profit corporation

By: _____

Print Name: John M Burns

Title: President

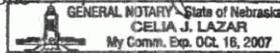
STATE OF Nebraska)
COUNTY OF Douglas)

ss.:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that John M. Burns who is the President of Southwest Iowa Foundation, Inc., whose name is signed to the foregoing Declaration, has acknowledged the same before me in the aforesaid jurisdiction as the duly authorized officer of Southwest Iowa Foundation, Inc. on behalf of Southwest Iowa Foundation, Inc.

GIVEN under my hand and seal on this 1st day of August, 2005.

Celia J. Lazar (SEAL)
Notary Public



My commission expires: _____

CB Lodging, LLC, a Kansas
limited liability company
Capital Management Inc. (MANAGER)

By: Charles E. Mackey

Print Name: Charles E. Mackey

Title: PRESIDENT, CAPITAL MANAGEMENT, INC.

STATE OF Missouri)
) ss.:
COUNTY OF Jackson)

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Charles E. Mackey, who is the President of ~~CB Lodging, LLC~~ whose name is signed to the foregoing Declaration, has acknowledged the same before me in the aforesaid jurisdiction as the duly authorized officer of CB Lodging, LLC on behalf of CB Lodging, LLC. **Capital Management, Inc who is the manager of
CB Lodging, LLC, a Kansas limited liability company

GIVEN under my hand and seal on this 16th day of August, 2005.

Cynthia Y. McNealey (SEAL)
Notary Public

My commission expires: 9/8/2008

Cynthia Y. McNealey
Notary Public - Notary Seal
State of Missouri - Jackson County
My commission expires 9/8/2008

CITY OF COUNCIL BLUFFS, an
Iowa Municipality

By: Thomas P. Hanafan

Print Name: THOMAS P. HANAFAN

Title: MAYOR OF COUNCIL BLUFFS, IA.

STATE OF IOWA)
)
COUNTY OF POTTAWATTAMIE)

ss.:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Thomas P. Hanafan who is an authorized representative of the City of Council Bluffs, whose name is signed to the foregoing Consent, has acknowledged the same before me in the aforesaid jurisdiction as the duly authorized representative of the City of Council Bluffs on behalf of the City of Council Bluffs.

GIVEN under my hand and seal on this 4 day of AUGUST, 2005.

Joyce A. Rindone (SEAL)
Notary Public

My commission expires: _____

229905.8



