

100-57818

Bent Tree Phase 4

Preparer

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**DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF BENT TREE ESTATES, PHASE II, A SUBDIVISION  
IN POTTAWATTAMIE COUNTY, IOWA**

THIS DECLARATION, made on the date hereinafter set forth, is made by Bluffs Development, L.L.C., an Iowa limited liability company, hereinafter referred to as the "Declarant."

**PRELIMINARY STATEMENT**

The Declarant is the owner of certain real property located within Pottawattamie County, Iowa and described as follows:

For Lots 56 through 86 and Lots 112 through 115 in BENT TREE ESTATES, PHASE II, a Subdivision in Pottawattamie County, Iowa.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot."

The Declarant desires to provide for the preservation of the values and amenities of BENT TREE ESTATES, PHASE II, as well as for the maintenance of the character and residential integrity of BENT TREE ESTATES, PHASE II.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. The Lots are, and each Lot is and shall be subject to all and each of the following conditions and other terms:

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Recorded 6-21-2000

**ARTICLE I.**  
**RESTRICTIONS AND COVENANTS**

1. Each Lot shall be used exclusively for suburban residential. (R-2 district)

2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, basketball backboards, dog house, pool house, mail boxes, or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any improvement be commenced, except for Improvements which have been approved by Declarant or Declarant's appointee as follows:

a. An Owner desiring to erect an Improvement on any Lot shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

b. Declarant shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall be a developed residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant to promote development of the Lots and to protect the values, character and residential quality of all Lots. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

c. Written Notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

d. No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to the approval or disapproval

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of any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

3. No part of any residence, except as hereinafter provided, may be erected or maintained on any of the Lots nearer to the front street right-of-way ("R.O.W.") than seventy-five (75) feet, nor nearer to the side Lot line than twenty-five (25) feet. Provided, however, that Declarant shall have and does hereby reserve the right with the consent in writing of the record owner of the fee simple title to any such Lot, to change any building line on any such lot or lots, so long as the change conforms to the Pottawattamie County, Iowa Zoning Ordinances.

4. a. Residences designed for construction on Lots in BENT TREE ESTATES, PHASE II, will be required to have the following minimum square footage; to-wit:

- (1) One Story Residences: 1600 square feet of finished living area will be required on ground level.
- (2) One and One-half Story Residences: 1900 square feet of finished living area will be required above the basement level with at least 1300 square feet of finished living area required on the first floor.
- (3) Two Story Residences: 2000 square feet of finished living area will be required above basement level, with at least 1200 square feet of finished living area required on the first floor.
- (4) Bi-Level and Split-Level and Split-Entry Residences: 1900 square feet of finished living area will be required, with at least 1400 square feet of finished living area required on the first floor.

b. The phrase "finished living area" as used in this Section shall include in all cases areas on the first and second floor of the Residence enclosed and finished for all-year occupancy computed on outside measurement of the Residence. The term shall not include any area in any basement, garage, porch or attic finished or unfinished. No structure erected on any lot shall be more than two stories in height, unless consented to in writing by Declarant, or its designee. Declarant, or its designee, shall have and hereby reserves the right to reduce the floor area requirement set forth above, provided the total reduction for any one Residence may not exceed twenty (20) percent of such minimum floor area requirements for such Residence.

c. Each Residence shall include at least an attached two car garage.

5. No single-family residence shall be created, altered, placed or permitted to remain on any Lot, other than one detached single-family dwelling, which does not exceed two and one-half stories in height.

6. The exposed front foundation walls and any exposed foundation walls facing any street must be constructed of material approved by Declarant. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with materials approved in writing by Declarant. The roof of all Improvements shall be covered with simulated shakes, wood cedar shakes or 30 year rated shingles of not less than 280 pounds of weight, or other material approved by Declarant.

7. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof.

8. No exterior television or radio antenna, satellite receiving dish in excess of twenty-four (24) inches in diameter, or exterior solar heating or cooling device of any sort shall be permitted on any Lot.

9. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

10. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicles may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Section 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction. All residential Lots shall provide at least the minimum number of off street

parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the Pottawattamie County.

11. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted unless completely screened from view, except for pickup purposes. No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubble or cutting shall be deposited on any street, road or Lot. No clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be planted and maintained in rear yards, with the written approval of Declarant and the Hills L.L.C. and subject to Article II hereof.

12. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

13. All fences and landscaping must be approved by Declarant.

14. No above ground swimming pools.

15. Except for Lot 56, construction of any Improvement on any Lot shall commence not later than thirty-six (36) months after the initial conveyance of title from the Declarant to the Lot Owner. This period of thirty-six (36) months shall be binding upon subsequent purchasers of any Lot, and shall run from the initial conveyance from the Declarant and shall not be extended without the written consent of the Declarant or its designee. If construction is not commenced within thirty-six (36) months after the initial conveyance of title from the Declarant, then the Declarant shall have the right, at its option, to repurchase the Lot from the Lot Owner for the original price Lot Owner paid to Declarant for the original purchase, less ten percent (10%) of the total original purchase price. Declarant may exercise this option at any time after the expiration of thirty-six (36) months from the date of the initial conveyance of title from the Declarant, so long as construction has not been commenced. Additionally, Declarant shall have the first right of refusal to purchase any Lot if the Lot owner desires to sell such Lot within the thirty-six (36) months following the initial conveyance from Declarant. During this period, Lot Owner shall give Declarant immediate written notice of any accepted offer to purchase the Lot, and Declarant shall have thirty (30) days after the date of the notice to exercise its first right of refusal hereunder, by tendering its offer to purchase to Lot Owner, on substantially the same terms and conditions of the prior accepted offer. If Declarant does not exercise this first right of refusal to purchase within the thirty (30) day period, this right shall terminate and Lot Owner may proceed to sell the Lot pursuant to the prior accepted offer. All options and first rights of refusal hereunder shall terminate upon completion of construction of the residence on the Lot. The period

of Construction for improvements on Lot 56 shall be increased to fifteen (15) years and all other provisions of this paragraph shall apply to Lot 56.

16. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

17. Driveway approaches shall be constructed of concrete, brick or material acceptable to Declarant. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete, brick or material acceptable to Declarant. No Asphalt overlay of driveway approaches will be permitted.

18. No shelter nor any fence for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for a dog house and horse stable; provided always that the construction plans, specifications and the location of the proposed structure and fences have been first approved by Declarant, or its assigns. Dog houses and horse stables shall only be allowed adjacent to the rear of the building, concealed from public view. No fences, dog runs or kennels may be constructed or installed on any Lot without the written permission of the Declarant. The plans, proposed site location, and materials to be used in the construction of the fences, dog runs, kennels, or stables shall be provided to Declarant for Declarant's review. The Pottawattamie County Code shall be used in determining the number of animals that are allowed per Lot. Provided, however, that no more than four (4) horses may be kept on any one Lot. Horses may only be kept on Lots 71, 72 and 73. No accumulation of manure outside of a closed airtight container will be permitted on any lot. Each lot owner will be responsible for removing all manure from the property, including pasture land and dog runs, at least weekly during the months of April through October of each year. Fences enclosing said animals shall be constructed so as to preclude the animals from coming into contact with people or vegetation on an adjoining lot. No exterior lighting or arenas or exercise areas shall be constructed so that the lighting shines upon an adjoining lot. No activities with said animals shall be conducted in such a way as to cause excessive noise or dust. Each owner of a lot shall immediately remove any manure left by said animal outside of that owner's lot.

19. Any exterior air-conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots

shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

20. No Residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

21. No structure of a temporary character, carport, trailer, basement, storage shed, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. Pool and bath houses may be approved by the Declarant as an Improvement, pursuant to Paragraph 2 of this Article. No structure or dwelling shall be moved from outside BENT TREE ESTATES, PHASE II, to any Lot without the written approval of Declarant.

22. No water wells may be dug or drilled on any lot that is serviced by City Water. If City Water is not available to any lot, the Owner shall submit to Declarant the plans and specifications, including the location of the proposed well and Declarant shall have the authority to approve said location and the plans and specifications for the proposed well. No well may be dug or drilled without the Declarant's expressed written permission.

**ARTICLE II.**  
**EASEMENTS AND RESTRICTIONS**  
**RELATING TO GOLF COURSE**

1. The HILLS, L.L.C. expects to construct, operate and maintain a golf course and a driving range on lots not shown on the plat of BENT TREE ESTATES , PHASE II, (herein "Golf Course"). Declarant anticipates that the proximity of the Lots to the Golf Course will enhance the desirability and value of the Lots to purchasers and their successors and assigns. Nevertheless, purchases and owners of the Lots should be aware that: (i) golfers will from time to time hit golf balls from the Golf Course onto the Lots; and (ii) normal operation and maintenance of the golf courses will involve operation of mowers and other power equipment during the evening and early morning hours.

2. The Declarant hereby declares, grants and establishes easements on the Lots in favor of the Grantees (defined below) for: (i) intrusion or errant shots onto the Lots; and (ii) intrusion of noise from mowing and other power equipment during all hours of the day and night. For this purpose, an "errant shot" shall refer to a golf shot which is hit onto any Lot.

3. The easements granted in this Article are for the use and benefit of the HILLS, L.L.C., its successors and assigns in ownership of the Golf Course, and any lessee, licensee, permittee or invitee of the owner of the Golf Course, (hereafter referred to as "Golf Course Owner" or "Bent Tree Golf Club").

4. No Golf Course Owner shall have any liability, obligation or expense to the owner of a Lot in respect of any personal injury, bodily injury or property damage occurring as a result of an errant shot which is not: (i) negligently, intentionally or recklessly hit onto a Lot; or (ii) hit in violation of the rules established by any operator of a golf course or driving range on the Golf Course. By accepting title to a Lot, each owner hereby covenants that it will not sue any Golf Course Owner for property damage, personal injury or bodily injury which results directly or indirectly from such an errant shot, presently or in the future. All Owners, by acceptance of delivery of a deed, assume all risks associated with errant golf balls, and all Owners agree and covenant not to make any claim or institute any action whatsoever against developer, the golf course designer, the golf course builder, the golf course owner, or the builder of the unit arising or resulting from any errant golf balls, any damages that may be caused thereby, or for negligent design of the golf course or siting of the unit.

5. The Golf Course Owner may from time to time change the configuration and layout of the golf courses or driving range on the Golf Course. Such changes may affect the frequency, trajectory and velocity of errant shots which pass onto any individual Lot. Nevertheless, no Owner of a Lot shall have any right to object to, or in any manner limit changes to the golf course, and the easements granted in this Article shall remain fully effective as to all of the Lots after such changes.

6. The Golf Course is private property. Owners of Lots and their invitees shall comply with all the rules and regulations of the operator of the Golf Course relating to use of and play on the golf course.

7. Owners of Lots shall have the right to use private golf carts on Bent Tree Golf Club's course provided the golf carts are of the same make, model, and color of those provided for use by Bent Tree Golf Club, including options such as cart tops, except that Owners' golf carts may be either electric or gas powered.

8. Owners agree to upgrade their personal cart or carts to conform with the carts being then provided by Bent Tree Golf Club, when Bent Tree Golf Club changes its fleet of carts. Bent Tree Golf Club will notify each registered owner of a golf cart of the change and allow each owner the opportunity to purchase an acceptable cart as part of the fleet being purchased by Bent Tree Golf Club. Each owner shall be responsible for the purchase, storage, and maintenance of their own cart, however

Bent Tree Golf Club will allow each owner the option of having maintenance performed on their cart, by the fleet maintenance provider, at the owner's expense.

9. Bent Tree Golf Club will issue annual permits for owner's cart or carts, which will permit the owner to use the cart on the golf course subject to the rules of the course. Owners will be assessed a "trail fee" on an annual basis, which fee is personal to the owner and the cart so registered and not assignable to another person or another cart. The trail fee cost structure will be based on single or double usage and will be determined by Bent Tree Golf Club.

10. Private cart owners must check in with the golf shop before playing. This includes any partial round of golf, which may or may not begin on any hole other than number one.

11. Bent Tree Golf Club is not responsible for any damage to owner's cart or carts while on Bent Tree Golf Club property.

12. Failure of owner to comply with any cart ownership guidelines will result in the loss of the privilege of using the cart on the course for a period of time to be determined by Bent Tree Golf Club. Restoration of the privilege of using the cart on the course shall be at the discretion of Bent Tree Golf Club.

13. Owners of lots in Bent Tree Estates, Phase II, who are not members of Bent Tree Golf Club, will be given preferential tee times, by Bent Tree Golf Club, which can be made up to ten (10) days in advance of the day of play. All other green fee play will be allowed to make tee times up to seven (7) days in advance.

14. In the event Bent Tree Golf Club becomes a private club, owners of lots in Bent Tree Estates, Phase II, at the time the club becomes private, will be given first preference to purchase a membership.

### ARTICLE III. HOMEOWNERS' ASSOCIATION

1. The Association. Declarant has caused the incorporation of BENT TREE ESTATES HOMEOWNERS ASSOCIATION, an Iowa not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of BENT TREE ESTATES (including all phases thereof), including:

a. While Declarant does not intend to provide common facilities, the Association may in the future acquire, construct, landscape, improve, equip,

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maintain, operate, repair, keep up and replace Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include playgrounds and parks; dedicated and nondedicated roads, paths, ways, entry areas and green areas; and signs and entrances for BENT TREE ESTATES, PHASE II. Common Facilities shall not include the golf course situated on Golf Lots. Common Facilities may be situated on property owned or leased by the Association, on private property subject to an easement in favor of the Association, or on public property.

b. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of any Common Facility.

c. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of BENT TREE ESTATES, PHASE II; and the protection and maintenance of the residential character of BENT TREE ESTATES, PHASE II.

2. Membership and Voting. BENT TREE ESTATES, is divided into 125 separate lots (referred to as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lots merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Owner of each Lot other than Declarant, whether one or more persons and entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association.

Declarant shall be entitled to one hundred (100) votes per Lot owned or sold to a contractor for future construction of a home.

3. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Iowa Nonprofit Corporation Act, and

all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

- a. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations regulating to the Common Facilities.
- b. The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks, medians, thoroughfares or public property within or near BENT TREE ESTATES, PHASE II.
- c. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.
- d. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.
- e. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.
- f. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.
- g. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.
- h. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.
- i. General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

j. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

k. The exercise of any and all rights assigned to the Association by Declarant including but not limited to the architectural control of the improvements constructed in BENT TREE ESTATES, PHASE II.

4. Mandatory Duties of the Association. The Association shall maintain and repair the fences and signs which have been or will be installed by Declarant along the entrances to BENT TREE ESTATES, PHASE II.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant or sold by the Declarant to a contractor for future construction of a home.

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Section 3 of this Article.

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9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 10, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

- a. One Hundred and No/100 Dollars (\$100.00) per Lot.
- b. In each calendar year beginning on January 1, 2000, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

10. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Three Hundred and No/100 Dollars (\$300.00) per Lot.

11. Excess Dues and Assessments. With the approval of sixty percent (60%) of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

12. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 5, above.

13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

14. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of ten percent (10%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association

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with respect to such action. No Owner may waive or otherwise escape liability of the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any right of the Association.

15. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

16. Declarant's Lots. Notwithstanding the above requirements regarding the payment of assessments, lots owned by Declarant and held for sale shall not be subject to the payment of any assessments until they are sold.

#### ARTICLE IV. EASEMENTS

1. A perpetual license and easement is hereby reserved to erect and operate, maintain, repair and renew buried or underground storm sewers, water and gas mains and cables, lines or conduits and other electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior Lots that are adjacent to presently platted and recorded Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded.

2. Declarant plans to install a golf cart and pedestrian path and irrigation pipes and controls, along the North lot lines of lots 40, 41, and 55 in BENT TREE ESTATES, PHASE I. In that regard Declarant does hereby reserve an easement of twenty feet in width along the North lot lines of said lots and adjacent to the right of way for the public street, to install, maintain, repair, remove and replace a golf cart and pedestrian path, including associated fences and signs and irrigation pipes and

controls. Said easement shall be for the use of individuals using the golf course. Declarant reserves the right to regulate the use of the golf cart path and pedestrian path areas.

3. Declarant further reserves an easement over the common lot line between Lots 12 and 13 in BENT TREE ESTATES, PHASE I, for the installation of a sewer line and water main. Said easement shall be twenty (20) feet in with and extend ten (10) feet on either side of the above mentioned common lot line and shall be for the purposes of erecting, operating, maintaining, repairing, and renewed burial of sewer lines and water mains. This easement shall include the five (5) foot easement mentioned above on said lots.

4. Declarant further reserves an easement over the Southerly twenty (20) feet adjacent to McPherson Avenue of Lots 57 and 86, all in BENT TREE ESTATES, PHASE II, for the construction, repair, and maintenance of a sign and pertinent equipment attached thereto, to identify BENT TREE ESTATES, PHASE II.

5. Other easements are provided for in the final plat of BENT TREE ESTATES, PHASE II.

#### ARTICLE V. GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant 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.

2. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by Declarant in any manner which it may determine in its full and absolute discretion until all Lots have been sold, or for a period of ten (10) years from the date hereof, whichever first occurs. Lots sold by Declarant shall not include Lots sold to contractors for future construction of homes. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than 100% of the Lots covered by this Declaration. Easements contained herein may not be amended unless they are amended by agreement of all parties concerned with the easement.

3. Bluffs Development, L.L.C., or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

4. Invalidation of any covenant shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 7<sup>th</sup> day of June, 2000.

BLUFFS DEVELOPMENT, L.L.C.:

BY: F & J ENTERPRISES, INC., MEMBER

By: Frank R. Krejci  
FRANK R. KREJCI, President

BY: J AND M DEVELOPMENT, L.C., MEMBER

By: John H. Jerkovich  
JOHN H. JERKOVICH, Member

By: McCARTHY CONSTRUCTION, INC.,  
MEMBER

By: Robert P. McCarthy Pres  
ROBERT P. McCARTHY, President

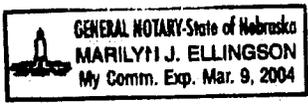
THE HILLS, L.L.C.  
d/b/a Bent Tree Golf Club

By: Duane Mueske Pres  
DUANE MUESKE, President

*Continued*

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

On this 15<sup>th</sup> day of June, 2000, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Frank R. Krejci, to me personally known, who being by me duly sworn, did say that he is the President of F & J Enterprises, Inc., which is one of the members of Bluffs Development, L.L.C., an Iowa limited liability company, executing the foregoing instrument, that no seal has been procured by the corporation or the limited liability company; that the instrument was signed on behalf of the corporation as a member of Bluffs Development, L.L.C., a limited liability company, by authority of the corporation's Board of Directors and by authority of the limited liability company's members; and that he as the officer acknowledged execution of the instrument to be the voluntary act and deed of the corporation and the limited liability company by it and by the officer voluntarily executed.



Marilyn J. Ellingson  
NOTARY PUBLIC IN AND FOR SAID STATE

STATE OF IOWA )  
 ) ss.  
COUNTY OF POTTAWATTAMIE )

On this 7<sup>th</sup> day of June, 2000, before me, a Notary Public in and for the State of Iowa, personally appeared John H. Jerkovich, to me personally known, who being by me duly sworn, did say that he is one of the members of J and M Development, L.C., (one of the members of Bluffs Development, L.L.C., an Iowa limited liability company), that no seal has been procured by the said limited liability company, and that said instrument was signed on behalf of the said limited liability company by authority of its members and the said members acknowledged the execution of the instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.



Christine M. Ritter  
NOTARY PUBLIC IN AND FOR SAID STATE

COPIED

STATE OF IOWA

COUNTY OF POTTAWATTAMIE

)  
) ss.  
)

On this 7<sup>th</sup> day of June, 2000, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert P. McCarthy, to me personally known, who being by me duly sworn, did say that he is the President of McCarthy Construction, Incorporated, which is one of the members of J and M Development, L.C., (one of the members of Bluffs Development, L.L.C., an Iowa limited liability company), executing the foregoing instrument, that no seal has been procured by the corporation or the limited liability company; that the instrument was signed on behalf of the corporation as a member of J and M Development, L.C., a limited liability company, by authority of the corporation's Board of Directors and by authority of the limited liability company's members; and that he as the officer acknowledged execution of the instrument to be the voluntary act and deed of the corporation and the limited liability company by it and by the officer voluntarily executed.



Christine M. Ritter  
NOTARY PUBLIC IN AND FOR SAID STATE

STATE OF IOWA

COUNTY OF Pottawattamie

)  
) ss:  
)

On this 7<sup>th</sup> day of June, 2000, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Duane Mueske, to me personally known, who being by me duly sworn, did say that he is the President of THE HILLS, L.L.C., an Iowa limited liability company, that no seal has been procured by the said limited liability company, and that said instrument was signed on behalf of the said limited liability company by authority of its members and the said members acknowledged the execution of the instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.



Christine M. Ritter  
NOTARY PUBLIC IN AND FOR SAID STATE

Preparer

Information: Richard A. Heininger, P.O.Box 249, Council Bluffs, IA 51502, Telephone: (712) 328-1833

AGREEMENT OF MEMBERS  
FOR THE  
CONVEYANCE OF REAL PROPERTY

This Agreement is entered into by J and M Development, L.C., an Iowa Limited Liability Company, and F & J Enterprises, Inc. a Nebraska Corporation, being all of the members of Bluffs Development, L.L.C. and do hereby consent to the sale of Lots 56 through 86 and Lots 112 through 115 inclusive in Phase II of Bent Tree Estates and authorize J and M Development, L.C. by John H. Jerkovich to execute all documents necessary to convey said real estate. This consent is given pursuant to paragraphs 7 and 10 of the Operating Agreement of Bluffs Development, L.L.C.

Dated this 7<sup>th</sup> day of June, 2000.

BLUFFS DEVELOPMENT, L.L.C.:

BY: F & J ENTERPRISES, INC., MEMBER

By: Frank R. Krejci  
FRANK R. KREJCI, President

BY: J AND M DEVELOPMENT, L.C., MEMBER

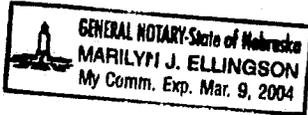
By: John H. Jerkovich  
JOHN H. JERKOVICH, Member

By: McCARTHY CONSTRUCTION, INC.,  
MEMBER

By: Robert P. McCarthy  
ROBERT P. McCARTHY, President

STATE OF Nebraska )  
 ) ss:  
COUNTY OF Douglas )

On this 15<sup>th</sup> day of June, 2000, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Frank R. Krejci, to me personally known, who being by me duly sworn, did say that he is the President of F & J Enterprises, Inc., which is one of the members of Bluffs Development, L.L.C., an Iowa limited liability company, executing the foregoing instrument, that no seal has been procured by the corporation or the limited liability company; that the instrument was signed on behalf of the corporation as a member of Bluffs Development, L.L.C., a limited liability company, by authority of the corporation's Board of Directors and by authority of the limited liability company's members; and that he as the officer acknowledged execution of the instrument to be the voluntary act and deed of the corporation and the limited liability company by it and by the officer voluntarily executed.



Marilyn J. Ellingson  
NOTARY PUBLIC IN AND FOR SAID STATE

STATE OF IOWA )  
 ) ss:  
COUNTY OF POTTAWATTAMIE )

On this 12<sup>th</sup> day of June, 2000, before me, a Notary Public in and for the State of Iowa, personally appeared John H. Jerkovich, to me personally known, who being by me duly sworn, did say that he is one of the members of J and M Development, L.C., (one of the members of Bluffs Development, L.L.C., an Iowa limited liability company), that no seal has been procured by the said limited liability company, and that said instrument was signed on behalf of the said limited liability company by authority of its members and the said members acknowledged the execution of the instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

Dany P. [Signature]  
NOTARY PUBLIC IN AND FOR SAID STATE  
Exp 3/21/02

STATE OF IOWA

COUNTY OF POTTAWATTAMIE

)  
) ss:  
)

On this 7th day of June, 2000, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert P. McCarthy, to me personally known, who being by me duly sworn, did say that he is the President of McCarthy Construction, Incorporated, which is one of the members of J and M Development, L.C., (one of the members of Bluffs Development, L.L.C., an Iowa limited liability company), executing the foregoing instrument, that no seal has been procured by the corporation or the limited liability company; that the instrument was signed on behalf of the corporation as a member of J and M Development, L.C., a limited liability company, by authority of the corporation's Board of Directors and by authority of the limited liability company's members; and that he as the officer acknowledged execution of the instrument to be the voluntary act and deed of the corporation and the limited liability company by it and by the officer voluntarily executed.



Christine M. Ritter  
NOTARY PUBLIC IN AND FOR SAID STATE

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