

BK 105-7664

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
GRANDFIELD ESTATES
POTTAWATTAMIE COUNTY, IOWA

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ARTICLE I

STATEMENT OF INTENT

Developer owns the real estate commonly known as Grandfield Estates, a subdivision in Pottawattamie County, Iowa, as more specifically identified in the Addendum to this Declaration. Developer desires to provide for the preservation of values in the development of said facilities, and, therefore, desires to subject said real estate to covenants, restrictions, easements, charges, and liens hereinafter set forth which are for the benefit of said property. In connection with the maintenance of certain portions of said real estate, it is the intent and desire of Developer to incorporate the Grandfield Estates Homeowners Association, L.L.C., hereinafter referred to as "Homeowners Association" which shall have powers of maintaining and administering the common properties and facilities and enforcing the covenants and restrictions and collecting and disbursing assessments and charges.

THEREFORE, the developer hereby declares that the subject real estate be held, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth, which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof.

ARTICLE II

DEFINITIONS

For the purpose of these Restrictions, the following words shall be defined as follows:

- (1) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration and any addition to the residential community know as GRANDFIELD ESTATES which Developer may in its discretion make subject to this Declaration as hereinafter set forth, including Common Areas.
- (2) "Lot" shall mean and refer to any separately-owned parcel as may be shown by any recorded subdivision plat of the Properties. Where the context indicates or requires, the term "Lot" includes any structure on the Lot.
- (3) "Residence" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.
- (4) "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title, to any lot situated upon the Properties. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, unless such person or entity has acquired title pursuant to foreclosure. Lot Owner shall include Developer.
- (5) "Developer" shall mean and refer to L & W Development, L.L.C., its successors and assigns.
- (6) "Front Property Line" shall mean the property line of any Lot abutting the right-of-way of any street.

(7) "Common Areas" shall mean all real property owned by the Developer or the Homes Association for the common use and enjoyment of the Lot Owners, and located on the Properties.

(8) "Homes Association" shall mean GRANDFIELD ESTATES HOMEOWNERS ASSOCIATION, L.L.C., to be formed by the Developer for the purpose of serving as the Homeowners Association.

(9) "Board of Directors" shall mean Board of Directors of the Homes Association as set forth in the Homes Association's Article of Incorporation and By-Laws.

(10) "Exterior Structure" shall mean any structure erected or maintained on a Lot other than the main residential structure or any structural component thereof, including but not limited to any deck, gazebo, animal shelter, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, basketball goal, swing set, trampoline, sand box, playhouse, treehouse, or other recreational or play structure.

ARTICLE III

Section 1.

Use of Land. None of the Lots may be improved, used or occupied for other than single-family private residential purposes, and no duplex, flat or apartment house, although intended for residential purposes, may be erected thereon. No Lot shall be further subdivided. No residential building which has previously been at another location shall be moved onto the Lot. No trailer or other exterior structure erected on any Lot shall at any time be used for human habitation; provided, however, that nothing herein shall prevent the Developer from erecting temporary buildings and using such temporary buildings or any residence for model, office, sales or storage purposes during the development of the Properties. No dwelling, manufactured home, modular home, or any prefabricated building to be used as a residence shall be placed on any lot in the Subdivision.

Section 2.

Setback Lines. No part of any residence, except as hereinafter provided, may be erected or maintained on any of the Lots nearer to the front property lot line than seventy-five (75) feet, nor nearer to the side Lot line than allowed by the Pottawattamie County Ordinances. Provided, however, that L & W Development, L.L.C. 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 is approved by the appropriate Pottawattamie County Zoning Department.

Section 3.

Dwelling Size.

a. Residences designed for construction on Lots in Grandfield Estates will be required to have the following minimum square footage, whenever practicable in light of the unique topography, existing trees and other native growth, and the other provisions of these covenants, conditions and restriction, to-wit:

1. One Story: 2000 square feet of enclosed floor area will be required on the ground level.

2. One and One-Half Story Residences: 2400 square feet of enclosed floor area will be required above the basement level, with at

least 1600 square feet of enclosed floor area required on the first floor.

3. Two Story Residences: 2600 square feet of enclosed floor area will be required above the basement level, with at least 1600 square feet of enclosed floor area required on the first floor.

b. The phrase "enclosed floor area" as used in this Section shall include in all cases areas on the first and second computed on outside measurement of the Residence, and shall not include any area in any basement, garage, porch or attic finished for all-year occupancy and further shall not include any area in any basement, garage, porch or attic finished or unfinished. No Residence erected on any of said Lots shall be more than two stories in height, unless consented to in writing by Developer, or its designee. Developer, 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 ten (10) percent of such minimum floor requirements for such Residence.

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

Section 4.

Approval of Plans and Post-Construction Changes.

a. No Residence or Exterior Structure may be erected upon any Lot unless and until the building plans, specifications, exterior color scheme, materials, location, elevation, grade and landscaping thereof have been submitted to and approved in writing by the Developer or, in the case of delegation of such approval power by Developer as provided herein, the Board of Directors of the Home Association. No structures of any kind shall be moved onto any Lot. Nor shall any changes or alteration in such building plans, specifications, exterior color scheme, materials, location, elevation, grade and landscaping thereof be made until such change or alteration has been submitted to and approved in writing by the Developer, or its designee. Nor shall any change or alteration in such elevation, grade and landscaping be made unless such change or alteration is in conformance with Pottawattamie County Zoning Ordinances.

b. Following the completion of construction of any Residence or Exterior Structure, no exterior colors or landscaping thereof or with respect thereto shall be changed and no exterior additions or alterations to any structure shall be made unless and until the changes have been submitted to and approved in writing by the Developer as provided herein, the Board of Directors of the Homes Association. All replacement of all or any portion of a structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same material as the original structure unless the changes have been submitted to and approved in writing by the Developer or, in the case of delegation of such approval power by Developer as provided herein, the Board of Directors of the Association.

c. No building, fence, wall or other structure, shall be commenced, erected or maintained upon a Lot, nor shall any exterior painting, resurfacing, addition to, change or alteration therein, be made until the plans, specifications, and plot plan showing the size, nature, kind, shape, height, material and location of the same have been submitted to and approved in writing as to harmony of external design, color and location in relation to the surrounding structures and topography by the Developer, or the Board of Directors of the Association. All such plans and specifications shall be submitted to and approved by the Developer or the Board of Directors of the Association.

The subdivision is composed of in part of 23 building Lots which have been developed expressly for residential purposes and the construction of

Residences. The primary purpose of design and other controls is to protect and preserve the value of the Residences in Grandfield Estates for the benefit of both the individual Lot Owners and the public in general. These controls are not to be viewed as a means for suppressing expressions of individuality nor as a mere land restriction. A secondary purpose of the design and other controls are to protect the Developer's financial investment in the unsold Lots.

d. Each individual Lot Owner is to take all steps necessary to reasonably and adequately regulate the drainage from their Lot and to control unreasonable and undesirable erosion.

e. The construction and landscaping of each Residence shall be completed within twelve (12) months from the date the construction of the Residence's foundation is commenced unless time length is approved by developer or Board of Directors of the Association. Excess dirt resulting from excavation done on any Lot shall be hauled from the lot or used in landscaping the Lot within the construction time period. All excavation or alteration of the existing topography and native growth will be done in a manner such that the natural drainage or designated drainage is not altered to such an extent that unreasonable or undesirable drainage or erosion results improvements not so completed, or upon which construction has ceased for ninety (90) consecutive days, or which have been partially or totally destroyed and not rebuilt within ninety (90) days shall be deemed nuisances. Developer or the Homes Association may remove any such nuisance or repair or complete the same at the cost of the Lot Owner.

f. Construction of the Residence on the Lot shall commence not later than six (6) months after the initial conveyance of title from the Developer to Lot Owner. This period of six (6) months shall be binding upon subsequent purchasers of any Lot, and shall run from the initial conveyance from the Developer and shall not be extended without the written consent of the Developer or its designee. When a lot is purchased, the purchasers shall enter into a construction contract with Larry Hackett Construction, Inc. Larry Hackett Construction, Inc. is the sole company permitted and allowed to build homes in Grandfield Estates unless specifically waived in writing by said company.

g. Material and equipment used during the construction and landscaping process will be stored and maintained on the Lot in an orderly manner and discarded materials, rubbish and unneeded equipment will be removed from the Lot weekly, or as needed. The lots shall be kept clean and without rubbish during construction. There shall be dumpsters on job sites and no burning shall be allowed.

h. No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, motorcycle, van aircraft, grading or excavating equipment, or any other portable vehicle shall be stored, repaired, or routinely parked on the streets of the subdivision as shown by the Plat. Each Lot Owner shall provide off-street parking to adequately meet his or her needs and, in any event, off-street parking for two automobiles, shall be provided in addition to the attached three car garage space.

j. Approvals and/or consents required by these covenants shall be solely the function of Developer. Developer may, at its option, delegate all or any part of the function of control to the Board of Directors of the Homes Association. If such delegation is made, control shall be the function and obligation of the Board of Directors of the Homes Association, and it may not be delegated to a separate control committee or other similar group. Any such delegation by Developer of all or part of its control function to the Board of Directors shall not be effective unless done in writing and signed by a person authorized to act on behalf of Developer and accepted by the Board of Directors of the Association.

Section 5.

a. Building Material Requirements. Exterior walls of all buildings, structures and appurtenances thereto shall be made of brick, stone, stucco, effis, wood shingles, wood siding, cement fiber siding, glass blocks, or any combination thereof. Windows, doors, and louvers shall be of wood, fiberglass or metal and glass. Roofs shall be covered with 50 year concrete shingles, tile, 50 year Heritage or equal shingle, wood shake, or with the combination with standing seam metal. Exteriors, except roofs and shake sidewalls, shall be covered with no less than two coats of good paint or stain. All foundations shall be made of poured concrete. Any and all exposed foundations on all fronts of dwelling units shall be brick, stone, effis, or stucco; except for any unsupported dormers. The front of the dwelling shall be 25 percent covered with brick, stone, effis, or stucco. All exteriors of dwelling units shall be earth tone colors. Curb cuts are not required if curb cuts are used no more than 3' beyond edge of driveway. No curb cut shall extend beyond the two feet concrete curb and gutter. No building shall be permitted to stand with its exteriors in an unfinished condition for longer than seven (7) months after commencement of construction. In the event of fire, windstorm, or other damages, no building shall be permitted to remain in a damaged condition longer than one (1) month.

b. Utilities, Service and Access. Each Lot Owner shall be responsible for any expenses related to the extension of utility services to their individual Residence from the main utility lines already provided by Developer. Each Lot Owner shall also be responsible for any expenses related to providing vehicular access to their Lot from the platted streets.

Section 6.

Buildings or Uses Other than for Residential Purposes; Noxious Activities; Miscellaneous.

a. Except as otherwise provided in Article 3, Section 1 above, no Residence or Exterior Structure shall ever be placed, erected or used for business, professional, trade or commercial purposes on any Lot, provided, however that this restriction shall not prevent a Lot Owner from maintaining an office area in his or her residence which is not his or her principal place of business and so-long as it does not increase traffic into the Subdivision.

b. No noxious or offensive activity shall be carried on with respect to any Lot or in the Common Areas, nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot or in the Common Areas or be permitted to accumulate or remain on any Lot or in the Common Areas, except such compost facilities as may be approved by Developer, or its designee, in writing, nor shall anything be done which may be or become an annoyance or a nuisance to the neighborhood, including but not limited to mechanical work on automotive or other equipment of any kind. Each Lot Owner shall properly maintain his or her Lot in a neat, clean and orderly fashion. All Residences and Exterior Structures shall be kept and maintained in good condition and repair at all times. Developer retains the right to keep and maintain such materials and equipment as it deems reasonably necessary to further development of this and any other property owned by Developer.

c. No incinerator or trash burner shall be allowed on any Lot, no fuel tank or propane tank shall be permitted to remain outside of any Residence, and, except on pick-up days, no garbage or trash shall be permitted outside of any dwelling unless within an area that is fully screened from view from any adjoining street or Lot as shown on the plat. No propane tanks permitted to heat homes.

d. No Lot Owner shall use, suffer or permit any person or persons in any manner whatsoever, to use Owner's Lot for any purpose in violation of the laws and regulations of the United States, the State of Iowa, and Pottawattamie

County, Iowa, or any other lawful authority. No Lot Owner shall use, suffer or permit any person or persons in any manner whatsoever, to use Owner's Lot or the Common Areas for any purpose which will constitute an unreasonable and improper invasion upon the quiet use and enjoyment of any other Lot Owner's property. Each Lot Owner shall maintain Owner's Lot in a clean and wholesome condition and all health and police regulations shall in all respects and at all times be fully complied with by the Lot Owner so as to prevent noxious and offensive activities or conditions which could constitute a public or private nuisance.

e. All gardens shall be well groomed and maintained. Fencing shall be 4' in height and limited to the rear of home only and/or one side only. Fence material shall be chain link, cedar to be sealed or stained, or vinyl fencing.

Section 7.

a. All Lots, whether occupied or unoccupied, and any improvements placed thereon shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, Developer or the Homeowners Association shall have the right, through its agents and employees, to do so, the cost of which shall be added to and become an assessment to which such Lot is subject. Neither Developer, the Homes Association, nor any of its agents, employees or contractors shall be liable for any maintenance work as performed.

b. No vehicles, including but not limited to, trailers, buses, campers, motor homes, recreational vehicles, boats, trucks, or commercial vehicles or any similar apparatus shall be parked, maintained or stored on any Lot. All said vehicles shall be parked, maintained and stored inside the Residence and shall not be parked on the street. It is the intent of the parties hereto that all automobiles and vehicles shall be kept in an enclosed garage whenever possible. No motorized vehicles shall be operated on any Lot or on the Common Areas or within the entire boundaries of Grandfield Estates other than in the streets or in the driveways. No all terrain vehicles shall be operated in the entire boundaries of Grandfield Estates. (Refer back to page 4-h for more explanation.)

c. No television, radio, citizens' band, short wave or other antenna, solar panel, windmill, wind-driven electrical generating system, sun energy system, clothes line or pole, basketball goals are to be portable or on a separate pole detached from the house, or other unsightly projection shall be attached to the exterior of any Residence or erected in any yard. Any satellite dish replacement shall be approved in writing by Developer or its designee. Should any part or all of the restriction set forth in the preceding sentence be held by a court of competent jurisdiction to be unenforceable because it violates the First Amendment or any other provision of the United States Constitution, or for any other reason, the Developer, or its designee, shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the neighborhood and any such rules and regulations shall be binding upon all of the Lots. No lights or other illumination shall be higher than the Residence. Playground equipment shall be approved by developer or Board of Directors of the Association and maintained in good repair and condition.

d. All garage doors shall remain closed at all times except when necessary for entry or exit, such as, maintenance, cleaning of garage, or convenience of working in near by area.

e. No garage sales, sample sale or similar activities shall be held within the Properties without the written consent of the Developer or its designee or the Board of Directors of the Association.

f. No speaker, horn, whistle, siren, bell or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Residence or in any yard.

g. All public utilities and services on all Lots shall be underground.

h. In the event of vandalism, fire, windstorm or other damage, no Residence or Exterior Structure shall be permitted to remain in a damaged condition for longer than two (2) months.

i. No exterior Christmas lights and/or decorations may be erected or maintained on any of the Lots hereby restricted, except during a sixty (60) day period beginning November 15th of each calendar year.

j. Dogs and cats shall be confined to their Owner's Lot. No dogs shall be allowed to run at large in the Subdivision. Dogs shall be on a leash if they are off of the owner's lot. No dogs or cats shall be allowed to soil or defecate in any other lot or common area of the Subdivision. Owners shall be responsible for restraining their dogs and preventing them from loud and excessive barking.

k. 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; provided always that the construction plans, specifications and the location of the proposed structure and fences have been first approved by Developer, Board of Directors of the Association. Dog houses shall only be allowed adjacent to the rear of the building, concealed from public view. No fences or kennels may be constructed or installed on any Lot without the permission of the Developer or Board of Directors of the Association. The plans, proposed site location, and materials to be used in the construction or installed on any Lot without the written permission of the Developer or the Board of Directors of the Association is prohibited. The plans, proposed site location, and materials to be used in the construction of the fences or kennels shall be provided to Developer for Developer's review. No more than two dogs shall be allowed per household. 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 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.

l. No air conditioning apparatus or unsightly projections shall be attached or affixed to the front of any Residence.

m. No bright light (Mercury Vapor or Sodium) shall be placed on the exterior of any structure or constructed separately without the written consent of Developer or the Board of Directors of the Association. No exterior lighting shall be constructed so that the lighting shines upon an adjoining lot.

n. Each Lot Owner shall keep drainage ditches, culverts and swales located on his or her Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his or her Lot as may be reasonably required for proper drainage.

o. Neither the Developer or the Board of Directors of the Association nor any Lot Owner shall allow or permit any hunting or the discharge of any firearms within the entire boundaries of Grandfield Estates.

Section 8.

Exterior Structures.

a. Exterior Structure shall be the same design, look and material as the home. Any storage areas need to be incorporated into home design. Excluding lots 16 and 17, those structures would have to match and blend with home design approved by developer. The size of the building must be approved by the developer.

b. All residential fences and privacy screens (other than those installed by Developer) shall be consistent with standard designs, heights, materials and location to be approved by the Developer or its designee. Fences and walls shall not obstruct the scenic view of any Lot. Fences and walls will be permitted only with the approval of the Developer or Board of Directors of the Association.

c. The design, materials and location of all recreational or play structures shall be approved by the Developer or Board of Directors of the Association.

d. No above-ground swimming pools shall be permitted. All In-ground pools and hot tubs shall be fenced, with materials and design approved by the Developer or its designee. All pools and hot tubs shall be kept clean and maintained in operable condition.

e. No dog runs shall be permitted on any Lot.

Section 9.

Animals. No animal of any kind shall be kept on any Lot, except that up to two (2) dogs and/or cats may be kept, as long as they are in compliance with the Pottawattamie County, Iowa. Zoning Ordinances as the same is now enforce or may hereafter be amended. Lot owners shall not be allowed to have possession of or ownership of any aggressive type of dog, including but not limited to pit bulls and Doberman pinchers.

Section 10.

a. Driveways. All driveways must be concrete or pavers with concrete sub base unless otherwise approved by the developer or Board of Directors of the Association. All such driveways shall be limited to service of the primary Residence on the Lot, unless otherwise approved in writing by the Developer or Board of Directors of the Association. (No asphalt overlay of driveway approaches shall be permitted.) Asphalt will be allowed to out buildings.

Section 11.

Signs. No signs, advertisements, billboards, or advertising structures of any kind may be erected or maintained on any Lot without the consent, in writing, of Developer or the Board of Directors of the Association; provided, however, that permission is hereby granted for erection and maintenance of not more than one advertising board on each Lot or tract as sold and conveyed, which advertising board shall not be more than seven (7) square feet in size and may be used for the sole and exclusive purpose of advertising for sale or lease the Lot or tract upon which it is erected.

Section 12.

a. Landscaping and Lawns. Prior to occupancy, all front and back lawns, including all areas between each Residence and any adjacent street, shall be fully

sodded or seeded, however, a Lot Owner may leave a portion of the Lot as a natural area with the express written permission of the Developer or Board of Directors of the Association. The Owner of each lot shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four (4) inches and shall properly maintain and replace all trees and landscaping. Noxious weeds and plants shall be kept reasonably mowed and removed and all unsightly growth shall be removed from all improved Lots.

b. Trees. Each Lot Owner shall plant, at Lot Owner's expense, at least two, 2-inch trees in the front yard of the Lot and at least two, 2-inch trees in the rear yard of the Lot. The species of trees to be planted shall be approved by the Developer or the Board of Directors of the Association. The required trees shall be planted as soon after construction of a dwelling as weather permits.

c. Sprinkler System. Each Lot Owner shall install, maintain and repair, at Lot Owner's expense, lawn sprinkler systems on each Lot. The installation of the sprinkler system shall be completed at the time the dwelling construction is complete. Minimum areas to be irrigated are front yards, side yards, and 100 feet to rear yard.

d. Landscaping Required. In addition to the cost and the requirements of the preceding three (3) paragraphs, each Lot Owner shall provide, at his or her expense, professional landscaping improvements on each Lot in the minimum amount of \$5,000 for such improvements. All such required landscaping shall be completed by the Lot Owner within six months of occupancy. Amount to be used on: walls, shrubs, perennials, trees, etc.

Section 13.

Easement for Public Utilities: Drainage: Maintenance. The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines and other utilities, and to give or grant rights-of-way or easements and rights-of-way shown on the recorded plat of the Properties. All utility easements and rights-of-way shall inure to the benefit of all utility companies, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of all Lot Owners in the Properties and the Homes Association as a cross-easement for utility line or service maintenance.

The Developer shall have and does hereby reserve for itself, its successors and assigns and the Homes Association and its successors and assigns, an easement over and through all unimproved portions of each Lot and all Common Areas in the Properties for the purpose of performing the duties of the Homes Association, and for the purpose of maintenance and improvement of all Common Areas.

ARTICLE IV

COMMON AREAS

Section 1.

Developer's Right to Retain. The Developer may retain the legal title to the Common Areas until such time as it has completed improvements thereon and until such time as in the opinion of the Developer and the Association is able to maintain the same.

Section 2.

Lot Owner's Easements of Enjoyment. Every Lot Owner shall have a right and easement of enjoyment in and to the Common Areas, but only for the intended use, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Homes Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Homes Association.
- (b) The ownership by the Homes Association of any Common Areas and the right and easement of enjoyment of the Lot Owners in the Properties as to any Common Areas shall be subject to the right of the Developer to convey sewage, water, drainage, maintenance and utility easements over, under, upon and through such Common Areas. The Association shall maintain a retention pond on lot 12 so long as it is necessary and desirable by the Developer or Association. In the event that it is determined that the retention pond is not necessary and is no longer desirable the Developer and/or Association may deed the area of the retention pond to Lot 12. The then owner of Lot 12 shall accept this area as part of Lot 12 and the lot owner and Developer or Association shall not receive or be entitled to any consideration for the conveyance of said property to Lot 12.
- (c) No Lot Owner shall improve, destroy or otherwise alter any Common Areas without the express written consent of the Developer or Board of Directors of the Association.
- (d) The Developer and the Board of Directors of the Association shall have the right to make additional rules, regulations and restrictions pertaining to the use of any Common Areas.

Section 3.

Delegation of Use. Any Lot Owner may delegate, in accordance with the bylaws of the Homes Association, and subject to reasonable rules, regulations and limitations as may be adopted in accordance therewith, the right of enjoyment, to the Common Areas and facilities to the members of the Lot Owner's family, visitors, or contract purchasers who reside on the property.

ARTICLE V

COVENANT FOR MAINTENANCE AND INSURANCE ASSESSMENTS

Section 1.

Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Lot owned within the Properties, hereby covenants, and each Lot Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homes Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire of the Homes Association as to the amount of any unpaid assessments. Each assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Lot Owner of such property at the time

when the assessment became due. The personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them. Common Areas shall not be subject to assessment and may not vote. Home Owners Association assessments—maintenance around entrance sign, landscaped corners, and detention pond.

Section 2.

Purpose of Assessments. The assessments levied by the Homes Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement, maintenance and general liability insurance for the Common Areas. The amount of insurance, if any, shall be set by the Homes Association.

Section 3.

Exterior Maintenance. The Homes Association shall provide maintenance of the Common Areas, streets, sewers and walkways. Each Lot Owner shall provide, at the Lot Owner's expense, exterior maintenance upon his or her respective Lot including mowing, fertilizing, watering, planting of trees, shrubs and grass and snow removal on walks and drives. Each Lot Owner shall be responsible for all maintenance and repair of the dwelling units and shall not permit waste but instead shall in a timely fashion maintain the exterior appearance of the unit in a clean, uniform, and orderly manner free of discolored or peeling paint or stain. Each Lot Owner shall be responsible for prompt repair of broken glass.

In the event any Lot Owner fails in his or her maintenance obligations, the Homes Association, thirty (30) days after written demand, may at its election, perform the maintenance including but not limited to, painting, roofing, staining, repairing glass, maintaining or replacing trees, shrubs, bushes, rock walls, or otherwise, as may be necessary to cause the property to comply with this section. The cost of any Homes Association ordered repair shall become a lien upon the Lot or Lots repaired without further Homes Association action and the Lot Owner shall be personally obligated to reimburse the actual costs incurred. The Homes Association may, at its option, elect to provide garbage and trash pick-up service, or any other exterior service, repair or maintenance, and may include the cost thereof in the assessments.

In the event that the need for maintenance or repair to Common Areas, or Lots is caused through the willful or negligent act of a Lot Owner, his or her family, or guest, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject, and such added assessment shall not be subject to the maximum assessment limitations herein contained.

Section 4.

Payment of Assessments. The annual assessments shall be paid annually; however, the Homes Association may establish a different method of payment upon notice to the Lot Owners. Special assessments shall be payable in the manner, amounts and times specified by the Homes Association.

Section 5.

Special Assessments for Capital Improvements. In addition to the annual assessments and the lien for exterior maintenance authorized above, the Homes Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each

class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6.

Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be delivered either personally or by mail to all members not less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7.

Rate of Assessment. The total annual assessments shall be levied at an equal rate against each Lot; provided, however, that until January 1, 2010, the maximum annual amount that may be levied against any Lot upon which there is no completed dwelling as of July 1 of that year shall not \$ _____ per year.

Section 8.

Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Areas. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Homes Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Lot Owner subject thereto. The due dates shall be established by the Homes Association. The Homes Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Homes Association setting forth whether the assessment on a specified Lot has been paid.

Section 9.

Effect of Nonpayment of Assessments; Remedies of the Homes Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Homes Association may bring an action at law against the Lot Owner personally obligated to pay the same, or foreclose the lien against the property in proceedings in the nature of a mechanic's lien foreclosure. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of the Lot.

Section 10.

Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

HOMES ASSOCIATION

Section 1.

Every Lot Owner shall be deemed to have a membership in the Homes Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration.

Section 2.

The Association shall have two classes of voting membership:

Class A. Class A member shall be all Lot Owners, with the exception of Developer, L & W Development, L.L.C., and shall be entitled on all issues to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine and advise the secretary prior to any meeting. In no event shall more than one (1) vote be cast with respect to any Lot. In the absence of agreement by multiple owners of a Lot, that Lot's vote shall be suspended if more than one (1) person seeks to exercise it.

Class B. The Class B member shall be Developer, L & W Development, L.L.C., its successors and assigns, and shall be entitled to thirty (30) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) the Class B member voluntarily waives its right to Class B voting privileges.

Section 3.

Articles of Incorporation and Bylaws. Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Homes Association shall be set forth in its and Bylaws. In any event, if any provisions set forth in this Declaration applicable to notice, voting and quorum requirements are in conflict with any provisions of Iowa law applicable to not-for-profit corporations on the date of this Declaration, or at any time after said date, the applicable provisions of Iowa law or bylaws established by the Association the applicable provisions of Iowa law and By-Laws shall control.

ARTICLE VII

GENERAL PROVISIONS

Section 1.

Property Subject to this Declaration. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration as of the date of this Declaration is that property more specifically identified in the Addendum to this Declaration.

Section 2.

Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Developer, or its successors and assigns, or by the Lot Owner of any real estate subject to the Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless written notice of the proposed Agreement is sent to every Lot Owner at least sixty (60) days in advance of any action taken.

Section 3.

Notices. Any notice required to be sent to any member or Lot Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last know address of the person who appears as a member or Lot Owner on the records of the Developer or Homes Association at the time of such mailing.

Section 4.

Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or person violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages or both and against the land to enforce any lien created by these covenants, and failure by the Homes Association of any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5.

Severability. In the event any one of these covenants or restrictions is held invalid by a judgment or court order, this shall in no way effect any other provisions which shall remain in full force and effect.

Section 6.

Amendment. This Declaration may be amended only after no Class B member remains in the Homes Association. Thereafter, by written consent of at least seventy percent (70%) of the Lot Owners of the Properties within the subdivision as then constituted, evidenced by a Declaration duly executed and acknowledged by such Lot Owners and recorded in the Office of the Recorder of Pottawattamie County, Iowa, this instrument may be modified and amended.

Section 7.

Insurance. The Board of Directors of the Homes Association shall obtain and maintain, to the extent reasonably available, such forms, types and amounts of insurance coverage as the Board of Directors, in its discretion, deems advisable. Types of insurance the Board of Directors, may obtain include, but are not limited to, casualty insurance to cover damage or loss up to the replacement cost of improvements located upon real estate owned by the Homes Association, by reason of fire or other hazard covered by a standard extended coverage endorsement; casualty insurance to cover such other risks as shall customarily be covered with respect to property similar in construction, location and use; public liability insurance; worker's compensation insurance to the extent necessary to comply with any applicable law; a legal expenses indemnity endorsement, or its equivalent, affording protection for the officers and directors of the Homes Association for expenses and fees incurred by any of them in defending any suit or settling any claim, judgment or

cause of action to which any such officer or Director shall have been made a party by reason of his or her services as such; fidelity insurance against dishonest acts on the part of directors, managers, trustees, employees or volunteers; and such other policies of insurance, if authorized by applicable Iowa law and by the Board of Directors of the Homes Association.

Section 8.

Developer Approval/Consent. Notwithstanding anything to the contrary, whenever the approval or consent of the Developer, or Board of Directors of the Association, is required for any action, such approval or consent shall be in writing and be signed and dated by the Developer or Officers of the Association. Any approval or consent not in writing as required herein shall be unenforceable.

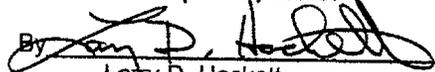
Section 9.

Obligations of Developer. No responsibility, liability or obligation shall be assumed by or imposed upon Developer, or Board of Directors of the Association, by virtue of the authority granted to Developer in this Declaration, or as a result of any act or failure to act by Developer, or its designee, with respect to any proposed improvement.

Section 10.

Grantee's Acceptance. Each grantee or purchaser of any Lot shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such Lot, accept such deed or contract upon and subject to each and all of the provisions of this Declaration of Restrictions and Covenants and to the jurisdiction, rights, powers, privileges and immunities of Developer and Board of Directors of the Association. By such acceptance, such grantee or purchaser shall, for himself/herself, his/her heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with this Declaration and the grantee or purchaser of each other Lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in the Declaration.

L & W Development, L.L.C.

By 
Larry D. Hackett

State of Iowa)
) ss.
County of Pottawattamie)

On this 24th day of August, 2004, before me, a notary in and for the state of Iowa, personally appeared Larry Hackett, to me personally known, who being by me duly sworn, did say that he is President of L&W Development, L.L.C. the sole owner and acknowledged the execution of the instrument to be their voluntary act and deed.


Notary Public in and for said state

(Seal)

