

10.5 = 16651

Highclere Phase 2

Prepared By  
 and Return to: Deborah L. Petersen of Reilly, Petersen, Hannan & Dreismeier, 215 S. Main, PO Box 1016, Council Bluffs, IA 51502, (712) 328-1575  
 Individual's Name Street Address City, State Zip Code Phone

**PROTECTIVE COVENANTS, CONDITIONS,  
 RESTRICTIONS AND EASEMENTS FOR  
 HIGHCLERE PHASE II**

The following covenants, conditions, restrictions and easements are hereby imposed upon the following described real estate and are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 21 years from the date of recording, after which time said covenants shall be automatically extended for successive periods of 21 years by at least one Lot Owner properly filing a claim once every 21 years. These covenants may be amended by a majority of the then owners of the Lots, agreeing to change said covenants in whole or in part, subject to the Developer's rights to amend:

Lots 1A through 14A, Lots 1B through 14B, and Outlots "A", "B", and "C", Highclere Phase II, a subdivision in the City of Council Bluffs, Pottawattamie County, Iowa, as surveyed, platted and recorded.

By acceptance of the conveyance of said Lot or Lots, the grantee, in consideration of the premises, binds himself or herself, and his or her heirs, executors and administrators, successors, assigns, and grantees, to strictly observe and perform all of the restrictions and covenants herein contained.

Invalidation of any one of the covenants herein contained by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

1. All Lots described herein shall be known, described and used solely as residential

Lots; any structure erected on any residential building Lot shall be a single family dwelling (as part of a duplex) not to exceed two stories in height.

2. Any fences or hedges shall be approved by the Developer.

3. No receptacle for mail shall be erected unless the mailbox shall be constructed of new materials and be placed upon such parts of the Lot as approved by the postal authorities and the Developer.

4. No structure shall be erected, altered, placed or permitted to remain on any residential building Lot, as herein defined, other than one single-family dwelling (as part of a duplex) not to exceed two stories in height and a private garage.

5. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No outside radio, television or other electronic antenna or aerial shall be erected on any Lot without the written consent of the Developer.

6. Boats, camping trailers, automobiles, auto-drawn trailers, trucks, motorized mobile homes or recreational vehicles may not be stored on the premises, except in the enclosed garages.

7. No repair of automobiles will be permitted outside of garages on any Lot at any time; nor will any vehicle offensive to the neighborhood be visibly stored, parked or abandoned in the neighborhood.

8. All construction plans and plot plans showing the locations and designs of all

structures must be submitted to the Developer, who shall consider such plans and materials, exterior design and colors, and location of the improvements on the building Lot. If acceptable to Developer, the Developer shall approve such plans; provided that the Developer specifically reserves the right to deny permission to construct any type of structure, use any exterior color, or make any improvement which it determines will not conform to the master plan for the development of the subdivision.

9. No advertising signs, home office or occupation 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 square feet advertising a Lot as "For Sale". The Developer is not limited by this provision and may maintain such signs as Developer desires on the property.

10. Produce or vegetable gardens may only be maintained in the rear yard.

11. No garbage or trash cans or containers shall be permitted unless screened from view, except for pickup purposes and within 12 hours of the scheduled pickup time.

12. All utility service lines from each Lot line to a dwelling or other improvement shall be underground.

13. These covenants may be enforced by any property owner in the subdivision.

14. The term "Developer" shall mean Woodbury Company II, LLC, a Nebraska Limited Liability Company, its successors and assigns. Developer may name three property owners to serve as Developer under the terms and conditions hereof. Vacancies in the number of property owners

serving as "Developer" shall be filled by majority vote of the remaining members "serving as Developer". Each member serving as Developer shall serve until his or her successor is so elected.

15. Developer expressly reserves for itself, until 90% of the Lots are sold, the right to amend these covenants, easements and restrictions, in any way Developer may desire.

16. Townhome Owner's Organization. Each Lot Owner shall be a member of Highclere Townhomes Association, Inc. and shall have one vote for each Lot. The Developer shall be entitled to twenty (20) votes for each Lot it owns.

The Lot Owners and the Developer (so long as it owns any Lot) shall be entitled to vote in the determination of the following issues:

a. The approval of a maintenance contract with Woodbury Company II, LLC, and its successors, to provide all necessary minimum maintenance services to the subdivision.

b. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of the Common Facilities for the general use, benefit and enjoyment of the Lot Owners and the maintenance and repair of the improvements to the Lots as set forth herein. Common Facilities may include recreational facilities such as swimming pools, tennis courts, playgrounds and parks' common sprinkler systems; dedicated and non-dedicated roads, paths, ways and green areas; signs, fencing and entrances; and any other common improvement or area which primarily benefits the Lot Owners. The Common Facilities may be situated on property owned or leased by the Townhome Association or on dedicated property

or property subject to Easements accepted by and benefitting the Lot Owners.

c. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided that such rules and regulations are uniformly applied to all Lot Owners. The rules and regulations may regulate, limit and restrict the use of the Common Facilities to Lot Owners, their families, their guests and others as determined by the Lot Owners.

d. The exercise, promotion, enhancement and protections of the privileges and interests of the Lot Owners; and the protection and maintenance of the residential nature of the Lots identified above.

e. The creation and funding of an account in the Townhome Association, including the determination of the amount of any monthly dues to be paid to said account in the Townhome Association for the performance of the duties, obligations and responsibilities set forth herein, as well as the determination of any annual assessments for the services needed for the Lots and the Common Facilities in addition to any annual assessments for all Lot Owners. The funding shall also include funds sufficient to pay Woodbury Company II, LLC, and its successors, for its services under the maintenance contract referred to above in subparagraph (a) of this paragraph. Any such dues or assessments shall be treated as assessments by the Townhome Association and shall be governed by all provisions herein, including the lien provisions. The Townhome Association shall maintain a separate account for the funds referred to herein, said funds to be collected and

disbursed only upon vote by the Lot Owners.

17. Assessments. (a) The Developer for each Lot owned within the Properties as defined herein, hereby covenants and each owner of any Lot by acceptance of a deed therefor, whether or not regular annual assessments are assessed for the charges for the purposes hereinafter set forth to pay assessments levied by the Association as hereafter provided, which assessments, together with interest costs, and reasonable attorney's fees shall be and constitute, until paid, a continuing charge against and a lien upon such townhome or property against which each such assessment is made.

(b) The assessment levied by the Association shall be used exclusively without any part of the net earnings inuring to the private benefit of its members, to maintain, repair and replace when necessary the Highclere Phase II subdivision landscaping and lighting, and the landscaping, fencing, lighting and signage, or any other improvements to any common areas therein.

(c) Before each fiscal year, the Board of Directors of the Association shall adopt and fix, in reasonably itemized detail an annual budget, for the then anticipated fiscal affairs and general operations for the Association for that year, and shall levy and collect annual assessments from each Lot owner, which shall be sufficient to fund the budget for the fiscal year.

(d) The regular annual assessments provided for herein shall commence as to all Lots on the first day of the month following the filing of this Declaration. The first regular annual assessment shall be adjusted according to the number of months remaining in the calendar year. The

Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certification signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

(e) Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten (10%) percent annum. The Association may foreclose the lien against the property in the same manner as provided by law for foreclosures of mortgages.

(f) The lien of the assessment 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

(g) In addition to the regular annual assessments, 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 area, including fixtures and personal property related thereto, and related facilities.

(h) Assessments and dues shall be fixed at a uniform rate as to all Lots.

(i) 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.

(j) Notwithstanding the above requirements regarding the payment of assessments, Lots owned by the Developer and held for sale shall not be subject to the payment of any assessments until they are sold.

DATED this 31<sup>st</sup> day of January, 2005.

WOODBURY COMPANY II, LLC

By Robert Hancock IV  
ROBERT HANCOCK, IV