

CONTRACT

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Name _____ Address _____ Telephone _____

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PELICAN COVE
A SUBDIVISION IN THE CITY OF COUNCIL BLUFFS,
POTTAWATTAMIE COUNTY, IOWA**

THESE DECLARATIONS are made as of the date shown at the close of this instrument, by the parties executing this Declaration who are, whether one or more, referred to herein as the "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in Pottawattamie County, Iowa, more particularly described as follows:

Lots 13 through 40 and adjoining portions of Outlots A, B and C of Pelican Cove, a Subdivision in Council Bluffs, Pottawattamie County, Iowa.

WHEREAS, Declarant desires to provide for the preservation of the values and amenities of Pelican Cove, and for the Maintenance of the character and residential integrity of Pelican Cove.

NOW, THEREFORE, Declarant hereby declares that all of the property herein above described shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which are for the purpose of protecting the value and desirability of, and which shall run with, all of said real property and shall be binding on all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE ONE
DEFINITIONS**

Section 1. "Association" shall mean and refer to Pelican Cove Association, Inc., a nonprofit Iowa corporation, its successors and assigns.

Section 2 "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and all improvements thereon. There will be no Common Area owned by the Association at the time of the initial development of the Subdivision.

Section 3. "Common Area Improvements" shall mean and refer to (i) any improvements, including but not limited to signs, paving curbs, gates, sea walls, walkways, landscaping, lighting standards, roadways, common storm drains, utility lines, sewers and other service facilities, not dedicated to the City and located from time to time on the Common Area and (ii) any perimeter fencing or gate on the Lots or Common Area and any signage which serves all of the Lots. Declarant reserves the right to build a clubhouse or boat house or tennis courts on the common area without the approval of the Owners or the Association.

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Section 4. "Declarant" shall mean West Marawa Development Company, Inc., and its successors and assigns, provided assigns acquire more than one undeveloped Lot from Declarant for the purpose of development.

Section 5. "Lot" shall mean any plot of land shown on the recorded Subdivision plat referred to above with the exception of any Common Areas.

Section 6. "Maintenance" shall mean the exercise of reasonable care to keep improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weed free environment for optimum plant growth.

Section 7. "Member" shall mean every person or entity who holds membership in the Association.

Section 8. "Mortgage" shall mean a conventional mortgage or a deed of trust or a real estate contract of purchase.

Section 9. "Mortgagee" shall mean a holder of a conventional mortgage or a beneficiary under or holder of a deed of trust or the Seller under a real estate contract.

Section 10. "Owner" shall mean and refer to:

- (a) The record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, but excluding those having such interest merely as security for the performance of an obligation or as an encumbrance upon the interest of the beneficial Owner, and
- (b) The purchaser, whether one or more persons or entities, under a recorded contract for the sale and purchase of a Lot, under which the Seller retains title solely as security for the performance of the purchaser's obligation under the contract.

Section 11. "Subdivision" shall mean the subdivided real property hereinbefore described and such additions thereto as may be brought within the jurisdiction of the Association as hereinafter provided.

ARTICLE TWO MEMBERSHIP IN ASSOCIATION - VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a Member of the Association; Membership shall be appurtenant to and may not be separated from ownership of a Lot.

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

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

Class B. The Class B Member shall be Declarant, who shall be entitled to exercise five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership are greater than the total votes outstanding in the Class B membership, or on January 1, 2004, whichever first occurs.

ARTICLE THREE ASSESSMENTS

Section 1. Lien and Personal Obligation of Assessments. The Declarant hereby covenants for each Lot and for each Owner of any Lot, by acceptance of a deed therefore or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract for the purchase thereof, that it is, and shall be, deemed to covenant and agree to pay to the Association: (1) annual assessments and (2) special assessments for capital improvements. Such assessments will be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and a continuing lien on each Lot against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person or persons who owned the Lot at the time the assessment fell due, but such personal obligation shall not pass to the successors in title of such person or persons unless expressly assumed by them. (See Article Three, Section 9 hereof for subordination provisions.)

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents in the Subdivision, and for the management, maintenance, repair, upkeep, and general operation of any Common Areas or facilities, and for the maintenance and upkeep of the yards, sidewalks, and driveways. Annual assessments shall include, and the Association shall acquire and pay for out of the funds derived from annual assessments, the following:

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

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

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

(h) Maintenance and upkeep of the yards, sidewalks, and driveways, which shall include the following responsibilities:

(i) Each lot Owner, at his or her expense, shall install, use, maintain and repair a sprinkler system throughout the Lot in the Subdivision for the purpose of watering lawns; the Owner shall pay for the water utility service associated with such use.

(ii) The removal of the natural accumulations of snow and ice from the private road.

(iii) The Maintenance and repair of a boundary fence to be placed by the Declarant along the exterior Lot lines in the Subdivision.

(iv) The Maintenance and repair of a security guard gate, including associated landscaping.

(v) The Maintenance and repair of the private concrete roadway throughout the Subdivision

(vi) The periodic pick-up of trash and garbage removal, which fee shall be added to the association's assessments.

(vii) The Maintenance and repair of all Common Areas and Common Area improvements.

(i) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or the By Laws of the Association, or which shall be necessary or proper in the opinion of the board of directors of the Association for the operation of any Common Areas or facilities, for the maintenance and upkeep of the yards, for the benefit of Lot Owners, or for the enforcement of these restrictions.

(j) In the event the need for any maintenance or repair mentioned in this section is attributable to the willful or negligent act of the Owner of a Lot, or of his or her family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessments to which such Lot is subject.

Section 3. Maximum Annual Assessment. The Members of the Association may vote to set a maximum amount for the annual assessment for any given year. The board of directors of the Association may fix the annual assessment at an amount not in excess of the maximum set by the Members for any given year.

Section 4. Special Assessments For Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement, including fixtures and personal property related thereto, on any Common Area, or on any Lot if such improvement is for the collective benefit of the Members and not just for the particular advantage of the Owner of the Lot. Any such assessment must be approved by a majority of each class of Members.

Section 5. Notice and Quorum For Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the hereinbefore purpose of taking any action authorized by Section 3 or 4 hereinbefore shall be sent to all Members not less than five (5) nor more than twenty (20) days in advance of such meeting. In the event the proposed action is favored by a majority of the votes cast at such meeting, but less than the requisite majority of each class of Members, Members who were not present in person or by proxy may give their assent in writing within ten (10) days after the date of such meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, unless otherwise stated in the assessment.

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

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of any Common Areas or facilities, or by abandonment of his or her Lot.

Section 9. Subordination of Assessment Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Association, if authorized by its Board of Directors, may release the lien of any delinquent assessments on any Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if such Board of Directors determines that such lien has no value to the Association. No Mortgagee shall be required to collect any assessments due. The Association shall have the sole responsibility to collect all assessments due.

ARTICLE FOUR

PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every Owner of a Lot shall have a right and easement of enjoyment in and to any Common Areas or facilities which shall be appurtenant to and shall pass with the title to such Lot, subject to the following rights of the Association:

- (a) The right to charge reasonable fees for the use of any facility situated within any Common Area and the use of any Common Area.
- (b) The right to suspend the right of use of any Common Areas or recreational facilities and the voting rights of any Owner for periods during which assessments against his or her Lot remain unpaid, and the right, after hearing by the board of directors, to suspend such rights for a period not exceeding sixty (60) days for any infraction of the published rules and regulations of the Association.
- (c) The right to dedicate or transfer all or any part of any Common Areas or facilities to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless an instrument executed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been duly recorded.

Section 2. Delegation of Use. Subject to such limitations as may be imposed by the By Laws, each Owner may delegate his right of enjoyment in and to any Common Areas and facilities to the Members of his or her family, guests, tenants, and invitees.

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

Section 4 Other Easements and Party Walls

- (a) Easements for installation and Maintenance of utilities and drainage facilities are shown on the recorded Subdivision plat. In addition to the right of use thereof by the utilities, any cable television franchisee of the City of Council Bluffs is also granted the right to install and maintain its lines and equipment in such easements. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and Maintenance of utilities, or which may damage, interfere with, or change the direction or flow of drainage facilities in the easements.
- (b) No dwelling unit or other structure of any kind shall be built, erected or maintained on any such easement, reservation, or right of way, and such easements, reservations, and rights of way shall at all times be open and

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

Section 5. Right of Entry. The Association, through its duly authorized employees and contractors, shall have the right, after reasonable notice to the Owner thereof, to enter any Lot at any reasonable hour on any day to perform such Maintenance or repair as may be authorized herein.

Section 6. Partition. There shall be no judicial partition of any Common Area, nor shall Declarant, or any Owner, or any other person acquiring any interest in the Subdivision or any part thereof, seek judicial partition thereof.

ARTICLE FIVE RESTRICTIONS AND COVENANTS

The Subdivision shall be occupied and used only as follows:

Section 1. Each Lot shall be used as a residence for a single family and for no other purpose; however, an Owner may use a portion of his or her residence for an office, provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner, and provided further that in no event shall any part of a residence be used as a school or music studio. No outbuilding may be constructed for the storage of a boat on any lot. No residence may be rented or occupied by a non-owner at any time.

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

Section 3. No noxious or offensive activity, annoyance, or nuisance shall be carried on in or on any Lot and/or Common Area, with the exception of the business of Declarant or the transferees of Declarant in developing all of the Lots as provided in Section 11 hereinafter.

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

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

Section 6. No animals, livestock, poultry, or reptiles of any kind shall be raised, bred, or kept on any Lot or on any Common Area or facility. However, dogs, cats, or other normal household pets may be kept on Lots subject to such rules and regulations as may be adopted by the Association, so long as they are not kept, bred, or maintained for

commercial purposes, and provided that they are kept on leashes whenever outside, and further provided that only one animal house shall be allowed. Each owner is responsible for cleaning up after his or her pets, including the removal of stools left by the pets when being walked. No dog runs of any kind shall be allowed. Any dog house shall be at the rear of residence concealed from public view and the design and location approved by the Architectural Control Committee in advance of installation.

Section 7. No debris, rubbish, trash, garbage, or other waste material shall be kept or permitted on any Lot or on any Common Area or facility except in sanitary containers located in appropriate areas concealed from public view. No excess or unused building material shall be kept, stored, or otherwise maintained on any Lot in a location within public view, other than for use connected with approved or permitted construction.

Section 8. No fence, hedge, wall, or other dividing instrumentality shall be constructed or maintained on any Lot in the Subdivision, except that Declarant or the transferees of Declarant may construct a boundary fence along the exterior Lot lines of the Subdivision. Invisible fencing for animals may be installed at the Owner's expense and with the prior written approval of the Architectural Control Committee.

Section 9. No outbuilding, tent, shack, garage, trailer, shed, or temporary building of any kind shall be constructed or maintained on any lot.

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

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

- (a) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from doing on any part or parts of the Subdivision owned or controlled by Declarant, Declarant's transferees, or their representatives, whatever they determine may be reasonably necessary or advisable in connection with the completion of such work.
- (b) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from constructing and maintaining on any part or parts of the Subdivision property owned or controlled by Declarant, Declarant's transferees, or their representatives, such structures as may be reasonably necessary for the completion of such work, the establishment of the Subdivision as a residential community, and the disposition of Lots by sale.
- (c) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from conducting on any part or parts of the Subdivision property owned or controlled by Declarant, Declarant's transferees, or their representatives, the business of completing such work, of establishing the Subdivision as a residential community, and of disposing of Lots by sale.

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

Section 12. No exterior television or radio antenna or disc of any sort shall be permitted on any Lot unless the same has been approved by the Architectural Control Committee. No tree houses, tool sheds, doll houses, windmills, or similar structures shall be permitted on any Lot.

Section 13. No exterior addition thereto or any change or alteration therein may be made, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing (as to conformity and harmony of external design with existing structures in the Subdivision, and as to location in relation to topography and finished ground elevation) by the board of directors of the Association, or by an architectural committee composed of three (3) Members of the Association appointed by the board. In the event said board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such approval will not be required and this section will be deemed to have been fully complied with. Approval shall be revoked if the building or construction associated with the plans has not been commenced within 3 years of the date of approval of the plans. Construction of improvements must be completed within one (1) year from date of commencement.

Section 14. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck over one (1) ton capacity, 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 vehicle 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 14 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings 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 City of Council Bluffs, Iowa. All garage doors must be closed when not in use.

Section 15. No incinerator, trash burner or fuel tank shall be permitted on any Lot. No garbage or trash can or container shall be stored or be permitted to remain outside 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, rubbish 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 maintained in rear yards.

Section 16. 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.

Section 17. No exterior swimming pool may be constructed or maintained on any lot, extending more than one foot above ground level.

Section 18. Driveway and driveway approaches on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of a driveway will be permitted.

Section 19. All utility service lines from each Lot line to a dwelling or other improvement shall be underground.

Section 20. No Owner shall be permitted to install a dock on the shoreline unless the dock is approved by the Board of Directors of the Association. All docks will be a standard material and must be maintained. A boat may be attached to the sea wall without the approval of the Board of Directors of the Association as to the location and the method of attachment to the seawall.

Section 21. Except in case of an emergency, no Owner shall disclose to any person, other than another Owner, the security code to the entry gate to the Subdivision. The Board of Directors of the Association may designate such times when the gates will remain open.

ARTICLE SIX OWNER'S OBLIGATION TO REPAIR AND MAINTAIN

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

ARTICLE SEVEN OWNER'S OBLIGATION TO REBUILD

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

ARTICLE EIGHT INSURANCE

The Association shall purchase and provide general liability coverage insurance in such amounts as shall be determined from time to time by the Board of Directors of the Association for the Common Area and Common Area Improvements. The Association may provide Directors and Officers liability coverage insurance for the Association, for its Officers, and Members of the Board of Directors. In addition, the Association may purchase such additional insurance against other hazards which may be deemed appropriate by the Board of Directors.

Each Owner shall be responsible for obtaining their own homeowners insurance for their home, and on the contents, as well as their decorations, furnishings and personal

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property therein and any personal property stored elsewhere on the Subdivision. In addition, each Owner shall purchase insurance to insure against his or her personal liability and loss or damage by fire or other hazards.

The Association will not insure the homes nor the personal property of the individual Owners as this is the responsibility of the Owners.

ARTICLE NINE ACCESS

The Association, its officers, employees and agents, and contractors and repairmen designated by the Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Association hereunder, and the Association is hereby granted a specific easement for such purposes.

ARTICLE TEN EASEMENTS

Section 1. There are hereby reserved in favor of the Owners, their families, guests, invitees and servants, a non-exclusive easement to use, free of charge, in common with others entitled to similar use, any and all of the Common Area Improvements existing from time to time in the Subdivision, including but not limited to roadways, entrances, and exits and other service facilities located in, upon or under the Common Area, subject to such reasonable and uniformly applied rules and regulations as the Board of Directors of the Association may establish from time to time with respect to such use.

Section 2. There are hereby reserved in favor of and granted to the Owners nonexclusive easements under, through and across the Common Area for sewers, electricity, television, water, telephone and all other utility purposes, including the right to use of any such existing systems, structures, mains, sewers, conduits, lines, and other public utilities and service facilities. The grantee of such easement shall bear all costs related to the use of the easement and shall repair to the original specifications any damage to the Common Area resulting from such use, provided the costs of maintaining and repairing common storm drains, utility lines, sewers and other service facilities are expenses in accordance with Article Three.

Section 3. There hereby is reserved in favor of the Owners and their tenants, agents, and invitees, and the agents and invitees of such tenants, a nonexclusive easement to use, free of charge, in common with others entitled to similar use, any and all of the sidewalks existing from time to time within the Common Area. There hereby is further reserved in favor of the Association, its agents and contractors, the right to enter upon each Lot from time to time for the purpose of construction, repairing and maintaining the sidewalks in the event the Owner fails to provide for such construction, repair, or Maintenance.

Section 4. Except for use of the sidewalk along the sea wall, individual Owners are responsible to obtain permission to access any other Owner's property including the side, front, back lawns and shorelines. Without express permission, said property is off limits. Swimming will be restricted to the area in front of each Owner's sea wall or down the center of the canal. Private boats and docks are included in this restriction.

Section 5. A twenty (20) foot wide storm sewer easement extending from storm sewer inlets in each cul-de-sac and from the entrance road, into the coves is reserved as shown on the plat of the Subdivision.

Section 6. All roads, sanitary and storm sewer systems within the Subdivision are private and are not being dedicated to the public and shall be maintained by the Association.

ARTICLE ELEVEN ARCHITECTURAL CONTROL

Section 1. Appointment. The Directors shall appoint three or more people to serve as the Architectural Control Committee. The Members of the Committee serve at the pleasure of the Directors and may be replaced at any time with or without cause.

Section 2. Power and Duties of the Committee. No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Subdivision, nor shall any exterior addition or change or alteration therein be made, nor shall any trees, shrubs, or plants be planted or maintained upon the Subdivision, until the plans and specifications therefor showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, and in relation to other trees, shrubs and plants, by the Committee. Failure of the Committee to act on such plans as submitted within forty-five (45) days after the date of submission shall be deemed to be a disapproval of such plans.

Unless approved in writing by the Committee, no building shall be created, altered, placed or permitted to remain on Lots 13 through 40 inclusive, other than one single-family home, not exceeding two stories in height, having a garage of not less than two nor more than three standard automobiles nor more than two boat garages, and containing finished areas, exclusive of porches, breezeways, carports, and garages of at least 1,700 square feet on the ground floor of a one-story home; 1,400 square feet on the ground floor and 700 square feet on the second floor of a one and one-half story home; 1,000 square feet on the ground floor and 1,000 square feet on the second floor of a two story home; 2,000 square feet of finished living area, with at least 1,500 square feet of finished living area on the first floor of bi-level, split level or split entry homes. The Committee shall have the right to define the terms one-story, one and one-half story, split level and split entry home. Homes of unusual design not included in the categories listed herein would need to be considered by the Committee on an individual basis. Square foot areas are to be computed to the outside surface of enclosed walls.

Documents submitted for approval shall be clear, concise, complete, consistent and legible. All drawings shall be to scale. Samples of materials to be included in the construction may be required of the applicant at the discretion of the Committee. Submittals for approval shall be made in duplicate and the components and actions of the Committee will be identically marked on both copies of said Submittals. One copy will be returned to the applicant, and one copy will be retained as part of the permanent records of the Committee. Each applicant shall submit to the Committee the following documents, materials and/or drawings.

- (1) Site plans indicating specific construction or improvements and indicating Lot number, street address, grading and surface drainage; and
- (2) Complete construction plans, including, but not limited to, basement and upper floor plans, floor areas of each level, wall sections, stair and fireplace sections and exterior elevations clearly indicating flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials.

COMPLIANT

After the construction of the original structure on each Lot, no change to exterior appearance of the structure, appurtenances (decks, patio, wall or exterior landscaping, sea wall, sidewalk) shall be permitted without the prior written approval of the Committee. Appropriate documentation will be required by the Committee for proposed changes after the original construction is completed.

ARTICLE TWELVE GENERAL PROVISIONS

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

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

Section 3. Amendments. This Declaration may be amended by Declarant in any manner which it may determine in its full and absolute discretion until all of the Lots have been sold or for a period of three (3) years from the date hereof, whichever first occurs. Thereafter, this Declaration may be amended by duly recording an instrument executed and acknowledged by not less than three-fourths (3/4) of each class of Members.

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

Section 5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any Member thereof for a period of twenty-one (21) years from the date hereof, and thereafter shall continue automatically in effect for additional periods of ten (10) years each by the Association or any Lot Owner filing for record in the Pottawattamie County Recorder's office an affidavit of renewal.

EXECUTED at Council Bluffs, Iowa on this 5th day of October 2001.

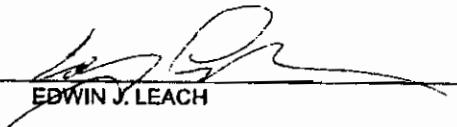
"DECLARANT"

WEST MANAWA DEVELOPMENT COMPANY, INC.

By Herbert E. Andersen
HERBERT E. ANDERSEN

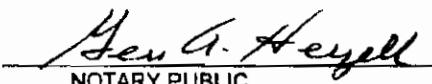
By William F. McVey
WILLIAM F. McVEY

COPIED

By 
EDWIN J. LEACH

STATE OF IOWA)
) ss.
POTTAWATTAMIE COUNTY)

On this 5 day of October 2001 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Herbert E. Andersen, William F. McVey and Edwin J. Leach to me personally known, who, being by me duly sworn, did say that they are all of the Directors of said Corporation executing the above and foregoing instrument; that said instrument was signed on behalf of said Corporation by authority of its board of directors; and that the said Herbert E. Andersen, William F. McVey and Edwin J. Leach as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said Corporation, by it and by them voluntarily executed.


NOTARY PUBLIC

