

COMPARED

[Space Above For Recording Data]

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
SHOAL POINTE A SUBDIVISION
IN THE CITY OF CARTER LAKE, IOWA**

THESE DECLARATIONS, made on this 26 day of March, 1996, by the party or parties hereto who are, at the close of this instrument, described as "Declarant".

WITNESSETH:

WHEREAS, Declarant, whether one or more, is the owner of certain property in Pottawattamie County, Iowa, more particularly described as follows:

Lots 1 through 28 Shoal Pointe, a subdivision as surveyed, platted and recorded in Pottawattamie County, Iowa;

WHEREAS, Declarant desires to make all of the above described property subject to the covenants, conditions and restrictions hereinafter set forth:

NOW, THEREFORE, Declarant hereby declares that all of the property hereinabove described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, 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 I
DEFINITIONS**

Section 1. "Association" shall mean and refer to the Shoal Pointe Townhome Owners Association, Inc., an Iowa nonprofit corporation, its successors and assigns.

Section 2. "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 Properties, but excluding those having such interest

97- 7444

COMPARED

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 purchasers obligation under the contract.

Section 3. "Properties" shall mean and refer to:

Lots 1 through 28 Shoal Pointe, a subdivision as surveyed, platted and recorded in Pottawattamie County, Iowa,

together with any such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any platted Lot shown upon any recorded subdivision map of the Properties or one of two parcels resulting from a Lot split of a duplex zoned Lot.

Section 5. "Improved Lot" shall mean and refer to any Lot included within the Properties upon which shall be erected a dwelling the construction of which shall be at least 80% completed according to the plans and specifications for construction of said dwelling.

Section 6. "Assessable Lot" shall mean and refer to any Improved Lot which the Board of Directors of the Association determines is entitled to the benefits for which assessments are levied by the Association as provided in this instrument.

Section 7. "Declarant" shall mean and refer to all persons and entities signing this instrument, their successors and assigns.

Section 8. "Common Area" shall mean and refer to the private roadway known as Shoal Point Drive abutting the Lots and adjoining Avenue "Q", which roadway is legally described as Outlot A of Shoal Pointe, a subdivision located in Pottawattamie County, Iowa, as surveyed, platted and recorded.

Section 9. "Common Area Improvements" shall mean and refer to (i) any improvements, including but not limited to signs, paving curbs, landscaping, lighting standards, roadways, common storm drains, utility lines, sewers and other service facilities, located from time to time on the Common Area and (ii) any perimeter fencing on the Properties or Common Area and any signage which serves all of the Lots.

COMPARED

ARTICLE II PROPERTY RIGHTS

Section 1. The Association may suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for any period not to exceed 60 days for any infraction by any such Owner, or members of such Owner's family, or guests or tenants of such Owner, of the published rules and regulations of the Association.

Section 2. Ownership of any Lot shall entitle the Owner or Owners thereof to such parking rights as shall be available upon such Lot.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Each Lot Owner is empowered to enforce the covenants. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to any assessment.

Section 2. In order to ensure that a quorum is present for all meetings of the members, and to allow for orderly management of the Association's affairs, it shall be the duty of each member to attend such meeting or execute and deliver to the Association a continuing proxy prepared by the Association. This continuing proxy shall operate in lieu of the actual attendance at the meeting by the specific member and shall be void if the member personally attends that meeting to exercise the member's right to vote. A Lot Owner may provide a superseding proxy to be voted by his duly authorized attorney in fact for one specific meeting only. The Proxy shall be subject to the terms of the Iowa Nonprofit Corporation Act concerning revocability and life span of the proxy. Failure to attend personally or by proxy is a violation of this covenant.

The continuing proxy shall be voted by the President of the Association in his or her discretion at any meeting. It is noted that Iowa law requires that members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The continuing proxy shall provide on its face that it is valid on a continuous basis for an indefinite period of time until revoked in writing by the specific Lot Owner. All proxies shall be in writing and filed with the Secretary of the Association. Each proxy shall be freely revocable and shall automatically cease when the member giving such proxy shall cease to be an Owner of a Lot or at such earlier time as shall be specified in the proxy or by operation of law.

Section 3. The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

Class A: Class A Members shall be the Owners of all Lots other than that Lots owned by Declarant or Lots which are subject to a mortgage or deed of trust in favor of Declarant. Each Class A Member shall be entitled to one vote for each Lot Owned.

COMPARED

When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot.

Class B: Class B Members shall be the Owners of all Lots owned by Declarant or Lots which are subject to a mortgage or deed of trust in favor of Declarant. Each Class B Member shall be entitled to four votes for each Lot owned, the Class B membership (with each former Class B Member then entitled to one vote for each Lot owned) upon the occurrence of the first of the following dates:

- (a) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership, or
- (b) January 1, 2001.

ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. The Declarant hereby covenants for each Assessable Lot and for each Owner of any Assessable 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, whether or not it shall be so expressed in such deed or in such contract, that it is, and shall be, deemed to covenant and agree to pay to the Association:

- (1) Special assessments for capital improvements, and
- (2) Monthly assessments for exterior maintenance and other operational expenses with respect to each Assessable Lot as deemed necessary by the Association, and
- (3) Common Area maintenance assessments for repair, maintenance and other operational expenses with respect to the Common Area Improvements as deemed necessary by the Association,

as such assessments shall be established and collected as hereinafter provided. The special assessments and monthly assessments together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon each Lot which each such Assessment shall be made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the property at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title, unless expressly assumed by them.

COMPARED

Section 2. The Assessment levied by the Association shall be used exclusively to promote the health, safety, recreation and welfare of the residents owning Lots and for exterior maintenance, and other matters as more fully set out in Articles V and VI herein.

Section 3. The Board of Directors shall have the authority to levy and assess from time to time against an Assessable Lot any monthly maintenance assessment for the purpose of meeting the requirements of Section 1 of Article V herein for exterior maintenance and for other operational expenses of the Association, including but not limited to the costs of the insurance coverages referred to in Article X herein.

Section 4. The Association may levy special assessments from time to time against an Assessable Lot for the purpose of meeting the requirements of Section 2 of Article V herein for the cost of any construction, reconstruction, repair or replacement of any capital improvements on such Lot, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of membership, who shall vote in person or by proxy at a meeting duly called for such purpose.

Section 5. The Board of Directors shall have the authority to levy and assess from time to time against an Assessable Lot any common area maintenance assessment for the purpose of meeting the requirements of Article VI herein for repair, maintenance and other operational expenses with respect to the Common Area Improvements.

Section 6. Written notice of a meeting called for the purpose of taking any action authorized under Sections 3, 4, or 5 of this Article IV shall be sent to all members of the Association not less than 10 days nor more than 50 days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, 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 such subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. Any such subsequent meeting shall be held within 60 days following the preceding meeting.

Section 7. The monthly assessments shall be paid pro-rata by the Owners of all Assessable Lots based upon the total number of Assessable Lots; provided, however, the Board of Directors of the Association may equitably adjust such prorations if it determines that certain Assessable Lots on which all of the improvements are not yet completed do not receive all of the benefits for which such assessments are levied. The monthly assessments may be collected on a monthly or other periodic basis by the Association. The Board of Directors of the Association shall fix the amount of the monthly or other periodic assessments against each Assessable Lot. Written notice of the assessment shall be sent to every Lot Owner subject thereto. The dates payments are due shall be established by the Board of Directors. The special assessments for capital improvements shall only be assessed against the Assessable Lots for which the costs of such construction, reconstruction, repair or replacement of any capital improvements occurs. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether or not all assessments on a specified Assessable Lot have been paid. A properly executed certificate

COMPARED

of the Association as to the status of assessments, on a particular Assessable Lot shall be binding upon the Association as of the date of its issue by the Association.

Section 8. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at the maximum legal interest rate for written agreements allowable by law in the State of Iowa. Should any assessment remain unpaid more than sixty (60) days after the due date, the Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against the property through proceedings in any court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

Section 9. The lien on 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 V EXTERIOR MAINTENANCE

The Association may provide exterior maintenance upon each Assessable Lot as set forth hereinafter.

Section 1. Monthly assessments levied against the Lots may be assessed for, but not limited to, the following:

- (a) Maintenance of trees and shrubs, lawns, and other exterior landscaping improvements as originally installed by the builder, except such improvements as may be within the confines of any fenced in areas on any Assessable Lot or installed by or at the direction of the Owner, which improvements shall be the responsibility of the Owner. The Owner understands that the original landscape as installed by the builder is warranted for a period of one year from the time of planting. The Owner is responsible for replacement of all dead landscaping improvements after the one year warranty period expires and the owner agrees to allow the Association to replace such dead landscape improvements at the expense of the Owner of record at the time of replacement and the Owner shall reimburse the Association on demand. The

COMPARED

Association shall have no duty to repair, replace or maintain any exterior concrete surfaces.

(b) Snow removal as to be determined by the guidelines set forth by the Board of Directors.

(c) Maintenance, repair, re-construction and replacement of the perimeter fencing and security gates.

Section 2. Special assessments may be assessed for, but not limited to, the following:

(a) Maintenance, repair, and replacement roofs.

(b) Maintenance, repair, including painting, of all exterior walls, with the exception that the Association shall not assume the duty to repair or replace any glass surfaces, including, but not limited to, window glass and door glass. The Association shall not assume the duty to repair or replace any doors, door openers, and cooling units for air condition systems. However, the Association shall assume the duty to paint the exterior surfaces of exterior doors.

(c) Maintenance, repair, and replacement of gutters.

(d) Maintain, repair, and replace the aluminum seawalls, boat docks, and boat lifts.

ARTICLE VI MAINTENANCE OF COMMON AREA IMPROVEMENTS

The Association may from time to time repair, maintain, and operate the Common Area Improvements, which such maintenance and repair may include, but not be limited to, the following:

(a) Maintaining the surface of the roadways on the common area in a level, smooth, and evenly covered condition;

(b) Snow removal as to be determined by the guidelines set forth by the Board of Directors of the Association;

(c) Placing, keeping in repair, and replacing any necessary or appropriate directional signs, markets and lines;

(d) Repairing and replacing when necessary such artificial lighting facilities;

COMPARED

- (e) Maintaining and repairing any and all common storm drains, utility lines, sewers and other service facilities which are necessary for the operation of the dwellings on the Lots;
- (f) Maintaining all common fences and gates including those on the perimeter of the Lots;
- (g) Payment of all electrical, water, and other utility charges or fees for services furnished to the common area of the Lots;
- (h) Payment of all real property taxes and other special taxes and assessments assessed against the Common Area or the Common Area Improvements within the Lots;
- (i) Payment of all premiums for general public liability insurance insuring against claims for personal injury, death or property damage occurring in, upon or about the Common Area within the Lots.

As provided in this Article, the Board of Directors of the Association may levy and assess common area maintenance assessments against each Assessable Lot for the costs and expenses of the repair, maintenance and operations of the Common Area Improvements.

ARTICLE VII ARCHITECTURAL CONTROL

No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration therein be made, nor shall any trees, shrubs, or plantings be planted or maintained upon the Properties, 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 plantings, by the Board of Directors of the Association. Failure of the board to act on such plans as submitted within thirty (30) days after the date of submission shall be deemed to be approval of such plans, and the Owner may proceed in accordance with such plans and specifications.

ARTICLE VIII PARTY WALLS

Section 1. Each wall which is built as part of the original construction of any dwelling upon the Lots, and which is placed on the dividing line between any adjoining Lots, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

CONTRIBUTO

Section 2. The cost of reasonable repairs and maintenance of any party wall shall be shared by the owners who make use of such party wall in proportion to the length of each Lot and party wall.

Section 3. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owner or owners shall thereafter make use of such party wall, such other owners or owners shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owner or owners to call for a larger contribution from other owners under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Notwithstanding any other provision of this Article, an owner who, by his negligent or willful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements and repair of damage caused by the elements.

Section 5. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 6. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each owner involved shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and all owners shall be bound by any decision arrived at by a majority of all such arbitrators. Arbitration shall be governed by the terms of the Uniform Arbitration Act, to the extent consistent with the foregoing provisions.

ARTICLE IX GENERAL RESTRICTION AND OTHER PROVISIONS

Section 1. Every Owner shall have full rights of ownership and full use and enjoyment of his Lot, subject to the following restrictions:

- (a) Other than as carried on by the Declarant or his assigns, agents or successors, in respect to the sale, marketing, construction and improvement of the Lots or any other commercial activity on the Properties, no business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Properties, or, without the prior written authorization of the Association, shall any "For Sale" or "For Rent" signs be displayed by any Person, firm or corporation, bank, savings and loan association, lending institution, or insurance company who as holder of a deed of trust against any Lot acquired ownership thereof through foreclosure (or by deed in lieu of foreclosure), or the agent of any of them. Nothing in this Section is intended to restrict the right of any Lot Owner to rent or lease the Owner's Lot from time to time or to engage any Person, firm or corporation, to rent or lease said Lot and provide maid and janitorial services therefor, nor shall any provision hereof be deemed to prohibit an Owner from keeping his or her personal business or

COMPARED

professional records or accounts therein, or handling his or her personal business calls or correspondence therefrom, but all the express restrictions herein contained about use of displays and signs shall nonetheless be and remain in full force and effect and prohibits such activity concerning any rental or lease or attempts to rent or lease. In accordance with the foregoing, the Lots shall be and are restricted exclusively to residential use and no trade or business of any kind other than as set forth hereinabove may be conducted in or from a Lot.

- (b) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the Property, other than non-exotic household pets. All pets shall be leashed when outside of the residential structure and patio area. No such pet shall be kept, bred, or maintained for any commercial purposes. The Board of Directors of the Association shall make reasonable rules and regulations for the accommodation of pets.
- (c) No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on any Lot within the Properties, unless such fences or enclosures shall have first been authorized in writing by the Association.
- (d) No vehicle repairs, other than emergency repairs or repairs of a minimal nature needed to be performed to move a vehicle off the properties shall be allowed on the Properties. The Association is expressly authorized to tow away, at an offending owner's expense, any vehicle referred to in this Section which is in violation hereof or in violation of the rules and regulations governing parking as may be adopted by the Board of Directors. No boats, boat trailers, campers, canoes, recreational vehicles, vehicles used primarily for recreational purposes, vehicles primarily used for commercial purposes, or vehicles with commercial writings on their exterior shall be stored, allowed to remain, or parked in the subdivision, except in an area, if any, designated by the Board of Directors or except as otherwise permitted by the Association's Board of Directors or Declarant.
- (e) Except as placed or erected by Declarant or his assigns, agents or successors, no sign, billboards, unsightly objects, or nuisances shall be erected, place, or permitted to remain on the Properties subject to this Declaration, nor shall such Properties be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot thereof.
- (f) No offensive or unsightly appearance shall be maintained or allowed to exist upon the Properties, nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood. The Association shall have the right to require all owners to place trash and garbage in containers located in areas designated

COMPANIES

by the Association. No incinerators shall be kept or maintained on any Lot. All rubbish, trash, and garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

(g) No machinery or equipment of any kind shall be placed, operated or maintained upon the Properties, except such machinery or equipment as is usual and customary in connection with the Declarant's sales, marketing, maintenance or construction of buildings, improvements or structures which are within the permitted uses of such Property, and except that which Declarant or the Association may require or permit for the operation and maintenance of the Common Area.

(h) Outside clothes lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any of the Lots.

(i) No improper, offensive, or unlawful use shall be made on any part of the Properties. All valid laws, zoning ordinances, and regulations of all government bodies having jurisdiction over the subdivision shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

(j) No Owner, other than the Declarant or developer of the Properties, shall be permitted to install a dock on the shoreline unless the dock is approved by the Board of Directors of the Association, the City of Carter Lake, Iowa, and the Iowa Department of Natural Resources.

(k) No Owner shall disclose to any person, other than another Owner or in the case of an emergency, the security code to the entry gate to the Properties. Additionally, the entry gates shall not be left open for an extended period of time as determined by the Board of Directors of the Association.

In addition to the restrictions above, the Association shall have the right to make and to enforce reasonable rules and regulations governing the use of the Units and the Common Elements.

ARTICLE X 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.

ARTICLE XI 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 XII EASEMENTS

Section 1. There hereby is 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 on the Properties, 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 hereby is reserved in favor of and granted to the Owners non-exclusive 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 VI.

Section 3. Each Owner of an Improved Lot shall, at its expense, construct, repair and maintain a sidewalk on such Lot adjacent to the Common Area if such sidewalk is required under the laws, ordinances or regulations of any governmental agency having jurisdiction over the Properties. If required, such sidewalk shall satisfy the specifications for sidewalks within the City of Carter Lake, Iowa, shall be located within ten (10) feet of the Common Area as designated by the Declaration, and shall be in place prior to completion of the building improvements on such Lot. If an Owner fails to construct, repair, or maintain a required sidewalk, the Association may, but shall not be required to, provide for such construction, repair, or maintenance, and the cost to the Association for such construction, repair, or maintenance shall be specially assessed against such Lot the same as special assessments for capital improvements as provided in Article IV herein. There hereby is reserved in favor of the Owners and their tenants, agents, and invitees, and the agents and invitees of such tenants, a non-exclusive 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 ten (10) feet of 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

COMPANY

sidewalks in the event the Owner fails to provide for such construction, repair, or maintenance as provided in this Section 3.

Section 4. A cross-easement for access to the docks and shoreline is hereby reserved in favor of and against the Owners of each Lot as follows: Lots 1 and 2; Lots 3 and 4; Lots 5 and 6; Lots 7 and 8; Lots 9 and 10; Lots 11 and 12; Lots 14 and 15; Lots 17 and 18; Lots 19 and 20; Lots 21 and 22; Lots 23 and 24; Lots 25 and 26; and Lots 27 and 28. The cross-easements shall be for the benefit of the two Lots subject thereto, and shall not be for the benefit of any other Lot within the Properties. Each cross-easement shall be a total of twenty (20') feet in length along the rear of each Lot, with ten (10') feet being situated on either side of the adjoining Lot line. The easement shall be five (5') feet in width along the Lot line on the side yard connecting each adjoining Lot. The cross-easements are hereby established to provide and allow each Lot Owner, their families, guests, invitees and servants, reasonable access to the dock area and shoreline; provided however, such utilization must at all times be reasonable and subject to any rules and regulations established by the Board of Directors of the Association. Each Lot Owner shall be responsible for the maintenance and repair of only that part of the cross-easement which is situated on his or her Lot.

ARTICLE VII GENERAL PROVISIONS

Section 1. The Association, or any Owner of a Lot, shall have the right to enforce, by a proceeding at law or in equity, such restrictions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of the Declaration. Failure of the Association or of 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. Invalidation of any one or more of these covenants or restrictions, by judgements or court order, shall in no way affect any other provisions, which other provisions shall remain in full force and effect.

Section 3. These Declarations may be amended at any time during the initial twenty (20) year term referred to in Section 4, hereafter, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots then covered by these Declarations, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots then covered by these Declarations. Any such amendment shall be valid only upon its being recorded in the same manner as Deeds shall be recorded at such time.

Section 4. These covenants and restrictions contained in this Declaration shall run with the land, and shall be binding for an initial term of twenty (20) years from the date these Declarations are recorded, after which time they shall be automatically extended for successive periods of ten (10) years each.

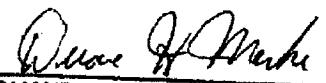
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed these Declarations of Covenants, Conditions and Restrictions on the day and year first written above.

13
97- 7456

~~CONFIDENTIAL~~

DECLARANTS:

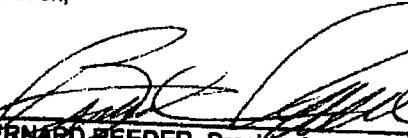
THE SHOALS DEVELOPMENT CO., INC., an Iowa corporation,

By: 
DUANE H. MENKE, President

SHOAL POINTE, L.L.C., a Nebraska limited liability company,

By: 
BERNARD REEDER, Managing Member

BRETT DEVELOPMENT, INC., a Nebraska corporation,

By: 
BERNARD REEDER, President

STATE OF IOWA

COUNTY OF POTTAWATTAMIE

)
ss.
)

On this 26 day of March, 1996, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Duane H. Menke, to me personally known, who being by me duly sworn, did say that he is the

Classification

President of The Shoals Development Co., Inc. executing the within and foregoing instrument; that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Duane H. Menke, as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by him voluntarily executed.

William E. Lovelace
NOTARY PUBLIC IN AND FOR STATE OF IOWA
7-20-88

STATE OF IOWA)
COUNTY OF POTTAWATTAMIE)
SS.)

On this 26 day of March, 1996, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Bernard Reeder, to me personally known, who being by me duly sworn, did say that said person is the Managing Member of said Shoal Pointe, L.L.C., that no seal has been procured by the said limited liability company, and that said instrument was signed on behalf of said limited liability company by authority of its members, and the said Bernard Reeder acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

John C. Clark
NOTARY PUBLIC IN AND FOR STATE OF IOWA
7-20-98

-15-
97- 7458

CONFIDENTIAL

STATE OF IOWA)
COUNTY OF POTAWATTAMIE)ss.
)

On this 26 day of March, 1996, before me, the undersigned,
a Notary Public in and for said county and state, personally appeared Bernard Reeder,
to me personally known, who being by me duly sworn, did say that he is the President
of Brett Development, Inc. executing the within and foregoing instrument; that no seal
has been procured by the said corporation; that said instrument was signed on behalf
of said corporation by authority of its Board of Directors; and that the said Bernard
Reeder, as such officer, acknowledged the execution of said instrument to be the
voluntary act and deed of said corporation by it and by him voluntarily executed.

William E. Blodgett
NOTARY PUBLIC IN AND FOR STATE OF IOWA
7-20-98

INST # 6660
RECORDING FEE 45.00
AUDITOR FEE 100
RMA FEE 100

FILED FOR RECORD
OTTAWATTAMIE CO. IA.

97 OCT 31 AM 9:25

JOHN SCIORTINO
RECORDER

[Space Above for Recording Data]

**AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SHOAL POINTE A SUBDIVISION
IN THE CITY OF CARTER LAKE, IOWA**

This Amendment to the Declaration of Covenants, Conditions and Restrictions for Shoal Pointe is made on this 16 day of March, 1997, by the Owners of Lots within Shoal Pointe.

WITNESSETH:

WHEREAS, ninety (90%) percent of the Owners of the Lots within Shoal Pointe approved the following amendments to the original Declaration of Covenants, Conditions and Restrictions for Shoal Pointe, which are filed on record in the office of the Pottawattamie County Register of Deeds, Instrument No. 97-7444 (the "Declaration").

WHEREAS, this Amendment to the original Declaration and shall be filed against the following described real estate, to wit:

Lots 1 through 28, inclusive, Shoal Pointe a subdivision as surveyed, platted and recorded in Pottawattamie County, Iowa.

NOW, THEREFORE, in furtherance thereof, the Owners hereby adopt, declare and provide as follows:

**ARTICLE V
EXTERIOR MAINTENANCE**

Section 1 of Article V shall be amended in its entirety as follows:

98-18276

Section 1

- (c) Maintenance, repair, re-construction and replacement of the perimeter fencing, security gates and entrance monumentation.

ARTICLE VII ARCHITECTURAL CONTROL

Article VII shall be amended in its entirety as follows:

Unless approved in writing by the Architectural Control Committee, no building shall be created, altered, placed or permitted to remain on Lots 1 through 28 inclusive, other than one single-family townhome style dwelling, not to exceed two stories in height, having a garage of not less than two and no more than three standard automobiles nor no more than two boat garages, and containing finished living areas, exclusive of porches, breezeways, carports, and garages of at least 1,400 square feet on the ground floor of a one-story unit; 1,100 square feet on the ground floor and 550 square feet on the second floor of a one and one-half story unit; 1,000 square feet on the ground floor and 800 square feet on the second floor of a two-story.

The Architectural Committee shall have the right to define the terms one-story, one and one-half story, two-story, split-level and split-entry house. Houses of unusual design not included in the categories listed herein will be considered 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. Submittal for approval shall be made in duplicate and the comments and actions of the Committee will be identically marked on both copies of said submittal. 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.

After the construction of the original structure on each Lot, no change to exterior appearance of the structure, appurtenances (decks, patio, fence, wall or exterior landscaping) shall be permitted without the prior written approval of the Architectural Control Committee.

ARTICLE IX GENERAL RESTRICTIONS AND OTHER PROVISIONS

Section 1 of Article IX shall be amended in its entirety as follows:

Section 1

(b)

(i) No animals, livestock, or poultry of any kind shall be raised, bred or kept on any part of the Property, other than non-exotic pets. All pets shall be leashed when outside of the residential structure and patio area. No such pet shall be kept, bred or maintained for any commercial purpose.

Every Owner may have no more than two (2) pets on their Lot. This requirement is specific to dogs, domestic cats and fish. For each dog on the Property the maximum weight allowance shall not exceed 100 pounds per animal.

(ii) No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for (1) dog house constructed for (1) dog; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by the Architectural Control Committee or its assigns, if required by this Declaration. Dog houses shall only be allowed at the rear of the residence, concealed from public view. No commercial stables, kennels, aviary or their similar uses shall be allowed.

Section 1

(c) No fences, enclosure, or structure of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on any Lot within the Properties, unless such fences or enclosures shall have first been authorized in writing by the Association. No outbuildings or other attached or unattached structures appurtenant to a residence may be erected on any of the building sites hereby restricted.

Section 1

(d)

(i) No vehicle repairs, other than emergency repairs or repairs of minimal nature needed to be performed to move or remove a vehicle off the Properties shall be allowed on the Properties. The Association is expressly authorized to tow away, at an offending Owner's expense, any vehicle referred to in this Section which is in violation hereof or in violation of the rules and regulations governing parking or future rules as may be adopted by the Board of Directors. No boats, boat trailers, campers, canoes, recreational vehicles used primarily for recreational purposes, vehicles primarily used for commercial purposes or vehicles with commercial writings on their exterior shall be stored, allowed to remain or parked in the subdivision. At no time whatsoever is any vehicle to be parked in a common area or driveway of a Lot Owner to be used for recreational vehicle or boat storage.

(ii) No vehicle belonging to a Lot Owner or a guest of a Lot Owner may be parked on the street, driveway or in the common areas of the Properties for any period exceeding seventy-two (72) hours, continuously. Any vehicle left parked on the premises for over seventy-two (72) hours, continuously, will be towed away at the Lot Owners expense.

Section 1

(e) Except as placed or erected by Declarant or his assigns, agents or successors, no sign, billboards, banners, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Properties subject to this Declaration, nor shall such Properties be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot thereof.

Section 1

(f)

(i) No offensive or unsightly appearance shall be maintained or allowed to exist upon the Properties, nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood. No incinerators shall be kept or maintained on any Lot. All rubbish, trash and garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

(ii) The Association shall have the right to require all Owners to place trash and garbage in cans or containers which are maintained and stored within the Owner's Property and completely screened from view, except for pickup purpose. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside any dwelling or suitable storage facility, except when in actual use.

Section 1

(l) 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 1

(m) All garage doors of any dwelling on the premises must remain closed at all times, except when entering or alighting from the garage area.

Section 1

(n) No motorized recreational vehicles, such as but not limited to: boats, motor homes, off-road vehicles, shall be allowed on any vacant lot, stored in the driveway of any Lot Owner or on the street of the Properties.

Section 1

(o) No structure of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be erected on any of said Lots, or used as a residence, temporarily or permanently. No pre-cut dwelling shall be assembled on any of said Lots. No full or partial subterranean dwelling or log houses shall be constructed or erected on any of said Lots. No dwelling shall be moved from

outside of the Properties onto any of the said Lots. PROVIDED, however, nothing contained herein shall restrict Declarant or its assigns from locating, constructing or moving a temporary real estate and/or construction office on any building site in the Properties to be solely used during the period of construction and sale of the Properties. Declarant and its assigns may also erect and maintain model homes for sale purposes and may operate such office therein for so long as they deem necessary for the purposes of selling the Properties.

Section 1

(p) No awnings or sun screens of any type shall be affixed to any building or structure within the Properties, without written consent of the Association.

Section 1

(q) Except for the purpose of controlling erosion on vacant Lots, no field crops shall be grown upon any Lot at any time.

Section 1

(r) No residential dwelling shall be occupied by any persons as a dwelling for such person until the construction of such dwelling has been completed, except for minor finish details as determined and approved by the Association, the Committee and/or its assigns.

ARTICLE X
INSURANCE

Article X shall be amended in its entirety as follows:

The Association shall procure, purchase and provide general liability coverage and extended coverage in such amounts as shall be determined from time to time by the Board of Directors of the Association for the Common Areas and Common Areas Improvements. The Association may provide the Directors and Officers liability coverage insurance for the Association, for its Officers and members for 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 insurance on the contents, as well as their decorations, furnishings and personal property therein and any personal property stored elsewhere on the Properties. In addition, in the event an Owner desires to insure against his personal liability and loss or damage by fire or other hazards obtained by the Association as above provided, said Owner may, at his option and expense, obtain additional insurance.

IN WITNESS WHEREOF, the undersigned have executed this instrument on the date first written above.

OWNERS:

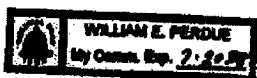
John M. Gitter
Malvina A. Gitter
David H. Mark
Jeffrey L. Kleinbach
Bob W. Young

STATE OF Iowa)

COUNTY OF Pott)

Before me, a notary public, in and for said county and state, personally came James H. Gitter, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof this is their voluntary act and deed and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 16 day of March, 1997.



William E. Perdue
Notary Public

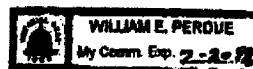
STATE OF Iowa)
COUNTY OF Pott)

Before me, a notary public, in and for said county and state, personally came
Bernard Perdue, known to me to be the identical person who executed the
above instrument and acknowledged the execution thereof this is their voluntary act and deed
and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 16 day of March, 1997.

William E. Perdue
Notary Public

STATE OF Iowa)
COUNTY OF Pott)



Before me, a notary public, in and for said county and state, personally came
Robert M. Gitterman, known to me to be the identical person who executed the
above instrument and acknowledged the execution thereof this is their voluntary act and deed
and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 16 day of March, 1997.

William E. Perdue
Notary Public

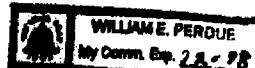
STATE OF Iowa)
COUNTY OF Pott)



Before me, a notary public, in and for said county and state, personally came
Mark A. Luttrell, known to me to be the identical person who executed the
above instrument and acknowledged the execution thereof this is their voluntary act and deed
and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 16 day of March, 1997.

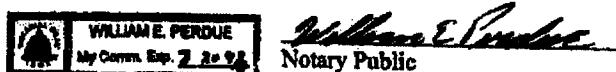
William E. Perdue
Notary Public



STATE OF Iowa)
COUNTY OF Pott)

Before me, a notary public, in and for said county and state, personally came
Debra Parker, known to me to be the identical person who executed the
above instrument and acknowledged the execution thereof this is their voluntary act and deed
and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 16 day of March, 1997.

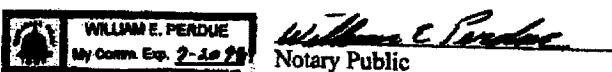


William E. Perdue
Notary Public

STATE OF Iowa)
COUNTY OF Pott)

Before me, a notary public, in and for said county and state, personally came
Robert Parker, known to me to be the identical person who executed the above
instrument and acknowledged the execution thereof this is their voluntary act and deed and the
voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 16 day of March, 1997.

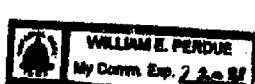


William E. Perdue
Notary Public

STATE OF Iowa)
COUNTY OF Pott)

Before me, a notary public, in and for said county and state, personally came
William Parker, known to me to be the identical person who executed the
above instrument and acknowledged the execution thereof this is their voluntary act and deed
and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 16 day of March, 1997.



William E. Perdue
Notary Public

STATEMENT

STATE OF Texas)
COUNTY OF Palmer)

Before me, a notary public, in and for said county and state, personally came
Steven Deakar, known to me to be the identical person who executed the
above instrument and acknowledged the execution thereof this is their voluntary act and deed
and the voluntary act and deed of said corporation.

Witness my hand and Notarial Seal this 16 day of March, 1997.


William E. Carter
Notary Public

