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 Polk County Iowa
 TIMOTHY J. BRIEN RECORDER
 File# 2002-00003177

BK **9219** PG **842-865**

RETURN TO:

Prepared by: Jeremy C. Sharpe, The Financial Center, 666 Walnut Suite 2000, Des Moines, IA 50309-3989, 515-243-7100

**DECLARATION OF
 COVENANTS, CONDITIONS AND RESTRICTIONS
 FOR
 TWIN GATES PLAT 1 AREA A**

THIS DECLARATION, made on the date hereinafter set forth by SAVANNAH HOMES, INC., with its principal place of business in Polk County, Iowa, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Ankeny, Polk County, Iowa, which is more particularly described as:

Lots 33 through 59, Lots 38A, 39A, 40A, 41A, 48A, 49A, 50A, and 59A, and Outlots V, X, Y and Z in Twin Gates Plat 1, an Official Plat, now included in and forming a part of the City of Ankeny, Iowa "designated as Area A in the Twin Gates PUD Master Plan and;

WHEREAS, Declarant desires to create upon the Properties (defined below), which includes the above-described real estate to be Phase 1, a residential use community, with possibly mixed residential uses, and with green spaces, landscaping, and possibly other improvements, fixtures and personal property thereon as common areas (the "Common Area") to be owned by the below referenced Association for the benefit of the Owners of the Lots; and

WHEREAS, Declarant desires to provide for the ownership, preservation of values and amenities in the Properties and for the maintenance of the Common Area, and any Association Responsibility Elements (defined below) and to this end, desires to subject the Properties to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the Properties and each owner of any portion thereof.

NOW THEREFORE, Declarant hereby declares that all of the real property described above 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 the real property and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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1. **DEFINITIONS.**

- A. "Additional Land" shall mean the land described in Exhibit A attached hereto which the Declarant owns and may, pursuant to the terms hereof, add to the Properties in one or more phases.
- B. "Association" shall mean and refer to Twin Gates Owners Association, Inc., its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa as amended.
- C. "Association Responsibility Elements" shall mean the following as located upon a BiAttached Lot.
- (1) The exterior surface of the Building upon a BiAttached Lot, excluding windows, doors, patios and decks.
 - (2) The structural portion of the Building upon a BiAttached Lot.
 - (3) The roof, gutters, downspouts, and foundations of the Buildings upon a BiAttached Lot.
 - (4) Any common wall between residential or garage structures upon BiAttached Lots, except the interior surfaces thereof.
 - (5) The yard surrounding the residential or garage structure upon a BiAttached Lot, except for trees and shrubbery.
 - (6) Driveways and sidewalks upon a BiAttached Lot.
 - (7) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a residential or garage structure which are carrying any service to more than one BiAttached Lot.
- D. "BiAttached Lots" shall mean the Lots resulting from the subdivision by the Declarant of any Lot as permitted by applicable zoning regulations into two separate smaller Lots for the purpose of constructing thereon the BiAttached Living Units permitted under Section 5C below. Lots 54 through 59(including Lot 59A with Lot 59) are the Lots in Phase 1 which may under applicable zoning regulations be subdivided into BiAttached Lots.
- E. "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- F. "Building" shall mean any structure constructed on a BiAttached Lot containing a Living Unit and having a common wall with a Building on an adjacent BiAttached Lot.
- G. "City" shall mean and refer to the City of Ankeny, Iowa.

H. "Common Area" shall mean all real property (including the landscaping and improvements thereto and thereon) and/or personal property and/or fixtures owned and maintained by the Association for the common use and enjoyment of the Owners. The Common Area to be owned initially by the Association is described as:

Outlots X, Y and Z of Twin Gates Plat 1 and the landscaping and any improvements and fixtures thereon.

Common Area will also include any real property (including landscaping and improvements thereto and thereon) owned and maintained in common by the Association and the Twin Gates Townhomes Owners Association, Inc., including, but not limited to, entrance areas into the Twin Gates developments for the use and benefit of the members of both Associations.

I. "Declarant" shall mean and refer to Savannah Homes, Inc., an Iowa corporation and its successors and assigns, if such successors or assigns acquire all Lots owned by the Declarant for the purpose of resale or development.

J. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject, as the same may be amended from time to time.

K. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Properties, or any portion thereof, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, or successors to their interest.

L. "Living Unit" shall mean any portion of a Building on a BiAttached Lot designed and intended for use and occupancy as a residence by a single family or individual.

M. "Lot" shall mean and refer to the lots numbered 33 through 59 shown on the recorded plat of Twin Gates Plat 1 and any additional numbered lots within any subsequent plats of any portion of the Additional Land which may later be added to the Properties and brought within the jurisdiction of the Association and the Declaration, but does not include the Common Areas. Lot includes both Single Family Lots and BiAttached Lots.

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N. "Member" shall mean and refer to those persons entitled to membership as provided in this Declaration the Articles of Incorporation of the Association and the Bylaws of the Association.

O. "Owner" shall mean refer to the record owner, whether one or more persons or entities, including the Declarant, of a fee simple title to any part of the Properties, but excluding those having such interest merely as security for the performance of

an obligation, and excluding those having a lien upon the property by provision or operation of law. A vendee in possession under a recorded contract of sale of any part of the Properties shall be deemed the owner thereof.

- P. "Properties" shall mean and refer to that certain real property described above, as Phase 1 of Twin Gates, and such additions thereto from the Additional Land as may hereafter be brought within the jurisdiction of the Association and within the terms of the Declaration, but shall exclude and not refer to any portion thereof conveyed, dedicated or granted to the City now or in the future.
- Q. "Single Family Lots" shall mean all of Lots upon which there are built, or upon which there may only be built, single family detached houses.

2. PROPERTY RIGHTS IN COMMON AREAS.

- A. **Management and Maintenance by the Association.** The Association, subject to the rights of the Owners as set forth in the Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Common Area conveyed to it and all improvements thereon, and the Association Responsibility Elements, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management. The Association's obligation shall include (i) the maintenance, repair, reconstruction and replacement of the grassy areas, landscaping, fixtures, personal property and other improvements located in and constituting the Common Area, and (ii) the maintenance, repair, reconstruction and replacement of the Association Responsibility Elements including but not limited to, mowing and snow removal.

In the event that the need for maintenance, replacement or repair of any portion of the Common Areas or the improvements thereon, or of the Association Responsibility Elements is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the cost of such maintenance, replacement or repair shall be added to and become part of the assessment to which the Owner is subject and a lien upon the Lot of such Owner and shall become due and payable upon demand.

No person other than the Owner of a BiAttached Lot and his invitees shall have the right to enter upon, use or affect an Association Responsibility Element located within a BiAttached Lot, except that the Association and its designates may enter upon and within a BiAttached Lot and the Buildings and Living Unit located thereon at reasonable times for the following purposes:

- (1) Installation, repair, removal, replacement, maintenance or inspection of an Association Responsibility Element.

- (2) Enforcement of any provision of this Declaration or the Articles of Incorporation or the By-Laws of the Association
- (3) Mowing and maintenance of grass and landscaped areas.

B. **Owner's Easement and Right of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area except as otherwise provided herein. The rights of easement and enjoyment in the Common Area for all Owners are subject to the terms of this Declaration (and subject to any reasonable and nondiscriminatory rules and regulations which may be enacted by the Association) which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions;

- (1) The right of the Association to suspend the voting rights of the Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.
- (2) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of Members has been recorded.
- (3) The right and obligation of the Association to maintain sewer and other underground utilities located within the Properties.
- (4) The right of the Declarant or the Association to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Area;
- (5) The right of Declarant or the Association to provide in the Common Area, landscaping, outdoor furniture and recreational equipment, signs, decorative structures and necessary appurtenant utilities;
- (6) The provisions of this Declaration and of Rules and Regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation and Bylaws and those accompanying the Declaration; and
- (7) The right of the Association to mortgage any or all of the Common Area with the assent of two-thirds (2/3rds) of the votes of each class of members.

C. **Title to Common Area.** The Declarant hereby covenants for itself, its successors and assigns, that it shall convey to the Association from time to time and as it is

subsequently determined, the fee title or easement rights to all Common Area, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions created by this Declaration, or granted to the City of Ankeny, Iowa. The transfer of title or easements to the initial Common Area shall be accomplished on or before the recorded conveyance any portion of the Properties by the Declarant. Common Area, if any, created by subsequent Supplemental Declarations adding real estate to the Properties or by subsequent plats within the Properties shall be conveyed or easements therefor given immediately following the recording of such Supplemental Declaration or such subsequent plat in the Polk County Recorder's office.

- D. **Use of the Common Area.** The Common Area shall be used strictly in accordance with the provisions of the Declaration and rules and regulations promulgated by the Association. No Owner shall obstruct or interfere whatever with the rights and privileges of other Owners or the Association in the Common Area, and nothing shall be planted, altered, constructed upon, or removed from the Common Area, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the Common Area to the prior condition and charge and assess the cost thereof against the Owner who violates this section and such cost shall become a special assessment and a lien upon the Lot of such Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of such restoration as provided in Article 4 for the collection of delinquent assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Area, the Association or the offended Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorneys' fees as the Court may allow together with all necessary costs and disbursements incurred in connection therewith. Any Owner may delegate in accordance with the Bylaws of the Association, the right to enjoy the Common Area to family members, tenants or contract purchasers who reside on the property and to no one else.
- E. **Duration.** The Common Area as described in Section 1 D, and except as expanded as provided for herein, shall not be changed and shall continue in perpetuity except by approval of all members of the Association, subject to the provisions for dedication or transfer in Section B(2) above and the right to mortgage in Section B(7) above.
- F. **Dissolution.** The Association shall not be dissolved, liquidated or its corporate existence terminated except as provided in the Articles of Incorporation or Bylaws of the Association.

3. **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.**

- A. **Membership.** The owner or owners of the Properties or any subdivisions thereof shall be members of the Association. Membership shall be appurtenant to the ownership of the real property and shall be indivisible from such ownership.
- B. **Classes of Membership.** The Association shall have three classes of voting membership:
- (1) **Class A.** Class A members shall be Single Family Lot Owners, with the exception of the Declarant, and shall be entitled to one vote for each Single Family Lot owned, except they shall have no vote on matters relating only to BiAttached Lots. When more than one person holds an interest in any Single Family Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Single Family Lot.
 - (2) **Class B.** Class B members shall be all BiAttached Lot Owners with the exception of the Declarant, and shall be entitled to one vote for each BiAttached Lot owned, except they shall have no vote on matters relating only to Single Family Lots. When more than one person holds an interest in any BiAttached Lot, all such persons shall be members. The vote for such BiAttached Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any BiAttached Lot.
 - (3) **Class C.** The Class C member shall be the Declarant or its assigns so long as it is the owner of any Lots. The Class C member shall be entitled to ten (10) votes for each Lot owned. The Class C membership shall cease and be converted to Class A membership or Class B membership, as the case may be, on the happening of either of the following events, whichever occurs earlier:
 - (a) when 75% of the Lots in all phases are deeded to homeowners; or
 - (b) on January 1, 2007.
- C. **Board of Directors.** The Owners entitled to vote shall elect a Board of Directors of the Association as prescribed by the Association's Bylaws. The Board of Directors shall manage the affairs of the Association.
- D. **Suspension of Voting Rights.** The Association shall suspend the voting rights of a Member for any period during which any assessments against his or her Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

4. COVENANT FOR ASSESSMENTS.

- A. **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) monthly assessments or charges, and (2) special assessments for capital improvements and operating deficits, and other special assessments as provided in this Declaration; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.
- B. **Purpose of Assessments:** The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and Association Responsibility Elements (including snow removal) and for other purposes specifically provided herein, including, but not limited to, payment of legal liabilities or obligations of the Association and all fees, costs, expenses, and attorneys fees in connection therewith.
- C. **Maximum Monthly Assessment:**
- (1) Until January 1 of the year following the conveyance of the first Lot to an Owner, the maximum monthly assessment to Single Family Lot Owners, for the Common Area consisting of Outlots X, Y and Z shall be in the amount of \$7.50, and the maximum monthly assessment to BiAttached Lot Owners for the Common Areas and the Association Responsibility Elements shall be in the amount of \$65.00. *More language added 15th Amend*
 - (2) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased effective January 1 of each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.
 - (3) From and after January 1 of the year immediately following the conveyance of the first Lot to and Owner, the maximum monthly assessment may be increased above 10% by a vote of two-thirds (2/3) of each class of members affected by the increase who are voting in person or by proxy, at a meeting duly called for this purpose.

- (4) The Board of Directors shall fix the monthly assessment at an amount not in excess of the maximum.
- D. **Special Assessments for Capital Improvements and Operating Deficits.** In addition to the monthly 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 performing any of its stated obligations and responsibilities under this Declaration, including, without limitation, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Association Responsibility Elements, including fixtures and personal property related thereto, which the Association is required to maintain, or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of all classes of members who are to be affected thereby and who are voting in person or by proxy at a meeting duly called for this purpose.
- E. **Notice and Quorum for an Action Authorized under Sections C and D.** Written notice of any meeting called for the purpose of taking any action authorized under Section C or D shall be sent to all members subject to such assessment not less than 10 days, nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership subject to the assessment shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.
- F. **Uniform Rate of Assessment.** Both monthly and special assessments must be fixed at a uniform rate for all Single Family Lots and at a uniform rate for all Bi-Attached Lots and may be collected on a monthly basis. The difference between the monthly assessment amounts between Single Family Lot Owners and BiAttached Lot Owners shall only be due to the additional cost to the Association of maintaining and repairing the Association Responsibility Elements on the BiAttached Lots.
- G. **Date of Commencement of Monthly Assessments: Due Dates.** The monthly assessments provided for herein shall be due as to each Lot on the first day of the month and shall commence as to Lots on the first day of the first month following the date of conveyance to the Association of the Common Area pertaining to that phase, or if no Common Area is added in such phase, then on the first day of the month following the recordation of the Supplemental Declaration adding such phase. The first monthly assessment shall be adjusted according to the number of days remaining in that month. The Board of Directors shall fix the amount of the monthly assessment against each Lot at least thirty (30) days in advance of the

effective date of such increase. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

- H. **Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12% per annum or at the highest rate allowed by Iowa law, whichever is higher. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the cost of preparing and filing the petition in such action, including reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, or abandonment of his Lot.
- I. **Subordination of Assessments Liens.** If any Lot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

J. **Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (1) All property which is dedicated to and accepted by a public authority; and
- (2) All Common Area;

Not other land or improvements located within the Properties shall be exempt from said assessments, charges or liens, except as otherwise provided herein.

5. DECLARANT'S RIGHTS.

- A. **Use Of And Entry Upon Lots.** Declarant reserves the right to use any of the Properties, including the Common Area to sell, assign, or conduct other businesses in connection with the construction and development of the project from any of such Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant reserves the right to enter upon any Lot, and Common Area in connection with any construction activity. Declarant's rights are subject to all applicable ordinances of the City.
- B. **Additional Phases.** Without the consent of any other Owners, but subject to the right of FHA/VA approval as provided below, the Declarant its successors and assigns, reserve the right to add additional Common Area by conveying the same to the Association from time to time, whether such Common Area consist of real estate, personal property or fixtures. Nothing in this Section shall be deemed an obligation on the part of the Declarant to convey additional properties to the Association. Declarant also reserves the right to add to the Properties any or all of the Additional Land in one or more additional phases by means of one or more Supplemental Declarations filed of record in the Polk County, Iowa records, which additions to the Properties may be Common Area to be conveyed to the Association or Lots or Outlots to be conveyed ultimately to third party owners or to be dedicated to the City. Any such additional phases shall be annexed to this Declaration by January 1, 2007.
- C. **BiAttached Living Units.** Declarant also reserves the right as allowed by applicable zoning regulations to construct BiAttached Living Units on any of Lots 54 through 59(including Lot 59A) of Twin Gates Plat 1 and/or on any Additional Land added to the Properties, which would involve the subdivision of a Lot into two BiAttached Lots and the construction thereon of Buildings containing one Living Unit each sharing a common wall along the common lot line of the BiAttached Lots created by such subdivision.

- D. **Declarant Responsibility.** Declarant is and shall be responsible for all duties and obligations of the Association hereunder and shall have all rights of the Association until the Association is established and the initial Common Areas are conveyed thereto. The Association shall be established prior to the recording of this Declaration.

6. **MAINTENANCE OF LOTS.**

- A. **Maintenance by Owners of Lots.** The Owner of each Lot shall furnish and be responsible for, at his own expense, all maintenance, and repairs of his Lot and all structures, improvements and equipment located thereon, except that Owners of BiAttached Lots shall not be responsible for maintenance or repair of the Association Responsibility Elements.
- B. **Maintenance Obligations of Association.**
- (1) The Association shall maintain, repair, or replace the Common Area and the Association Responsibility Elements. The Association shall arrange for the maintenance of said Common Area to include signage maintenance, mowing, weed control, tree maintenance and landscaping.
 - (2) The Association shall have such other reasonable and necessary maintenance, and replacement duties as are necessary and desirable to preserve the high quality of the Properties, including the Common Area and the Association Responsibility Elements.
- C. **Responsibility for Willful or Negligent Acts.** In the event that the need for maintenance or repair of the Common Area or Association Responsibility Element is caused through the willful or negligent act of the Owner, his 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.

7. **INSURANCE AND INSURANCE ASSESSMENT FOR LOTS**

- A. **Insurance and Insurance Assessment.** In addition to the annual assessments and the special assessments for capital improvements, the Association may levy assessments for insurance purchased by the Association. The Association shall obtain liability and casualty insurance for the Common Area and any other real or personal property owned by the Association and for the Association Responsibility Elements. The casualty insurance shall be "all risk" coverage for 100% of the insurable value of the fixtures and improvements in the Common Area and in the Association Responsibility Elements, or otherwise owned by the Association, providing for loss or damage settlement on a replacement cost basis. The insurance coverage obtained by the Association shall be written in the name of and the proceeds thereof shall be payable to the Association. All insurers must be authorized to conduct business in the State of Iowa. In the event of casualty

loss, the Association shall be responsible for repair and restoration of the Common Area and Association Responsibility Elements. The cost of the insurance attributable to the Common Areas shall be assessed equally to all Lot Owners and the cost of the insurance attributable to the Association Responsibility Elements shall be assessed equally to the BiAttached Lot Owners. If the insurance proceeds of the insurance obtained by the Association is insufficient to cover the costs of repair or replacement of the insured property damaged or destroyed, the Association shall make a reconstruction assessment against all Lot Owners to cover the additional cost of repair or replacement of the Common Areas not covered by the insurance proceeds, and shall make such an assessment against BiAttached Lot Owners to cover the additional cost of repair or replacement of the Association Responsibility Elements.

- B. **No Limitation.** This Article shall not limit the right of the Association to purchase insurance for the Common Area and Association Responsibility Elements and make assessments therefor.
- C. **Annual Review of Policies.** All insurance policies acquired by the Association shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.
- D. **Other Insurance Requirements to Satisfy FHLMC.** The Association must also obtain any additional coverage commonly required by private mortgage investors for developments similar in construction, location and use, including the following where applicable and available:

- Agreed amount
- Demolition cost
- Increased cost of construction
- Boiler and machinery

The insurer's minimum liability per accident under boiler and machinery coverage must equal the insurable value of the building housing such boiler or machinery or \$2 million, whichever is less.

Deductibles may not exceed the lower of \$10,000 or 1 percent of the applicable amount of coverage. Funds for such deductibles must be included in the association's reserves and be so designated.

The Association's insurance policy must name the insured in substantially the same language indicated below:

Association of Owners of the Twin Gates Plat 1 for
the use and benefit of the individual owners.

The Association must carry comprehensive general liability (CGL) insurance covering all Common Areas.

If not already included in the terms of the CGL coverage, there must be a "severability of interest" endorsement precluding the insurer's denial of an Owner's claim because of negligent acts by the Association or other Owners.

The Association must also carry any additional coverage commonly required by private Mortgage investors for developments similar in construction, location and use, including the following where applicable and available:

- (1) Comprehensive automobile liability
- (2) Bailee's liability
- (3) Elevator collision liability
- (4) Garage keeper's liability
- (5) Host liquor liability
- (6) Worker's compensation and employer's liability
- (7) Contractual liability.

The insurer's limit of liability per occurrence for personal injury or property damage under the terms of the above coverages must be at least \$1 million.

All policies documenting insurance coverage(s) obtained in accordance with FHLMC requirements for property insurance must have the insurance industry's standard mortgage clause. Such clause must provide that the insurer will notify the named mortgagee at least 10 days before any reduction in coverage or cancellation of the policy.

If a Mortgage on a Lot is owned in whole by FHLMC "(name of Seller/Servicer), its successors and assigns" should be named as mortgagee instead of Federal Home Loan Mortgage Corporation.

The mortgage clause of insurance policies obtained by the Association must be endorsed to fully protect the interest of FHLMC or the interests of FHLMC and the Seller/Servicer where applicable.

When a mortgage clause is not applicable (e.g., in a separate policy of comprehensive general liability), a certificate of insurance must be provided to the Seller/Servicer. This certificate must contain the information required for certificates or other evidence of insurance in the FHLMC single family Seller/Servicer Guides, with the Seller/Servicer named as certificate holder instead of the mortgagee.

8. EASEMENTS AND ENCROACHMENTS.

- A. **Easement for Maintenance.** Declarant reserves unto the Association a nonexclusive easement over the Common Area for the sole benefit of the Association in performance of its maintenance obligation under this Declaration. This easement shall not be for the benefit of the members or the public at large.
- B. **Easement Affecting BiAttached Lots.** Each BiAttached Lot shall be subject to the following easements in favor of the Association and the other Owners of BiAttached Lots:
- (1) Every portion of a structure upon a BiAttached Lot which contributes to the support of any structure not on the same BiAttached Lot is burdened with an easement of such support.
 - (2) each BiAttached Lot is burdened with an easement through the BiAttached Lot and through the attic and basement of any structure thereon for conduits, ducts, plumbing, wiring, pipes and other facilities for the furnishing of utilities and services to other BiAttached Lots, including the location of utility meters on one BiAttached Lot for the service to other BiAttached Lots.
 - (3) Each BiAttached Lot is burdened with an easement of ingress and egress for construction, maintenance, repair and replacement of Association Responsibility Elements by the Association and the Declarant.
 - (4) Each BiAttached Lot is burdened with an easement for surface drainage for the benefit of all other BiAttached Lots and the Common Area.
 - (5) Each BiAttached Lot is burdened with encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.
 - (6) Each BiAttached Lot is burdened with an easement through the BiAttached Lot but outside of any structure thereon for purposes of reasonable ingress and egress by other Owners of BiAttached Lots to the front and rear of the other Owner's BiAttached Lots.
- C. **Easement for Signs.** Declarant reserves unto itself, its successors and assigns, for so long as it owns any portion of the Properties, the right and easement to erect and maintain identification and "For Sale" sign or signs within the Properties, including any Common Area as Declarant deems reasonably necessary, provided the same are consistent with the ordinances of the City.
- D. **Easements for Utilities.** Declarant declares for its benefit and for the benefit of any subsequent owners of any Lots within the Properties perpetual and nonexclusive mutual easements between adjacent Lots five feet in width along the side lot line of each Lot in favor of the adjacent lot for the location, construction, maintenance and repair of private sanitary sewer, water and storm sewer lines

serving the benefitted Lots, together with the right of ingress and egress over and across the easement areas for the purpose of conducting such construction, maintenance and repair of such water and sewer service lines. The owner of the benefitted Lot shall be responsible for the construction, maintenance and repair of the utility lines serving the benefitted Lot located in the easement area and shall return the easement area to the grade and condition it was in prior to any such work. Otherwise, the Lot owners shall be responsible for the maintenance of the easement areas located on their Lots free of obstructions and debris and shall not change the grade of such easement areas without the consent of the owner of the benefitted Lot.

- E. **Additional Easement Rights of the Declarant.** Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise leave the location of any drainage, utility, and sewer easement and to grant such further easements, licenses and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any portion of the Common Area. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Polk County, Iowa and the Association and any Owner of any Lot shall be subject to the right and easements reserved herein; provided, however, the rights reserved in this Section D shall not be exercised in a manner which unreasonably and adversely affects the Common Area or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Common Area. The rights and easements reserved by Declarant in this Section D shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Lot within the Properties.
- F. **Easement for Emergency Purposes.** An easement and right is hereby dedicated and granted to officers, employees or contracted agents of the City for the administration of general public services including fire protection, law enforcement, water service and animal control and for use in case of emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, over and upon the Common Area and easements reserved or granted for the benefit of the Association. This provision shall not be amended without the prior written approval by the City.
- G. **Encroachment on BiAttached Lots.** If, by reason of the location, construction, settling or shifting of a building, any part of a building containing a Living Unit upon a BiAttached Lot (the "Encroaching Unit") encroaches upon any minor portion of any other adjacent BiAttached Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all

appurtenances thereto. Upon the written demand from the Owner of an Encroaching Unit, the owner of the BiAttached Lot upon which said unit encroaches shall deed to the Owner of the Encroaching Unit that portion of the BiAttached Lot upon which the Encroaching Unit is located. The deed shall be by quit claim deed free and clear of any mortgages and encumbrances. All costs of abstracting, releases of mortgages, recording fees, engineering fees and legal fees shall be paid by the owner of the Encroaching Unit.

9. PARTY WALLS ON BIATTACHED LOTS

- A. Each wall which is built as a part of the original construction of the Living Units upon the BiAttached Lots and placed on the dividing lines between the BiAttached Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration and the rights of the Association, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- B. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- C. 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 Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- D. 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.
- E. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the BiAttached Lot and shall pass to such Owner's successors in title.

10. ARCHITECTURAL CONTROL AND APPROVAL OF PLANS.

- A. **Purpose.** In order to preserve the general design for the development of the whole of Twin Gates as a fine residential community, no House, Outbuilding of any kind, nor any addition thereto, shall be erected or undertaken upon any Lot, unless the plan, design, building materials, and location thereof shall have first been approved by the Declarant and by the City of Ankeny, Iowa, or after the Declarant no longer owns any Lots, by the Board of Directors of the Association, and by the City of Ankeny, Iowa or such person or persons or corporate entity or municipal office designated by either for this purpose.

- B. **Approval of Plans.** No House or Outbuilding of any kind, no fence, wall or other structure shall be commenced or erected upon the Properties, nor shall any exterior addition to or change or alteration therein 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 by the Declarant, or by the Board of Directors of the Association after the Declarant no longer owns any Lots, and by the City of Ankeny as to the harmony of external design and location in relation to the surrounding homes and topography. This requirement shall not apply to plans for BiAttached dwellings prepared by or for the Declarant, or to plans and specifications which have been previously approved by the Declarant, or by the Board of Directors, as the case may be, and by the City of Ankeny for another house in this plat. Any change in appearance or color of any part of the exterior of a House or Outbuilding shall be deemed a change thereto and shall require the approval therefor as above provided.
- C. **Procedure.** In order to obtain the approval of the Declarant, or after the Declarant no longer owns any Lots, of the Board or its designee, an Owner shall submit a set of plans, which plans shall show in sufficient detail the following: (a) exterior design elements, (b) exterior building materials, (c) exterior colors, (d) location of proposed improvements on the Lot, and (e) landscaping details. No approval of the plans shall be given, unless the proposed improvement or construction shall meet all of the expressed provisions of this Declaration and shall be in accordance with the spirit and harmony of these Covenants.

The Declarant, or the Board or its designee if the Declarant no longer owns any Lots, shall make a decision within 15 days of the receipt of such plans. Failure to approve or disapprove such plans within 15 days shall be deemed approval.

11. USE RESTRICTIONS

- A. **Subjection of the Properties to Certain Provisions.** The ownership, use, occupation and enjoyment of each Lot shall be subject to the provisions of this Declaration, all of which provisions, irrespective of where set forth or classified, shall have equal status and shall be enforceable and binding as a covenant, condition, restriction or requirement running with the land and shall be binding on and enforceable against each and all Lots, and the Owners thereof and their respective assigns lessees, tenants, occupants and successors in interest.
- B. **Residential Use.** No Lot, or if more than one dwelling unit is located on a Lot, no dwelling unit on a Lot, shall be used for any purpose other than for single-family residential purposes.
- C. **Design and Construction.**
- (1) no mobile home or manufactured or modular homes, as defined in the Code of Iowa, shall be placed upon or erected on any Lot.

- (2) no House shall be erected on any Lot nearer than the building setback lines as shown on the recorded plat.
- (3) no House or any other structure shall be constructed, altered or maintained on any Lot, unless it has a driveway running from a street to the home, and provide sufficient area to park at least two (2) automobiles entirely off the street. All driveways shall be constructed of concrete or bituminous surfacing.
- (4) any dog run, or other outside structure of like nature shall be properly screened by reasonable shrubbery or decorative fence or both and shall be subject to the approval required in Section 9 above.
- (5) no House shall be shingled with metal roofing. Acceptable roofing materials are tile cedar shingles, cedar shakes, standing seamed copper, and fiberglass and/or asphalt shingles.
- (6) all Houses or improvements of any kind must be completed within twelve (12) months of the commencement date of the construction. Following the construction of the residential dwelling on any Lot, the front yard and the side yard shall be fully sodded and the rear yard may be seeded.
- (7) no above ground or non-permanent swimming pools shall be permitted on any Lot.
- (8) no fence shall be permitted within the front yard of any Lot. Chain link fences will be allowed in back yards. No snow fence or temporary fence of any kind shall be permitted on any Lot; except those required to be constructed by the Declarant.
- (9) all areas disturbed by construction must be sodded or seeded.
- (10) all painted surfaces on any House or Outbuilding shall be painted in earth tones.
- (11) no television, radio, microwave or other communications antenna tower or receiver shall be constructed on any Lot; however, satellite dishes of no more than 18 inches in diameter are permissible.

D. General Restrictions.

- (1) No building or structure of a temporary character and no trailer, basement, tent, shack, garage or Outbuilding shall be used at any time as a residential dwelling on any Lot, either temporarily or permanently.
- (2) No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats and other common household pets may be kept, so long as they are not kept, bred or maintained for commercial

purposes, and are controlled and prevented from entering the Lots of other Owners without their consent.

- (3) No recreational vehicles, motor cycles, four-wheelers, three-wheelers or snowmobiles may be driven on the Properties except on the driveways and public streets.
- (4) The Owner or person in possession of each Single Family Lot, whether vacant or improved, shall keep the same mowed at a height not to exceed 4 inches for improved Lots and 8 inches for vacant Lots, and free of debris. Each Owner agrees that after written notice given by certified mail to such Owner or person in possession by the Declarant or the Board or any property Owner owning property within 500 feet of such Lot, such weeds shall be cut and/or such debris shall be removed within fifteen (15) days, failing which the Declarant or the Board or the property Owner giving such notice may enter upon the property to cut or cause to be cut such weeds remove or cause to be removed such debris, and shall have a right of action against the Owner of such Lot for the collection of the costs thereof.
- (5) No noxious or offensive activities not involving the maintenance of Lots shall be carried on upon any Lot nor shall anything be done thereon which may be or may become a nuisance or a danger to the neighborhood; nor shall any Lot be used as to create an annoyance or a nuisance to the neighborhood; nor shall any Lot be used for any unlawful purpose; nor shall any Owner cause, or suffer or harbor the source of, any noise or activity which disturbs the peace, comfort and quiet enjoyment of other Owners or those claiming under or through other Owners.
- (6) No Lot other than the Lots referenced in Section 5C above, shall be subdivided, partitioned replatted or in any way divided so as to create more than one parcel of real estate for the purpose of constructing and maintaining a House thereon.
- (7) All trash receptacles and garbage cans shall be stored in the garages on each Lot. This restriction shall not preclude the placement of waste containers outside of such area on a temporary basis if so required by governmental regulation or terms of contract with a commercial waste collector.
- (8) No boat, snowmobile, recreational vehicle, trailer or other vehicle other than automobiles shall be stored or parked on any Lot for more than five (5) consecutive days unless enclosed in a building.
- (9) Each Owner shall be responsible for the repair, maintenance and replacement of utility services and lines serving his or her Lot. Certain perpetual easements are reserved as shown on the recorded plat. All

utility connection facilities and services shall be under ground. No individual water supply system or individual sewage disposal system shall be permitted on any Lot. Each Lot Owner must hook up to the public sanitary sewage system as soon as the same is available to all Lots. The Owner or occupant of a Lot shall at their own expense, keep and preserve that portion of the easement within their Lot in good condition and repair, and shall neither erect nor permit erection of any building, structure or fences of any kind within the easement which might interfere in any way with the use of such easement.

- (10) Owners shall obey all posted signs placed by the Association on the Properties for the welfare, safety and benefit of all Owners. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned.

- E. **Rules and Regulations.** The Board of Directors of the Association shall have the right to adopt proper rules and regulations governing the Common Area, and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns and licensees.
- F. **No Waiver.** Failure of the Association to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of this right to enforce the same thereafter.
- G. **Fines and Liquidated Damages.** In addition to the enforcement rights granted to the Association for the collection of assessments, the Association shall have the right to maintain any action at law or in equity appropriate for the enforcement of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration, the Articles of Incorporation and Bylaws. The Association is specifically granted a right to obtain affirmative or negative injunctions, restraining orders and similar equitable relief for repeated violations by any person whatsoever. The Association shall have the right to adopt a schedule of fines and/or liquidated damages to be imposed upon members, their families, tenants, invitees and guests for violations of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration and the Articles of Incorporation and Bylaws of the Association.

12. GENERAL PROVISIONS.

- A. **Duration.** This Declaration shall run with the land and shall be binding upon all Lots and Lot Owners for a period of twenty-one (21) years from the date of recordation in the office of the Polk County Recorder (except for any easements, which shall be perpetual unless and until terminated by all of the then Owners of

AMENDMENT

66.66%
of each class.

the Lots), unless properly extended by a claim filed and properly indexed in the Polk County, Iowa Recorder's Office pursuant to Section 614.24 of the Iowa Code. Invalidation of the covenants, conditions and restrictions of the Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

- B. **Enforcement.** If the Owner or person in possession of any Lot or portion of a Lot violates or attempts to violate any of the covenants or restrictions herein established it shall be lawful for the Association, the Declarant or any person or persons owning any other Lots in said plat to prosecute any proceedings in law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions, and either to prevent him or them from so doing or to require removal of any violating structure or improvement or to recover damages for such violation, and shall be entitled to recover reasonable attorneys fees and costs and expenses as a result thereof.
- C. **Amendment.** This Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder of Polk County, Iowa, signed or approved in writing by two-thirds (2/3) of each class of the then Owners to be affected by the amendment; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time within five (5) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies or to correct any of the provisions of this Declaration, or to add the additional phases of Lots and Common Area referenced in paragraph 5B hereof. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof.
- D. **Notice to Mortgagees.** The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its Bylaws or any other applicable documents which default has not been cured within sixty (60) days.
- E. **Annexation.** In addition to the additional phases which may be added by the Declarant under paragraph 5B hereof, additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of membership.
- F. **FHA/VA APPROVAL.** As long as there is a Class C membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration, if those Federal Mortgage Agencies have an interest

in the Properties or any portion thereof: Annexation of additional properties, dedication of Common Areas, and amendment of this Declaration.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this 9th day of May, 2002.

DECLARANT
SAVANNAH HOMES, INC.,

By: Ted A. Grob
Ted A. Grob, President

STATE OF IOWA)
)ss:
COUNTY OF POLK)

On this 9th day of May, 2002, before me, the undersigned, a Notary Public in and for the said State, personally appeared Ted A. Grob to me personally known, who being by me duly sworn, did say that he is the President of the corporation executing the within and foregoing instrument; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Ted A. Grob as officer acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.

Linda Aldrich
Notary Public in and for the State of Iowa

Linda Aldrich
Notarial Seal - IOWA
Commission No. 188049
My Commission Expires 12-23-02

**EXHIBIT A
ADDITIONAL LAND**

A PART OF THE WEST ½ OF SECTION 35, AND A PART OF THE EAST ½ OF SECTION 34, ALL IN TOWNSHIP 80 NORTH, RANGE 24 WEST OF THE 5TH P.M., CITY OF ANKENY, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST ¼ CORNER OF SAID SECTION 35; THENCE SOUTH 89°27'18" WEST ALONG THE SOUTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 34, 116.70 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF N.W. 2ND AVENUE AND THE POINT OF BEGINNING; THENCE NORTH 11°13'53" WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 142.08 FEET; THENCE NORTHWESTERLY CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG A CURVE CONCAVE NORTHEASTERLY WHOSE RADIUS IS 7489.44 FEET, WHOSE ARC LENGTH IS 184.13 FEET, AND WHOSE CHORD BEARS NORTH 10°27'17" WEST, 184.12 FEET; THENCE NORTH 23°35'36" WEST CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 101.29 FEET; THENCE NORTH 34°06'11" EAST, 388.80 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 35; THENCE CONTINUING NORTH 34°06'11" EAST, 64.80 FEET; THENCE NORTH 78°57'53" EAST, 106.68 FEET; THENCE SOUTH 72°16'30" EAST, 510.02 FEET; THENCE NORTH 24°19'29" EAST, 124.99 FEET; THENCE SOUTH 85°35'47" EAST, 300.00 FEET; THENCE NORTH 11°39'29" EAST, 179.54 FEET; THENCE NORTH 69°46'43" EAST, 186.52 FEET; THENCE SOUTH 61°35'57" EAST, 258.78 FEET; THENCE SOUTH 87°59'13" EAST, 412.22 FEET; THENCE NORTH 26°17'38" EAST, 307.39 FEET; THENCE SOUTH 63°46'55" EAST, 299.79 FEET; THENCE SOUTH 33°50'34" EAST, 75.56 FEET; THENCE SOUTH 56°15'50" WEST, 1650.66 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 35; THENCE CONTINUING SOUTH 56°15'50" WEST, 555.30 FEET; THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE SOUTHEASTERLY WHOSE RADIUS IS 799.19 FEET, WHOSE ARC LENGTH IS 187.47 FEET, AND WHOSE CHORD BEARS SOUTH 49°32'02" WEST, 187.04 FEET; THENCE NORTH 33°44'25" WEST, 273.44 FEET; THENCE SOUTH 56°15'35" WEST, 176.09 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST ¼ OF SAID SECTION 34; THENCE CONTINUING SOUTH 56°15'35" WEST, 63.66 FEET TO A POINT ON SAID EASTERLY RIGHT OF WAY LINE OF N.W. 2ND AVENUE; THENCE NORTH 11°08'43" WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 330.54 FEET TO THE POINT OF BEGINNING AND CONTAINING 37.38 ACRES (1,628,234 S.F.) MORE OR LESS;

EXCEPT THE PORTION OF THE ABOVE-DESCRIBED REAL ESTATE INCLUDED IN TWIN GATES PLAT 1.