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TIMOTHY J. BRIEN RECORDER  
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Prepared by: Thomas L. Flynn, 2000 Financial Center, 666 Walnut Street, Des Moines, IA 50309, 515-243-7100

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
LOTS 5-36 OF HILLSBORO PLAT 2**

COMES NOW GERALD D. GRUBB, INC., an Iowa Corporation ("Declarant") as developer of Hillsboro Plat 2, and in support of this DECLARATION, states and provides as follows:

**RECITALS**

WHEREAS, Declarant desires to establish and place certain covenants, conditions and restrictions and to reserve certain easements, on Lots 5-36 of Hillsboro Plat 2 (the "Property"); and

WHEREAS, Declarant intends the Property to be developed so as to accommodate townhomes therein.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, uses, limitation, easements and obligations all of which are declared to be for the purpose of protecting the value and desirability of the Property and which shall run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person (or their grantees, successors, heirs, executors, administrators, devisees and assigns) owning an interest in the Property, or the improvements and appurtenances thereto.

**ARTICLE I**

**DEFINITIONS**

Section 1. "Association" shall mean and refer to Hillsboro Owners' Association, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the 2001 Code of Iowa.

Section 2. "Association Responsibility Elements" shall mean the following, whether located upon a Lot or upon the Common Area:

- (a) The exterior surface of the Buildings upon a Lot.
- (b) The structural portion of the Buildings upon a Lot.
- (c) The downspouts and foundations of the Buildings upon a Lot.
- (d) Any common wall between Living Units within a Lot.

- (e) The yard surrounding the Living Units within a Lot.
- (f) Driveways and sidewalks of each Living Unit upon a Lot.
- (g) Conduits, ducts, plumbing, wiring, pipes and other facilities of the residential structure which are carrying any service to more than one Lot.
- (h) The Common Area, including but not limited to the private storm and sanitary sewers, private water mains and storm water drainage and detention areas located thereon.

Section 3. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 4. "Building(s)" shall mean and refer to any structure(s) containing one or more single-family living units that may be constructed on a Lot or on several Lots and shall include any attached or detached garage building conveyed with the Lot on which the Building(s) is (are) situated.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is described as:

**LOT 37**

Declarant will convey to the Association by deed the Common Area at or about the time of the conveyance of the first Lot.

Section 6. "Declarant" shall mean and refer to Gerald D. Grubb, Inc., an Iowa Corporation, its successors and assigns.

Section 7. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Property is subject.

Section 8. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Property, 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 interests.

Section 9. "Living Unit" shall mean and refer to any portion of a Building situated upon a Lot and designed and intended for use and occupancy as a residence by a single family or individual.

Section 10. "Lot" shall mean and refer to the 32 numbered Lots shown upon the recorded Plat of the Property specifically excluding the Common Area. In the event any part of the Property is replatted and a subsequent Plat is recorded, then "Lot" shall refer to the numbered lots shown on such replatting and such subsequent recorded Plat.

Section 11. "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.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of an undivided fee simple interest to any Lot which is a part of the Property, including contract sellers and vendees (deemed co-owners), 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.

Section 13. "Plural and Gender" Whenever the context so permits or requires, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

Section 14. "Property" shall mean and refer to that certain real property described in the Recitals above, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY RIGHTS IN COMMON AREA

Section 1. Obligations of 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 shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.

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

- (a) Installation, repair, removal, replacement or inspection of an Association Responsibility Element.
- (b) Enforcement of any provision of this Declaration or the Articles of Incorporation or the By-Laws of the Association.
- (c) Mowing and maintenance of grass and landscaped areas.

In the event that the need for maintenance or repair of any portion of the Common Area, the improvements thereon, or of any Association Responsibility Element 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 or repair shall be added to and become part of the assessment to which the Owner is subject and a lien upon Owner's undivided interest in the Lot and Living Unit of such Owner and shall become due and payable upon demand.

Section 2. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which may be delegated to family members, lessees and guests of

every Owner, (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:

(a) the right of the Association to suspend the voting rights of the Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations; provided, however, that nothing contained in this paragraph shall be deemed to deny an Owner access to and from the Owner's Lot;

(b) 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 two-thirds of the Members has been recorded;

(c) The right and obligation of the Association to maintain sewer and other underground utilities located within the Property;

(d) The right of the Declarant, its successors and assigns to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Area, which right of Declarant, successors and assigns, terminates as of that date on which Declarant or successors or assigns no longer owns any portion of the Property;

(e) The right of the Declarant to maintain within a sales office, any number of model Living Units, easements for construction of unsold Lots and/or Living Units by Declarant and Declarant's invitees, which right of Declarant, successors and assigns, terminates as of that date on which Declarant or successors or assigns no longer owns any portion of the Property;

(f) The right of Declarant, but not the obligation, to provide in the Common Area, landscaping, outdoor furniture and recreational equipment, signs, decorative structures and necessary

appurtenant utilities, which right of Declarant, its successors and assigns, terminates as of that date on which Declarant or its successors or assigns no longer owns any portion of the Property;

(g) The rules and regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation and Bylaws, and those accompanying this Declaration; and

(h) The right of the Association to mortgage any or all of the Common Area with the consent of two-thirds of the Members.

Section 3. 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 to all Common Area, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions of record or created by this Declaration, or granted to the City of Des Moines. The transfer of title to the Common Area shall be accomplished on or before the recorded conveyance of the first Lot by Declarant.

Until the construction work on all Living Units within the Property, and appurtenant improvements incidental to said Living Units, is completed, Declarant or its assignee shall have the right to enter upon the Common Area for the purpose of completing such work and performing under applicable guarantees.

Section 4. Use of the Common Area. The Common Area shall be used strictly in accordance with the provisions of the Declaration. 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 Owner's interest in the Lot and the Living Unit 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 IV 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.

Section 5. Duration. The Common Area as described in Article 1, Section 5, 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 2(b) above and the right to mortgage in Section 2(h) above.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Ownership of a Lot shall be the sole qualification for membership.

Section 2. Member Voting Rights. Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

**Notwithstanding the above, Gerald D. Grubb Inc. and its successors and assigns as Declarant, shall be the sole voting member of the Association until such time as Gerald D. Grubb, Inc. and/or its successors and assigns as Declarant, no longer owns any Lots, or until Gerald D.**

**Grubb, Inc. and/or its successors and assigns as Declarant waives this right to be the sole voting member, whichever first occurs.**

Section 3. Board of Directors. The Members shall elect a Board of Directors of the Association as prescribed by the Association's By-laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

Section 5. Notice of Member's Meetings. Unless the Articles of Incorporation or the Bylaws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary, or the officer or persons calling the meetings, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at Member's address as it appears on the records of the Association, with postage thereon prepaid.

#### ARTICLE IV

##### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot (excluding Declarant), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges, and (2) special assessments for capital improvements and operating deficits; 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 property 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 property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 2. 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 Property and for the improvement and maintenance of the Common Area and the Living Units situated on the Property and for other purposes specifically provided herein.

Section 3. Monthly Assessment. The Board of Directors shall fix the monthly assessment. A portion of such monthly assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Association Responsibility Elements.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any extraordinary snow removal, any construction, reconstruction, repair or replacement of a capital improvement, 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 consent of a majority of the votes of all Members who are voting in person or by proxy at a meeting duly called for this purpose, with regard to class designation. If for any reason Declarant loans money to the Association to assist in the payment of the foregoing items, such loan or loans shall be repaid in accordance with such terms and conditions as required by Declarant at the time such loan or loans are extended, but in any event shall be repaid in full no later than six months after the

last Living Unit is sold. In such an event, and without the need for a vote of Members, the Association shall levy a special assessment against all Lots in order to pay all sums due Declarant.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than 5 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 votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments, Due Dates. The monthly assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to an Owner of an interest in a Lot with a completed Living Unit constructed thereon and for which a certificate of occupancy has been issued. **Lots and Living Units owned by the Declarant which have not been conveyed or leased to a third party shall be exempt from the assessments.** The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of monthly assessments. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. 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.

Section 8. Assessments for Insurance. The premiums for all insurance policies carried by the Association shall be paid by the Association and the pro rata cost thereof shall be incorporated in the monthly assessments to which each Lot conveyed by Declarant shall be subject under the terms and provisions of this Article IV; provided, however, that the Association may require each Owner to pay to the Association at the time the Owner's Lot is conveyed to such Owner an additional assessment equal to thirteen (13) monthly insurance assessments. The Association may hold such additional insurance assessment funds in escrow for the purchase of insurance as herein provided or may use such funds to prepay the premiums of the required insurance.

Section 9. 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 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the costs 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 the Owner's Lot.

Section 10. 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.

#### ARTICLE V

##### DECLARANT'S RIGHTS

Section 1. As long as Declarant or its successors or assigns owns any portion of the Property, Declarant reserves the right to use any of the Lots or Living Units owned by Declarant as models and to sell, lease, assign or conduct other businesses in connection with the construction and development of the project from any of such Lots or Living Units 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, lease Living Units and to show Living Units then unsold. Declarant retains the right to be considered an Owner of any Lot or Living Unit that remains unsold.

Declarant also reserves the right to make changes in the location or manner of construction of Buildings and other improvements on Lots owned by Declarant.

Section 2. As long as Declarant or its successors or assigns owns any portion of the Property, Declarant reserves the right to use any of the Lots owned by Declarant as models and is hereby vested with the sole control over all Common Area landscaping, plantings and the like. Declarant shall have the right to change the plantings and other landscaping elements within the Common Areas from time to time in its sole discretion. Declarant, in its sole discretion, and without liability or responsibility to do so, shall decide whether or not dead or dying trees, bushes or other plantings should be replaced.

Section 3. As long as Declarant or its successors or assigns owns any portion of the Properties, Declarant reserves the right to convey or cause the Association to convey a portion of the Common Area if necessary due to encroachments thereon by any Building.

Section 4. Declarant reserves the right to assign all of its rights and obligations as Declarant hereunder to any other person or entity.

#### ARTICLE VI

##### MAINTENANCE

Section 1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at his own expense, all maintenance and repairs of any improvements or upgrades located thereon, except for the Association Responsibility Elements, but including decorating and replacements within his Living Unit, including the heating and air conditioning units and any partitions and interior walls.

Section 2. Maintenance Obligations of Association. In addition to maintenance of the Common Areas and any improvements located thereon, the Association shall provide all maintenance, repair and replacement of the Association Responsibility Elements.

Section 3. Maintenance Obligations of Declarant. Declarant shall maintain and repair for a period of one (1) year from the date it conveys title to the first Living Unit sold within a Building, the exterior portion of each Building. Thereafter, such responsibility shall belong to the Association.

Section 4. Responsibility for Willful or Negligent Acts. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, the Owner's 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 the Owner's Lot is subject.

Section 4. Snow Removal. Unless and until otherwise determined by the Board of Directors of the Association, the Association shall be responsible for snow removal from all Lots and from the sidewalk and driveway servicing each Living Unit, including any portions of the driveways within the Common Area serving the Living Units.

#### ARTICLE VII

#### INSURANCE

Section 1. Insurance. The Association shall purchase a master casualty insurance policy or policies affording the Association extended coverage insurance insuring the Association Responsibility Elements in an amount consistent with the full replacement value of the Association Responsibility Elements. If the Association can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Association, it may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the monthly assessment for each Lot on a pro rata basis. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first mortgagee of each Lot.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insured (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, Owners, the respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, that the insured shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted.

Section 2. Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy any Lot.

The Association shall also obtain any other insurance required by law to be maintained, including but not limited to, workers' compensation insurance, and such other insurance as the Board of Directors shall from time to time be deemed necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association.

Section 3. Other Matters. Each Owner shall be deemed to have delegated to the Board of Directors the Owner's right to adjust with the insurance companies all losses under policies purchased by the Association. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein

or termination thereof shall be furnished to each Owner or first mortgagee whose interest may be affected thereby.

Section 4. Distribution to Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and the Owner's mortgagee jointly.

Section 5. Additional Insurance. Each Owner shall be solely responsible for and may obtain such additional homeowner's liability insurance and casualty insurance as the Owner deems necessary or desirable at the Owner's own expense affording coverage upon the Owner's property which is not part of the Association Responsibility Elements, and which is for the Owner's personal liability. All such insurance shall contain the same provisions for waiver or subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association to insure the Association Responsibility Elements in the name of the Association. Owners' casualty insurance policies shall provide that they shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable by the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

Section 6. Casualty and Restoration. Damage to or destruction of any Association Responsibility Element due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose.

Section 7. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the

damage and repairing or reconstructing the Association Responsibility Elements so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a special assessment against all Lots for such deficiency.

For the purposes of Section 6 above, repair, reconstruction and restoration shall mean construction or rebuilding of any Association Responsibility Element to as near as possible the same condition as it existed immediately prior to the damage or destruction with the same or similar type of architecture.

Section 8. Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property, or, in the discretion of the Board of Directors, may be distributed to the Owners of the Building affected and their mortgagees who are the beneficial Owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

#### ARTICLE VIII

##### EASEMENTS AND ENCROACHMENTS

Section 1. General Easements. Each Lot shall be subject to the following easements in favor of the Association and the other Owners:

- (a) Every portion of a structure upon a Lot which contributes to the support of any structure not on the same Lot is burdened with an easement of such support.
- (b) Each Lot is burdened with an easement through the 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 Lots, including the location of utility meters on one Lot for the service to other Lots.

(c) Each Lot is burdened with an easement of ingress and egress for maintenance, repair and replacement of Association Responsibility Elements by the Association.

(d) Each Lot is burdened with an easement for common driveway usage with other designated Lots, if and only if a shared or common driveway is constructed serving more than one Lot.

(e) Each Lot is burdened with an easement for surface drainage for the benefit of all other Lots and the Common Area.

(f) Each Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.

(g) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.

(h) Each Lot is burdened with an easement through the Lot but outside of any structure thereon for purposes of reasonable ingress and egress by other Lot Owners to the front and rear of the other Owner's Lot.

(i) Each Lot is burdened with any and all recorded easements including any easements reserved or dedicated on the recorded plat.

Section 2. Drainage, Utility and Sewer Easements. As noted on the Plat, there are reserved certain areas of the Lots and Common Area for Drainage, Public Utility and Sewer Easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electrical, telephone, water, gas, sewer and other utility services, (including all lines, pipes, wires, cables, ducts, etc.,) to the Living Units constructed on the various Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such utility easements and any fences so installed shall be and are

expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant, as long as Declarant owns any portion of the Property, and the right of the Association to provide for and maintain appropriate drainage. Regardless of whether shown on the recorded plat, each Lot shall accept surface water drainage from adjacent properties, whether or not located within the Property and each Lot shall have the right to drain its surface water to the adjacent Lots located within the Property.

Section 3. Additional Easement Rights. As long as Declarant owns any portion of the Property, 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 Lot or Lots or any portion of Common Area. Declarant further reserves the right, as long as Declarant owns any portion of the Property, 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 any Owner of any Lot shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section 3 shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section 3 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 Property.

Section 4. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Common Areas and any pedestrian walkways or sidewalks.

Section 5. Easement for Signs. Declarant reserves unto itself for so long as it owns any Lot or Living Unit, the right and easement to erect and maintain such entryway, identification and "For Sale" and/or "For Lease" sign or signs within the Property as Declarant deems reasonably necessary.

Section 6. Encroachment. If, by reason of the location, construction, settling or shifting of a Building, any part of a Building consisting of single-family residence appurtenant to a Lot (hereinafter in this Article VIII referred to as the "Encroaching Unit") encroaches upon any minor portion of any other adjacent 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 Lot upon which said unit encroaches, shall deed to the owner of the Encroaching Unit that portion of the 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.

Section 7. Driveways and Access. An easement is hereby reserved and granted to each Lot for driveway and access purposes over the Common Area wherein the private common driveways and the driveway serving such Lot is located. This easement shall extend from the Lot to the dedicated public street. Further, an easement is hereby reserved and granted for the use of all Lots served by one common driveway. To the extent that a driveway or a portion of a driveway serving a Lot is located partially or wholly on another Lot or Lots, the Lot Owners served by such driveway shall have the benefit of an easement over that portion of the other Lot or Lots covered by the driveway. This driveway easement

shall be for ingress and egress purposes and no Lot Owner shall park or allowed to be parked any vehicle or other obstruction within the driveway area, so as to prevent access to the other Lot or Lots which such driveway serves. Further, there is hereby reserved and granted an easement for the benefit of each Lot served by a sidewalk and pedestrian walkway located partially or wholly on the Common Area or another Lot or Lots. This latter easement is for the purpose of allowing pedestrian access from the public street to the Lot served by such sidewalk or pedestrian walkway. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walkway which would impair the use or access by the Lot Owner which such sidewalk or pedestrian walkway serves.

ARTICLE IX

PARKING RIGHTS

Subject to the provisions of Article VIII, Section 7 above, the paved driveway in front of each Owner's garage shall be for the exclusive benefit of such Owner and the Owner's guests. No one shall use these parking spaces for parking or storing of boats, snowmobiles, trailers, camping vehicles, or other recreational vehicles, or for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickup and deliveries to neighboring Lots. No bicycles, toys or other private property shall be allowed to obstruct any driveway, nor shall the same be stored in the open, alongside building walls or other locations of public view. No vehicles shall be parked so as to impede access from or to any Lot or public street. No vehicles shall be parked so as to obstruct the garages or driveways of other Owners. Any vehicle improperly parked will be towed away at its Owner's expense, without prior notice to the Owner. No fence, barrier or other obstruction of any kind shall ever be placed or constructed so as to impede access from or to any Lot or public street. The Association shall have the right to adopt rules and regulations concerning parking on the private street located in the Common Area, including rules prohibiting all parking on such private street.

ARTICLE X

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Living Units upon the Property and placed on the dividing lines between the Living Units 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.

Section 2. Sharing of Repair and Maintenance. 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.

Section 3. Destruction by Fire or Other Casualty: 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.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by the Owner's 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.

Section 5. Right of Contribution Runs With Land. 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.

ARTICLE XI

ARCHITECTURAL CONTROL

No building, fence, wall or other structure, except as originally constructed by or on behalf of Declarant, shall be commenced, erected, altered or maintained upon the Property, nor shall any exterior

addition to, or change or alteration therein, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors, or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. This Article shall not apply to any construction, improvements or alterations made by Declarant, including the construction of fences on the Common Area.

## ARTICLE XII

### SIGNS AND HOME OCCUPATIONS

Section 1. Signs. So long as Declarant is a Member of the Association, no advertising signs of any kind including sale or "for sale" signs or rental or "for rent" signs (other than interior window signs) shall be displayed on any Lot without the prior written approval of Declarant. Further, no signs of any nature, kind or description shall be erected, placed or maintained on any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation. Nothing in this Article shall affect the rights of Declarant provided in Article VIII, Section 5.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot, provided the same is permitted under the ordinances of the City of Des Moines. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots or single-family dwellings as a part of the development of the Property.

ARTICLE XIII

USE RESTRICTIONS

Section 1. Subjection of the Property of Certain Provisions. The ownership, use, occupation and enjoyment of each Lot and the Common Area shall be subject to the provisions of the By-Laws and Articles of Incorporation of the Association, and 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.

Section 2. No Lot shall be used for any purpose other than for single-family residential purposes, except for rights of Declarant as provided herein including the right to construct the Buildings and sell the same.

Section 3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that Owners or their tenants shall be permitted to have no more than one (1) dog and one (1) cat per Living Unit, or two (2) cats per Living Unit, provided that no animal shall weigh more than 25 pounds at full growth, and further provided that they are not kept, bred or maintained for any commercial purposes. "Pit Bull" dogs are strictly prohibited from being kept, bred, or maintained on any Lot. Any person owning or keeping a pet dog or cat shall (i) be responsible for caring for his or her pet(s) in such a manner as to keep them from becoming a nuisance to other persons; (ii) keep the pet(s) leashed at all times when they are outside the person's Living Unit, and (iii) be responsible for and shall at all times clean up any waste or excrement from such pet(s) on the Common Areas or another Owner's Lot. Failure to do so in a prompt or responsible manner shall result in a fine or special assessment by the Association against such Living Unit in an amount sufficient to pay for such action including costs with a minimum of \$50.00.

Section 4. No noxious or offensive activities not involving the maintenance of Lots or Common Area shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood; nor shall any Lot be used for any unlawful purpose. No Owner shall 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.

Section 5. The Owner of each Lot shall keep the same free of weeds and debris.

Section 6. 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.

Section 7. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any Lot or the Common Area at any time as a residence, either temporarily or permanently.

Section 8. No tower, satellite dish or other television or radio antennae device shall be placed upon any Lot or shall be attached to the structure of or placed upon the roof of any Living Unit, except that satellite dishes no larger than twenty inches (20") in diameter may be placed upon a Lot providing it does not impede or infringe upon the view, use or enjoyment of any other Lot.

Section 9. No personal property shall be stored or left upon a Lot except within the residential structure or garage located upon the Lot, except that outdoor cooking equipment and appropriate deck and patio furniture may be stored on the deck or patio of the Living Unit. Garage doors shall be kept closed except during times of access to the garage.

Section 10. Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors, which may be given through regulations of the Association.

Section 11. No boat, snowmobile, recreational vehicle, trailer or other vehicle other than automobiles, shall be stored or parked in any driveway or street. The Association may, by regulation or rule, limit or prohibit the parking of automobiles on any driveway. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreational vehicle, trailer or other vehicle and the cost shall be assessed against the Owner and the Owner's Lot.

Section 12. No activity shall be allowed which unduly interferes with the peaceful possession and use of the Property by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

Section 13. The storage or collection of rubbish of any character whatsoever or of any material that emits fowl or obnoxious odors and the growing of any noxious weed or other noxious substance is prohibited.

Section 14. Owners shall be individually responsible for utility charges which they incur for water and sewer services, in the same manner as persons occupying single-family, detached houses.

Section 15. No fence shall be allowed to be constructed on any Lot unless prior written approval from the Board of Directors has been granted. Any such fence so approved by the Association shall be limited to privacy or decorative fences located around the decks or patios of the Living Units.

Section 16. Nothing shall be done or kept in any Lot or in the Common Area which will increase the rate of insurance on the Common Area or the Association Responsibility Elements, without the proper written consent of the Board of Directors. No Owner shall permit anything to be done or kept in the Owner's Lot or in the Common Area which will result in the cancellation of insurance on any Lot or any part of the Common Area or the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.

Section 17. 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.

Section 18. The Board of Directors shall have the authority to adopt rules and regulations governing the use of Lots, the Common Area and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns and licensees.

Section 19. Agents of or contractors hired by the Board of Directors may enter any Lot when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable.

Section 20. Neither the Owners nor the Association nor the use of the Common Area shall interfere with the completion of the contemplated improvements and the sale of the Lots by the Declarant. The Declarant may make such use of the unsold Lots and the Common Area as may facilitate such completion and sale, including, but not limited to, the maintenance of a sales office, model home, the showing of the Property and the display of signs.

Section 21. No Waiver. Failure of the Association or any Owner to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or By-Laws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

ARTICLE XIV

GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. 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 fifty-one percent (51%) of the Owners with voting rights, including lots owned by Declarant; 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 Property, 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 or modify any of the provisions of this Declaration. 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 Property or any portion thereof which have requested notice of any proposed amendments.

Section 3. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-one (21) years from the date of recordation in the Office of the Recorder of Polk County, Iowa, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in

part as hereinabove provided. Invalidation of the covenants, conditions and restrictions of this 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.

Section 4. 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 By-Laws or any other applicable documents which default has not been cured within sixty (60) days.

IN WITNESS WHEREOF, Gerald D. Grubb, Inc. has caused this Declaration to be executed this 16 day of Oct, 2002.

DECLARANT:

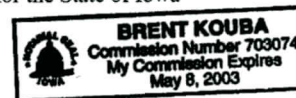
GERALD D. GRUBB, INC.

By Gerald D. Grubb  
Gerald D. Grubb, President

STATE OF IOWA            )  
                                  ) ss:  
COUNTY OF POLK        )

On this 16 day of October, 2002, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Gerald D. Grubb, 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 no seal has been procured by the corporation; that said instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Gerald D. Grubb as such officer acknowledged the executive of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.

Brent Kouba  
Notary Public in and for the State of Iowa



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