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NAOMI ELLIS, RECORDER
MARION COUNTY IOWA

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
(Recorder's Cover Sheet)**

Preparer Information:

Ryan L. Haaland
1601 Golden Aspen Drive
Suite 108
Ames, Iowa 50010
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Taxpayer Information:

The Courtyards Land Holding, LLC
1615 SW MAIN ST SUITE 207
Ankeny, Iowa 50023

Return Document To:

The Courtyards Land Holding, LLC
See Above

Grantor:

Same as Taxpayer Information

Grantee:

N/A

Legal Descriptions: See Exhibit Page 2

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

KNOW ALL PERSONS BY THESE PRESENTS that **THE COURTYARDS LAND HOLDING, LLC** an Iowa limited liability company (“Declarant”), as developer of PRAIRIE RIDGE EPCON in the City of Pella, Marion County, Iowa, desires to establish and place residential covenants, conditions and restrictions and does hereby reserve certain easements, all as hereinafter specifically set forth, on the following described real property:

Lots 1 – 35, Lot 84, and Outlots Y and Z in PRAIRIE RIDGE EPCON PLAT 1, an Pella, Iowa (hereinafter the “Properties”).

NOW, THEREFORE, Declarant hereby declares that the Properties 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 Properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I **DEFINITIONS**

Section 1. “Association” shall mean and refer to Prairie Ridge EPCON Owners Association, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa.

Section 2. “Association Responsibility Elements” shall mean the following:

- (a) The yard surrounding a residential structure upon a Lot, excluding any gardens, plants, flowers, or other landscaping installed by an Owner, which includes any landscaping selected by Owner during and as a part of the construction of their Living Unit.
- (b) Private streets, driveways and pedestrian sidewalks.
- (c) Irrigation system.
- (d) Entrance sign.
- (e) Common Area.
- (f) Ponds (including aerators) and landscaping surrounding said ponds, if any.
- (g) Lot 84.
- (h) All private storm sewer and/or surface water flowage intakes (and structure above the box) and insert paving related to, and serving, the storm sewer pipe within Outlots Y and Z (as defined and referenced herein)

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

Section 4. “Building” shall mean and refer to any structure containing one or more single-family dwelling units that may be constructed on a Lot or on several Lots.

Section 5. “City” shall mean the City of Pella, Iowa.

Section 6. "Common Area" shall mean all real property (including the improvements thereto) owned or controlled by the Association for the common use and enjoyment of the Owners. The Common Area to presently owned by the Association is described as:

Lot 84 and Outlots Y and Z in PRAIRIE RIDGE EPCON PLAT 1, Pella, Iowa; together with the improvements located thereon including, but not limited to, drives, streets, landscaping, detention areas, project and street signs and sprinkler system.

Section 7. "Common Elements" shall mean all common water lines, sewers, gas lines, electric lines and other utility service facilities located within the Properties that serve more than one Living Unit.

Section 8. "Declarant" shall mean and refer to The Courtyards Land Holding, LLC, its successors and assigns.

Section 9. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject.

Section 10. "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 interests.

Section 11. "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 12. "Lot" shall mean and refer to any of the lots in Lots 1-35 in PRAIRIE RIDGE EPCON PLAT 1, Pella, Iowa as shown on the Official Plat thereof, any Lots created by the division of such Lots, and any additional lots within Prairie Ridge EPCON subdivision which may later be brought within the jurisdiction of the Association and the Declaration, but does not include the Common Areas. The rights and obligations under this Declaration relating to ownership of the lots shall apply equally to each lot regardless of size or design of Living Unit situated thereon.

Section 13. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 14. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, 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.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership and Voting. 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 that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership. Subject to provisions of Section 2 of this Article, the Owners of a Lot 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, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 2. Declarant as Sole Voting Member. Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Association until Declarant no longer owns any portion of any Lot, or until Declarant waives, in writing, its right to be the sole voting member. Declarant shall have the right to elect all Directors and to cast all votes as it deems appropriate. Each Owner, by acceptance of a deed to a Lot shall be deemed to have released Declarant from all claims with respect to actions taken or not taken while Declarant controls the Association.

Section 3. Board of Directors. The voting Members shall elect a Board of Directors of the Association as prescribed by the Bylaws of the Association. 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 hereunder against his/her/its Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

Section 5. Notice of Meetings of Members. 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 his/her address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Duration. No dissolution of the Association shall occur without the prior approval and consent of the City.

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. 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 agree to pay to the Association: (1) monthly assessments or charges, (2) special assessments for capital improvements and operating deficits, (3) special assessments as provided in this Article III, Article V and Article VI; (4) a transfer assessment; and such assessments to be established and collected as hereinafter provided. The monthly, special, and transfer assessments, together with late fees, 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. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the joint and several personal obligation of each person who was the Owner of such property at the time when the assessment became due.

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 Properties and for the insurance, improvement, maintenance, repair, replacement, removal, and demolition of the Association Responsibility Elements, the Common Elements and the Living Units situated on the Properties and for other purposes specifically provided herein.

Section 3. Maximum Monthly Assessment and Transfer Assessment. Until January 1 of the

year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be Three Hundred Ten Dollars and 00/100 (\$310.00) per Lot plus a pro rata portion of the amount of real estate taxes and special assessments payable by the Association. Thereafter, the maximum monthly assessment may be increased effective January 1 of each year at an amount fixed by the Board of Directors.

At the time of the closing on any Lot, a transfer assessment in the amount of \$500.00 shall be paid to the Association by the initial and any subsequent purchaser of any Lot. By including this notice of a transfer assessment in this Declaration all purchasers are put on notice that upon conveyance of title to such purchasers, unless paid to the Association at the closing, a lien for the transfer assessment shall immediately attach to such Lot.

A portion of such monthly and transfer assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair, replacement, removal and demolition of the Common Elements, the Association Responsibility Elements, and any capital improvement that the Association is required to maintain. Notwithstanding the foregoing, Declarant may use any reserve funds, if established, to defray operating costs as it deems appropriate.

A Lot shall not be subject to monthly or special assessments until the first day of the month following the date of occupancy as a residence or date of closing, whichever comes first.

Declarant shall not be liable for monthly, special, or transfer assessments upon lots owned by it. All monthly payments shall be made on the first of each month, or any Owner may pay each assessment in one payment, but not less frequently than monthly.

The Association and Declarant are not required to submit statements for assessments to any Owner.

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 construction, reconstruction, repair, replacement, removal or demolition of a capital improvement that the Association is required to maintain or for operating deficits that the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 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 five (5) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of twenty-five percent (25%) of the Members or proxies entitled to cast votes 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 fifty percent (50%) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Except the assessment levied due to the actions or negligence of an owner pursuant to Article V Section 4, 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 a Lot with a completed Living Unit constructed thereon and for which a certificate of occupancy has been issued. **LOTS OWNED BY THE DECLARANT THAT DO NOT HAVE COMPLETED LIVING UNITS CONSTRUCTED THEREON AND**

COMPLETED UNITS THAT ARE NOT SOLD, LEASED OR OCCUPIED SHALL BE EXEMPT FROM THE ASSESSMENTS DESCRIBED IN THIS ARTICLE III AND THE ASSESSMENTS DESCRIBED IN ARTICLE VI. The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of monthly assessments. The insurance assessment provided for in Article VI 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 Board of 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. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest 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 or foreclosure of its lien, or both, and there shall be added to the amount of said assessment all cost and expenses incurred by the Association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements, Common Area, or abandonment of the Owner's Lot.

Section 9. Subordination of Assessments Liens. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The assessment shall be paid prior to or at the closing of sale or transfer of any Lot. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. The failure of an Owner to pay assessments as provided in this Article III shall not constitute a default under a mortgage insured by the Federal Mortgage Agencies.

ARTICLE IV DECLARANT'S RIGHTS

Declarant reserves the right to use any of the Lots as models and 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 also reserves the right to make changes in the number, location, or manner of construction of buildings and other improvements on the Properties including, without limitation, the substitution of screened-in porches for decks on certain Lots designated by Declarant; provided, that in all cases, such changes shall be accomplished in a manner consistent with applicable laws and ordinances.

ARTICLE V MAINTENANCE

Section 1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for,

at the Owner's own expense, all maintenance and repairs of the Owner's Lot, Living Unit, and all structures, improvements, and equipment located thereon including decorating and replacements within the Owner's Living Unit, the heating and air conditioning systems and all walls appurtenant to the Living Unit, but excluding the Association Responsibility Elements. The Owner shall be responsible for maintenance upon each Lot that is subject to assessment hereunder as follows: paint, repair, replace and care for roofs, gutters, downspouts, decks, exterior building surfaces and other exterior improvements, excluding lawns. The Owner shall also be responsible for the maintenance, repair, and replacement of all windows in the Owner's Living Unit, the doors leading into the Living Unit, all electrical fixtures located on the exterior of the Living Unit, and any and all other maintenance, repair, and replacements of the improvements, including decks, patios and stoops, including snow removal therefrom, shrubs, flowers, trees, plantings, gardens, and other landscaping on the Owner's Lot and installed by the Owner, including any landscaping selected by Owner during and as a part of the construction of their Living Unit, unless otherwise provided herein. The Owner shall also be responsible for the maintenance, repair and replacement of all electrical wiring from the main electrical box to the Owner's Living Unit, notwithstanding the fact that such wiring crosses a Common Element or is located off-premises from the Owner's Lot. The Owner shall be responsible for maintaining exterior light fixtures of the Living Unit, including replacement of the light bulbs, and the Owner shall keep such light fixtures illuminated from dusk to dawn daily.

To the extent that equipment, facilities and fixtures (including fences) within any lot shall be connected to similar equipment, facilities, or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to any equipment, facilities or fixtures affecting or serving other Lots.

Any repair or replacement of an exterior structure, improvement, or equipment (including, without limitation, electrical fixtures) shall match the original item that it repairs or replaces. All exterior structures, improvements, and equipment (including, without limitation, decks and fences) shall be constructed in accordance with local ordinances and building codes.

All maintenance, repair, and replacement of driveways located on the Lots shall be the responsibility of the owner of said Lot, except that the Association shall be responsible for the snow removal on driveways. The Association shall only be responsible for repair or replacement of the driveway if the damage is the willful or negligent act of the Association or its agent.

Section 2. Maintenance of Private Streets and Pedestrian Sidewalks. The Association shall be responsible for the maintenance, including snow removal, repair, and repaving of all private streets and for the maintenance, including snow removal, and repair of any pedestrian walkways or sidewalks, excluding the walkways from the driveway to the front door of any Living Unit and any stoops located at entrances of any Living Unit, constructed or to be constructed within the Properties by Declarant for the benefit of all Owners of Lots. Private streets shall be maintained at all times in such manner as to provide ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street or highway. The specification for replacement and/or repaving of any private streets, walkways, or pedestrian sidewalks shall mirror the pavement standard as set forth and detailed within the site plan approved by the City of Pella, Iowa for the subject property.

Section 3. Maintenance Obligations of Association. In addition to maintenance upon the private streets and pedestrian sidewalks, the Association shall provide all maintenance, repair, replacement, removal and demolition of the Association Responsibility Elements and Common Elements. The Association shall perform all necessary repairs, replacements, and maintenance thereof in a manner similar

to and in accordance with the appearance of the existing landscaping, taking into account determining factors such as availability, age, and reasonableness as regard to the level of maturity and development of the landscaping at the time of the repair, replacement, or maintenance activity. The Association shall not be responsible for or provide any maintenance, repair, replacement, removal, or demolition of any trees, shrubs, flowers, flower beds, flower gardens, vegetable gardens, other plantings, or other elements of landscaping on the Owner's Lot and installed by the Owner, including any landscaping selected by Owner during and as a part of the construction of their Living Unit.

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, 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 Lot is subject.

ARTICLE VI **INSURANCE**

Section 1. Casualty Insurance. The Association shall obtain a master casualty insurance policy or policies affording fire and extended coverage insurance for the Association Responsibility Elements in an amount equal to the full replacement value thereof. The Association may obtain "all risk" coverage for the Association Responsibility Elements. 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. The Association 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 maintenance 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.

The master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provision that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, the Owners and their respective agents and guests, and (b) waives any defense based on invalidity based upon the acts of the insured; and providing further that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by any Owner 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 or organization of the Association or Board of Directors, its agents and employees, the 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, worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem 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 to the Association. 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.

Section 3. 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 mortgagee jointly, or in accordance with the terms of any endorsement in favor of the mortgagee.

Section 4. Additional Insurance. Each Owner shall obtain additional insurance at the Owner's expense, affording coverage upon the Owner's personal property, the contents of the Owner's Living Unit, and all components of the Owner's Living Unit not included in the Association Responsibility Elements (including, but not limited to, the structure of the Owner's Living Unit and all floor, ceiling, and wall coverings and fixtures, betterments and improvements) in an amount equal to the full replacement value therefor. Such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner shall obtain comprehensive public casualty insurance, at the Owner's expense, affording coverage upon the Owner's Lot with a combined single limit of not less than \$500,000 per occurrence. Such insurance shall provide that it 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 on 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 5. Casualty and Restoration. Damage to or destruction of any building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed. The repair or reconstruction shall be done by the Association, if it is a building included in the Association Responsibility Elements, and the proceeds of insurance, if any, shall be applied for that purpose. The repair or reconstruction shall be done by the Association, as to the Association Responsibility Elements, and the Owner, if the building is a Living Unit, and the proceeds of insurance, if any, shall be applied for that purpose. If for any reason the Association chooses not to repair or reconstruct the Association Responsibility Elements of any Building damaged or destroyed by fire or other casualty, the Owner(s) of the affected Lots shall have the right, but not the obligation, to perform such repair or reconstruction and to collect the cost thereof from the Association.

Section 6. 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 and reconstructing the Common Area or any Building or Buildings 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 the amount of such deficiency.

For the purposes of Section 5 above, repair, reconstruction and restoration shall mean construction or rebuilding of any Building or Buildings to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

Section 7. 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 Properties, 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 damages shall not constitute a waiver of any rights against Owner for committing willful or malicious damage.

ARTICLE VII **EASEMENTS**

Section 1. Easements. As noted on the recorded Plat of the Properties, Declarant has reserved

certain areas of the Lots for public and private easements. In doing so, it is the intention of Declarant to provide the needed flexibility, 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 service (including all lines, pipes, wires, cables, ducts, etc.) to the Living Units constructed on the Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such easements and any fences installed shall be 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 and 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 Properties and each Lot shall have the right to drain its surface water to the adjacent Lots located within the Properties.

Section 2. Additional Easement Rights. Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement right, title, and authority to relocate, alter or otherwise change the location of any 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 the 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 2 shall run with the land and Declarant's right to further alter or grant easements shall automatically transfer to the Association when Declarant shall have conveyed the last Lot within the Properties.

Section 3. Easement for Access and Maintenance. The Association, its agents, and contractors and each Owner shall have an easement and license to, in and over each Lot for the purpose of performing its maintenance obligations and for access to the rear of the Lot owned by such Owner.

Section 4. Easement for Water Usage. The Association, its agents, and contractors shall have an easement and license to use hoses, bibs, and water from all Lots for the purpose of performing its maintenance obligations.

Section 5. 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 all Lots and any pedestrian walkways or sidewalks.

Section 6. Easement for Signs. Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to the Owners by and through the Association, the right and easement to erect and maintain an entryway sign or signs.

Section 7. Driveways and Entrances. An easement is hereby reserved and granted for the use of all Lots served by one driveway over such driveway. To the extent that a driveway serving a Living Unit is located partially or wholly on another Lot or Lots, the Owner of the Living Unit served by such driveway shall have the benefit of any 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 Owner shall park or allow to be parked any vehicular or other obstruction within the driveway area so as to prevent access to the Living Units that 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 another Lot or Lots. In the event Living Units are served by a shared front entry stoop and to the extent of such shared stoops a reciprocal easement is granted for the benefit of each served by such shared entry stoop. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walk or shared entry stoop which would impair use and access to the Living Unit which such sidewalk or entry stoop serves.

Section 8. 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, heating and air conditioning systems and similar services to other lots, including the location of utility meters and equipment on one lot for 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 or Common Elements by the Association.
- (d) Each Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.
- (d) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.

Section 9. Landscaping and Fence Easements. Permanent and perpetual landscaping easements are granted to all of the Lots which have a patio between their townhome (each, the "Landscaping Dominant Estate") and the townhome on the adjacent Lot, expanding their patio area from the edge of the paved patio on the Dominant Estate to three feet from the foundation of the townhome on the adjacent Lot (each, the "Landscaping Servient Estate"), in a width that is equal to the width of the paved area of the patio on the Dominant Estate (the "Landscaping Easement Area"). The owner of the Lot on the Dominant Estate may landscape the Landscaping Easement Area or leave it as grass. If the owner of the Lot on the Landscaping Dominant Estate chooses to landscape the Landscaping Easement Area, said landscaping will be subject to the following restrictions, responsibilities, and covenants:

- (a) Landscaping Materials. Plantings in Landscaping Easement Area shall be limited to flowers and shrubs that do not exceed 3 feet in height. The owner of the Landscaping Dominant Estate may put mulch, rock, or similar landscaping materials up to the foundation of the townhome on the Landscaping Servient Estate, but may not put any plantings within 3 feet of said foundation, without prior written consent from the then owner of the Landscaping Servient Estate, which can be rescinded by the owner of the Landscaping Servient Estate at any time. No building, play structures, or other structures of any kind shall be placed within the Landscaping Easement Area without prior written consent of the then owners of the Servient Estate, which also may be rescinded by the owner of the Landscaping Servient Estate at any time.
- (b) Change in Grade Prohibited. The owner of the Landscaping Dominant Estate shall keep and maintain the grading and elevations of Landscaping Easement Area, including drainage away from foundations of the townhome on the Landscaping Servient Estate. The owner of the Landscaping Dominant Estate shall not change the grade, elevation, or contour of any part of the Landscaping Servient Estate in any manner which could reasonably be expected to obstruct or impede the normal flow of surface water over the Landscaping Servient Estate or lead to water intruding on foundations of the townhome on

the Landscaping Servient Estate.

- (c) Maintenance of the Landscaping. If the owner of the Landscaping Dominant Estate chooses to landscape the Landscaping Easement Area, the owner of the Landscaping Dominant Estate shall, at its sole cost and expense, keep, and preserve the landscaping in the Landscaping Easement Area in good condition at all times, including keeping it free and clear of brush, trash, debris, weeds, undergrowth, objects, dirt fill, or other obstructions which might reasonably be expected to impair Landscaping Servient Estate's property value, or aesthetic.

Permanent and perpetual fence easements are granted to all of the Lots which have a patio between their townhome (each, the "Fence Dominant Estate") and the townhome on the adjacent Lot (each, the "Fence Servient Estate"), with said easements being bordered on the two sides by extensions of the side wall nearest the courtyard of the Fence Dominant Estate and Fence Servient Estate's adjacent side wall, on the front by a line parallel with and an extension of the rear wall of the Fence Dominant Estate's Living Unit extending up to the side wall of the Fence Servient Estate's Living Unit, or an extension thereof, and on the rear by the rear property lines of the Fence Dominant Estate and Fence Servient Estate between the side lines described above (the "Fence Easement Area"). The owner of the Lot on the Fence Dominant Estate may construct a fence in the Fence Easement Area to maximize the size of their backyard. However, no fence shall be built upon any lot, regardless of whether the Fence Easement Area is used, without prior approval of the Association. The construction of a fence in the Fence Easement Area shall also be subject to the approval of the City, if required. If the owner of the Lot on the Fence Dominant Estate chooses and receives the appropriate approvals to build a fence on the Fence Easement Area, said fence will be subject to the following restrictions, responsibilities, and covenants:

- (i) Use of Fence Easement Area. The owner of the Fence Dominant Estate shall have exclusive access rights to the Fence Easement Area, subject to any access easements in favor of the Association and any easement grants of record.
- (ii) Fence Location and Materials. The fence shall be located on the boundary of the Fence Easement Area so as to maximize the backyard area of the Lot on the Fence Dominant Estate. The fence shall be constructed only of materials approved by the Association.
- (iii) Structures in the Fence Easement Area. The owner of the Fence Dominant Estate shall not place any permanent or temporary structures in the Fence Easement Area without the prior approval of the Association.
- (iv) Change in Grade Prohibited. The owners of the Fence Dominant Estate shall keep and maintain the grading and elevations of Fence Easement Area, including drainage away from foundations of the townhome on the Fence Servient Estate. The owners of the Fence Dominant Estate shall not change the grade, elevation or contour of any part of the Fence Servient Estate in any manner which could reasonably be expected to obstruct or impede the normal flow of surface water over the Fence Servient Estate or lead to water intruding on foundations of the Living Unit on the Fence Servient Estate.
- (v) Maintenance of the Fence. If the owner of the Fence Dominant Estate chooses to erect a fence in the Fence Easement Area, the owner of the Fence Dominant Estate shall, at its sole cost and expense, keep and preserve the fence in good condition at all times and shall keep the Fence Easement Area free and clear of brush, trash, debris, weeds, undergrowth, objects, dirt fill, or other obstructions which might reasonably be expected to impair Fence Servient Estate's property value, or aesthetic.

The following shall apply to both the fence and landscaping easements:

- (1) Failure to Maintain. In the event the Association or owner of a Servient Estate reasonably determines that the then owner of the Dominant Estate adjacent to it is insufficiently maintaining all or a portion of an easement area on which the owner of the Dominant Estate has chosen to landscape or erect a fence in any manner which could reasonably be expected to impair the Servient Estate's property value or aesthetic, the Association or owner of the Servient Estate shall notify the owner of the Dominant Estate and the Association, in writing, of such deficiency. If the owner of the Dominant Estate fails to remedy such deficiency within thirty (30) days from receipt of the notice, then the Association may take any steps reasonably necessary, in the reasonable opinion of the Association, to bring the landscaping and/or fence in the easement area on the Servient Estate into compliance with the maintenance obligations set forth herein, including paying the costs thereof. The Association shall bill the owner of the Dominant Estate for the actual costs of said work to bring the easement area into compliance with such maintenance obligations, and the same shall be due within fifteen (15) days of the date of such invoice. Such reimbursement obligation shall be treated as any other assessment that the owner of the Dominant Estate owes to the Association.
- (2) Right of Access. The owner of the Dominant Estate shall have the right of access to the Servient Estate and have all rights of ingress and egress reasonably necessary for the use and benefit of the easements as herein described, including, but not limited to, the right to improve, repair and maintain this easement in whatever manner necessary and consistent with its purpose.
- (3) Private Easement. Nothing in this provision shall be deemed to be a dedication of any area for public use. All rights, easements and interests herein created are private and do not constitute a grant for public use or benefit.
- (4) Amendment. No amendment or modification shall be binding unless made by the written consent and mutual agreement of all the record owners of the real estate herein and the Association. Any such amendment or modification shall be effective when duly recorded in the records of the County Recorder.
- (5) Easement Benefit. This provision shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors, and assigns. It is the intention of the parties hereto that all of the various rights, obligations, restrictions, and easements created in this provision shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming under them.
- (6) Duration. The duration of the easements granted herein shall be perpetual.

ARTICLE VIII
PARKING RIGHTS

Section 1. Use of Parking Spaces, Guest Parking and Parking on Private Streets. Subject to the provisions of Article VII, Section 7, above, the paved driveway in front of each Owner's garage shall be for the exclusive use of such Owner and the Owner's guests. However, no one, including the Owner and the Owner's guests, shall use these parking spaces, the designated guest parking or the private streets located within the Properties, for the parking or storage of any watercraft, snowmobiles, commercial

vehicles, trailers, camping vehicles or other recreational vehicles. Automobiles of the Owner and the Owner's guests may be parked in the paved driveway in front of the Owner's garage, or in the designated guest parking for a maximum of seven (7) consecutive days for a total of fourteen (14) days per year. To park an automobile in such areas for a period of time longer than seven (7) consecutive days, for a total of fourteen (14) days per year, the Owner must notify the Association. In the event of a violation of this provision, the Association may, after reasonable notice, remove any such snowmobiles, watercrafts, commercial vehicles, trailers, recreational or camping vehicles or any other vehicle, at Owner's expense.

Section 2. Storage and Access. Bicycles, toys, or other personal property shall not be allowed to obstruct any driveway, nor shall the same be stored alongside building walls or in any other location open to public view. No vehicles shall be parked so as to impede access from or to any Lot or public street. No fence, barrier, or other obstruction of any kind shall be placed or constructed so as to impede access from or to any Lot or public street.

Section 3. Temporary Parking. Notwithstanding the foregoing, the temporary or incidental parking of trucks or other commercial vehicles shall be allowed for the making of pickup and deliveries to neighboring Lots. In addition, during construction of the Living Units, Declarant may use the driveways, sidewalks, public streets, and similar areas within the Properties, as it deems appropriate.

ARTICLE IX **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 Properties, nor shall any exterior addition to or change or alteration thereof be made (including screen door, satellite dishes and similar fixtures) 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 building (including the exterior items for which the Owner is responsible for maintenance pursuant to Article V, Section I, hereof) shall be deemed a change thereto and shall require the approval therefor as above provided.

ARTICLE X **SIGNS AND HOME OCCUPATIONS**

Section 1. Signs. No signs of any kind including but not limited to rental signs (other than interior window signs) and further including signs of any nature, kind, or description that identify, advertise, or in any way describe the existence or conduct of a home occupation, shall be displayed on any Lot without the prior written approval of the Board of Directors; provided, however, that an Owner shall be entitled to display one (1) "for sale" sign of standard and customary size and materials in connection with attempts by the Owner to market a Lot. Nothing in this Article shall affect the rights of Declarant provided in Article IV.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incident 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. No child-care service or activity shall be regularly conducted on any Lot, except for incidental childcare activities for the sole benefit of the Owner of a Lot. 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 Properties.

Section 3. Restriction on Rental. In order to protect the integrity of this subdivision and to ensure that those persons residing therein have similar proprietary interests in their Lots and Living Units, no Lot or the Living Unit located thereon shall be leased or rented for a period of time of less than one (1) year and no lease or rental agreement to any such tenants or lessee shall be extended or renewed for a period of time longer than two (2) years. No Owner shall lease his/her Living Unit more than one (1) time during his/her ownership thereof. All leases must be approved by the Board of Directors prior to the commencement of the lease.

ARTICLE XI
ENCROACHMENTS AND EASEMENTS FOR BUILDINGS

Section 1. Encroachment. If, by reason of the location, construction, settling, or shifting of a building, any part of a Building consisting of a Living Unit appurtenant to a Lot (hereinafter in this Article XII 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, for the period during which the encroachment exists.

Section 2. Easements. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in or on any other Lot or Living Unit and serving such Owner's Lot.

ARTICLE XII
ADDITIONAL RESTRICTIONS

Section 1. No Lot shall be used except for residential purposes, as defined in the Pella Zoning Ordinance, except for rights of Declarant as provided in Article IV. No buildings, structures, or sheds shall be erected on any Lot other than the Living Units or replacements thereof. No Lot shall be subdivided in any manner.

Section 2. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that no more than a total of two (2) dogs; or one (1) dog and one (1) cat; or two (2) cats, for a combined weight of not more than 140 pounds total at full growth, may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. No dogs or cats shall be permitted outside of the Living Unit unless leashed and attended by the Owner. No dog runs, doghouses, or unattended chains shall be permitted. The Owner shall be responsible for prompt removal and disposal of all waste from their dogs or cats. The Association may, by rules and regulations, prohibit or further limit the raising, breeding, or keeping of any pet on any Lot.

Section 3. No noxious or offensive activities not involving the maintenance of Lots shall be carried on upon any Lot nor shall anything be done thereon that may be or may become 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 that disturbs the peace, comfort and quiet enjoyment of other Owners or those claiming under or through other Owners.

Section 4. The Owner of each Lot shall keep the same free of brush, trash, debris, weeds, leaves, undergrowth, objects, dirt fill, or other obstructions.

Section 5. No trash receptacles and garbage cans shall be permitted to be placed outside of a Building or a structure on any 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 by any private removal service, on trash pickup days only and not more than twenty-four (24) hours in advance of pickup. The Owners, individually or collectively, shall contract with only one (1) private removal service for trash removal.

Section 6. No temporary structure, trailer, basement, tent, shack, garage, barn, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 7. No exterior transmission tower, antenna or television transmission dish of any kind shall be constructed, installed, modified, or permitted on the ground, on Buildings, on Living Units, on Common Areas or on garages without written consent from the Board of Directors. Owner must submit a request to install said services in writing to the Board of Directors prior to such installation. Requests should include type, size and location of the tower, antenna, dish or other device the owner seeks permission to construct, install, modify or attach. Notwithstanding the foregoing, an exterior tower, antenna or receiver dish which is twenty-four (24) inches or less in diameter shall be permitted on the back on-half of Owner's Building, porch or deck. Owner must submit notification to the Board of Directors in writing of Owner's intent to install said services. No more than one (1) such exterior tower, antenna or receiver dish shall be permitted on each Lot. No more than one (1) penetration in the dwelling shall be permitted for the cable from such exterior tower, antenna or receiver dish. The Association shall collect a fully refundable deposit, to be determined by the Board of Directors from time to time, from the Owner upon installation of the tower, antenna or receiver dish for purposes of repairing any damage caused to the Building, Living Unit, porch or deck by the installation or removal of such tower, antenna or receiver dish.

Section 8. No basketball goal (whether attached to the exterior of a Living Unit or affixed to a free-standing pole), soccer goal, baseball backstop or other similar sporting equipment shall be constructed upon any Lot.

Section 9. All unattached sporting equipment, toys, outdoor cooking equipment, and other equipment and supplies necessary or convenient to residential living shall be stored on the patio or deck of the Living Unit. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weed or other noxious substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort and serenity of Owners is prohibited.

Section 10. The Owners shall be individually responsible for utility charges which they incur for water, trash removal (if contracted for or provided by the City), and sewer services in the same manner as persons occupying single-family detached houses.

Section 11. No fence shall be allowed to be constructed on any Lot without prior written approval from the Association and shall be subject to the provisions of Article VII Section 9.

Section 12. No personal property shall be stored or left upon a Lot except within the residential structure or garage located upon the Lot. Garage doors shall be kept closed except during times of access to the garage.

Section 13. Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors.

Section 14. No activity shall be allowed which unduly interferes with the peaceful possession and use of the Properties by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

Section 15. 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 prior 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 16. 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 that require maintenance, modification or repair of the property shall be the same as the responsibility for the maintenance and repair of the property concerned.

Section 17. 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. Such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns, and licensees.

Section 18. Agents or contractors of 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 19. 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 20. Failure of the Association or any Owner to enforce any covenant, condition or restriction of 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 the right to enforce the same thereafter.

Section 21. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

ARTICLE XIII **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 Association, the Owners and all parties claiming under them, and the City (if it so elects by approval of its City Council) shall have the right to enforce 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 by an instrument recorded in the Office of the Recorder of Marion County, Iowa, signed or approved by at least two-thirds of the then Owners; 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. Notwithstanding the foregoing, this Declaration may be amended by Declarant without approval by the other Owners so long as Declarant has any ownership interest in any Lot.

This Declaration may also be amended by Declarant, if it then has any ownership interest in any

Lot, at any time within four (4) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies. As long as Declarant is the sole voting member, 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.

Section 3. Duration. This Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them. To the extent allowed by law, any covenant, condition, restriction or other matter herein shall run with the land and shall be binding upon all parties and all persons claiming under them and shall be perpetual. Any covenant, condition, restriction or other matter herein that is within the limitations of Iowa Code Section 614.24, shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-one (21) years from the date the Declaration is recorded, and may be extended for successive additional periods of twenty-one (21) years by filing a claim in accordance with Iowa Code Sections 614.24 and 614.25. Invalidity of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way affect 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 or Bylaws of the Association or any other applicable documents which default has not been cured within sixty (60) days.

ARTICLE XIV ADDITION AND REMOVAL OF PROPERTY

Section 1. Additional Common Areas. Declarant shall have the right at any time to convey additional Common Areas to the Association from time to time within the Property. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to convey additional Common Areas to the Association in the future. The Association shall be obligated to accept any additional Common Areas so conveyed by Declarant and to hold and maintain the additional Common Areas pursuant to the terms of this Declaration.

Section 2. Subjecting Additional Land to Declaration. Declarant shall have the irrevocable right to subject additional land to the terms of this Declaration at any time in the future without the consent of the Association. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration and Owners of Lots within the additional land shall automatically become Members of the Association in the same fashion as described in this Declaration and shall be subject to the same applicable terms, conditions, duties and assessments as described in this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the Recorder of Marion County, Iowa. No approval of the Association or any other person shall be necessary.

Section 3. Removing Land from Operation of Declaration. Declarant shall have the right now and in the future to remove any portion of the Property from the operation of this Declaration provided that the portion so removed has not yet been platted into individual lots and a plat for that portion has not been filed of record with the Auditor of Marion County, Iowa. Declarant shall signify this removal by filing an amendment to this Declaration with the Recorder of Marion County, Iowa. No approval of the Association or any other person shall be necessary.

ARTICLE XV LIMITATION OF LIABILITY

Declarant shall not be liable to the Association or any Owner for damages or repairs to:

- (a) Any private street, sidewalk, driveway, curb, stoop, or other concrete improvement located within the Properties, including (but not limited to) cracking or chipping that may occur due to weather conditions; or
- (b) Any Living Unit beyond the express warranties set forth in the homeowner's warranty provided to the original owner; or
- (c) Any appliances within any Living Unit, including (but not limited to) the furnace, air conditioner, stove, oven, dishwasher, and garbage disposal, beyond the express warranties set forth in the manufacturer's warranty provided to the original Owner.

