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Dallas County IOWA

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When recorded return to:
City of Clive
Attn: Joyce Cortum, Deputy City Clerk
1900 NW 114th St.
Clive, IA 50325

**AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
WALNUT CREEK HILLS OF CLIVE HOMEOWNERS ASSOCIATION**

MTG.
REF. BKHA

THIS DECLARATION, made on the date hereinafter set forth by Walnut Creek Hills, L.L.C., an Iowa limited liability company, and Walnut Creek Hills Land Co., L.C., an Iowa limited liability company, hereinafter referred to collectively as "Declarant".

RECITALS:

WHEREAS, Declarant is the equitable owner of certain property, which is more particularly described as:

Walnut Creek Hills of Clive Plat 1, an Official Plat, now included in and forming a part of the City of Clive, Dallas County, Iowa,

and

Outlot "Y" in Verona Hills Plat 1, an Official Plat located in Clive, Dallas County, Iowa,

(the "Properties"); and

WHEREAS, Declarant desires that the Properties, and any additions thereto made by the Declarant, be held, sold and conveyed subject to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Properties and each owner thereof.

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

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Walnut Creek Hills of Clive Homeowners Association, its successors and assigns, a nonprofit corporation organized pursuant to Chapter 504 of the Code of Iowa, 2005, as amended.

Section 2. "Association Responsibility Elements" shall mean the following, wherever located on the Properties:

- (a) The Common Area.
- (b) The Common Facilities, including but not limited to any entrance or turnabout landscaping or signage.

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 single-family attached or detached dwelling unit that may be constructed on a Lot or a part of more than one Lot and shall include any attached or detached garage building conveyed with the Lot.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) owned and maintained by the Association for the common use and enjoyment of the Owners and shall also include the Common Facilities as hereinafter defined.

Section 6. "Common Facilities" shall mean and refer to all personal property, fixtures and improvements owned by the Association including those located on real property not owned by the Association such as on property conveyed to or owned by the City of Clive for which a license or easement was granted.

Section 7. "Declarant" shall mean and refer to Walnut Creek Hills, L.L.C., an Iowa limited liability company, its successors and assigns, and Walnut Creek Hills Land Co., L.C., an Iowa limited liability company, its successors and assigns.

Section 8. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject.

Section 9. "Living Unit" shall mean and refer to any portion of a Building situated upon a Lot and is designed and intended for use and occupancy as a residence by a single family or individual and, without limitation, shall include any garage located on a Lot.

Section 10. "Lot" shall mean and refer to each and every lot contained in any plat or replat of the Properties or any portion thereof made and recorded in accordance with the statutes of the State of Iowa.

Section 10. "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 11. "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 provisions or operation of law.

Section 12. "Properties" shall mean and refer to that certain real property described above, and any additions thereto made by the Declarant, but shall exclude and not refer to any portion thereof conveyed, dedicated or granted to the City of Clive now or in the future.

ARTICLE II
PROPERTY RIGHTS IN COMMON AREA AND IN CONNECTION
WITH ASSOCIATION RESPONSIBILITY ELEMENTS

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 Association Responsibility Elements, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management and shall pay all real property taxes assessed against the Common Area before the same shall become delinquent. The Association's obligations under this Section are for the exclusive benefit of the Owners and the City of Clive.

No person other than the Owner of a Lot and/or 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 designees may enter upon and within a Lot at reasonable times for the following purposes:

- (a) Installation, repair, removal, replacement or inspection of an Association Responsibility Element.
- (b) Enforcement of any provisions of this Declaration or the Articles of Incorporation or the Bylaws of the Association.

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 the Lot and Living Unit of such Owner and shall become due and payable upon demand.

Section 2. 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, fee title ownership 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 Clive, Iowa, or to any public utilities. The transfer of title to the initial Common Area shall be accomplished on or before the recorded conveyance of the first Lot by Declarant. Common areas, if any, created by subsequent plats shall be conveyed immediately following the recording of such subsequent plat in the Dallas County Recorder's office.

Section 3. Use of the Common Area. The Common Area shall be used strictly in accordance with the provisions of this 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 Lot and 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 III 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 4. Duration. The Common Area as described in Article 1, Section 5, shall not be diminished and shall continue in perpetuity except by approval of a vote of a majority of the Members present, either in person or by proxy, at an annual meeting or special meeting called for such purpose, subject to the provisions for dedication or transfer in Article II, Section 2(b) above and the right to mortgage in Article II, Section 2(h) above.

ARTICLE III
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for the entire Properties, hereby covenants, and each Owner of any portion of the Properties by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements and operating deficits; and special assessments as provided in this Article III, Article V, Article VI and Article VII; such assessments to be established and collected as determined when due by the Board. The annual and special assessments, together with interest, costs and reasonable attorneys fees, shall be a charge on the Lot and improvements thereon and shall be a continuing lien upon the Lot and improvements thereon 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 attorneys fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such person'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 recreation, health, safety, and welfare of the residents in the Properties, for the improvement and maintenance of the Association Responsibility Elements and for other purposes specifically provided herein.

Section 3. Maximum Annual Assessment. Until January 1, 2006, the maximum annual assessment for each Owner shall be Twenty-five Dollars (\$25.00) per Lot.

- (a) From and after January 1, 2006, the maximum annual assessments due and payable during any calendar year may not be increased by the Board of Directors by an amount equal to more than ten percent of the annual assessment due and payable during the immediately preceding calendar year unless an increase greater than ten percent is approved by a vote of a majority of the Members present, either in person or by proxy, at an annual meeting or a special meeting called for such purpose.
- (b) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

- (c) A portion of such annual assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Association Responsibility Element or of any capital improvement which the Association is required to maintain.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment if necessary to finance or perform any of its stated obligations and responsibilities under this Declaration. Further, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of 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 assent of a majority of the votes of the Members who are voting in person or by proxy at an annual meeting or a special meeting called for such purpose.

Section 5. Uniform Rate of Assessment. Subject to Section 6 below, both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual basis.

Section 6. Date of Commencement of Annual Assessments Due Dates. The annual 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 (other than Declarant) of a Lot with completed Living Unit constructed thereon and for which a certificate of occupancy has been issued. Lots owned by the Declarant which have not been conveyed or leased to a third party shall be exempt from the assessments described in this Article III and the assessments described in Article VI. The insurance assessment provided for in Article VI shall commence as to each Lot on the first day of the first month following the date of conveyance of said Lot to an Owner (other than Declarant). The Board of Directors shall fix any increase in the amount of the annual 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 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be in default and shall bear interest from the due date at the rate of twelve percent (12%) per annum or at the highest rate allowed by Iowa Law, whichever is lower. The Association may bring an action at law against any 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 attorneys fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of the Owner's Lot.

Section 8. 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 application 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.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) All property which is dedicated to and accepted by a public authority; and
- (b) All Common Areas;

No other land or improvements located within the Properties shall be exempt from said assessments, charges or liens.

ARTICLE IV **DECLARANT'S RIGHTS**

Section 1. Declarant reserves the right to use any portion of the Properties to sell, assign or conduct other businesses in connection with the construction and development of the project prior to such Lots 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 location or manner of construction of buildings and other improvements.

Section 2. Declarant, its successors and assigns reserve the right to add additional common areas by conveying the same to the Association from time to time. Nothing in this Section shall be deemed an obligation on the part of the Declarant to convey additional real estate to the Association.

Section 3. 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 is and shall be responsible for all duties and obligations of the Association hereunder and shall have all rights of the Association until the Association is established and the initial Common Areas are conveyed thereto.

ARTICLE V **MAINTENANCE**

Section 1. Maintenance Obligations of Association. In addition to maintenance of the Common Area, and any improvements located thereon, the Association shall provide all maintenance, repair and replacement of the Association Responsibility Elements. The Association shall hold the City of Clive harmless from and against any and all responsibility to maintain, repair, or replace any Association Responsibility Element. The Association shall also maintain any detention ponds located within that certain park ground in Outlot M of Walnut Creek Hills of Clive Plat 1, an Official Plat, in a manner that allows for unobstructed drainage into said detention ponds. Such maintenance shall not include mowing, unless necessary to prevent drainage obstructions.

Section 2. Responsibility for Willful or Negligent Acts. In the event that the need for maintenance or repair to an Association Responsibility Element is caused through the willful or negligent act of the Owner or such Owner's 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. Authority to Purchase; Notice.

- (a) In addition to the maintenance assessments and the special assessments, the Association may levy assessments for all insurance, including physical damage insurance and liability insurance, purchased by the Association. Except as otherwise provided in Section 5 of this Article VI, all insurance policies relating to the Association Responsibility Elements shall be purchased by the Association. The Association, the Board of Directors of the Association, the managing agent and the Declarant shall not be liable for failure to obtain any coverages required by this

Article VI or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost. The Association shall promptly furnish to each Owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association.

- (b) To the extent reasonably practical, each such policy shall provide that:
 - (1) The insurer waives any right to claim by way of subrogation against the Association, the Board of Directors of the Association, and the Owners and their respective agents, employees, guests and, in the case of the Owners, the members of their households;
 - (2) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Owner (including Owner's invitees, agents and employees) or of any member, officer or employee of the Association without a prior demand in writing that the Association cure the defect and the Association shall not have so cured such defect within sixty days (60) after such demand;
 - (3) Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least sixty days' (60) prior written notice to the Association.
- (c) The Declarant, so long as Declarant shall own any Lot, shall be protected by all such policies as an Owner. The coverage provided to the declarant under the insurance policies obtained in compliance with this Article VI shall not be deemed to protect or to be for the benefit of any general contractor engaged by the Declarant nor shall such coverage be deemed to protect the Declarant against liability for (or waive any rights with respect to) warranty claims.
- (d) All policies of insurance shall be written by reputable companies licensed to do business in the State of Iowa. Physical damage policies shall be in form and substance and with carriers acceptable to a majority of the mortgagees.
- (e) The deductible, if any, on the insurance policy purchased by the Association shall be a common expense provided, however, that the Association may assess any deductible amount necessitated by the negligence, misuse or neglect of an Owner against such Owner.

Section 2. Liability Insurance.

- (a) The Association may obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage) and property damage liability insurance in such limits as the Board of Directors may from time to time determine, insuring the Association, each director, and each Owner against any liability to the public or to the Owners (and their invitees, agents and employees) arising out of, or incident to the ownership or use of the Association Responsibility Elements. Such insurance shall be issued on a comprehensive liability basis and shall, to the extent reasonably practical, contain: (i) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) deletion of the normal products exclusion with respect to events sponsored by the Association; and (v) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to a Unit Owner because of negligent acts of the Association or of another Owner. In no event shall such insurance be less than one million dollars covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained in such amounts as the Association Board directors shall determine.

Section 3. Other Insurance. The Association may obtain and maintain:

- (a) adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall: (i) name the Association as an obligee; (ii) be written in an amount not less than one-half the total annual assessments for the year or the amount required by mortgagees, or one or more of the Federal Mortgage Agencies, whichever is greatest; and (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;
- (b) if required by any governmental or quasi-governmental agency, including, without limitation, one or more of the Federal Mortgage Agencies, flood insurance in accordance with the then applicable regulations of such agency;
- (c) workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);
- (d) broad form machinery and pressure vessel explosion insurance (if applicable) in an amount not less than five hundred thousand dollars per accident per location;

- (e) directors and officers liability insurance in an amount not less than one million dollars; and
- (f) such other insurance as the Board of Directors may determine.

Section 5. Insurance Trustee.

- (a) All physical damage insurance policies purchased by the Association shall be for the benefit of the Association, the Owners, their mortgagees, and the Declarant, as their interests may appear, and shall provide that all proceeds of such policies shall be paid in trust to the Board of Directors of the Association as "insurance trustee" to be applied pursuant to the terms of Article VII.
- (b) The sole duty of the insurance trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in this Declaration, for the benefit of the insured and the insured's beneficiaries thereunder.

ARTICLE VII
REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

Section 1. When Repair and Reconstruction are Required. Except as otherwise provided in Section 4 of this Article VII, in the event of damage to or destruction of all or any part of any Association Responsibility Element as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration thereof.

Section 2. Procedure for Reconstruction and Repair.

- (a) Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of an Association Responsibility Element, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the insurance trustee determines to be necessary.
- (b) Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a common expense and a special assessment therefor shall be levied.

- (c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the damaged Association Responsibility Element, subject to any modifications required by changes in applicable governmental regulations, and using contemporary building materials and technology to the extent feasible.

Section 3. Disbursements of Construction Funds.

- (a) Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the insurance trustee from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs upon order of the Board of Directors.
- (b) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided equally among all Owners.
- (c) Certificate. The insurance trustee shall be entitled to rely upon a certificate executed by the president or vice president, and the secretary of the Association, certifying: (i) whether the damaged Association Responsibility Element is required to be reconstructed and repaired; (ii) the name of the payee and the amount to be paid with respect to disbursement from any construction fund; and (iii) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the insurance trustee promptly after request.

Section 4. When Reconstruction is Not Required. If the Board of Directors elects not to repair insubstantial damage to an Association Responsibility Element, the Board of Directors shall remove all remains of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the Properties.

**ARTICLE VIII
EASEMENTS AND ENCROACHMENTS**

Section 1. Additional Easement Rights. 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, water retention, 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 to more specifically describe or to change the description of any such drainage, water retention, 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 Dallas 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 1 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 1 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Lot within the properties.

Section 2. 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 Area and any pedestrian walkways or sidewalks.

Section 3. Easement for Signs. Declarant reserves unto itself for so long as it owns any Lot, the right and easement to erect and maintain such entryway, identification and "For Sale" sign or signs within the Properties as Declarant deems reasonably necessary.

Section 4. 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.

ARTICLE IX **USE RESTRICTIONS**

Section 1. Subject of the Properties to Certain Provisions. The ownership, use, occupation and enjoyment of each Lot and the Common Area shall be subject to the provisions of the Restrictive Covenants of any plat of the Properties, the Bylaws 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. The Board of Directors of the Association 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 guest, lessees, assigns and licensees.

Section 3. For any portion of the Properties developed as residential properties, the Association hereby reserves and shall retain the right to require installation of mailboxes and yard lights of a uniform design, location and construction.

Section 4. No Waiver. 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.

ARTICLE X

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. Declarant has the right to amend these covenants at any time during which Declarant has an ownership interest in any Lot in the Properties by the recordation of an instrument, recorded in the Office of the Recorder of Dallas County, Iowa, signed by Declarant. This Declaration may also be amended or changed at any time by the recordation of an instrument, recorded in the Office of the Recorder of Dallas County, Iowa, signed or approved in writing by a majority vote of the then Members; 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.

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 Dallas 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

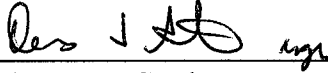
whole or in part as hereinabove provided. Invalidation of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

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 Bylaws or any other applicable documents which default has not been cured within thirty (30) days.

Section 5. Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

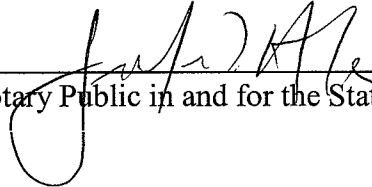
IN WITNESS WHEREOF, Walnut Creek Hills, L.L.C. has caused this Declaration to be executed this 14th day of October, 2005.

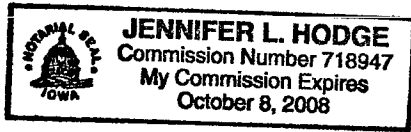
WALNUT CREEK HILLS, L.L.C. (Declarant)

By: 
Thomas J. Gratias, Manager

STATE OF IOWA)
) SS.
COUNTY OF POLK)

On this 14th day of October, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Thomas J. Gratias, to me personally known, who, being by me duly sworn, did say that he is the Manger of the limited liability company executing the within and foregoing instrument; that said instrument was signed on behalf of said limited liability company by authority of its managers; and that the said Thomas J. Gratias, as such manager, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it and by him voluntarily executed.


Notary Public in and for the State of Iowa



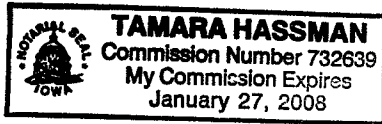
IN WITNESS WHEREOF, Walnut Creek Hills Land Co., L.C. has caused this Declaration to be executed this 14th day of October, 2005.

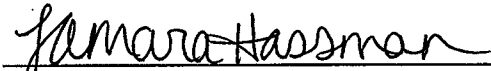
WALNUT CREEK HILLS LAND CO., L.C.

By: 
John C. Kline, Manager

STATE OF IOWA)
) SS.
COUNTY OF POLK)

On this 14th day of October, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared John C. Kline, to me personally known, who, being by me duly sworn, did say that he is the Manger of the limited liability company executing the within and foregoing instrument; that said instrument was signed on behalf of said limited liability company by authority of its managers; and that the said John C. Kline, as such manager, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it and by him voluntarily executed.




Notary Public in and for the State of Iowa

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