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Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2008-00003609

BK 12282 PG 366-380

RETURN TO:

Michael J. Green  
4500 Westown Parkway, Suite 277  
West Des Moines, Iowa 50266

**Preparer**

Information Michael J. Green Regency West 5. 4500 Westown Pkwy, Ste. 277 West Des Moines, IA 50266 (515) 242-2431  
Individual's Name Street Address City Phone

SPACE ABOVE THIS LINE FOR RECORDER

**INGERSOLL SQUARE CONDOMINIUMS  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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

WITNESSETH:

WHEREAS, "Declarant" is the owner of certain property in Des Moines, County of Polk, State of Iowa, which is more particularly described as:

All of Lots One (1) through Eight (8) and the East 51 feet of Lot Nine (9) in Block "B" in WEST AND BURTON'S ADDITION, an Official Plat; AND all of Lots One (1) through Nine (9) in HARDING ROAD PLACE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa being subject to established easements of record.

AND

The 16.0 foot wide vacated easement East/West Alley Right-of-Way lying South of and adjoining Lots 1 through 8, and lying South of and adjoining the East 51.0 feet of Lot 9, in Block "B", West and Burton's Addition, an Official Plat; and which lies North of and adjoining Lots 1 through 9, Harding Road Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

To be known as INGERSOLL SQUARE CONDOMINIUMS.

WHEREAS, the above property is improved with one building consisting of 138 suites, common areas thereto; and

WHEREAS, associated with said improvements is a parking garage located on:

All of Lots One (1) through Eight (8) and the East 51 feet of Lot Nine (9) in Block "B" in WEST AND BURTON'S ADDITION, an Official Plat; AND all of Lots One (1) through Nine (9) in HARDING ROAD PLACE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa being subject to established easements of record.

AND

The 16.0 foot wide vacated easement East/West Alley Right-of-Way lying South of and adjoining Lots 1 through 8, and lying South of and adjoining the East 51.0 feet of Lot 9, in Block "B", West and Burton's Addition, an Official Plat; and which lies North of and adjoining Lots 1 through 9, Harding Road Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

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 right, 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 Ingersoll Square Condominium Association, Inc., its successors and assigns.

**Section 2.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Properties, except that a vendee in possession under a recorded contract of sale of any Unit shall be considered the owner instead of the contract seller. Those having an interest merely as security for the performance of an obligation shall not be considered an "Owner".

**Section 3.** "Properties" shall mean the above-described Properties (including the improvements thereon) owned by the Association for the common use and enjoyment of the Owners. The Common Area shall be all portions of the Properties which are not included within a Unit and not included within property owned by a municipality or municipal agency. The

Common Areas and any improvements thereon, if any, shall be conveyed to the Association prior to the sale of the first Unit.

**Section 4.** "Unit" shall mean and refer to the numbered Units as shown upon Exhibit "C" of the Declaration of Submission of Property to Horizontal Property Regime for Ingersoll Square Condominiums recorded in Polk County, Iowa. In no event shall "Unit" include any Common Area.

**Section 5.** "Declarant" shall mean and refer to High Land Co., L.C., its successors and assigns.

**Section 6.** "Association Responsibility Elements" shall mean the following, whether located upon a Unit or upon the Common Area:

- a) The exterior surface of any structure upon the Premises;
- b) The structural portion of any structure upon the Property;
- c) The roof and foundations of any structure upon the Property;
- d) Any common wall between residential Units, except the interior surfaces thereof;
- e) The sidewalk and property located between a street curb and the Property;
- f) Conduits, ducts, plumbing, wiring, pipes and other facilities within the Property but outside a Unit which are carrying any service to more than one Unit.

## ARTICLE II. PROPERTY RIGHTS AND MAINTENANCE

**Section 1. Owner's Easements of Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Unit, subject to the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by a majority of the members entitled to vote has been recorded.

**Section 2. Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or any guests of either. However, no more than two (2) guests per Unit shall be allowed to use the swimming pool amenity per day.

**Section 3. Association Responsibility Elements.** No person other than the Owner of a Unit and his invitees shall have the right to enter upon, use, or affect an Association Responsibility Element located on the Property, except that the Association and its designates

may enter upon and within a Unit and the residential structure located thereon at reasonable times for the following purposes:

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

**Section 4. Maintenance.** The Association shall be responsible for maintenance of the Common Area and improvements thereon. Each Owner shall be responsible for maintenance of his Unit and all structures, improvements and equipment thereon, except for the Association Responsibility Elements. The Association shall not allow any of the improvements located on the Outlots area or any fences owned by the Association located on any privately owned Units to become a nuisance through lack of repair, maintenance, or replacement.

### ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

**Section 1.** Every Owner of a Unit which is subject to assessment shall be a member of the Association. Membership is mandatory and shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

**Section 2.** All Owners shall be entitled to the votes identified for each Unit as set forth on Exhibit "B" of the Declaration of Submission of Property to Horizontal Property Regime referred to above for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than the percentage vote be cast with respect to any Unit.

**Section 3.** Notwithstanding any other provision of this Declaration, the Declarant, its successors and assigns shall be the sole voting member of the Association until Declarant no longer owns any portion of the Properties, or until Declarant waives, in writing, this right to be the sole voting member, whichever first occurs. While the sole voting member, the Declarant, its successors and assigns shall have the right to elect all directors.

### ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Unit owned within the Properties, hereby covenants, and each Owner of any Unit 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 the Association: (a) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided and any and all assessments for Ingersoll Square Condominium Association, Inc., as more fully set out in Section 11 of this Article. The assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment is made. Each such

assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to the successors in title.

**Section 2. Purpose of Assessments.** The assessment levied by and for the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Units and for the improvement and maintenance of the Common Area and Association Responsibility Elements.

**Section 3. Maximum Annual Assessment.** Except as provided below, until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be not more than Three Thousand Dollars (\$3,000.00) per Unit, plus a prorata portion of the amount of real estate taxes and special assessments payable by the Association in such year.

- a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than the percentage limitation (set forth in (f) below) above the maximum assessment for the previous year without a vote of the membership;
- b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above the percentage limitation (set forth in (f) below) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose;
- c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum;
- d) A Unit shall not be subject to assessment until the first day of the month following the date of occupancy thereof as a residence;
- e) The Declarant shall not be liable for annual or special assessments upon Units owned by the Declarant unless the unit is occupied as a residence; has been submitted to the Association for maintenance, insurance, or other substantial direct benefit for the Unit; or has had a certificate of occupancy issued concerning such unit by the City of Des Moines;
- f) The percentage limitation specified in sections (a) and (b) above shall be the greater of ten percent (10%) or the percentage increase in the CPI for the most recent month for which the CPI has been published over the CPI for the same month in the immediately preceding year. The CPI shall mean the Consumer Price Index (2005 Revised Consumer Price Index All Items and Major Group Figures for all Urban Consumers) published by the Bureau of Labor Statistics of the U.S. Department of Commerce or its successor index. In the event the CPI as

above described is modified, revised, or replaced by another Consumer Price Index issued by the Bureau of Labor Statistics, such modification, revision, or replacement shall be used as the CPI. If the CPI shall no longer be published or becomes no longer recognized as an appropriate measure of changes in the cost of living, then another authoritative index shall be substituted as determined by the Board of Directors of the Association.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, or for any Association Responsibility Element, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of members entitled to vote 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 entitled to vote not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members entitled to vote or of proxies entitled to cast 60 percent (60%) of all votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 6. Uniform Rate of Assessment.** Except as provided in Sections 3(e) and 11, annual assessments, special assessments for capital improvements and insurance assessments must be fixed at a uniform rate for all Units based upon the percentage interest of each and may be collected on a monthly basis.

**Section 7. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

**Section 8. Insurance and Insurance Assessment.** In addition to the annual assessments and the special assessments for capital improvements, the Association may levy assessments for

insurance purchased by the Association. The Association shall obtain liability and casualty insurance for the Common Area and for the Association Responsibility Elements. Unless otherwise determined by the Board of Directors of the Association, each Owner shall be responsible for obtaining homeowners' liability insurance and casualty insurance for property which is not part of the Association Responsibility Elements; the Board of Directors may require an Owner's casualty insurance to be obtained from the same insurer as the insurer under the Association's casualty insurance for the Association Responsibility Elements. In the event of casualty loss, the Association shall be responsible for repair and restoration of the Common Area and Association Responsibility Elements, and the Owner shall be responsible for repair and restoration of all other portions of the buildings and improvements upon his Unit, except to the extent that the Board of Directors of the Association has determined to obtain casualty insurance for such portions which are not part of the Association Responsibility Elements in which case the Association shall apply any insurance proceeds received for such portions to such repair and restoration of such portions.

**Section 9. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

**Section 10. Subordination of the Lien to Mortgages.** The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 11. Utilities.** Each Owner shall be responsible for payment of all utility services to his Unit, including but not limited to, electricity, water, gas, telephone and sewer services.

**Section 12 Assessments for City Related Improvements.** Notwithstanding any of the provisions of this Article, the Board of Directors may establish an assessment for the maintenance, improvement, or reconstruction of sidewalks as necessary to comply with any directive of the City of Des Moines, Iowa.

#### **ARTICLE V. ARCHITECTURAL CONTROL**

No structure shall be commenced, erected, or maintained upon the Properties, nor shall any change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height materials and location of the same shall have been submitted to and approved in writing by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event

said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. This Article shall not apply to construction, improvements, or alterations made by the Declarant.

**ARTICLE VI. EASEMENTS**

Each Unit shall be subject to the following easements in favor of the Association:

- a) Every portion of a Unit which contributes to the support of any structure extending to another Unit is burdened with an easement of such support;
- b) Each Unit is burdened with an easement through the Unit of conduits, ducts, plumbing, wiring, pipes, meters and other facilities for the furnishing of utilities and services to other Units, foundation drains, sanitary sewer and water service facilities;
- c) Each Unit is burdened with an easement of ingress and egress for maintenance, repair and replacement of Association Responsibility Elements by the Association;
- d) Each Unit is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting, or inexact location during construction.

**ARTICLE VII. FIRST LIEN HOLDERS RIGHTS**

**SECTION 1. Notices of Action.** A holder, insurer, or guarantor of a first mortgage, upon written request to the Association, (such request to state the name and address of such holder, insurer, or guarantor and the Unit number), will be entitled to timely written notice of:

- (a) Any proposed amendment of the condominium instruments effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interest in the general or limited common elements appertaining to any Unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the Association appertaining to any Unit or (iv) the purposes to which any Unit or the common elements are restricted.
- (b) Any proposed termination of the covenants;
- (c) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first mortgage held, insured, or guaranteed by such eligible holder;
- (d) Any delinquency in the payment of assessments or charges owed by an owner of a Unit subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of 60 days;



(e) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

**SECTION 2. Other Provisions for First Lien Holders.** To the extent possible under applicable law, the following protections for the benefit of first mortgage holders shall exist:

(a) Any restoration or repair of the condominium property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on Units to which at least 67% of the votes of Units subject to mortgages held by such eligible holders are allocated, is obtained.

(b) Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the condominium property must require the approval of the eligible holders of first mortgages on Units to which at least 67% of the votes of Units subject to mortgages held by such eligible holders are allocated.

(c) Unless the formula for reallocation of interests in the common elements after a partial condemnation or partial destruction of the condominium project is fixed in advance by this Declaration or by applicable law, no reallocation of interest in the common elements resulting from a partial condemnation or partial destruction of the project may be effected without the approval of the eligible holders of first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated.

NOTE: As used in this section, the term "eligible holder, insurer, or guarantor" shall mean a holder, insurer, or guarantor of a first mortgage on a Unit which has requested notice in accordance with the provisions of Section VII(1) above. The rights set forth in this Article VII are in addition to and not in limitation of the other rights granted elsewhere in the Declaration to any eligible holder, insurer, or guarantor.

## ARTICLE VIII. USE RESTRICTIONS

**Section 1. Subjection of the Property to Certain Provisions.** The ownership, use, occupation and enjoyment of each Unit and Common Area shall be subject to the provisions of 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 Units and the Owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

**Section 2. Use of Properties.** The use of the Properties shall be in accordance with and subject to the following provisions:

- a) All residential Units shall be occupied and utilized only in accordance with the designations, specifications, uses, limitations and requirements set forth herein

and as set forth in the Horizontal Property Regime Declaration filed as to this complex;

- b) A Unit may be leased by the Owner in accordance with the provisions relative to the same contained in the Declaration of Submission of Property to Horizontal Property Regime Ingersoll Square Condominiums filed of record in Polk County, Iowa.;
- c) Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association;
- d) No more than two animals may be kept by the Owner of a Unit, in any Unit. No more than two dogs or two cats; or one dog and one cat. No more than one dog which must weigh less than 75 pounds at any stage of growth, or two dogs with a combined weight not to exceed 75 pounds at any stage of growth, or two cats. No exotic, dangerous or vicious animals shall be allowed. In no event shall an Owner or its guests, family members and invitees, have or allow a pet considered vicious or dangerous, including without thereby limiting, dogs which have the appearance and characteristics or being predominately of breeds of Stafforshire terrier, American pit bull terrier or American Staffordshire terrier. Any pets shall not be left unattended by the Owners, may not be tied up in any common area and shall not be allowed to run free. All pets outside of a Unit must be on a leash and at all times accompanied by an adult. Owners shall be fully liable for any injury or damage to any person or to the common area caused by Owner's pet. Each Owner shall be responsible for cleaning up all waste of their pet(s). Any damage done by any pets, including dragging chains, digging, scratching or chewing shall be the responsibility of the Owner of such pet, including, but not limited to, any such damage done to landscaping. No owner shall be allowed to chain or otherwise confine their pets in the common area at any time. Pets are not allowed around the pool or hot tub areas. Fencing or invisible fencing is not allowed. The Association may levy a \$25.00 per incident fine for any pet waste that is not cleaned up by the Owner of such pet. The Association Board may adopt such other rules and regulations regarding pets as they may deem appropriate, and in the event that in the judgment of the Association, any pet is causing or creating a nuisance or unreasonable disturbance or noise, such pet shall be permanently removed from the Property upon written notice of such determination by the Association.
- e) No boat, snowmobile, recreational vehicle, trailer, or other vehicle other than automobiles shall be stored or parked in any parking stall of the Parking Garage. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreation vehicle, or other vehicles and assess the Owner of the Unit for the cost of removal and storage;

- f) No activity shall be allowed which unduly interferes with the peaceful possession and use of the Units by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed;
- g) Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the Common Area or the Association Responsibility Elements, without the prior written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of Insurance on any Unit 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;
- h) All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned;
- i) The Board of Directors of the Association shall be the authority to adopt rules and regulations governing the use of Units, the Common Area and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns and licensees;
- j) Agents or contractors hired by the Board of Directors of the Association may enter any Unit when necessary in connection with any installation, repair, removal, replacement, or inspection of any Association Responsibility Element or in connection with landscaping or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable;
- k) An Owner shall give notice to the Association of every lien against his Unit other than permitted mortgages, taxes and Association assessments and of any suit or other proceeding which may affect the title to his Unit within ten days after the lien attaches or the Owner receives notice of such suit;
- l) An Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement to the Common Area or the Association Responsibility Elements rendered necessary by his act, neglect, or carelessness, or by that of his family, guests, employees, agents, or lessees, which liability shall include any increase in insurance rates resulting therefrom;
- m) 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 Units by the Declarant. The Declarant may make such use of the unsold Units

and the Common Area as may facilitate such completion and sale, including but not limited to, the maintenance of a model home, the showing of the property and the display of signs;

- n) Police, firemen, emergency units, inspectors and any other public officials or law enforcement agencies shall have the same right of entry onto and the same enforcement powers as to the Common Area as they have with respect to public streets and publicly owned parks and area;
- o) No sign shall be placed upon or within any Unit that is not in compliance with Article VI(2)(g) of the Horizontal Property Regime Declaration filed of record as to this complex;
- p) Trash receptacles shall be kept within the Unit;
- q) No tower or antennae shall be placed upon any Unit without the approval of the Board of Directors or the Architectural Control Committee;
- r) No personal property shall be stored or left outside of any Unit;
- s) Owners are not allowed to move into or out of the building on Saturday or Sunday. Moves into or out of the Units are to be scheduled Monday through Friday, 8:00 a.m. to 8:00 p.m.

**Section 3. No Waiver.** Failure of the Association or any Owner to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto shall not constitute a waiver of the right to enforce the same thereafter.

#### ARTICLE IX. DECLARANT'S RIGHTS

**Section 1. Units.** Declarant reserves the right to use any of the Units as models and to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such Unit 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 Units then unsold. Declarant retains the right to be considered an Owner of any Unit that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of Buildings and other improvements. Declarant reserves the right to enter upon and within any Unit and Common Area in connection with any construction activity.

**Section 2. Common Area.** Declarant reserves the right and is hereby vested with the sole control over all Common Areas. Declarant shall have the right to change the elements within the Common Area from time to time in its sole discretion.

## ARTICLE X. COVENANTS WITH CITY

**Section 1. Right of Public Access.** Officers, employees or contracted agents of the City of Des Moines, Iowa ("City") shall have the right and authority to enter upon the Common Areas and easements reserved or granted for the benefit of the Association for the administration of general public services including Emergency Fire Protection, Law Enforcement and administration of the Water Works Rules and Regulations and any applicable agreements for providing water service.

**Section 2. Indemnification and Hold Harmless of the City.** The Association, its successors or assigns, agree to defend, indemnify, protect and save harmless the City and its political subdivisions, including any of its elected officials, officers, employees or agents, from and against any judgments, awards, claims or expenses or other things whatsoever, including attorney fees, costs or disbursements, arising out of or in connection with any act or acts of negligence, causes, omissions, fault, misconduct, claims, damages, suits or other actions developed, brought or asserted by any person, firm, corporation, entity or estate, against the said City by reason of, in connection with, related to or growing out of, directly or indirectly, the duties and responsibilities which are imposed upon the Owners of the Association, its successors and assigns, with respect to its duties or obligations under this Declaration, including any rules or regulations in existence pursuant to this Declaration, or related to or growing out of, directly or indirectly, the ownership, maintaining, cleaning out, grading, repairing, construction or reconstruction of the Common Areas, or any part thereof, including but not limited to the existence of flowage or drainage of water in or out of the lakes, dam, silt basins and spillway located adjacent to the Properties, or related to or growing out of, directly or indirectly, the existence of this Declaration and the purposes for which this Declaration is executed of the approval of this Declaration.

Declarant, its successors and assigns, including all subsequent owners in the Properties, hereby covenant not to sue, demand or claim any damages or other remedies against the City, its political subdivisions and its elected officials, officers, employees or agents by reason of, in connection with, related to or growing out of, directly or indirectly, the failure of the City to exercise any rights afforded to it under this Declaration, the approval of this Declaration, the approval of any site plan or Common Areas, the issuance of a building permit for such purposes, any inspection performed relating to said permit or permits or any certification issued indicating compliance with any City ordinance regulating the issuance of said building permit or approvals.

**Section 3. Liability of City.** Neither the Declarant, owners, Association nor any other person or other entity shall place any reliance upon the approval of this Declaration by the City, the issuance of a Building Permit for such purposes, any inspections performed relating to said Permit or any certification issued indicating compliance with any City ordinance regulating the issuance of said Building Permit or approvals, as indicating the safety or quality of construction of any improvements located on the Common Areas or within the Properties. Neither the issuance of, nor any inspections or certifications made relating to the Building Permit or relating to any City ordinance or approval, including the approval of this Declaration, shall constitute an assumption by the City, or any elected officials, officers, agents or employees thereof, of any duty or responsibility of any person or entity to adequately construct, reconstruct, repair and maintain

the Common Areas and improvements located thereon or provide a safe premises or to, in any way, indicate a decrease in the risk associated with the use or existence of the improvements located on the Common Areas. A certification that the Common Areas or other structures or facilities have been inspected, pursuant to any City ordinance regulating the same shall not, in any way, constitute a representation, covenant, warranty or guaranty of the safety or quality of said improvements by the City, of any elected officials, officers, agents or employees thereof. The Declarant, its successors and assigns, hereby expressly release and discharge, and agree to hold harmless, defend and indemnify, the City, its elected officials, officers, agents and employees, from any and all duties, responsibilities, obligations, claims, demands, causes of action or liabilities arising out of or related to the issuance of a Building Permit within the Properties or any inspection performed or certification issued in connection with the Building Permit and approval of the improvements located on the Common Areas and the approval of this Declaration.

**Section 4. Amendment.** This Article shall not be amended without the prior written approval of the City.

**Section 5. Right of Enforcement.** In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, the City 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. City is hereby declared to be a third party beneficiary of the provisions of this Declaration.

#### ARTICLE XI. GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than 90 percent (90%) of the Unit Owners and thereafter by an instrument signed by not less than 75 percent (75%) of the Unit Owners; but no amendment shall alter any rights to rent a Unit without a unanimous vote of the Unit Owners and/or alter the rights of the

Declarant or impose any additional obligations upon the Declarant without the consent of the Declarant. Any amendment must be recorded. During such time as the Declarant, or any of its Members, are a voting member of the Association, this Declaration may be amended in any manner by Declarant. No amendment to these Declarations shall be permitted affecting the specific rights of the City of Des Moines set forth in this Declaration without first obtaining the approval of the City of Des Moines, Iowa.

**Section 4. Lots Owned by City.** These covenants, restrictions and conditions shall not be applicable to property owned or dedicated to the City of Des Moines, Iowa.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 10th day of July, 2007.

**HIGH LAND CO., L.C.**

By *Robert J. Caluzzi*  
Robert J. Caluzzi, Manager

STATE OF IOWA )  
                          ) SS:  
COUNTY OF POLK )

On this 10th day of July, 2007, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert J. Caluzzi to me personally known, who being by me duly sworn, did say that he is the Manager of High Land Co., L.C., a limited liability company, executing the within and foregoing instrument; that no seal has been procured by the said limited liability company; that said instrument was signed on behalf of the limited liability company by authority of its members; and that Robert J. Caluzzi, as Manager, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the limited liability company, by it and by him voluntarily executed.

*Phyllis J. Kline*  
Notary Public in and for the State of Iowa

