

47.	First National City Bank,	)	PARTIAL RELEASE OF FIRST
	Corporate Trustee	)	AND REFUNDING MORTGAGE
	By E. F. Mitchell, Vice President	)	Dated 23 January 1962
	Attest: John J. Lynch, Assistant Cashier)	)	Filed 20 July 1962
	(Corporate Seal affixed) and	)	Record 436 at 115
	Jacob M. Ford II, Individual Trustee	)	Consideration: \$1.00 and
		)	other good and valuable
	to	)	consideration
		)	
	Chicago, Burlington & Quincy	)	
	Railroad Company	)	

KNOW ALL MEN BY THESE PRESENTS: That the First National City Bank (formerly The First National Bank of the City of New York), a corporation created and existing under the laws of the United States of America, and Jacob M. Ford II, (by succession to Frazier L. Ford), Trustees, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby remise, release, and quitclaim unto the Chicago, Burlington & Quincy Railroad Company, a corporation created and existing under the laws of the State of Illinois, all right, title, interest, claim or demand, whatsoever said First National City Bank and Jacob M. Ford II, Trustees, may have acquired in, through, or by a certain Trust Mortgage bearing date of the first day of February, 1921, and recorded in the office of the

Recorder of Page County, State of Iowa, in Book 272 of Mortgages, Page 1, as supplemented by Supplemental Indenture, dated 1 August 1944, unrecorded, Supplemental Indenture and Second Supplemental Indenture, both dated 1 August 1945, Third Supplemental Indenture dated 1 February 1950, and a Supplemental Indenture dated 1 February 1958, all recorded in the office of the

Recorder of Page County, State of Iowa, in Book 350-A Pages 1 and 28, Book 380-A Page 1 and Book 418 Page 130, respectively, to the following described property in Page County, State of Iowa, to-wit:

Fractional Section 1, Township 68 North, Range 37 West of 5th P.M., Page County, Iowa, (Also listing other real property).

This release is made and accepted without covenants or warranties, expressed or implied, in law or in equity, and without recourse to the grantors in any event or in any contingency.

It is understood that the lien of said Trust Mortgage is not in any degree or to any extent impaired or affected hereby upon any property covered by said mortgage other than that specifically herein described.

Duly acknowledged 23 January 1962 in statutory corporate form by E. F. Mitchell, Vice President of First National City Bank, Trustee; duly acknowledged 29 January 1962 by Jacob M. Ford, II, Trustee.

48.	Board of Directors of	)	CERTIFICATE OF AUTHENTICITY
	America's Choice Community of Clarinda	)	Dated 15 December 1995
	an Iowa nonprofit corporation	)	Filed 15 December 1995
		)	Record 588 at 483
	as to	)	
		)	
	America's Choice Community of Clarinda	)	

The Board of Directors of America's Choice Community of Clarinda, an Iowa nonprofit corporation, hereby certifies that attached hereto and by this reference incorporated herein are certain documents listed below that relate to the real estate described on Exhibit "A" which is attached hereto and by this reference incorporated herein.



The attached documents are:

1. Articles of Incorporation of America's Choice Community of Clarinda.
2. Its By-Laws.
3. The schematic drawing of the floor plan of the entire residential facility, showing the location and apartment number of each apartment.
4. A list showing the square footage of each apartment.
5. A prototype application agreement that is applicable to each apartment.
6. A prototype occupancy agreement that is applicable to each apartment.

The undersigned Board of Directors hereby certifies that the attached documents, listed above, are authentic copies of the originals and they are each in full force and effect as of the date of this document and have been continuously since the present owners acquired their respective rights to occupy the apartments.

Dated this 15th day of December, 1995.

AMERICA'S CHOICE COMMUNITY OF CLARINDA,  
AN IOWA NONPROFIT CORPORATION

By (Signed) Don Reid, Member of Board of Directors

By (Signed) Monty Boswell, Member of Board of Directors

By (Signed) Kay York, Member of Board of Directors

By (Signed) Elizabeth McClelland, Member of Board of Directors

By (Signed) Leone Winger, Member of Board of Directors

Duly acknowledged.

Attached to same are the following:

EXHIBIT "A"

That part of Lots 5, 6 and 7 of Green Acres Addition to the City of Clarinda and Part of the Southwest Quarter Southwest Quarter Section 31, Township 69, Range 36, and Northwest Quarter Section 1, Township 68, Range 37, Page County, Iowa, more particularly described as follows:

Commencing at the North Quarter Corner of Section 1, Township 68 North, Range 37 West, Page County, Iowa, thence along Section line South 89 degrees 13 minutes 09 seconds West 33.00 feet to the western right-of-way of Sixteenth Street; thence along right-of-way Due South 137.04 feet to the northwesterly right-of-way of the abandoned railroad; thence along said right-of-way South 53 degrees 18 minutes 02 seconds West 260.71 feet to the Point of Beginning; thence continuing along right-of-way South 53 degrees 18 minutes 02 seconds West 152.04 feet to the Northeast Corner of Tract III as recorded in Book 547, Page 269, Page County Recorders Office; thence South 00 degrees 41 minutes 29 seconds East 122.63 feet to the southeasterly right-of-way of said railroad; thence along said right-of-way South 58 degrees 10 minutes 43 seconds West 332.58 feet by chord distance and bearing long the 2914.81 feet radius curve to the right; thence South 89 degrees 12 minutes 01 seconds West 222.99 feet to an IDOT right-of-way rail; thence along the eastern line of Outlot One of Berry's Addition North 01 degrees 27 minutes 17 seconds West 583.78 feet to the Southwest Corner of Lot 7 of Green Acres Addition to the City of Clarinda; thence North 01 degrees 39 minutes 28 seconds West 140.00 feet to the Northwest Corner of said Lot 7; thence North 88 degrees 54 minutes 46 seconds East 108.38 feet to the intersection of the centerline of an existing ditch; thence along said centerline the following courses and distances, South 36 degrees 04 minutes 30 seconds East 209.34 feet; thence South 50 degrees 04 minutes 10 seconds East 143.80 feet; thence South 69 degrees 17 minutes 20 seconds East 130.97 feet; thence South 82 degrees 46 minutes 11 seconds East 92.57 feet; thence South 80 degrees 53 minutes 36 seconds East 89.53 feet to the point of beginning.

ARTICLES OF INCORPORATION OF AMERICA'S CHOICE COMMUNITY OF CLARINDA. (See Entry No. 44 foregoing.)



CERTIFICATE OF INCORPORATION; issued by Iowa Secretary of State 29 July 1991 with seal affixed, stating that AMERICA'S CHOICE COMMUNITY OF CLARINDA has filed articles of incorporation in this office and is hereby authorized to transact business as a corporation from 29 July 1991, perpetually, under the provisions of Iowa Code chapter 504A.

AMERICA'S CHOICE COMMUNITY OF CLARINDA BYLAWS;

ARTICLE I Offices, Purposes and Powers

Section 1.1 Principal Office. The principal office of the corporation is in the State of Iowa.

Section 1.2 Registered Office. The registered office of the corporation required by the Iowa Nonprofit Corporation Act to be maintained in the State of Iowa may be, but need not be, identical with the principal office in the State of Iowa, and the address of the registered office may be changed from time to time by the Board of Directors.

Section 1.3 Other Offices. The corporation may have at such place or places, within or without the State of Iowa, as the Board of Directors may from time to time appoint or the business of the corporation may require or make desirable.

Section 1.4 Purpose. The corporation shall have such purposes as are now or may hereafter be set forth in its Articles of Incorporation.

Section 1.5 Powers. The corporation shall have such powers as are now or may hereafter be granted by the Nonprofit Corporation Act of the State of Iowa.

ARTICLE II Members

Section 2.1 Membership Classes. There shall be two classes of Membership, both of which classes shall consist of voting members:

(a) Sponsor Members. Sponsor Members of the Corporation shall be such organizations as shall, from time to time, provide health care, support and guidance for the care and treatment of persons residing within the Corporation's retirement center in Clarinda, Iowa, and such additional support and guidance as shall be required by the Corporation from time to time. The initial Sponsor Member shall be:

Clarinda Municipal Hospital

(b) Residential Members. All persons residing within the Corporation's retirement center in Clarinda, Iowa shall be Residential Members.

Section 2.2 Qualifications for Residential Membership. All persons who have attained the age of 62, who can pay the fees assessed by the Corporation for residence within the Corporation's retirement center in Clarinda, Iowa, and can live independently will be eligible to reside within the retirement center and be a Residential Member of the Corporation.

Section 2.3 Default Under Occupancy Agreement. Should a Resident default under the terms of the Occupancy Agreement:

(a) If default is due to financial hardship beyond the control of Residential Member, and such Residential Member has no source of support or assets with which to cure such default, the Corporation's Managing Agent shall assist such Residential Member in applying for financial resources through the Corporation's Sponsor Members, federal, state and local agencies, the community at large, the Owner through its reserves, and such other agencies as the Managing Agent may, from time to time, deem appropriate.

Regardless of whether financial resources are obtained on behalf of the Residential member, as long as such Residential Member continues to be able to live independently, such Residential Member shall be deemed to be in full compliance with his Occupancy Agreement, he shall continue to reside within the facility, and his Occupancy Agreement shall be extended and renewed from time to time for successive three (3) year periods as though no default had occurred.

Provided, however, should the continued occupancy of such Residential Member (cumulated with the continued occupancy of other Residential Members who are residing within the facility without the





benefit of financial resources) inflict such severe strain on the financial soundness of the facility that the Corporation would be forced to file a petition in bankruptcy or otherwise be in danger of insolvency, the Occupancy Agreement of such Residential Member will, upon the specific direction of the Board of Directors, be terminated sixty (60) days from the date of such direction.

(b) Except as provided in paragraph a above, if default occurs as a result of the happening of any of the events specified in clauses (a) to (e) of Article 12 of the Residential Members' Occupancy Agreement, and such default is not cured in accordance with the terms and provisions of such Article, upon the written direction of the Board of Directors, the Managing Agent shall, on behalf of the Corporation and in accordance with the terms and provisions of Article 12 of the Resident's Occupancy Agreement, reenter the premises and remove all persons and personal property therefrom, either by unlawful detainer proceedings or by suitable action or proceeding at law, in equity or by any other proceedings which may apply to the eviction of residents or by force or otherwise to repossess the Premises in its former state as if the Occupancy Agreement had not been made.

Section 2.4 Transfer of/Restriction on Consent to Assignment or Transfer of Residential Membership.

(a) A Residential member may at any time assign or transfer his membership in the Corporation to another person or persons, provided such persons qualify for membership in accordance with the terms and provisions of Paragraph 2.2 hereof, and such assignment or transfer is approved by the Corporation acting by and through the Board of Directors, which approval shall not be unreasonably withhold. A prospective Residential Member shall meet the qualifications of Section 2.2 of these Bylaws.

(b) Upon such assignment or transfer such Residential Member shall be entitled to receive from the transferee or assignee a sum equal to the initial entrance fee paid by such Residential Member plus an amount equal to the following amounts ("Factor") for each full twelve (12) months since the initial occupancy of the Unit:

Unit Description	Entrance Fee	Factor
1 Bedroom / 576 Sq. Ft.	\$16,500.00	\$495.00
1 Bedroom / 683 Sq. Ft.	\$17,500.00	\$555.00
1 Bedroom / 742 Sq. Ft.	\$18,000.00	\$580.00
2 Bedroom / 848 Sq. Ft.	\$19,500.00	\$620.00
2 Bedroom / 899 Sq. Ft.	\$21,000.00	\$650.00
2 Bedroom / 910 Sq. Ft.	\$21,500.00	\$665.00
2 Bedroom / 914 Sq. Ft.	\$21,500.00	\$665.00
2 Bedroom / 1,049 Sq. Ft.	\$24,500.00	\$765.00
2 Bedroom / 1,200 Sq. Ft.	\$28,000.00	\$870.00

(c) The Corporation, acting by and through the Board of Directors, shall not be obligated to consent to an assignment or transfer of membership, notwithstanding the provisions hereof, if the consideration for such assignment or transfer is less than or greater than the sum computed in paragraph (b) above, or if all monthly charges owed by the Residential Member to the Corporation have not been paid.

Section 2.5 Place of Meetings. Meetings of the Members may be held at any place within or without the State of Iowa, as set forth in the notice thereof or in the event of a meeting held pursuant to waiver of notice, as may be set forth in the waiver, or if no place is so specified, at the corporation's retirement center in Clarinda, Iowa.

Section 2.6 Annual Meetings. The annual meeting of the Members shall be held on the second Tuesday in December of each year, or if said day be a legal holiday, then on the next succeeding business day, for the purpose of electing directors and transacting any and all business that may properly come before the meeting.

Section 2.7 Substitute Annual Meeting. If the annual meeting is not held on the day designated in Section 2.6, any business, including the election of directors, which might properly have been acted upon at that meeting, may be acted upon at any subsequent Member meeting held



pursuant to these bylaws or to a court order requiring a substitute annual meeting.

Section 2.8 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by the Board of Directors, and shall be called by the President at the request of not less than one-fourth ( $\frac{1}{4}$ ) of all Members entitled to vote at the meeting.

Section 2.9 Notice of Meetings. A written or printed notice of each Member meeting stating the place, day and hour of the meeting shall be delivered not less than ten (10) days nor more than fifty (50) days before the date thereof, either personally or by mail, by or at the direction of the president or secretary or other person calling the meeting. In the case of an annual or substitute annual meeting, the notice of the meeting need not state the purpose or purposes of the meeting. In case of a special meeting, the notice of meeting shall state the purpose or purposes for which the meeting is called.

A written or printed notice of each meeting is not required if the Member waives notice as contemplated in Section 5.2 or attends the meeting either in person or by proxy for any purpose other than to object to the transaction of business.

Section 2.10 Voting Lists. The officer or agent having charge of the Membership records of the corporation shall make, at least ten (10) days before each meeting of Members, a complete list of the Members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, which list for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original Membership records shall be prima facie evidence as to who are the Members entitled to examine such list or to vote at any meeting of Members.

Section 2.11 Voting. Each Member entitled to vote shall be entitled to one (1) vote upon each matter submitted to a vote at a meeting of the Members; provided, however, that as to Residential Members, if two or more Residential Members shall occupy a dwelling unit, then each such Residential member shall have that percentage of a full vote as shall be the product of one (1) divided by the number of Residential Members occupying that dwelling unit.

Membership standing in the name of a corporation may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or in the absence of such provision, as the Board of Directors of such corporation may determine.

Section 2.12 Quorum. At all meetings of the Members, the presence, in person or by proxy, of one-tenth ( $\frac{1}{10}$ ) of the Members entitled to vote shall constitute a quorum. If the quorum is present, a majority of the shares which are represented shall determine any matter coming before the meeting unless a different vote is required by statute, by the Articles of Incorporation, or by these Bylaws. The Members at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 2.13 Proxies. A Member entitled to vote pursuant to Section 2.8 may vote in person or by proxy executed in writing by the Member or by his attorney in fact. A proxy shall not be valid after eleven (11) months from the date of its execution, unless a longer period is expressly stated therein. If the validity of any proxy is questioned, it must be submitted to the secretary of the Members' meeting for examination or to a proxy officer or committee appointed by the person presiding at the meeting. The secretary of the meeting, or, if appointed, the proxy officer or committee, shall determine the validity or invalidity of any proxy submitted and reference by the secretary in the minutes of the meeting to the regularity of a proxy shall be received



as prima facie evidence of the facts stated for the purpose of establishing the presence of a quorum at such meeting and for all other purposes.

Section 2.14 Presiding Officer. The President, or in his absence, the Vice President, shall serve as the chairman of every Member meeting unless some other person is elected to serve as chairman by a majority vote of the shares represented at the meeting. The Chairman shall appoint such persons as he deems required to assist with the meeting.

Section 2.15 Rules of Order. Except as otherwise provided in the Articles of Incorporation, Iowa Nonprofit Corporation Act, or these Bylaws, the latest edition of Robert's Rules of Order shall determine procedure in all meetings of the Members.

Section 2.16 Adjournments. Any meeting of the Members, whether or not a quorum is present, may be adjourned by a majority of the Members represented at the meeting to reconvene at a specific time and place. It shall not be necessary to give any notice of the reconvened meeting or the business to be transacted, if the time and place of the reconvened meeting are announced at the meeting which was adjourned. At any such reconvened meeting at which a quorum is represented or present, any business may be transacted which could have been transacted at the meeting which was adjourned.

Section 2.17 Informal Action by Members. Any action required to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

#### ARTICLE III Board of Directors

Section 3.1 General Powers. The business and affairs of the corporation shall be managed by the Board of Directors. In addition to the power and authority expressly conferred upon it by these bylaws, the Board of Directors may exercise all such powers of the corporation and do all such lawful acts and things as are permitted by the Iowa Nonprofit Corporation Act.

Section 3.2 Number, Election and Term of Office. The Corporation's Board of Directors shall consist of Richard Hamilton, Jean Negley, and Irma Hill until April 30, 1992, at which time the corporation shall have seven (7) directors, which number may be altered from time to time by the amendment of these Bylaws, but no decrease in the number of directors shall have the effect of shortening the term of any incumbent director. The directors shall be elected at each annual meeting of the Members as follows: (a) Four (4) directors shall be appointed by Clarinda Municipal Hospital, two (2) of whom must be residents of the Corporation's retirement center in Clarinda, Iowa, and two (2) of whom may be from the community at large; and (b) Three (3) directors shall be elected by the majority vote of the Residential Members.

Each director, except in case of death, resignation, retirement, disqualification, or removal, shall serve for a term of one (1) year and thereafter until his successor shall have been elected and qualified.

Section 3.3 Vacancies. A vacancy occurring in the Board of Directors may be filled for the unexpired term by affirmative vote of a majority of all the directors remaining in office though less than a quorum of the Board of Directors.

Section 3.4 Committees of the Board of Directors. The Board of Directors by resolution adopted by a majority of the full Board of Directors may designate from among its members an executive committee and one (1) or more other committees.

#### ARTICLE IV Meetings of the Board of Directors

Section 4.1 Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than required by these Bylaws immediately after, and at the same place as, the annual meeting of the Members. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Iowa, for the holding of additional regular meetings without other notice than such resolution including a substitute annual meeting.





Section 4.2 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the president, or in his absence, by the secretary of the corporation, or by any two (2) directors in office at that time.

Section 4.3 Place of Meetings. Directors may hold their meetings at any place within or without the State of Iowa as the Board of Directors may from time to time establish for regular meetings or as is set forth in the notice of special meetings or, in the event of a meeting held pursuant to waiver of notice, as may be set forth in the waiver.

Section 4.4 Notice of Meetings.

(a) Notice. Notice of any special meeting shall be given at least two (2) days previously thereto by written or oral notice delivered personally or mailed to each director at his business address or by telegram or by telephone. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company.

(b) Waiver. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

(c) Purpose. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 4.5 Quorum. At meetings of the Board of Directors, more than one-half ( $\frac{1}{2}$ ) of the directors then in office shall be necessary to constitute a quorum for the transaction of business.

Section 4.6 Vote Required for Action. Except as otherwise provided in this section or by law, the act of a majority of the directors present at a meeting at which a quorum is present at the time shall be the act of the Board of Directors. Adoption, amendment and repeal of a bylaw is provided for in Article IX of these bylaws. Vacancies in the Board of Directors may be filled as provided in Section 3.3 of these bylaws.

Section 4.7 Action by Directors Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if a written consent thereto shall be signed by all the directors and such written consent is filed with the minutes of the proceedings of the Board. Such consent shall have the same force and effect as a unanimous vote of the Board of Directors.

Section 4.8 Presumption of Assent. A Director of the corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken, shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the Secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 4.9 Officers of Meeting. At any meeting of the Board of Directors, the presiding officer shall be the President, or in his absence a Vice President, or in the absence of or disability of these officers, the Directors present at the meeting shall appoint a Chairman, who shall preside at such meeting. The Secretary of the corporation, if present, shall act as Secretary of the meeting, or, if he shall not be present, any Assistant Secretary shall serve as Secretary of the meeting, but, in the absence of the Secretary and any Assistant Secretary, the presiding officer shall appoint a Secretary pro tem.

Section 4.10 Order of Business. The order of business at any regular meeting or at a special meeting of the Board of Directors so far



as possible shall be: reading and disposal of any unapproved minutes; report of officers and committees; election of officers; unfinished business; new business; and adjournment.

Section 4.11 Rules of Order. Except as otherwise provided in the Articles of Incorporation, Iowa Nonprofit Corporation Act, or these Bylaws, the latest edition of Robert's Rules of Order shall determine procedure in all meetings of the Board of Directors.

Section 4.12 Adjournment. A meeting of the Board of Directors, whether or not a quorum is present, may be adjourned by the majority of the directors present to reconvene at a specific time and place. It shall not be necessary to give notice of the reconvened meeting or of the business to be transacted, other than the announcement at the meeting which was adjourned. At any such reconvened meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting which was adjourned.

#### ARTICLE V Notice and Waiver.

Section 5.1 Procedure. Whenever these bylaws require notice to be given to any Member or director, the notice shall be given as prescribed in Sections 2.6 and 4.4. Whenever notice is given to a Member or director by mail, the notice shall be sent first class mail by depositing the same in a post office or letter box in a postage prepaid sealed envelope addressed to the Member or director at his address as it appears on the books of the corporation, and such notice shall be deemed to have been given at the time the same is deposited in the United States mail.

Section 5.2 Waiver. Whenever any notice is required to be given to any director by law, by the Articles of Incorporation or by these bylaws, a waiver thereof in writing signed by the director entitled to such notice, whether before or after the meeting to which the waiver pertains, shall be deemed equivalent thereto.

#### ARTICLE VI Officers

Section 6.1 Number. The Officers of the corporation shall consist of a President, one (1) or more Vice-Presidents as determined or designated by the Board of Directors, a Secretary, and a Treasurer. The Board of Directors shall from time to time create and establish the duties of such other officers and elect or provide for the appointment of such other officers or assistant officers as it deems necessary for the efficient management of the corporation. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary and except the offices of President and Vice President.

Section 6.2 Election and Term of Office. The Officers of the corporation to be elected by the Board of Directors shall be elected by the Board of Directors at the regular annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office for a term of one (1) year and until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

Section 6.3 Compensation. No compensation shall be paid to Directors for their services as Directors. No remuneration shall be paid to a Director for services performed by him for the Corporation in any other capacity, unless a resolution authorizing such remuneration shall be unanimously adopted by the Board of Directors before the services are undertaken.

Section 6.4 Removal. Any officer or agent elected by the Board of Directors may be removed by the Board of Directors at any meeting with respect to which notice of such purpose has been given to the members thereof.

Section 6.5 President's Duties. The President shall:

- (a) Be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the corporation;
- (b) When present, preside at all meetings of the Members and the Board of Directors;





(c) Sign, with the Secretary or any other proper officer of the corporation thereunto authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by the bylaws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed.

(d) In general, perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6.6 Vice-President's Duties. The Vice-President shall:

(a) In the absence of the President or in the event of his death, inability or refusal to act, the Vice-President (or in the event there be more than one (1) Vice-President, the Vice-Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President;

(b) He shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 6.7 Secretary's Duties. The Secretary shall:

(a) Keep the minutes of the Members' and Board of Directors' meetings in one (1) or more books provided for that purpose;

(b) See that all notices are duly given in accordance with the provisions of these bylaws or as required by law;

(c) Be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized;

(d) In general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 6.8 The Treasurer's Duties. The Treasurer shall:

(a) If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine;

(b) Have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for monies due and payable to the corporation from any source whatsoever, and deposit all such monies in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VII of these bylaws;

(c) In general, perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 6.9 Assistant Secretary and Assistant Treasurer Duties.

(a) The Assistant Treasurer shall, if required by the Board of Directors, give bond for the faithful discharge of his duties in such sums and with such sureties as the Board of Directors shall determine;

(b) The Assistant Secretary and Assistant Treasurer, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or Board of Directors.

Section 6.10 Resignation. Any Director or officer of the corporation may at any time, resign as such Director or officer by giving notice of his resignation to the Board, the President or the Secretary of the corporation. Such resignation shall take effect at the time specified therein, or, if no time be specified therein, at the time of the receipt thereof, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.11 Bonds. The Board of Directors may by resolution require any or all of the officers, agents or employees of the corporation to give bonds to the corporation, with sufficient surety or



sureties, conditioned on the faithful performance of the duties of their respective officers or positions, and to comply with such other conditions as may from time to time be required by the Board of Directors.

Section 6.12 Reimbursement by Officers. Any payments made to an officer of the corporation such as salary or entertainment expense incurred by him, which shall be disallowed in whole or in part as a deductible expense by the Internal Revenue Service, shall be reimbursed by such officer to the corporation to the full extent of such disallowance. It shall be the duty of the Board of Directors to enforce payment of each such amount disallowed. In lieu of payment by the officer, subject to the determination of the Board of Directors, proportionate amounts may be withheld from his future compensation payments until the amount owed to the corporation has been recovered.

#### ARTICLE VII Contracts, Loans, Checks, Deposits and Gifts

Section 7.1 Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 7.2 Loans. No loans shall be considered on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

No loans shall be made by the corporation to its officers or directors.

Section 7.3 Checks and Drafts. All checks, drafts, or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall, from time to time, be determined by resolution of the Board of Directors. Provided, however, the following shall, at all times and in such manner as shall be directed by the Board of Directors, have signature authority on the America's Choice Community of Clarinda Occupancy Account:

(a) At least one (1) member of the Board of Directors, and  
(b) One (1) individual appointed by the Agent employed by the Corporation to manage the Corporation's retirement center in Clarinda, Iowa, and

(c) Such additional individuals as the Board of Directors may, from time to time, appoint.

Section 7.4 Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

Section 7.5 Gifts. The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest or devise for the general purposes or for any specific purpose of the corporation. The Board of Directors may vary the use to which a specific contribution, gift, bequest or devise can be put in the event the use for which the contribution, gift, bequest or devise is to be used becomes impossible, unnecessary, impractical or contrary to the best interests of the corporation.

#### ARTICLE VIII Miscellaneous

Section 8.1 Fiscal Year. The Board of Directors is authorized to fix the fiscal year of the corporation and to change the same from time to time as it deems appropriate.

Section 8.2 Seal. The corporate seal, if any, shall be in such form as the Board of Directors may from time to time determine.

#### ARTICLE IX Amendments

Section 9.1 Power to Amend Bylaws. The Board of Directors shall have power to alter, amend or repeal these bylaws or adopt new bylaws.

Section 9.2 Conditions. Action taken by the Board of Directors with respect to bylaws shall be taken by an affirmative vote of a majority of all directors then holding office.



#### ARTICLE X Indemnification

Section 10.1 The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the corporation, by reason of the fact that he or she is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of he corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 10.2 The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the defense or settlement or such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for any negligence or misconduct in the performance of his or her duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 10.3 To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 10.1 and 10.2 of this Article, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection therewith.

Section 10.4 Any indemnification under Sections 10.2 and 10.2 of this subdivision, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 10.1 and 10.2 of this Article. Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding, or if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion.

Section 10.5 Expenses incurred in defending a civil or criminal action, suit, or proceedings may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding as authorized

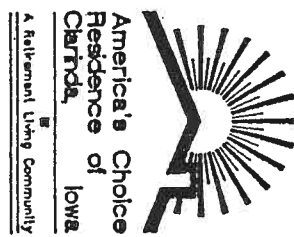
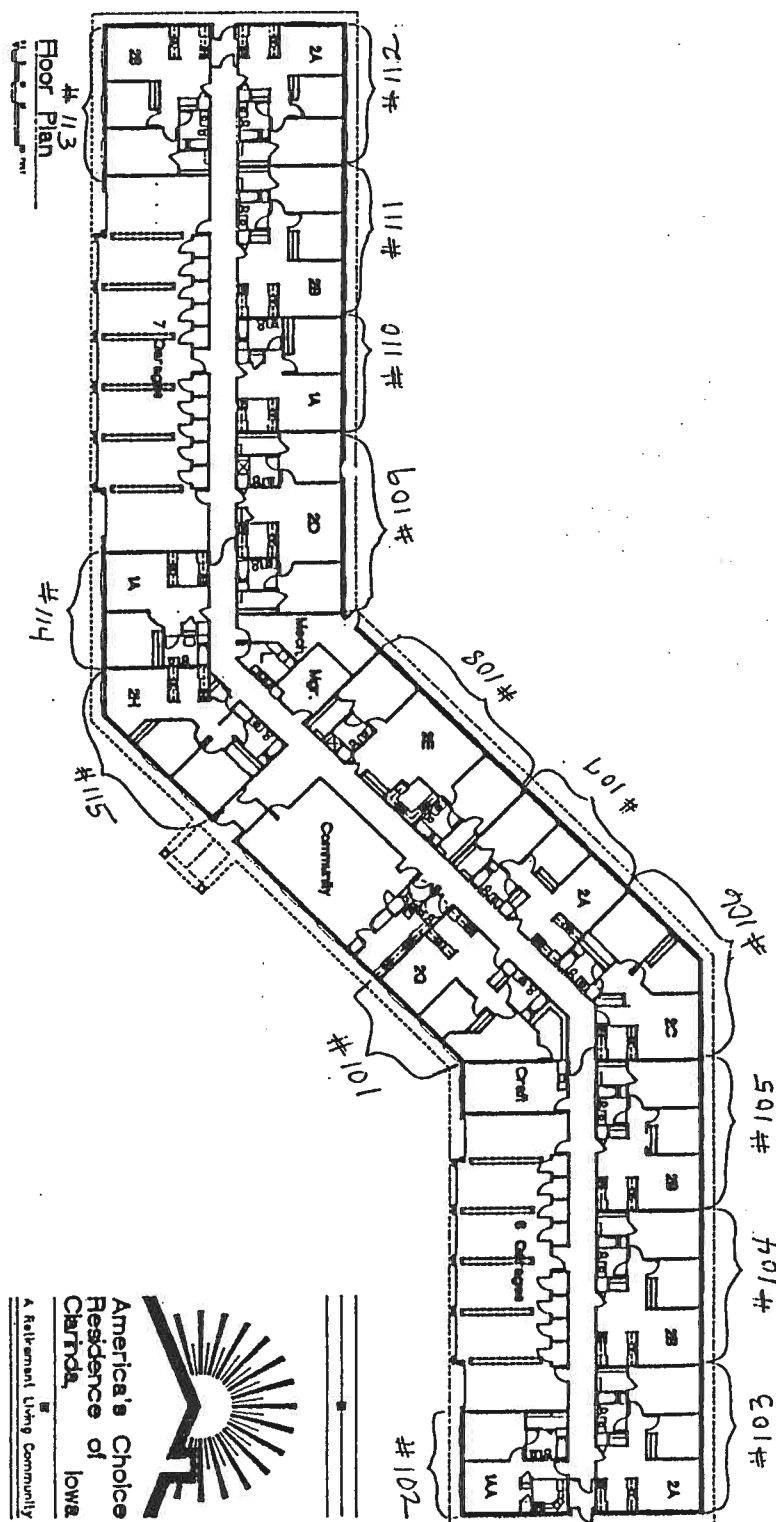




in the manner provided in Section 10.4 of this Article upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the corporation as authorized in this Article.

Section 10.6 Nothing contained in this Article shall limit the corporation's ability to reimburse expenses incurred by a director, officer, employee or agent of the corporation in connection with his or her appearance as a witness in a proceeding at a time when he or she has not been made a named defendant or respondent in the proceeding.

ADOPTED by the Board of Directors on \_\_\_\_ day of \_\_\_\_\_, 1991.



APARTMENT NUMBER & SQUARE FOOTAGE			
UNIT NUMBER	SQUARE FOOTAGE	UNIT NUMBER	SQUARE FOOTAGE
#101	914 sq. ft.	#108	1200 sq. ft.
#102	576 sq. ft.	#109	1049 sq. ft.
#103	848 sq. ft.	#110	683 sq. ft.
#104	899 sq. ft.	#111	899 sq. ft.
#105	899 sq. ft.	#112	848 sq. ft.
#106	908 sq. ft.	#113	899 sq. ft.
#107	848 sq. ft.	#114	683 sq. ft.
		#115	908 sq. ft.

Total of All Apartments - 13,061 sq. ft.

#### APPLICATION AGREEMENT

Dwelling Unit No. \_\_\_\_\_  
Date: \_\_\_\_\_

##### 1. APPLICATION AMOUNT

I/We \_\_\_\_\_, a resident of the State of \_\_\_\_\_, ("Applicant"), in consideration of the payment of the Entrance Fee set forth below, hereby apply for Residential Membership in America's Choice Community of Clarinda, Iowa, an Iowa Corporation ("Corporation").

Unless otherwise agreed to in writing by Corporation, I/We hereby agree to pay an Entrance Fee as follows:

\$\_\_\_\_\_ upon signing this application Agreement ("Agreement") which sum shall be deposited in an interest bearing escrow account in a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation, and held in such institution and disbursed pursuant to this Agreement. The purpose of the escrow account is to protect the Applicant. The funds deposited in the escrow account shall be kept and maintained in an account separate and apart from the Corporation's business accounts. The escrow account will be maintained by an escrow agent.

I/We hereby ratify the provisions contained in the Corporation's Articles of Incorporation, Bylaws and Occupancy Agreement, copies of which are attached hereto and receipt of which is hereby acknowledged.

##### 2. PRIORITY OF MORTGAGE LIEN

This Agreement and all rights hereunder are and at all times shall be subject to and subordinate to the lien of the mortgage and accompanying documents to be executed by the Corporation to a lender or lenders ("Lender"); and to any and all modifications, extensions, and renewals thereof; and to any mortgage or deed of trust made in place thereof; and to any mortgage or deed of trust which may at any time thereafter be placed on the property of the Corporation or any part thereof.

##### 3. OCCUPANCY AGREEMENT

The Applicant, if approved for membership as defined in Section 1, will be entitled to occupancy of the above numbered dwelling unit under the terms of the Occupancy Agreement. It is estimated that the initial monthly charge for said unit will not exceed \$\_\_\_\_\_, but it is to be emphasized that this is only an estimate, subject to fluctuations as provided for in the Occupancy Agreement. The Occupancy Agreement shall be for a term of three (3) years as specified therein. The monthly charge shall terminate at such time as outlined in the Occupancy Agreement or upon transfer of the Applicant's Residential Membership as detailed in the Bylaws. I/We agree to execute the Occupancy Agreement on demand and to comply with all the terms thereof.

##### 4. CANCELLATION PROVISIONS AND DISBURSEMENT OF ESCROW FUNDS

(a) By Corporation. The Corporation reserves the right at any time before it has notified the Applicant of his/her acceptability for Residential Membership, for reasons deemed sufficient by the Corporation, to return the Entrance Fee paid by the Applicant under this Agreement; or in the event the Applicant shall have died prior to becoming a Residential Member or being notified in writing that such Applicant has been accepted, the Corporation reserves the right to return same to Applicant's estate or legal representative, and thereupon all rights of



the Applicant shall cease and terminate without further liability on the part of the Corporation. In either of the cases mentioned in this Subparagraph 4(a), the Entrance Fee shall be returned with interest, if any, earned thereon.

Further, the entrance fee paid by the Applicant, held in escrow, shall be released only as follows:

(a) if the Corporation fails to meet the escrow requirements of Iowa Code Section 523D.(4), within thirty-six (36) months, the escrow funds shall be returned by the escrow agent to the Applicants who have made payments to the Corporation;

(b) upon notice from the Corporation that an Applicant is entitled to a refund, the escrow agent shall refund the amount directly to the Applicant. The amount of the refund shall be included in the Corporation's Notice to the escrow agent and such refund shall be determined in compliance with Iowa Code Chapter 534D, and any applicable terms of the Applicant's contract;

(c) except as provided by paragraphs "a" and "b", amounts held in escrow shall be released only upon approval of the Commissioner of Insurance or the Deputy appointed under Iowa Code Section 502.01 hereinafter ("Commissioner"). The Commissioner shall approve the release of funds only upon a determination that at least one of the following conditions has been satisfied; and

(i) the facility has a minimum of 50% of the units reserved for which the Corporation is charging an entrance fee and the aggregate amount of the entrance fees received by or pledged to the Corporation, plus anticipated proceeds from any long-term financing commitments, plus funds from all other sources in the actual possession of the Corporation, equal not less than 90% of the aggregate cost of constructing or purchasing, equipping, and furnishing the Development.

(ii) the resident has moved into the living unit, the cancellation period required by Iowa Code Section 523D.6, Sub-Section 2, has expired, construction of the Development or the portion of the Development under construction is complete, the Development has been adequately equipped and furnished, a Certificate of Occupancy or the equivalent has been issued by the appropriate local jurisdiction, and the Corporation has been issued all the appropriate licenses or permits needed to operate the Development and provide all of the promised services.

(d) upon receipt by the escrow agent of a request by the Corporation for the release of these escrow funds, the escrow agent shall approve release of the funds within five (5) working days unless the escrow agent finds that the requirements of Iowa Code Section 523D.5(4) and (5) have not been met and notifies the Corporation of the basis for this funding. The request for release of the escrow funds shall be accompanied by any documentation the escrow agent requires.

If the Applicant shall default in any of the obligations called for in this Agreement, and such default shall continue for fifteen (15) days after notice sent by registered mail by the Corporation to the Applicant at the address given below then, at the option of the Corporation, the Applicant shall lose any and all rights under this Agreement, and any amount paid toward the Entrance Fee may be retained by the Corporation as liquidated damages, (actual damages not being susceptible of ascertainment at this time) or may, at the option of the Corporation, be returned less the Applicant's proportionate share of the expenses to be determined solely by the Corporation. The Corporation may, at its option, release the obligations of the Applicant under this Agreement in the event the Applicant shall secure an assignment of this Agreement to an assignee who has assumed the obligations herein contained and is satisfactory to the Corporation and Lender. This Agreement is not otherwise assignable.

(b) By Applicant. The Applicant may withdraw from this Agreement, thereby terminating all rights and liabilities hereunder, upon which event all amounts paid by him/her hereunder together with interest earned, if any, thereon shall forthwith be refunded, as follows:





(1) If, within one (1) year after the date of execution of this Agreement, construction of the Retirement Center in which the dwelling unit is located has not commenced, the Applicant shall have the right at any time thereafter to withdraw from this Agreement by delivering written notice of withdrawal to the Corporation.

(2) If it is determined that either an Entrance Fee greater than that stated, or the monthly charges will be greater than that stated, or the monthly charges will be greater than those projected, the Applicant shall have the right to withdraw from this Agreement within fourteen (14) days after written notice by the Corporation of such occurrence (which notice the Corporation hereby agrees to serve in a timely manner), provided the Applicant delivers written notice of withdrawal to the Corporation within such fourteen (14) day period. If the Applicant elects not to withdraw, the Applicant shall, in such event, execute and deliver to the Corporation an amended Application Agreement agreeing to pay the adjusted entrance fee.

(3) If Applicant dies, or through illness, injury or incapacity is precluded from becoming a resident under the terms of the Occupancy agreement and/or the application agreement before occupying the dwelling unit, this contract is automatically rescinded and the applicant or the applicant's legal representative shall receive a full refund of all payments of money or transferred property to the Corporation, except those costs specifically incurred by the Corporation at the request of the applicant and set forth in writing in a separate Addendum, signed by both parties to the Contract.

(c) Use of Entrance Fee. In the event that this Agreement is not cancelled by either the Corporation or the Applicant, and there is a closing with the Lender, the Corporation shall disburse and apply the Entrance Fee to the uses and purposes of the Corporation. Interest earned on the Entrance Fee shall be paid to the Applicant.

#### 5. NOTICES

Any notice provided for in this Agreement shall be in writing and shall be deemed to have been sufficient if and when delivered personally or when deposited in the United States mail, certified return receipt requested, postage prepaid, addressed as follows:

To the Applicant: \_\_\_\_\_

To the Corporation: America's Choice Community of Clarinda, Iowa  
114 North 15th Street, Clarinda, Iowa 51632

#### 6. ORAL REPRESENTATION NOT TO BE RELIED UPON

This Agreement will supersede any prior understandings and agreements and constitutes the entire agreement between us, and no oral representations or statements shall be considered a part hereof.

WITNESS:

\_\_\_\_\_  
Applicant  
\_\_\_\_\_  
Applicant  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Telephone

#### OCCUPANCY AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_, 1992, by and between America's Choice Community of Clarinda, 113 No. 15th, Clarinda, Iowa 51632, an Iowa Corporation, (hereinafter referred to as "Corporation"), and \_\_\_\_\_, (hereinafter referred to as "Resident");

WHEREAS, Corporation has been formed for the purpose of developing, owning and operating a housing development restricted to housing senior citizens ("Development") to be located in Clarinda, Iowa, with the intent that its Residents shall have the right to occupy the dwelling units thereof under the terms and conditions hereinafter set forth;



WHEREAS, the following addendums and attachments are incorporated into this contract by this reference:

- a. Addendum "A", which is the contract for cancellation;
- b. Addendum "B", which is a copy of the resident's application agreement;
- c. The Corporation's Articles of Incorporation; and
- d. A copy of the Corporation's By-Laws;

WHEREAS, Resident intends to become a resident of and has a bona fide intention to reside in the Development;

WHEREAS, the Residents living in the development shall have the right to self-organization in accordance with the Corporation's Articles of Incorporation and ByLaws currently in effect;

WHEREAS, Resident has met the age and income qualifications of the Development; and

WHEREAS, Corporation proposes to build the Development in one phase which will involve a total of nineteen (19) dwelling units.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Corporation hereby lets to the Resident, and the Resident hereby hires and takes from the Corporation dwelling Unit Number \_\_\_\_ ("Premises").

TO HAVE AND TO HOLD said Premises unto the Resident, his/her executors, administrators and other authorized assigns, on the terms and conditions set forth herein and in the ByLaws of the Corporation now or hereafter adopted pursuant thereto, from the date of this Agreement, for a term terminating on \_\_\_\_\_, 19\_\_, renewable thereafter for successive three (3) year periods under the conditions provided for herein.

#### ARTICLE 1. MONTHLY CHARGES

Commencing at the time indicated in Article 2 hereof, the Resident agrees to pay to the corporation a monthly sum referred to herein as "Monthly charges" equal to one-twelfth (1/12th) of the Resident's proportionate share of the sum required by the Corporation, as estimated by its Board of Directors, to meet its annual expenses pertaining to the Development, including but not limited to the following items:

- (a) The costs of all operating expenses of the Development and services furnished to Resident;
- (b) The costs of necessary management and administration;
- (c) The amount of all taxes and assessments levied against the Development or the Corporation or which it is required to pay, and ground lease, if any;
- (d) The cost of fire and extended coverage insurance on the Development and such other insurance as the Corporation may effect or as may be required by any mortgage on the Development ("Mortgage");
- (e) The cost of furnishing water, sewer, common area electricity, common area heat, common area air-conditioning, garbage and trash collection;
- (f) All reserves set up by the Board of Directors pertaining to the Development;
- (g) The estimated cost of repairs, maintenance and replacements of the Development property to be made by the Corporation;
- (h) The amount of principal, interest, and other required payments on the Mortgage; and
- (i) Any other expenses of the Corporation approved by the Board of Directors, including operating deficiencies, if any, for prior periods.

The Board of Directors shall determine the amount of the Monthly Charges annually, but may do so at more frequent intervals should circumstances so require. No Resident shall be charged with more than his/her proportionate share thereof as determined by the Board of Directors.

Until further notice from the Corporation, Monthly Charges for the Premises shall be \$\_\_\_\_\_.

#### ARTICLE 2. WHEN PAYMENT OF MONTHLY CHARGES TO COMMENCE

After thirty (30) days notice by the corporation to the effect that the Premises is or will be available for occupancy, or upon occupancy by the Resident, whichever is earlier, the resident shall make



a payment for Monthly Charges covering the unexpired balance of that month. Thereafter, the Resident shall pay Monthly charges in advance of the first day of each succeeding month.

#### ARTICLE 3. SERVICES

The following services will be provided to all Residents during the full term of their occupancy within the Development:

1. Lifestyle Assessment. A Lifestyle Assessment will be provided to all Residents upon occupancy. The fees for such assessments will be paid by the Corporation.

2. Wellness Program. Based upon the Lifestyle Assessment, an optional Wellness Program monitored by a Health Technician will be designed for the individual needs of each Resident. The fees for such Wellness Program will be paid by the Residents participating in the program.

3. Mini-Van. Scheduled transportation daily throughout the community will be provided for doctor/hospital visits. The fees for such service will be paid by the Corporation.

4. Meals Program. Residents may choose to participate in an optional meals program for noon meals. The fees for such meals will be paid by Residents participating in the program.

5. Personal Emergency Response System. Such system is provided by the Corporation and will be available throughout the Development.

The Resident has the right to rescind a contract for the services provided herein, without penalty or forfeiture, within three (3) business days after the date the Contract was executed or within thirty (30) days after the date the Resident has received the disclosure statement as required by the Iowa Code, whichever is later.

#### ARTICLE 4. CORPORATION'S CHANGE OF ACCOMMODATIONS OF RESIDENT

The Corporation does not temporarily or permanently transfer Residents within the development or transfer Residents to other health facilities. The Residents may transfer their membership in accordance with Article 9 herein.

#### ARTICLE 5. RESIDENT'S OPTION FOR AUTOMATIC RENEWAL

It is covenanted and agreed that the term herein granted shall be extended and renewed from time to time by and against the parties hereto for further periods of three (3) years from the expiration of the term herein granted and upon the same covenants and agreements as herein contained unless: (1) notice of the Resident's election not to renew shall have been given to the Corporation in writing at least four (4) months prior to the expiration of the then current term, and (2) the Resident shall have on or before the expiration of said term (a) met all his/her obligations and paid all amounts due under this Agreement up to the time of said expiration, and (b) vacated the premises, leaving same in good state of repair. Upon compliance with provisions (1) and (2) of this Article, the Resident shall have no further liability under this Agreement and shall be entitled to no payment from the Corporation.

#### ARTICLE 6. PREMISES TO BE USED FOR RESIDENTIAL PURPOSES ONLY

The Resident shall occupy the Premises for himself/herself and/or his/her immediate family and for no other purposes, and may enjoy the use in common with other residents of all community property and facilities of the entire Development so long as the Resident occupies his/her Premises, and abides by the terms of this Agreement. Any sublessee of the Resident, if approved pursuant to Article 8 hereof, may enjoy the rights to which the Resident is entitled under this Article 6.

The Resident shall not permit or suffer anything to be done or kept upon said Premises which will increase the rate of insurance on the Development, or on the contents thereof, or which will obstruct or interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance on the premises of the Development or commit or suffer any immoral or illegal act to be committed thereon. The Resident shall comply with all of the requirements of the Board of Health and all other governmental authorities with respect to the said Development. If by reason of the occupancy or use of said Premises or community property and





facilities of the Development by the Resident the rate of insurance on the Development shall be increased, the Resident shall become personally liable for the additional insurance premiums.

ARTICLE 7. RESIDENT'S RIGHTS TO PEACEABLE POSSESSION

In return for the Resident's continued fulfillment of the terms and conditions of this Occupancy Agreement, the Corporation covenants that the Resident may, at all times while this Agreement remains in effect, have and enjoy for the Resident's sole use and benefit the Premises hereinabove described, after obtaining occupancy, and may enjoy in common with all other residents, the use of all community property and facilities of the Development.

ARTICLE 8. SUBLETTING WITHOUT CONSENT OF CORPORATION

The Resident hereby agrees not to assign this Agreement nor to sublet his/her Premises without the written consent of the Corporation. The liability of the Resident under this Occupancy Agreement shall continue notwithstanding the fact the Resident may have sublet the premises with the approval of the Corporation and the Resident shall be responsible for such subleasing which may, at the option of the Corporation, result in the termination and forfeiture of the Resident's rights under this Occupancy Agreement. Nonpaying guests of the Resident may occupy Resident's Premises under such conditions as may be prescribed in writing by the Board of Directors.

ARTICLE 9. TRANSFERS

a. A Resident may at any time assign or transfer his membership in the Corporation to another person or persons, provided such persons qualify for membership in accordance with the terms and provisions of Section 2.2 of the Corporation's Bylaws, and such assignment or transfer is approved by the Corporation acting by and through the Board of Directors, which approval shall not be unreasonably withheld.

b. Upon such assignment or transfer, such Resident shall be entitled to receive from the transferee or assignee a sum equal to the initial entrance fee paid by such Resident plus an amount equal to the following amounts ("Factor") for each full twelve (12) months since the initial occupancy of the Unit:

Unit	Entrance Fee	Factor
1 Bedroom/576 Sq. Ft.	16,500.00	495.00
1 Bedroom/683 Sq. Ft.	17,500.00	555.00
1 Bedroom/742 Sq. Ft.	18,000.00	580.00
2 Bedroom/848 Sq. Ft.	19,500.00	620.00
2 Bedroom/899 Sq. Ft.	21,000.00	650.00
2 Bedroom/910 Sq. Ft.	21,500.00	665.00
2 Bedroom/914 Sq. Ft.	21,500.00	665.00
2 Bedroom/1,049 Sq. Ft.	24,500.00	765.00
2 Bedroom/1,200 Sq. Ft.	28,000.00	870.00

c. The Corporation, acting by and through the Board of Directors, shall not be obligated to consent to an assignment or transfer of membership, notwithstanding the provisions hereof, if the consideration for such assignment or transfer is less than or greater than the sum computed in paragraph (b) above, or if all monthly charges owed by the Resident to the Corporation have not been paid.

ARTICLE 10. MANAGEMENT, TAXES AND INSURANCE

The Corporation shall provide necessary management, operation and administration of the Development; pay or provide for the payment of all taxes or assessments levied against the Development; procure and pay or provide for the payment of fire insurance and extended coverage, and other insurance as required by any mortgage on property in the Development, and such other insurance as the Corporation may deem advisable on the property in the Development. The Corporation will not provide insurance on the Resident's personal property.

ARTICLE 11. UTILITIES

The Corporation shall provide water, sewer, trash removal, common area heat, common area electricity, and common area air-conditioning in amounts which it deems reasonable. The Resident shall pay directly to



the supplier for utilities for Premises electricity, gas, telephone, and cable T.V.

#### ARTICLE 12. REPAIRS

(a) By Resident. The Resident agrees to repair and maintain his/her Premises at his/her own expense as follows:

(1) Any repairs or maintenance necessitated by the Resident's own negligence or misuse.

(2) Any redecoration of the Resident's own Premises.

(3) Any repairs, maintenance or replacements required on the following items: Additional appliances, additional window treatments, wall-coverings, additional floor coverings, furnishings, household goods and personal property.

(b) By Corporation: The Corporation shall provide and pay for all necessary repairs, maintenance and replacements except as specified in clause (a) of this Article. The officers and employees of the Corporation shall have the right to enter the Premises of the Resident in order to effect necessary repairs, maintenance and replacements, and to authorize entrance for such purposes by employees of any contractor, utility company, municipal agency or others, at any reasonable hour of the day with reasonable notice and, in the event of emergency, at any time.

(c) Right of Corporation to Make Repairs at Resident's Expense: In case the Resident shall fail to effect the repairs, maintenance or replacements specified in clause (a) of this Article in a manner satisfactory to the Corporation and pay for same, the later may do so and add the cost thereof to the Resident's next Monthly Charge payment.

#### ARTICLE 13. ALTERATIONS AND ADDITIONS

The Resident shall not, without the written consent of the Corporation, make any structural alterations in the Premises or outside the Premises or in the water, gas or heatpipes, electrical conduits, communications conduits, plumbing or other fixtures connected therewith, or remove any additions, improvements or fixtures from the Development.

If the Resident for any reason shall cease to be an occupant of the Premises, he/she shall surrender to the Corporation possession thereof, including any alterations, additions, fixtures and improvements.

#### ARTICLE 14. DEFINITION OF DEFAULT BY RESIDENT AND EFFECT THEREOF

A. It is mutually agreed as follows: At any time after the happening of any of the events specified in clauses (a) to (e) of this Article, the Corporation may at its option give to the Resident a notice that this Agreement will expire at a date not less than sixty (60) days thereafter. The notice of dismissal or discharge shall only be given upon a good faith determination that just cause exists, and the notice shall be given in writing, signed by the medical director, if any, and the administrator of the development. In an emergency situation only such notice as is reasonable under the circumstances. If the Corporation so proceeds, all of the Resident's rights under this Agreement will expire on the date so fixed in such notice, unless in the meantime the default has been cured in a manner deemed satisfactory by the Corporation, it being the intention of the parties hereto to create hereby conditional limitations, and it shall thereupon be lawful for the Corporation to reenter the Premises and to remove all persons and personal property therefrom, either by unlawful detainer proceedings or by suitable action or proceeding at law, in equity or by any other proceedings which may apply to the eviction of residents or by force or otherwise, and to repossess the Premises in its former state as if this agreement had not been made:

(a) In case the Resident attempts to transfer or assign this Agreement in a manner inconsistent with the provisions of the By-Laws.

(b) In case at any time during the continuance of this Agreement the Resident shall make a general assignment for the benefit of creditors.

(c) In case the Resident fails to effect and/or pay for repairs and maintenance as provided for in Article 10 hereof.



(d) In case the Resident shall fail to pay any sum due pursuant to the provisions of Article 1 or Article 9 hereof.

(e) In case the Resident shall default in the performance of any of his/her obligations under this Agreement.

The Resident hereby expressly waives any and all right of redemption in case the Resident shall be dispossessed by judgment or warrant or any court or judge; the words "enter", "reenter", and "reentry", as used in this Agreement, are not restricted to their technical legal meaning and, in the event of a breach or threatened breach by the Resident of any of the covenants or provisions hereof, the Corporation shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, as if reentry, summary proceedings and other remedies were not herein provided for.

The Resident expressly agrees that there exists under this Occupancy Agreement, a landlord-tenant relationship and that in the event of a breach or threatened breach by the Resident of any covenant or provision of this Agreement, there shall be available to a landlord for the breach or threatened breach under the law by a resident of any provision of a lease or rental agreement.

The failure on the part of the Corporation to avail itself of any of the remedies given under this Agreement shall not waive nor destroy the right of the Corporation to avail itself of such remedies for similar or other breaches on the part of Resident.

B. Continued Occupancy After Default. If default is due to financial hardship beyond the control of Resident, and Resident has no source of support or assets with which to cure such default, the Corporation's Managing Agent shall assist Resident in applying for financial resources through the Corporation's Sponsor Members, federal, state and local agencies, the community at large, the Owner through its reserves, and such other agencies as the Managing Agent may, from time to time, deem appropriate.

Regardless of whether financial resources are obtained on behalf of the Resident, as long as such Resident continues to be able to live independently such Resident shall be deemed to be in full compliance with his Occupancy Agreement, such Resident shall continue to reside within the facility and such Resident's Occupancy Agreement shall be extended and renewed from time to time for successive three (3) year periods as though no default had occurred.

Provided, however, should the continued occupancy of such Resident (cumulated with the continued occupancy of other Residents who are residing within the facility without the benefit of financial resources) inflict such severe strain on the financial soundness of the facility that the Corporation would be forced to file a petition in bankruptcy or otherwise be in danger of insolvency, the Occupancy Agreement of such Resident will, upon the specific direction of the Board of Directors, be terminated sixty (60) days from the date of such direction.

C. Transfer After Default. All monthly charges owed by the Resident to the Corporation shall be paid to the Corporation as a condition of the Corporation's allowance of transfer of Entrance Fee Agreement to an assignee or transferee.

#### ARTICLE 15. RESIDENT TO COMPLY WITH ALL CORPORATE REGULATIONS

The Resident covenants that he will preserve and promote the principles on which the Corporation has been founded, abide by the Articles of Incorporation and Bylaws of the Corporation and any amendments thereto and, by his acts of cooperation with its other residents, bring about for himself and his coresidents a high standard in home and community conditions. The Corporation agrees to make its Bylaws known to the Resident by delivery of same to him/her or by promulgating them in such other manner as to constitute adequate notice.

#### ARTICLE 16. EFFECT OF FIRE LOSS ON INTEREST OF RESIDENT

In the event of loss or damage by fire or other casualty to the Premises without the fault or negligence of the Resident, the Corporation shall determine whether to restore the damaged Premises and shall further determine, in the event such premises shall not be restored, the amount





which may be paid to the Resident to assist in the relocation of the Resident.

If under such circumstances, the Corporation determines to restore the Premises, Monthly Charges shall abate wholly or partially as determined by the Corporation until the Premises have been restored. If, on the other hand, the Corporation determines not to restore the Premises, the Monthly Charges shall cease from the date of such loss or damage.

#### ARTICLE 17. INSPECTION OF DWELLING UNIT

The Resident agrees that the representatives of any mortgagee holding a mortgage on the Development, the officers and employees of the Corporation and, with the approval of the Corporation, the employees of any contractor, utility company, municipal agency or others, shall have the right to enter the Premises of the Resident and make inspections thereof at any reasonable hour of the day with reasonable notification and at any time in the event of emergency.

#### ARTICLE 18. SUBORDINATION CLAUSE

The Development, of which the Premises is a part, was or is to be constructed by the Corporation with the assistance of the Mortgage. Therefore, it is specifically understood and agreed by the parties thereto that this Agreement and all rights, privileges and benefits hereunder are and shall be at all times subject to and subordinate to the lien of the Mortgage. The Resident hereby agrees to execute, at the Corporation's request and expense, any instrument which the Corporation or any lender may deem necessary or desirable to effect the subordination of this Agreement to any such mortgage or deed of trust, and the Resident hereby appoints the Corporation and each and every officer thereof, and any future officer, his/her irrevocable attorney-in-fact during the term hereof to execute any such instrument on behalf of the Resident. The Resident does hereby expressly waive any and all notices of default and notices of foreclosure of said mortgage which may be required by law.

In the event a waiver of such notices is not legally valid, the Resident does hereby constitute the corporation his/her agent to receive and accept such notices on the Resident's behalf.

#### ARTICLE 19. LATE CHARGES AND OTHER COSTS IN CASE OF DEFAULT OR DEATH

A. The resident covenants and agrees that, in addition to the other sums that have become or will become due, pursuant to the terms of this Agreement, the Resident shall pay to the Corporation a late charge in an amount to be determined from time to time by the Board of Directors for each Monthly Charge, or part thereof, more than ten (10) days in arrears.

B. If a Resident defaults in the performance or observance of any provision of this Agreement, such Resident is removed from the Premises, and the Corporation has obtained the services of an attorney with respect to the defaults involved, the Resident covenants and agrees to pay to the Corporation all Monthly Charges remaining due and payable hereunder for the remainder of the term of this Agreement, or until a new Resident resides within the Premises, whichever occurs first, plus any costs or fees involved, including reasonable attorneys' fees, notwithstanding the fact that a suit has not yet been instituted. In case a suit is instituted, the Resident shall also pay the costs of the suit in addition to the other aforesaid costs and fees.

C. Upon the death of the Resident, all sums that have become or will become due pursuant to the terms of this Agreement, for the remainder of the term of this Agreement or until a new Resident resides within the Premises, whichever occurs first, shall be due and payable by the estate of the Resident.

#### ARTICLE 20. ORAL REPRESENTATION NOT BINDING

No representation other than those contained in this Agreement, the Articles of Incorporation and the Bylaws of the Corporation shall be binding upon the Corporation or the Resident.



ARTICLE 21. REMEDIES

The exercise of any of the rights or remedies as herein provided with respect to any default shall not preclude or affect the subsequent exercise of such rights or remedies at different times for different defaults.

The respective rights or remedies, whether provided by this Agreement or by law, or available in equity, shall be cumulative and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or different defaults, or for the same or different failures of the Resident to perform or observe any provision of this Agreement.

ARTICLE 22. GRIEVANCES BETWEEN THE CORPORATION AND RESIDENTS

All grievances shall be made in writing and delivered to one of the Resident Board members. The Resident Board member will present the grievance to the Board at the next scheduled Board meeting. The Board will address the grievance in accordance with the Corporation's By-Laws.

ARTICLE 23. APPOINTMENTS OF PERSONAL REPRESENTATIVE

Prospective Resident or Residents may appoint a Personal Representative in this contract. If such Resident intends to appoint a Personal Representative, the Personal Representative's name, address and phone number may be filled in below.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

The Personal Representative shall receive copies of the contract and all notices, disclosures, or forms required to be delivered to a Resident. A Personal Representative appointed under this Article has no legal authority to make any decisions for the Resident. The Personal Representative may advise the Resident as to the materials provided. The Personal Representative shall not be affiliated or associated with the Corporation, and shall not be a Resident.

ARTICLE 24. CANCELLATION

Either the Corporation or the Resident may cancel this Contract by Completion of the "Notice of Cancellation" attached hereto as Addendum "A".

ARTICLE 25. GENDER REFERENCE

Any reference to the word "his" herein shall be interpreted to read and mean the word "her" in the event the Resident is female and the word "their" in the event the Resident is a couple.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed the day and year first above written.

AMERICA'S CHOICE COMMUNITY OF CLARINDA

By \_\_\_\_\_

Its \_\_\_\_\_

Resident \_\_\_\_\_

Resident \_\_\_\_\_

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