

WARREN COUNTY, IOWA  
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BOOK 1999 PAGE 2539  
JUDITH K. TAYLOR, RECORDER

DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
COLONIAL MEADOWS

DEPUTY

THIS DECLARATION, made this 22nd day of July, 1999 by Colonial Meadows, L.C., an Iowa limited liability company, hereinafter called "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property in the City of Norwalk, Warren County, Iowa, which is more particularly described in Exhibit "A" attached hereto; and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereof to the covenants, restrictions, charges and liens hereinafter set forth;

NOW, THEREFORE, COLONIAL MEADOWS, L.C., Declarant, declares that the real property described in Exhibit "A", and such additions thereto as may hereafter be made pursuant to this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, charges, and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Association" shall mean and refer to the Colonial Meadows Property Owners Association, Inc., an Iowa not-for-profit corporation, its successors and assigns. The Articles of Incorporation for the Association have been executed by the incorporator thereof on the same date as this Declaration has been executed. The Articles of Incorporation and initial Bylaws for the Association are hereby incorporated by this reference.

(b) "Board of Directors" shall mean and refer to the Board of Directors of the Association.

(c) "City" shall mean and refer to the City of Norwalk, Warren County, Iowa.

(d) "Colonial Meadows PUD" shall mean and refer to Ordinance No. 98-09 of the City of Norwalk, Iowa, as published and made effective December 24, 1998, and as may be amended from time to time, which adopted the Master Plan for the Development of the Colonial Meadows Planned Unit Development.

(e) "Common Areas" shall mean and refer to those areas of land and improvements thereon shown on any recorded plat or its equivalent of the Properties or any portion thereof filed or approved by Declarant which are deeded to the Association. This specifically includes easements granted to or by Declarant and/or the Association.

(f) "Declarant" shall mean and refer to Colonial Meadows, L.C. and its successors and assigns and shall include any person or entity to which Declarant may assign its rights and privileges, duties, and obligations hereunder, which are and shall be assignable.

(g) "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map or plat of the Properties which is intended to be sold as a separate unit.

(h) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation. Where any such Lot is being sold by the fee Owner to a contract vendee who is entitled to possession of the Lot, the contract vendee shall be considered to be the Owner of the Lot if: (1) the rights of the contract vendor hereunder are delegated to the contract vendee under such contract; and (2) the contract vendee shall furnish proof of such delegation to the Master Association.

(i) "Properties" shall mean and refer to the real property (including improvements) described in Exhibit "A" attached hereto. "Properties" shall include any additional properties added by Declarant pursuant to this Declaration.

## ARTICLE II

### THE ASSOCIATION

Section 1. Powers and Duties of the Association: The Association shall have the following powers and duties with respect to the Properties:

(a) The Association shall own, possess, administer, manage, repair and maintain the Common Areas, provided, however, that in the event the Association shall fail to carry out its duties hereunder, Declarant shall have the right, but not the obligation, to do so at the expense of the Association.

(b) With respect to Colonial Parkway which will become a public right-of-way when deeded to the City:

(i) The Association shall establish, repair, replace and maintain all landscaping materials and irrigation located within the right-of-way of said Colonial Parkway. Such repair, maintenance and replacement of the boulevard landscaping shall be in accordance with construction or site plans approved by the City allowing the construction of such boulevard landscaping.

(ii) The Association hereby agrees to indemnify and hold the City, its elected officials, employees, officers, agents, and representatives, from and against any and all claims or demands for liability, loss, damage, costs, expenses or attorney's fees of any kind or acts or omissions of the Association arising out of or in connection with any undertaking arising out of any obligations of the Association to perform the above-described services that relate to any area with the public right-of-way.

(c) The Association shall have the power from time to time as it deems necessary and appropriate to adopt, amend and enforce rules and regulations applicable within the Properties, including the Common Areas, in order to implement the provisions of this Declaration, including but not limited to, rules and regulations to promote the general health, safety and welfare of persons within the Properties, and to protect and preserve property. The Association may also provide for enforcement of any such rules and regulations by appropriate penalties.

(d) The Association shall determine, collect, administer and enforce the assessments provided for in Article III of this Declaration as provided therein, which duties shall include, but shall not be limited to, the payment of all expenses for the upkeep, maintenance and repair of the Common Areas. The Association shall have the power to suspend the voting rights of any member of the Association during any period in which such member shall be in default in the payment of any assessment levied by the Association.

(e) The Association shall enforce the provisions of this Declaration, and shall have power to utilize any remedies set forth in this Declaration, in the Articles of Incorporation or the Bylaws of the Association, or any other remedy at law or in equity including without limitation, an action seeking a prohibitive or mandatory injunction or damages or both. In any action for the enforcement of this Declaration, the losing party or parties shall pay all attorneys' fees and costs, including the attorneys' fees and costs of any appeal, incurred by the prevailing party in such action.

(f) The Association shall provide and keep in force, for the protection of the Association and its members, the Architectural Review Committee and its members, the Declarant, and all Owners, as their interests may appear, general public liability insurance in such limits as the Association shall deem appropriate covering all Common Areas within the Properties. Each such insurance policy shall provide that in case of violation of any provision thereof by one or more (but fewer than all) of the Owners of property within the Properties, the coverage of such insurance policies shall be suspended or invalidated only as to the interests of the Owner or Owners committing the violation and not as to the interests of any other Owner. The Association may also purchase and maintain insurance, in such amounts as the Association

may deem appropriate, against any insurable hazard or liability which the Association wishes to insure against. The Association may also provide and keep in force worker's compensation insurance for any employees, as required by law.

(g) The Association shall have and may exercise any right or privilege given to it expressly in this Declaration or in the Articles of Incorporation and Bylaws, and shall have and may exercise every other right or privilege or power and authority which the Association deems necessary or desirable to fulfill its obligations under this Declaration or the Articles of Incorporation and the Bylaws, including but not limited to, the right to engage necessary labor and acquire use of or purchase necessary property, equipment or facilities; to employ personnel necessary to manage affairs of the Association; to obtain and pay for legal, accounting and other professional services as may be necessary or desirable; or to perform any obligations under this Declaration by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be desirable.

Section 2. Membership and Voting Rights: Membership and voting rights in the affairs of the Association shall be as follows:

(a) Each and every person, persons or legal entity who shall own all or a part of any Lot, tract, or parcel of land in the Properties, shall automatically be a member of the Association, PROVIDED that any person or entity who holds such an interest merely as security for the performance of any obligation shall not be a member. Membership shall be appurtenant to and may not be separated from Ownership of all or a portion of any Lot, tract or parcel of land in the Properties.

Membership shall be continuous throughout the period that a member continues to own all or a portion of any Lot, tract, or parcel of land in the Properties. A membership shall terminate automatically without any Association action whenever any member ceases to own any part of any Lot, parcel or tract of land in the Properties. Termination of membership shall not relieve or release any former member from any liability or obligation incurred by virtue of or in any way connected with ownership of any part of a Lot, tract or parcel of land in the Properties, nor shall it impair any rights or remedies which the Association or others may have against such former Owner or member arising out of or in any way connected with such ownership or membership.

(b) Each member of the Association shall be entitled to one (1) vote for each one hundred dollars (\$100.00), or fraction thereof, of value of that portion of the Properties in which such member owns an interest as assessed by the County of Warren, State of Iowa, for real estate tax purposes for the preceding year. For Lots or portions of the Properties which are exempt from paying real estate taxes and are not assessed by the Warren County Assessor, the number of votes for members owning such properties shall be one (1) vote for each (\$100.00), or fraction thereof, of the cost of construction of improvements constructed on such properties, as determined from the records of the City of Norwalk's Building Department. When two or more persons or entities hold undivided interests in any part of the Properties, all such persons or entities shall be members, and the vote for such part of the Properties shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to each one

hundred dollars(\$100.00), or fraction thereof, of value of the part of the Properties in which such members own undivided interests.

(c) Each member of the Association shall abide by and benefit from each provision, covenant, condition, and restriction contained in the Articles of Incorporation and the Bylaws of the Association, and by which each member agrees to be bound, or which is contained in any rule, regulation, or restriction promulgated pursuant to said Articles of Incorporation and Bylaws. The obligations, burdens, and benefits of membership in the Association touch and concern the land and shall be covenants running with each Owner's land for the benefit of all other Lot or parcels of land within the Properties.

**NOTWITHSTANDING THE ABOVE, DECLARANT SHALL BE THE ONLY MEMBER WITH VOTING RIGHTS AS TO THE ASSOCIATION UNTIL SUCH TIME AS DECLARANT NO LONGER OWNS ANY LOT OR PARCEL PRIMARILY FOR THE PURPOSE OF SALE OR UNTIL DECLARANT WAIVES THIS RIGHT TO BE THE ASSOCIATION'S SOLE VOTING MEMBER, WHICHEVER FIRST OCCURS. SO LONG AS DECLARANT IS THE SOLE VOTING MEMBER, DECLARANT SHALL HAVE THE RIGHT TO APPOINT OR REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF DIRECTORS AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION. EACH OWNER OF A LOT VESTS IN DECLARANT SUCH AUTHORITY TO BE THE SOLE VOTING MEMBER AND TO APPOINT AND REMOVE DIRECTORS AND OFFICERS OF THE ASSOCIATION AS PROVIDED BY THIS SECTION.**

### ARTICLE III

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for the entire Properties, hereby covenants, and each Owner of any Lot or any other portion of the Properties by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements and operating deficits; and (3) special assessments as provided in Section 4 below. Such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. The lien for the assessments shall be prior to all other liens on the property, except only tax liens in favor of any assessing unit and special district, and all sums unpaid on a first mortgage of record. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the purposes of the Association as set forth in Article II, including but not limited to, payment of legal liabilities or obligations of the Association and all fees, costs, expenses, and attorney fees in connection therewith.

Section 3. Rate of Assessments. Until January 1 of the year immediately following the conveyance of the first Lot, or part thereof, to an Owner, each Owner of any part of the Properties subject to assessments, shall pay an annual assessment of \$0.02 per square foot of land owned in the Properties.

Section 4. Increase in Assessments.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot, or part thereof, to an Owner, the maximum annual assessment may be increased each year not more than twenty-five percent (25%) above the maximum assessment for the previous year without a vote of the membership of the Association.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot, or part thereof, to an Owner, the maximum annual assessment may be increased above twenty-five percent (25%) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors of the Association may fix annual assessments at an amount not in excess of the maximum, and the Board of Directors of the Association may modify the annual assessment upward or downward from time to time, but in no event upward beyond the maximum permitted by this Section. Written notice of any modification of the annual assessment shall be sent to every Owner subject thereto.

Section 5. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessment authorized above, the Association may levy a special assessment if necessary to finance or perform any of its stated obligations and responsibilities under this Declaration, provided that any such special assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 and 5 shall be sent to all members not less than five (5) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Assessments; Due Dates: The general annual assessment provided for herein shall commence as to each respective Lot, or portion thereof, on the first day of the month following the conveyance by the Declarant of a Lot, or portion thereof. LOTS OWNED BY THE DECLARANT THAT DO NOT HAVE COMPLETED BUILDING IMPROVEMENTS CONSTRUCTED THEREON SHALL BE EXEMPT FROM THE ASSESSMENTS DESCRIBED HEREIN. The first general annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of such assessments at least thirty (30) days in advance of each annual assessment period. Written notice of such assessments shall be sent to every Association Member subject thereto. The due dates shall be established by the Board of Directors of the Association, and annual assessments may be collected in equal monthly installments at the discretion of the Board of Directors.

The Association shall, upon demand, and for a reasonable charge, furnish a statement signed by an authorized representative of the Association setting forth whether the assessments owing by a member have been paid. A properly executed statement of the Association as to the status of assessments is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessment; 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 fifteen (15%) per annum or at the highest rate allowed by Iowa Law, whichever is higher. The Association may bring an action at law against the member personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the petition in such action, including reasonable attorney's fees. No member may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of said Owner's Lot.

Section 9. Subordination of Assessments Liens. If any property subject to a lien created by any provision in this Declaration shall be subject to the lien of a first Mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (ii) the foreclosure of the lien of such Mortgage or the acceptance of a deed in lieu of the foreclosure by the Mortgagee, shall not operate to affect or impair the lien except the assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a

decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting Owner personally.

Section 10. Exempt Property. In addition to Declarant's property described in Section 7, above, the following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

- a. All property which is dedicated to and accepted by a public authority;
- b. All Common Areas;
- c. Lot 1 of the final plat of Colonial Meadows Plat 1, so long as said Lot is owned by the City and is used as the City's public safety facility.

#### ARTICLE IV

##### ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

Section 1. Purpose. In order to establish and preserve a harmonious and aesthetically pleasing design for the development of a Lot or parcel of the Properties and to protect and promote the value of such Lots or parcels. Every grantee of any interest in any Lot or parcel subject to this Declaration, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article IV.

Section 2. Designation of Committee. The Board of Directors shall establish an Architectural Review Committee (herein from time to time also referred to as "ARC" or the "Committee" which shall consist of a minimum of four (4) members who shall be natural persons, and who shall be appointed by the Board of Directors of the Association. Any and all members of ARC may be removed by the Board of Directors without cause. Notwithstanding the foregoing, so long as Declarant owns any Lot, or portion thereof, and has not waived in writing the rights reserved herein, Declarant shall have right, in its sole discretion, to appoint or remove members of ARC, and shall have the right to be the sole member of ARC.

Section 3. Function of Architectural Review Committee. No improvement, as that term is hereinafter defined, shall be erected, constructed, placed, altered (by addition or deletion), demolished, maintained or permitted to remain on any Lot, or any portion thereof, until plans and specifications, in such form and detail as ARC may deem necessary, shall have been submitted to and approved in writing by ARC as provided in Section 6 hereinbelow. ARC shall have the power to employ professional consultants to assist it in discharging its duties. ARC shall have discretion in the refusal or approval of plans and specifications. Approval by ARC is in addition



to and not in lieu of the requirements of any ordinances, codes, rules and regulations of the City. ARC may make such rules, as it may deem appropriate to govern its proceedings.

Section 4. Content of Plans and Specifications. Three (3) sets of architectural plans and specifications (hereinafter from time to time collectively referred to as the "Plans") shall be submitted to the Architectural Review Committee and shall include the following:

(a) Complete plans and specifications prepared by licensed architects and professional engineers for such construction, alteration or demolition covering the exterior of any building and the entirety of any other improvement, including working drawings, materials, brochures, structural design, cut sheets for architectural details and evidence of the construction procedures to be used, and a construction schedule with estimated dates for completion of each phase of the work;

(b) Site plan showing the location of buildings, parking areas and driveways, landscaped areas, pedestrian walkways, below ground utility equipment and facilities, and other improvements and the computation of the total area not covered by buildings, the total area covered by landscaping and pedestrian walkways, and the size and number of parking spaces;

(c) Storm drainage plan and report, construction and final grading plans and, if requested by the Committee, a traffic plan and study;

(d) All building elevations, sections, roof plans and floor plans;

(e) Color and material samples of the exterior finish;

(f) Full color rendering of all buildings;

(g) Landscape and irrigation plan showing all materials and containing a plant list specifying the type, size and number of plants, and including walkways, walls and fences, berms and barriers, elevation changes and watering systems;

(h) A topographical plot showing existing contour grades and showing the location of all improvements, structures, walks, patios, waterways, driveways, fences and walls. Existing and finished grades shall be shown at lot corners and at corners of proposed improvements. Lot drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the lot contours is contemplated;

(i) Exterior lighting plan, including location and method;

(j) If a sign or signs is or are permitted and desired, plans and specifications for such sign or signs, and including size, shape, location, color and materials;

(k) Screening, including size, location, and method;

- (l) Utility connections;
- (m) Fire protection system;

(n) Any other materials or documents requested by ARC or required by the City in its review proceedings.

Section 5. Definition of "Improvement". Improvement shall mean and include all buildings, roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, pools, ponds, waterways, drainage areas, lakes, dams, swimming pools, tennis courts, signs, changes in any exterior color or shape, changes in any exterior windows, and any new exterior improvement exceeding Five Thousand (\$5,000.00) Dollars in cost which may not be included in any of the foregoing. It does not include garden shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. It does include both original improvements and all later changes and improvements.

Section 6. Architectural Review Process. The process for review and approval of Plans by the ARC shall consist of the following:

(a) Review of Plans and Specifications. Any applicant desiring to erect, construct, place, alter (by addition or deletion) demolish, maintain or permit to remain on any Lot, or portion thereof, any improvement, shall submit the Plans to ARC. Within thirty (30) days after receipt of the complete Plans (as herein defined) ARC shall notify the applicant of the Committee's decision which shall be in writing and shall be in one of the following forms:

- (1) "Approved" - The entire application as submitted is approved by the ARC.
- (2) "Approved as Noted" - The application is not approved as submitted, but ARC's suggestions for curing objectionable features or segments are noted. The applicant must correct the Plan's objectionable features and segments and the Applicant may be required to resubmit the application and receive written approval prior to commencing the construction or alteration.
- (3) "Disapproved" - The entire application as submitted is rejected in total. The ARC may provide comments but is not required to do so.

At such time as the ARC delivers its decision, it will return one (1) set of the Plans to the applicant, and shall retain two (2) sets of the Plans for ARC's records. If ARC fails to deliver such a written notice of its decision to the applicant within such thirty (30) day period, it shall be conclusively presumed that ARC has approved such Plans, EXCEPT that ARC shall have no right or power, either by action or failure to act, to waive or to grant any variances to the Protective Covenants set forth in Article V hereof.

(b) Appeal. Any applicant shall have the right to appeal a decision of the ARC by resubmitting the information, documents and required Plans. Such appeal shall be considered only if the applicant has modified the construction or modification or has new information which would, in the ARC's opinion, warrant a reconsideration. If applicant fails to appeal a decision of the ARC, the ARC's decision is final. In the case of a disapproval and resubmittal, the ARC shall have fifteen (15) days from the date of each resubmittal to approve or disapprove any resubmittal. The filing of an appeal does not extend any maximum time period for the completion of any new construction or modification.

(c) City Approval. The review and approval of Plans by ARC shall not be a substitute for compliance with the permitting and approval requirements of the City, or other governmental authorities having jurisdiction. It is the responsibility of applicant to obtain all necessary permits and approval.

Section 7. Basis of Approval. Approval of plans and specifications shall be based, among other things, on such written design guidelines as Declarant may publish from time to time, the adequacy of site dimensions, conformity and harmony of external design and of location with neighboring structures and sites, conformity with natural surroundings and aesthetic considerations, relation of finished grades and elevations to neighboring sites, and conformity to both the specific and general intent of the protective covenants. If, in the judgment of the ARC the circumstances require, the Committee may grant reasonable variances from the terms and condition of this Declaration.

Section 8. Limitation of Liability. Neither the Declarant, the Association, the Architectural Review Committee nor any of the members of such Committee shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Owner of land affected by this Declaration by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications.

Section 9. Restoration of Construction Sites. Upon completion of any construction upon any Lot, or any portion thereof, the Owner shall complete all landscaping in accordance with the landscaping plan as submitted to ARC, and shall complete all improvements and remove all construction materials and debris, all within sixty (60) days following the completion of construction, PROVIDED HOWEVER, that the date for completion may be extended by the written approval of ARC if warranted due to adverse weather conditions or other causes beyond the control of the Owner. In the event said actions are not completed within the applicable time period, Declarant or the Association may, but has no obligation to do so, complete said actions at the expense of the Owner.

Section 10. Inspection. All improvements shall be constructed in accordance with the Plans approved by the ARC pursuant to this Article. The ARC or its designated representatives may, if the Committee so elects, monitor any approved improvements for the purpose of determining that the construction of such improvements complies with any and all approved Plans. The Committee or its designated representatives may enter upon any Lot and any

improvements thereon at any reasonable time or times to inspect the progress, work status or completion of any improvement. Each Owner and such Owner's contractor shall cooperate with the Committee or its designated representatives in connection with any such inspection.

Section 11. Certificate of Completion. Upon the completion of construction of an improvement, an Owner may request in writing that ARC inspect the completed improvement to determine if its construction complies with the provisions of this Declaration, and request that ARC issue a Certificate of Completion as evidence on such compliance. A request for a Certificate of Completion should be made by an Owner at the same time that application is made for a Use and Occupancy Permit from the City. The written request, signed by the Owner, or the Owner's designated representative, will indicate compliance with the major items listed below, pursuant to the Plans approved by ARC. Where items, usually related to landscaping cannot be installed before occupancy, the request must indicate a completion date. One (1) full planting season will be the maximum time permitted. Violation of this deadline will be considered as a violation of the Declaration.

The following items, and the following items only, will be covered by the Certificate of Compliance inspection:

- (a) Building(s) is located according to approved site plan.
- (b) Building(s) is of approved architecture, materials and approved color.
- (c) The approved landscaping has been installed or is scheduled to be completed prior to the expiration of the first full planting season.
- (d) The approved lighting has been installed.
- (e) The roof pipes, vents, louvers, flashing and utility equipment match the surface from which they project.
- (f) Any approved signs have been installed.
- (g) Air conditioning, utility equipment and trash collection areas have been screened according to approved Plans.
- (h) Grading, seeding, paving, and drainage have been completed according to Plans.

Section 12. Conflict with Governmental Regulations: In the event of any conflict between the provisions of this Declaration and any law, ordinance, code, development plan, plat or any other requirement imposed by any governmental authority, the provisions of this Declaration shall prevail; PROVIDED HOWEVER, that if any provision of this Declaration violates or would result in a violation of any law, ordinance, code, development plan, plat or any other requirement imposed by any governmental authority, then such provision of this

Declaration shall be void and of no effect, but the remaining provisions of this Declaration shall continue in full force and effect after deletion of the repugnant provision.

Section 13. Fees: A fee of Two Hundred (\$200.00) Dollars shall be submitted to ARC along with the Plans in order to cover the expenses incurred by ARC in connection with its review of the Plans. ARC may also from time to time set an inspection fee schedule as it deems appropriate in order to cover its inspection of completed improvements at the request of the applicant; PROVIDED HOWEVER, that the inspection fee shall not exceed the sum of One Hundred (\$100.00) Dollars for each inspection. The review and/or inspection fee shall be paid to ARC along with the request for review and/or inspection and ARC need not take any action until the fee is received.

Section 14. Lapse of Committee Approval: Approval of plans and specifications for an improvement shall lapse and become void one (1) year after the date of final approval of the plans and specifications by the Architectural Review Committee unless, prior to the expiration of one (1) year from the date of such approval, a building permit has been issued for the construction of the improvement in accordance with the approved plans and specifications, the foundations for all buildings to be constructed pursuant to the approved plans and specifications have been completed and the remaining construction is being diligently pursued on a continuous basis toward completion.

## ARTICLE V

### PROTECTIVE COVENANTS AND BUILDING RESTRICTIONS

Section 1. Covenants Applicable to Lots. The following provisions shall be applicable to any and all construction, improvement, alteration, or addition to any Lot:

(a) Noxious or Offensive Activities: No noxious or offensive activities shall be carried on upon any Lot nor shall anything be done or placed upon any Lot which is or may become a nuisance or shall cause unreasonable disturbance or annoyance to others, all of which shall be determined by Declarant and/or by the Association in their respective sole discretion.

(b) Hazardous Activities: No activity shall be conducted upon any Lot which are or might be unsafe or hazardous to any person or other Lot or improvement, which shall be determined by Declarant and/or the Association in their respective sole discretion. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot, no open fire shall be lighted or permitted on any Lot and no explosive or fireworks shall be set off on any Lot.

(c) Illegal Uses: No activities or uses which are contrary to the laws, rules or regulations of any governmental unit or political subdivision shall be permitted.

(d) Bulk, Area and Height Requirements: All development shall adhere to the provisions of the Colonial Meadows PUD Zoning Ordinance, as may be amended from time to time, in each of the following respects:

- (1) Minimum setback lines;
- (2) Building heights;
- (3) Minimum lot sizes;
- (4) Minimum lot widths;
- (5) Maximum lot coverage;
- (6) Maximum height of improvements;
- (7) Minimum front yard widths;
- (8) Minimum rear yard widths;
- (9) Minimum side yard widths;

## ARTICLE VI

### MAINTENANCE

Section 1. Duty of Maintenance: Owners and occupants (including lessees) of any part of the Properties shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that part of said Properties so owned or occupied, including buildings, improvements and grounds in connection therewith, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse, and wastes.
- (b) Lawn mowing.
- (c) Tree and shrub pruning.
- (d) Watering.
- (e) Keeping exterior lighting and mechanical facilities in working order.

- (f) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (g) Keeping parking areas, driveways, and roads in good repair.
- (h) Complying with all government health and police requirements.
- (i) Striping of parking areas and repainting of improvements.
- (j) Repair of exterior deterioration or damages to improvements.

Section 2. Unimproved Property: All unimproved Lots, tracts or parcels of land in the Properties shall be well maintained. The provisions of Section 1 of this Article shall, to the extent applicable, apply to unimproved property. In addition, all grassed areas of unimproved property shall be kept mowed to a height of 6 inches or less.

Section 3. Enforcement: If, in the opinion of the Association any such Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the care and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association through its authorized agent or agents shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owner, and occupants (including lessees) of any part of such properties on which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse the Association for such cost. If such Owner or occupant shall fail to reimburse the Association within 30 days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of all of said persons jointly and severally, and shall constitute a lien against that portion of the Properties on which said work was performed; PROVIDED HOWEVER, that the debt and obligation of such Owner or occupant shall be limited to the value of that portion of the Properties upon which said work was performed, plus all improvements and personal property located thereon. Such lien shall have the same attributes as the lien for assessments and special assessments set forth in Article III, Section 9 above, which provisions are incorporated herein by reference, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

## ARTICLE VII

### COMMON PROPERTIES

Section 1. Easements of Enjoyment: Subject to the provisions of Section 4 hereof, every member of the Association shall have a right and easement of enjoyment in and to the Common Areas.

Section 2. Title to Common Areas: The Declarant hereby covenants for itself, its successors and assigns, that it shall convey to the Association from time to time the fee title to all

Common Areas, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions whether or not of record or created by this Declaration or granted to any public authority. The transfer of title to the initial Common Areas shall be accomplished on or before the recorded conveyance of any portion of the Properties by Declarant. Common Areas, in any, created by subsequent plats shall be conveyed immediately following the recording of such subsequent plat in the Warren County Recorder's office.

Section 3. Maintenance of Common Areas: The Association shall enter into such contracts and agreements for the maintenance of the Common Areas as shall be necessary to preserve the Common Areas in a good state of repair structurally, mechanically and aesthetically. Funds for maintenance contracts and agreements shall be allocated by the Association from the annual assessments provided for herein, and by such special assessments as are deemed necessary by the Association to ensure prompt and adequate maintenance of the Common Areas.

Section 4. Reservation of Easements, Exceptions and Exclusions: Declarant reserves to itself and also grants to the Association the right to establish from time to time by dedication or otherwise, utility and other easements across the Common Areas to any governmental subdivision, public agency, authority, or public or private utility for any purpose necessary or convenient for the use and occupancy of the Properties including, but not limited to, water, sewer, gas, electricity, cable television, drainage, irrigation, and to create other reservations, exceptions, and exclusions in the dedication of the Common Areas consistent with the best interests of the Owners, the Association and the Declarant.

Section 5. Declarant's Right To Use Of Common Areas: Declarant shall have a non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in or on the Common Areas maintenance and storage facilities for use by the Association or the Declarant.

Section 6. Delegation of Use: Any Owner may delegate, by only in accordance with and subject to the limitations of the bylaws of the Association, and any rules and regulations promulgated in accordance therewith, his right to enjoyment of the Common Areas, to the members of his family, his tenants, guests, or contract purchasers.

## ARTICLE VIII

### DECLARANT'S RIGHTS

Section 1. Declarant reserves the right to use any of the Properties, to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such property 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 Properties then unsold. Declarant retains the right to be considered an Owner of any Lot or portion of the Properties that remains unsold.



Section 2. Declarant, for itself and successors and assigns, reserves the right to add additional property located with the final plat of Colonial Meadows Plat 1 to the terms of this Declaration. Provided however, nothing contained herein shall bind the Declarant to add such additional properties. None of the terms of this Declaration shall apply in any way to any property located with Colonial Meadows Plat 1, other than the properties described on Exhibit "A", until such property has been added by a written supplement or amendment to this Declaration duly filed in the Office of the Warren County Recorder.

Section 3. Declarant, for itself and successors and assigns, reserve the right to add additional Common Areas by conveying the same to the Association from time to time. Nothing in this Section shall be deemed an obligation on the part of the Declarant to convey additional properties to the Association.

Section 4. Declarant is and shall be responsible for all duties and obligations of the Association hereunder and shall have all rights of the Association until the Association is established and the initial Common Area is conveyed thereto. The Association shall be established prior to the recording of the final plat of Colonial Meadows Plat 1.

Section 5. Declarant shall have the right to assign all of its rights under this Declaration. The assignee or any such assignment shall be responsible for Declarant's duties and obligations under this Declaration.

Section 6. Declarant reserves unto itself, its successors and assigns, for so long as it owns any portion of the Properties, the right and easement to erect and maintain identification and "For Sale" sign or signs within the Properties, including any Common Areas, as Declarant deems reasonably necessary, provided the same are consistent with the ordinances of the City.

## ARTICLE IX MISCELLANEOUS PROVISIONS

Section 1. Duration: This Declaration and the covenants, restrictions, charges, and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and every Owner of any part of the Properties, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded, and continuing through and including December 31, 2021, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless a change (the word "change" including additions, deletions or modifications thereto, in whole or in part) is approved as provided in Section 2 of this Article.

Section 2. Amendment: During the period of time the Declarant is the sole Owner with voting rights in the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Office of the Recorder of Warren County, without the approval of an Owner or mortgagee; provided, however, that with the exception of the addition of

additional properties to the terms of this Declaration (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee having a secured interest in any Lot, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected.

Section 3. Enforcement: Declarant, the Association and all Owners of Lots, tracts or parcels of land within the Properties shall have the right (but not the duty) to enforce any of the covenants and restrictions set out in any Declaration hereafter filed by Declarant or any subsequent Owner. Enforcement of the covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by Declarant, the Association or any Owner to enforce any such covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter. In any action to enforce this Declaration, Declarant or the Association shall have the right to recover all costs and expenses, including attorneys' fees incurred, including costs, expenses and attorneys' fees incurred on any appeal.

Section 4. Severability of Provisions: If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null, or void, the remaining paragraphs, sections, sentences, clauses, or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses, and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses, or phrases shall become or be illegal, null or void.

Section 5. Notice: Whenever written notice to a member (or members) is permitted or required hereunder, such shall be given by the mailing of such to the member at the address of such member appearing on the records of the Association, unless such member has given written notice to the Association of a different address, in which event such notice shall be sent to the member at the address so designated. In such event, such notice shall conclusively be deemed to have been given by the Association by placing same in the United States mail, properly addressed, whether received by the addressee or not.

Section 6. Titles: The titles, headings, and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

EXECUTED as of the day and year first above written.

COLONIAL MEADOWS, L.C.

By X John H. Ghrist II  
John H. Ghrist II, Manager

By Suzanne L. Ghrist-Priebe  
Suzanne L. Ghrist-Priebe, Manager

STATE OF IOWA    )  
                          )    ss.  
COUNTY OF Warren)

On this 22nd day of July, 1999, before me personally appeared John H. Ghrist II and Suzanne L. Ghrist-Priebe, to me personally known, who, being by me duly sworn did say that they are managers of COLONIAL MEADOWS, L.C., a limited liability of the State of Iowa, and that said instrument was signed and sealed in behalf of said limited liability company by authority of its members, and said John H. Ghrist II and Suzanne L. Ghrist-Priebe, acknowledged the execution of said instrument to be the free act and deed of said limited liability company.

Michael  
Notary Public, in and for the State of Iowa  
My commission expires: January 22, 2000

EXHIBIT "A"

Lots 2, 3 and 4 in Colonial Meadows Plat 1, an Official Plat, now included in and forming a part of the City of Norwalk, Warren County, Iowa.