

# THE HILLS OF CEDAR CREEK, PHASE 1

LOTS 1 THROUGH 307 INCLUSIVE AND OUT LOTS "A" THROUGH "O" INCLUSIVE,  
LYING IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHWEST  
QUARTER, AND THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 74 NORTH, RANGE 43  
WEST, AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, AND THE SOUTHWEST QUARTER OF THE SOUTHWEST  
QUARTER OF SECTION 34, TOWNSHIP 75 NORTH, RANGE 43 WEST, ALL WEST OF THE 5TH PRINCIPAL MERIDIAN,  
POTTAWATTAMIE COUNTY, IOWA

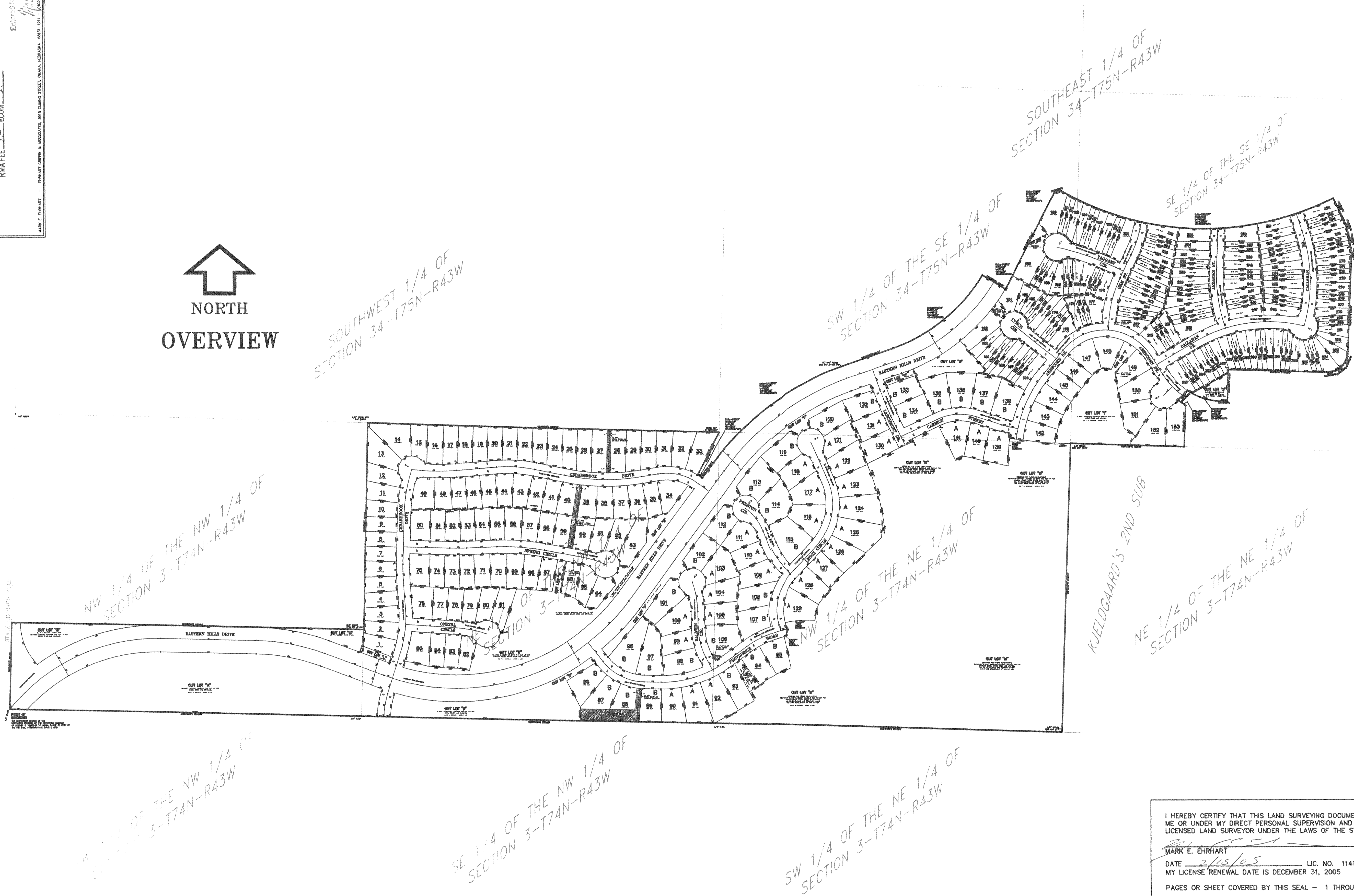
1-8-24

15395  
INST # 15395  
RECORDING FEE 425.00  
AUDITOR FEE  
RMA FEE 1.00 ECOM 1.00

CG FILED TO AH 8-15  
RECORDED  
AUDITOR

Entered for Public  
Mark E. Ehrhart

MARK E. EHRHART - EHRHART GRIFFIN & ASSOCIATES, 3552 FARNAM STREET, OMAHA, NEBRASKA 68131-3111 - (402) 551-0631



PROJECT NO.	
EGA021243	
REVISIONS	NO.
	DESCRIPTION
DATE	BY

**EHRHART GRIFFIN & ASSOCIATES**

3552 Farnam Street  
Omaha, Nebraska 68131  
402 / 551-0631

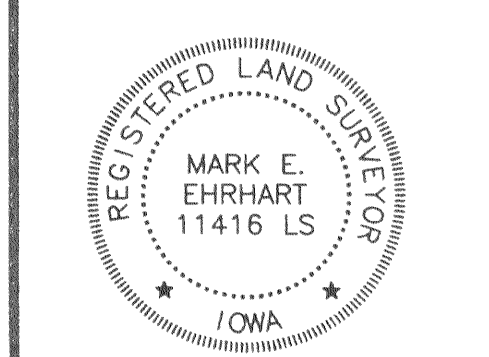
- ENGINEERING
- PLANNING
- LAND SURVEYING

**THE HILLS OF CEDAR CREEK  
PHASE 1  
FINAL PLAT  
COUNCIL BLUFFS, IOWA**

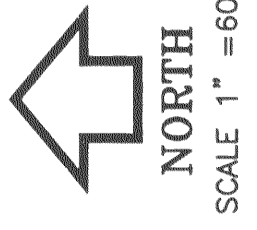
DATE: 2-15-05  
DESIGNED BY:  
DRAWN BY:  
CHECKED BY:  
CREW:

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

MARK E. EHRHART  
DATE 2/15/05 LIC. NO. 11416  
MY LICENSE RENEWAL DATE IS DECEMBER 31, 2005  
PAGES OR SHEET COVERED BY THIS SEAL - 1 THROUGH 6



SHEET NO.  
1 OF 6



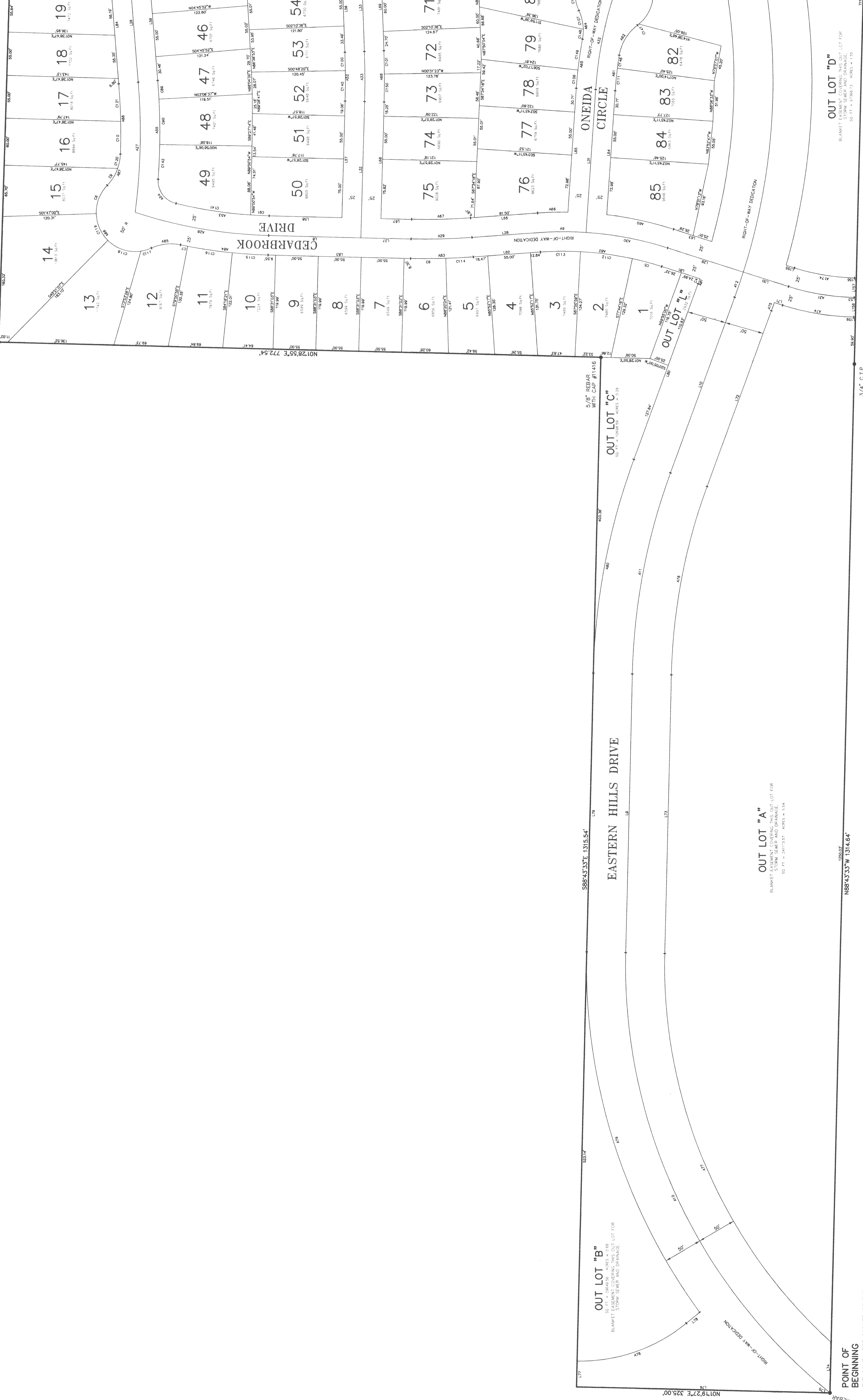
# THE HILLS OF CEDAR CREEK, PHASE 1

PROJECT NO.  
EGA021243

NO.	DESCRIPTION	DATE	BY

5/8" REBAR WITH CAP #1557

5/8" REBAR



**EHRHART & GRIFFIN ASSOCIATES**  
 3552 Farnam Street  
 Omaha, Nebraska 68131  
 402 / 551-0631

- ENGINEERING
- PLANNING
- LAND SURVEYING

## THE HILLS OF CEDAR CREEK PHASE 1 FINAL PLAT COUNCIL BLUFFS, IOWA

DATE: 2-15-05  
 DESIGNED BY:  
 DRAWN BY:  
 CHECKED BY:  
 CREW:

SHEET NO.  
 2 OF 6

POINT OF BEGINNING  
 THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 35 NORTH, RANGE 43 WEST OF THE 5TH P.M., POTOMAC COUNTY, IOWA

OUT LOT "A"  
 BLANKET EASEMENT, OUT LOT FOR STORM SEWER AND DRAINAGE.  
 50 FT. x 2417.37' AREA = 5.54

OUT LOT "B"  
 BLANKET EASEMENT, OUT LOT FOR STORM SEWER AND DRAINAGE.  
 50 FT. x 134.64' AREA = 0.68

OUT LOT "C"  
 BLANKET EASEMENT, OUT LOT FOR STORM SEWER AND DRAINAGE.  
 50 FT. x 147.82' AREA = 7.39

OUT LOT "D"  
 BLANKET EASEMENT, OUT LOT FOR STORM SEWER AND DRAINAGE.  
 50 FT. x 100.00' AREA = 1.13

OUT LOT "E"  
 BLANKET EASEMENT, OUT LOT FOR STORM SEWER AND DRAINAGE.  
 50 FT. x 138.63' AREA = 7.06



# THE HILLS OF CEDAR CREEK, PHASE 1

PROJECT NO. EGA021243	REVISIONS
	NO. DESCRIPTION DATE BY

**EHRHART & GRIFFIN ASSOCIATES**  
 3552 Farnam Street  
 Omaha, Nebraska 68131  
 402 / 551-0631

- ENGINEERING
- PLANNING
- LAND SURVEYING

## THE HILLS OF CEDAR CREEK FINAL PLAT PHASE 1 COUNCIL BLUFFS, IOWA

DATE: 2-15-05	CREW:
DESIGNED BY:	
DRAWN BY:	
CHECKED BY:	
SHEET NO.	3 OF 6



SCALE 1" = 60'  
 NORTH

Delta=33.3829'  
 R=1050.00'  
 L=1616.51'  
 CH=607.69'  
 CB=N53.2029°E

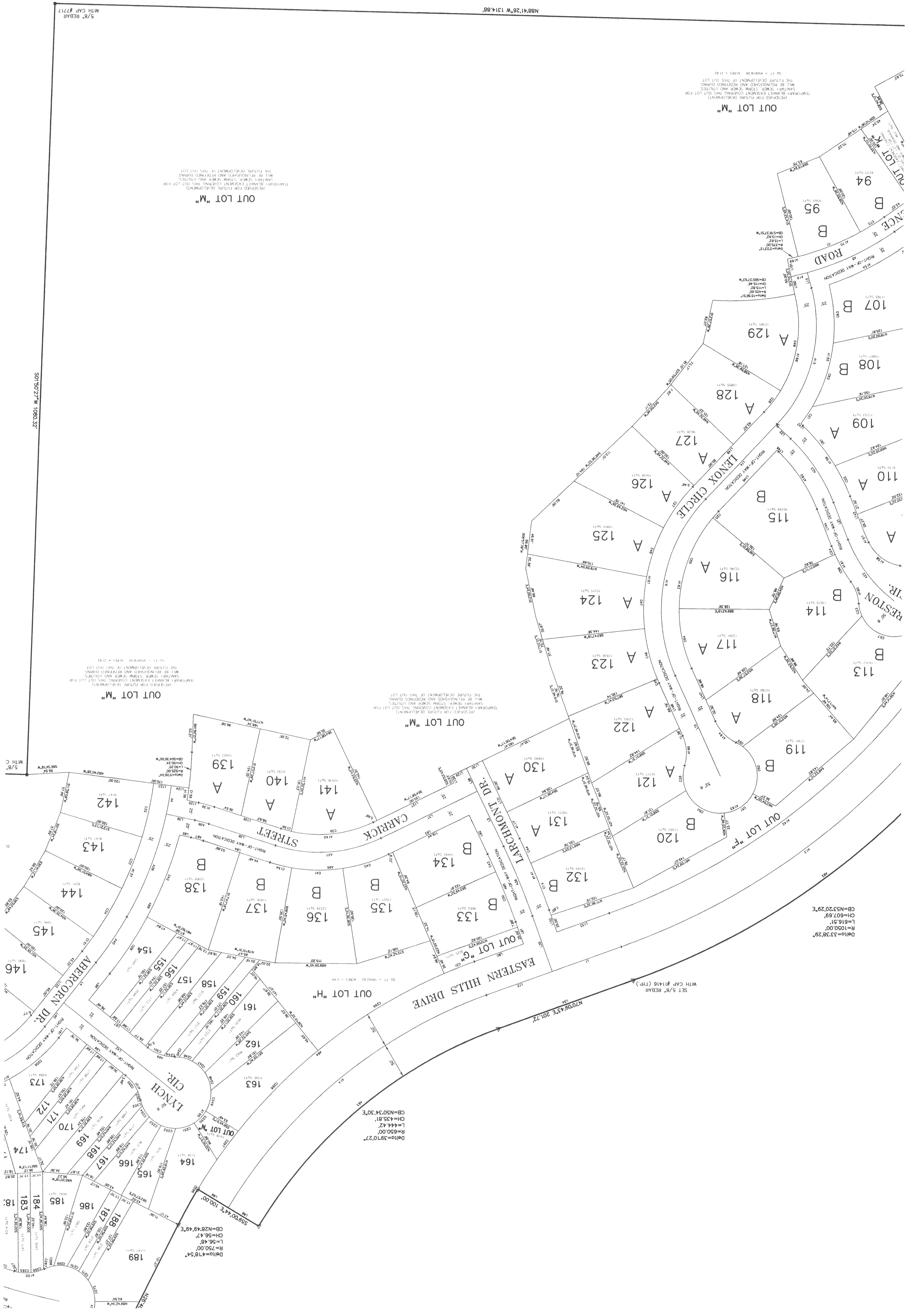
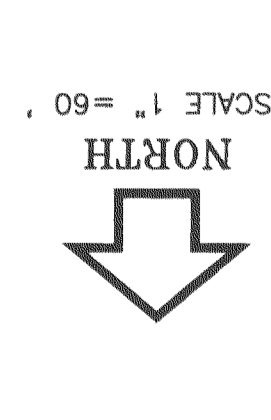
Delta=521.29'  
 R=225.00'  
 L=21.04'  
 CH=21.03'  
 CB=S56.2814°E

S89.213°E 1317.84'

N88.4300°W 1315.03'

# THE HILLS OF CEDAR CREEK, PHASE 1

PROJECT NO. EGA021243		REVISIONS NO.      DESCRIPTION BY      DATE
THE HILLS OF CEDAR CREEK PHASE 1 FINAL PLAT COUNCIL BLUFFS, IOWA		DATE: 2-15-05 DESIGNED BY: DRAWN BY: CHECKED BY: CREW:
<b>EHRHART &amp; GRIFFIN ASSOCIATES</b> 3552 Fernon Street Council Bluffs, IA 51501 402 / 851-0631		ENGINEERING PLANNING LAND SURVEYING
SHEET NO. 4 OF 6		OUT LOT "M" OUT LOT "N" OUT LOT "O" OUT LOT "P"





# THE HILLS OF CEDAR CREEK, PHASE 1

PROJECT NO. EGA021243	
REVISIONS	BY
DESCRIPTION	DATE
NO.	

**EHRHART  
GRIFFIN &  
ASSOCIATES**

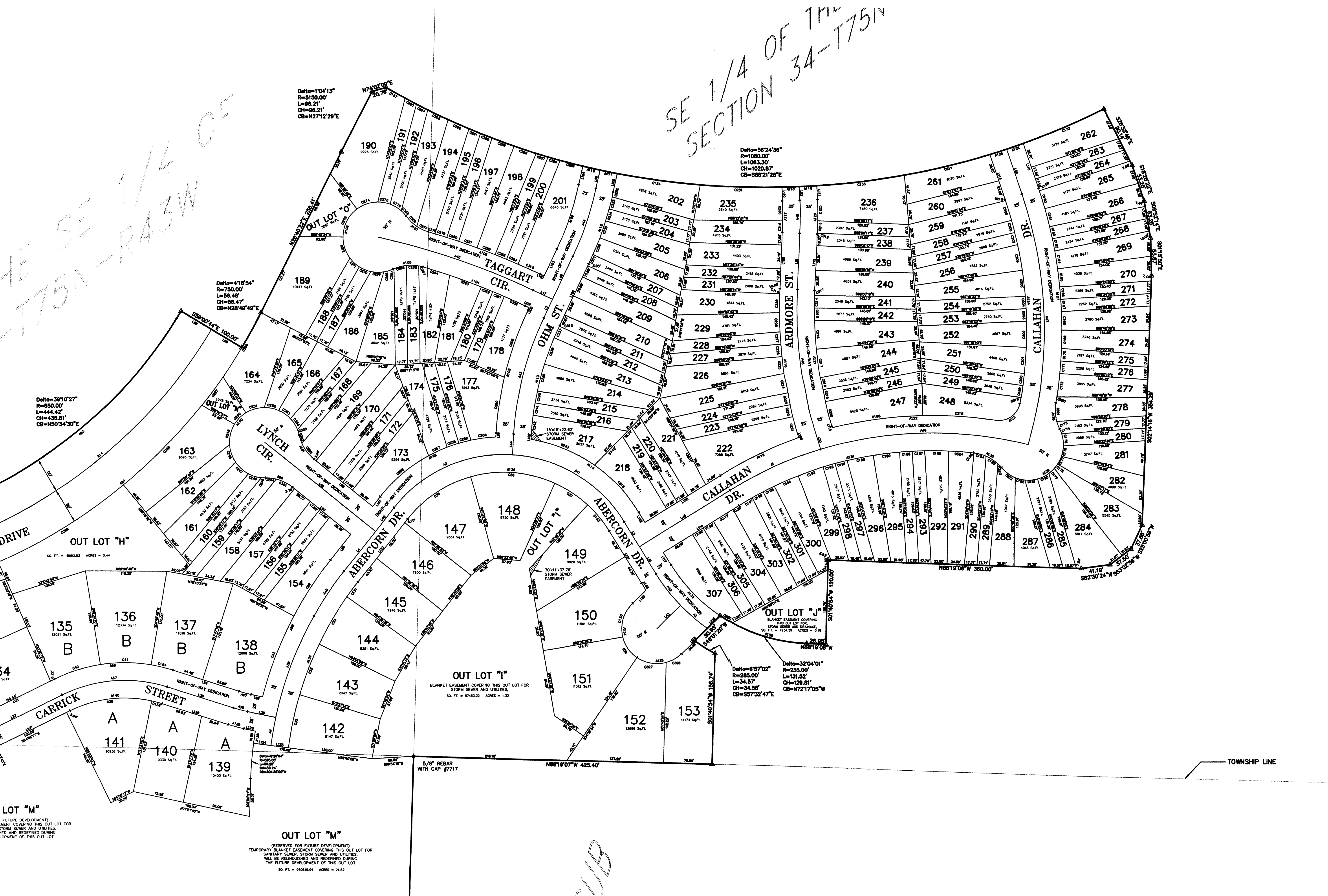
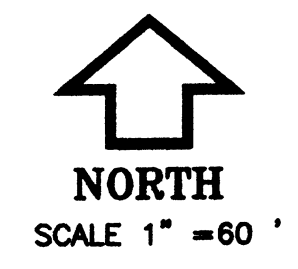
3552 Farnam Street  
Omaha, Nebraska 68131  
402 / 551-0631

- ENGINEERING
- PLANNING
- LAND SURVEYING

**THE HILLS OF CEDAR CREEK  
PHASE 1  
FINAL PLAT  
COUNCIL BLUFFS, IOWA**

DATE: 2-15-05  
DESIGNED BY:  
DRAWN BY:  
CHECKED BY:  
CREW:

SHEET NO.  
**5 OF 6**



**OUT LOT "M"**  
 (RESERVED FOR FUTURE DEVELOPMENT)  
 TEMPORARY BLANKET EASEMENT COVERING THIS OUT LOT FOR  
 SANITARY SEWER, STORM SEWER AND UTILITIES.  
 WILL BE RELINQUISHED AND REDEFINED DURING  
 THE FUTURE DEVELOPMENT OF THIS OUT LOT  
 SQ. FT. = 9008.04 ACRES = 21.82

*JUB*







STATEMENT OF MORTGAGE HOLDER  
Regarding Hills of Cedar Creek Subdivision Phase I

STATE OF IOWA                    )  
  )ss.  
POTTAWATTAMIE COUNTY        )

This statement is made pursuant to Iowa Code § 354.11(2), by Douglas Goodman, President, for Peoples National Bank, dated this 16<sup>th</sup> day of February, 2005.

1. Peoples National Bank is the holder of:

- a) A mortgage granted to the Peoples National Bank to secure the sum of \$3,100,000.00, dated October 24, 2003, filed November 3, 2003, in Book 104, Page 11588;
- b) A mortgage granted to the Peoples National Bank to secure the sum of \$590,000.00, dated June 14, 2004, filed July 1, 2004 in Book 105, Page 21; and
- c) A mortgage granted to Peoples National Bank to secure the sum of \$618,000.00, dated July 19, 2004, filed August 9, 2004, Book 105, Page 2521;

All recorded in the Pottawattamie County Recorder's office secured by certain real estate (including real estate not described below). The collateral for Peoples National Bank includes real estate that is to be platted as Hills of Cedar Creek Subdivision Phase I, Council Bluffs, Pottawattamie County, Iowa. The portion of the collateral that is to be platted as Hills of Cedar Creek Phase I is the following described property, to-wit:

A tract of land lying in the Northwest Quarter of the Northwest Quarter and the Northeast Quarter of the Northwest Quarter, and the Northwest Quarter of the Northeast Quarter of Section 3, Township 74 North, Range 43 West, and the Southwest Quarter of the Southeast Quarter, and the Southeast Quarter of the Southeast Quarter of Section 34, Township 75 North, Range 43 West, all West of the 5th Principal Meridian, Pottawattamie County, Iowa, and being more particularly described as follows:

Beginning at the Southwest corner of the Northwest Quarter of the Northwest Quarter of said Section 3 (NW¼ NW¼ Sec. 3); thence North 01°19'27" East along the West line of said NW¼ NW¼ Sec. 3, a distance of 325.00 feet to a point on a line lying 325 feet North of and parallel with the South line of the aforesaid NW¼ NW¼ Sec. 3; thence South 88°43'33" East along said parallel line, a distance of 1315.54 feet to a point on the West line of the Northeast Quarter of the Northwest Quarter of said Section 3 (NE¼ NW¼ Sec. 3); thence North 01°28'55" East along said West line of the NE¼

NW $\frac{1}{4}$  Sec. 3, a distance of 772.54 feet to the Northwest corner of said NE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3; thence South 88°21'13" East along the North line of said NE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, a distance of 1317.84 feet to the Northeast corner of said NE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3; thence South 27°20'23" West, a distance of 179.57 feet to a point on a curve; thence Southeasterly along a curve to the right having a radius of 225.00 feet and a central angle of 05°21'29", an arc distance of 21.04 feet (chord=21.03', chord bearing=S56°28'14"E); thence North 36°31'15" East, a distance of 69.22 feet to a point of curvature; thence Northeasterly along a curve to the right having a radius of 1050.00 feet and a central angle of 33°38'29", an arc distance of 616.51 feet (chord=607.69', chord bearing=N53°20'29"E) to a point of tangency; thence North 70°09'43" East, a distance of 201.72 feet to a point of curvature; thence Northeasterly along a curve to the left having a radius of 650.00 feet and a central angle of 39°10'27", an arc distance of 444.42 feet (chord=435.81', chord Bearing=N50°34'30"E); thence South 59°00'44" East, a distance of 100.00 feet to a point on a curve; thence Northeasterly along a curve to the left having a radius of 750.00 feet and a central angle of 04°18'54", an arc distance of 56.48 feet (chord=56.47', chord bearing=N28°49'49"E) to a point of tangency; thence North 26°40'22" East, a distance of 256.41 feet to a point of curvature; thence Northeasterly along a curve to the right having a radius of 5150.00 feet and a central angle of 01°04'13", an arc distance of 96.21 feet (chord=96.21', chord bearing=N27°12'29"E); thence North 74°02'09" East, a distance of 20.76 feet to a point on a curve; thence easterly along a curve to the left having a radius of 1080.00 feet and a central angle of 56°24'36", an arc distance of 1063.30 feet (chord=1020.87', chord bearing S88°21'28"E); thence South 26°33'46" East, a distance of 90.14 feet; thence South 18°28'22" east, a distance of 53.25 feet; thence South 09°52'14" East, a distance of 53.25 feet; thence South 01°15'50" East, a distance of 53.87 feet; thence South 02°14'16" West, a distance of 354.29 feet; thence South 25°00'59" West, a distance of 37.66 feet; thence South 53°02'56" West, a distance of 37.50 feet; thence South 82°30'24" West, a distance of 41.19 feet; thence North 88°19'06" West, a distance of 360.00 feet; thence South 01°40'54" West, a distance of 120.00 feet; thence North 88°19'06" West, a distance of 26.95 feet to a point of curvature; thence Northwesterly along a curve to the right having a radius of 235.00 feet and a central angle of 32°04'01", an arc distance of 131.52 feet (chord=129.81', chord bearing=N72°17'05"W); thence South 46°01'20" West, a distance of 50.95 feet to a point on a curve; thence Southeasterly along a curve to the left having a radius of 285.00 feet and a central angle of 06°57'02", an arc distance of 34.57 feet (chord=34.55', chord bearing=S57°32'47"E); thence South 01°40'54" West, a distance of 156.74 feet to a point on the South line of the Southeast Quarter of the Southeast Quarter of the aforesaid Section 34 (SE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 34); thence North 88°19'07" West along the South line of said SE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 34, a distance of 425.40 feet to the Southwest corner of said SE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 34 which is also the Northeast corner of the Northwest Quarter of the Northeast




Quarter of the aforesaid Section 3 (NW¼ NE¼ Sec.3); thence South 01°50'27" West along the East line of said NW ¼ NE¼ Sec. 3, a distance of 1080.32 feet to the Southeast corner of said NW¼ NE¼ Sec. 3; thence North 88°41 '26" West along the South line of said NW¼ NE¼ Sec. 3, a distance of 1314.88 feet to the Southeast corner of the aforesaid Northeast Quarter of the Northwest Quarter of Section 3 (NE¼ NW¼ Sec.3) thence North 88°43'00" West along the South line of said NE¼ NW¼ Sec. 3, a distance of 1315.03 feet to the Southeast corner of the aforesaid Northwest Quarter of the Northwest Quarter of Section 3 (NW¼ NW¼ Sec.3); thence North 88°43'33" West along the South line of said NW¼ NW¼ Sec. 3, a distance of 1314.64 feet to the point of beginning. The above described tract of land contains 104.03 acres, more or less.

2. The plat for Hills of Cedar Creek Subdivision, Phase I regarding the above-described real estate has been prepared with our free consent and in accordance with our desire.

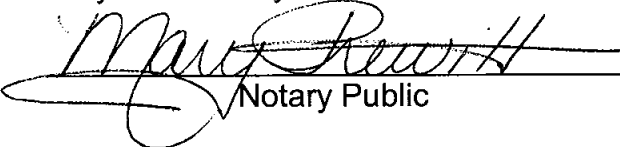
3. The undersigned mortgage holder grants a partial release of the above-described mortgage as to those portions of the above-described platted real estate that are conveyed to the governing body or dedicated to the public.

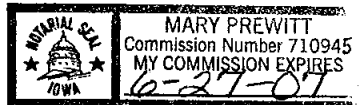
PEOPLES NATIONAL BANK

By   
Douglas Goodman  
Its: President



On this 16<sup>th</sup> day of February, 2005, before me, a notary public in and for said county, personally appeared Douglas Goodman, to me personally known, who being by me duly (sworn or affirmed) did say that he is the President of said corporation, that the seal affixed to said instrument is the seal of said corporation, and that said instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors and the said Douglas Goodman acknowledges the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

  
Notary Public





February 17, 2005

PETERS  
LAW FIRM,  
P.C.

HCC Investments LLC  
11040 Oakmont  
Overland Park, KS 66210  
Attn: Jerry. F. Duggan

Examined by  
Peters Law Firm, P.C.  
Abstract Opinion No. 4505

233 PEARL STREET  
P.O. BOX 1078  
COUNCIL BLUFFS,  
IOWA 51502-1078  
712-328-3157  
FAX: 712-328-9092

To Whom It May Concern:

GLENWOOD OFFICE  
10 NORTH WALNUT  
P.O. BOX 189  
GLENWOOD, IA 51534  
712-527-4877  
FAX: 712-527-3418

As requested, I have completed an examination of the abstract of Title provided as to the following described real estate situated in Pottawattamie County, Iowa, described, to-wit:

NEOLA OFFICE  
401 FRONT STREET  
P.O. BOX 282  
NEOLA, IA 51559  
712-485-2265

A tract of land lying in the Northwest Quarter of the Northwest Quarter and the Northeast Quarter of the Northwest Quarter, and the Northwest Quarter of the Northeast Quarter of Section 3, Township 74 North, Range 43 West, and the Southwest Quarter of the Southeast Quarter, and the Southeast Quarter of the Southeast Quarter of Section 34, Township 75 North, Range 43 West, all West of the 5th Principal Meridian, Pottawattamie County, Iowa, and being more particularly described as follows:

JAMES A. CAMPBELL  
DENNIS M. GRAY  
JAMES A. THOMAS  
LYLE W. DITMARS  
SCOTT H. PETERS\*  
JOHN M. McHALE\*  
JACOB J. PETERS\*  
LEO P. MARTIN\*  
SCOTT J. ROGERS  
JON E. HEISTERKAMP\*  
JOHN M. FRENCH\*  
MATTHEW G. WOODS  
JOHN C. RASMUSSEN\*  
JOHN D. KWAPNIOSKI\*  
JENNIFER K. SEWELL\*  
JUSTIN R. WYATT  
\*Also Admitted in NE

Beginning at the Southwest corner of the Northwest Quarter of the Northwest Quarter of said Section 3 (NW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3); thence North 01°19'27" East along the West line of said NW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, a distance of 325.00 feet to a point on a line lying 325 feet North of and parallel with the South line of the aforesaid NW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3; thence South 88°43'33" East along said parallel line, a distance of 1315.54 feet to a point on the West line of the Northeast Quarter of the Northwest Quarter of said Section 3 (NE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3); thence North 01°28'55" East along said West line of the NE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, a distance of 772.54 feet to the Northwest corner of said NE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3; thence South 88°21'13" East along the North line of said NE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, a distance of 1317.84 feet to the Northeast corner of said NE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3; thence South 27°20'23" West, a distance of 179.57 feet to a point on a curve; thence Southeasterly along a curve to the right having a radius of 225.00 feet and a central angle of 05°21'29", an arc distance of 21.04 feet (chord=21.03', chord bearing=S56°28'14"E); thence North 36°31'15" East, a distance of 69.22 feet to a point of curvature; thence Northeasterly along a curve to the right having a radius of 1050.00 feet and a central angle of 33°38'29", an arc distance of 616.51 feet (chord=607.69', chord bearing=N53°20'29"E) to a point of tangency; thence North 70°09'43" East, a distance of 201.72 feet to a point of curvature; thence Northeasterly along a curve to the left having a radius of 650.00 feet and a central angle of 39°10'27", an arc distance of 444.42 feet (chord=435.81', chord Bearing=N50°34'30"E);



thence South 59°00'44" East, a distance of 100.00 feet to a point on a curve; thence Northeasterly along a curve to the left having a radius of 750.00 feet and a central angle of 04°18'54", an arc distance of 56.48 feet (chord=56.47', chord bearing=N28°49'49"E) to a point of tangency; thence North 26°40'22" East, a distance of 256.41 feet to a point of curvature; thence Northeasterly along a curve to the right having a radius of 5150.00 feet and a central angle of 01°04'13", an arc distance of 96.21 feet (chord=96.21', chord bearing=N27°12'29"E); thence North 74°02'09" East, a distance of 20.76 feet to a point on a curve; thence easterly along a curve to the left having a radius of 1080.00 feet and a central angle of 56°24'36", an arc distance of 1063.30 feet (chord=1020.87', chord bearing=S88°21'28"E); thence South 26°33'46" East, a distance of 90.14 feet; thence South 18°28'22" east, a distance of 53.25 feet; thence South 09°52'14" East, a distance of 53.25 feet; thence South 01°15'50" East, a distance of 53.87 feet; thence South 02°14'16" West, a distance of 354.29 feet; thence South 25°00'59" West, a distance of 37.66 feet; thence South 53°02'56" West, a distance of 37.50 feet; thence South 82°30'24" West, a distance of 41.19 feet; thence North 88°19'06" West, a distance of 360.00 feet; thence South 01°40'54" West, a distance of 120.00 feet; thence North 88°19'06" West, a distance of 26.95 feet to a point of curvature; thence Northwesterly along a curve to the right having a radius of 235.00 feet and a central angle of 32°04'01", an arc distance of 131.52 feet (chord=129.81', chord bearing=N72°17'05"W); thence South 46°01'20" West, a distance of 50.95 feet to a point on a curve; thence Southeasterly along a curve to the left having a radius of 285.00 feet and a central angle of 06°57'02", an arc distance of 34.57 feet (chord=34.55', chord bearing=S57°32'47"E); thence South 01°40'54" West, a distance of 156.74 feet to a point on the South line of the Southeast Quarter of the Southeast Quarter of the aforesaid Section 34 (SE¼ SE¼ Sec. 34); thence North 88°19'07" West along the South line of said SE¼ SE¼ Sec. 34, a distance of 425.40 feet to the Southwest corner of said SE¼ SE¼ Sec. 34 which is also the Northeast corner of the Northwest Quarter of the Northeast Quarter of the aforesaid Section 3 (NW¼ NE¼ Sec.3); thence South 01°50'27" West along the East line of said NW¼ NE¼ Sec. 3, a distance of 1080.32 feet to the Southeast corner of said NW¼ NE¼ Sec. 3; thence North 88°41'26" West along the South line of said NW¼ NE¼ Sec. 3, a distance of 1314.88 feet to the Southeast corner of the aforesaid Northeast Quarter of the Northwest Quarter of Section 3 (NE¼ NW¼ Sec.3) thence North 88°43'00" West along the South line of said NE¼ NW¼ Sec. 3, a distance of 1315.03 feet to the Southeast corner of the aforesaid Northwest Quarter of the Northwest Quarter of Section 3 (NW¼ NW¼ Sec.3); thence North 88°43'33" West along the South line of said NW¼ NW¼ Sec. 3, a distance of 1314.64 feet to the point of beginning. The above described tract of land contains 104.03 acres, more or less.

The Abstract is in three parts. Part 1 contains Entries numbered 1-39, both inclusive, last certified to January 12, 2005 at 8:00 a.m. Part 2 contains Entries numbered 1-26, both inclusive, last certified to January 21, 2005 at 8:00 a.m. Part 3, which contains both Parts 1 and 2, contains Entries numbered 1 through 5, both inclusive, last certified to February 17, 2005 at 3:00 p.m. All parts of the abstract were last certified by Abstract Guaranty Company, Title Guaranty Division Member No. 8146.

The abstract contains a notice at Entry No. 1 that the Abstract is prepared pursuant to Section 614.29 through 614.28 of the Code of Iowa, Chapter 11 of the Iowa Land Title standards of the Iowa State Bar Association and the Abstracting Standards of the Iowa Land Title Association.

All matters of record prior to the date of the recording of the root of title are omitted herefrom except:

1. Plat and surveys.
2. Easements.
3. Party wall and other boundary lines agreements.
4. Unexpired recorded leases.
5. Patents.

#### **TITLE**

Subject to the exceptions listed below, we find marketable title to the property to be in HCC Investments, LLC an Iowa Limited Liability Company, pursuant the combination of a Warranty Deed dated October 24, 2003, filed November 3, 2003 in Book 104, Page 11586 as disclosed at Entry No. 25 of Part 1; a Warranty Deed dated October 24, 2003, filed November 3, 2003 in Book 104, Page 11587 as disclosed at Entry No. 26 of Part 1, a Warranty Deed dated October 23, 2003, filed October 30, 2003, in Book 104, Page 11360 as disclosed at Entry No. 10 of Part 2 which was re-recorded to show City approval of a property line adjustment in Book 104, Page 22858 as disclosed at Entry No. 12 of Part 2.

#### **EXCEPTIONS**

1. Entry No. 27 of Part 1 and Entry No. 14 of Part 2 disclose a mortgage granted to the Peoples National Bank to secure the sum of \$3,100,000.00, dated October 24, 2003, filed November 3, 2003, in Book 104, Page 11588.

2. Entry No. 28 of Part 1 and Entry No. 15 of Part 2 disclose a mortgage granted to the Peoples National Bank to secure the sum of \$590,000.00, dated June 14, 2004, filed July 1, 2004 in Book 105, Page 21.

3. Entry No. 29 of Part 1 and Entry No. 16 of Part 2 disclose a mortgage granted to Peoples National Bank to secure the sum of \$618,000.00, dated July 19, 2004, filed August 9, 2004, Book 105, Page 2521.

4. Entry No. 14 of Part 1 and Entry No. 8 of Part 2 discloses a boundary survey of all the property under examination by Ehrhart Griffin & Associates dated February 11, 2003, recorded February 12, 2003 in Book 103, Page 45478.

5. Entry No. 15 of Part 1 and Entry No. 9 of Part 2 disclose City of Council Bluffs Resolution No. 03-176 approving annexation of the property under examination. Entry No. 17 of Part 1 and Entry No. 13 of Part 2 disclose the Filing of Written Decision recorded on July 27, 2004 in Book 105, Page 01742 regarding the annexation.

6. Entry No. 23 of Part 1 disclose City of Council Bluffs Ordinance No. 5767, recorded September 17, 2003 in Book 104, Page 07246, which amends the zoning map regarding the property under examination and other property. You are referred to the Zoning Administrator for details regarding the zoning of specific parcels.

7. Entry No. 30 of Part 1 and Entry No. 17 of Part 2 disclose City of Council Bluffs Ordinance Nos. 3967, 3968, 4948, changes to the Municipal Code, and Ordinance Nos. 5216, 5217, 5255, 5323, 5458, and 5469.

Entry No. 31 of Part 1 and Entry No. 18 of Part 2 disclose City of Council Bluffs Ordinance No. 4589.

Entry No. 32 of Part 1 and Entry No. 19 of Part 2 disclose City of Council Bluffs Ordinance No. 4942.

Entry No. 33 of Part 1 and Entry No. 20 of Part 2 disclose City of Council Bluffs Ordinance No. 5264.

Entry No. 34 of Part 1 and Entry No. 21 of Part 2 disclose City of Council Bluffs Ordinance No. 5333.

SINCE THESE ORDINANCES AFFECT THE PROPERTY UNDER EXAMINATION, YOU ARE REFERRED TO THE RECORD FOR FURTHER PARTICULARS.

8. Entry No. 41 of Part 1 and Entry No. 26 of Part 2 disclose the following: NO SEARCH made for Bankruptcies filed subsequent to October 1, 1979. Your attention is directed to the Bankruptcy Clerk of Federal Court, Des Moines, Iowa where said matters are now filed of record.



9. Entry No. 1 of Part 3 discloses City of Council Bluffs Ordinance No. 05-16 granting final plat approval for Hills of Cedar Creek Phase 1.

10. Entry No. 3 of Part 3 discloses the following:

WE DO NOT CERTIFY TO UNPAID FEES FOR SERVICES FOR SEWER SYSTEMS, STORM WATER DRAINAGE SYSTEMS, SEWAGE TREATMENT, SOLID WASTE COLLECTION, WATER, AND SOLID WASTE DISPOSAL, WHICH HAVE BEEN CERTIFIED TO THE COUNTY TREASURER FOR COLLECTION UNLESS THESE CHARGES HAVE BEEN ENTERED ON THE TAX RECORDS.

11. Entry No. 4 of Part 3 discloses the following:

“INASMUCH as the office of the County Treasurer indexes Buildings on Leased Land and assessments for machinery and equipment in such a manner it is impossible to determine if there are any which would attach to the real estate under examination, we do not certify to such assessments”.

12. Entry No. 2 of Part 3 discloses LIEN SEARCHES including Liens in District and Federal Courts Pottawattamie County as to the following persons, ONLY:

Ten Years last past:  
HCC Investments, LLC

13. Entry No. 5 of Part 3 discloses:

GENERAL TAXES for the year 2003, and prior years paid.

P-023006034004919;  
920;  
005079;  
080;  
P-049016003015250;  
251;  
297003;

#### **CAUTIONARY INSTRUCTIONS**

This examination does not constitute a certification that any building or other improvements situated upon the described property are within the platted boundary lines. Such determination could only be made by survey.

This examination does not constitute a certification that any fences or other apparent boundary line markers are situated upon the platted boundaries of the land. This determination could only be made by survey.

If any person is in possession other than the titleholders named in this opinion, you should make inquiry to determine the nature and extent of the claimed right of possession.

You are charged with notice of any visible easements such as power lines, and if any such easements exist, you should make inquiry to determine the nature and extent of the claimed easement right.

The opinion covers the period shown on the abstractor's certificate only. You take subject to any matters affecting title from the last certificate to closing. You can purchase for yourself from the abstractor a lien search and certificate as of closing. Contact the abstractor or this office for assistance.

Under Iowa law, any person who furnishes labor, services, or materials, incident to the construction of any building or other improvement upon real estate, may file a Mechanic's Lien against the real estate, within ninety days after completion of the improvements, if the improvements have not been paid for. You should therefore satisfy yourself that no recent improvements have been made on the property, or if any such improvements have been made, you should satisfy yourself that all bills, in connection with the improvements, have been paid.

You should assure yourself as to the availability of reasonable and convenient access to the real estate from an existing public right-of-way. You are charged with notice of any rights to access to and from highways and streets which may be designated as "controlled access facilities" by the state and local authorities.

You are charged with notice that the use of any real estate located in the State of Iowa may be subject to restrictions relating to Flood Plain Zoning; these restrictions on use are administered by the Iowa Department of Natural Resources in conjunction with local and federal authorities. In the event the real estate described herein appears to be physically located in an area where there is a potential for flooding from any source, you are directed to consult with the City or County officers having charge of zoning matters to determine whether or not restrictions may apply by virtue of Flood Plain Zoning.

The abstract has not disclosed the existence of hazardous substance, pollutants, contaminants, hazardous wastes, underground storage tanks, drainage wells, active or abandoned water wells, and other environmentally regulated activities. You are cautioned that federal, state and local legislation may, in the event there are environmental and/or public health violations, permit injunctive relief and require removal, remedial actions and/or other "clean up." The cost of such "clean up" may become a lien against the real estate, and a party interested in the real estate may incur personal liability even though said party may not have disposed of any hazardous substances, pollutants, contaminants, or hazardous waste on the real estate or used any underground storage tanks or wells.

You should, therefore, make a careful inspection of the property to determine that such environmental contamination or conditions do not exist. You may also want to consider the following:

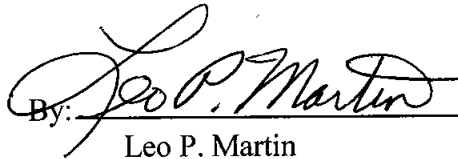
- a) Inquire as to past uses of the property to determine if such uses could have resulted in any contamination or future contamination of the property or the groundwater, and ascertain whether any adjoining property has been or is being used for a purpose which has or could result in contamination of the property under examination; and
- b) Make a visual inspection and/or conduct professional testing to confirm the real estate is free of environmental hazards and contamination.

The laws of the U.S.A. relating to bankruptcy provide that all bankruptcy cases are to be filed with the Clerk of the Bankruptcy Court. Since the clerk's office is not in the county in which the real estate is situated, the abstract company cannot certify whether or not the title to the real estate is affected thereby. If a concern should be present regarding the effects of bankruptcy upon the title of the subject real estate, an inquiry should be made to the office of the Clerk of Bankruptcy Court in Des Moines, Iowa.

The Abstract is being retained pending further instructions. If you have any questions, please contact me.

Sincerely,

PETERS LAW FIRM, P.C.

By:   
Leo P. Martin

LPM:rsw  
Enclosure

G:\LPM\26232\Ltrs\TO 4505.wpd



**CERTIFICATE AND RECEIPT**

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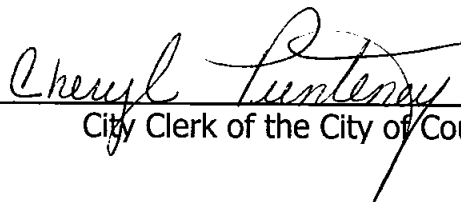
**STATE OF IOWA**

} ss.

Pottawattamie County,

The undersigned, Clerk of the City of Council Bluffs, Iowa, hereby certifies that Resolution 05-16 and Attachment "A" are as the same appears of record in this office.

Witness my hand and seal of the City of Council Bluffs, Iowa,  
this 16th day of February A.D. 2005

  
\_\_\_\_\_  
City Clerk of the City of Council Bluffs, Iowa

=====

RESOLUTION NO. 05-16

A RESOLUTION granting final plat approval for a Subdivision to be known as The Hills of Cedar Creek Phase 1.

WHEREAS, Duggan Homes, Inc., has requested final plat approval for Phase 1 of a subdivision to be known as The Hills of Cedar Creek; and

WHEREAS, Phase 1 is located on 104 acres extending east and north from State Orchard Road, one-quarter mile north of Greenview Road; and

WHEREAS, the final plat has been reviewed by the appropriate city departments and utilities; and

WHEREAS, the final plat is consistent with the preliminary plan approved on March 24, 2003, by Resolution No. 03-65, and as reconfirmed on May 24, 2004, by Resolution No. 04-115; and

WHEREAS, the Community Development Department recommends approval of the final plat for a subdivision to be known as The Hills of Cedar Creek Phase 1, as shown on Attachment "A", subject to the following conditions:

1. Prior to executing the final plat, all required public improvements shall be installed at developer's expense and accepted by the City, or the City shall be in receipt of a performance guarantee in an amount determined by the Public Works Department to be sufficient to finish all required public improvements not yet completed and/or certified and accepted by the Public Works Department.
2. Sidewalk, trails and the open space along Cedar Hills Parkway (Eastern Hills Drive) shall be completed when the roadway is built. The developer shall install sidewalk, at no expense to the City, along the street frontage of each lot, including the cul-de-sacs, prior to issuance of a Certificate of Occupancy for each residence. Sidewalk and trails shall be built consistent with City standards and placement requirements. Although the trails will be privately owned and maintained, it is in the public's interest to assure quality design and construction.
3. Prior to executing the final plat, all technical corrections required by the Community Development Department and/or Public Works Department shall be incorporated in the final plat document. These include, but are not limited to the following:
  - a. The roadway shown as 'Cedar Hills Parkway' shall be renamed and dedicated as 'Eastern Hills Drive'.
  - b. Laurens' Circle is too similar to 'Lawrence' in the County and shall also be renamed and noted as such on the final plat. An administrative approval shall be made through the Community Development Department, with concurrence by Public Works, the Fire Department and the County.
  - c. Several outlots need letter designations added.
  - d. The square footage of each lot shall be noted on the plat.

4. The development of Lots 154 through 307 is restricted as follows:
  - a. Only one dwelling unit shall be constructed on each lot.
  - b. Only one "single family attached dwelling" or one "townhouse dwelling" as defined in the declaration of restrictions filed with the plat of the subdivision shall be permitted on each lot.
  - c. Single family detached homes shall not be constructed on Lots 154 through 307.
  - d. Multi-family dwellings shall not be constructed on Lots 154 through 307.
5. All fire hydrants shall be active and accessible prior to any framing activity in the subdivision.
6. The developer shall provide the City with two sets of as-built construction drawings, testing results and a two-year maintenance bond, upon acceptance of all required improvements.
7. Sidewalk shall be installed, at no expense to the City, along the street frontage of each lot prior to issuance of a certificate of occupancy for each house. The applicant is not required to construct sidewalk along the State Orchard Road frontage.
8. In addition to filing covenants, the applicant shall record documentation for establishment of the Homeowners Association, if separate from the covenants. Responsibility for maintenance of all detention/retention basins shall be identified. A copy shall be filed with the City Clerk and the Community Development Department.
9. Grant variances for the following deficiencies in the land area zoned R-3 within The Hills of Cedar Creek, Phase 1:
  - a. Exceeding the lot depth to width ratio on the interior sublots for the four-unit townhome structures, on the sublots, as renumbered.
  - b. Less than the minimum lot area of 2,500 square feet for those sublots cited on the plat, as renumbered.
  - c. Variances, if granted shall be noted on the final plat and identified by the appropriate revised lot number.

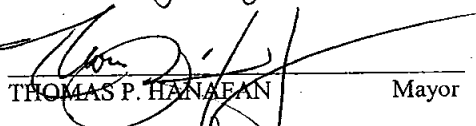
NOW, THEREFORE, BE IT RESOLVED  
 BY THE CITY COUNCIL  
 OF THE  
 CITY OF COUNCIL BLUFFS, IOWA:

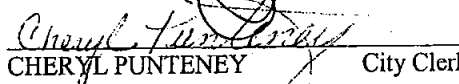
That the final plat for a subdivision to be known as The Hills of Cedar Creek Phase 1, as shown on the attachment, is hereby approved, subject to the conditions set forth above; and

BE IT FURTHER RESOLVED

That the Mayor and City Clerk are hereby authorized and directed to endorse the final plat.

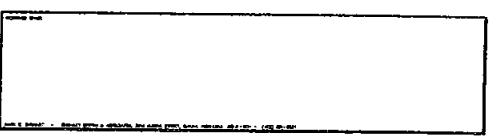
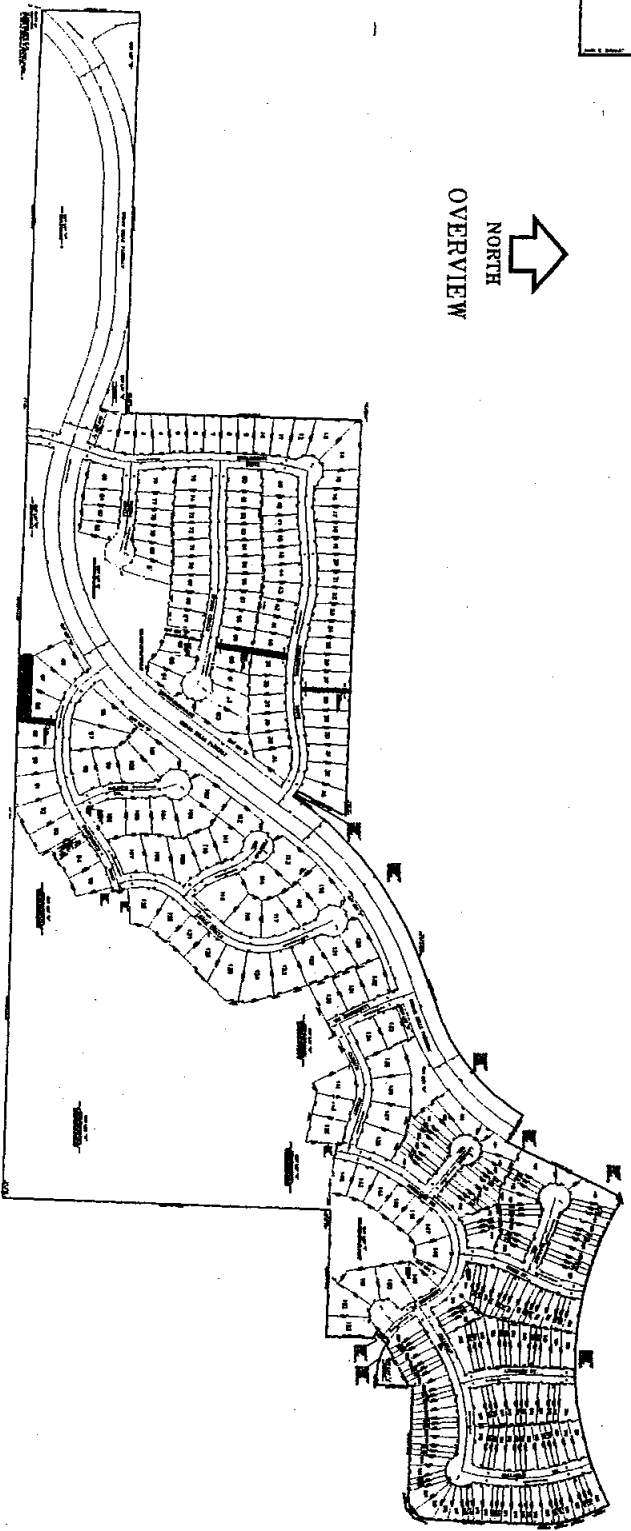
ADOPTED  
 AND January 24, 2005  
 APPROVED

  
 THOMAS P. HANAFAN Mayor

Attest:   
 CHERYL PUNTENEY City Clerk

# THE HILLS OF CEDAR CREEK, PHASE 1

LOTS 1 THROUGH 307 INCLUSIVE AND OUT LOTS "A" THROUGH "M" INCLUSIVE, LYING IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER, AND THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 74 NORTH, RANGE 43 WEST, AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER, AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 75 NORTH, RANGE 43 WEST, ALL WEST OF THE 5TH PRINCIPAL MERIDIAN, POTTAWATTAMIE COUNTY, IOWA



CASE #SUB-05-004  
ATTACHMENT 'A'

PROJECT NO. EGAOZ1243		REVISIONS		
NO.	DESCRIPTION	DATE	BY	
<p><b>EHRLHART &amp; GRIFFIN &amp; ASSOCIATES</b> 2015 Quaking Aspen 402 731-8831</p> <ul style="list-style-type: none"> <li>• ENGINEERING</li> <li>• PLANNING</li> <li>• LAND SURVEYING</li> </ul>				
<p><b>THE HILLS OF CEDAR CREEK</b> <b>PHASE 1</b> FINAL PLAT COUNCIL BLUFFS, IOWA</p>				
DATE: 12-20-04	DESIGNED BY:	DATE:	DESIGNED BY:	DATE:
DRAWN BY:	DATE:	DRAWN BY:	DATE:	DRAWN BY:
CHECKED BY:	DATE:	CHECKED BY:	DATE:	CHECKED BY:
CHECKED BY:	DATE:	CHECKED BY:	DATE:	CHECKED BY:
SHEET NO. 1 OF 8				

**DECLARATION**  
**OF**  
**EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**HILLS OF CEDAR CREEK, A SUBDIVISION IN**  
**THE CITY OF COUNCIL BLUFFS,**  
**POTTAWATTAMIE COUNTY, IOWA**



**DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS OF HILLS OF CEDAR CREEK, A SUBDIVISION  
IN THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 17 day of February, 2005, by HCC INVESTMENTS, LLC, an Iowa limited liability company ("**Developer**").

**RECITALS:**

A. This Declaration is filed as part of the Final Plat of Hills of Cedar Creek Subdivision, Phase 1, a subdivision in the City of Council Bluffs, Pottawattamie County, Iowa. Developer is the owner of that certain real property located in Hills of Cedar Creek, Phase 1, a subdivision in the City of Council Bluffs, Pottawattamie County, Iowa more particularly described in Exhibit A.

B. For the purpose of promoting the development of the "Addition" (as defined in Section 2.1) in a first-class manner, Developer desires to place certain easements, covenants, conditions, restrictions and obligations upon the land in the Addition.

**ARTICLE 1  
REAL ESTATE IMPROVEMENT DISTRICT**

**Section 1. All Properties Contained in District.** All Properties contained within the Initial Plat of the Hills of Cedar Creek Subdivision are part of the Hills of Cedar Creek Real Estate Improvement District of Pottawattamie County, Iowa ("**District**") formed pursuant to Chapter 358C of the Iowa Code ("**Code**"). The District is a body corporate and politic with the authority to exercise all powers conferred upon the District by Chapter 358C and other applicable laws.

**Section 2. Special Assessments.** The District has the power and authority under Chapter 358C to levy and assess special assessments on property within the District to pay for the costs of public improvements within the District. At or near the time of the filing of the final plat for Hills of Cedar Creek Subdivision Phase I, the District levied and assessed certain costs of the public improvements against the Lots within the District.

**ANYONE INTERESTED IN PURCHASING A LOT OR A RESIDENCE IN THE DISTRICT MUST VERIFY THE TOTAL AMOUNT OF SPECIAL ASSESSMENTS LEVIED AGAINST SUCH LOT. SPECIAL ASSESSMENTS ARE PAYABLE AS PROVIDED BY IOWA LAW, INCLUDING WITHOUT LIMITATION, CHAPTERS 358C AND 384 OF THE CODE.**

**Section 3. Taxes.** The District has limited authority to tax the owners of Lots in the

**District as provided under Iowa law, including without limitation, Chapter 358C.**

**ARTICLE 2**  
**DEFINITIONS**

The following terms as used in this Declaration shall have the meanings set forth below unless the context clearly requires otherwise:

Section 2.1    "**Addition**" means the real property described in Exhibit A, and any other property subjected to this Declaration pursuant to Section 14.1 below.

Section 2.2    "**Architectural Committee**" is defined in Section 8.1.

Section 2.3    "**Association**" means Hills of Cedar Creek Homes Association, an Iowa not-for-profit corporation organized or to be organized as herein provided.

Section 2.4    "**Board of Directors**" means the board of directors of the Association.

Section 2.5    "**Builder**" means any party which acquires fee title to a Lot(s) for the purpose of constructing a residence thereon for resale.

Section 2.6    "**City**" means the City of Council Bluffs, Iowa.

Section 2.7    "**Common Facilities**" means (a) all areas and facilities within the Addition designated by Developer for the general use or benefit of all Owners and occupants of the Addition, including any parks, green space, landscaping within the island areas and located within street right-of-way and landscaping features; and other recreational areas; sidewalks and walkways; signs, monuments, bridges; median strips and islands in streets; ponds, streams, creeks and drainage and retention facilities; streets and street lighting; and any fencing around the perimeter of the Addition; (b) any land deeded to the Association by or at the direction of Developer; (c) any easements, leases, licenses or other rights of use granted to the Association by or at the direction of Developer, and the land or other property which is the subject thereof; and (d) all buildings, structures and other improvements, fixtures and equipment and other tangible personal property owned by the Association and located on, or used in connection with or forming a part of any of the foregoing; PROVIDED, HOWEVER, the foregoing does not constitute a representation or warranty that any Common Facility so enumerated will exist within the Addition. Developer, from time to time, shall have the right to designate portions of the Restricted Area Improvements as comprising Common Facilities.

Section 2.8    "**Declaration**" means this Declaration of Easements, Covenants, Conditions and Restrictions of Hills of Cedar Creek Subdivision, as it may be amended or supplemented from time to time.

Section 2.9 "**Default Rate of Interest**" means an annual rate of interest equal to the lesser of (i) the "prime rate" from time to time published in The Wall Street Journal (with interest hereunder adjusted as and when said prime rate is adjusted) plus 4% per annum, or (ii) the highest lawful rate. If The Wall Street Journal should cease to publish the prime rate, the Association may compute interest hereunder upon the prime rate or similar rate published in another financial periodical selected by the Association.

Section 2.10 "**Delinquent Amount**" is defined in Section 4.6.

Section 2.11 "**Design Standards**" is defined in Section 8.5.

Section 2.12 "**Developer**" means HCC Investments, LLC, an Iowa limited liability company, and each of its members and any successors thereto or assignees thereof who succeed by assignment from the Developer to some or all of the Developer's rights hereunder, as specified in such instrument of assignment.

Section 2.13 "**Lots**" means each separately subdivided parcel within the Addition, as shown on the Plat, which is intended for individual ownership; PROVIDED, HOWEVER, any such separate parcel which is included within the Common Facilities shall not be deemed a Lot.

Section 2.14 "**Owner**" means the record owner, whether one or more persons and/or entities (including Builders and the Developer) of fee simple title to a Lot, but specifically excluding those having an interest merely as security for the performance of an obligation.

Section 2.15 "**Plat(s)**" means the Final Plat identified in the Recitals above for the Addition, as such Final Plat may be replatted and amended from time to time, together with the plat(s) for any additional land subsequently added to the Addition pursuant to Section 14.1, which plat(s) shall reflect the City approved (or proposed City approved) platting, location and size of all Lots in the Addition and the location of the streets and easements on, adjacent to or affecting such Lots.

Section 2.16 "**County Recorder's Office**" means the Pottawattamie County Recorder for Pottawattamie County, Iowa.

Section 2.17 "**Restricted Area**" means (i) that area of any Lot which is located within Out Lots B through O, inclusive, designated on the Plat; (ii) those areas on Lots 27 and 28 designated as storm sewer and drainage easements; (iii) those areas on Lots 39, 40, 59, and 60 designated as sanitary, storm sewers, and drainage easement; (iv) those areas on Lots 66, 87, 88, and 89 designated as storm sewer and drainage easements; and (v) those areas on Lots 106 and 217 designated as storm sewer easements. Out Lots B through O, inclusive, as designated on the Plat are made part of the Restricted Area subject to the various easements as more fully described in the notations on the Plat. Out Lots B through O may also contain trails and/or a trail system that are made part of the Restricted Area.

Section 2.18 "**Restricted Area Improvements**" is defined in Section 3.8.

Section 2.19 "**Turnover Date**" is defined in Section 3.11.

**ARTICLE 3**  
**DECLARATION, ASSOCIATION, BOARD OF DIRECTORS**

Section 3.1 **Declaration**. Developer hereby declares that all of the land in the Addition shall be held, sold and conveyed subject to the easements, covenants, conditions and restrictions contained in this Declaration, which easements, covenants, conditions and restrictions: (i) are for the purpose of establishing a general scheme for the development and construction of residences on the land in the Addition, (ii) are for the purpose of enhancing and protecting the value, attractiveness, appeal and desirability of all land within the Addition, (iii) shall run with all land within the Addition and be binding on all parties having or acquiring any right, title or interest in the land or any part thereof, and (iv) shall inure to the benefit of and be a burden upon each Owner.

Section 3.2 **The Association**.

(a) Commencing on the date hereof and continuing until ninety-five percent (95%) of the Lots have been sold to Owners and residences have been constructed thereon, the Developer shall have the sole right to create the Association; thereafter, if not previously formed by Developer, the Association may be formed by (i) the Developer; or (ii) the Owners, if the Owners representing at least seventy-five percent (75%) of all Lots assent to the creation of the Association; or (iii) the District; or (iv) the City.

(b) The Developer shall have no responsibility or liability for (i) the creation, formation, management or operation of the Association, (ii) any actions taken or omitted to be taken by or on behalf of the Association as a result of, in connection with, under or pursuant to this Declaration, or (iii) any liabilities, obligations, debts, actions, causes of action, claims, suits or damages incurred by or on behalf of or arising in connection with the Association or the duties and obligations of the Association pursuant to this Declaration.

Section 3.3 **Purposes of Association**. The Association shall protect, maintain, improve, operate and administer the Addition, including taking necessary action to levy and collect the assessments herein provided for, pay expenses and do such other things as are provided or contemplated in this Declaration and the Association's Articles of Incorporation and Bylaws. The Association shall not be deemed to be conducting a business of any kind, and shall hold and apply all funds it receives for the benefit of the Addition in accordance with the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws.

Section 3.4 **Membership in Association**.

(a) Developer shall be a member of the Association until Developer elects in writing to relinquish its membership. Each other Owner shall, upon acquisition of fee simple title to any Lot and occupancy of the residence located thereon, automatically become a member of the Association. Each Owner shall be entitled to only one Association membership for each Lot owned by the Owner,



and, subject to the provisions of Section 3.11, shall have only one vote per Lot in the Association. If an Owner (other than Developer) is comprised of more than one person and/or entity, they shall designate one of their members to hold the Association membership, it being the intention that for each Lot there shall be only one Association membership. Each member (other than Developer) must be (1) an individual who is an Owner, or (2) if the Owner is or includes a partnership, an individual who is a partner, or (3) if the Owner is or includes a corporation, an officer of the corporation, or (4) if the Owner is or includes a trust, an individual who is a trustee or beneficiary of the trust, or (5) if the Owner is or includes a limited liability company or an association, an individual who is a member of the limited liability company or association. Each Owner shall give notice to the Association of the name and address of the individual who will hold the Association membership for such Owner; otherwise, the Association may designate the party who is to be the Association member with respect to such Lot.

(b) A membership in the Association shall not be transferred, pledged or alienated in any way except as expressly provided in this Declaration. Subject to the provisions of paragraph (a) of this Section 3.4, membership in the Association shall automatically be transferred to the new Owner upon the transfer of fee simple title to the Lot to which the membership appertains; PROVIDED, HOWEVER, the Association shall not be responsible for providing notices to the new member under this Declaration until notice of the transfer and of the name and address of the new member has been given to the Association.

#### Section 3.5 Board of Directors.

(a) Subject to the provisions of subparagraph (b) hereof, the members of the Association shall elect the Board of Directors and the Board of Directors shall, by majority rule, conduct all of the business of the Association, except when membership votes are required pursuant to this Declaration or pursuant to the Articles of Incorporation or Bylaws of the Association.

(b) Notwithstanding anything contained in the preceding subparagraph (a) or elsewhere in this Declaration to the contrary, prior to the Turnover Date, the Developer shall be entitled to appoint all of the members of the Board of Directors.

#### Section 3.6 Indemnification.

(a) To the fullest extent permitted by law, the Association shall indemnify each officer and director of the Association, each member of the Architectural Committee and Developer (each, an "Indemnified Party") against all claims, liabilities, damages, costs and expenses, including reasonable attorneys' fees, incurred by the Indemnified Party in connection with any action taken pursuant to, or in connection with this Declaration, provided the Indemnified Party did not act, fail to act or refuse to act willfully, in a grossly negligent manner or with fraudulent or criminal intent in the performance of the Indemnified Party's duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.

(b) To the fullest extent permitted by law, neither Developer nor any officer or director of the Association nor any member of the Architectural Committee shall be liable to any Owner or to the Association or anyone claiming by, through or under any Owner or the Association for any damages suffered or claimed on account of any decision, course of action, inaction, omission, error or negligence taken or made in good faith and which Developer, such officer, director or Architectural Committee member reasonably believed to be within the scope of his or its duties.

Section 3.7 **Powers and Duties of Association**. The Association shall have the powers and duties set forth in its Articles of Incorporation and Bylaws, provided such powers and duties are not inconsistent with the provisions of this Declaration, including, but not limited to, the following powers and duties:

(a) The Association shall have the power, in its discretion, to do any of the following, which it may exercise or perform whenever, in its discretion, it may deem necessary or desirable:

- (1) Levy and collect the assessments and charges provided for in this Declaration.
- (2) Enforce the provisions of this Declaration.
- (3) Exclusively manage and control all Common Facilities for the benefit of the Owners, including exercise of control over such easements, leases, licenses, usage rights and other rights and property as the Association may acquire from time to time.
- (4) Acquire by lease or own title to such property as may be reasonably necessary in order to carry out the purposes of the Association.
- (5) Grant upon, across or under property owned or controlled by the Association such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other public or private utilities, roadways or other purposes as may be reasonably necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Addition or any part thereof or the preservation of the health, safety, convenience and welfare of the Owners.
- (6) Erect and maintain signs for the marking of streets and safety signs for the protection of children and other persons.
- (7) Obtain property insurance on the Common Facilities and Restricted Area Improvements against loss or damage by fire or other casualty and public liability insurance with respect to the Common Facilities, all in such forms and amounts and with such insurance companies as the Association may deem appropriate, naming as insureds Developer and its agents and employees (so long as Developer owns any land within the Addition or controls the Association as provided in Section 3.11), each officer and director of the Association, any management company under any management contract with respect to the Common Facilities and its agents and employees,

and any other persons or entities designated by the Association, in its discretion.

(8) Borrow money in such amounts, at such rates of interest, upon such terms and security and for such periods of time as the Association may deem necessary or appropriate, in its sole discretion; PROVIDED, HOWEVER, the foregoing shall not be construed to give the Association any right or authority to mortgage the Common Facilities.

(9) Adopt and enforce reasonable rules and regulations for use of the Common Facilities and the other land in the Addition to preserve or enhance the quality or appearance of the Addition or the safety or convenience of the users thereof or otherwise to promote the interests of Owners within the Addition, and amend or supplement such rules and regulations at any time and from time to time.

(10) Exercise any other powers elsewhere provided to the Association in this Declaration.

(b) The Association shall have the duty to do or cause to be done the following:

(1) Clean catch basins, storm sewers and drainage facilities which are part of the Common Facilities.

(2) Care for, spray, trim, protect and replant trees and shrubbery which are part of the Common Facilities.

(3) Maintain all Restricted Area Improvements, and provide lawn care, including mowing, spraying, replanting grass and replacing sod on all portions of the Common Facilities. The Association shall maintain the landscaping within the Restricted Area.

(4) If any vacant or unimproved Lot is not maintained by the Owner thereof, mow, care for, maintain and remove rubbish from such Lot and do anything else the Association deems necessary or desirable to keep such Lot neat in appearance and in good order, all at the expense of such Owner.

(5) Maintain, repair and replace all structures, improvements and facilities which are part of the Common Facilities and maintain all creeks, streams or ponds and all drainage and retention facilities which are part of the Common Facilities.

(6) Pay all taxes and assessments levied or assessed against the Common Facilities, and any other property owned or leased by the Association.

(7) Keep true and correct records of accounts in accordance with generally accepted accounting principles, and have available for inspection by any Owner, at reasonable times during regular business hours, books which specify in reasonable detail all expenses incurred and funds

accumulated from assessments or otherwise.

(8) Upon reasonable request and during reasonable business hours, make available for inspection by any Owner the books, records and financial statements of the Association, together with current copies, as amended from time to time, of this Declaration, the Articles of Incorporation and Bylaws of the Association.

(9) Perform any other duties required of the Association as provided elsewhere in this Declaration.

Section 3.8 **Fences, Walls, Sprinkler Systems and Other Improvements in the Restricted Area.** The Association shall have the right, but not the obligation, to use the Restricted Area for any purpose set forth in this Declaration, including, without limitation, for ingress and egress, and for installing, replacing, repairing, relocating and maintaining cable television systems, master television antenna systems, security and similar systems; roads, walkways, sidewalks, bicycle pathways; entry monuments and fences (collectively, "**Restricted Area Improvements**"), as well as trees, bushes, landscape irrigation systems, berms, or any other materials or items related to landscaping; lakes, ponds, drainage systems; street lights, and utilities, including, but not limited to water, sewers, meter boxes, mail boxes, telephones, gas, and electricity, and to enter upon, install, construct, relocate, and remove all such items. No fence, landscaping (other than sod), wall or sprinkler system shall be erected or installed in the Restricted Area by the Owner of the affected Lot without the prior written consent of the Architectural Committee.

Section 3.9 **Managing Agent; Contracts and Services.** Any powers, rights and duties of the Association may be delegated to a managing agent under a management contract; **PROVIDED, HOWEVER,** that no such delegation shall relieve the Association from its obligation to perform any such delegated duty. Any contract entered into by the Association for professional management or other services which term may be renewed by agreement of the parties for successive one-year periods, and any such contract shall permit termination by either party upon 90 days notice with or without cause and without payment of any termination fee. Subject to the foregoing limitations, the Association is specifically authorized to enter into a management contract with a management company owned in whole or in part by Developer.

The Association shall also have the right, in its discretion, to enter into such contracts and transactions with others, including Developer and its affiliates or other homes associations, as the Association may deem necessary or desirable for the purposes herein set forth, and shall have the right to engage and dismiss such agents and employees as will enable the Association to adequately and properly carry out the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws. No such contract or transaction shall be invalidated or in any way affected by the fact that one or more members of the Board of Directors may be employed by or otherwise associated with Developer or its affiliates, provided the fact of such interest is disclosed or known to the other members of the Board of Directors acting upon such contract or transaction, and provided further that the contract or transaction is on commercially reasonable terms. Any such

interested director may be counted in determining the existence of a quorum at the meeting of the Board of Directors at which such contract or transaction is authorized, and such interested director may vote thereon with the same force and effect as if he or she were not interested.

Section 3.10 **Acceptance of Easements, Etc.** The Association shall accept all easements, leases, licenses and other usage rights and title to all property and improvements which may be granted, conveyed or assigned to the Association by or at the direction of Developer in Developer's sole discretion.

Section 3.11 **Control of Association by Developer.** Notwithstanding anything in this Article 3 or elsewhere in this Declaration to the contrary, Developer shall have and maintain absolute and exclusive control of the Association and the Architectural Committee, including appointment and removal in Developer's sole discretion of all officers of the Association, members of the Board of Directors and all members of the Architectural Committee, until the date (the "**Turnover Date**") which is the earlier of (a) the expiration of 10 years from the date of recording of the most recent plat affecting the Addition, or (b) the effective date designated by Developer in a notice to the members of the Association stating that Developer relinquishes control. Until the Turnover Date, Developer will be entitled to cast all votes with respect to the election and removal of all officers of the Association, the Board of Directors, and members of the Architectural Committee and with respect to any other matter requiring the vote or approval of members of the Association or the Architectural Committee as set forth herein or in the Association's Articles of Incorporation or Bylaws. Notwithstanding the foregoing, or any other provision to the contrary set forth in this Declaration, if at the occurrence of the Turnover Date, Developer continues to own any Lots in the Addition, then so long thereafter as Developer continues to own Lots in the Addition, Developer shall have the sole and exclusive authority to appoint all of the members of the Architectural Committee.

#### **ARTICLE 4** **ASSESSMENTS**

Section 4.1 **Creation of Lien and Personal Obligation.** Each Owner of a Lot shall pay all assessments, annual and special, provided for in this Declaration. Each such assessment, together with interest thereon as hereinafter provided, filing fees, attorneys' fees, court costs and other costs of collection thereof (such interest and all of such fees and costs being herein sometimes collectively called "**Costs**"), shall be a continuing lien upon the Lot against which such assessment is made, which lien shall be enforceable as provided in Section 4.6. Each assessment, together with all Costs relating thereto, shall also be the personal obligation of the Owner of the Lot at the time the assessment is made. If an Owner consists of more than one person and/or entity, the obligations of the Owner for the payment of such assessments and costs shall be joint and several.

Section 4.2 **Purpose of Assessments.** The assessments levied by the Association shall be used to provide funds to enable the Association to exercise the powers and perform the duties herein set forth, including (by way of example only and not by way of limitation) (a) the costs of maintenance, management, operation, repair and replacement of the Common Facilities and of the



Restricted Area Improvements; (b) the costs of management and administration of the Association, such as compensation paid by the Association to managers, accountants, attorneys, other professionals and employees; (c) the costs of utilities (including water, electricity, gas and sewer provided directly to the Association and not individually metered or billed by the service providers directly to the Lots) and other services provided by the Association which generally benefit and enhance the value and desirability of the Addition; (d) the costs of any insurance maintained by the Association; (e) reasonable reserves for major items, contingencies, replacements and other purposes as deemed appropriate by the Association; (f) the costs of bonding any persons handling funds of the Association; (g) taxes, assessments and other governmental impositions paid by the Association; and (h) the costs of any other items or services to be provided or performed by the Association as set forth in this Declaration or in the Association's Articles of Incorporation or Bylaws, or in furtherance of the purposes of the Association.

Section 4.3 **Annual Assessments.**

(a) Each Lot shall be subject to an annual assessment which may be levied by the Association from year to year and shall be paid to the Association annually in advance by the Owner of such Lot. If the amount collected from annual assessments for any year exceeds the Association's costs and expenses for such year, such excess shall be taken into consideration in preparing the budget and determining the annual assessments to be levied for the following year. If the amount collected from annual assessments for any year is inadequate to meet the Association's actual or projected costs and expenses for such year, special assessments may be levied at any one or more times during such year as provided in Section 4.4. A portion of the annual assessments for each year shall be allocated to reserves to provide required funds for repair or replacement of major items and for other contingencies and proper purposes. The responsibility of the Association shall be only to provide for such reserves as the Association in good faith deems reasonable, and neither Developer nor the Association shall have any liability to any Owner if such reserves are inadequate.

(b) The first annual assessment with respect to each Lot shall be due as of the first day of the month after the date on which a residence on such Lot is first occupied for residential purposes (i.e., occupancy of a model home for sales purposes shall not trigger the assessment). Such first annual assessment shall be prorated on a per diem basis in accordance with the number of days remaining in such year from and after the date the assessment is due. The annual assessment with respect to each Lot for each subsequent year shall be due as of January 1 of such year.

(c) Failure of the Association to levy annual assessments for any one year shall in no way affect the right of the Association to do so for any subsequent year.

(d) The Association shall give at least 30 days advance notice to each Owner of a Lot whose address is then listed with the Association of the amount of the annual assessment on such Lot and the date on which such assessment is due.

Section 4.4 **Special Assessments.**

(a) The Association may at any time or times during any year, if necessary in its discretion to enable the Association to carry out the purposes herein set forth, levy against each Lot (from and after the date on which such Lot first becomes subject to annual assessments as provided in Section 4.3(b)) a special assessment over and above the annual assessment for such year authorized by Section 4.3.

(b) The Association shall give at least 30 days advance notice to each Owner of a Lot whose address is then listed with the Association of the amount of each special assessment and the date on which such assessment is due.

Section 4.5 **No Waiver or Offset.** No Owner shall be exempt from payment of the assessments and Costs imposed under this Declaration by reason of the waiver by such Owner of the use or enjoyment of the Common Facilities or by nonuse thereof or by abandonment of such Owner's Lot. All assessments, annual and special, shall be payable in the amounts specified in the notices thereof given by the Association, and there shall be no offsets against such amounts for any reason.

Section 4.6 **Delinquency; Enforcement of Liens.**

(a) If any Owner of a Lot fails to pay any assessment, annual or special, on or before the 30th day following the date on which such assessment is due, or fails to pay any other amount owing under this Declaration within 30 days of the due date (collectively, a "**Delinquent Amount**") then such Delinquent Amount shall bear interest from the due date until paid at the Default Rate of Interest.

(b) Each assessment, annual or special, shall become delinquent on the 30th day after the date on which such assessment is due, and payment of the assessment and Costs (including interest), and any other Delinquent Amounts owing under this Declaration may then be enforced as a lien on such Lot in proceedings in any court in Pottawattamie County, Iowa, having jurisdiction of suits for the enforcement of such liens. The Association may, whenever any assessment is delinquent, file a certificate of nonpayment of assessments (the "**Delinquency Statement**") with the County Recorder's Office, and for each Delinquency Statement so filed, the Association shall be entitled to collect from the Owner of the Lot described therein an administrative fee which fee shall be part of the Costs included in the lien.

(c) Such liens securing payment of a Delinquent Amount shall continue for a period of five years from the date of recording of the Delinquency Statement and no longer, unless, within such time, suit shall have been instituted for the collection of the Delinquent Amount, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment therein.

(d) Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, the benefit of any redemption, homestead or exemption laws of the State of Iowa now or hereafter in effect.

(e) Any lien which arises against any Lot by reason of any Delinquent Amount shall be subordinate to the lien of a first mortgage ("**First Mortgage**") on such Lot acquired in good faith and for value securing the payment of a loan made by a bank, savings and loan association or other institutional lender ("**First Mortgagee**"), provided such First Mortgage is recorded prior to the recording of the Delinquency Statement. If any lien for Delinquent Amounts and Costs which accrued prior to the date a First Mortgagee acquires title to the Lot has not been extinguished by the process whereby the First Mortgagee acquired title, the First Mortgagee shall not be liable for Delinquent Amounts or Costs arising or accruing prior to such date and in the case where the Delinquent Amount is an assessment or other sum owing to the Association, upon request by the First Mortgagee to the Association, the Association shall release such lien of record; PROVIDED, HOWEVER, that (i) any Delinquent Amount and Costs which are so extinguished shall continue to be the personal obligation of the delinquent Owner, and the party owed such amount may seek to collect them from such Owner even after such Owner is no longer the Owner of the Lot, and (ii) if the Owner against whom the original assessment was made is the purchaser of or redeems the Lot, the lien shall continue in effect and may be enforced for the Delinquent Amount and Costs which were due prior to the final conclusion of any such foreclosure or equivalent proceeding. Any such Delinquent Amount and Costs which are not collected within a reasonable time may be reallocated by the Association among all other Owners of Lots, irrespective of whether collection proceedings have been commenced or are then pending against the defaulting Owner.

Section 4.7 **Certificate of Nonpayment of Assessments.** Upon request, any party acquiring title to or any interest in a Lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid assessments and Costs pertaining to such Lot, if any, and the Association shall thereafter be prevented from asserting that the amount of accrued but unpaid assessments and costs is in excess of the amount so indicated in the certificate.

Section 4.8 **Pledge of Assessment Rights as Security.** The Association may pledge the right to exercise its assessment powers as security for any obligation of the Association; PROVIDED, HOWEVER, that after the Turnover Date any such pledge shall require the prior affirmative vote of a majority of all members of the Association.

Section 4.9 **Loans to Association.** Declarant shall have the right to make interest free loans to the Association.

## **ARTICLE 5** **EASEMENTS AND LICENSES**

Section 5.1 **Reservation by Developer; Grant to Association.** Developer hereby reserves to itself and its successors and assigns and grants to the Association the right, privilege and easement to enter upon the Common Facilities and the Lots to the extent necessary for the purposes of (a) constructing, maintaining, relocating, repairing, replacing and removing Restricted Area Improvements on the Restricted Area, and decorative walls, underground sprinkler systems, lighting, sidewalks, signs, landscaping features, recreational facilities and other improvements on the

Common Facilities, which Developer or the Association reasonably believes will enhance the beauty and function of the Common Facilities or the Addition; (b) planting, replanting, maintaining, relocating and replacing grass and landscaping on the Restricted Area and on the Common Facilities; and (c) doing all other things which Developer or the Association shall be obligated to do as set forth in this Declaration or shall deem desirable for the neat and attractive appearance and beautification of the Common Facilities.

Section 5.2 **Grant to Owners**. Developer hereby grants to each Owner the non-exclusive, perpetual right, privilege and easement to use the Common Facilities for the respective purposes for which the Common Facilities are constructed, designed and intended, subject, however, to all of the provisions of this Declaration, the provisions of the Association's Articles of Incorporation and Bylaws and any reasonable rules and regulations of general application within the Addition which the Association may adopt from time to time, which right, privilege and easement shall survive the termination of this Declaration.

Section 5.3 **License to Enter**. During the term of this Declaration and thereafter as long as any of the easements created by this Declaration survive, Developer, the Association and their respective partners, officers, employees, agents and contractors shall have a temporary license to enter upon and use such portions of any Lot as may be reasonably necessary to permit Developer or the Association to exercise or perform the rights, powers and obligations reserved to Developer or the Association by the provisions of this Declaration.

## **ARTICLE 6** **DAMAGE TO IMPROVEMENTS**

Section 6.1 **Damage to Improvements**. If improvements on a Lot are damaged or destroyed by casualty or other cause, such improvements shall either be repaired and restored with due diligence, or the Owner shall, at its sole expense, demolish the damaged improvements, including foundations, clear away all debris and take all other action (including filling to grade, sodding and landscaping) required so that the area formerly occupied by the demolished improvements shall be neat and attractive in appearance and compatible with a high-quality residential development.

## **ARTICLE 7** **ADDITIONAL COVENANTS**

Section 7.1 **Property and Lot Maintenance**. All vacant Lots and undeveloped portions of the Addition shall be kept mowed and free of trash and construction debris by the Owner thereof. From and after the completion of construction of a residence on a Lot, the Owner and occupant of each Lot shall install a sod covering on the entire Lot, shall maintain all areas in a sanitary and attractive manner and shall edge the street curbs that run along the property line and the sidewalks and driveway located on the Lot. Each Lot must be kept mowed at regular intervals so as to maintain the property in a neat and attractive manner. No vegetables shall be grown on any Lot. No Owner

shall permit weeds or grass to grow to a height of greater than six (6) inches upon its Lot. Upon failure of the Owner of any Lot to maintain such Lot (whether or not developed), Developer may, at its option, have the vegetation cut as often as necessary in its judgment, and the Owner of such Lot shall be obligated, when presented with an itemized statement, to reimburse Developer for the cost of such work. In the event Developer shall fail to exercise its right granted under the preceding sentence within ten (10) days following written notice to Developer from the Association stating the Association's intent to exercise such right, the Association shall have the right, in lieu of Developer, to have the vegetation cut as provided above, and upon exercise of such right, the Owner of the Lot in question shall be obligated, when presented with an itemized statement, to reimburse the Association for the cost of such work.

Section 7.2 **Maintenance of Improvements.** Each Owner shall maintain the exterior of all improvements on its Lot in good condition and repair, shall replace worn and rotten parts, shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate. Upon failure of the Owner to maintain the exterior of all buildings, fences, walls and other improvements on his Lot, Developer may, at its option, perform such maintenance as often as necessary in its judgment, and the Owner of such Lot shall be obligated, when presented with an itemized statement, to reimburse Developer for the cost of such maintenance work. In the event Developer shall fail to exercise its right granted under the preceding sentence within ten (10) days following written notice from the Association to Developer of the Association's intent to exercise such right, the Association shall have the right, in lieu of Developer, to perform such maintenance as provided above, and upon exercise of such right, the Owner of such Lot in question shall be obligated, when presented with an itemized statement, to reimburse the Association for the cost of such maintenance work.

Section 7.3 **Taxes and Other Encumbrances.** Each Owner shall promptly pay, before delinquency, all taxes, assessments, liens, encumbrances or charges of every kind ("**Liens**") levied against or imposed upon such Owner or such Owner's Lot which may, as a matter of law, be or become a lien on any part of the Restricted Area prior in lien to the easements granted in this Declaration. In the event of a breach of this covenant, the Association shall have, in addition to all other rights or remedies, the right (but not the obligation) to obtain the discharge of any such Lien by payment or otherwise, and collect from such Owner all costs and expenses incurred by the Association in connection therewith, including attorneys' fees.

Section 7.4 **Lien Rights.** If a party rectifies an Owner's default under this Article 7, the curing party shall have a lien on the defaulting Owner's Lot, which lien may be enforced in conformance with the provisions of Article 4.

## **ARTICLE 8** **ARCHITECTURAL AND LANDSCAPE CONTROL**

Section 8.1 **Appointment of Architectural Committee.** The Association shall have an

architectural committee ("**Architectural Committee**") consisting of persons appointed (and removed) from time to time, subject to the last sentence in Section 3.11, (a) by Developer until the Turnover Date, and (b) by the Board of Directors after the Turnover Date. After the Turnover Date, the Architectural Committee shall have three members.

Section 8.2 **Term; Successors; Compensation; Liability of Architectural Committee.**

(a) Each member of the Architectural Committee shall serve on the Architectural Committee until such member resigns or is removed by the party who appointed such member to serve on such Architectural Committee. Without limiting the foregoing, the appointing party may remove its appointed member of the Architectural Committee at any time for any reason.

(b) In the event of the death, resignation or removal by the appointing party of any member of the Architectural Committee, such appointing party shall have full authority to designate and appoint a successor within a reasonable period of time. If no such appointment is made on a timely basis, the remaining member(s) of the Architectural Committee shall appoint a successor member.

(c) No member of the Architectural Committee shall be entitled to compensation for, or be liable for claims, causes of action or damages arising out of, services performed pursuant to this Declaration.

Section 8.3 **Authority of Architectural Committee.**

(a) After the initial platting of the land in the Addition, the Addition shall not be replatted or resubdivided, no landscaping shall be undertaken and no building, fence, wall or other structure or improvement shall be commenced, erected, placed, relocated, maintained or altered on any Lot, nor shall any exterior painting of, exterior addition to, or alteration of, such items be made by any party (other than Developer) until all plans have been approved in writing by a majority of the members of the Architectural Committee, as to:

(1) conformity and harmony of the proposed replat and any landscape plan to the existing development in the Addition, surrounding areas, community standards and other developments with which Developer is associated;

(2) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design and proper orientation of main elevation with respect to nearby streets;

(3) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping in relation to the various parts of the proposed improvements and in relation to improvements on other Lots in the Addition; and

(4) the other standards set forth within this Declaration or matters in which the

Architectural Committee has been vested with the authority to render a final interpretation and decision.

Without limiting the foregoing, the Architectural Committee is authorized and empowered to consider and review any and all aspects of platting, construction and landscaping which may, in the reasonable opinion of such party, affect adjoining Lots, or the general value of Lots in the Addition.

(b) The Architectural Committee acting pursuant to a majority vote of its members, shall have the right, power and authority to enforce the covenants, conditions, restrictions and all other terms contained in this Declaration relating to the matters within its purview as set forth herein.

Section 8.4 **Procedure for Approval.**

(a) Each of the following documents (and all modifications thereof) must be submitted to the Architectural Committee and such Committee's approval must be obtained, prior to the document's submission to the City or implementation:

(1) architectural, building and construction plans for each residence, showing the nature, kind, shape, square footage, height, color, materials and location of all improvements on each Lot, and specifying any requested variance from the setback lines, garage location or other requirements set forth in this Declaration, and, if requested by the Architectural Committee, samples of proposed construction materials.

(2) All documents must be submitted in duplicate and must be sent to the Architectural Committee by hand delivery or certified mail; **PROVIDED, HOWEVER,** Developer shall not be obligated to submit or obtain approval of such documents as long as Developer owns any Lot(s) in the Addition.

Section 8.5 **Design Standards.** The Architectural Committee shall use good faith efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Addition consistent with the standards set forth in this Declaration, provided that such Committee shall have sole discretion with respect to taste, design and all standards specified herein. One objective of the Architectural Committee is to conform generally with community standards and prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures from being built or maintained in the Addition. The Architectural Committee may from time to time publish and promulgate bulletins regarding architectural standards, which shall be fair and reasonable and shall carry forward the spirit and intention of this Declaration ("**Design Standards**"). The Design Standards may, from time to time, be amended, supplemented or repealed by the Architectural Committee, and the Committee, in its sole discretion, may grant variances from the Design Standards.

Section 8.6 **Construction Period Requirements.** The Architectural Committee shall



have the right to establish additional measures to be observed during the period of construction on a Lot in order to minimize disturbance to adjacent sites, and all parties involved in such construction shall be required to observe such measures.

Section 8.7 **Residence Design**. Without limiting the requirement that improvements conform to any Design Standards, the following shall apply:

(a) **General Design**. The design of each residence shall comply with the following criteria: (1) appropriateness of form, color and materials to design style; (2) relationship of window to wall and wall to total form (well-designed massing); (3) appropriateness of detailing to form, style and massing; and (4) proportions of roofs being consistent with the proposed architectural style.

(b) **Exterior Materials and Colors**. All exterior materials and the color of all exterior materials (including paint) shall be subject to prior written approval of the Architectural Committee. Residences shall be faced on all sides with quality materials (such as brick, wood, stone, stone veneer, batt and board or stucco) or other materials as approved by the Architectural Committee. Prefabricated metal buildings are not permitted. All foundations must be painted to the point where the foundation meets the finished grade of the Lot.

(c) **Windows, Solar Panels and Awnings, Window or Wall Air Conditioning and Heating Units**. No unpainted aluminum will be permitted for window framing. Wood frames shall be painted, sealed, stained or have another coating approved by the Architectural Committee. Without limiting the foregoing, the Architectural Committee has the authority to require the use of certain types of divided light windows (such as bronzed, white or black), to prohibit or regulate the use of solar or heating panels and to regulate the construction, location, appearance and maintenance of awnings. No window or wall air conditioning or heating units will be permitted; provided however, Developer may permit such heating and air conditioning units in a marketing office within a model home.

(d) **Roofs**. The Architectural Committee has the authority to require at a minimum a six (6) to twelve (12) foot roof pitch or slope on the main structure of the residence (subject to the Architectural Committee's ability to permit slight variances for garage and porch roof pitch or slope), and to require that of the roofing materials be earth tones. No metal roofs (other than metal roofing over window bays) are permitted.

(e) **Construction, Location and Size Limitations**.

(1) Once commenced, construction of improvements shall be diligently pursued to completion, and improvements may not be left in a partly finished condition for more than 30 days without written approval from the Architectural Committee.

(2) Subject to the provisions of Article 6, residences destroyed by fire or other casualty shall be demolished and removed from the Lot and new construction begun within three months after

the date of such destruction, and thereafter such construction shall be performed with due diligence through completion.

(3) Minimum square footage requirements for residences shall be 1,400 square feet for homes constructed on the Estate Lots; 1,100 square feet for homes constructed on the Standard Lots; and 900 square feet for homes constructed on the Village Lots as measured to the outside of exterior walls, but exclusive of porches, garages, patios and detached accessory buildings; PROVIDED HOWEVER, Developer may alter this requirement by a maximum of ten percent (10%) in Developer sole discretion.

(4) All residences and other improvements shall be located on each Lot as approved by the Architectural Committee and in full compliance with any setback lines or restrictions shown on the Plat or required by the City.

(f) **Patios.** No screening of a patio or other recreational area will be installed without the written approval of the Architectural Committee.

(g) **Fences.** Fences are not encouraged because they fragment the landscape of the Addition. The location and composition of all fencing and walls constructed on any Lot shall be subject to the approval of the Architectural Committee and must be constructed of material approved by the Architectural Committee and must comply with all applicable governmental requirements and ordinances and all provisions of this Declaration. No fence or wall shall be permitted to extend nearer to the front street than (i) forty-five (45) feet from the front street, or (ii) the front of the house, whichever distance is further. Except as approved by the Architectural Committee, no portion of any fence shall be more than four (4) feet in height as measured from the lowest point of the Lot; provided however, any fence around an in ground swimming pool shall comply with all Laws, but under no circumstance may be of a solid material (only chain link or rod iron will be permitted).

(h) **Outbuildings.** No detached building (such as a storage building, doghouse, greenhouse, gazebo or playhouse) or other detached structure shall be erected or placed on any Lot.

(i) **Garages.** Unless otherwise approved by the Architectural Committee, all garages shall be attached to the residence. All driveways shall be surfaced with concrete, or with brick pavers, or other surface approved by the Architectural Committee.

(j) **Obstructions.** No fence, landscaping or other obstruction shall be permitted on any corner Lot which would obstruct necessary sight lines of vehicular traffic.

Section 8.8 **Interpretation; Waiver.** The Architectural Committee's interest in reviewing site and building designs is to assure that a high quality of compatible development is consistently achieved. In order to meet special situations which may not be foreseen, it may be desirable from time to time for the Architectural Committee to allow variances of certain requirements. Any variance granted is considered not to be precedent setting because the decision is being made in the

context of the specific project in question with the welfare of the overall Addition in mind. All approvals and consents of the Architectural Committee shall be in writing, and oral approvals or consents shall be of no force or effect.

Section 8.9 **Architectural Committee Limitation on Liability.**

(a) The Architectural Committee may delegate its plan review responsibilities to one or more of its members or to architectural consultants retained by the Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Architectural Committee.

(b) The establishment of the Architectural Committee and Design Standards shall not be construed as impairing the obligation of any Owner to maintain or repair his Lot as may otherwise be specified in this Declaration or in the Association's Bylaws.

(c) By its approval of plans and specifications, the Architectural Committee shall not be deemed to have approved the same for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither Developer nor any officer or employee thereof, or any other or governmental requirements, the Architectural Committee nor any member thereof, nor the Association nor any member, officer or director thereof, assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither Developer nor any officer or employee thereof, the Architectural Committee nor any member thereof, nor the Association nor any member, officer or director thereof, shall be liable to any Owner or other person or entity for any damage, loss, cost or prejudice suffered or claimed on account of (1) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (3) the development or manner of development of any property within the Addition. Approval of plans and specifications by the Architectural Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with accepted engineering practices, or with applicable governmental ordinances or regulations, including zoning ordinances and building codes.

**ARTICLE 9**  
**USE AND OCCUPANCY RESTRICTIONS**

Section 9.1 **Residential Use.**

(a) Each Lot may be used only for residential purposes and for no other use or purpose. No business or commercial building may be erected on any Lot and no business or commercial enterprise or other nonresidential use may be conducted on any Lot. Without limiting the foregoing, no building or structure intended for or adapted to commercial, business or professional purposes, nor any apartment house, duplex, double house, lodging house, rooming house, group home, dormitory, church, school, hospital, sanitorium, guest house, servant's quarters or multiple-family

dwelling shall be erected, placed, permitted or maintained on any Lot. Nothing in this Paragraph shall prohibit an Owner's use of its residence for quiet, inoffensive activities, such as tutoring or giving art or music lessons, or for a home office, so long as such activities do not violate the other restrictions set forth in this Declaration, and do not materially increase the number of cars parked on the street, or interfere with adjoining owners' use of their Lots.

(b) Each residence may be occupied by only one (1) family consisting of persons related by blood, adoption or marriage or no more than two (2) unrelated persons living and cooking together or in the same residence as a single housekeeping unit; PROVIDED, HOWEVER, that nothing contained herein shall prevent occasional temporary occupancy by guests of the family or occupancy by full-time domestic servants or medical assistants employed by the family; and FURTHER PROVIDED, nothing contained herein shall prevent the owner of a residence from renting a residence as long as the residence is occupied by only one (1) family as set out in this paragraph.

(c) Notwithstanding anything contained herein to the contrary, Developer or a Builder, subject to the Developer's approval, may temporarily use a residence, garage or trailer on a Lot as a sales, marketing or construction office for the sole purpose of (i) enabling the Developer to develop, construct, market and sell its Lots and residences in the Addition or in any other addition or subdivision owned by Developer, or (ii) enabling a Builder to construct, market and/or sell such Builder's residences in the Addition until such Builder's last residence in the Addition is sold.

Section 9.2 Signs. Except for a professionally prepared For Sale or For Rent sign, not exceeding 5 square feet, no yard signs, banners, or other signs are permitted without the Association's prior approval. All signs permitted by the Association shall be maintained in good condition and repair, with a neat and orderly appearance, and shall comply with the applicable ordinances of the City. Without limiting the foregoing, no sign shall be permitted which (i) describes the condition of the residence or the Lot, (ii) describes, maligns, or refers to the reputation, character or building practices of Developer, any Builder, or any other Owner, or (iii) discourages or otherwise impacts or attempts to impact a party's decision to acquire a Lot in the Addition. In the event of a violation of the foregoing provisions, Developer or the Association shall be entitled to remove any such offending sign, and in so doing, shall not be subjected to any liability for trespass or otherwise.

Section 9.3 Animals. No animals of any kind shall be raised, bred or kept on any land in the Addition except that dogs, cats or other household pets may be kept for the purpose of providing companionship for the residents of any residence constructed on a Lot. Animals are not to be raised, bred or kept for commercial purposes or for fur, clothing or food. Without limiting the foregoing, it is the general purpose of these provisions to restrict the use of the Addition so that no person shall permanently or temporarily quarter in the Addition live cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks, snakes or any other reptiles, mammals or animals (domesticated, household or otherwise) that may interfere with or threaten the quietude, health or safety of the community, as determined by the Association. No more than four (4) domesticated household pets will be permitted on each Lot. Pets must be restrained or confined on

the backyard portion of Owner's Lot inside a fenced area (which may be in the form of a so-called "invisible" electric fence) or within the residence. Dog runs are not permitted. All Lots shall be kept clean and free of pet waste and debris. All animals shall be properly tagged for identification and shall be properly vaccinated, bathed and otherwise kept clean to avoid health or safety risks and concerns.

Section 9.4 **Nuisances**. No Owner shall permit or suffer anything to be done or kept about or within such Owner's Lot or on or about any other part of the Addition which obstructs or interferes with the rights of other Owners or occupants or causes them annoyance by unreasonable noises or otherwise, nor will any Owner commit or permit any nuisance or illegal act about or within any part of the Addition. Each Owner shall comply with the rules and regulations adopted by the Association and the requirements of all health authorities and other governmental authorities having jurisdiction over the Addition.

Section 9.5 **Boats and Motor Vehicles.**

(a) No boats, marine craft, hovercraft, aircraft, trailers, buses, trucks, pick-up camper, camper body, motor homes, campers or other recreational vehicles or similar vehicle or equipment shall be parked or stored in or upon any Lot except within an enclosed garage. No automobile shall be stored (except within an enclosed garage), or parked, except for temporary guest parking, and except for parking within an enclosed garage or on a driveway on the Lot (i.e., street parking is prohibited, except for temporary guest parking). A vehicle shall be deemed stored on a driveway in violation of this Declaration if it is not being driven on a public street at least once in 10 consecutive days. No vehicle shall be repaired (except for minor repairs effected within an enclosed garage) or rebuilt on any Lot. The Association may remove or cause to be removed any unauthorized vehicle or other item prohibited hereby at the expense of the owner thereof in any manner permitted by law.

(b) Trucks with tonnage in excess of one (1) ton and any vehicle in excess of one-half (1/2) ton with painted or affixed advertisement shall not be permitted to park overnight within the Addition, except those used by Developer or a Builder during and directly related to the development of the Addition or construction of improvements on a Lot in the Addition.

(c) No vehicle of any size which transports dangerous, flammable, hazardous, corrosive or explosive cargo may pass through or be kept in the Addition at any time.

(d) Except to the extent expressly permitted hereby, no vehicles or similar equipment shall be parked or stored in any area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks (with tonnage not in excess of one (1) ton) and pick-up trucks with attached bed campers (with tonnage not in excess of one (1) ton) that are in operating condition with current license plates and in daily use as motor vehicles on the streets and highways of the State.

Section 9.6 **Lights.** No spotlights, floodlights or other lighting shall be placed or used on any Lot in a manner which illuminates or otherwise unreasonably interferes with the enjoyment of neighboring Lots. Golden, yellow, blue or reddish colors are not permitted except for holiday decorative lighting during the period from Thanksgiving Day through New Year's Day. No exterior lighting shall be installed or maintained on any Lot if the Architectural Committee objects thereto.

Section 9.7 **Antennas.** No exterior radio, television or other antenna of any kind (including "satellite dishes") or other device for the reception or transmission of radio, microwave or similar signals shall be placed or maintained on any Lot without the prior approval of the Architectural Committee. All such antennas and other devices shall be completely screened from view from outside the Lot (such screening shall be approved by the Architectural Committee) and shall be installed in accordance with and shall comply in all respects with City requirements. In the event these limitations, or any part thereof, are deemed unlawful, the Board or the Developer reserve the right to regulate the placement of such devices in a manner not in violation of the law.

Section 9.8 **Trash and Garbage**. No garbage or trash shall be kept, maintained or contained on any Lot so as to be visible from another Lot. All equipment and containers for the storage or other disposal of such material shall be kept in clean and sanitary condition. No incinerator shall be kept or maintained on any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot. Trash shall be placed in such designated locations and containers as may be established from time to time in the Design Standards. Materials incident to construction of improvements may be stored on Lots during construction so long as construction progresses on such Lots without delay.

Section 9.9 **Mining**. No manufacturing, industrial, oil or gas drilling, oil or gas development, smelting, refining, quarrying or mining operations of any kind shall be permitted in the Addition, nor shall oil or gas wells, tanks, tunnels, pipelines (other than natural gas lines installed and maintained by a utility company), mineral excavations or shafts be permitted upon or in any part of the Addition. No derrick or other structure, equipment or machinery designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted within the Addition.

Section 9.10 **Basketball Goals**. No basketball goals shall be attached to any building. All basketball goals shall be free-standing. All such goals and devices are otherwise subject to approval by the Architectural Committee.

Section 9.11 **Clothes Drying**. The drying or hanging of clothes so as to be visible from the street or another Lot is prohibited.

Section 9.12 **Drainage**. No Owner shall erect, construct, maintain or permit any fence or other improvement or obstruction which would interfere with or alter drainage of the land, or within any area designated by Developer or the Association as a drainage easement, or within any area which has been intentionally contoured to facilitate drainage; **PROVIDED** that, with the prior consent of the City and the Architectural Committee, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

Section 9.13 **Storage Tanks**. No exterior storage tank of any kind, whether for fuel, water, sewage or any other substance, shall be placed or maintained on any Lot.

Section 9.14 **Garage Doors**. Garage doors shall be kept closed except when opened for the removal or the parking or replacing of a vehicle or other item in the garage.

Section 9.15 **Safety Conditions; Repairs**. Without limiting the other provisions of this Article 9, each Owner shall maintain and keep such Owner's Lot at all times in good repair and in a clean, safe and sanitary condition, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their Lots. Subject to the provisions of Article 6, all improvements on a Lot shall be repaired and restored by the Owner thereof with due diligence.



Section 9.16 **Waiver or Modification; Additional Restrictions.** The Association or the Architectural Committee may waive or modify any one or more of the foregoing restrictions. The Association may also further restrict or regulate the use and occupancy of the Addition and the Lots by reasonable rules and regulations of general application within the Addition adopted from time to time by the Association.

Section 9.17 **Compliance with City Requirements.** Notwithstanding any provision of this Article 9 or any other provision of this Declaration to the contrary, all property within the Addition shall be used only in compliance with City requirements. In every case in which any provision of this Declaration is at variance with City requirements, the more restrictive provision shall govern and control.

Section 9.18 **Enforcement.** The Association or its authorized agents may enter any Lot on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed by the rules and regulations adopted by the Association, shall be deemed secured by a lien upon such Lot enforceable in accordance with the provisions of Section 4.6. All remedies described in Article 12 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, occupant or other party of any provision of this Article 9, or any other provision of this Declaration.

## **ARTICLE 10** **MORTGAGES**

Section 10.1 **Defaults.** Notwithstanding anything in this Declaration to the contrary, no breach or default of any term, provision, covenant, condition, restriction or easement contained in this Declaration shall defeat or adversely affect the lien of any mortgage on any property in the Addition; however, except as herein specifically provided otherwise, each and all of said terms, provisions, covenants, conditions, restrictions and easements shall be binding upon and effective against any Owner who acquires its title or interest by foreclosure, deed in lieu of foreclosure or the exercise of any other right or remedy under a mortgage, including the obligation to pay all assessments and Costs arising or accruing thereafter, in the same manner as any other Owner. An Owner who leases his Lot to another party shall be responsible for assuring compliance by the tenant with all of the provisions of this Declaration, the Association's Articles of Incorporation and Bylaws and the rules and regulations adopted by the Association, all as amended and supplemented from time to time, and such Owner shall be jointly and severally responsible with the tenant for any violations by the tenant.

Section 10.2 **Enforcement After Foreclosure Sale.** Without limiting any other rights or remedies herein provided or otherwise available at law or equity, an action to rectify any default or breach of this Declaration may be brought against a purchaser who has acquired title to a Lot through foreclosure of a mortgage and the subsequent sale of the Lot (or through any equivalent proceeding), and against the successors in interest of such purchaser, even though the default or breach existed

prior to the purchaser's acquisition of title to or interest in the Lot.

Section 10.3 **Exercise of Owner's Rights.** During the pendency of any proceeding to foreclose a mortgage (including any period of redemption), the mortgagee, or a receiver appointed in any such action, may (but need not), if and to the extent permitted by such mortgage or by the other documents evidencing or securing the loan secured by such mortgage, exercise any or all of the rights and privileges of the Owner under this Declaration, including the right to vote as a member of the Association in the place and stead of the Owner.

## **ARTICLE 11** **RIGHTS OF DEVELOPER**

Notwithstanding anything in this Declaration to the contrary, Developer may at any time and from time to time prior to the Turnover Date, in its sole discretion, without the consent of any Builder or other Owner, Association member or other party, (a) subdivide any Lot owned by Developer into two or more Lots, (b) combine any two or more Lots owned by Developer into fewer Lots, (c) add to the Addition any such land as may be owned or approved for addition by Developer, or (d) dedicate portions of the Addition owned by Developer to any governmental or quasi-governmental body (including the City) if, in Developer's sole discretion, such dedication will benefit the Addition as a whole. Any such change, addition or dedication shall become effective upon the recording with the County Recorder's Office of an amendment to this Declaration setting forth the same. No other Owner shall be entitled to further subdivide any Lot, nor combine any Lots without the Association's approval.

## **ARTICLE 12** **REMEDIES**

Section 12.1 **General.** In the event of any breach or default by any Owner, occupant or other person or entity ("**Defaulting Party**") under this Declaration, the Association shall have all of the rights and remedies provided in this Declaration and otherwise available at law or equity, and may prosecute any action or other proceeding against the Defaulting Party for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided, or for the appointment of a receiver for the affected Lot, or for damages or specific performance, or for judgment for the payment of money and collection thereof, or for any combination of remedies, or for any other relief, all without notice and without regard to the value of the affected Lot or the solvency of the Defaulting Party. Any and all such rights and remedies may be exercised by the Association at any time and from time to time, cumulatively or otherwise.

Section 12.2 **Expenses of Enforcement.** All expenses of the Association, or any other person having rights of enforcement under this Declaration, in connection with any action or proceeding described in or permitted by this Article 11, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the Defaulting Party and

shall be deemed a special assessment against the Owner of the affected Lot, with respect to which special assessment the Association shall have a lien as provided in Article 4.

Section 12.3 **Right to Cure**. The Association and any manager or managing agent retained by the Association shall have the authority (but not the obligation) to correct any breach or default under this Declaration and to do whatever may be necessary for such purpose, and all expenses in connection therewith, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the Defaulting Party as a special assessment, with respect to which special assessment the Association shall have a lien as provided in Article 4.

Section 12.4 **Limitation on Developer's Liability**. Notwithstanding anything to the contrary in this Declaration, it is expressly agreed that Developer (including any assignee of Developer's interest hereunder) shall not have any personal liability to the Association or to any Owner, tenant, occupant, Association member or other party arising under, in connection with or resulting from (including resulting from any action or failure to act with respect to) this Declaration, the Association, the Architectural Committee, the Association's Articles of Incorporation or Bylaws, the Design Standards or the rules or regulations adopted by the Association, or for any action taken or not taken pursuant to authority granted to Developer herein or therein. Developer's sole liability shall be limited to Developer's equity in Lots owned by Developer and no execution or other action shall be sought or brought against any other assets or be a lien upon any other assets of Developer.

### **ARTICLE 13** **AMENDMENT, TERMINATION AND SUCCESSORS**

Section 13.1 **Amendment by Association**. Subject to Section 13.2, the Association shall have the right to amend this Declaration by a written instrument setting forth the entire amendment, which amendment shall become effective when duly adopted and recorded with the County Recorder's Office. Subject to Section 13.2, any proposed amendment must be first approved by a majority of the Board of Directors, adopted by the members of the Association, and approved by the District, and the City. Amendments may be adopted by the members of the Association (a) at a meeting of the members by the affirmative vote of at least two-thirds of all members entitled to vote at such meeting, or (b) without a meeting if all members have been duly notified of the proposed amendment and if two-thirds of all members entitled to vote, consent to the amendment in writing.

Section 13.2 **Amendment by Developer**. Notwithstanding any other provision of this Declaration to the contrary, prior to the Turnover Date, Developer shall have the sole and exclusive right to amend this Declaration without the approval of the Board of Directors or members of the Association or the approval of any Builder, other Owner or other party, by a written instrument setting forth the entire amendment, which shall become effective upon its recording with the County Recorder's Office. Provided however, any such amendment must be approved by the City and the District. After the Turnover Date, this Declaration may not be amended to delete the last sentence of Section 3.11 without the concurrence of Developer (unless Developer at that time no longer owns any Lots in the Addition).

Section 13.3 **Term and Termination**. This Declaration shall continue in full force and effect until January 1, 2026. Thereafter, unless one year prior to January 2, 2026, an instrument signed by at least two-thirds of all Association members then entitled to vote shall be recorded with the County Recorder's Office directing the termination of this Declaration, this Declaration shall be automatically continued without any further notice for an additional period of 10 years and thereafter for successive periods of 10 years each; **PROVIDED**, that within one year prior to the expiration of any such 10-year period, this Declaration may be terminated as above provided in this Section. Notwithstanding anything in this Declaration to the contrary, in the event the Association properly files such an instrument with the County Recorder's Office indicating an intent to terminate this Declaration, the Association shall cause the Mayor of the City to be served with a copy of said instrument and the City in its sole discretion may file a subsequent instrument with the County Recorder's Office within six months of the expiration of this Declaration stating the City's intent to extend this Declaration; and in such event, this Declaration shall be automatically continued as set forth in Section 13.3.

Section 13.4 **Successors**. If at anytime the Association or Developer is dissolved or ceases to exist, the City, in its sole discretion, may act as the Developer and/or Association under this Declaration enforcing all or any part of this provisions of the Declaration.

#### **ARTICLE 14** **GENERAL PROVISIONS**

Section 14.1 **Annexation**. Additional land(s) may be included in the land covered hereby and become subject to this Declaration upon the filing of record of a Supplementary Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to such real property; **PROVIDED, HOWEVER**, that such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary or appropriate to reflect the different character, if any, of the added real properties and as not materially inconsistent with this Declaration and which do not adversely affect the concept of this Declaration. Furthermore, the following provisions shall apply:

- (a) Prior to the Turnover Date, additional real property may be added and annexed to the land and scheme of the Declaration by the Developer in its sole discretion.
- (b) After the Turnover Date, the Association may add or annex additional real property to the land and scheme of this Declaration by obtaining the consent of the Owners representing at least seventy-five percent (75%) of all votes of the Association membership.
- (c) In the event any person or entity other than the Developer desires to add or annex additional residential properties and/or Common Facilities to the scheme of this Declaration, such

proposed annexation must have the prior written consent and approval of the Developer (prior to the Turnover Date) and at least seventy-five percent (75%) of the votes of all of the Association membership.

(d) Any real property additions or annexations made pursuant to this Section 14.1, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Developer, Association and the Architectural Committee to the real properties added or annexed.

Section 14.2 **Notices**. All notices, requests, consents, approvals and other communications required or permitted under this Declaration or the Association's Bylaws shall be in writing and shall be addressed to Developer at its address, Attn: Jerry F. Duggan; to the Association at the address specified in the Association's Bylaws, and to each Owner and member at the last address shown for such Owner or member on the records of the Association. Any party may designate a different address or addresses for itself by giving written notice of its change of address to the Association. All such notices, requests, consents, approvals and other communications shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of receipt thereof.

Section 14.3 **Performance by Developer**. Prior to the incorporation of the Association, Developer shall have the right, at its option, to perform the duties of the Association or the Architectural Committee, levy and collect the assessments and otherwise exercise the rights and powers herein given to the Association or the Architectural Committee in the same manner as if such powers and duties were herein given directly to Developer. Neither the Association nor the Architectural Committee shall assume any of the rights or powers herein provided without the consent of Developer and its relinquishment of such rights and powers; **PROVIDED, HOWEVER**, that nothing set forth herein shall be deemed to require Developer to perform or satisfy any duty or obligation to Owners or otherwise.

Section 14.4 **Assignment by Developer**. Any and all of the rights, powers and easements of Developer herein contained may be assigned to any party which assumes the obligations of Developer pertaining to the particular rights, powers and easements assigned. Upon the recording with the County Recorder's Office of a document of assignment whereby the assignee assumes and agrees to perform such obligations, such assignee shall, to the extent of such assignment, have the same rights, powers and easements and be subject to the same obligations with respect thereto as are herein given to and assumed by Developer, and Developer shall thereupon be released and relieved from all liability with respect to such obligations accruing from and after the date of recording of such assignment.

Section 14.5 **Terminology**. The words "include," "includes" and "including" shall be deemed followed by the phrase "without limitation." The words "herein," "hereof," "hereunder" and similar terms shall refer to this Declaration unless the context requires otherwise. Whenever the context so requires, the neuter gender includes the masculine and/or feminine gender, and the singular number includes the plural and vice versa.

Section 14.6 **Severability**. If any provision of this Declaration or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration and of the application of such provision in other circumstances shall not be affected thereby.

Section 14.7 **Townhome Area**. The lots comprising the townhome area of the Hills of Cedar Creek subdivision (Lots 154 through 307)(the "Townhome Property") shall be subject to this Declaration. The Owners of a Lot in the townhome area shall have voting rights in the Association and shall be obligated to share in the expenses of maintaining the Common Facilities. However, to the extent that there is any inconsistency between this Declaration and the Declaration of Restrictions for the Townhome Property, the Townhome Property shall comply with the Declaration of Restrictions for the Townhome Property.

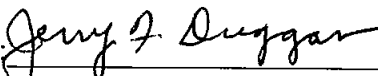
**ARTICLE 15**  
**COVENANTS RUNNING WITH THE LAND**

Each Owner, by the acceptance of a deed creating an interest or estate in any land within the Addition, and the heirs, legal representatives, successors and assigns of each of the foregoing, accepts the same subject to the all of the terms, provisions, covenants, conditions, restrictions, reservations, easements and liens and subject to all of the rights, benefits and privileges of every kind which are granted, created, reserved or declared by this Declaration, and all impositions and obligations hereby imposed (including the imposition of personal liability for payment of assessments and other amounts owing hereunder), all of which shall be deemed covenants running with the land and shall bind every Owner having any interest or estate in any land within the Addition, and shall inure to the benefit of any such person or entity, as though the provisions of this Declaration were recited at length in each and every deed, conveyance or other instrument evidencing or creating such interest or estate.

IN WITNESS WHEREOF, Developer has executed this Declaration as of the date first above written.

**DECLARANT:**

**HCC INVESTMENTS, LLC,**  
an Iowa limited liability company

By:   
Jerry F. Duggan, Member

STATE OF IOWA )  
 ) SS.  
COUNTY OF POTTAWATTAMIE )

On this 17<sup>th</sup> day of February, 2005, before me appeared Jerry F. Duggan, to me personally known, who, being by me duly sworn, did say that he is a member of HCC Investments, LLC, an Iowa limited liability company, and that said instrument was signed on behalf of said limited liability company, and said Jerry F. Duggan acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid on the day and year first above written.



  
\_\_\_\_\_  
Notary Public

My Commission Expires:

8/29/2006

#### EXHIBIT A

Legal Description:

Lots 1 through 307, inclusive, Hills of Cedar Creek Subdivision, Phase 1, Council Bluffs, Pottawattamie County, Iowa according to the recorded plat thereof.

**DECLARATION OF COVENANTS, RESTRICTIONS,  
ASSESSMENTS AND EASEMENTS  
OF HILLS OF CEDAR CREEK TOWNHOMES**

This is the Declaration of Covenants, Restrictions, Assessments and Easements of Hills of Cedar Creek Townhomes made as of the 17 day of February, 2005.

Recitals

A. HCC Investments, LLC, an Iowa limited liability company ("Declarant"), is the owner in fee simple of all of the real property hereinafter described as the "Townhome Property" and the improvements thereon and appurtenances thereto. This Declaration is filed as part of the Final Plat of Hills of Cedar Creek Subdivision, Phase 1, City of Council Bluffs, Pottawattamie County, Iowa.

B. The Declarant desires to create of this property a site of individually owned townhome units and commonly owned areas and facilities.

**REAL ESTATE IMPROVEMENT DISTRICT**

**Section 1. All Properties Contained in the District. All Properties contained within the Initial Plat of the Hills of Cedar Creek Subdivision are part of the Hills of Cedar Creek Real Estate Improvement District of Pottawattamie County, Iowa ("District") formed pursuant to Chapter 358C of the Iowa Code ("Code"). The District is a body corporate and politic with the authority to exercise all powers conferred upon the District by Chapter 358C and other applicable laws.**

**Section 2. Special Assessments. The District has the power and authority under Chapter 358C to levy and assess special assessments on the property within the District to pay for the costs of public improvements within the District. At or near the time of the filing of the final plat for Hills of Cedar Creek Subdivision Phase I, the District levied and assessed certain costs of the public improvements against the Lots within the District.**

**ANYONE INTERESTED IN PURCHASING A LOT OR A RESIDENCE IN THE DISTRICT MUST VERIFY THE TOTAL AMOUNT OF SPECIAL ASSESSMENTS LEVIED AGAINST SUCH LOT. SPECIAL ASSESSMENTS ARE PAYABLE AS PROVIDED BY IOWA LAW, INCLUDING WITHOUT LIMITATION, CHAPTERS 358C AND 384 OF THE CODE.**

**Section 3. Taxes. The District has limited authority to tax the owners of Lots in the District as provided under Iowa law, including without limitation, Chapter 358C.**



## Definitions

The terms used in this document shall have these meanings, unless the context requires otherwise:

"Articles" and "Articles of Incorporation" of Incorporation mean the articles of incorporation, filed with the Secretary of State of Iowa, incorporating Hills of Cedar Creek Townhomes Association as an Iowa not for profit corporation, as amended from time to time.

"Association" and "Hills of Cedar Creek Townhomes Association, Inc." means the entity created by the filing of the Articles.

"Board" and "Board of Directors" of Directors mean those persons who, as a group, serve as the board of directors of the Association.

"Bylaws" means the bylaws of the Association, as amended from time to time.

"City" means the City of Council Bluffs, Iowa.

"Common Areas" means (a) all areas and facilities within the Townhome Property designated by Declarant for the general use or benefit of all Owners and occupants of the Townhome Property, including any parks, green space, landscaping within the island areas and located within street right-of-way and landscaping features; and other recreational areas; sidewalks and walkways; signs, monuments, bridges; median strips and islands in streets; ponds, streams, creeks and drainage and retention facilities; streets and street lighting; and any fencing around the perimeter of the Addition; (b) any land deeded to the Association by or at the direction of Declarant; (c) any easements, leases, licenses or other rights of use granted to the Association by or at the direction of Declarant, and the land or other property which is the subject thereof; and (d) all buildings, structures and other improvements, fixtures and equipment and other tangible personal property owned by the Association and located on, or used in connection with or forming a part of any of the foregoing; PROVIDED, HOWEVER, the foregoing does not constitute a representation or warranty that any Common Areas so enumerated will exist within the Townhome Property. Common Areas shall not include those portions of the Townhome Property labeled or described in this Declaration or on the Plat as part of a Unit.

"Completed Units" means a Unit where the residence is substantially completed and for which a temporary or permanent certificate of occupancy has been issued by the City.

"Declarant" means HCC Investments, LLC, an Iowa limited liability company, and its successors and assigns.

"Declaration" means this instrument, by which the Townhome Property is subjected to the covenants, restrictions, assessments and easements set forth herein.

"General Association" means the homes association for the single-family area of the Hills of Cedar Creek subdivision.

"Lot" means any lot as shown as a separate lot on any recorded plat or replat of all or part of the Townhome Property upon which a townhome residence has been or will be constructed.

"Occupant" means a person lawfully residing in a Unit, regardless of whether or not that person is a Unit owner.

"Person" means an individual, corporation, partnership, limited liability company, trust, or other legal entity capable of holding title to real property.

"Plats" means the plats, plats of survey or replats of various parts of the Townhome Property filed from time to time with the Pottawattamie County Recorder's Office, as required or permitted by Chapter 354 of the Code of Iowa.

"Single Family Attached Dwelling" shall be defined as: A building designed or constructed to contain one independent dwelling unit which is located on one lot and is attached by a common vertical wall to only one other adjacent dwelling unit. Each unit shall have a floor area not less than 500 square feet and shall have a minimum width of not less than twenty (20) feet.

"Townhome" means the Townhome regime for the Townhome Property created by this Declaration.

"Townhouse Dwelling" shall be defined as: Two to four individual dwelling units having a common vertical wall with one or more other individual dwelling units. Each individual dwelling unit shall have its own access and at least two exposed walls. Townhouse Dwelling units shall not be located above or below any other dwelling units.

"Townhome Instruments" means this Declaration, the Articles, the Bylaws, the Plats, and all rules and regulations adopted by the Board from time to time in accordance with this Declaration or the Bylaws.

"Townhome Property" means the tract of land hereinafter described, including all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto. The Townhome Property is legally described in Exhibit A attached hereto.

"Turnover Date" is defined in Article VII Section 6.

"Unit" means collectively a Lot and the townhome residence thereon, being that portion or portions of the Townhome Property constituting a "townhouse unit" or "units" of the Townhome.

"Unit owner" and "Unit owners" mean that person or those persons owning the real estate in

fee simple on which a Unit is located.

### The Plan

NOW, THEREFORE, Declarant hereby subjects all of the Townhome Property to the covenants, restrictions, assessments and easements hereinafter set forth and makes and establishes the following plan for the Townhome Property.

#### ARTICLE I

##### THE LAND

The legal description of the land constituting the Townhome Property, located in the City of Council Bluffs, Pottawattamie County, Iowa, is attached hereto as Exhibit A.

#### ARTICLE II

##### NAME

The name by which the Townhome shall be known is "Hills of Cedar Creek Townhomes".

#### ARTICLE III

##### PURPOSES; RESTRICTIONS

Section 1. Purpose. This Declaration is being made to establish separate individual parcels from the Townhome Property to which fee simple interests may be conveyed; to create restrictions, covenants and easements providing for, promoting, and preserving the values of Units and the Common Areas and the well being of Unit owners and occupants; and to establish a "Unit owners" association to administer the Townhome and the Townhome Property, to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth, and to raise funds through assessments to accomplish these purposes.

Section 2. Restrictions. The Townhome and the Townhome Property shall be benefited by and subject to the following restrictions:

(a) Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto; provided, however, that no Unit may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing: (i) an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers,

employees, licensees or invitees coming to the Unit), making professional telephone calls or corresponding, in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions; (ii) it shall be the right of Declarant to maintain, during the period of its sale or rental of Units, but for no longer than a ten year period of time from the time of the closing of the first sale of a Unit to a bona fide purchaser, (A) one or more Units as sales and rental models and offices, and for storage and maintenance purposes, and (B) such other portions of the Townhome Property as Declarant may deem necessary, including, without limitation, any community building and the maintenance of a construction trailer, as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction or sale of Unit(s) or the Townhome Property, which right may not be limited or revoked without the specific consent of Declarant; and (iii) one or more Units may be maintained for the use of the Association in fulfilling its responsibilities.

(b) Common Areas Uses. The Common Areas shall be used in common by all Unit owners and occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Units. Unless expressly provided otherwise herein, no Common Areas shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit owners and occupants.

(c) Visible Areas.

(i) Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except interior inoffensive drapes, curtains, or louvered blinds which, from exterior observation, must be white, beige or gray, or as otherwise authorized by the Board) or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof.

(ii) No awning, canopy, shutter, or any other device or ornament, shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board or the Declarant.

(iii) No outside antenna, satellite dish, or other device for the reception or transmission of radio or television or other electronic signals shall be erected or maintained on any Lot or upon the exterior of any Unit, without prior written approval of the Board or the Declarant, and then only in such places and under such conditions as are expressly authorized by the Board or the Declarant. The Board and the Declarant shall have the power to limit the size of the device and require such specific areas and methods of placement of any such device as it deems appropriate in order to render the installation as inoffensive as possible to other owners and occupants. In the event these limitations, or any part thereof, are deemed unlawful, the Board and the Declarant reserve the right to regulate the placement of such devices in a manner not in violation of the law.

(iv) No speaker, horn, whistle, siren, bell or other sound device shall be located, installed or maintained upon the exterior of any residence or in any yard, except voice intercoms and devices used exclusively for security purposes.

(v) No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard.

(vi) No lights or other illumination (other than street lights) shall be higher than the residence. Golden, yellow, blue or reddish colors are not permitted except for holiday decorative lighting during the period from Thanksgiving Day through New Year's Day. Except for such holiday lights, all exterior lighting shall be white and not colored.

(vii) No shed, barn, detached greenhouse or outbuilding, basketball court, animal run, trampoline, tree house or batting cage or clothesline shall be erected upon, moved onto or maintained upon any Lot. Any animal house must be located within the fenced-in patio area of the Unit.

(viii) No garage sales, sample sales or similar activities shall be held other than as part of a neighborhood event approved by the Board.

(d) Offensive Activities; Trash. No noxious or offensive activity shall be carried on with respect to any Unit, or upon the Common Areas, nor shall any Unit or Common Area be used in any way or for any purpose which may endanger the health of or unreasonably disturb any occupant. No trash, refuse, or garbage can or receptacle shall be placed on any Unit outside a residence, except after sundown of the day before or upon the day for regularly scheduled trash collection.

(e) Garages and Vehicles.

(i) Garage doors shall remain closed at all times except when necessary.

(ii) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage.

(iii) Overnight parking of motor vehicles of any type or character in Common Areas (other than designated off-street parking areas) is prohibited. No commercial truck, bus, boat, trailer, camper, mobile home, or similar apparatus shall be left or stored overnight, except in an enclosed garage or as permitted in clause (v) below.

(iv) Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited except during such time as such truck is actually being used for the specific purpose for which it is designed.

(v) Recreational motor vehicles of any type or character are prohibited except:

(A) Storing in an enclosed garage;

(B) Temporary parking for the purpose of loading and unloading (maximum of one overnight every 14 days); or

(C) With prior written approval of the Board.

(vi) The Board may enforce such restrictions by levying enforcement charges, having such vehicles towed away, or taking such other lawful actions as it, in its sole discretion, deems appropriate.

(f) Renting and Leasing. No Unit or part thereof shall be used for transient or hotel purposes, which is defined as: (i) rental of less than one month duration or under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease may be of less than an entire Unit. Any lease agreement shall be in writing, shall require that the tenant and other occupants comply with all provisions of the Townhome Declarations, shall provide that the lease shall be subject in all respects to the provisions of the Townhome Declarations, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Townhome Instruments shall be a default under the lease. Prior to the commencement of the term of a lease, the Unit owner shall notify the Board, in writing, of the name or names of the tenant or tenants and the time during which the lease term shall be in effect. Notwithstanding the existence of a lease, the Unit owner shall remain liable for all obligations, including, without limitation, the payment of dues, under this Declaration with respect to the Unit.

(g) Signs. No sign of any kind shall be displayed to the public view on the Townhome Property except: (a) on the Common Areas, signs regarding and regulating the use of the Common Areas, provided they are approved by the Board; and (b) on the Common Areas and model Units, signs advertising the sale and/or rental of Units by the Declarant or its designee during the period of its initial sale and rental of Units. No other "for sale" or "for lease" signs shall be permitted. One political sign per candidate or issue, not more than three feet high or three feet wide, not to exceed a total of six square feet, is permitted on the Lot for up to three weeks before the election but must be removed within 24 hours after the election. If these limitations on the use of signs, or any part thereof are determined to be unlawful, the Board reserves the right to regulate the use of signs in a manner not in violation of law.

(h) Maintenance and Replacements. Each Unit owner shall properly maintain the owner's Unit in a neat, clean and orderly fashion and in good condition and repair at all times. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason shall be of the same materials, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Board. Any building

erected to replace an existing building containing Units shall be of new construction, be of comparable structure type, size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.

(i) Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common Areas, which may impair the structural integrity of any improvement.

(j) Construction in Easements. No structure, planting or other material shall be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

(k) Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Areas. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that: (i) the maintaining of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, restrictions on the size, number and type of such pets, and the right to levy enforcement charges against persons who do not clean up after their pets; and (ii) the right of an occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Townhome or other Units or occupants.

(l) Conveyances. Each Unit shall be conveyed or transferred (voluntarily or involuntarily) as a separately designated and legally described fee simple estate subject to the terms, conditions and provisions hereof. The rights in the Common Areas shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance. In any instrument of conveyance or creating an encumbrance, or in any other document legally describing a Unit, it shall be sufficient to lawfully describe a Unit and its interest in the Common Area by referring to the Lot designation of the Unit on the relevant Plat and the appropriate recording references of the initial page of this Declaration. Failure to include a reference to this Declaration in any deed shall neither invalidate any such transfer nor relieve the Unit from being subject to this Declaration. The right of a Unit owner to sell, transfer or otherwise convey that owner's Unit is not subject to any right of first refusal, and any Unit owner may transfer that owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of Unit owners, each Unit owner agrees to notify the Association, in writing, within five days after an interest in that Unit owner's Unit has been transferred to another person. In addition, each Unit owner agrees to provide to a purchaser of that owner's Unit a copy of all Townhome Instruments.

(m) Discrimination/Handicapped Accommodation. No action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Unit owner in favor of another. In addition, notwithstanding any provision hereof, or any rule or regulation, the Board shall make reasonable accommodation if necessary to afford a handicapped person equal opportunity to use and enjoy the Common Areas, provided, that nothing contained herein shall be construed to mean or imply that any such accommodation be at the cost of the Association.

(n) Architectural Control. Following the completion of construction of any Unit, no significant landscaping change or any exterior addition or alteration shall be made thereto unless and until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board. However, no such approval of the Board shall be required for the Declarant to construct the Units and Common Areas.

(o) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit owners, as a whole, and the Association, and to protect and preserve the nature of the Townhome and the Townhome Property. A copy of all rules and regulations, and amendments thereof, shall be furnished by the Board to the owners of each Unit prior to the time when the same shall become effective.

#### ARTICLE IV

##### IMPROVEMENT DESCRIPTIONS

Section 1. Residential Buildings. There will be up to 36 residential buildings containing 4 Units and 5 residential buildings containing 2 Units as part of the Townhome Property making a total of 154 Units. The residential buildings are of traditional architectural style, of one or two stories, with basements and garages. These buildings are of wood frame construction, with wood or vinyl siding, and composition shingle roofs. The principal materials of which these buildings are constructed are wood, glass, concrete, brick, composition shingle, and drywall. The residential buildings and Units are and will be located as shown on the Plats.

Section 2. Other. Each Unit will have a private exterior entrance and a driveway immediately in front of the attached garage which is part of that Unit. In addition, the Common Areas will include an entryway gate, paved streets, entry monuments and green and landscaped areas. Declarant shall have the right to add and designate additional Common Areas from time to time in its discretion.



## ARTICLE V

### UNITS

Section 1. Unit Designations. Each of the dwelling units, each of which is called a "Unit", is or will be designated by a Lot number shown on the Plat on which that Unit is located.

Section 2. Composition of Units.

(a) Unit Composition. Each Unit constitutes a single fee simple estate and consists of real estate within the boundaries designated for that Unit on the Plat, and all improvements located thereon. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include:

(1) the portion of the building and improvements located within the boundaries designated for that Unit on the Plat;

(2) all fixtures and appliances installed for the exclusive use of that Unit, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, gas furnaces, hot water heaters, heat pumps, and/or air conditioning units (even though located outside the bounds of a Unit), and components of the foregoing, if any;

(3) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit; and

(4) all areas outside the building and improvements located within the boundaries of the Lot designated on the Plat including, without limitation, the driveway, lawn, and landscaping within the Lot boundary.

(b) Unit Types, Sizes, Locations and Components. All Units are of the general categories or types described on the attached Exhibit B which also sets forth the general composition of each type of Unit. Each Unit has its own gas furnace, and hot water heater. Each Unit has direct access to a public street.

Section 3. Party Walls. Each wall which is built as a part of the original construction of the Units upon the Townhome Property and placed on the dividing line between two or more Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence and willful acts or omissions shall apply thereto.

(a) The reasonable repair and maintenance of a party wall not covered by insurance shall be shared by the Unit owners who make use of the wall in proportion to such

use.

(b) Notwithstanding any other provision of this Declaration, any Unit owner who by his, her or its negligence or willful act causes the party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

(c) The right of any Unit owner to contribution from any other Unit owner with respect to the obligations relating to party walls shall be considered an appurtenant right and pass to any and all successors in interest to the title of such Unit.

(d) The boundary line between Units which share a party wall is and shall be deemed to be the center line of the wall regardless of the actual location of the platted boundary line.

## ARTICLE VI

### COMMON AREAS

Section 1. Common Areas – Description. All areas and facilities within the Townhome Property designated by Declarant for the general use or benefit of all Owners and occupants of the Townhome Property, except those portions labeled or described in this Declaration or on the Plats as a part of a Unit.

Section 2. Interest in Common Areas. The Association shall have a blanket easement over, under, and/or through the Common Areas to maintain, repair, and replace all improvements constituting the Common Areas. Each Unit Owner shall be responsible for the "common expenses" as allocated among all of the Completed Units on an equal basis per Completed Unit. No Unit owner may waive or release any liability for common expenses. Further, the rights in the Common Areas shall not be separated from the Unit to which it appertains.

## ARTICLE VII

### HOMEOWNERS ASSOCIATION

Section 1. Establishment of Association. The Association has been formed or will be formed by the Declarant to serve as the Unit owners' Association. The Declarant will be the sole initial member of the Association.

(a) Declarant shall be a member of the Association until Declarant elects in writing to relinquish its membership. Each other Owner shall, upon acquisition of fee simple title to any Lot and occupancy of the residence located thereon, automatically become a member of the Association and the General Association. Each Owner shall be entitled to only one Association membership for each Unit owned by the Owner, and, subject to the provisions of Article VII, Section

6 pertaining to the election and removal of officers and the Board of Directors of the Association, shall have only one vote per Lot in the Association. If an Owner (other than Declarant) is comprised of more than one person and/or entity, they shall designate one of their members to hold the Association membership, it being the intention that for each Lot there shall be only one Association membership. Each member (other than Declarant) must be (1) an individual who is an Owner, or (2) if the Owner is or includes a partnership, an individual who is a partner, or (3) if the Owner is or includes a corporation, an officer of the corporation, or (4) if the Owner is or includes a trust, an individual who is a trustee or beneficiary of the trust, or (5) if the Owner is or includes a limited liability company or an association, an individual who is a member of the limited liability company or association. Each Owner shall give notice to the Association of the name and address of the individual who will hold the Association membership for such Owner; otherwise, the Association may designate the party who is to be the Association member with respect to such Lot.

(b) A membership in the Association shall not be transferred, pledged or alienated in any way except as expressly provided in this Declaration. Subject to the provisions of paragraph (a) of this Section 1, membership in the Association shall automatically be transferred to the new Owner upon the transfer of fee simple title to the Lot to which the membership appertains; PROVIDED, HOWEVER, the Association shall not be responsible for providing notices to the new member under this Declaration until notice of the transfer and of the name and address of the new member has been given to the Association.

Section 2. Board of Directors.

(a) Subject to the provisions of subparagraph (b) hereof, the members of the Association shall elect the Board of Directors and the Board of Directors shall, by majority rule, conduct all of the business of the Association, except when membership votes are required pursuant to this Declaration or pursuant to the Articles of Incorporation or Bylaws of the Association.

(b) Notwithstanding anything contained in the preceding subparagraph (a) or elsewhere in this Declaration to the contrary, prior to the Turnover Date, the Developer shall be entitled to appoint all of the members of the Board of Directors.

Section 3. Indemnification.

(a) To the fullest extent permitted by law, the Association shall indemnify each officer and director of the Association, and Declarant (each, an "**Indemnified Party**") against all claims, liabilities, damages, costs and expenses, including reasonable attorneys' fees, incurred by the Indemnified Party in connection with any action taken pursuant to, or in connection with this Declaration, provided the Indemnified Party did not act, fail to act or refuse to act willfully, in a grossly negligent manner or with fraudulent or criminal intent in the performance of the Indemnified Party's duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.

(b) To the fullest extent permitted by law, neither Declarant nor any officer or director of the Association shall be liable to any Owner or to the Association or anyone claiming by, through or under any Owner or the Association for any damages suffered or claimed on account of any decision, course of action, inaction, omission, error or negligence taken or made in good faith and which Declarant, such officer or director reasonably believed to be within the scope of his or its duties.

Section 4. Authority of Board. The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Areas and the exterior portions of the Units and assess and collect funds for the payment thereof and to do all things, and exercise all rights provided by the Townhome Instruments, or the Townhome Act, that are not specifically reserved to Unit owners. In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Association, acting through the Board, shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in the Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Units; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Association or other parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense cost of any such enforcement proceedings by the Association shall be paid out of the general funds of the Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Declarant or any Unit owner from enforcing any building, use or other restrictions in its or his own name.

(b) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of any governmental authority, utility or any other similar person or entity therein or thereto.

(c) To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Association, the Common Areas and the property within the Townhome Property.

(d) To levy the assessments and related charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.

(e) To enter into and perform agreements from time to time with the Declarant and other parties regarding the performance of services and matters benefiting both the Declarant and the Association and its members and the sharing of the expenses associated therewith.

(f) To enter into and perform agreements with the Declarant, other developers, other homes associations, and other parties relating to the joint use, operation and maintenance of any recreational facilities and other similar common areas, whether in or outside the Townhome Property, and the sharing of expenses related thereto.

(g) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and owners of the Association, including, without limitation, keeping of books and records, operation and maintenance of Common Areas, and planning and coordination of activities.

(h) To engage the services of a security guard or security patrol service.

(i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the Townhome Property; and to do any other things necessary or desirable in the judgment of the board to keep any property in the Townhome Property neat in appearance and in good order.

(j) To exercise any architectural, aesthetic or other control and authority given and assigned to the Association in this Declaration or in any other deed, declaration or plat relating to all or any part of the Townhome Property.

(k) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations and guidelines, including, without limitation, the establishment and collection of monetary fines for violations of this Declaration and such rules, regulations and guidelines.

(l) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Association.

Section 5. Delegation of Authority; Management Contracts. The Board may delegate all or any portion of its authority to a managing agent, which may be the Declarant or an affiliate of the Declarant. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense, provided, however, that any agreement for professional management shall be terminable by the Association for cause on no more than thirty (30) days' written notice; shall be terminable by either party without cause and without penalty, on not more than ninety (90) days' written notice; shall not exceed one year unless renewed by

agreement of the parties for successive one-year periods; and shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing. The Association also shall have the authority to enter into contracts with Declarant or an affiliate of Declarant for goods, services, or for any other thing, including, without limiting the generality of the foregoing, contracts for the providing of maintenance and repair services, provided the same are bona fide and commercially reasonable to the Unit owners at the time entered into under the circumstances then prevailing.

Section 6. Control of Association by Declarant. Notwithstanding anything in this Article VII or elsewhere in this Declaration to the contrary, Declarant shall have and maintain absolute and exclusive control of the Association, including appointment and removal in Declarant's sole discretion of all officers of the Association and members of the Board of Directors, until the date (the "**Turnover Date**") which is the earlier of (a) the expiration of 10 years from the date of recording of the most recent plat affecting the Townhome, or (b) the effective date designated by Declarant in a notice to the members of the Association stating that Declarant relinquishes control. Until the Turnover Date, Declarant will be entitled to cast all votes with respect to the election and removal of all officers of the Association and the Board of Directors and with respect to any other matter requiring the vote or approval of members of the Association as set forth herein or in the Association's Articles of Incorporation or Bylaws.

## ARTICLE VIII

### MAINTENANCE AND REPAIR: ASSOCIATION OBLIGATIONS

Section 1. Association Duties and Responsibilities. The Association shall:

- (a) maintain, repair and replace all improvements constituting a part of the Common Areas, trunk and branch utility lines, and common sewer lines;
- (b) provide for the periodic painting of exterior painted surfaces and for the repair and replacement of roofs and siding of each Unit;
- (c) provide lawn care, consisting of mowing, edging, fertilizing and weed control of grass areas, and trimming of all trees, whether in a Common Area or on a Lot, but such services shall not include the care of any areas made inaccessible to the Association;
- (d) provide and pay for the costs of spring start-up, winterization, and repair, maintenance and water for the use of a common lawn sprinkler system on the Lots;
- (e) provide snow removal for the driveways, front sidewalks and front porches (but not back patios) on the Lots as soon as possible when the accumulation reaches two (2) inches or more; and
- (f) establish, maintain and expend reserve funds for the future repair and

replacement of the Common Areas, for the future repair and replacement of Units' roofs and driveways, and for the periodic painting of exterior painted surfaces, as described above;

Clean catch basins, storm sewers and drainage facilities which are part of the Common Areas;

Contribute to a capital fund pursuant to an agreement with the General Association to provide for pool repairs, and maintenance of other common areas and amenities provided by the General Association;

The Board, in its discretion, shall determine the scope and timing of the foregoing services and functions of the Association.

Except to the extent that a loss is covered by insurance maintained by the Association, the Association shall not have responsibility to repair the interior of any Unit, or component thereof, or personal property within any Unit. Further, the Association shall not have responsibility for the repair of any damage caused by the gross negligence or willful misconduct of a Unit owner or its family members, tenants, guests or contractors (which repair shall be the responsibility of the Unit owner).

Section 2. Individual Responsibility. Each Unit owner shall repair and maintain the interior of the Unit, and all components thereof, owned by that Unit owner. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit owner shall include repair, maintenance and replacement of all appliances, all plumbing fixtures and electrical fixtures, and all windows, screens and doors, including the frames, sashes and jambs, and the hardware therefore. Except for those specific items listed as an Association responsibility in Article VIII, Section 1, each Unit owner shall repair and maintain the exterior of his or her Unit. In the event a Unit owner fails to timely make a repair or perform maintenance required of that Unit owner, or in the event the need for maintenance or repair of any part of the Common Areas (including, without limitation, any trunk or branch utility lines) is caused by the negligent or intentional act of any Unit owner or occupant, or is as a result of the failure of any Unit owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express or implied, or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the cost thereof shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit owner's Unit and on that Unit owner. The determination that such maintenance or repair is necessary, or has been so caused by the Unit Owner, shall be made by the Board. Each Unit owner within a residential building containing more than one Unit shall have an easement over the Lots of the other Unit owners within the same residential building to maintain and/or repair said Unit owner's Lot and/or Unit including, without limitation, cleaning of windows, lawn care, and roof repair. The Association shall also have the easement set forth in the preceding sentence. Notwithstanding the granting of said easement for maintenance purposes, each Unit owner has the right to otherwise exclude other Unit owners from entering upon or using the Unit owner's Lot.

Section 3.     Trash Services. To the extent not provided as a service by any governmental authority, the Association shall provide, one day per week, for the collection and disposal of rubbish and garbage from each Completed Unit subject to assessment.

## ARTICLE IX

### UTILITY SERVICES

Each Unit owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit, and to reimburse the Association for that owner's Unit's share of any utility cost that the Board reasonably determines is attributable to use by that owner's Unit. All other utility costs shall be common expenses and paid by the Association.

## ARTICLE X

### INSURANCE; LOSSES

Section 1.     Fire and Extended Coverage Insurance. The Board shall obtain and maintain for all buildings, structures, fixtures and equipment (whether as a Common Area or Unit), and for the Association's personal property and supplies on the Townhome Property, at the Association's cost and as a common expense, blanket fire and extended coverage against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Townhome Property, or, if the policy does not include an "all risks" endorsement, a policy that includes the "broad form" covered causes of loss, in amounts at all times sufficient to prevent the Unit owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, and excavations). This insurance shall also:

(a)     provide coverage for the Units and built-in or installed improvements, fixtures and equipment that are part of a Unit;

(b)     be written in the name of the Association for the use and benefit of the Association and the Unit owners, and provide for the payment of losses thereunder by the insurer to the Association (or its nominee) as insurance trustee for the benefit of the Association, each Unit owner and the holder of each first mortgage of record on the Units, as their interests appear and as set forth in this Declaration;

(c)     contain or have attached the standard mortgagee clause commonly accepted by institutional first mortgage holders, insurers, and guarantors, which must provide that the



carrier shall notify the named insured and each first mortgagee named in the mortgage clause at least ten days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy;

- (d) be paid for by the Association, as a common expense;
- (e) contain a waiver of subrogation of rights by the carrier as to the Association, its officers and directors, and all Unit owners;
- (f) provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit owners; and
- (g) be primary, even if a Unit owner has other insurance that covers the same loss.

The Unit owner shall be responsible for the deductible under the Association's insurance on any property damage or casualty loss to the Unit. The amount of such deductible shall be uniform for all Units and shall be set by the board from time to time in a reasonable amount.

Section 2. Liability Insurance. The Association shall obtain and maintain, at the Association's cost and as a common expense, a commercial policy of general liability insurance covering all of the Common Areas, public ways and any other areas under the Association's supervision, and Units, if any, owned by the Association, even if leased to others, insuring the Association, the directors, and the Unit owners and occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) \$1,000,000.00, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of a Unit owner because of negligent acts of the Association, the Board, or other Unit owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten days' prior written notice to the Association.

Section 3. Fidelity Coverage. The Board may obtain and maintain, at the Association's cost and as a common expense, fidelity insurance providing coverage for the Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association.

Section 4. Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Iowa which has a "B" or better general policyholder's rating or a "6" or better financial

performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBB" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

Section 5. Other Association Insurance. In addition, the Board may purchase and maintain, at the Association's cost and as a common expense, contractual liability insurance, officers and directors liability insurance, and such other insurance as the Board may determine.

Section 6. Nominee; Power of Attorney. There may be named, under any policy obtained by the Association, a nominee as an insured on behalf of the Association, who shall have exclusive authority to negotiate losses under any such policy. Each Unit owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or its nominee, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or its nominee, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for the Association, the Unit owners and their first mortgage holders, as their interests may appear and as set forth in this Declaration. This power is for the benefit of each and every Unit owner, and their respective first mortgage holders, and the Association, and the Townhome, runs with the land, and is coupled with an interest.

Section 7. Unit Owners' Insurance. Each Unit owner and occupant shall obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and similar matters of the type and nature of coverage commonly referred to as "tenants' improvements and betterments" or an "H06" policy. Each Unit owner or occupant may carry such insurance, in addition to that provided by the Association pursuant hereto, as that Unit owner or occupant may determine, subject to the provisions hereof, and provided that no Unit owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the blanket insurance carried pursuant hereto by the Association. In the event any Unit owner or occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Unit owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and directors, and all other Unit owners and occupants.

Section 8. Sufficient Insurance. In the event the improvements forming a part of the

Townhome or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be used in payment therefor; provided, however, that in the event that within sixty (60) days after such damage or destruction Unit owners and their first mortgagees, if they are entitled to do so pursuant to the provisions of this Declaration, shall elect not to make the repair, restoration or reconstruction, then such repair, restoration or reconstruction shall not be undertaken.

Section 9. Insufficient Insurance. In the event the improvements forming a part of the Townhome or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Unit owners and their first mortgagees if they are entitled to do so pursuant to the provisions of this Declaration, shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association shall make repairs, restoration or reconstruction of the improvements so damaged or destroyed at the expense (to the extent not covered by insurance) of the Unit owner. Should any Unit owner refuse or fail after reasonable notice to pay that Unit owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

Section 10. Election Not to Restore. The Association may, with the written consent of all Unit owners and their first mortgagees, both given within seventy-five (75) days after damage or destruction, determine not to repair, restore or reconstruct any damage or destruction. In the event of such an election not to repair or restore damage or destruction or reconstruct such Unit or Units, the net proceeds of insurance paid by reason of such damage or destruction shall be distributed among the owners of the damaged Units, and the holders of their respective mortgage liens, (as their interests may appear), in the proportions of their interests in the Units.

## ARTICLE XI

### GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1. Easements of Enjoyment; Limitation. Every Unit owner shall have a right and easement (i) for ingress to and egress from such owner's Lot and Unit, (ii) of enjoyment in, over and upon the Common Areas, and (iii) an unrestricted right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas, including, without limitation, parking rules and regulations, and the right of the Board to suspend the rights to use the Common Areas by any Unit owner for any period during which any assessment against the Unit owner's Unit remains unpaid and for a period not to exceed

60 days for any violation of the Association's published rules and regulations, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof or to that Unit's parking facilities. Each Unit owner shall be deemed to have delegated that Unit owner's right of enjoyment to the Common Areas and to ingress and egress to the occupants of that owner's Unit.

Section 2. Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of entry and access to, over, under, upon and through all of the Townhome Property, including each Unit and the Common Areas, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any and all utilities, improvements, and other items, things or areas of or in the Townhome Property. In the event of an emergency, the Association's right of entry to a Unit may be exercised without notice; otherwise, the Association shall give the Unit owners or occupants of a Unit no less than twenty-four hours advance notice prior to entering a Unit.

Section 3. Easements for Encroachments. Each Unit and the Common Areas shall be subject to and benefited by easements for encroachments on or by any other Unit and upon the Common Areas created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements; or by reason of errors on the Plats. Valid easements for these encroachments and for the maintenance of same, as long as the physical boundaries of the Units after the construction, reconstruction, repairs, etc. will be in substantial accord with the description of those boundaries that appears herein or on the Plats, shall and do exist so long as the encroachments remain.

Section 4. Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Townhome Property contributing to the support of another building, utility line or improvement on another portion of the Townhome Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Townhome Property.

Section 5. Easements for Proper Operations. Easements in favor of the Association and the Declarant shall exist upon, over and under all of the Townhome Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, and the road system and all walkways, and for all other purposes necessary for the proper operation of the Townhome Property. By these easements it shall be expressly permissible for the Declarant and/or the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to construct and maintain the necessary appurtenances and improvements on, above, across and under the Townhome Property. Should any public authority or other company furnishing a service request a specific easement, permit, or license, the Board shall have the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the

same, provided that use of the same would not, in the sole judgment of the Board, unreasonably interfere with the use and enjoyment of the Townhome Property by owners and occupants.

Section 6. Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, delivery men, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Areas in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish, from time to time.

Section 7. Easements Reserved to Declarant. Non-exclusive easements are hereby reserved to Declarant, its successors and assigns, over, under and upon each Unit and the Common Areas (a) for a ten year period of time from the date of the closing by Declarant of the first sale of a Unit to a bona fide purchaser, for access to and for the purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available, (b) for the periods provided for warranties for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made by Declarant with Unit purchasers, and (c) for the initial sales and rental period, but for no longer than ten years from the time of the closing of the first sale of a Unit to a bona fide purchaser, to maintain and utilize one or more Units and appurtenances thereto, for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs.

All rights and easements reserved to Declarant, its successors and assigns, pursuant to this section, shall be exercised and utilized, as the case may be, in a reasonable manner, and in such a way as not to unreasonably interfere with the operation of the Association and the rights of owners and occupants of Units.

Section 8. Power of Attorney. Each Unit owner other than Declarant, by acceptance of a deed to a Unit, appoints the Association or its designated representative, as his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit owner, such deeds of easement, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each and every Unit owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

Section 9. General. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

## ARTICLE XII

### ASSESSMENTS AND ASSESSMENT LIENS: RESERVE FUNDS

Section 1. Types of Assessments. Each Unit owner shall be obligated, and by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association: (a) annual operating assessments to pay common expenses, (b) special assessments to pay common expenses and for capital improvements, and (c) special individual Unit assessments, all of such assessments to be established and collected as hereinafter provided. Each Unit owner acknowledges and agrees that a portion of the annual assessment is in consideration of the Association's contractual obligation to the homes association for the single-family area of the Hills of Cedar Creek subdivision (the "General Association") and for the use of the amenities provided by the General Association.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote and provide for the health, safety and welfare of Unit owners and occupants and the best interests of the Townhome Property.

Section 3. Elements-Appportionments; Due Dates.

(a) Annual Operating Assessments Payable Monthly.

(1) The Declarant shall directly pay or contribute to the Association the following amounts toward the "common expenses" of the Association:

a. All common expenses allocable to the period prior to the closing of the first sale by Declarant of a Completed Unit.

b. Until the Turnover Date, Declarant shall have the right (but not the obligation) to make non-interest bearing loans to the Association to provide the Association with adequate funds (in addition to assessments received from Completed Units and contributions from Declarant as provided above) to pay common expenses. Any such loans shall be repaid to the Declarant by the Association prior to the Turnover Date.

(2) Annual operating assessments to pay common expenses shall be payable in monthly installments and shall be assessed against (i) all Completed Units owned by parties other than the Declarant and (ii) all Completed Units rented by the Declarant to third parties. The first annual operating assessment for each such Completed Unit shall be prorated based upon when it became a Completed Unit during the year.

(3) Annually, in advance where practical, the Board shall estimate, and allocate among all Completed Units subject to assessment and their owners on an equal per

Completed Unit basis, "common expenses" of the Association, consisting of the following:

a. the estimated fiscal year's cost of the maintenance, repair, and other services to be provided or paid for by the Association, including without limitation, landscaping and grounds maintenance; repairs to walks, driveways and parking areas; snow and trash removal; management services; exterior painting; lamp replacement in the Common Areas; electricity furnished to the Common Areas (including any taxes); taxes on property owned by the Association; cleaning of ponds; and any other property maintenance and operation expenses which may be required from time to time;

b. the estimated fiscal year's costs for insurance premiums to be provided and paid for by the Association [except that the costs for the casualty insurance on Completed Units allocable (as determined by the Board) to each Completed Unit shall be an expense solely of such Completed Unit];

c. the estimated fiscal year's costs for utility services not separately metered or charged to Unit owners;

d. the estimated amount required to be collected to maintain a working capital reserve fund, to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;

e. an amount deemed adequate by the Board to maintain a reserve for painting of Units, a reserve for future repairs and replacement of the Units' roofs, and other reserves for the cost of repairs and replacements of Common Areas; and

f. the estimated fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.

(4) The Board shall thereupon allocate to each Completed Unit subject to assessment on an equal per Unit basis (except for casualty insurance, which shall be allocated directly to the insured Completed Unit), and thereby establish the annual operating assessment for each separate Completed Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.

(5) The annual operating assessment shall be payable, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit owner from prepaying assessments in annual, semiannual, or quarterly increments. The due dates of any

such installments shall be established by the Board, or, if it fails to do so, an equal monthly pro rata share of the annual operating assessment for a Unit shall be due the first day of each month.

(6) If the amounts so collected (together with payments by or from the Declarant) are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board as a special operating assessment among the Completed Units subject to assessment on an equal per Unit basis, and shall become due and payable on such date or dates as the Board determines.

(7) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, or as reductions in future assessments, as determined by the Board, in its sole discretion, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit owners.

(8) The rate of annual assessment per Completed Units for 2005 shall be set by the Board and shall not exceed \$180.00 per month). The rate of annual assessment upon each Completed Unit may be increased (i) by the Board from time to time, without a vote of the members, by up to 10% over the rate of annual assessment in effect for the preceding year for each year starting in 2006, or (ii) at any time by any amount by a vote of the members (being for this limited purpose solely the members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase. Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Association to perform its duties as specified in this Declaration. However, the provisions set forth in this paragraph shall not limit or restrict the power of the Board under Article XII, Section 3(a), paragraph 6 pertaining to the assessment of special operating assessments.

(b) Special Assessments for Capital Improvements.

(1) In addition to the annual operating assessments and any special operating assessments, the Board may levy, at any time, special assessments to construct, reconstruct or replace capital improvements to the extent that reserves therefor and any applicable insurance proceeds with respect thereto are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required to comply with applicable law or governmental regulation, or to correct any deficiency or defect creating a safety or health hazard to occupants) shall not be constructed nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to ten percent (10%) or more of that



fiscal year's budget, without the prior consent of Unit owners owning at least 60% of the then existing Units.

(2) Any such special assessment shall be prorated among all Completed Units on an equal per Unit basis and shall become due and payable on such date or dates as the Board determines.

(c) Special Individual Unit Assessments. The Board shall levy assessments against an individual Unit, or Units, and the owner or owners thereof, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of fire and extended coverage insurance, the cost of making repairs the responsibility of a Unit owner, and a Unit owner's interest, late charges, fines, enforcement and collection charges, and arbitration charges). Any such assessment shall become due and payable on such date as the Board determines. Additionally, during the first years of the Townhome's existence, and until such time as real estate taxes and assessments are split into separate tax bills for each Unit, the Association shall have the right to pay the real estate taxes and assessments attributable to the Townhome Property in the event the same have not been paid, when due, and assess each Unit owner for his, her or its share of such real estate taxes and assessments as a special individual Unit assessment. The share of those taxes and assessments attributable to a Unit shall be computed by multiplying the total taxes and assessments for all of the Townhome Property by the undivided interest in the Common Areas attributable to each Unit. The calculation by the Association of the Units' shares of taxes and assessments shall be binding upon all Unit owners.

Section 4. Effective Date of Assessment. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit owner subject thereto. Written notice mailed or delivered to a Unit owner's Unit shall constitute notice to that Unit owner, unless the Unit owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit owner.

Section 5. Effect of Nonpayment of Assessment; Remedies of the Association.

(a) If any installment of an assessment is not paid within ten (10) days after the same is due, the entire unpaid balance of the assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

(b) If any installment of an assessment is not paid within ten (10) days after the same is due, the Board, at its option, and without demand or notice, may (i) charge interest on the entire unpaid balance (including the accelerated portion thereof) at such rate as the Board, from time to time, establishes by rule (or if the Board fails to establish a rate by rule, at the rate of eight percent

(8%) per annum), (ii) charge a reasonable, uniform, late fee, as established from time to time by the Board, by rule, (iii) charge the cost of collection, including attorneys' fees and other out-of-pocket expenses and/or (iv) cut-off or restrict the services to be provided to the Unit by the Association and the use of the Common Areas.

(c) All assessments, together with interest, late fees, and costs, including attorney fees, shall be a charge and lien in favor of the Association upon the Unit against which each such assessment is made.

(d) At any time after any assessment or an installment of an assessment levied pursuant hereto remains unpaid for thirty (30) or more days after the same has become due and payable, a certificate of lien for the unpaid balance of that assessment, including all future installments thereof, interest, late fees, and costs, including attorneys' fees, may be filed with the Recorder of Pottawattamie County, Iowa, pursuant to authorization given by the Board. The certificate shall contain a description or other sufficient legal identification of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments and charges, and shall be signed by an officer or other agent of the Association.

(e) The lien provided for herein shall become effective from the time a certificate of lien was duly filed therefore, and shall continue for a period of five (5) years unless sooner released or satisfied in the same manner provided by law in the State of Iowa for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

(f) Any Unit owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the District Court of Pottawattamie County, Iowa for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Unit, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

(g) Each such assessment together with interest, late fees, and costs, including attorneys' fees, shall be the joint and several personal obligation of the Unit owners who owned the Unit at the time when the assessment fell due and all subsequent Unit owners.

(h) The Association, as authorized by the Board, may file a lien or liens to secure payment of delinquent assessments, interest, late fees, and costs, including attorneys' fees, bring or join in an action at law against the Unit owner or owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these. In any foreclosure action, the owner or owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action. The Association in any foreclosure action involving a Unit or Units shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including attorneys' fees) shall be added to the amount of any such assessment, to the extent

permitted by Iowa law.

(i) No claim of the Association for assessments and charges shall be subject to setoffs, off sets, or counterclaims.

(j) No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Areas or the services provided by the Association, or any part thereof, or by abandonment of his, her or its Unit.

(k) Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Units and their interests in the Townhome Property, and to continue to provide utility and other service, and, accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

Section 6. Subordination of the Lien to First Mortgages. The lien of the assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments and charges against the mortgaged Unit which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor owner. The foregoing will not relieve any successor owner from the obligation for assessments accruing thereafter.

Section 7. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Contribution to Reserves Upon Sale of Units. Upon the closing of the sale of each Completed Unit by Declarant, Declarant shall collect from the buyer and cause to be paid over to the Association, for deposit into its reserve funds, a sum equal to two months of the then monthly assessment in effect for the Completed Units subject to assessment.

Section 9. Initial Casualty Insurance. Upon closing of the sale of each Completed Unit by Declarant, Declarant will collect from the buyer, and cause to be paid over to the Association, that portion of the insurance described in Article X, Section 1, attributable to Buyer's Unit for the twelve month period following closing.

## ARTICLE XIII

### CONDEMNATION

Each Unit owner, by accepting title to a Unit, grants to the persons who shall from time to time constitute the Board of the Association an irrevocable power of attorney, coupled with an interest, to conduct negotiations with the State, a political subdivision thereof or any other corporation, agency or authority having the power of eminent domain that seeks to acquire any of the Townhome Property. In such event, the Association shall act as the representative of the Unit owners, and the Board may cause the Association to execute and deliver the appropriate conveyance on behalf of all owners in return for the agreed consideration. The Board shall allocate such consideration, to the extent possible, to the repair, replacement or restoration of the condemned Common Areas and then to the Unit owners and their respective mortgagees, as their interests may appear, in proportion to their respective undivided interests in the Common Areas. In the event negotiations shall fail, the condemning authority may join the Association as a party defendant in lieu of naming all Unit owners and such proceedings shall bind all Unit owners; however, any owner having an interest in the Common Areas may be made a party defendant in such proceedings. Subject to the foregoing provisions, in the event that any Unit is taken by condemnation or the exercise of the power of eminent domain, each owner and the holder of mortgages on the Unit shall be entitled to seek and have their just damages for the taking of the Unit, as allowed by law, including severance damage, if any. No provision herein shall be deemed to give any Unit owner or any other party priority over the rights of the holder of any first mortgage on any Unit in the case of a distribution of condemnation awards for losses to or a taking of the mortgaged Unit.

## ARTICLE XIV

### TOWNHOME INSTRUMENT REQUIREMENTS

Section 1. Association Control. Except in its capacity as a Unit owner of unsold Units, the Declarant or its agent will not retain a property interest in any of the Common Areas after the Turnover Date, except as expressly provided or contemplated herein. The owners of Units that have been sold by the Declarant or its agent will assume control of the Association and the Common Areas, as elsewhere provided herein.

Section 2. Declarant's Obligations. Declarant or its designee, in its capacity as owner of Units not yet sold, will be vested with the rights and be subject to the duties of a Unit owner set forth herein, or in any other Townhome Instrument, or established by law.

Section 3. Unit Owners' Rights and Obligations. Each Unit owner will be vested with the rights and be subject to the duties of a Unit owner set forth herein, or in any other Townhome Instrument, or established by law, during the time of that owner's ownership of a fee simple interest in a Unit.

## ARTICLE XV

### AMENDMENTS

Section 1. Power to Amend. Except as otherwise specifically provided herein, after the Turnover Date, additions to, changes in, or amendment of this Declaration shall require the consent of Unit owners owning at least two thirds (2/3) of the Units and, until the sale by Declarant of the last contemplated Unit, the Declarant. Notwithstanding the foregoing:

(a) The consent of Unit owners of at least eighty percent (80%) of the Units shall be required to terminate the Townhome and this Declaration; and

(b) Declarant reserves and shall have the absolute unilateral right and power to amend the Townhome Instruments, to the extent necessary to (i) cause the Townhome Instruments to comply with Iowa law or conform to the requirements then governing the making of a mortgage loan or the purchase, guaranty, or insurance of mortgages by an institutional lender or an institutional guarantor or insurer of a mortgage on a Unit, (ii) correct typographical errors or factual errors or omissions the correction of which would not impair the interest of any Unit owner, mortgagee, insurer, or guarantor, (iii) update Exhibit B of this Declaration, or (iv) comply with any requirement the City makes as a condition to approval by the City of some matter relating to the development of the Townhome Property. No such amendment by the Declarant shall require the consent of any Unit owner.

Section 2. Method to Amend. An amendment to this Declaration, adopted with the consents of Unit owners, shall be executed with the same formalities as to execution as this Declaration by two officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by the Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to this Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in Declarant or any duly empowered successor Declarant by this Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Recorder of Pottawattamie County, Iowa.

Section 3. Form of Consent of Owners. The consent of owners of Units to any amendment of this Declaration may be obtained in the form of written consent(s) executed by two thirds (2/3) of all of the Unit owners or in the form of a formal resolution approved by two thirds (2/3) of all of the Unit owners at a meeting of the members.

## ARTICLE XVI

### GENERAL PROVISIONS

Section 1. Covenants With the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having at right, title or interest in or to all or any part of the Townhome Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

Section 2. Enforcement. In addition to any other remedies provided in this Declaration, Declarant (only with respect to those rights directly benefiting the Declarant), the Association, and each Unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Unit owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Unit owner shall have rights of action against each other for failure to comply with the provisions of the Townhome Instruments and applicable law, and with respect to decisions made pursuant to authority granted thereunder, provided, the Association shall have the right to assess reasonable charges against a Unit owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration, and provided, further, that neither the Association nor its directors, officers, or other representatives, shall be liable to any Unit owner or occupant, or their invitees, for damage to any Unit or any part thereof, or any personal property of such Unit owner, occupant or invitee, or for injury to such person, unless the damage or injury was proximately caused by the gross negligence or the intentional tortious act of the Association or such director, officer or other representative. Notwithstanding the foregoing, in the event of any dispute between the Association and any Unit owner or occupant that cannot be settled by agreement between them, no Unit owner or Unit Owners shall institute legal proceedings against the Association without first submitting the dispute to nonbinding arbitration by a single independent arbitrator selected by the Board. In addition to all other remedies available by law, the Association may use summary abatement or similar means to enforce any provisions hereof or restrictions against the Unit or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means.

Section 3. Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with Iowa law, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no wise affect any other provisions of this Declaration, which provisions shall remain in full force and effect.





Exhibit A

Legal Description: Lots 154 through 307, inclusive, Hills of Cedar Creek, Phase 1, Council Bluffs, Pottawattamie County, Iowa, according to the recorded plat thereof.

Exhibit B

<u>Unit</u>	<u>Characteristics</u>
A	2 story, 3 bedrooms, 2 ½ baths
B	2 story, 2 bedrooms, 2 ½ baths
C	2 story, 2 bedrooms, 2 ½ baths
D	2 story, 2 bedrooms, 2 ½ baths