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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
OAK PARK PLACE OF DUBUQUE, LLC -  
OAK PARK ESTATES, DUBUQUE COUNTY, IOWA

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this \_\_\_\_\_ day of SEPTEMBER, 2005, by Oak Park Place of Dubuque, L.L.C., an Iowa Limited Liability Company, (hereinafter referred to as “Declarant”).

The Declarant is the owner of the real property described in Exhibit “A” attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions as provided herein and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration.

Declarant hereby declares that all of the property described in Exhibit “A” and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof.

This Declaration does not and is not intended to create a condominium within the meaning of the Iowa Horizontal Property Regime (Condominium) Iowa Code Chapter 499B.

ARTICLE I  
DEFINITIONS

For purposes of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1. Articles of Incorporation” or “Articles”. The Articles of Incorporation of Oak Park Place of Dubuque Homeowners’ Association, Inc. as filed with the Secretary of the State of Iowa.
2. Association”. The Oak Park Place of Dubuque Homeowners Association, Inc., a non-profit corporation, incorporated under Iowa Code Chapter 504A, an Iowa corporation, its successors or assigns.

3. “Board of Directors”. The Board of Directors of Oak Park Place of Dubuque having its normal meaning under Iowa non-profit corporate law.

4. “By-Laws”. The By-Laws governing the conduct of Oak Park Place of Dubuque Homeowners Association, Inc., attached hereto as Exhibit “B” and incorporated herein by reference, as they may be amended from time to time.

5. “Class “B” Control Period”. The period of time during which the Class “B” member is entitled to appoint a majority of the members of the Board of Directors, as provided in the Associations By-Laws.

6. “Common Expenses”. The actual and estimated expenses incurred by the Association for the general benefit of all Unit Owners, including any reasonable reserve found to be necessary, but not including any expenses incurred during the Class “B” control period for initial development, original construction or installation of infrastructure, original capital improvements, or other original construction costs, unless approved by Voting Members representing a majority of the total Class “A” vote of the Association. Common Expenses shall be funded by assessments levied against all Units in the Properties.

7. “Common Areas and Facilities”. All portions of the property owned by the Association and any improvements thereon.

8. “First Mortgagee”. A person owning a mortgage on any unit, which mortgage is first in priority upon foreclosure to other mortgages which may affect such unit.

9. “Member”. A person entitled to membership in the Association as provided herein.

10. “Person”. A natural person, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

11. “Properties”. shall mean and refer to the real property described in Exhibit “A” attached hereto together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

12. “Site Plan”. The conceptual land use plan attached hereto marked Exhibit “C” prepared by IIW Engineers & Surveyor, P.C. the architect hired for the project by the Declarant. The Site Plan is subject to amendment by the Declarant. The Site Plan shows development of the properties and set forth the legal description of the real estate that may be annexed without approval of the Class “A” members.

13. “Supplemental Declaration”. An amendment or supplement to this Declaration executed by or consented to by Declarant which, by way of example and not limitation, subjects additional property to this Declaration, imposes, expressly or by reference additional restrictions and obligations on the land described therein, by recorded instrument.

14. “Unit”. That part of the properties intended for development, use and occupancy as an attached residence for a single family on separately described real estate, as well as vacant land intended for development as such. The terms shall include all portions of the real estate owned as

well as any structure thereon. Although the structures contemplated contain two (2) dwellings, each dwelling shall be deemed a separate unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Site Plan approved by the Declarant, until such time as a certificate of occupancy is issued on all or a portion thereof by the local governmental entity having jurisdiction. After issuance of a certificate of occupancy on any portion thereof, the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

15. “Unit Owner or Owners”. The person or persons whose estates or interests, individually or collectively, aggregate fee simple and absolute ownership of a Unit.

16. “Voting Members”. The Member selected by tenants-in-common or joint tenants of a single Unit to cast the vote for the Unit.

## ARTICLE II General Description

1. The Real Estate. The Properties legally described in Exhibit A will, in the initial phase of this development, include six (6) duplexes. The Site Plan attached hereto as Exhibit “C” contemplates a second phase development ultimately resulting in a total of twenty-two (22) Units on real estate legally described in Exhibit A. The real estate owned by each Unit Owner will extend past building lines, front and back, and include landscaping.

2. The Building. The duplexes are one or two story, with basements. The buildings are constructed of concrete, wood frame with brick veneer and wood siding combination. The individual buildings have combined living room dining area, one and a half baths and two bedrooms. Each Unit has individual central heating and air conditioning.

3. Right-of-Ways. The streets and right-of-ways within the Properties have been or will be dedicated to the City of Dubuque, Iowa.

## ARTICLE III Usage, Occupancy and Transfer of Interest in Units

1. Real Estate. Each Owner shall have fee title ownership of the Unit purchased by the Owner, subject to all restrictive covenants.

2. Common Areas and Facilities. Every Owner shall have a right and non-exclusive easement of use, access and enjoyment in the Common Areas and Facilities which shall be appurtenant to and pass with the title to his Unit, subject to:

A this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association.

B the right of the Association to adopt rules regulating the use and enjoyment of the Common Area;

C the rights of the Board to suspend the rights of the Owner to use any facilities, or the right of the Board to permit non-member's use of any facilities situated upon the Common Area upon payment of use fees established by the Board, and the right of the Board to impose reasonable membership requirements and charge reasonable admission or other fees to members for use of any facility situated upon the Common Areas.

D the right of the Association acting through its Board to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in the By-Laws.

E the right of the Association, acting through its Board to dedicate or transfer all or any part of the Common Area pursuant to Article V hereof; provided, however, the dedication or transfer of any streets or roads which are necessary for ingress and egress to and from any Unit shall be subject to the Unit Owner's nonexclusive easement.

### 3. Occupancy of Units.

A General. The units within the Oak Park Estates are intended for the housing of persons fifty-five (55) years of age or older, although younger persons are not restricted from occupying a unit along with a person fifty-five (55) years of age or older so long as such co-occupancy is in compliance with this Section. In addition, certain exceptions may be made pursuant to Article III(F)(ii)(d). The provisions of this Section are intended to be consistent with, and are set forth in order to comply with, the Fair Housing Act, 42 U.S.C. Sec. 3601, et seq., and the Iowa Civil Rights Act, Section 216.8 and 216.8A, et seq., as such laws are amended from time to time (collectively, the "Fair Housing Acts"), regarding discrimination based on familial status. Declarant, until termination of the Declarant Control Period, or the Association, acting through its board, shall have the power to amend this Article III(F), without the consent of the owners or any other person, except the Declarant during the period in which Declarant owns more than twenty-five percent (25%) of the units, for the purpose of making this section consistent with the Fair Housing Acts, the regulations adopted pursuant thereto and any judicial decisions arising thereunder or otherwise relating thereto, in order to maintain the intent and enforceability of this section.

#### B Restrictions on Unit Occupancy.

i. Except as may otherwise be permitted pursuant to Article III(3)(B)(iv), each occupied unit shall at all times have as a permanent occupant at least one (1) person who is fifty-five (55) years of age or older (the "Qualifying Occupant"), except that in the event of the death of a person who was the sole Qualifying Occupant of a Unit, the spouse of such Qualifying Occupant may continue to occupy the unit provided that the provisions of the Fair Housing Acts and the regulations adopted thereunder are not violated by such occupancy. For purposes of this Article III(3)(B), an occupant shall not be considered a "permanent occupant" unless such occupant considers the unit to be his or her legal residence and actually

resides in the unit for at least six (6) months during every calendar year or such shorter period as the unit is actually occupied by any person.

ii. No unit shall be occupied by any person under the age of twenty-one (21), except that one (1) person under the age of twenty-one (21) may occupy a unit if the Board reasonably determines that such occupancy is necessary to provide reasonable accommodation for the health care needs of a handicapped parent or grandparent who would be unable to continue to reside in the unit without such person's care. For purposes of this Article III(3)(B), a unit shall be deemed to be "occupied" by any person who stays overnight in the unit more than twenty-one (21) days in any sixty (60) day period or more than thirty (30) days in any twelve (12) month period.

iii. Nothing in this Article III(3) is intended to restrict the ownership of or transfer of title to any unit; however, no owner may occupy the unit unless the requirements of this Article III(3) are met, nor shall any owner permit occupancy of the unit in violation of this Article III(3). Owners shall be responsible for (1) including a statement that the units within the community are intended for the housing of persons fifty-five (55) years of age or older, as set forth in Article III(3)(A), in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such owner's unit, which agreements or contracts shall be in writing and signed by the tenant or purchaser, and (2) clearly disclosing such intent to any prospective tenant, purchaser, or other potential occupancy of the unit. Each lease of a unit shall provide that failure to comply with the requirements and restrictions of this Article III(3) shall constitute a default under the lease.

iv. Any owner, in writing, may request that the Board of Directors make an exception to the requirement of this Article III(3)(B) with respect to his or her unit. The Board of Directors may, but shall not be obligated to, grant exceptions in its sole discretion, provided that the requirements for exemption from the Fair Housing Acts would still be met.

C Change in Occupancy; Notification In the event of any change in occupancy of any unit as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise, the owner of the unit shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the unit and such other information as the Board may reasonably require to verify the age of each occupant. In the event that an owner fails to notify the Board and provide all required information within ten (10) days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the owner and the unit for each day after the change in occupancy occurs until the Association

receives the required notice and information, regardless of whether the occupants continue to meet the requirements of this Article III(3), in addition to all other remedies available to the Association under this Declaration and Iowa law. This requirement shall apply in addition to any other requirement for notification of a change in ownership under Article XIII(2)(F).

D Monitoring Compliance; Appointment of Attorney-in-Fact.

i. The Association shall maintain age records on all occupants of units. The Board shall adopt and publish policies, procedures and rules to monitor and maintain compliance with this Article III(3), including policies regarding visitors, updating of age records, the granting of exemptions pursuant to Article III(3)(B)(iv), and enforcement. The Association shall periodically distribute such policies, procedures and rules to owners and make copies available to owners, their tenants and mortgagees upon reasonable request.

ii. The Association shall have the power and authority to enforce this Article III(3) in any legal manner available, as the Board deems appropriate, including, without limitation, conducting a census of the occupants of the units, requiring copies of birth certificates or other proof of age for each occupant of the unit to be provided to the Board on a periodic basis, and taking action to evict the occupants of any unit which is not in compliance with the requirements and restrictions of this Article III(3). EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER UNIT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS ARTICLE III(3). Each owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her unit that, in the judgment of the Board, are reasonably necessary to monitor compliance with this Article III(3).

iii. Each owner shall be responsible for ensuring compliance of its unit with the requirements and restrictions of this Section and the rules of the Association adopted hereunder by itself and by its tenants and other occupants of its unit. EACH OWNER, BY ACCEPTANCE OF TITLE TO A UNIT, AGREES TO INDEMNIFY, DEFEND AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES AND CAUSES OF ACTION THAT MAY ARISE FROM FAILURE OF SUCH OWNER'S UNIT TO SO COMPLY.

ARTICLE IV  
Membership and Voting Rights

1. Membership. Every Unit Owner, as defined in Article I shall be deemed to have a membership in the Association. When more than one person is Owner of a single Unit, all such persons shall be members of the Association, but multiple ownership of a Unit shall not increase the number of votes appurtenant to such Unit. The membership rights of a Unit owned by a corporation or partnership or trust shall be exercised by the individual designated from time to time by the Unit Owner in a written instrument provided to the Secretary of the Association, subject to the provisions

of this Declaration and the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

2. Voting. The Association shall have two (2) classes of membership, Class “A” and Class “B” as follows:

A Class “A” members shall be all Owners with the exception of the Class “B” member, if any.

Class “A” members shall be entitled to one equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof. There shall be only be one (1) vote per Unit. The vote for each Unit shall be exercised by the Registered Voter for the Unit, or a proxy, as provided for in the By-Laws.

The Unit’s vote shall be suspended if more than one person seeks to exercise it.

B Class “B” member shall be the Declarant. The rights of the Class “B” member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in this Declaration or the By-Laws. The Class “B” member shall be entitled to one vote per unit owned and in addition, shall be entitled to appoint a majority of the members of the Board of Directors during the Class “B” control period as specified in Article III, Section 2 of the By-Laws. After termination of the Class “B” control period, the Class “B” member shall have the right to disapprove actions of the Board of Directors and any committee as provided in Article III, Section 3 of the By-Laws.

## ARTICLE V Maintenance

1. By the Owner. Except to the extent provided in paragraph 2 below, each Owner shall have the obligation to maintain, replace and keep in good repair all portions of his Unit. This includes, but is not limited to, glass surfaces, windows, window frames, doors, doorways, frames, hardware, walls, yard lights, mail boxes, decks, patios, heating and cooling systems and components thereof, plumbing and related systems and components thereof, electrical and related systems and components thereof including appliances, fixtures, lights, light bulbs, all gas, water, or sewer systems, fireplaces, pipes, lines, ducts, conduits or other apparatus serving only the Unit. All structural repair or replacement shall be made by the Unit Owner. The Owner has the responsibility to maintain, replace and repair the roof shingles or other roof coverings, exterior doors, exterior trim, exterior siding subject to approval of materials and colors by the Board of Directors of the Association. The Owner shall perform his responsibilities in such manner so as to not unreasonably disturb other persons residing in adjacent Units, shall not paint or otherwise decorate or change the exterior appearance of any portion of a Unit, and not make any major interior alterations unless written consent of the Association is first obtained. The Owner shall maintain party walls and party fences, if any. The Unit Owner shall have an easement upon or into adjoining Units and/or a right-of-entry as is necessary to perform such work and shall not be liable for trespass for such entry or work.

2. By the Association. The Association’s obligation extends only to maintenance and repair of items as is necessary to create a uniform exterior appearance of the Units and the Common

Areas and Facilities. In the event a maintenance responsibility is not clearly shown by this Declaration, the Board of Directors shall have the authority to determine whether the Unit Owner or the Association shall bear the responsibility. The Association shall maintain, replace and repair, as a Common Expense, the Common Areas and Facilities. The Association shall also maintain, replace and repair as a Common Expense some portions of the individually owned property, such as sidewalks, all surface parking areas, landscaping and other flora and irrigation. The maintenance provided by the Association shall include snow removal from the paved driveways and sidewalks, mowing and other landscape maintenance, excluding gardens or flower beds planted by the Unit Owner or Occupant. Maintenance provided by the Association shall not include routine cleaning.

3. Failure to Maintain. If the Board of Directors determines that (i) any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair or replacement of items of which he or she is responsible hereunder; or (ii) that the need for maintenance, repair, or replacement in the Common Areas or Facilities is caused through the willful or negligent act of any Owner, his or her family, guests, lessees or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense. Such cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Unit as hereinafter provided. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary by the Board of Directors. In the case of (i) above, when the Owner has not discharged his or her responsibility, unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten days. If the Board determines that an emergency exists, that an Owner has not complied with the demand given by the Association as herein provided, or that the need for maintenance or repair is in a Common Area or Facility as in (ii) above, then the Association may, but is not obligated to, provide any such maintenance, repair or replacement in the manner described above. The Association or its agents or employees shall have a right of entry upon or into the Unit as necessary to perform such work and shall not be liable for trespass for such entry or work.

4. Rights of the Association. The Board shall have, by a two-thirds vote, the power to dedicate portions of the Common Areas and Facilities to any local, state, or federal governmental entity including, but not limited to the City of Dubuque, Iowa. The Association may maintain other property which it does not own including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain community wide standards. With respect to the Common Areas and Facilities and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational or other agreements with trusts, condominiums, cooperatives or neighborhood and other owners or residents associations. Such agreements shall require the consent of two-thirds of all Directors of the Association.

ARTICLE VI  
Insurance And Casualty Losses

1. Association Insurance. The Association shall obtain and maintain at all times as a Common Expense, insurance as required herein, including a casualty insurance policy or policies affording fire and extended coverage in an amount that at least equals the full replacement value of all structures within the Common Areas and Facilities and a liability insurance policy or policies in an amount not less than \$4,000,000 general aggregate; \$2,000,000 for injury or injuries, including death, arising out of each occurrence, and in addition a \$1,000,000 umbrella policy, or such additional amounts as the Board may deem advisable from time to time covering the Association, the Board of Directors, Officers and all agents, and employees of the Association.

The policies may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining whether the insurance equals at least full replacement cost.

In addition to the insurance required hereinabove, the Board shall obtain as a common expense:

A Workmen's compensation insurance if and to the extent necessary to meet the requirements of applicable law.

B Public liability and officers and directors liability insurance in such amounts as the Board may determine, but in no event less than \$1,000,000 per occurrence (such insurance shall obtain a cross-liability endorsement);

C Fidelity bonds covering officers, directors, employees and other persons who handle or are responsible for handling Association funds. If reasonably available such amounts shall be in an amount at least equal to no less than six months operating expenses plus reserves on hand as of the beginning of the fiscal year and shall contain waivers of any defense based upon the exclusion of persons serving without compensation;

D Flood insurance, if required; and

E Other insurance as the Board of Directors may determine to be necessary.

2. Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry insurance as required herein, including a casualty insurance policy or policies affording fire and extended coverage in an amount that at least equals the full replacement value of the Unit and a liability insurance policy or policies in amounts not less than \$1,000,000.00 and in addition a \$1,000,000 umbrella policy or such additional amounts as the Board may deem advisable from time to time covering all Unit Owners or other persons entitled to occupy the Unit.

Every Unit Owner shall be obligated to obtain and maintain insurance covering consequential damages to any other Unit due to occurrences originating within the Owner's Unit caused by negligence of the Owner, Owner's family, guests of Lessee or the failure of the Owner to maintain

the Unit, or any other casualty within the Unit that causes damage to the Units or the Common Elements.

Each Owner further covenants and agrees that in the event of partial loss or damage resulting in less than total destruction of structures comprising his Unit, the Owner shall proceed promptly to repair or reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved by the Association and in accordance with the Architectural Standards the Board may establish. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or reconstruct, if all Owners of the duplex agree in writing, in which case the Owners shall clear the Units of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and, thereafter, the Owner shall continue to maintain the Unit in a neat and attractive condition consistent with community standards.

3. Insurance Deductibles. If maintenance is required under Article V as a result of an insured loss, the amount of the deductible shall be considered a maintenance expense to be paid by the person or persons (including the Association) who would be responsible for such repair in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Areas and Facilities, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in accordance with the total cost of repair. Each Owner shall be responsible for any deductible applicable to his Unit, should the Association obtain a per Unit/per occurrence deductible.

4. Damage and Destruction.

A Any damage or destruction to the Common Areas and/or Facilities in excess of \$25,000 shall be repaired and reconstructed unless the members representing at least seventy-five percent (75%) of the total vote of the Association shall decide within sixty days after the casualty not to repair and reconstruct. If, for any reason, either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the association within such period, then the period shall be extended until such funds or information shall be made available.

B If the damage or destruction to the Common Area or Facilities for which insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without necessity of a vote of the Members, levy a special assessment against all Owners.

C The Board of Directors shall determine in its sole discretion, whether to repair and reconstruct Common Areas and Facilities where the estimated cost is \$25,000 or less.

ARTICLE VII  
Assessments By Association

1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is

deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Unit which are established pursuant to the terms of this Declaration or the By-Laws. All such assessments, together with charges, interest, costs and reasonable attorneys fees actually incurred, in the maximum amount permitted by law, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment is made, and shall become a lien on the date due, if unpaid. Such amounts shall also be the personal obligation of the person or persons who owned the Unit at the time when the assessment fell due. Each Owner shall be liable for his or her portion of each assessment coming due while he or she is the Owner of the Unit and his or her grantees shall be jointly and severally liable for a portion thereof as may be due and payable at the time of any conveyance. At all times said assessments shall be a continuing lien upon the Unit. Assessments shall be paid in such manner and on such dates as shall be fixed by the Board of Directors. Unless otherwise provided by the Board, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month.

## 2. Annual Assessments and Charges.

A Computation of Operating Budget and Assessment. The Board of Directors shall, at the beginning of the Association's Fiscal Year, prepare a budget covering the estimated cost to operate the Association during the coming year. It shall be the duty of the Board of Directors at least thirty (30) days prior to beginning of the Association's fiscal year, to prepare a budget covering the estimated cost of operating the Association during the coming year. The Board shall cause a copy of the budget and notice of assessments to be levied against each Unit for the following year to be delivered to each Member at least thirty (30) day prior to the beginning of the Associations fiscal year. The budget and the assessment shall become effective unless disapproved by a two-thirds majority at a duly called and constituted meeting of the Association by a vote representing a majority of the total Class A vote and by the Class B member if such exists; provided, unless a meeting is requested by the Members, as provided in the By-Laws, the budget and assessment may take effect without a meeting of the Members. Notwithstanding the foregoing, however, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year and the Board may propose a new budget at any time during the year by causing the proposed budget and assessment to be delivered to the Members at least thirty (30) days prior to the proposed effective date thereof.

B Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget that shall take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget with respect both to the amount and timing by equal annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment as provided in this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

3. Special Assessments. In addition to the annual assessment the Board may, at any time, levy a special assessment against all Owners for expenses determined by the Board to be for the benefit of the Association as a whole; provided, however, prior to becoming effective any special assessments shall be approved by the affirmative vote of at least two-thirds of the votes represented in person or by proxy at a special or annual meeting of the Members duly called for the purpose. The affirmative vote or consent of the Class "B" Member shall be required before the Association may levy a special assessment, if such membership exists.

4. Specific Assessment. The Association may levy a specific assessment against any Member individually or against such Member's Unit for whose benefit an expense was incurred which benefited less than the Association as a whole, and for the purpose of reimbursing the Association for the costs incurred in bringing a Member and his Unit into compliance with the provisions of this Declaration, any amendments hereto, the Articles, the By-Laws or the Association Rules. The assessment may be levied upon the vote of the Board after notice to the Member and opportunity for hearing in the manner set forth in the By-Laws.

5. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner of the Unit against which such assessment is made shall be in default.

A If any installment of an assessment or charge is not received by the 10th day of the month or if any other charge is not received within ten days of its due date, a late charge equal to the greater of \$7.50 or 10% of the amount not received or such higher amount as may be authorized by law may be imposed without further notice or warning to the delinquent Owner and interest not to exceed the maximum rate afforded by law shall accrue from the due date.

B If assessments or other charges or any part thereof due from an Owner remain delinquent for a period greater than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment or charge is not received within ten days from the date of notice of delinquency, the Board of Directors may accelerate and declare immediately due all of the Owner's unpaid installments of the annual assessment for that fiscal year.

C If assessments or other charges or any part thereof remain outstanding for more than thirty (30) days after first becoming delinquent, the Association, acting through its Board of Directors, may institute suit to collect all amounts due and suspend the Owner's right to use the Common Areas and Facilities (provided, however, the Board may not restrict ingress or egress to or from a Unit), whether or not a notice of delinquency has been sent as provided above.

6. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Unit on the earlier to occur of (i) ninety days after the date on which a building permit is issued for the Unit; or (ii) at the time the Certificate of Occupancy is issued for the Unit by the appropriate governmental authority. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment

shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commenced on the Unit.

7. Class "B Control Period. Until termination of the Class "B" control period, in lieu of paying regular assessments on its unsold units, the Declarant shall be obligated for the difference between the amount of the assessments levied on all units subject to the assessment and the amount of actual expenditures required to operate the Association during the fiscal year. This obligation may be satisfied in the form of a cash subsidy, or by contribution of needed services or materials or a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts of in-kind contribution of services or materials, or a combination of services or materials with Declarant or other entities for the payment of some portion of the Common Expenses.

8. Statement of Account. Any Owner, Unit Purchaser, Mortgagee, or interested person or lender considering a loan to be secured by a Unit shall be entitled upon written request to a statement from the Association setting forth the amount of assessments due and unpaid including any late charges, interest, fines or other charges against a Unit. The Association may require the payment of a fee not to exceed \$50.00 as a prerequisite to the issuance of such a statement.

9. Covenant to Pay Assessment. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No Owner may waive or otherwise exempt himself from liability for the assessments provided herein including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required by this Declaration, the By-Laws or any governmental requirement.

10. Lien for Assessments. Upon recording of a notice of lien on any Unit there shall exist a perfected lien for unpaid assessments prior and superior to all other liens except (i) all taxes, bonds, assessments or other levies which by law would be superior thereto and (ii) the lien or charge of any first mortgage of record made in good faith and for value. Such lien when delinquent may be enforced by suit, judgment and foreclosure.

The Association acting on behalf of the Owner shall have the power to bid for the Unit at foreclosure sale and to acquire, hold, lease, mortgage and convey the same. After foreclosure the Association as Owner shall have no right to vote, and no assessment shall be levied on the Unit, said assessment to be charged equally to each other Unit in addition to its usual assessment.

Where a First Mortgagee obtains title, pursuant to judicial or nonjudicial foreclosure of the mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition and title. Such unpaid share of Common Expenses or assessments shall be deemed to be a Common Expense collectible from the Owners of all the Units including such acquirer, its successors and assigns.

11. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of assessments:

A all Common Area and Facilities;

B all Property dedicated to or accepted by any governmental authority or public utility; and

C all Property owned by the Class B Members.

ARTICLE VIII  
Annexation And Withdrawal of Property

1. Annexation Without Approval of Class A. The Declarant expressly reserves the option and right, for itself and any successor Declarant, but not the obligation, to expand the real estate subject to this Declaration. Except as contained in this paragraph there are no limitations on this Option to Expand.

A This Option to Expand shall expire on December 31, 2010, provided that the time may be extended by the affirmative vote or written consent of two-thirds of the total vote of the Association Members, excluding any votes held by the Declarant at any time during the year preceding the time the option would otherwise expire.

B The Site Plan, Exhibit "C" attached hereto is shown as a conceptual land use plan, but the Declarant is not bound to develop the property as shown therein. The maximum number of units that may be created on the property described in Exhibit "C" is twenty-two (22) and the maximum number of units that may be created on the additional property is twenty-two (22). These restrictions do not apply to paragraph 5 of this Article. The additional property may be added as a whole at one time or in one or more portions at different times, or it may never be added and there are no limitations upon the order of additions or boundaries thereof.

C There are no limitations on the locations or dimensions of improvements to be located on the additional property. No assurances are made as to what, if any, further improvements will be made on any portion of the additional property.

D The additional property, when and if added shall be subject to the use restrictions contained in this Declaration or subsequently promulgated in accordance herewith.

E Any structures and improvements placed, constructed, replaced or reconstructed on the additional property will be compatible with and the same as or similar to the existing Units as to quality of construction and architectural style. No assurance is made with respect to materials to be used in improvements placed on the additional property. No assurances are made that Units constructed on the additional property will be substantially identical to existing Units.

F This option reserved shall be exercisable unilaterally by the Declarant and the consent of Unit Owners shall not be required. Declarant shall have the unilateral right to reallocate liability for payment of Common Expenses, and allocation of votes in the Association, all to be done in accordance with the limitations above described. The Declarant shall exercise the option by its adoption, execution and recordation of a Supplemental

Declaration to this Declaration and by recording such plats, certifications and plans as may required by law, and by the Oak Park Place Declaration.

2. Acquisition of Additional Common Area. Declarant may convey to the Association some of the additional property, improved or unimproved, which upon conveyance or dedication to the Association, shall be accepted by the Association as Common Areas and Facilities and thereafter shall be maintained by the Association at its expense for the benefit of all of its Members.

3. Withdrawal of Property. Declaration reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand pursuant to this Article without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by the Declarant, provided such withdrawal does not materially affect the overall uniform scheme of development for the Properties.

4. Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property subject to this Declaration.

5. Annexation with Approval of Class A Membership. Subject to consent of the Owner thereof, the Association may annex real property other than that contemplated in the Site Plan, Exhibit "C" above, and following the expiration of the right in paragraph 1 of this Article. Such annexation shall require the affirmative vote of the Unit Owners representing a majority of the Class "A" votes of the Association (other than those held by the Declarant) present at a meeting duly called for such purpose, and of the Declarant, so long as Declarant owns property subject to this Declaration.

Annexation shall be accomplished by filing of record in Dubuque County, Iowa a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association and by the Owner of the property being annexed and any such annexation shall be effective upon filing, unless otherwise provided therein.

## ARTICLE IX Architectural Standards And Use Restrictions

The Properties and all Units thereon are subject to the architectural standards and use restrictions set forth in the following provisions:

1. Residential Use. The property shall be used for single family residential purposes only, which purposes shall include parking and recreation, and such other purposes by the Owners and their families, guests and tenants, as may be permitted by the By-Laws or by the Association, through its Board of Directors. No Unit may be subdivided into smaller Units. Notwithstanding the foregoing, the Declarant may maintain a business and sales office and/or model units on the Properties so long as the Declarant owns any properties subject to this Declaration, and may display signs offering the same for sale. The Association may also maintain an office on the property for management purposes.

2. Leasing. The lease or rental of a Unit shall not be deemed a violation of this restriction. In addition, every lease on every unit is subject to the following rules and regulations regardless of whether in the written lease.

A The lease must be in writing.

B The lease must be for the entire Unit.

C The lease must be for a minimum period of not less than two months. Renewal can be for any length.

D The use of the premises is subject to this Declaration, the Association By-Laws and the Association Rules and Regulations, including but not limited to the Age Limitations provisions pursuant to the Fair Housing Act set forth in Article III(3) hereof.

E Within ten days of occupancy by the Tenant (Occupant), the name and telephone number of the Tenant, together with a complete copy of the Lease must be furnished to the Secretary of the Association, along with the registration form required for voting as set forth in the By-Laws.

F The Unit cannot be used as a motel or hotel or otherwise for transient tenants.

G If any Owner (landlord) or Tenant (Occupant) is in violation of any of the provisions of the Association may bring an action in its own name or in the name of the Owner or both to have the Tenant evicted or to recover damages or both. If the Court finds that the Tenant is or has violated any provisions of the Declaration, the By-Laws or the Rules and Regulations, the Court may find the Tenant guilty of forcible detainer, despite the fact that the Owner is not a party to the action and/or that the Tenant is not otherwise in violation of the Tenant's Lease or other rental agreement with Owner. For purposes of granting the forcible entry detainer against the Tenant, the Court may consider the Owner a person in whose name a contract (the Lease or Rental Agreement) was made for the benefit of another (the Association). This remedy is in addition to any other remedies available at law. If permitted by law, Owner agrees that the Association may recover all of its costs, including Court costs and reasonable attorney's fees from the Owner, and these costs shall be a continuing lien on the Unit, the Unit Owner and the Unit Owner's successor and assigns. The Association shall serve the Tenant and the Owner written notice of the nature of the violation and allow thirty (30) days to cure the violation before the Association may file for eviction. The time period after service of a notice to quit may run concurrently with the 30 day period to cure, if allowed by law.

H By becoming a Tenant, each Tenant agrees to be bound by the Declaration, the By-Laws and other Rules and Regulations of the Association and accepts the right and powers of the Association to evict the Tenant for any violation.

I To protect first mortgage lenders, only subsections (D) and (E) of Section 1 shall apply to a first mortgage lender who has title to the Unit through foreclosure or deed in lieu of foreclosure.

3. Pools. No swimming pool, Jacuzzi, hot tub, spa or similar equipment may be constructed, erected or installed by any Unit Owner.

4. Patios and Decks. The erection, construction, installation or modification of any patio or deck adjacent to a Unit may be permitted if in accordance with the Architectural Standards and upon written approval by the Association.

5. Enforcement. The Association, acting through its Board of Directors, shall have the authority to enforce the use restrictions contained herein. Further, the Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use Common Areas and Facilities. Imposition of sanctions shall be as provided in Article III, Section 23 of the By-Laws of the Association. The Board shall, in addition, have the power to seek relief in any Court for violations or to abate nuisances.

## ARTICLE X Amendment

1. By the Declarant. So long as Declarant owns Properties subject to this Declaration, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is:

A Necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, judicial determination;

B Necessary to enable any reputable title insurance company to issue title insurance coverage on the Units;

C Required by any institutional or governmental lender or purchaser of mortgage loans including, but not limited to, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation to enable such lender or purchaser to make or purchase mortgage loans on the Unit;

D Necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing; or

E The Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material, adverse effect upon any right of any Owner.

2. By the Association. Hereafter or otherwise, this Declaration may be amended only by the affirmative vote or written consent or any combination thereof of Members representing seventy-five percent (75%) of the total Class "A" votes in the Association and the consent of the Class "B" members so long as such membership exists. Any amendment to be effective must be recorded in the public records of Dubuque County, Iowa.

The unit ownership shall be confirmed by a list certified by an abstracter in Dubuque County within sixty (60) days of the vote or execution of a consent to amend or supplement the Declaration or By-Laws.

## ARTICLE XI Term

The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective, legal representatives, heirs, successors and assigns for a term of twenty-one (21) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing signed by the majority of the then Owners has been recorded within the year preceding the beginning of each successive period of ten years agreeing to change said covenants and restrictions in whole or in part or to terminate the same in which case this Declaration shall be modified or terminated as specified therein.

## ARTICLE XII Easements

1. Easements of Encroachment. There shall be reciprocal, appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Areas and Facilities adjacent thereto, or as between adjacent Units due to unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Area or Facility or as between said adjacent units as the case may be, along a line perpendicular to such boundary at such point; provided, however, no easement for encroachment shall exist if the encroachment occurred due to a willful or knowing conduct.

2. Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property subject to this Declaration, to the Association and to the Assignees of each, a non-exclusive easement upon, across, over and under all of the Common Areas and Facilities and the Units, for ingress, egress, installation, replacement, repair and maintenance of improvements, utilities and related services, including but not limited to, cable television systems, roads, walkways, bike paths, drainage systems, Street lights, security systems, signage, water, sewer, meter boxes, telephones, gas and electricity.

## ARTICLE XIII Other Provisions

The Association and/or the Declarant reserve unto themselves certain other rights and obligations as follows:

1. Rights and Obligations of the Association.

A Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

B Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

C Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the Common Area. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association.

The Association, through the Board, by contract or other agreement, shall have the right to enforce county ordinances and to permit Dubuque County to enforce ordinances on the Properties for the benefit of the Association and its Members.

D Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

E Governmental Interests. For so long as the Declarant owns any property shown on Exhibit "A", the Association shall permit the Declarant authority to designate sites within the Properties, which may include Common Area owned by the Association, for fire, police, water, and sewer facilities, public schools and parks, and other public facilities.

## 2. General Provisions.

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

B Right of Entry. The Association shall have the right, but not the obligation, to enter into any Unit for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association rules, which right may be exercised by the Associations Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency

situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

C Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

D Compliance. Every Owner and occupant of any Unit shall comply with all lawful provisions of this Declaration, the By-Laws and rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Unit Owner or Owners.

E Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, HOWEVER, AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE DESIGN REVIEW AND MODIFICATIONS COMMITTEES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO THE DESIGN GUIDE LINES MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY UNIT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY UNIT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF

DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

F Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Unit, such Owner shall give the Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Board of Directors, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Unit hereunder, including payment of assessments, notwithstanding the transfer of title to the Unit.

3. Mortgagee Provisions.

The following provisions are for the benefit of holders of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

A Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an “eligible holder”), will be entitled to timely written notice of:

- i. any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- ii. any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;
- iii. any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- iv. any proposed action which would require the consent of a specified percentage of eligible holders.

B Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) percent of the first Mortgagees or Voting Members representing at least sixty-seven (67%) percent of the total Association vote entitled to be cast thereon consent, the Association shall not:

i. by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

ii. change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit. (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

iii. by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area. (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

iv. fail to maintain insurance, as required by this Declaration; or

v. use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

C Other Provisions for First Lien Holders. To the extent possible under Iowa law:

i. Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the eligible holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to Mortgages held by such eligible holders are allocated.

ii. Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the eligible holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to Mortgages held by such eligible holders are allocated.

D Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation or to the addition of land.

i. The consent of Voting Members representing at least sixty-seven (67%) percent of the Class “A” votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of the eligible holders of first Mortgages on Units to which at least sixty-seven (67%) percent of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

ii. The consent of Voting Members representing at least sixty-seven (67%) percent of the Class “A” votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of eligible holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to a Mortgage appertain, shall be required to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- a. voting;
- b. assessments, assessment liens, or subordination of such liens;
- c. reserves for maintenance, repair, and replacement of the Common Area;
- d. insurance or fidelity bonds;
- e. rights to use the Common Area;
- f. responsibility for maintenance and repair of the Properties;
- g. expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;
- h. boundaries of any Unit;
- i. leasing of Units;
- j. imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;

k. establishment of self-management by the Association where professional management has been required by an eligible holder; or

l. any provisions included in the Declaration, By-Laws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

E No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

F Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

G Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

H Applicability of Article XIII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Iowa law for any of the acts set out in this Article.

I Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

J HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the Department of Housing and Urban Development ("HUD"), so long as HUD is insuring any Mortgage on a Unit within the Properties, or the Veterans Administration ( so long as the VA is guaranteeing any Mortgage on a Unit within the Properties: annexation of additional property other than that described on Exhibit "B", dedication of Common Area, mortgaging of Common Area, or material amendment of this Declaration.

#### 4. Declarant's Rights.

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein or in the By-Laws, as applicable, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Dubuque County, Iowa. Nothing in this

Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Units shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, sign model units, and sales offices, and the Declarant shall have, an easement for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Units owned by the Declarant and any clubhouse or community center which may be owned by the Association, as models and sales offices, respectively.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

#### ARTICLE XIV

##### Dispute Resolution and Limitation on Litigation

1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The association, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration, who agrees to submit to this article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the units (herein defined as units, common areas and limited common areas), and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the units, including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the association rules, or other documents affecting the units (collectively "Claim").

2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 23(c):

A Any suit by the association against any Bound Party to enforce the provisions regarding liens, assessments, and expenses;

B Any suit by the association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the Court may deem necessary in order to maintain the restrictions, covenants and ordinances.

Any Bound Party having an Exempt Claim may submit it to the alternate dispute resolution procedures set forth in this Section, but shall not have an obligation to do so.

3. Claim Procedure. Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”) other than a Claim exempted from this provision shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

A Notice. The association or Claimant shall notify the Respondent in writing stating the nature of the Claim, basis of the Claim, what the Claimant wants the Respondent to do or not to do to resolve the Claim, and that the Claimant wishes to resolve the Claim by mutual agreement with the Respondent and is willing to meet with the Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

B Negotiation. Each Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

C Arbitration. If the parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such period as the parties may agree), the Claimant shall have thirty (30) days following termination of the negotiation to submit the Claim to arbitration in accordance with the Rules of the American Arbitration or the Claim shall be deemed abandoned and the Respondent shall be released and discharged from any and all liability to Claimant arising out of the Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons not a party to the foregoing proceedings. The Arbitration Award (the “Award”) shall be final and binding, and the judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Iowa. Each party shall bear all of its own costs, including the fees of its attorney or other representative and shall share equally the cost of arbitration. The final binding arbitration shall not prevent the parties, prior to submission of arbitration, to agree to submit the Claim to a mediator, upon which the parties may mutually agree. In such case, the time frame shall be adjusted accordingly.

## ARTICLE XV Property Taxes

1. By the Association. The Association shall pay the property taxes and special assessments on the Common Areas and Facilities. The taxes and special assessments shall be a Common Expense included in the computation of the annual Operating Budget and Assessment. The definition of special assessments as used in this paragraph does not include special assessments levied by the Association as defined in Article VII.

2. By the Owner. The Owner shall pay all property taxes and special assessments on the Unit as defined herein. In the event the Owner fails or refuses to pay, then the Association may, but is not obligated to, pay the tax or assessment. If the Association chooses to make such payment, the cost shall be added to and become a part of the assessment to which the Owner is subject and shall become a lien against the Unit in the manner set forth in Article VII.

IN WITNESS WHEREOF the undersigned Declarant has executed this Declaration the date and year first above written.

OAK PARK PLACE OF DUBUQUE, L.L.C.

By: \_\_\_\_\_

Scott Frank, Manager

STATE OF \_\_\_\_\_ )  
: SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Scott Frank, to me personally known, who, being by me duly sworn, did say that the person is the Manager of Oak Park Place of Dubuque, L.L.C., that no seal has been procured by the said Limited Liability Company and that said instrument was signed on behalf of Oak Park Place of Dubuque, L.L.C. by authority of its Manager and the said Scott Frank acknowledged the execution of said instrument to be the voluntary act and deed of Oak Park Place of Dubuque, L.L.C. by it and by the Manager voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said State

EXHIBIT "A"

(Legal Description)

Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Oak Park Place in the City of Dubuque, Iowa, according to the recorded plat thereof filed as Instrument No. 10785-04 of the Dubuque County records.

EXHIBIT B

(Bylaws)

EXHIBIT C  
(Site Plan)