

0 50
SCALE (FEET)

104-0778 D-2607
Sheet 3 of 13

CREEKSIDE PLAT 4

FINAL PLAT (PAGE 2 OF 2)

SNYDER & ASSOCIATES


801 S.W. O'BALABOR ROAD
ANKENY, IOWA 50021
515-964-3020

ANKENY, IOWA
ATLANTIC MOBILE
MOUNTAIN MISSOURI
CENTRAL MISSOURI
ST. JOSEPH MISSOURI
314-881-4334

4	REVISED ERIAN TILE DETAIL	12/20/05	AWS
3	REVISED PER CITY COMMENTS	9/08/05	AWS
2	REVISED LOTS 45-49	8/24/05	AWS
1	REVISED PER CITY COMMENTS	3/08/05	AWS
NAME	REVISION	DATE	BY
Engineer	CDD	Checked by	BKC
Preparation	AWS	Date	11/19/04
Project No	104-0778	Field No	11
File No	D-2607		

161

RETURN TO:
WHEN RECORDED RETURN TO:
R. Michael Hayes
Hubbell Realty Company
6900 Westown Parkway
West Des Moines, IA 50266


Doc ID: 014974180031 Type: GEN
Recorded: 05/18/2004 at 10:20:07 AM
Fee Amt: \$181.00 Page 1 of 31
Polk County Iowa
TIMOTHY J. BRIEN RECORDER
File# 2004-00128238
BK 10542 PG 106-136

This document was prepared by R. Michael Hayes, Hubbell Realty Company, 6900 Westown Parkway,
West Des Moines, Iowa 50266

SPACE ABOVE THIS LINE FOR RECORDER

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
APPLICABLE TO
CREEKSIDE
ANKENY, POLK COUNTY, IOWA**

This Declaration of Covenants, Conditions, Easements and Restrictions Applicable to
Creekside, Ankeny, Polk County, Iowa, (the "Declaration"), is made this 27th day April,
2004, by HUBBELL REALTY COMPANY, an Iowa limited liability company.

WITNESSETH:

WHEREAS, Declarant is the owner of Creekside (as defined in Section 1.02(m)).

WHEREAS, Declarant desires to develop Creekside as a planned community; and

WHEREAS, Declarant desires to establish the covenants, conditions, easements and
restrictions governing Creekside for the benefit of the Owners (as defined in Section 1.02(j)) of
Lots (as defined in Section 1.02(i)) and of Units (as defined in Section 1.02(o)) in Creekside and
to provide for the Association (as defined in Section 1.02(a)) to operate and maintain common
elements of Creekside.

NOW, THEREFORE, Declarant hereby publishes and declares that all Lots and Units
in Creekside shall be held, sold and conveyed subject to the following covenants, conditions,
easements, restrictions, limitations and obligations, all of which are for the purpose of protecting
the value and desirability of Creekside, and all of which shall run with the land and shall be a
burden upon and a benefit to, any and all parties acquiring or owning any right, title or interest in
any part of Creekside, and their heirs, successors, assigns, grantees, executors, administrators,
and devisees.

ARTICLE I

INTENT; DEFINITIONS

1.01 Intent. It is the intent of this Declaration to provide conditions, covenants,
easements, restrictions, and reservations to ensure the proper use and appropriate development of
improvements to each Lot and Unit in Creekside so that Creekside is developed as a harmonious

and integrated development, and to protect the value and desirability of property within Creekside. It is further the intent to provide for the Association to perform the operation, maintenance, repair, replacement, alterations, improvement or modification of the Declarant Improvements (as defined in Section 1.02(f)) and to perform the installation, operation, maintenance, repair, replacement, alteration, improvement or modification within Creekside, of (a) project signage and entrance features, (b) landscaping on the corners of the intersections, and in the islands in the boulevard entrances, if any, and in the circles, if any, of any future cul-de-sac streets within Creekside, (c) the storm water detention ponds, if any, (d) greenbelt areas, if any, in the plats and any bicycle and pedestrian trail, to the extent not done by the City, and (e) such other common features for the benefit of Creekside as said Association shall undertake or as it agrees to perform on behalf of its members, and to enforce this Declaration.

It is contemplated that Outlot X, Creekside Plat 1, and Outlot Y, Creekside Plat 2, shall be developed for town homes; however, it is not assured that this will happen and if either area is not developed for town homes, it is contemplated that it will be developed for single family residential lots of a size and character similar to other single family lots in Creekside. If either such Outlot is developed as single family residential lots, then the development of such single family lots will be governed by this Declaration, or any amendments thereto to provide for such development and any additional common area improvements that are constructed in connection therewith and dedicated to the Association for operation and maintenance by the Association, and no other declaration of covenants or association shall be created to govern such development.

1.02 Definitions.

- (a) **"Association"** shall mean Creekside Owners Association, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa, and its successors and assigns.
- (b) **"Association Lot"** shall mean a Lot which is owned by (i) a town home association for the use and benefit of the members of such town home association and on which, either by recorded restrictions, recorded plats or zoning, no single-family home or town home may be constructed or (ii) which is owned by the Association for the use and benefit of members of the Association and on which, either by recorded restrictions, recorded plats or zoning, no single-family or town home may be constructed.
- (c) **"Board"** shall mean the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.
- (d) **"City"** shall mean the City of Ankeny, Polk County, Iowa.
- (e) **"Declarant"** shall mean Hubbell Realty Company, an Iowa corporation, and any Iowa limited liability company that it forms and in which it is an investor and to which it transfers all or any portion of the undeveloped portions of Creekside, and either of their successors and assigns as to the entirety of their remaining interest in their respective undeveloped portions of Creekside that have not theretofore been conveyed to home builders or home owners unless the context indicates otherwise.
- (f) **"Declarant Improvements"** shall mean those public streets and improvements Declarant is to construct as part of the platting of any plats within Creekside, as shown on the Site Construction Plans, those improvements that Declarant is to construct pursuant to

this Declaration, and any additional improvements, whether similar or dissimilar to any of the foregoing that Declarant chooses to construct and deliver to the Association for continued operation, maintenance, repair, replacement, alteration, improvement or modification.

(g) **"Hereof" and "Herein"** shall refer to the entirety of this Declaration and not only to any particular part of this Declaration, unless the context clearly provides otherwise.

(h) **"Improvements"** shall mean and include a single family home, a building containing town home units, outbuildings, driveways, parking areas, sidewalks, swimming pools, tennis courts, fences, walls, hedges, signs, lawns, landscaping, flag poles and any structure of any type or kind, and all additions to any of the foregoing.

(i) **"Lot"** shall mean any platted lot, tract, or portion thereof, or two or more contiguous lots, tracts, or portions thereof in Creekside, including real estate subject to recorded easements, but shall not include any land deeded to the City.

(j) **"Owner"** shall mean the person or persons who from time to time collectively hold the entire fee title to any Lot, as applicable, in Creekside, including sellers under executory contracts of sale, (but shall not include any person who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such loan documents), and the use of the singular shall include the plural.

(k) **"Occupant"** shall mean an Owner and any person from time to time entitled to use and occupy any building, or any part of any building on a Lot, under any lease, deed, license or other instrument or arrangement by which such person has acquired rights with respect to the use and occupancy of any building or part of a building on a Lot in Creekside.

(l) **"Single-Family Lot"** shall mean a Lot (other than an Association Lot) which is platted for the development, use and occupancy as a single-family home.

(m) **"Creekside"** shall mean the following described real estate:

Parcel "P" of the Northeast Quarter (NE ¼) of Section 1, Township 80 North, Range 24 West of the 5th P. M., in the City of Ankeny, Polk County, Iowa, as shown on the Plat of Survey recorded in Book 10343, Page 436 in the Office of the Recorder for Polk County, Iowa, together with all easements and servient estates appurtenant thereto and subject to (a) all easements, restrictions and covenants of record or hereafter granted as part of the recording of any final plat of any portion thereof and (b) the Creekside Planned Unit Development zoning ordinance as the same may be amended from time to time;

together with all additional real estate which is hereafter made subject to this Declaration pursuant to one or more amendments to this Declaration, including all lots and outlots, except streets, parks and other lots, if any, conveyed to the City (as defined in Section 1.02(d)), developed in any plats of any part of the property described above or in any plats of any part of any additional property which is hereafter made subject to this

Declaration pursuant to one or more amendments to this Declaration, and any replats of any portions of any of said plats or parcels together with all easements and servient estates appurtenant thereto, and subject to (1) zoning and other applicable building ordinances, (2) easements, covenants and restrictions of record.

(n) "Site Construction Plans" shall mean any construction plans for the streets, sanitary sewers, water lines, storm sewers, surface water detention facilities, trails, and grading plans for any future plat in Creekside, as the same are approved by the City and placed on file with the Association, and the final plats for any plats in Creekside, as hereafter filed of record in the Office of the Recorder for Polk County, Iowa.

(o) "Town Home Lot" shall mean a Lot (other than an Association Lot) which is platted for town homes and on which a single town home has been or may be constructed.

(q) "Unit" shall mean a Single-Family Lot or a Town Home Lot.

(p) "Zoning Ordinance" shall mean the zoning ordinances of the City of Ankeny, Iowa, including, but not limited to Creekside PUD, as the same may be amended from time to time.

(q) Words and phrases in this Declaration, including the acknowledgment, shall be construed as in the singular or plural number, unless the context permits only one such number.

(r) Words defined elsewhere in this Declaration shall have that meaning throughout the Declaration and not just in the Section in which such word is defined, unless the definition expressly states otherwise.

ARTICLE II

GENERAL USE RESTRICTIONS AND BUILDING SPECIFICATIONS

The Lots in Creekside shall be held, occupied, sold and conveyed subject to the following use restrictions and building specifications, as well as those restrictions set forth elsewhere in this Declaration:

2.01 Uses.

(a) Single-Family Residences. The use of Single-Family Lots in Creekside shall be limited to single-family residential dwellings and shall be developed with not more than one single-family dwelling on each Single-Family Lot in the final applicable plat or replat and may be developed only with such other uses of land or structures customarily incidental and subordinate to the single-family residential use as permitted by the City's zoning ordinance, unless such uses or structures are otherwise regulated or prohibited by this Declaration. All Single-Family Lots must be built within twelve (12) months of purchase and closing from Declarant. In the event construction does not commence within said twelve (12) month period, Declarant may, at its option, repurchase the applicable Single-Family Lot at 90% of the previous sales price.

(b) Town Homes. Town Home Lots in Creekside are designated for town home use. Uses of land or structures customarily incidental and subordinate to town home use as permitted by the City's Zoning Ordinance unless such uses or structures are otherwise regulated or prohibited by this Declaration. In addition to the covenants, conditions, restrictions and easements set forth in this Declaration, the development of Town Home Lots in Creekside shall be subject to additional declarations of covenants, conditions, restrictions and easements governing such town home developments, including, but not limited to, architectural standards, easements, common areas, assessments and other matters necessary and proper for the development of Town Home Lots (the "Town Home Declarations"). The initial Town Home Declaration and any amendments thereto made prior to the sale of ninety percent (90%) of the town homes developed within a particular town home development on Town Home Lots shall be subject to the approval of Declarant, which approval shall not be unreasonably withheld. Furthermore, in addition to such Town Home Lots being subject to the provisions of this Declaration, including, but not limited to, assessments made pursuant to this Declaration, the Town Home Lots in each town home development shall be governed by an association created to operate and maintain the common elements within such cluster town home development and shall be subject to an additional assessment to support the activities of the association for such cluster town home development. Such Town Home Lots shall also be subject to the Association and shall be subject to assessments made by the Association. In no event shall anything in a Town Home Declaration or any amendments made to a Town Home Declaration be deemed to amend this Declaration; and in the event of any conflict between a Town Home Declaration and this Declaration, the covenants, conditions, provisions and easements of this Declaration shall control.

The exact layout and number of lots to be included in the town home development of either said Outlot X, Creekside Plat 1, or Outlot Y, Creekside Plat 2, or any other land made available for town home development, shall be as shown on a final plat for such development, or any amendments thereto, approved by the Declarant, or once the Declarant no longer owns any of Single Family Lots in Creekside or has delegated such approval to the Association, approved by resolution of the Board of Directors of the Association, which consent shall not be unreasonably withheld.

If the purchaser of any such town home ground does not commence development of such ground within twelve (12) months after closing on such purchase, Declarant shall have the right to repurchase such land at a price equal to ninety percent (90%) of the price at which Declarant sold such land.

(c) If an Owner does not commence construction within six (6) months after the purchase of a Lot from Declarant, the Owner shall seed the Lot with grass and maintain it in accordance with Section 2.20.

(d) Business Activity. No full-time or part-time business activity may be conducted on any Lot or in any building or structure constructed or maintained on any Lot, except to the extent of a home occupation permitted by the City's Zoning Ordinance and except that home builders may maintain model homes during construction and Declarant may maintain a sales office during its development and sales of the Lots in Creekside.

2.02 Architectural Standards. The following architectural standards shall apply to the development of all Lots in Creekside:

(a) Character. No building or structure shall be constructed, altered or maintained upon any Single-Family Lot other than a detached single-family dwelling with an attached private garage and may have such other accessory structures permitted by this Declaration. No building or structure shall be constructed, altered or maintained upon any Town Home Lot other than town homes each with an attached private garage and may have such other accessory structures permitted by this Declaration. In order to preserve the general design for development of the Lots in Creekside as a fine residential subdivision of the City, no single-family dwelling or town home of any kind, or addition thereto, shall be erected upon any Lot unless the plan, design, building materials, exterior colors and location thereof shall have been first approved by Declarant, or if the Declarant no longer owns any Lots in Creekside or otherwise delegates this responsibility to the Association, by the Board, or such person or persons or entity designated by it for this purpose, which approval shall not be unreasonably withheld or delayed.

(b) Exterior Foundations. Exposed foundations must be painted to blend with exterior wall finishes. Exposed foundations greater than 8" must be covered by an approved exterior wall finish matching the rest of the house or town house, as applicable.

(c) Siding. Siding material variations on the elevation for accent purposes are encouraged, but the overall character and predominant siding must be consistent on all four elevations of the structure. Siding shall not have a reveal of greater than 8". Exterior colors shall be earth tones, white, or soft, muted tones, which may include muted yellows, greens or blues. No bright colors of any kind are permitted. Exterior materials may be pre-finished.

(d) Roof Materials. Roof material shall be slate, tile, cedar shakes, or composition shingles. Composition shingles shall be architectural grade, minimum twenty-five (25) year warranty. Shingle colors shall be muted earth tones and be compatible with and complimentary to the exterior materials and colors. White, white blend, and solid black roof shingles are not acceptable. All flashing and vents shall closely match or blend with the surrounding roof area. All vents and other roof penetrations should be located on the rear elevation wherever possible. Gutters should be part of the fascia detailing. Gutters and downspouts shall closely match the colors of the surfaces to which they are attached.

(e) Garages. All houses and town homes shall have, as a minimum, a two-car attached or built-in basement garage. Each house and town home shall provide off-street parking for two cars on paved surface.

(f) Minimum Single-Family House Sizes. All single-family homes shall contain a minimum square footage of living space exclusive of attached garages, breezeways, porches, and finished basement areas as follows:

- (i) One-story dwellings must have a minimum of 1,200 square feet of finished area directly under the roof.
- (ii) One and one-half story dwellings must have a finished floor area of at least 1,400 square feet.

- (iii) Two-story dwellings must have a finished floor area of at least 1,400 square feet.
- (iv) All split-level, raised ranch, or split foyer dwellings must have a minimum of 1,200 square feet of finished area directly under the roof.

(g) Minimum Town Home Sizes. All town homes shall contain a minimum square feet of living space exclusive of attached garages, breezeways, porches, and finished basement areas, as follows:

- (i) One story town homes must have a minimum of 1,000 square feet of finished area directly under the roof.
- (ii) All 1½-story town homes must have a minimum total finished floor area of 1,250 square feet.
- (iii) All 2-story town homes must have a minimum total finished floor area of 1,400 square feet.

(h) Minimum Finished Basement Floor Levels. If a minimum basement elevation requirement is shown on the final plat of the applicable Lot the single-family home or, if applicable, town homes constructed on such Lot shall have a finished basement floor elevation as shown on the applicable final plat.

(i) Decks and Porches. Decks attached to a single-family dwelling or a town home must be built from cedar, redwood, treated lumber or other products approved by Declarant, or once the Declarant no longer owns any Lots in Creekside or has delegated such approval to the Association, approved by the Board. Unpainted natural wood decks, though appropriate for rear yard spaces, are not acceptable as front entry porches. Front entry porches should be designed as integral, yet dominant features that invite entrance to the dwelling. Columns supporting porch roofs should be massive in scale (minimum 6" x 6"). Built up box columns or tapered round columns are encouraged. Handrails shall match the architectural style of the home. All steps to front porches must be cast in place concrete. No wood steps or precast concrete steps to front porches are permitted.

(j) Building Elevation and Drainage Standards. The finished grades for single-family homes and town homes constructed on each Lot shall be established to permit positive drainage away from such single-family homes and town homes.

2.03 Landscaping.

(a) Single-Family Lots. On each Single-Family Lot, the Owner at the time the dwelling is first occupied is required to plant, within ninety (90) days following the date of commencement of occupancy, one street tree on such lot from any of the following species of trees: Red Maple (*Acer rubrum*), Norway Maple (*Acer platanoides*), Marshall's Seedless Ash (*Fraxinus p. 'Marshall's Seedless'*), Northern Red Oak (*Quercus borealis*), Burr Oak (*Quercus macrocarpa*), or Little Leaf Linden (*Tilia cordata*), or any other species approved by Declarant, in writing, or once the Declarant no longer owns any Lots in Creekside or

has delegated such approval to the Association, approved by the Board, a copy of which additional approved trees shall be kept on file with the Association, (hereinafter such species of trees shall be referred to as "Street Trees"). Street Trees shall be a minimum of 2" caliper in diameter, 10' - 12' in height, and have a minimum spread of 4'. Street Trees shall be planted in the front yard of the Single Family Lot, outside the public right-of-way, but within any street tree easement, if any, upon such Single-Family Lot, or if there is no street tree easement, as near to the right-of-way as possible and not within an easement area without the consent of the easement holder.

In addition to the Street Tree required above, the following minimum quantities of landscape plants shall be planted on the applicable Single-Family Lot by the Owner at the time the dwelling is first occupied; within ninety (90) days following the date of commencement of occupancy:

- (i) one additional tree on all Single-Family Lots (trees other than Street Trees may be either deciduous trees whose trunks are at least 2" in caliper in diameter or evergreens that are at least 6' in height); and
- (ii) 10 deciduous and/or evergreen Shrubs.

This required landscape treatment should be concentrated around the front and entrance of the house. Approximately 75% of all required plant materials should be planted in the front and side yards within view from the street.

Within ninety (90) days after completion of the single-family home upon a Single Family Lot, the front yard, side yards and the twenty-five feet (25') of the rear yard measured from the rear of the dwelling foundation shall be fully sodded, and the remainder of the rear yard to the rear lot line shall be seeded or sodded.

If weather conditions make the time elements of the requirements of this Section 2.03(a) impossible to fulfill, Declarant, or once Declarant no longer owns any Lots in Creekside or has delegated such approval to the Association, the Board, shall establish a reasonable period of time for compliance.

(b) Town Homes Lots. An overall landscape plan for all Town Home Lots shall be submitted to Declarant, or once Declarant no longer owns any Lots in Creekside or has delegated such approval to the Association, to the Board, for approval prior to the installation of any landscape. The following minimum quantities of landscape plants shall be planted by the builder for each Town Home Lot, within ninety (90) days following the completion of the applicable Town Home Lot:

- (i) 2 street trees (as defined above for single family lots).
- (ii) 10 deciduous and/or evergreen shrubs.

If weather conditions make the time elements of the requirements of this Section 2.03(b) impossible to fulfill, Declarant, or if Declarant no longer owns any Lots in Creekside or has delegated such approval to the Association, the Board, shall establish a reasonable period of time for compliance.

(c) Front yard Requirements: Sodding. A minimum of seventy-five percent (75%) of the front yard of each Lot (excluding driveways and sidewalk areas) must be maintained as a groomed yard. With the exception of permitted landscaping features the front, sides and back yards of each lot shall be completely sodded following the completion of the single-family home and town home. If weather conditions make it impossible to comply with the foregoing requirement, Declarant, or if Declarant no longer owns any Lots in Creekside or has delegated such approval to the Association, the Board, shall establish a reasonable time within which to complete the sodding.

2.04 Fences And Hedges. No fences, walls, hedges or barriers shall be permitted upon Lots or adjoining property lines except as follows:

- (a) All fences must be approved by Declarant, or if Declarant no longer owns any Lots in Creekside or has delegated such approval to the Association, the Board, in writing. No fence shall exceed six (6) feet in height.
- (b) Fences that are on rear or side yard lot lines abutting green belt or park areas must be decorative wrought iron or black vinyl clad chain link and can be no higher than four feet (4') in height above ground level. No solid fences or hedges are permitted along such lot lines. Six foot (6') high privacy fences and hedges are allowed in the rear and side yards of Lots abutting any such greenbelt, provided that they are setback at least twenty feet (20') from the Lot line abutting such greenbelt area and any such fences conform to the standards for six foot (6') high fences set forth above in this Section.
- (c) Walls, fences, or hedges located along the rear property lines and side property lines not abutting greenbelt or park areas shall not exceed six feet (6') in height above ground level.
- (d) No fences shall be permitted in any landscape easement area.
- (e) Notwithstanding anything in this Declaration to the contrary, no Lot Owner shall have the right to erect a fence within or across any easement area shown upon the Final Plats of any plats within Creekside without the prior consent of the City or utility company or companies for whose benefit such easement runs. Any fence erected within or across an easement area without such consent may be taken down by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Lot Owner to restore or repair such fence.
- (f) The fence fabric or fence screening material, shall be mounted on the exterior face of the fence posts or fence framing. No chain link fence, including a chain link fence around a dog run, shall be permitted unless it is black vinyl coated fence. All fences shall be kept in good repair and attractive appearance.
- (g) No fences shall be built forward of the center line of the house built on a lot other than front yard decorative fence. Except for permitted decorative fences, all fences shall be either wood, vinyl, decorative wrought iron, or black vinyl coated

chain link. All wood fences shall be natural in color, stained, or painted in soft, earth-tone colors so as to blend in with the terrain. All vinyl fences shall be either white or soft earth tone colors. Front yard decorative fences shall be either painted wood, metal, or vinyl, open "picket" type and a maximum of 42" high.

- (h) All fences around dog runs must be black vinyl clad chain link or as approved by Declarant, or if Declarant no longer owns any Lots in Creekside or has delegated such approval to the Association, approved by the Board, in writing. Animal runs, animal houses and animal shelters shall not be permitted unless they are located at the rear of the house or garage. All animal houses, animal runs and animal shelters shall be screened with landscaping so that they are not visible (i) to neighbors, (ii) from the street or (iii) from any green belt or park area. Any animal house or animal shelter shall have the same external appearance, color and roof material as the single-family home or town home situated on the Lot. No animal house, animal shelter or animal run shall exceed twenty (20) square feet in area and no animal run, animal shelter or animal house shall be located within twenty (20) feet of any side lot line of any Lot or within forty (40) feet of the rear lot line of any Lot.

2.05 Mailboxes. If required by the City of Ankeny, Iowa ordinances or the United States Postal Service regulations, Declarant shall install "cluster-style" mailboxes to serve groups of the Single Family Lots and the respective developers of any Town Home Lots shall install "cluster-style" mailboxes to serve groups of the Town Homes Lots, substantially in accordance with the requirements of such ordinances or regulations, which mailbox, upon installation, shall become the property of the United States Postal Service without any further deed or transaction. Thereafter, the United States Postal Service shall maintain, repair and replace said mailbox. If the United States Post Office fails to maintain, repair or replace said mailbox, then the owners of each Lot may erect individual mailboxes in the public right-of-way adjacent to their property (or across the street from the Lot on the side of the street on which mail delivery is made) such that the front of the mailbox is at least six inches (6") back of the curb and the mail box is installed in such a manner so as not to lean or tilt. All such mailboxes and mailbox poles serving the Units shall be of a uniform style and appearance adopted in writing by Declarant, or another equivalent mailbox or mailbox pole approved in writing by Declarant, or once the Declarant has relinquished control of the appointment of the Board, adopted or approved by the Board, which list of approved mailboxes and approved mailbox poles shall be kept on file with the Association and shall be uniformly applied. In the event there is any change in the approved style and appearance of a mailboxes or mailbox poles to be used in Creekside, then all existing mailboxes and mailbox poles may continue to be used as long as they are maintained in good condition and repair, but any replacements of such mailboxes or mailbox poles shall conform to the revised criteria for mailboxes and mailbox poles.

2.06 Playhouses, Utility Buildings and Other Accessory Structures. Playhouses, utility buildings, storage sheds or other similar structures shall be permitted; provided that the exterior and the roof of any such structure shall be constructed of the same material, have the same color and appearance as the residential dwelling on the same Lot and are located only in rear yards. Tennis courts shall be located in the rear yards only. No such improvements shall be located closer than twenty feet (20') from any lot line.

2.07 Driveways. No town home or single-family home shall be constructed, altered, or maintained on any Lot unless it has a driveway from a street running to the town home or single-family dwelling. All parking and driveway areas shall be hard surfaced, using a suitable thickness of Portland cement, or clay or concrete interlocking pavers installed in a manner suitable for vehicular traffic.

2.08 Sidewalks. The Developer shall construct an eight-foot (8.0') wide sidewalk along N. E. Delaware Avenue. At the time a building is built upon any Single Family or Town Home Lot, the Owner of such Lot shall be responsible for construction of the four-foot (4.0') wide public sidewalk along the portion of public street frontage(s) abutting said Lot and within any sidewalk easement areas on such Lot according to City specifications. Except for construction of the sidewalk along N. E. Delaware Avenue, Declarant shall have no obligation to a purchaser of a Lot to install sidewalks.

2.09 Garbage Cans and Equipment; Outside Storage; Holiday Displays. No trash receptacles, garbage cans or recycling bins shall be permitted to be located upon a Lot unless hidden by an attractive screen of suitable height or unless sunken to ground level in a hole lined with permanent cribbing, except that garbage cans, trash sacks, recycling bins, yard refuse bags and other materials for collection by an authorized refuse collector may be placed at the pickup area designated by the City or its authorized refuse collection company on the day before collection and may remain until the evening of the day of the scheduled collection of the same. Items such as compost containers, lawn or garden equipment, building materials, and other similar items shall be placed out of public view. Firewood shall not be stored on the front or side of a house. Stacked firewood in excess of 4' long by 3' high shall be adequately screened from view and must be stacked in the rear yard and be at least twenty feet (20.0') from any rear or side yard lot line. No material of any kind whatsoever may be stored in the front yard or side yard of a house (except that garden hoses may be stored in a side yard adjacent to an outside faucet if neatly coiled or contained on a hose reel), and no material of any kind shall be stored in a rear yard unless appropriately covered or screened from view by neighbors. No clotheslines shall be permitted. No clothing, rugs or other items shall be hung on or from any railing, landscaping or window. All repair of motorcycles, automobiles or other vehicles shall be done out of public view. No exterior holiday decorations shall be erected more than six (6) weeks prior to the holiday and all exterior holiday decorations shall be removed within three (3) weeks following the holiday. If the Owner of a Lot has not removed such holiday display within the foregoing time periods, and if the Owner of such Lot fails to remove such holiday display within fifteen (15) days after such Owner receives written notice given by certified mail, return receipt requested, or delivered in person, from the Association or from any Owner within five hundred (500) feet of such Lot, the Association or Owner of the applicable Lot within five hundred (500) feet of the offending Lot shall have the right and easement to enter upon the premises and remove and dispose of the holiday display at the expense of the Owner of the applicable Lot where such holiday display is located, and shall have the right of action against the Owner of the applicable Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Polk County, Iowa, until such amount, plus the reasonable costs, including attorney's fees of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

2.10 Tents and Trailers. No trailer, boat, camper, motor home, or truck rated larger than $\frac{3}{4}$ ton or other movable or temporary structure or enclosure shall be maintained or parked on any Lot or street within public view and no tent shall be erected or maintained on any Lot for more than a cumulative of thirty (30) days in any calendar year.

2.11 Temporary Structures; Mobile Homes. With the exception of temporary sales offices placed by Declarant or its agents, there shall be no occupancy of temporary structures or partially completed structures, no home or other building shall be moved onto any Lot from outside Creekside, and no mobile homes shall be permitted at any time.

2.12 Swimming Pools. Hot tubs and below-ground swimming pools are allowed provided that any hot tubs which are not below ground are skirted in wood or other materials approved, in writing, by Declarant, or once Declarant has relinquished control of the appointment of the Board, adopted or approved by the Board, which list of approved materials shall be kept on file with the Association and shall be uniformly applied. In the event there is a change in the approved materials for hot tubs, then all existing hot tubs that had previously approved material may continue so long as such materials are maintained in good condition and repair and all replacements of such material shall conform to the new criteria. All swimming pools and hot tubs shall be located only in rear yards and shall be screened by a privacy fence or hedge. Any outdoor hot tub must be located within ten (10) feet of the dwelling. No above-ground swimming pools are allowed. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or any other purpose.

2.13 Satellite Dishes. Satellite dishes or parabolic devices in excess of 22" in diameter used to receive television or other signals from satellites shall not be permitted. Declarant, or once Declarant has relinquished control of the appointment of the Board of Directors of the Association or delegated this responsibility to the Association, the Board of Directors of the Association, may increase or decrease the permitted size of satellite dishes or parabolic devices by a written notice of Declarant or resolution of the Board of Directors of the Association which shall be kept on file with the Association and shall be uniformly applied, except that any previously lawfully existing satellite dish or parabolic device that is in excess of the newly established maximum diameter for such devices may be maintained and repaired, but not replaced and any replacement satellite dish must conform to the new standards. The satellite dishes or parabolic devices shall be mounted on the rear elevation or the rear half of the side elevation only. In no event shall a satellite dish or parabolic device be mounted on the front elevation or the front half of a side elevation.

2.14 Towers and Antennas. No extension tower, projection tower, receiver or antennas of any kind shall be constructed or maintained on any Lot or on the exterior of any building on a Lot.

2.15 Livestock and Poultry Prohibited; Exterior Animal Houses. No animal, livestock, pigs or poultry of any kind shall be raised, bred or kept on a Lot except that dogs, cats and other small commonly accepted domestic pets may be kept so long as they are not kept, bred or maintained for commercial purposes or sale to the public. In no event, however, shall more than two dogs or cats, collectively, be maintained on any one Single-Family Lot or on any one Town Home Lot at any one time. All animals shall be tied, kept on a leash, fenced, confined within an underground electrical fence area which outside perimeters are at least ten (10) feet from all property lines, or kept in an animal run at all times. Animal runs, animal houses and

animal shelters shall not be permitted unless they are located at the rear of the house or garage. All animal houses, animal runs and animal shelters shall be screened with landscaping so that they are not visible (i) to neighbors, (ii) from the street or (iii) from any greenbelt or park areas. Animal runs must be approved by the Declarant, or once Declarant has relinquished control of the appointment of the Board, approved by the Board, in writing, including, but not limited to, the size, location and fencing. Any animal house or animal shelter shall have the same external appearance, color and roof material as the single-family home or town home situated on the Lot. No animal house, animal shelter or animal run shall exceed twenty (20) square feet in area and no animal run, animal shelter or animal house shall be located within twenty (20) feet of any side or rear lot line of any Lot.

2.16 Sales Office. Declarant reserves the right to maintain one or more Units as a model or a sales and display office for itself, for its marketing firm, and/or for builders of homes within its plats; display or post signs of any type or size which are a part of the development and marketing of Creekside and which may include references to the golf course and residential community; and to have agents and employees equipment and material on any Unit used as a model or sales office.

2.17 Utilities and Utility Meters. All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground. Utility meters shall be hidden architecturally or through the use of remote reading devices. No private wells or septic systems shall be permitted on any Lot. No window mounted heating or air-conditioning units are permitted.

2.18 Security Lighting. Security lighting for driveways, parking and other external areas shall be designed, located and directed in a fashion, which will avoid direct lighting onto adjoining Units or Lots. Other than security lighting, no light poles are permitted on any Unit or Lot, except for decorative lights in the back yards for pool lighting and except for any Association Lot on which an Association or town home association clubhouse is located.

2.19 Noxious Activities. No noxious or offensive activity, noise or odors shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance or nuisance, either temporarily or permanently.

2.20 Maintenance of Lot. The Owner of any Lot, whether vacant or improved, shall keep the Lot free of debris and shall keep the Lot mowed so that the grass or weeds do not exceed six (6) inches in height. Each Owner of a Lot shall cut such grass or weeds and/or remove such debris within fifteen (15) days after such Owner receives written notice given by certified mail, return receipt requested, or delivered in person, from the Association or from any Owner within five hundred (500) feet of such Lot. If the grass or weeds are not mowed within fifteen (15) days of receiving notice, the Association or Owner within five hundred (500) feet of the offending Lot shall have the right and easement to enter upon the premises and mow or cut the weeds or grass or remove the offending debris at the expense of the Owner of the Lot where such grass or weeds are not so mowed or such debris is located, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the

Recorder for Polk County, Iowa until such amount, plus the reasonable costs, including attorney's fees of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

2.21 Construction Clean Up and Maintenance. Each Owner shall confine all of its construction activities solely to its Lot, shall keep its construction site clean, shall prevent any damage to any of the Declarant Improvements constructed or to be constructed by Declarant or by anyone else, and shall prevent any dirt, construction debris or other material from its Lot from being washed, blown, thrown, dumped, deposited or otherwise getting into the storm sewers, any storm water detention ponds, any overland flowage ways, the public streets, the public sidewalks or trails or onto any other Lot in Creekside. Weekly clean up of trash and debris is required. During construction, the Owner shall install and maintain silt fences or equivalent erosion control on the downhill property line(s) from construction on its Lot. Owners are responsible for their contractors or subcontractors. Such Owner shall promptly repair any such damage and restore all such facilities, other Lots and public streets to their condition immediately prior to such damage, destruction or deposit of dirt, construction debris or other material. If an Owner fails to adequately keep its construction site or the street clean or fails to repair any such damage and restore such facilities, other Lots or public streets, and such failure continues for more than three (3) days after written notice from the Declarant in whose plat such Lot is located or the Association, then such Declarant or the Association shall have the right and easement to enter upon the premises and perform such clean up, repair or restoration at the expense of the Owner of the Lot where such construction site is not adequately maintained or whose construction activity caused dirt and debris to be deposited upon the Lots of others or the public streets, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum, or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Polk County, Iowa until such amount, plus the reasonable costs, including attorney's fees, of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

2.22 Requirement and Limitations with Respect to Public Easements Located upon an Owner's Lot. Easements for the installation and maintenance of sanitary sewers, public utilities, storm sewers, surface water flowage areas and drainage ponds and related facilities, water mains, public trails, golf course walkways and cart paths and pipe lines are reserved as shown on the recorded plats of Creekside Plat 1, any future plat, or any replat of any portion thereof. The Owner of any Lot in Creekside shall, at such Owner's expense, keep and preserve that portion of such easements within such Owner's property (except golf course walkways and cart paths), at all times, in good condition, and shall neither erect nor permit erection of any building or structure of any kind nor permit any growth of any kind within such easement area nor change the grade of any such easement area in any manner that might interfere in any way with the use, maintenance, repair, restoration or replacement of any of the utility services, drainage, or sidewalks, golf course walkways and cart paths located in said easement area, without the prior consent of the City, golf course owner or utility company or person or entity for whose benefit such easement runs. Any such building or structure erected, growth permitted, or change in grade made within an easement area without such consent may be removed or regraded by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Owner to restore, repair or replace such building, structure, growth or change in grade.

2.23 Signage. Signage within Creekside impacts the aesthetics of the neighborhood and property values. All signage shall meet the following requirements and restrictions:

(a) Declarant or the Association shall erect Creekside project identification signage within the signage easements at the entrances into the development.

(b) In connection with the development of any plat within Creekside, Declarant, or any other developer of a particular plat or town home development, may erect project signage, real estate signage, financing signage, contractor, supplier or subcontractor signage related to construction and financing of such plat development and sale of the developed within such plat; provided, however, all such signage, including, but not limited to, the size, location and materials, shall be subject to the written approval of Declarant or if Declarant no longer owns any Lots in Creekside or otherwise delegates this responsibility to the Association, the approval of the Board. The developer of a townhouse development shall be permitted to place on the town home development property a project identification monument sign; provided, however, such signage, including, but not limited to, the size, location and materials shall be subject to the written approval of Declarant.

(c) In connection with the construction of any residence or building upon any Lot in Creekside the Owner or person constructing such residence or building may erect project signage, financing signage, contractor, supplier or subcontractor signage, or real estate signage related to the construction and financing of such residence or building and the sale of such residence or sale or lease of such building; provided, however, none of the foregoing signs shall be larger than 30" wide by 24" high without the written approval of Declarant or if Declarant no longer owns any Lots in Creekside or otherwise delegates this responsibility to the Association, the written approval of the Board.

(d) Once a Unit is sold and occupied as a residential dwelling unit, signage on that Unit shall be limited to (i) address signage, (ii) owner identification signs, (iii) signs advertising real estate for sale ("For Sale Signs"), (iv) sign for garage sales ("Garage Sale Signs"), (v) signs for special event signs (such as birthdays, graduations, or anniversaries, hereafter "Event" Signs), (vi) signs for political campaigns and public voting matters ("Political Signs"), and (vii) other signs approved in writing by Declarant or, after Declarant delegates such function to the Association or no longer owns a Lot in Creekside, approved by the Board. For Sale Signs shall only be displayed while the applicable single-family residence or town home is for sale and must be removed the day following the closing of the sale. Garage Sale Signs and Event Signs shall only be displayed one day before the sale or event, during the sale or event and must be removed by the day following the sale or event. Political Signs shall only be displayed up to two weeks prior to date of the vote or election, the day of the vote or election, and must be removed by the day following the vote or election. Political Signs not related to an election shall only be displayed for a maximum of two weeks. Other signs permitted by Declarant or the Board shall only be displayed for such time as authorized by Declarant or the Board, as applicable. All of the foregoing described signs shall be limited to no more than a 30" wide by 24" high yard sign and shall be professionally constructed. No hand painted signs will be allowed. Except for address and owner identification signs, no signs shall be erected on any building elevation, erected so that it is visible through

window or glass openings or, except for vehicles with professionally made business signage on the vehicle, attached to vehicles parked within the neighborhood.

ARTICLE III

PRIVATE EASEMENTS

3.01 Signage, Entrance Landscaping Features and Irrigation Easements.

(a) Declarant hereby grants to the Association, for and on behalf of the Owners of all Lots within Creekside, an easement for the purpose of installing, maintaining, operating, repairing, replacing and removing signage, flags, other entrance features and landscaping in, on, over, and under the following easement areas:

(i) that portion of Outlot X, Country Cove Plat 1, once platted, at the Southwest corner of the intersection of N. E. 47th Street and N. E. Delaware Avenue, that is more particularly described as follows:

Commencing at the point on the East line of Outlot X, Creekside Plat 1, that is the Southeast end of Curve C-2 shown on the final plat of Creekside Plat 1; thence South along the East line of said Outlot X, a distance of 20.00 feet; thence Westerly perpendicular to the East line of Outlot X, a distance of 45.00 feet; thence Northerly parallel to the East line of Outlot X, a distance of 45.00 feet to a point on the North line of Outlot X; thence Easterly along the North line of Outlot X, a distance of 20.00 feet; thence Southeasterly along a curve concave to the Southwest, which curve has a radius of 25.00 feet and a Chord bearing S 45° 03'39" E, 35.32 feet, for an arc length of 39.22 feet to the Point of Beginning; and

(ii) that portion of Outlot Y, Country Cove Plat 2, as hereafter platted, at the Northwest corner of the intersection of N. E. 47th Street and N. E. Delaware Avenue, that is more particularly described as follows:

Commencing at the point on the East line of Outlot Y, Creekside Plat 2, that is the Northeast end of Curve C-1 shown on the final plat of Creekside Plat 2; thence North along the East line of said Outlot Y, a distance of 20.00 feet; thence Westerly perpendicular to the East line of Outlot Y, a distance of 45.00 feet; thence Southerly parallel to the East line of Outlot Y, a distance of 45.00 feet to a point on the South line of Outlot Y; thence Easterly along the South line of Outlot Y, a distance of 20.00 feet; thence Northeasterly along a curve concave to the Northwest, which curve has a radius of 25.00 feet and a Chord bearing S 44° 56' 21" W, 35.39 feet, for an arc length of 39.32 feet to the Point of Beginning; and

(iii) such other easement areas as are hereafter dedicated for such purposes and described in an amendment to this Declaration:

(b) These easements are subject to the following conditions:

(i) The signs shall be Creekside identification signs. All such signs shall conform to the ordinances, rules, and regulations of the City. Any electrical service for such signs shall be separately metered or otherwise separately billed by the public utility furnishing such electrical service and charged to the Association. Neither Declarant nor the Association is required to install or maintain signs in any or all of these sign easement areas.

(ii) Declarant shall install initial entrance features, if any, and landscaping and the Association may install any additional entrance features, signs and landscaping it desires and the Association shall maintain, operate and replace all signs, entrance features, landscaping within such signage and landscaping easement areas, including, but not limited to, paying for any electrical or water service for such operation and maintenance.

(iii) Neither Declarant nor the Association shall locate any such signage, entrance features, or landscaping in a manner to obstruct any vision triangles that overlap a portion of any such easement area, if any.

(iv) The Owner of the Lot upon which any such easement is located shall not make any modifications or improvements to any such easement area without the consent of the Association, which consent shall be in the Association's sole discretion.

(v) Any of the easement areas granted in this Section shall terminate (a) by written election of the Declarant, in recordable form, filed in the Office of the Recorder for Polk County, Iowa, provided that Declarant is then the Owner of the Lot on which such easement area lies, but if any sign is then located in such easement area, it shall be removed at the expense of Declarant, or (b) by the vote of the Board of the Association any time on or after January 1, 2016, and the filing of a written memorandum thereof in recordable form in the Office of the Recorder for Polk County, Iowa.

3.02 Street Tree Easements. Declarant and the Association shall each have the right, but not the obligation, to plant Street Trees within any street tree easement established in any plat within Creekside as shown on the final plats of the respective portions of Creekside. No landscaping other than Street Trees may be planted within any street tree easement without the written approval of Declarant, or if Declarant no longer owns any Lots in Creekside or otherwise delegates this responsibility to the Association, the written approval of the Board. The Owner of each Lot shall be obligated for the maintenance of all trees located within the street tree easement area on such Owner's Lot and in the event any such trees die or otherwise are in a condition that would necessitate any of such trees being replaced such Owner shall replace any such tree at its sole cost. If an Owner fails to maintain or, if applicable, replace any such trees as provided above, the Declarant or the Association shall have the right to enter upon such Lot to maintain or, if applicable, replace any such trees at the applicable Owner's expense and shall have a right of action against the Owner of such Lot for the costs thereof, plus reasonable costs, including attorneys' fees of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien on such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof as filed in the Office of the Recorder of Warren County, Iowa until such

amount, plus reasonable costs, including attorneys' fees, of collecting such amount and the costs of filing of such lien, incurred by the lien holder is paid.

3.03 Landscaping Easements.

(a) Declarant hereby grants to the Association, for and on behalf of all Owners of Lots within Creekside, an easement for the purpose of planting landscaping, installing landscaping features and irrigation systems and replacing, repairing and maintaining such landscaping, landscaping features and irrigation systems in, on, over and under:

(i) The following described real estate:

The Easterly 45.00 feet and the Southerly 40.00 feet of Outlot "X", Creekside Plat 1, an Official Plat, City of Ankeny, Polk County, Iowa, and

The Easterly 45.00 feet of Outlot "Y", Creekside Plat 2, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa, as hereafter platted; and

(ii) Such other easement areas as are dedicated for such purposes and described in an amendment to this Declaration.

(b) These easement areas shall be subject to the following conditions:

(i) The purpose of these easement areas are to provide a landscaped setback from N. E. Delaware Avenue, a major arterial street, and to provide a transition between town home uses within Creekside and adjacent single family uses on property adjacent to the Creekside development.

(ii) Declarant and the Association shall each have the right, but not the obligation, to plant landscaping and installing landscaping features in such easement areas.

(iii) The developer of town homes upon said Outlot X, Creekside Plat 1, and the town home owners association governing said town homes built upon said Outlot X, Creekside Plat 1, shall have the right to plat additional landscaping and landscaping features and to install irrigation lines within and upon the portion of said landscape easement areas upon said Outlot X, except they shall not have the right to modify any portion of the signage, landscaping, entrance feature and irrigation easement described in Section 3.01(a)(i) without the consent of the Declarant, or once the Declarant no longer owns any Lots in Creekside or has delegated the duty to make such decision to the Association, the Association, which consent shall be in the Declarant's or Association's sole discretion.

(iv) The developer of town homes upon said Outlot Y, Creekside Plat 2, and the town home owners association governing said town homes built upon said

Outlot Y, Creekside Plat 2, shall have the right to plat additional landscaping and landscaping features and to install irrigation lines within and upon the portion of said landscape easement areas upon said Outlot Y, except they shall not have the right to modify any portion of the signage, landscaping, entrance feature and irrigation easement described in Section 3.01(a)(ii) without the consent of the Declarant, or once the Declarant no longer owns any Lots in Creekside or has delegated the duty to make such decision to the Association, the Association, which consent shall be in the Declarant's or Association's sole discretion.

- (v) All easement areas established pursuant to this Section shall be maintained by the Association at the Association's cost and expense, until such time as Outlot X, Creekside Plat 1, is sold for development of town homes, after which time, the purchaser of said Outlot X, or the town home association created for the town homes developed upon said Outlot X, shall maintain the portion of these easement areas located on said Outlot X and until such time as Outlot Y, Creekside Plat 2, is sold for development of town homes, after which time, the purchaser of said Outlot Y, or the town home association created for the town homes developed upon said Outlot Y, shall maintain the portion of these easement areas located on said Outlot Y. Such maintenance shall include replacement of any diseased or damaged trees or other landscape materials to the extent required to satisfy the Creekside PUD requirements.
- (vi) No decks, buildings or driveways may be built in these landscape easement areas.

3.04 Surface Water Flowage Easements. The topography of Creekside is such that surface water may flow from certain Lots onto other Lots. In regard to all matters concerning surface water, each Lot shall be subject to such easements as may exist for the flowage of surface water under the laws of the State of Iowa, as may be in effect from time to time, and all Owners shall have such rights and obligations with respect thereto as may be provided by such law.

3.05 Greenbelt and Park Maintenance Easements. Declarant intends to dedicate the greenbelt and park areas substantially as shown on the Creekside PUD Master plan as greenbelt and park area to the City for greenbelts and parks. In the event that the City does not undertake maintenance or repair of said greenbelt or park areas, there is hereby reserved to the Association, the right, but not the obligation to undertake such maintenance or repair. In addition, if the City will permit the Association to enhance such paved pedestrian and bike trails or any portion of such greenbelt or park areas granted to the City within Creekside, for example by erecting benches or landscaping adjacent to the trail, the Association, may, but is not required to, undertake such actions.

3.06 All of These Easements Are Subject to Concurrent Public Utility Easements. All of the easements granted in this Article III are subject to the following concurrent easements granted in part or all of these respective easement areas: (a) any sanitary sewer easements, storm sewer and/or surface water flowage easements, or trail easements granted to the City, and (b) any public utility easements granted to the electric company or companies providing electrical service

within the City, to the natural gas company or companies providing natural gas services within the City, to the telephone company or companies providing telephone service within the City, to the cable television company or companies providing cable television service within the City, and to the data transmission company or companies providing data transmission services within the City.

3.07 Construction of Certain Improvements and Amenities to Creekside by Declarant. The Declarant shall promptly commence and diligently pursue to completion, at their expense, within the plats developed by Declarant, the construction, if applicable, of private storm water detention and flowage facilities and related facilities, the installation of signs, other entrance features and landscaping in the sign easement areas, and the installation of landscaping in the island boulevard medians, if any, and in any future island boulevard medians when constructed, and in the island medians in the cul-de-sac circles and in any future cul-de-sac circles, if any, constructed in any future plat or any replat of any portion of Creekside and in greenbelt areas, if any, included in any plat, and associated irrigation lines and electrical and water services as may be required or appropriate, all substantially as shown on the Site Construction Plans, and such other additional improvements, if any, in such areas as Declarant desires. Upon completion of such work, Declarant shall install any other silt structures or other erosion control facilities required by law by reason of Declarant's work. Declarant may elect, within its discretion, to construct a clubhouse and/or recreational facilities, including, but not limited to, a pool and a sports court for use by the members of the Association and their families, guests and invitees; provided, however, Declarant shall have no obligation to construct a clubhouse or other recreational facilities. Collectively such work performed or to be performed by Declarant is referred to herein as the "Declarant's Improvements". Declarant shall perform all such construction of Declarant's Improvements in a good and workmanlike manner, with first class materials, and in accordance with all applicable laws, rules, ordinances, codes and regulations.

In the event any mechanic's or materialman's lien is filed against any Lot not then owned by Declarant as a result of the construction of Declarant Improvements by Declarant, Declarant shall, within thirty (30) days after such lien is filed, either pay the same and have it discharged of record or post such bond or other security as shall be required by law to obtain the release and discharge of such lien as against such Lot.

Upon completion of the Declarant Improvements, the Association shall operate, maintain, repair, restore and replace all such Declarant Improvements. Declarant shall execute such documents, including, but not limited to, bills of sale to convey title to any of the Declarant Improvements, but not the land upon which they lie, to the Association as may be necessary or desirable to enable the Association to fulfill the duties and obligations delegated to the Association by this Declaration.

3.08 Conveyance of Lots Prior to Completion of Declarant's Work and Coordination of Construction of Improvements to Such Lots. Declarant may convey any Lot in its plats in Creekside prior to completion of the Declarant Improvements to be made to Creekside pursuant to Section 3.09 of this Declaration. In such event, Declarant shall have an easement to go on such Lot to the extent necessary to complete construction of the Declarant Improvements.

Declarant and the Owner of any such Lot conveyed prior to substantial completion of such Declarant Improvements to Creekside shall use all reasonable efforts to cooperate and coordinate their respective construction work to the extent reasonably practicable so that each may undertake

construction at the same time; provided, however, the Owner of such Lot may not undertake any construction work that materially interferes with the ability of Declarant to complete the Declarant Improvements, that materially delays Declarant in the completion of the Declarant Improvements, or that increases the cost to Declarant of constructing the Declarant's Improvements.

3.09 Maintenance of the Sidewalk and Parking Areas along N. E. Delaware Avenue. The Association shall maintain and repair the sidewalk along N. E. Delaware Avenue, including snow removal, and shall maintain the parking in the N. E. Delaware Avenue right-of-way abutting Creekside, including mowing.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

4.01 Membership. Every Owner of a Unit in Creekside shall be a member of the Association. A person who is not an Owner of a Unit in Creekside may not become a member in the Association and will not be allowed access or use of any Declarant Improvements, other than as a guest or invitee of a member (which shall be subject to the Articles of Incorporation, Bylaws of the Association, and rules and regulations established by the Association from time to time), unless and until such person becomes the Owner of a Unit in Creekside and becomes a member of the Association.

4.02 Voting Rights. The voting rights of members and the reserved rights of the Declarant are specified in the Articles of Incorporation and Bylaws of the Association.

4.03 Authority and Obligations. The Association through its Board of Directors, shall have the right, power and authority to:

- (a) provide for the enforcement of this Declaration;
- (b) borrow money and own, mortgage, pledge and convey real property and personal property;
- (c) provide for any operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of the Declarant Improvements to Creekside or any improvements hereafter made by the Association;
- (d) provide for the installation, operation and maintenance of project signage and entrance features;
- (e) provide for the installation, maintenance and care of landscaping on the corners of the intersections, in the islands, in the boulevard entrances, and in any circles of any future cul-de-sac streets within Creekside;
- (f) provide for the planting of Street Trees in street tree easements;
- (g) provide for the installation, operation and maintenance of landscaping, landscaping features and other improvements within landscaping easements;

(h) provide for the installation, maintenance and repair of all greenbelt areas in Creekside and of bike and pedestrian trails within and abutting Creekside, to the extent not done by the City of Ankeny, Iowa as provided in Section 3.05, including, if any, but not limited to snow removal from the bike and pedestrian trails;

(i) provide for the maintenance and repair of the sidewalk along N. E. Delaware Avenue abutting Creekside and for maintenance of the parking area within the N. E. Delaware right-of-way abutting Creekside;

(j) make additional common improvements for the benefit of Creekside;

(k) in its discretion, perform services on behalf of the Owners of one or more of the Lots within Creekside;

(l) hire accountants, architects, contractors, lawyers, managers, employees, and such other persons as necessary or desirable to carry out its duties;

(m) purchase such insurance as may be reasonable, including, but not limited to, general liability insurance, property and casualty insurance and officers and directors coverages;

(n) levy, collect, and have jurisdiction, control and possession of assessments as hereinafter provided; to enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration;

(o) establish rules and regulations for the use of Association property and easement areas which are established for the benefit of the members of the Association by members of the Association and their guests and invitees, and for the rendering of decisions delegate to it by this Declaration and the enforcement of such decisions or this Declaration, which may include remedies and the imposition of reasonable fines for the violation of such rules and regulations or provisions of the Declaration;

(p) otherwise establish such procedures and policies as may be necessary or deemed desirable to provide for the general welfare of the Owners and Occupants of Creekside, in accordance with the spirit and letter of this Declaration, including the power to make variances in this Declaration, but only in accord with the intent and purpose of Section 1.01 above; and

(q) do such other things as are reasonable or necessary to carry out its obligations hereunder or under any agreement with any Owner of any Unit.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

5.01 Creation of Lien and Personal Obligation. Declarant hereby covenants, and each Owner of a Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association assessments as provided in this Declaration. The assessments levied by the Association and any other charges against the Owner of a Unit set forth elsewhere in this Declaration, together with interest, costs and reasonable attorney's fees shall be a charge on the Unit of such Owner and shall be a continuing

lien upon such Unit against which each such assessment or charge is made senior to all liens except the first mortgage of record, any ad valorem taxes, and any special assessments levied by the City. Such assessment or charge, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of the Unit at the time when the assessment or charge fell due. The personal obligation for delinquent assessment or charge shall not pass to said Owner's successor in title unless expressly assumed by them.

5.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of carrying out the general duties and powers of the Association, including, but not limited to operation, maintenance, repair, reconstruction, restoration, replacement, or alteration of the Declarant Improvements to Creekside or the improvements hereafter constructed by the Association as provided in this Declaration, insurance coverage of the Association and its property, any legal or other costs of enforcement of this Declaration, and for such reasonable reserves as the Board deems necessary. In making such assessments, the amount to be levied shall be equal and limited to the actual cost to the Association of providing those functions and services set forth in this Declaration.

5.03 Rate of Assessment. The assessments levied upon and against Units within Creekside and the Owners thereof, shall be a share of the total amount of each assessment prorated equally among such Units within Creekside and the Owners thereof as of the beginning of the period for which such assessment applies. The assessments levied upon and against a Lot, and the Owners thereof, shall be a share of the total amount of each assessment prorated to such Lot and the Owner thereof as follows:

- (a) In the event that Outlot X, Creekside Plat 1, is sold for development as a town home project, then from and after the date of such sale, the Outlot X, Creekside Plat 1, shall bear 14.16% of any assessment made by the Association. The statement for such assessment shall be sent to the owner of Outlot X, Creekside Plat 1, or once a town home association has been formed, to said town home association. The town home association may allocate the assessment in any manner that it chooses, but if it does not specify an allocation, then each town home unit in Outlot X shall be liable for the portion of such assessment equal to 1 divided by the number of planned town home units as shown on the master plan for development of town homes on Outlot X shown on the master plan for such development approved by the City of Ankeny, Iowa, until all units are constructed and then shall be equal to 1 divided by the total number of town home units actually constructed.
- (b) In the event that Outlot Y, Creekside Plat 2, is sold for development as a town home project, then from and after the date of such sale, the Outlot Y, Creekside Plat 2, shall bear 12.87% of any assessment made by the Association. The statement for such assessment shall be sent to the owner of Outlot Y, Creekside Plat 2, or once a town home association has been formed, to said town home association. The town home association may allocate the assessment in any manner that it chooses, but if it does not specify an allocation, then each town home unit in Outlot Y shall be liable for the portion of such assessment equal to 1 divided by the number of planned town home units as shown on the master plan for development of town homes on Outlot Y shown on the master plan for such development approved by the City of Ankeny, Iowa, until all units are constructed and then shall be equal to 1 divided by the total number of town home units actually constructed.

- (c) The balance of any assessment made by the Association shall be borne by the owners of the Single Family Lots in an amount equal to 1 divided by the maximum number of Single Family Lots shown on the approved master plan for the Creekside PUD at the time of such assessment, which number is initially 175 Single Family Lots, as said master plan for the Creekside PUD may be amended from time to time, and once all Lots are developed, shall be divided by the amount equal to 1 divided by the total number of Single Family Lots actually constructed in the Creekside development.
- (d) If either said Outlot X, Creekside Plat 1, or said Outlot Y, Creekside Plat 2, is developed, in whole or in part, with Single Family Lots, then:
 - a. If, such change is on Outlot X, Creekside Plat 1, the percentage of any assessment allocated to town homes on said Outlot X, Creekside Plat 1, shall be reduced from 14.16% to the percent equal to the area in acres sold for town home development divided by 71.89 acres;
 - b. If, such change is on Outlot Y, Creekside Plat 2, the percentage of any assessment allocated to town homes on said Outlot 2, Creekside Plat 1, shall be reduced from 12.87% to the percent equal to the area in acres sold for town home development divided by 71.89 acres; and
 - c. Any Single Family Lots developed thereon shall be allocated a portion of such assessment in the manner described above for allocation of assessments to Single Family Lots, provided that the number of Single Family Lots developed thereon shall be added to the total possible number of Single Family Lots in the denominator to determine the allocable share of such assessment for each Single Family Lot in Creekside.

5.04 Procedures. All assessments shall be made in the manner and subject to the following procedure, to wit:

- (a) Notice of all assessments may be given by mail addressed to the last known or usual post office address of the holder of legal title of the assessable property and deposited in the United States mail with postage prepaid, or may be given by posting a brief notice of the assessment upon the assessable property itself.
- (b) Every assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided, unless the assessment by its own terms provides for payment in monthly, quarterly or semi-annual installments, in which case each such payment shall be due as stated in such notice. From and after the date when said payment is due, it shall bear interest at lesser of (i) the rate of twelve percent (12%) per annum, or (ii) the maximum rate allowed by law, until paid and such payment and interest shall constitute a lien upon the assessable property and said lien shall continue in full force and effect until the assessment is fully paid. The Board may also impose a late charge in such amount as it shall establish from time to time and set forth in any notice of assessment to defray the Association's administrative costs associated with and collecting delinquent assessment payments. At any time after the passage of the resolution levying an

assessment and its entry in its minutes, the Board may, in addition, execute and acknowledge with respect to any assessable property and cause same to be recorded in the Recorder's Office for Warren County, Iowa, and the Board may, upon payment, cancel or release any assessable property from the liability of assessment (as shown by recorded instrument) by executing, acknowledging and recording (at expense of the Owner of the property affected) a release of such assessment with respect to any assessable property affected, and the Board shall cause to be noted from time to time in the minutes of their proceedings, the payment made on account of assessments. Notwithstanding any other provision herein, the Association may bring an action at law against the Owner personally obligated to pay such assessment, or foreclose the lien against the assessable property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment, the cost of preparation, and filing the petition in such action including reasonable attorney's fees. No Owner of assessable property may waive or otherwise be relieved of liability for the assessments provided for herein by non-use of the common areas or facilities or abandonment of its assessable property.

- (c) The term "assessable property" shall mean all Units within Creekside whether or not such Units have a single-family home or town home constructed on it and whether or not such Unit is vacant or occupied.

ARTICLE VI

GENERAL PROVISIONS; DURATION OF DECLARATION

6.01 Specific Enforcement of Restrictions. Declarant and each Owner of a Lot in Creekside which is subject to the terms and conditions of this Declaration shall have the right to enforce this Declaration and each and every covenant, condition, easement, provision, restriction and term of this Declaration and in the event of the breach of any such covenant, condition, easement, provisions, restriction or term contained in this Declaration, Declarant and each such Owner shall have the right to exercise all rights and remedies available at law or in equity. All Owners of Units within the Creekside covenant and agree, by acceptance of a deed to such Unit, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the breach of the restrictions and covenants contained in this Declaration and that this Declaration may be specifically enforced by Declarant or the Board. All remedies provided for in this Declaration or which are otherwise available at law or in equity shall be cumulative. Neither Declarant nor any Owner of a Lot that is subject to the terms of this Declaration shall have any liability to any person or entity for any failure to enforce any provision of this Declaration.

6.02 Breaches Deemed to be a Nuisance. Every act or omission that violates, in whole or in part, any of the covenants, conditions, easements, provisions, restrictions and terms contained in this Declaration is hereby declared to be a nuisance, and every remedy allowed by law or equity therefore shall be applicable against the party who so violates this Declaration and may be exercised by Declarant or by any Owner of a Lot which is subject to this Declaration.

6.03 Attorneys Fees. In the event, in the reasonable opinion of the Board or Declarant, it shall be necessary to secure the services of an attorney to enforce the provisions of

this Declaration, then the fee of such attorney, and all other costs in connection with the enforcement of this Declaration, including, but not limited to, the costs of obtaining and/or continuing an abstract of title to the Lot in question, the costs of any contemplated or actual legal proceedings, and the costs of preparation and presentation of any evidence in such connection shall be the obligation of the Owner of the Lot which is the subject of such enforcement action, unless such Owner is found not to have violated any provision of this Declaration, and provided such Owner shall not be obligated for any such attorneys fees and costs incurred by such Declarant or the Association after such Owner offers to settle such matter for an amount equal to or greater than that finally approved by a court of competent jurisdiction and/or by taking or forbearing from the requested action, as appropriate. If such costs and attorneys' fees are not paid within ten (10) days from the date of written notice thereof by the Board or such Declarant to the Owner of such Lot, said fee and costs shall thereupon constitute a lien against the property in question, the same as the lien for the general assessment pursuant to the provisions of Article V hereof, and all interest and remedies applicable to such lien shall apply thereto.

6.04 Inspection. Declarant or representatives of the Association who are authorized by the Board may, from time to time, at any reasonable hour or hours, enter and inspect any Lot or Unit subject to this Declaration to ascertain compliance therewith.

6.05 Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner of a Lot which is subject to this Declaration to enforce any condition, covenant, easement, provision, restriction, reservation or term of this Declaration in any one instance shall not be deemed a waiver of the right to do so thereafter nor shall it be deemed to constitute a waiver of the right to enforce any other condition, covenant, easement, provision, restriction, reservation or term of this Declaration.

6.06 Rights of Third Parties. Nothing in this Declaration shall be construed so as to impose or create any duty or obligation on either Declarant, the Association or any Owner of any Lot which is subject to this Declaration to the benefit of the general public, third parties, or invitees, guests, employees, agents, principals or licenses of any Owner or Occupant of any Lot which is subject to this Declaration.

6.07 Liability. Neither the Declarant nor the Association, nor their respective members, shareholders, directors, managers, officers, employees, agents and representatives shall have any liability to or for damages of any sort to any Owner or Occupant or to any other person or entity for any exercise or failure to exercise any right or duty or obligation, if any, of Declarant or Association hereunder, or in any manner arising herefrom, or for the granting of approval or withholding of approval, required or permitted under the terms of this Declaration, except as in Declarant's or the Association's capacity as the Owner of any Lot that is subject to this Declaration. Provided, however, any Owner of a Lot which is subject to this Declaration may exercise any rights such Owner may have against the Declarant or Association or otherwise seek to enforce the conditions, covenants, easements, provisions, restrictions, reservations and terms of this Declaration against such Declarant or the Association, by an action in equity for specific performance or injunctive relief, to which Declarant shall be subject. These remedies of specific performance and injunctive relief, shall be the only remedies available against Declarant or the Association (except as in Declarant's or the Association's capacity as the Owner of any Lot that is subject to this Declaration) for any exercise or failure to exercise any right, duty or obligation, if any, of Declarant or Association hereunder, or in any manner arising herefrom, or for the granting of approval or withholding of approval required or permitted under the terms of

this Declaration, all other remedies being expressly waived by acceptance of a deed to any Lot within Creekside.

6.08 Condemnation. In the event of any partial taking by a governmental body or other entity that has the power of eminent domain that involves a taking of all or part of improvements to be constructed by Declarant, the Owners of each Lot agree, by acceptance of a deed to such Lot, whether or not it is so expressly stated in such deed, that the Association shall have and shall be deemed to have an interest in proceeds to be paid for such taking in the amount necessary to repair, restore or replace the portion of such improvements so taken as near as practicable to a functional whole to serve the same purpose after such taking as the facility so taken served prior to such taking. To the extent that the Association does not receive its own award or payment from the condemning authority or the award or payment received is inadequate to cover the cost of repair, restoration or replacement of such improvements, the Owners of each Lot receiving such award or payment shall pay to the Association pro rata from their awards or payments the amount necessary for the Association to complete such repair, restoration or replacement of such improvements. In the event that the awards or payments received from such condemnation are inadequate to pay the entire cost to complete such repair, restoration or replacement of such improvements, then the remaining cost shall be assessed against all Owners of Units in Creekside in proportion to their respective assessment shares. All amounts due to the Association from the Owners of any Unit shall constitute a lien against the property in question, the same as the lien for the general assessment pursuant to the provisions of Article V hereof, and all interest and remedies applicable to such lien shall apply thereto.

6.09 Estoppel Certificates. The Association shall issue to any Owner of a Unit or to any mortgagee of, or purchaser from, any Owner of a Unit, an Affidavit Explanatory of Title or Estoppel Certificate in such form as may reasonably be requested stating any or all of the following information:

- (a) whether the Association knows of any default under this Declaration by the Owner of such Unit, and if there are known defaults, specifying the nature thereof;
- (b) the nature of any amounts owed to the Association by any Owner about whose Unit the request is made, and the nature of any amounts owed by the Association to the Owner about whose Unit the request is made;
- (c) the applicable share of any assessments for which the Owner about whose Unit the request is made is liable;
- (d) the nature and amount of any budget or approved expenditures that have been adopted by the Association;
- (e) whether this Declaration has been amended, and if so, the nature of any such amendment;
- (f) whether the Association claims any offsets or defenses to any amounts owed by it under this Declaration to the Owner of such Unit, and if so, the nature of such offsets or defenses; and

- (g) whether this Declaration is in full force and effect, or if it is claimed it is not in full force and effect, specifying the portions of, or manner in which, this Declaration is not in full force and effect.

The Association shall be entitled to establish a reasonable fee for the provision of a certificate in accordance with the foregoing provisions and may condition the delivery of such certificate upon the payment of the applicable fee.

6.10 Covenants Binding and Running with the Land. Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of Declarant, the Association, and the Owners of each Lot in Creekside, and their successors and assigns and all parties and persons claiming under any of them, and shall be deemed covenants that run with the land, and shall continue for the applicable periods specified in this Declaration.

It is the intent that, notwithstanding anything in the Code of Iowa to the contrary, all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be covenants running with the land for the full period specified in this Declaration without further action by either Declarant, the Association, or any Owner of any Lot in Creekside. However, in the event that Section 614.24 of the Code of Iowa, as the same may be amended or replaced, may require that a verified claim be filed in the Office of the Recorder for Polk County, Iowa prior to the twenty-first anniversary of the date of this Declaration or the twenty-first anniversary of the last filing of such verified claim in order to continue all or some of the covenants of this Declaration, including, but not limited to, any covenant, term, provision or restriction that is or may be considered a use restriction, reversion or right of reverter, in effect throughout the applicable periods specified in this Declaration, then:

- (a) the Association, or the Owners of the Lots acting jointly or severally, shall file all verified claims necessary to keep all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration;
- (b) a verified claim filed by the Association or any Owner of a Lot in Creekside shall be valid and binding upon the Association and all the then Owners of Units in Creekside, (the "Interested Parties"), and their successors and assigns, with the same effect as if executed by all such persons, and in order to facilitate filing of any verified claim required to so continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration in full force and effect, the Association and each Owner of a Lot is hereby irrevocably appointed the attorney-in-fact for all of the other Interested Parties for the purpose of filing any such verified claim;
- (c) that in the event of any defect in the verified claim or its filing and recording in the Office of the Recorder for Polk County, Iowa, no interested person or anyone claiming, by, through or under an interested person shall be entitled to assert such defect as a basis to avoid its duties and obligations under this Declaration unless, if such defect is in a claim prepared by any interested party, such defect is not corrected within thirty (30) days after notice of such defect to all interested parties;

(d) that in the event an interested party fails or refuses to cooperate to file any verified claim required to continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration in full force and effect, such interested party hereby waives and shall be deemed to have waived the right to, and be estopped to, assert any failure to file such verified claim as a defense to its duties and obligations under this Declaration; and

(e) that each interested party by acquisition of its interest in Creekside or under this Declaration, whether or not expressly provided in any instrument creating such interest, hereby waives its right to assert the failure to file any verified claim required by the Code of Iowa as a legal basis to avoid any duty or obligation upon it and its respective portion of Creekside throughout the applicable period specified in this Declaration.

6.11 Duration. The easements granted in or pursuant to Article III of this Declaration or granted in any other Section of this Declaration, any other provisions of this Declaration expressly incorporated in Article III or such other Section of this Declaration to the extent applicable to such easements, and any other covenants, indentures, restrictions and reservations of this Declaration that are reasonably or necessarily incidental to the benefit or burden of such easement rights, including any rights of assessment or for liens for the payment of costs associated therewith, shall continue in perpetuity, unless sooner modified or terminated as provided in Section 6.12 of this Declaration.

Except as provided in the preceding paragraph of this Section, the covenants, indentures, restrictions and reservations in this Declaration shall be for an initial term of twenty (20) years, and shall automatically renew for successive terms of ten (10) years each, unless sooner modified or terminated as provided in Section 6.12 of this Declaration.

6.12 Amendment of This Declaration. This Declaration may not be altered, amended, modified, supplemented or terminated, in whole or in part, except in writing and as provided in this Section. Declarant, for so long as such Declarant retains ownership of any Lot within Creekside which has no building located thereon, and after Declarant has no interest in Creekside (other than as an Owner of a developed lot), the Owners possessing sixty percent (60%) or more of the Association voting rights (on issues other than the election and removal of directors) may, by written declaration signed and acknowledged by them and recorded in the Office of the Recorder for Polk County, Iowa, alter, amend, supplement, add to, or terminate such conditions, covenants, indentures, restrictions and reservations of this Declaration, provided, however, that such alteration, supplement, addition, amendment or termination shall insure provisions for the continued operation, maintenance, repair, restoration and replacement of improvements to Creekside constructed by Declarant, and except that no such alteration, amendment, supplement, addition, or termination may change the manner of assessment of any Owner except in a manner applied uniformly to all Owners. No such alteration, amendment, modification, or change shall reduce or modify the rights or obligations granted to, or imposed upon, the Association with respect to the continued operation, maintenance, repair, restoration and replacement of the Declarant Improvements to Creekside and the power to levy assessments therefor or to eliminate the requirement that there be an Association unless some other person or entity be substituted for the Association and succeed to all of its rights and duties under this Declaration. It is expressly understood that no such alteration, amendment, supplement, addition, or termination shall require the consent of any Occupant (other than an Owner, and

then for such Owner-Occupant only to the extent provided elsewhere in this Section) or any mortgagee of any Lot, or from the City.

6.13 No Public Dedication. Nothing contained in the Declaration shall be deemed to be a gift or dedication of any portion of Creekside to general public, or for the general public, or for any public purpose whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the benefit of the Owners of the Lots in Creekside and the purposes herein expressed.

6.14 Release Upon Sale. Subject to the provisions of this Section, if an Owner of a Lot in Creekside sells, transfers, or assigns its Lot (other than as security for a loan), then it shall be released from its future obligations under this Declaration. It shall be a condition precedent to such release and discharge that any and all amounts that shall then be due and payable by such Owner shall have been paid, and that such Owner shall give written notice to the Association of any such sale, transfer, conveyance, or assignment concurrently with the filing for record of the instrument effecting the same.

Notwithstanding anything in this Declaration to the contrary, it is expressly understood and agreed that any first mortgagee who shall have acquired title to any Lot, or portion thereof, through foreclosure or deed in lieu of foreclosure, shall not be personally liable for any obligations under this Declaration that arose with respect to the obligations of the Owner of such Lot prior to the date such mortgagee acquired title thereto; provided, however, that any existing lien or right to a lien against such Lot allowed by this Declaration or as a result of the enforcement of this Declaration with respect to matters occurring before such mortgagee so acquired title thereto and shall continue and remain in full force and effect.

6.15 Severability. In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

6.16 Time of Essence. Time is of the essence with respect to the performance of each of the conditions, covenants, terms and provisions of this Declaration.

6.17 Governing Law. This Declaration shall be construed in accordance with the laws of the State of Iowa.

6.18 Captions. The captions of the Articles, Sections and Subsections of this Declaration are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

[Signatures appear on the next page.]

IN WITNESS WHEREOF, Declarant have duly executed this Declaration as of the date and year first above written.

HUBBELL REALTY COMPANY.

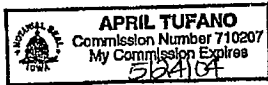
By: Hubbell Realty Company, Manager

By: [Signature]
Steven L. Niebuhr, Senior Vice President

By: [Signature]
R. Michael Hayes, Secretary

STATE OF IOWA)
)SS.
COUNTY OF DALLAS)

On this 27th day of April, 2004, before me a Notary Public in and for the State of Iowa, personally appeared Steven L. Niebuhr and R. Michael Hayes, to me personally known, who being by me duly sworn did state that they are Senior Vice President and Secretary, respectively, of **Hubbell Realty Company**, an Iowa corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that said Steven L. Niebuhr and R. Michael Hayes, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



[Signature]
Notary Public in and for the State of Iowa

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