

Prepared by:

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
NORTHRIDGE HEIGHTS FIFTH ADDITION  
AMES, STORY COUNTY, IOWA**

This Declaration of Covenants, Conditions, Easements and Restrictions for Northridge Heights Fifth Addition, Ames, Story County, Iowa, (the “**Declaration**”), is made this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by **UTHE DEVELOPMENT COMPANY, L.L.C.**, an Iowa limited liability company (“**Declarant**”).

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of Northridge Heights Fifth Addition, Ames, Story County, Iowa; and

**WHEREAS**, Declarant desires to develop this addition as a town home community; and

**WHEREAS**, Declarant desires to establish the covenants, conditions, easements and restrictions governing Northridge Heights Fifth Addition for the benefit of the Owners of Lots in the Addition and to provide for the Association to operate and maintain Common Areas and Common Elements of the Addition;

**NOW, THEREFORE**, Declarant hereby publishes and declares that Northridge Heights Fifth Addition 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 the Addition, 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 thereof, 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 covenants, conditions and restrictions to ensure the proper use and appropriate development of Improvements to each Lot in the Addition. It is further the intent to provide for the Association to perform the operation, maintenance, repair, replacement, alterations, improvement or modification of the Common Areas and Declarant Improvements.

**1.02 Definitions.**

- (a) **“Addition”** shall mean Northridge Heights Fifth Addition, Ames, Story County, Iowa.
- (b) **“Association”** shall mean Chilton Crossing Town Home Association, a nonprofit corporation organized pursuant to Chapter 504A of the Code of Iowa, and its successors and assigns.
- (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 Ames, Story County, Iowa.
- (e) **“Common Area”** shall mean a Lot which is owned by (i) the Association for the use and benefit of the members of Association and on which, either by recorded restrictions, recorded plats or zoning, no 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 Town Home may be constructed.
- (f) **“Common Element”** shall mean those items installed and managed by the Declarant and the Association, including, but not limited to, the sprinkling systems, and other Declarant Improvements.
- (g) **“Declarant”** shall mean Uthe Development Company, L.L.C., an Iowa limited liability company, and its successors and assigns.
- (h) **“Declarant Improvements”** shall mean those Improvements Declarant is to construct within the Addition, including, but not limited to, irrigation system for common area, signage, landscaping on common areas and bike paths, 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.
- (i) **“Declarant/Owner Remedies”** shall be as defined in Paragraph 6.01 hereof.

- (j) **“Improvements”** shall mean and include a building, driveways, parking areas, sidewalks, fences, signs, lawns, landscaping, flag poles and any structure of any type or kind, and all additions to any of the foregoing.
- (k) **“Lot”** shall mean Lots 1 through 24 in the Addition.
- (l) **“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 the Addition.
- (m) **“Owner”** shall mean the person or persons who from time to time collectively hold the entire fee title to any Lot in the Addition, including buyers 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).
- (n) **“Town Home”** shall mean the dwelling constructed on any Lot, whether it is an attached or unattached building.
- (o) **“Zoning Ordinance”** shall mean the zoning ordinances of the City of Ames, Iowa.
- (p) 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.
- (q) 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 the Addition 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) Town Homes. All Lots in the Addition shall be for Town Home use. In addition to the covenants, conditions and restrictions set forth in this Declaration, the Addition shall be subject to additional declarations of covenants, conditions, restrictions and easements, including, but not limited to, architectural standards,

easements, common areas, assessments and other matters necessary and proper for the development of the Addition. The initial Town Home Declaration and any amendments thereto made prior to the sale of ninety percent (90%) of the Town Homes shall be subject to the approval of Declarant. Furthermore, in addition to Lots being subject to the provisions of this Declaration, including, but not limited to, assessments made pursuant to this Declaration, the Lots shall be governed by the Association created to operate and maintain the Common Elements. In no event shall anything in an Association document be deemed to amend this Declaration.

- (b) Construction and Lot Maintenance. Construction must commence on all Lots within twelve (12) months of closing on purchase from Declarant. In the event construction does not commence within said twelve (12) month period, Declarant may, at its option, repurchase the applicable Lot at 90% of the sales price when conveyed by Declarant. Owner shall seed the Lot with grass or mow weeds at least once every two weeks for any period prior to commencement of construction. If this maintenance is not done, the curing party is entitled to Declarant/Owner Remedies.
- (c) Business Activity. No full-time or part-time business activity may be conducted on any Lot or in any building 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 sale of Lots.

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

- (a) Character. No building or structure shall be constructed, altered or maintained upon any Lot other than Town Homes each with an attached private two-stall garage. In order to preserve the general design for development of the Lots as a fine residential subdivision of the City, no Town Home of any kind, or addition thereto, shall be erected upon any Lot unless the plan, design, building materials, exterior colors, landscaping and location thereof shall have been first approved by Declarant, or such person or persons or entity designated by it for this purpose. In addition, the building must comply with the PRD approved by the City of Ames, Iowa.

**2.03 Landscaping and Yard.**

- (a) Sodding and Seeding Requirements. Each Lot shall be completely sodded following the completion of the Town Home construction. This shall be done within thirty (30) days following the completion of construction. If weather conditions make it impossible to comply with the foregoing requirement, Declarant or Declarant's agent shall establish a reasonable time within which the sodding shall be completed.
- (b) Gardens. No gardens shall be placed on any Lot.

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

- (a) Fences may be placed **ONLY** between decks and patios. All fences must be approved by Declarant or Declarant's agent in writing. No fence shall exceed six (6) feet in height.
- (b) All fences shall be kept in good repair and attractive appearance by Owner. All wood fences shall be natural in color, stained, or painted in soft, earth tone colors so as to blend in with the terrain.
- (c) Notwithstanding anything in this Declaration to the contrary, no Owner shall have the right to erect a fence within or across any easement area shown upon the final plat of any plats within the Association without the prior consent of the City or utility company or other person or entity for whose benefit such easement runs, as applicable. 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 Owner to restore or repair such fence.

**2.05 Mailboxes.** All mailboxes for delivery of mail by the United States Postal Service shall be placed as required by the United States Postal Service. These mailboxes shall be placed in a block and not individually on each Lot. If so placed, the boxes shall be maintained by the United States Postal Service. Individual mailboxes are not permitted.

**2.06 Playhouses, Utility Buildings and Other Accessory Structures.** No playhouses, playground equipment, sandboxes, swimming pools, utility buildings, storage sheds or other similar structures shall be permitted.

**2.07 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 except on pickup day. Firewood shall not be stored on any Lot.

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.

**2.08 Movable Enclosures.** No tent, trailer, boat, camper, motor home, or truck rated larger than  $\frac{3}{4}$ -ton or other movable enclosure shall be maintained or parked on any Lot or street within public view for more than twenty-four (24) hours in any week.

**2.09 Temporary Structures; Mobile Homes.** There shall be no occupancy of temporary structures or partially completed structures. No manufactured or prebuilt home or other building shall be moved onto any Lot. No mobile homes shall be permitted at any time.

**2.10 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 Declarant’s agent may increase or decrease the permitted size of satellite dishes or parabolic devices by a written notice 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. 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.

**2.11 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.

**2.12 Pets/Animals.** No animal, livestock, poultry, snakes or exotic animals 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 pets, collectively, be maintained on any one Lot at any one time. All outdoor animals shall be tied or kept on a leash. Pets shall not be allowed if they interfere with the peaceful enjoyment of the property by any residents within the subdivision as determined by \*.

The Owner shall remove all animal excrement from any Lot or Common Area within the Addition.

**2.13 Sales Office.** Declarant reserves the right to maintain one or more Lots as a model or a sales and display office for itself, for its marketing firm, and/or for builders of homes within the Addition; display or post signs of any type or size which are a part of the development and marketing and to have agents’ and employees’ equipment and material on any Lot used as a model or sales office. Any sales office must comply with all ordinances of the City of Ames, Iowa.

**2.14 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.

**2.15 Noxious Activities/Nuisance.** 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.

**2.16 Maintenance of Lot.** The Owner of any Lot, whether vacant or improved, shall keep the Lot free of debris.

**2.17 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 overland flowage ways, the public streets, the public sidewalks or trails or onto any other Lot. Weekly clean up of trash and debris is required.

**2.18 Signage.** Signage within the Addition 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 the Addition project identification signage within the signage easements at the entrances into the development.
- (b) Once a Lot is sold and occupied as a residential dwelling unit, signage on that Lot 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 The Addition, approved by the Board. For Sale Signs shall only be displayed while the applicable Town Home is for sale and must be removed the day following the closing of the sale. Garage Sale Signs and Event Signs shall be displayed only 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 be displayed only 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 may be displayed only for a maximum of two weeks. Only other signs permitted by Declarant or the Board may 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 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 windows or glass openings or, except for vehicles with professionally made business signage on the vehicle, attached to vehicles parked within the neighborhood.

## **ARTICLE III**

### **EASEMENTS**

#### **3.01 Utility Easements.**

- (a) Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Addition. The Owner of a Lot shall, at his or her own expense, keep and preserve that portion of the easement within his or her property in good repair and condition at

all times and shall neither erect nor permit erection of any building structure or growth of trees within said easement.

- (b) Association Easement. Declarant hereby grants to the Association an easement of ingress and egress onto all Lots for the purpose of enforcement of Declarant/Owner Remedies.

## ARTICLE IV

### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

#### **4.01 Membership.**

- (a) Every Owner of a Lot shall be a member of the Association. A person who is not an Owner of a Lot 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 Lot.
- (b) Membership shall be appurtenant to and may not be separated from ownership of any such Lot. Ownership of a Lot shall be the sole qualification for membership.

#### **4.02 Voting Rights.**

- (a) The Association shall have two classes of voting members:

##### CLASS "A"

Class "A" members shall be each Owner of a Lot, with the exception of Declarant. Class "A" members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, but the vote attributable to such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

##### CLASS "B"

The Class "B" member shall be Declarant. The Class "B" member shall be entitled to five (5) votes for each Lot owned. The Class "B" membership shall cease for Lots and be converted to Class "A" membership for voting purposes on the happening of either of the following events, whichever occurs earliest:

- (i) When the total votes outstanding in the Class "A" membership equal the total votes outstanding in the Class "B" membership, or

(ii) On January 1, 2012.

For assessment purposes, Class “B” members shall retain their status on unimproved Lots. When improvements on a Lot are substantially completed, the assessment shall convert to the Class “A” rate.

(b) The voting rights are further specified in the 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 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 in the Common Areas;
- (f) create an escrow account from assessments to cover maintenance of siding, roofs, gutters, attic vents and painting of garage doors of the Lots, but **NOT** exterior lighting, concrete driveway, windows, doors or decks;
- (g) provide mowing, edging, weeding, fertilizing and bush and tree trimming for all Lots, but **NOT** weeding, mulching and rock maintenance under decks;
- (h) provide snow removal on drives and sidewalks for all Lots, but **NOT** from decks, patios or bike and pedestrian trails;
- (i) provide for the installation, maintenance and repair of all bike and pedestrian trails within the Addition, to the extent not done by the City of Ames, Iowa;
- (j) make additional common Improvements for the benefit of the Addition;
- (k) in its discretion, perform services on behalf of the Owners of one or more of the Lots;
- (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;
- (o) enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration;
- (p) 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 and their guests and invitees which may include remedies and the imposition of reasonable fines for the violation of such rules and regulations;
- (q) 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 the Addition, in accordance with the spirit and letter of this Declaration, including the power to make variances in this Declaration; and
- (r) do such other things as are reasonable or necessary to carry out its obligations hereunder or under any agreement with any Owner of any Lot.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

**5.01 Creation of Lien and Personal Obligation.** Declarant hereby covenants, and each Owner of a Lot 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 Lot set forth elsewhere in this Declaration, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot of such Owner and shall be a continuing lien upon such Lot senior to all liens except the first mortgage of record 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 Lot 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 the Addition 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. See Section 4.03

supra. In making such assessments, the amount to be levied shall be equal to 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 on and against Lots within the Addition and the Owners thereof, shall be a share of the total amount of each assessment prorated equally among such Lots within the Addition and the Owners thereof as of the beginning of the period for which such assessment applies.

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

- (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 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 payment shall be due as stated in the 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 which 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 collecting delinquent assessment payments.

Notwithstanding any other provision herein, the Association may bring an action at law against the Owner personally obligated to pay any assessment, or may foreclose the lien against the assessable property in the manner provided for foreclosure of a mortgage, or both, and all costs incurred by the Association, including attorney fees, shall be added to the amount of such assessment. 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 Elements or abandonment of its assessable property.

- (c) The term "assessable property" shall mean all Lots within the Addition which are subject to this Declaration whether or not such Lots have a Town Home constructed on it and whether such Lot is vacant or occupied.

## ARTICLE VI

### GENERAL PROVISIONS; DURATION OF DECLARATION

**6.01 Specific Enforcement of Restrictions/Declarant/Owner Remedies.** Declarant and each Owner of a Lot in the Addition 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 Owner shall have the right to exercise all rights and remedies available at law or in equity and to Declarant/Owner Remedies as defined herein. All Owners of Lots within the Addition covenant and agree, by acceptance of a deed to such Lot, 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 which 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.

Declarant/Owner Remedies shall include, but not be limited to, the following:

If an Owner fails to comply with any provision in this Declaration and such failure continues for more than ten (10) days after written notice from the Declarant or the Association, then the Declarant or the Association Owner shall have the right and easement to enter upon the premises and perform such acts at the expense of the Owner of the Lot where such failure to act has occurred and shall have a right of action against the Owner of such Lot for collection of the costs thereof, plus reasonable costs, including attorney 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 for the date such cost is incurred and shall have a lien against such Lot from the date 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 of Story County, Iowa, until such amount, plus the reasonable costs, including attorney fees of collecting such amount and costs of filing such lien incurred by lienholder is paid.

**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 therefor 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 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; however, such Owner shall not be obligated for any such attorneys fees and costs incurred by such Declarant or the Association if the Owner offers to settle the 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 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. Any Owner of a Lot which is subject to this Declaration may, however, 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 the Addition.

**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 Lots in the Addition in proportion to their respective assessment shares. All amounts due to the Association from the Owners of any Lot 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 Association as Additional Insured.** All Owners or Occupants shall carry homeowner's insurance covering the Improvements on their Lot for all replacement cost. The Association shall be named as an additional insured on the insurance policy. Owners or Occupants shall provide proof of said insurance to the Association at least annually. If the Owner or Occupant fails to provide proof of insurance, the Declarant or Association shall be entitled to Declarant/Owner Remedies.

**6.10 Estoppel Certificates.** The Association shall issue to any Owner of a Lot or to any mortgagee of, or purchaser from, any Owner of a Lot, an Affidavit Explanatory of Title or Estoppel Certificate in such form as may reasonably be requested.

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.

**6.11 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 the Addition, 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.

**6.12 Duration.** The Covenants, Conditions and Restrictions in this Declaration shall continue in perpetuity, unless sooner modified or terminated as provided in 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.

**6.13 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, subject to the limitations at 2.01(a) supra. Declarant or Declarant's designee may, by written declaration signed and acknowledged by them and recorded in the Office of the Recorder for Story 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 the Addition, 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 the Addition 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.

**6.14 Release Upon Sale.** Subject to the provisions of this Section, if an Owner of a Lot 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 that 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.

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

UTHE DEVELOPMENT COMPANY, L.L.C.

By: \_\_\_\_\_  
Robert K. Friedrich, Jr., Manager

By: \_\_\_\_\_  
Charles E. Winkleblack, Manager

STATE OF IOWA            )  
  )ss:  
COUNTY OF STORY        )

On this \_\_\_\_ day of \_\_\_\_\_, 2003, before me, Notary Public in and for the State of Iowa, personally appeared Robert K. Friedrich, Jr. and Charles E. Winkleblack, to me personally known, who being by me duly sworn did say that these persons are Managers of said limited liability company and that said instrument was signed on behalf of the said limited liability company by authority of its managers and the said Robert K. Friedrich, Jr. and Charles E. Winkleblack acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

HUNZIKER, CHRISTY, SHIRK BUILDERS, INC.

By: \_\_\_\_\_  
Robert W. Shirk, Secretary/Treasurer

STATE OF IOWA, STORY COUNTY, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2003, before me, a Notary Public in and for the State of Iowa, personally appeared Robert W. Shirk, to me personally known, who being by me duly sworn, did say that that person is Secretary/Treasurer of said corporation and that said instrument was signed on behalf of the said corporation by authority of its board of directors and the said Robert W. Shirk acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa