COMPARED

FILED FOR RECORD
POTTAWATTAMIE CO. IA.

2006 JUN 13 AM 10: 44

JOHN SCHORTING
RECORDER

INST # 023584
RECORDING FEE 50.00
AUDITOR FEE
RMA FEE 1.00 ECOM 1.00

Last Revision – 4/6/96

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR TIMBERCREST ADDITIONS
IN THE CITY OF COUNCIL BLUFFS, IOWA

PREAMBLE: The filing of these covenants is intended to extend the term of the covenants previously made and filed affecting Lots 1-96 as originally platted.

THIS DECLARATION, made on the date hereinafter set forth by TIMBERCREST HOMES ASSOCIATION, an Iowa Not for Profit Association hereinafter referred to as "The Association."

1-833

NOW, THEREFORE, The Association hereby declares that all of the lots shall be held, sold, and conveyed subject to the following restrictions, and covenants, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These covenants, and restrictions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the described lots or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I
USE RESTRICTIONS

A. The subject property is hereby restricted to residential dwellings for residential use and structures and uses related to the convenience and enjoyment of such residential use.

B. No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets maintained within the dwelling may be kept, provided they are not kept, bred or maintained for any commercial purpose. It is intended specifically to prohibit horses, ponies, or other animals sheltered outside the main dwelling.

C. No advertising signs (except one of not more than five square feet "For Rent" or 'For Sale" sign per lot), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner of any lot or any resident thereof. Garage Sale signs shall be permitted only on the days of the sale. Political signs are permitted within two (2) weeks of election and must be removed the day after the election. Only business activities allowed by city zoning ordinance shall be conducted in any building, or on any portion of the subject property. However, no sign shall be allowed to advertise or identify such business. Provided, further, however, the foregoing covenants shall not apply to business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the Association, its agents and assigns during the construction and sale period.

D. No exterior television or radio antennae of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the premises, nor upon any structure situated upon said real property, unless approved in writing by the hereinafter mentioned Architectural Committee.

E. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

F. No repair of automobiles will be permitted outside of garages on any lot at any time; nor will any vehicle offensive to the neighborhood be visibly stored, parked or abandoned in the neighborhood.

G. No boat, personal water craft, camping trailer, snowmobile, auto-drawn trailer of any kind, mobile home truck, grading or excavating equipment, or other heavy machinery or equipment, vehicle undergoing repair, or aircraft shall be stored outside the garage or in any manner left exposed on any lot at any time. However, visitors or residents may have a motor home stored on a temporary basis not to exceed 30 days in any calendar year.

H. Except for the purpose of controlling erosion on vacant lots, no field crops shall be grown upon any lot at any time.

I. Vegetable gardens are prohibited on any part of yards adjoining streets.

J. Fuel tanks not to exceed 20 gallon capacity shall be permitted to remain outside of any dwelling provided they are not visible from the street. Except on garbage pick-up days, no garbage or trash can shall be permitted outside of any dwelling unless fully screened from view (not visible from street or neighboring lots). No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling except when actual use. Any exterior air conditioning condenser unit shall be placed in the rear or side yard.

K. Dwellings shall not be moved from outside of TIMBERCREST ADDITIONS to any lot within this subdivision.

L. Exposed front portions of the foundation of each dwelling are to be covered with either siding or brick unless approved in writing by the hereinafter described Architectural Committee.

M. A dwelling on which construction has begun must be completed within one (1) year from the date the foundation was dug for said dwelling.

N. No structure of a temporary character, trailer, basement, tent, shack or other outbuilding shall be erected upon, or used, on any lot at any time as a residence, either temporarily or permanently.

O. No unused building material, junk, or rubbish shall be left exposed on any lot at any time.

P. A dog house may be permitted provided the construction plans and specifications and the location of the proposed structure have been first approved in writing by the hereinafter described Architectural Committee.

Q. Only wood fencing or other type of fencing approved by the hereinafter described Architectural Committee shall be allowed.

R. No trees with trunks over 10" in circumference shall be moved, removed, damaged or destroyed without prior written approval of the hereinafter described Architectural Committee.

ARTICLE II
ARCHITECTURAL CONTROL

A. The Architectural Committee shall consist of a minimum of five (5) property owners of Timbercrest additions, 2/3rds from the Board of Directors and 1/3 at large. Upon the resignation, for any reason, of one of the committee members, the remaining

members shall promptly appoint a replacement. Until such appointment has been made, the remaining members shall exercise the committee's authority.

B. The approval or disapproval of the Architectural Committee as required in these covenants shall be in writing. Written approval or disapproval must be signed by a majority of the committee members and mailed or delivered to the applicant's last known address. In case of disapproval, the Committee shall include a statement of the reasons for disapproval and shall indicate in a general way, the kind of plans and specifications which the Committee will approve for the subject property. Failure of the Committee to give either written approval or written disapproval of a submitted plan within fourteen (14) days after submission of said plan, by mailing such written approval or disapproval to the last known address of the applicant for approval as shown on the submitted plan, shall operate to release such building plot from the Architectural Committee control provisions of these restrictions in regard to said submitted plan.

C. Unless approved in writing by the Architectural Committee, no building shall be created, altered, placed, or permitted to remain on any lot other than one attached or detached single-family dwelling not to exceed two stories in height, nor containing finished living areas, exclusive of porches, breezeways, carports, and garages of less than. For detached dwellings, 1,000 square feet on the ground floor for a one-story house, unless it has a basement garage, in which case 1,050 square feet shall be required on the ground floor; 900 square feet on the ground floor for a one and one-half story house, 1,350 square feet above basement level with 750 square feet on the main floor for a two-story house; 1,250 square feet of living area above ground for a bi-level, tri-level, or a split-level house; and 1,050 square feet of main floor living area for a split-entry house; nor having a garage for less than two automobiles: for an attached dwelling 1,000 square feet on the ground floor for a one-story house, unless it has a basement garage, in which case 1,050 square feet shall be required on the ground floor; 850 square feet on the ground floor for a one and one-half story house; 1,300 square feet above basement level with 650 square feet on the main floor for a two-story house; 1,250 square feet of living area above ground for a bi-level, tri-level, or split-level house; and 1,050 square feet of main floor living area for a split-entry house, nor having a garage for less than two automobiles. The Architectural Committee shall have the right to define the terms one-story house; one and one-half story house; two story house; bi-level; tri-level; split-level house; and split-entry house. Houses of unusual design and not included in the categories herein listed will be considered on an individual basis. Square foot areas are to be computed to the outside surface of enclosing walls.

D. No building, fence, landscaping or other structure or improvement, including but not limited to playground equipment, storage shed, antennae, rock gardens, fountains, and statues, shall be commenced, erected or maintained upon the premises, nor shall any exterior painting, resurfacing, addition to or change or alteration therein, be made until plans and specifications showing the nature, kind and shape, heights, materials, color of paint, and location of the same shall have been submitted to and approved in writing as to harmony of external design, color, and location in relation to surrounding structures and topography by the Architectural Committee.

E. The Architectural Committee shall have the right to disapprove any such plans or specifications of grading or landscaping plans which are not suitable or desirable in the Committee's opinion for aesthetic or other reasons, and in passing upon such plans, specifications, grading or landscaping plans, the Committee shall have the right to take into consideration the suitability of the proposed building or other

structure and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the building or other structure or landscaping as planned on the outlook from the adjacent or neighboring property, and if it is in accordance with all of the provisions of this declaration.

F. The Committee may disapprove if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications, details or any part thereof, to be contrary to the spirit or interest of these conditions and restrictions. The decisions of the Committee shall be final.

ARTICLE III
EROSION CONTROL

In developing residential housing in Timbercrest Additions, the owner and his agents agree to observe the following erosion control measures, which measures shall inure to the benefit of all property within said subdivision and all property in the natural watershed of said subdivision:

Section 1. Construction activities within said subdivision shall be limited such that no more than one structure shall be under construction at any one time. Completion of construction, for purposes of this article, shall be deemed to occur when erosion from construction of said structure has been permanently stabilized.

Section 2. Upon initiation of and at all times during construction of each individual dwelling, erosion and soil runoff effects shall be minimized by utilizing bales of hay to effect temporary terraces, unless and until erosion has been permanently stabilized pursuant to Section four following.

Section 4. Erosion shall be permanently stabilized as soon as is feasible after construction start (digging and construction of foundations and/or basement walls) by methods such as sodding and landscaping, and in all cases, permanent erosion stabilization shall occur prior to completion of construction and occupancy of the structure.

Section 5. The Association, or any owner, or the City of Council Bluffs, Iowa, or any owner of property within the natural watershed of said subdivision affected by runoff or erosion therefrom, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, and reservations, now or hereinafter imposed by the provisions of this Article IX, either to prevent or restrain any violation of same, or to recover damages or other dues for such violation. Failure by the Association, by the owner, by the City, or by any owner of property within the natural watershed of said subdivision to enforce any provision of Article IX shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE IV
DEFINITIONS

Section 1. "Association" shall mean and refer to the TIMBERCREST HOMES ASSOCIATION, an Iowa non-profit Association, its successors, and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to all or any part, parcel or portion of a platted Lot which is a part of the Properties as defined herein, including contract buyers and sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property more particularly described as follows:

All lots in Timbercrest Additions, in Council Bluffs, as surveyed, platted and recorded in Pottawattamie County, Iowa.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and/or members of the Association, subject to the limitations and restrictions hereinafter noted.

Section 5. "Lot" shall mean and refer to the property, or any part thereof described in Article IV, Section 3 herein.

Section 6. "The Association" shall mean and refer to Timbercrest Homes Association an Iowa not for profit association, its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Association for the purpose of development.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE V
PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner and/or member of the Association, shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting and rights to use of the Common Area by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(b) the rights of the Association to dedicate or transfer all or any part of the Common Area, subject to any then existing ingress and egress requirements in connection therewith, to any public agency, non-profit corporation to sue for purposes similar to those for which the Association was formed, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners and/or members of the Association and by persons holding mortgages or ay portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Owner not less than 30 days or more than 60 days in advance. The Association, or its assigns, shall have the right at any time to use so much of the Common Area as it may deem necessary or advisable for the purpose of aiding in the construction and development of the unimproved lots, except that such use may not interfere with the homeowner's use and reasonable access to the Common Area, nor with their right of ingress or egress to their homes.

(c) the right of the Association to limit the number of guests of Owners on recreational facilities.

(d) The right of the Association to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to

mortgage said Common Area and facilities, which mortgage shall be subordinate to the rights of the owners hereunder.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right of enjoyment of the Common Areas and facilities, together with any other right, license, privilege or easement conferred upon such Owner by this Declaration, to the members of his family, his tenants, guests, or contract purchasers who reside on the property.

ARTICLE VI
MEMBERSHIP

Every Owner as defined in Article IV, Section 2, under this Declaration shall be a member of the Association. No Owner shall have more memberships than the number of lots owned by such Owner. Memberships shall be appurtenant to and may not be separated from ownership of the Lots. Ownership of a Lot or Lots shall be the sole qualification for membership.

ARTICLE VII
VOTING RIGHTS

Members shall be all Owners of the Lots and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for 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 Lot.

ARTICLE VIII
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as herein provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the property against which each such assessment is made. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire to the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association on said Lots in Timbercrest Additions shall be used for the following purposes:

(a) To promote the recreation, health, safety, and welfare of the residents of the Properties.

(b) For the improvement, maintenance, and insurance of the Common Area and the payment of any taxes and assessments levied or assessed

against such Common Areas by any governmental body or entity having lawful jurisdiction to do so.

(c) For the construction of recreational facilities thereon.

Section 3. Maximum Annual Assessment.

(a) The maximum annual assessment may be increased each year not more than ten percent above the maximum assessment for the previous year without a vote of the membership.

(b) The maximum annual assessment may be increased above ten percent by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors must fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be delivered either personally or by mail to all members not less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be fifty percent (50%) of all of the votes. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due dates. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. The annual assessments shall be and become a lien as of the date of the annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto immediately following the assessment date. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments – Remedies of the Association. Any assessment installment which is not paid when due shall be delinquent. If the assessment installment is not paid within thirty (30) days after the due date, the assessment installment shall bear interest from the due date at the rate of nine percent (9%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose action, the Association shall be entitled to recover as a part of the action, the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The mortgagee of the subject property shall have the right to cure any

delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and rights of foreclosure to the mortgagee.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgagee. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

(a) all Properties dedicated to and accepted by a local public authority;
(b) the Common Area.

ARTICLE IX
GENERAL PROVISIONS

A. Enforcement. The Association or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions covenants, and reservations, now or hereinafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of same, to or recover damages or other dues for such violation. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. Amendment. The Covenants and restrictions of the Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by The Association as it sees fit for a period of five (5) years from the date hereof. This Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the lots. Any amendment must be recorded.

Last Revision – 4/6/96

EXECUTED THIS 8th DAY OF June, 2006.

TIMBERCREST HOMES, A NOT FOR PROFIT
IOWA ASSOCIATION

BY: Donna R. Kalar
Donna Kalar, President
Timbercrest Homes Association

ATTEST:

BY: Audrey C Whitman

AUDREY C WHITMAN
Notarial Seal - Iowa
Commission # 191764
My Commission Expires 8-6-09

Last Revision – 4/6/96

STATE OF IOWA

COUNTY OF POTTAWATTAMIE

On the date last above written, before me, the undersigned, a Notary Public in and for said County, personally came DONNA KALAR president of TIMERCREST HOMES ASSOCIATION, AN IOWA NOT FOR PROFIT ASSOCIATION and said DONNA KALAR, the identical person whose name is affixed to the foregoing Declaration, and acknowledged the execution thereof to be her voluntary act and deed on behalf of said Corporation for said Corporation.

WITNESS my hand and Notarial Seal at Council Bluffs, in said Count, on the date last above written.

Audrey C Whitman
Notary Public

AUDREY C WHITMAN
Notarial Seal - Iowa
Commission # 191764
My Commission Expires 8-2009

My commission expires: August 6, 2009