



Doc ID: 005907360016 Type: GEN  
 Recorded: 02/12/2008 at 03:26:39 PM  
 Fee Amt: \$82.00 Page 1 of 16  
 Dubuque County Iowa  
 Kathy Flynn Thurlow Recorder

File **2008-00001882**

Prepared by and Return To: Callahan Construction, Inc., 7629 Commerce Park, Dubuque, IA 52002  
 (563)588-4273

**DECLARATION OF RESTRICTIVE COVENANTS**

The undersigned, CALLAHAN CONSTRUCTION, INC., an Iowa Corporation, being the owner and developer of the following described property:

Lots 1-24 inclusive of "North Point Estates" in Section 13, Township 89 North, Range 1 East of the 5<sup>th</sup> P.M., in Dubuque County, Iowa, according to the United States Government Survey and the recorded plats thereof, subject to highway and easements of record.

hereby makes the following declarations as to limitations, restrictions, obligations and uses to which the above described real property and common properties as described herein may be put, hereby specifying that said declarations shall constitute covenants to run with all of said real estate, as provided by law, and shall binding upon the heirs, successors, and assigns of all parties and all persons claiming under them, and for the benefit and limitation upon all future owners of the above described real estate, including all lots now or hereafter existing in "North Point Estates."

**ARTICLE I  
 DECLARATION PURPOSES**

**Section 1. General Purposes.** The Developer is the owner of certain real property located in Dubuque County, Iowa, and desires to create thereon a planned community development provided with common properties designated for the private use of owners within such development, except as herein otherwise provided.

- a. The Developer desires to provide for the preservation of values and amenities in said planned community development and for the maintenance of the open spaces and other common properties and to this end desires to subject the real property described in Article III to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

- b. The Developer has deemed it desirable for the efficient preservation of the values and amenities in said planned community development to create an entity to which the common properties, easements or rights in relation thereto will be conveyed and transferred and to which will be delegated and assigned the powers of maintaining and administering the Common Properties, administering the roads, enforcing the covenants and restrictions, acting as billing, collecting, payment, and dispute resolution agent for multi-lot well water distribution systems and collecting and disbursing the assessments and charges herein created. For that purpose, the Developer will cause to be incorporated under the laws of the State of Iowa a nonprofit corporation known as "North Point Property Owners Association, Inc."

**Section 2. Declaration.** To further the general purposes herein expressed, the Developer, for itself, its successors and assigns, hereby declares that real property hereinafter described in Article III as "Existing Properties," whether or not referred to in any deed of conveyance of such properties, at all times is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth. The provisions of this Declaration are intended to create mutual equitable servitudes upon each lot becoming subject to this Declaration in favor of each and all other such lots; to create privity of contract and estate between the grantees of such lots, their heirs, successors and assigns; and to operate as covenants running with the land for the benefit of each and all such lots becoming subject to this Declaration, and the respective owners of such lots, present and future.

## **ARTICLE II DEFINITIONS**

**Section 1.** The following words and terms, when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- a. "Association" shall mean and refer to "North Point Property Owners' Association, Inc.," its successors and assigns.
- b. "Existing Properties" or "The Properties" shall mean and refer to the real estate described in Article III, Section 1 hereof.
- c. "Common Properties" shall mean the formal entrance if one is constructed, the Recreational Easement if one is granted, and the roads or streets in the subdivision with respect to which the Developer grants, assigns, or conveys to the Association, interest in, rights of control over, or rights of use, or with respect to which the Developer permits use by the Association and its members, and any replacement of or for any of the forgoing.
- d. "Lot" shall mean any plot of land described by a number upon any recorded subdivision map of the Properties.
- e. "Living Unit" shall mean and refer to any portion of a structure situated upon the properties designed for occupancy by a single family.
- f. "Owner" shall mean the record owner, [whether one (1) or more persons or

entities], of a fee or undivided fee interest including contract purchasers of any lot or living unit, situated upon the properties but shall not include any such person or entity who holds such interest merely as a security for the performance of an obligation.

- g. "Member" shall mean all those owners who are members of the Association as hereinafter provided.
- h. "Dwelling Lot" shall mean any lot intended for the improvement with a dwelling.
- i. "Dwelling" shall mean any building located on a Dwelling Lot and intended for the shelter and housing of a single family.
- j. "Dwelling Accessory Building" shall mean a subordinate building or a portion of a Dwelling, the use of which is incident to the Dwelling and customary in connection with that use.
- k. "Single Family" shall mean one (1) or more persons, each related to the other by blood, marriage, or adoption, or a group of not more than three (3) persons not all so related, together with his, her or their domestic servants, maintaining a common household in a Dwelling.
- l. "Story" shall mean that portion of a Dwelling included between the surface of any floor and the surface of a floor next above, or if there is no floor above, the space between the floor and the ceiling next above.
- m. "Living Area" shall mean that portion of a Dwelling which is enclosed and customarily used for Dwelling purposes and having not less than six (6) feet headroom, but shall not include open porches, open terraces, breezeways, attached garages, carports or Dwelling Accessory Buildings.
- n. "Developer" shall mean "Callahan Construction, Inc.
- o. "Structure" shall mean any building or other improvement erected or constructed, the use of which requires more or less permanent location on or in the ground, or attached to something having a permanent location or in the ground. A sign or other advertising device, attached or projecting, shall be construed to be a separate Structure.
- p. "Committee" shall mean the Architectural Review Committee.
- q. "Contract Purchaser" shall mean any person or entity that purchases a lot by way of installment sales contract.
- r. "Installment Sales Contract" shall mean an agreement made by the record owner of any lot to sell such lot to one (1) or more purchasers by means of a series of installment payments from such purchaser and the delivery of a deed to such lot, to such purchaser, after all such installment payments have been made.
- s. "Water Distribution Line" shall mean a line that moves water to more than one dwelling unit (including any dwelling accessory building).

- t. "Water Service Line" shall mean a line that moves water to only one dwelling unit (including any dwelling accessory building).
- u. "Effluent Service Line" shall mean a line that moves sewerage from only one dwelling unit (including any dwelling accessory building).

### **ARTICLE III EXISTING PROPERTIES – MERGER**

**Section 1. Existing Properties.** The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Dubuque County, Iowa, and more particularly described as Lots 1-24 inclusive of "North Point Estates" in Section 13, Township 89 North, Range 1 East, in Dubuque County, Iowa.

**Section 2. Mergers.** In the event of a merger or consolidation by the Association with another association as authorized by its Articles of Incorporation, its properties, rights and obligations may be transferred to another surviving or consolidated association. Alternatively, if the Association is the surviving corporation in a merger or consolidation, it may administer the covenants and restrictions established by this Declaration within the Existing Properties together with the covenants and restrictions established upon any other properties, as one scheme. However, no such merger or consolidation shall affect any revocation, change or addition to the covenants established by this Declaration with respect to the Existing Properties or any Supplemental Declaration with respect to any additions thereto, except as herein provided.

### **ARTICLE IV ARCHITECTURAL REVIEW PROCESS**

**Section 1. Objectives.** The Developer's objectives are to carry out the general purposes expressed in this Declaration; and to assure that any improvements or changes in the properties will be of good and attractive design and in harmony with the natural beauty of the area; and to assure that materials and workmanship of all improvements are of high quality and comparable to other improvements in the area. To achieve these goals, an "Architectural Review Committee" is hereby established to approve all plans prior to construction.

**Section 2. Architectural.** To achieve Developer's objectives, the Developer shall have the power to administer this Declaration with regard to approving or disapproving those matters which are expressed herein to be within jurisdiction of the Developer and the Developer shall constitute the "Architectural Review Committee" until such time as this function is assigned as per Section 5 hereof.

**Section 3. Matters Requiring Approval.** Prior written approval shall be obtained from the Architectural Review Committee with respect to all matters stated in this Declaration as requiring such approval. In addition thereto, no building, fence, privacy screen, wall, driveway access, or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, elevations, heights, materials, color, location, grade, and proposed lawn and landscaping have been submitted to and approved in writing by the Architectural Review Committee. Failure to comply may result in removal or alteration of any improvement so as to allow same to conform to approval granted by the Architectural Review Committee.

**Section 4. Procedure.** Whenever approval is required by the Architectural Review Committee, appropriate plans and specifications shall be submitted to the Committee. The Committee shall either approve or disapprove such design, location, proposed construction and clearing activities within thirty (30) days after said plans and specifications have been submitted to it; except that, if such plans and specifications are disapproved in any respect, the applicant shall be notified wherein such plans and specifications are deficient. The Committee may withhold approval for any reason deemed by it to be appropriate, including aesthetic reasons, except that approval will not be withheld for capricious or unreasonable reasons. If such plans and specifications are not approved or disapproved within thirty (30) days after submission, approval will not be required and this Article will be deemed fully complied with.

**Section 5. Assignability.** The function of the Developer in serving as the Architectural Review Committee under this Architectural Review Process shall be assignable at the option of the Developer to a committee of the Association created by the Association to carry out such function.

## **ARTICLE V GENERAL RESTRICTIONS**

**Section 1. Land Use-Single Family Residential.** The Existing Properties shall be used only as dwelling lots for single family residence and shall be subject to all restrictions and covenants set forth in this Declaration. No building shall be erected on any lot except one dwelling designed for occupancy by a single family and one dwelling accessory building designed for use in conjunction with said dwelling. A dwelling accessory building may include a detached multi-purpose structure not greater than two thousand (2000) square feet. The design, materials and construction of the dwelling accessory building must be of the same materials as the single family dwelling. In addition, a kennel may be erected but which kennel must be attached to the rear of a dwelling or dwelling accessory and not to exceed two hundred (200) square feet in size.

**Section 2. Subdivision of Lots.** No lot shall be subdivided or re-subdivided to make smaller dwelling lots. This restriction shall not prevent a purchaser of two (2) or more contiguous lots from building one (1) dwelling on more than one (1) adjoining platted lot or two (2) dwellings on three (3) or more adjoining lots as shown on a subdivision plat. The developer reserves the right to subdivide any lot or to extend the subdivision for future development.

**Section 3. Structural Restrictions.** A dwelling erected on a Lot or Lots of this Subdivision as herein provided shall have a first or main floor total square foot area, exclusive of open porches and/or garages, of not less than 2,300 square feet for a one story home, and a total square footage not less than 2,300 square feet for a 1 ½ or 2 story home. Refer to County zoning ordinance and County subdivision ordinance for height requirements. All construction within the subdivision shall be of new materials. All dwellings shall present their most attractive fronts to the street in the subdivision upon which the lot abuts. After window and door square footage is deducted, 100% of the remaining square footage of the front shall be brick and/or stone. Prefabricated, modular, component and mobile homes are not allowed within the subdivision. See the County zoning and subdivision ordinances for any further restrictions.

**Section 4. Lighting.** Each dwelling shall have a front yard light that is operated on a photo cell.

**Section 5. Location of Structure on Lot.** Refer to County zoning ordinance and County subdivision ordinance setbacks as the minimum requirements for proper setbacks.

**Section 6. Nuisances.** No noxious or offensive activity shall be carried on in any house, building, or on any lot, nor shall anything be done therein or thereon which may be or become a nuisance to the neighbors or neighborhood.

**Section 7. Temporary Structures.** No trailer, mobile home, recreational vehicle, tent, shack or other structure, except as otherwise permitted herein and no temporary building structure of any kind shall be used for a residence, either temporary or permanent. Temporary structures used during the construction of a structure shall be on the same lot as the structure and such temporary structures shall be removed upon completion of construction.

**Section 8. Completion of Construction.** Once excavation has commenced on a lot for the purpose of building on a lot, the house or building on said lot shall be fully completed within one year from commencement of construction. Grading, sodding, seeding and general landscaping must be completed no later than eighteen (18) months from the commencement of the excavation on the lot. In any event, soil erosion shall be kept to a minimum and within the limits as provided by law. The Developer, and if the Developer declines in writing, then the Association, shall have the right to complete any construction, grading, seeding, sodding, or general landscaping not completed within such time and to (a) recover the costs of same from the Owner; and (b) place a lien on the lot in the amount of such costs.

**Section 9. Excess Fill.** Excess fill from excavation for basements, etc., shall be moved to an area to be designated by the Developer and shall not be taken outside of "North Point Estates" unless authorized by the Developer.

**Section 10. Maintenance of Lots.** All lots, whether occupied or not, and any improvements placed thereon, at all times shall be maintained in such a manner as to prevent their becoming unsightly, unsanitary, or a health hazard. If not so maintained, the Association shall have the right, through its agents and employees to do so, the cost of which shall be added to and become a part of the annual assessment with respect to such lot. Neither the Association nor any of its agents, employees, or contractors shall be liable for the trespass or any damage which may result from such work.

**Section 11. Lot Appearance.** No owner shall accumulate on his Lot junked vehicles, unused vehicles, litter, refuse, or other unsightly materials. Garbage shall not be allowed to accumulate more than one (1) week and must be kept in adequate sanitary containers. All lots shall have sufficient off-street parking to accommodate at least four (4) automobiles, including garage space. All driveways shall be of hard surface construction. Habitual parking on roadways is prohibited.

**Section 12. Pets.** No animals of any kind, including but not limited to livestock, chicken, or fowl, shall be raised, bred, housed, quartered or kept on any lot, except that horses (only as to Lots two acres or greater in size), dogs, cats and other ordinary household pets may be kept and housed provided they are not kept, bred, housed, or maintained for any commercial purpose. Any such domestic animals kept as pets must be restrained and confined and kept off the premises of other lot owners and provided further that such domestic pets must be kept quiet and orderly so as not to disturb the peaceful enjoyment of the other lot owners.

**Section 13. Sidewalks.** Sidewalks within the subdivision are permitted but not required.

**Section 14. Firewood.** Firewood shall be stored within the residence or permitted shed. If stored outside, it shall be stacked and ranked immediately adjacent to the rear of the residence in an

orderly fashion. If the wood is purchased by the truckload, it must be cut and stacked within one (1) month of delivery.

**Section 15. Fire Protection.** The owners of any lot in this subdivision upon which a building is to be erected shall, prior to construction, secure and thereafter maintain fire protection from the fire department serving this subdivision.

**Section 16. Firearms.** No firearms, air rifles, or BB guns shall be discharged within said subdivision and no hunting of any animals shall be permitted within the subdivision.

**Section 17. Trees.** All existing trees, bushes, and shrubs shall be protected in their native state as much as possible except as the same may interfere with a proposed sanitary disposal system or with a proposed structure and lawn as approved by the Architectural Review Process.

**Section 18. Other Prohibited Matters.** No home occupation or profession shall be conducted on any lot except as may be authorized by the Association. No commercial use of any Dwelling or Lot shall be permitted. No model home or homes shall be permitted on any lot or lots except by prior written approval of the Developer. Excepting, nothing herein shall prevent Developer from carrying out in the normal course of business the development, construction, and sales of the Properties.

**Section 19. Easements Reserved with Respect to Lots.** Developer reserves for itself, successors and assigns, easements over each Lot, and the right to ingress and egress to the extent reasonably necessary to exercise such easements as follows:

- a. Utility easements shown on any recorded Plat of the Properties, except that if any plat fails to establish easements for such purposes then a ten (10) foot wide strip running along the side lot lines, front lot line and rear lot lines of The Dwelling Lots is reserved for the installation and maintenance of utility facilities, and incidental usage related hereto.
- b. An easement is reserved for surface drainage over any natural drainage areas within the Dwelling Lots.
- c. An easement is reserved for connection to and use of common wells serving multiple lots, with that portion of the easement area represented by the wells as indicated on the final plat of the subdivision. Additional easement areas as needed to connect each Dwelling lot indicated as being serviced by each such well and the dwelling on each such lot is, likewise, reserved over and across lot within the subdivision including portions thereof subject to roadway easement, though the precise routing of connecting water lines cannot be determined at time of execution hereof. Precise location as ultimately determined by the Architectural Review Committee shall control and be final, with the easement area of all connector lines to extend ten (10) feet in all directions from the center of the line.
- d. The Owner shall not place any structure on any such easement and shall be responsible for maintaining the easement, however, any damages caused by the user of the easement shall be repaired and restored by such user.

- e. Prior to commencement of construction upon any lot, the Developer, its successors, assigns, or licensees, shall have the right to enter upon any lot for the purpose of removing offensive underbrush or for pest control purposes. No such entry shall be deemed a trespass.
- f. No Owner shall have any claim or cause of action, except as herein provided, against Developer, its successors, assigns, or licensees arising out of exercise or non-exercise of any reserved easement except cases of willful or wanton misconduct.
- g. The conveyance by Developer of a title interest in any lot within the subdivision shall not serve as a relinquishment of Developer's easement rights as needed to install well water systems, unless Developer specifically relinquishes such rights by reference to this section in any such conveyance as to the lot which is the subject of such title transfer.

Owner(s) of Lots serviced by a well water system as indicated on the final plat are forbidden from installing their own well water system unless otherwise indicated on the face of the plat, and then such indicated systems shall only be allowed if compliant with standards of governmental bodies entrusted with regulations of such systems.

**Section 20. Driveway Connections.** Each driveway located within "North Point Estates" which connects with any street or roadway shall be provided with a culvert, if necessary, properly located adjacent to such street or road and of sufficient size to permit adequate drainage through such culvert and under said driveway; the cost and installation of said culvert shall be the responsibility of the owner of the Lot served by the said driveway and any upkeep, maintenance, and improvement thereafter in relation to said culvert shall continue to be the responsibility of said owner. All culverts shall meet the requirements set forth by the County Zoning Ordinance and County Subdivision Ordinance.

**Section 21. Quality of Structure.** It is the intention and purpose of these covenants and restrictions to insure that all structures shall be of a quality design, workmanship and materials which are compatible and harmonious with the natural setting of the area and the other structures within the development. All structures shall be built in accordance with applicable government building codes.

**Section 22. Recreational Vehicles and Campers.** All recreational vehicles must be stored inside the dwelling or dwelling accessory building. Except that, motor homes and campers may be parked or stored in the rear of dwelling or side of dwelling only if accessed from the rear of said dwelling. Recreational vehicles and campers may be temporarily parked on the front driveway for only the purposes of loading, cleaning and unloading for no more than two days in a week. Recreational vehicles and campers are not allowed to be permanently parked on the front drive. Any storage of motor homes or campers must not be aesthetically offensive.

**Section 23. Fences.** All fences must be approved by the Architectural Review Committee. All fences must be constructed of maintenance free materials and placed in the rear of house only.



**ARTICLE VI  
UTILITIES**

**Section 1. Water Supply.** Certain lots within the subdivision will be serviced by shared wells as indicated on the plat. Easement rights and obligations are as indicated on the plat and/or in Article V hereof. Well water systems are subject to the following additional provisions:

- a. All costs and expenses of operating, maintaining, repairing, or replacing the well, pump, sittings, equipment and water distribution lines shall be shared equally by owners of dwelling units served. Each dwelling shall have a water meter installed prior to occupancy of residence and it shall be purchased and installed by the owner(s) of the dwelling unit served. Except that, the owner(s) of each dwelling unit served shall pay a proportionate share of the electric cost to operate the well and pump base on the water meter usage.
- b. All costs and expenses of maintaining, repairing or replacing a water service line shall be paid by the owner(s) of the dwelling unit served.
- c. The owners of lots and, if applicable, any future subdivided portions thereof serviced by a multiple lot well and connected water distribution system shall be the owners of such shared well and distribution lines, which ownership interest can only be evidenced by and transferred incident to conveyances of the underlying real property served. Notwithstanding, the rights acquired by one owner in relation to real property other than the lot owned by such owner are easement rights only, as distinguished from a fee simple title interest.
- d. The "North Point Estates Property Owners' Association, Inc." shall act as agent for the owners of each multiple lot well and water distribution system with respect to the matter of billing, collecting and payment of subparagraph (a) shared costs and expenses and with respect to resolution of disputes arising in connection therewith, which it shall finally resolve without right of judicial or other review or appeal except as to any decision claimed to be both arbitrary and capricious. This service shall be provided by the "North Point Estates Property Owners' Association, Inc" on a cost recovery basis without liability to or recourse in favor of any lot owner(s). The "North Point Estates Property Owners' Association, Inc" shall not hereby acquire any ownership interest in any of the affected wells or water distribution lines.
- e. Any monies due the Association pursuant to subparagraph (d) above not paid within thirty (30) days of the submission of a statement shall be assessable, a charge upon the affected lot(s) and subject to lien in the same manner as assessments provided for at Article IX.
- f. The Association may decline to continue to serve as agent for multi-lot well water distribution systems at any time by action taken in accordance with its By-laws.
- g. All well water distribution systems shall comply with applicable well water quality and related standards, rules, and regulations.

**h. An individual property owner's obligation to contribute to the costs of maintenance or service to a well system and distribution lines shall not begin until such time as that property is hooked up to the well system itself and receives the benefit of the well system.**

**i. The owners of lots with a well installed on their property, as per the plat, gives the owners of lots serviced by the well the right to go upon the well easement, as per the plat, for the sole purpose of installing, repairing, maintaining and improving the service lines which provide water from the well as located per the plat.**

**j. The owners to this Restrictive Covenants further grant the right of ingress and egress to maintenance personnel and contractors to come upon and pass over and under, in person or with equipment, such portions of their properties as are necessary to make repairs, inspections, service or maintenance of the well, pump and pipe system. In the event said maintenance personnel and contractors fail to restore the property to its original condition after repair, maintenance or improvements on the well, pump and pipe system have been accomplished, the costs of restoring the property to its original condition shall be borne by the party or parties employing the services of the inspection service or maintenance personnel causing the damage. If the repair is for joint use by two or more parties, then the costs shall be shared equally by those parties benefiting.**

**Section 2. Sewage Disposal. Septic systems are subject to the following additional provisions:**

- a. All costs and expenses of maintaining, repairing or replacing an effluent service line shall be paid by the owner(s) of the dwelling unit served.**
- b. All sewage disposal by individual septic systems, or other approved methods shall be acceptable to and approved by the Dubuque County Health Department.**
- c. Design. Sanitary disposal or other approved methods must be designed by an Iowa Registered Professional Engineer or an Iowa Registered Sanitarian.**
- d. Design Plans. The design plans for any system shall be submitted to and a permit for installation obtained from the Dubuque County Health Department or other authority having jurisdiction.**
- e. Percolation Test. Proof acceptable to the Dubuque County Health Administrator that a separate percolation test has been taken on each lot with a septic field must be submitted with the above mentioned permit application.**
- f. Inspection. Any such system as installed shall be subject to inspection and final approval by the Dubuque County Health Department before backfilling. Said inspection shall be visual and on the Owner's lot site. Any system work covered up prior to inspection shall be uncovered and inspected prior to the issuance of any occupant permit.**
- g. Contractors. Lot owners shall hire only competent contractors to install said systems and said contractors shall construct same in accordance with the rules and regulations of the Dubuque County Department of Health or the State of Iowa Department of Health. In the event that Dubuque County Board of Supervisors**

develops a method of licensing contractors for the construction of sewage systems, said contractor hired by the lot owner shall be so licensed.

h. Ongoing Inspection. Each septic tank system shall be inspected at least once every three (3) years, more often if same is not functioning properly, and any malfunction detected by such inspection shall be corrected immediately or as soon thereafter as the weather permits. The inspection to be made in accord with this subparagraph shall be undertaken by a qualified inspector approved by the Dubuque County Department of Health and/or the Iowa Department of Health.

i. Effluent. No effluent shall be permitted to flow out or over any property and any malfunction shall be corrected immediately upon discovery or as soon thereafter as the weather permits.

j. Rules and Regulations. Any septic tank and drain field system to be established and maintained in accord herewith shall be subject to the rules and regulations of the Iowa Department of Environmental Quality, the Iowa Department of Health and the Dubuque County Department of Health and any violation thereof shall be subject to the penalty or penalties prescribed by each of said agencies.

k. Sanitary Sewer District. In the event a sanitary sewer district with a central system of sewage disposal and sewer lines is created, each lot owner will be obligated to connect to same within five (5) years after the system becomes available or when the present system on said lot or servicing said lot malfunctions, whichever occurs first.

l. Pumping of Septic Tanks. All septic tanks within the subdivision shall be pumped not less than every three (3) years.

m. Hold Harmless. Each lot owner shall hold Dubuque County and the State of Iowa harmless for the failure of the private sewage disposal systems servicing said lot.

**Section 3. Storm Sewer Easements.** The Developer shall determine which areas of the Storm Sewer Easements shall be served by piping. Surface drainage shall be allowed in all other areas of the Storm Sewer Easements.

**Section 4. Underground Utilities.** All utilities shall be located underground including, but not limited to, telephone, electric, natural gas, and cable television. This provision shall not apply to Article VI, Section 2(p), Sanitary Sewer Easements, or to Article VI, Section 3, Storm Sewer Easements, as provided herein.

**Section 5. Maintenance of Storm Sewer & Drainage Systems.** The Association shall accept from the Developer, the responsibility for the operation, repair and maintenance of the Storm Sewer & Drainage Systems and all related easements associated with such Storm Sewer and Drainage Systems.

**ARTICLE VII**  
**THE COMMON PROPERTIES: RIGHTS, OBLIGATIONS AND**  
**RESERVATIONS WITH RESPECT THERETO**

**Section 1. Members Easement of Enjoyment.** Subject to the provisions of this Article VII, every Member shall have the nonexclusive right and easement of enjoyment in and to the Common Properties, which easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

**Section 2. Obligation of the Association with Respect to Common Properties.** The Association, for itself, its successors and assigns, hereby covenants with the Developer as follows:

- a. The Association will accept conveyance of the easement rights in relation to the subdivision roadways or streets for the purpose of managing and controlling such streets for the benefit of its members. Further, the Association will accept further conveyance of Common Properties from the Developer should any hereafter occur including any formal entrance if one is constructed, any recreational easement or title to any lot within the subdivision. The Association will maintain all common Properties and in particular will maintain the street or roads in the subdivision by repairing or replacing them when necessary and by removing snow and all other obstructions so as to keep them open and passable at all times.
- b. The Association agrees that the general public shall have the right to the use of its streets.
- c. The Association will preserve and maintain for the common benefit of its Members, and other users of right, all of the Common Properties which it shall own, shall pay any taxes assessed in relation thereto, carry insurance with respect thereto as determined by its Board of Directors, and shall keep same in good and slightly repair.
- d. While the Association shall serve as agent for multi-well water systems as provided in Article VI hereof, at least until such time as it resigns as to any such multi-lot systems, none of such systems thereby become a "Common Property".

**Section 3. Extent of Members Easement.** The rights and easements of enjoyment created hereby for the benefit of the Association Members and other users of right shall be subject to the following:

- a. Rights of the Developer, its successors, assigns, licensees, and sub-licensees as herein reserved.
- b. The right of the Association to dedicate or transfer all or any part of the roads and Common Properties to any public agency, authority or utility, subject to the conditions and limitations as provided in its Articles of Incorporation.

**Section 4. Rights and Easements Reserved by Developer.** The Developer for itself, its successors and assigns, reserves the following rights and easements in and with respect to Common Properties transferred to the Association:

- a. An easement is reserved with respect to all open areas conveyed to the Association pursuant to this Declaration, to install, lay, construct, renew, operate and maintain underground utility lines, conduits, and equipment, and structures and devices relating to utility services for the purpose of serving the properties with telephone, electricity, water, cable service and other utility services; and Developer, its successors and assigns, through authorized representatives, may enter upon such areas at all times for any such purposes, and cut down and remove any trees or bushes that interfere or threaten interference with any such right to use.
- b. An easement is reserved for surface drainage over any open areas to include drainage from Storm Sewer and Drainage Easements.
- c. Agents, representatives and licensees of the Developer shall have the right at all times to enter upon the open areas for the purpose of exercising any such reserved rights, and no such entry shall constitute trespass, provided that no such entry shall interfere unreasonably with the use and enjoyment of the Common Properties by the Members, except as restricted herein.
- d. The Developer, its successors and assigns, by their agents and representatives, reserves the right during the sales period of the development to gain access to any and all of the Common Properties and Lots of which the Developer is the record holder and reserves the right to perform such acts thereon and with respect thereto as it may determine, except the exercise of such rights shall not unreasonably interfere with the use of the Common Properties by Members.

**ARTICLE VIII  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1. Membership.** Every person or entity who is a record owner of a fee, or undivided fee, interest in any Lot subject to these covenants shall be a member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member. In the event of future subdivision of any Lot, every person or entity who is a record owner of a fee, or undivided fee in all lots created from said original Lot, shall be a member.

**Section 2. Voting Rights.** The Association shall have two classes of voting membership:

- Class A.** Class A members shall be all those Owners as defined in Section I above with the exception of the Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section I above. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and 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 such Lot.
- Class B.** Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Lot in which it holds the interest required for membership. Class B membership shall cease and become converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

**ARTICLE IX  
COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation with Respect to Assessments.** The Developer, for each Lot within the properties subject to the provisions of this Declaration hereby covenants and each owner of any such Lot, by acceptance of a deed therefore or contract for the purchase thereof (whether or not it shall be so expressed in any such deed or contract), shall be deemed to covenant for himself, herself, his heirs, her heirs, representatives, successors and assigns to pay to the Association an annual assessment. All such assessments, together with interest thereon and cost of collection thereof, shall be a charge on the land with respect to which such assessments are made and shall be a lien against such land when such lien is perfected as provided in this Article. Each such assessment, together with interest thereon and costs of collection thereof, also shall be the personal obligation of the person who is the owner of such assessed land at the time the assessment became due.

**Section 2. Purpose of Assessments – Annual Assessments.** The annual assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Members, and for the improvement and maintenance of the Common Properties, and to providing services and facilities related to all or any of the foregoing matters, and of the Members, including, but not limited to, discharge of the obligations of the Association as imposed by this Declaration, payment of taxes, if any, upon the Common Properties, payment of insurance with respect to the Common Properties and repair, replacement and additions thereto, payment for any services provided to Members with respect to the foregoing matters, and for the cost of labor, equipment, materials, management and supervision thereof.

**Section 3. Amount of Assessment, Change in Amount and Date of Commencement.** The annual assessment for each year, commencing with the assessment made with respect to the calendar year 2007, shall be two hundred fifty dollars (\$250.00). No assessment shall be made with respect to any period prior to 2007. The Board of Directors of the Association, by resolution adopted in the manner provided in its By-Laws may increase the amount of the annual assessment for any future year. The amount of the increase for each Lot shall not exceed the total actually expended for such maintenance for that year by the Association, divided by the total number of lots subject to assessment in the Subdivision, unless an annual assessment of a greater amount for such year shall have been approved by vote of Members as provided in the By-Laws of the Association. The annual assessments described herein must be fixed at a uniform rate for all Lots and consistent with Section 6 below.

**Section 4. Effect of Nonpayment of Assessment, the Lien, Personal Obligation of the Owner.** If any assessment is not paid on the date when due, such assessment thereupon shall become delinquent and from and after the time when the Association shall have filed against the delinquent property with the Dubuque County Recorder an appropriate instrument setting forth such delinquency, such assessment, together with interest thereon and cost of collection thereof as hereinafter provided, shall become a continuing lien upon the property against which such assessments are made and shall bind such property in the hands of the then Owner, his heirs, representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

**Section 5. Interest, Remedies of the Association.** Delinquent assessments shall bear interest at the highest legal interest rate chargeable to individuals from the date of delinquency. The Association may bring either an action at law against the person personally obligated to pay the

same, or to foreclose the lien against the property and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest as provided by law and reasonable attorney's fee to be fixed by the court, together with the costs of such action.

**Section 6. Exempt Property.** Notwithstanding the foregoing, no assessments, charges, or liens shall be assessed with respect to Lots owned by the Developer, except Lots subject to installment sale contracts.

**Section 7. Subordination of the Lien to Mortgage.** The Lien of the assessments provided for herein shall be subordinated to the lien of any mortgage or deed to secure debt now or hereafter placed upon the properties subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

**Section 8. Proof of Payment.** The Association upon request and payment of a service fee of not more than fifteen dollars (\$15.00) at any time shall furnish any Owner liable for any assessment a certificate in writing signed by an officer of the Association setting forth what assessments, if any, which have been made with respect to said Owner's property and which are unpaid. Such certificate shall be conclusive evidence with respect to the matters certified therein.

## ARTICLE X GENERAL PROVISION

**Section 1. Duration.** The covenants and restrictions set forth in this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owners of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded with the Dubuque County Recorder after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of two-thirds of the Lots within the Existing Properties has been recorded agreeing to change said covenants and restrictions in whole or in part; provided however, that no such agreement of change shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Lot Owner, at least (90) days in advance of any such action taken.

**Section 2. Notices.** Any notice sent or required to be sent to any Member or Lot Owner under the provisions of this Declaration shall be deemed to have been properly given when mailed, postage prepaid, to the last known address of the person who appears as a Member or Lot Owner on the records of the Association at time of mailing.

**Section 3. Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction. Such action may be either to restrain violation or to recover damages, or against the land, to enforce any lien created by these covenants. Failure by the Association or any Owner to enforce any covenant or restriction herein contained in no event shall be deemed a waiver of the right to do so thereafter.

**Section 4. Modification.** By recorded Supplemental Declaration, the Association may modify any of the provisions of this Declaration or any Supplemental Declaration for the purposes of clarification or otherwise, provided that it shall not substantially alter the scheme of this Declaration or any succeeding Supplemental Declaration and provided that the modification is approved by two-thirds of the votes which members are entitled to cast.

**Section 5. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order in no way shall affect any other provisions, which shall remain in full force and effect.

**Section 6. Occupants.** All of the obligations, liabilities, and covenants imposed upon Owners hereunder shall also be applicable to and imposed upon all persons occupying any Lot who are not Owners other than Developer.

**Section 7. Creation of Association.** The Association shall be organized by the Developer at such time as Developer in its discretion may determine, but in no event, later than July 1, 2007.

**Section 8. Administration.** Until such time as the Association is organized, Developer, its successors and assigns, shall be vested with all powers of the Association described herein and in the By-Laws.

**Section 9. Rules and Regulations.** The Association may promulgate such rules and regulations with respect to the properties as it may determine.

**Section 10. Deeds.** Each Owner and purchaser under an installment sale contract accepts such conveyance subject to restrictions, covenants, obligations, and liabilities hereby created, reserved or declared, all as though same were recited at length in such deed or installment sale contract.

IN WITNESS WHEREOF, the foregoing instrument has been executed this  
12<sup>th</sup> day of February, 2008.

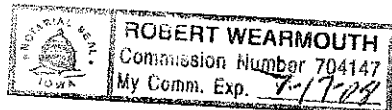
CALLAHAN CONSTRUCTION, INC.

By Joel M. Callahan  
Joel M. Callahan, President

STATE OF IOWA

DUBUQUE COUNTY

On this 12 day of FEBRUARY, 2008, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared JOEL M. CALLAHAN, to me personally known, who, being by me duly sworn, did say that he is the President, of the corporation executing the foregoing instrument; that no seal has been procured by the corporation; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and JOEL M. CALLAHAN acknowledged the execution of the instrument to be the voluntary act and deed of the corporation by it voluntarily executed.



Robert Wearmouth  
Notary Public in and for said State