

COVENANT SUMMARY

Pinnacle on Fleur

Utilities:

Electric	MidAmerican Energy
Gas	MidAmerican Energy
Internet	Quantum Fiber
Water	Des Moines Water Works

Each Owner shall be responsible for payment of all charges incurred for electricity, water, trash removal, gas, sewer, telephone, telecommunications, cable, television and similar utility services to the Owner's Lot in the same manner as people occupying single-family detached houses

School District: Des Moines Public Schools

HOA: Yes/Managed by: Pinnacle on Fleur, LC, 515.963.8335; admin@kimdev.com

Kimberley Development will manage the HOA until all units have been sold, at which point control will be turned over to the homeowners.

HOA Fees: \$500 initiation fee upon closing, after that \$250 Monthly

Rental Restrictions: No townhome or part of a unit may be rented or leased to anyone who doesn't own a share of it, unless the Declarant or the association approves it in advance.

All leases must be for at least one year, with no option to sublease, and renewals or extensions must also be for at least one year. Leasing a unit does not relieve the Owner of any responsibilities or obligations to the Association or other Owners.

Pets: No more than three (3) dogs or cats (for example, one (1) dog and two (2) cats or two (2) dogs and one (1) cat.) [covenants do not state breed or weight restrictions.]

Landscaping: The Association shall have sole control over all trees and shrubs, landscape plantings, retaining wall structures or other stabilization plantings and decorative features.

Property Rights in Common Areas: The Association must maintain all common areas in good, clean, and sanitary condition. Only Owners and their invitees may use them, while the Association may enter as needed to perform maintenance, enforce governing documents, or care for lawns and landscaping.

Maintenance by Association: The Association shall provide services on behalf of the Owners of each Lot for all decoration, operation, improvement, maintenance, repair, reconstruction, restoration, replacement, and preservation of the Common Areas and the Association Responsibility Elements.

Maintenance of Townhomes: Each Townhome Owner, at their own expense, is responsible for all decoration, maintenance, repair, and replacement of structures, improvements, fixtures, and equipment on or within their Lot and Living Unit, excluding Association Responsibility Elements.

All Living Units and related property must be kept safe, clean, orderly, sanitary, and free of pests, and maintained in good condition. Exterior structures, improvements, fixtures, and equipment must match as closely as possible.

Insurance: Owners are responsible for insuring their individual units and personal property, while the Association covers common areas and shared elements

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Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2023-00022148

BK 19468 PG 239-265

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PINNACLE ON FLEUR TOWNHOMES

Preparer Information:

Charles F. Becker
666 Walnut Street, Suite 2000
Des Moines, Iowa 50309
(515) 283-4609

Taxpayer Information:

N/A

RETURN TO:

Return Document To:
Wilson & Egge, P.C.
222 N.W. Sunrise Drive
Waukee, Iowa 50263

Grantor:

Pinnacle on Fleur, L.L.C.

Grantee:

N/A

Legal Description:

Lots One (1) through Twenty-three (23), inclusive, and Outlot Z, in Pinnacle on Fleur, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PINNACLE ON FLEUR TOWNHOMES**

THIS DECLARATION, made on the date hereinafter set forth by Pinnacle on Fleur, L.L.C., with its principal place of business in Polk County, Iowa, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Polk County, Iowa, which is more particularly described as:

Lots One (1) through Twenty-three (23), inclusive, and Outlot Z, in Pinnacle on Fleur, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

NOW THEREFORE, Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

1. DEFINITIONS

- A. "Association" shall mean and refer to Pinnacle on Fleur Townhome Owners Association, Inc., its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa as amended.
- B. "Association Responsibility Elements" shall mean the following, whether located upon a Townhome Lot or upon the Common Area:
 - (1) The exterior surface of the Buildings upon a Townhome Lot, excluding windows, doors, garage doors, stoops, patios and decks.
 - (2) The structural portion of the Building upon a Townhome Lot.
 - (3) The roof, gutters, downspouts, and foundations of the Buildings upon a Townhome Lot.
 - (4) Any common wall between residential or garage structures upon Townhome Lots, except the interior surfaces thereof.
 - (5) The yard surrounding the residential or garage structure upon a Townhome Lot, except for trees and shrubbery.
 - (6) Streets, driveways and sidewalks upon a Townhome Lot or the Common Area.
 - (7) Conduits, ducts, plumbing, wiring, pipes and other facilities or utilities within the attic or basement of a residential or garage structure which are carrying any service

to more than one Townhome Lot.

- (8) Landscape plantings, materials and only irrigation system installed by Declarant or the Association.
- (9) Entrance monument sign and features.
- (10) Any fence, retaining wall structure or stabilization plantings constructed or installed by Declarant or the Association.
- (11) Security systems, including, but not limited to, recording devices, lighting and associated cabling and wiring used to secure the Building or any other feature within the Properties as the Declarant or Association deems necessary.
- (12) The Common Area, including but not limited to any private storm and sanitary sewers, detention basins, private water mains, overland flowages and storm water drainage and detention areas located thereon.

- C. "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- D. "Building" shall mean and refer to any single-family attached or detached dwelling unit that may be constructed on a Townhome Lot or a part of more than one Townhome Lot, and shall include any attached garage.
- E. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned initially by the Association is described as:

Outlot Z in Pinnacle on Fleur, an Official Plat now included in and forming a part of the City of Des Moines, Polk County, Iowa; together with the improvements located thereon.

- F. "Declarant" shall mean and refer to Pinnacle on Fleur L.L.C., an Iowa limited liability company ("Pinnacle") and its successors and assigns, if such successors or assigns acquire all Townhome Lots owned by the Declarant for the purpose of resale or development.
- G. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject, as the same may be amended from time to time.
- H. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Properties, or any portion thereof, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, or successors to their interest.
- I. "Living Unit" or "Unit" shall mean and refer to any portion of a Building situated upon a Townhome Lot and designed and intended for use and occupancy as a resident by a single family or individual.

- J. "Townhome Lot" or "Lot" shall mean and refer to the lots numbered 1 through 23 shown on the recorded plat of the Properties, but does not include the Common Areas. With respect to any single-family portion of any Building that may be constructed on a part of more than one of such lots, "Townhome Lot" shall mean and refer to the real estate conveyed in connection with such dwelling unit.
- K. "Member" shall mean and refer to those persons entitled to membership as provided in the Articles of Incorporation of the Association and the Bylaws of the Association.
- L. "Owner" shall mean refer to the record owner, whether one or more persons or entities, including the Declarant, of a fee simple title to any Townhome Lot, but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the property by provision or operation of law. A vendee in possession under a recorded contract of sale of a Townhome Lot shall be deemed the owner of the Townhome Lot.
- M. "Properties" shall mean and refer to that certain real property described above.

2. PROPERTY RIGHTS IN COMMON AREAS

A. Management and Maintenance by the Association

The Association, subject to the rights of the Owners as set forth in the Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Common Area conveyed to it and all improvements thereon, and the Association Responsibility Elements and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.

No person other than the Owner of a Townhome Lot and his invitees shall have the right to enter upon, use or affect an Association Responsibility Element located within a Townhome Lot, except that the Association and its designates may enter upon and within a Townhome Lot and the Buildings and Living Unit located thereon at reasonable times for the following purposes:

- (1) Installation, repair, removal, replacement, maintenance or inspection of an Association Responsibility Element.
- (2) Enforcement of any provision of this Declaration or the Articles of Incorporation or the By-Laws of the Association.
- (3) Mowing and maintenance of grass and landscaped areas.

In the event that the need for maintenance, replacement or repair of any portion of the Common Area, the improvements thereon, or of any Association Responsibility Elements is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the cost of such maintenance, replacement or repair shall be added to and become part of the assessment to which the Owner is subject and a lien upon the Townhome Lot and Living Unit of such Owner and shall become due and payable upon demand.

B. Owner's Easement and Right of Enjoyment

Every Owner of a Townhome Lot shall have a non-exclusive right and easement of enjoyment in and to the Common Area which rights may be delegated to family members, lessees and guests of every Owner (subject to any reasonable and non-discriminatory rules and regulations which may be enacted by the Association), which shall be appurtenant to and shall pass with the title to every Townhome Lot, subject to the following provisions:

- (1) The right of the Association to suspend the voting rights of the Owner for any period during which any assessment against his Townhome Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations; provided, however, that nothing contained in this paragraph shall be deemed to deny an Owner access to and from his Townhome Lot.
- (2) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of Members has been recorded.
- (3) The right and obligation of the Association to maintain sewer and other underground utilities located within the Properties.
- (4) The right of the Declarant or the Association to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Area;
- (5) The right of Declarant or the Association to provide in the Common Area, landscaping, outdoor furniture and recreational equipment, signs, decorative structures and necessary appurtenant utilities;
- (6) The provisions of this Declaration and of Rules and Regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation and Bylaws and those accompanying the Declaration; and
- (7) The right of the Association to mortgage any or all of the Common Area with the assent of two-thirds (2/3rds) of the votes of all members.

C. Title to Common Area

The Declarant hereby covenants for itself, its successors and assigns, that it shall convey to the Association from time to time and as it is subsequently determined, the fee title to all Common Area, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions created by this Declaration, or granted to the City of Des Moines, Iowa. The transfer of title to the Common Area shall be accomplished on or before the recorded conveyance of the first Lot by the Declarant.

Until the construction work on all Living Units within the Properties, and appurtenant improvements incidental to said Living Units, is completed, Declarant or its assignee shall have the right to enter upon the Common Area, any Townhome Lot or Living Unit for the purpose of completing such work and performing

under applicable guarantees.

D. Use of the Common Area

The Common Area shall be used strictly in accordance with the provisions of the Declaration. No Owner shall obstruct or interfere whatever with the rights and privileges of other Owners or the Association in the Common Area, and nothing shall be planted, altered, constructed upon, or removed from the Common Area, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the Common Area to the prior condition and charge and assess the cost thereof against the Owner who violates this section and such cost shall become a special assessment and a lien upon the Townhome Lot and Living Unit of such Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of such restoration as provided in Article 4 for the collection of delinquent assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Area, the Association or the offended Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorneys' fees as the Court may allow together with all necessary costs and disbursements incurred in connection therewith.

E. Duration

The Common Area as described in Section 1(E) shall not be changed and shall continue in perpetuity except by approval of the Declarant or all members of the Association, subject to the provisions for dedication or transfer in Section B(2) above and the right to mortgage in Section B(7) above.

3. MEMBERSHIP, VOTING RIGHTS AND BOARD OF DIRECTORS

A. Membership

Every owner of a Townhome Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Townhome Lot which is subject to assessment. Ownership of a Townhome Lot shall be the sole qualification for membership.

B. Voting

Subject to provisions of Section 3 of this article, there shall be appurtenant to each Lot one vote in the Association. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as they among themselves determine, but in the event shall more than one vote be cast with respect to any Lot.

C. Declarant as Sole Voting Member

Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Association until Declarant no longer owns any portion of the Properties or until Declarant waives, in writing, its right to be the sole voting Member. Declarant shall have the right to elect and/or remove all Directors and to cast all votes as it deems appropriate. Each Owner by acceptance of a deed shall be deemed to have released Declarant from all claims with respect to actions taken or not taken while Declarant controls the Association.

D. Board of Directors

Declarant shall appoint the initial Board of Directors. Upon cessation of all ownership interest by Declarant and subject to the provisions of Section 3 of this Article, Declarant shall conduct a turnover meeting at which the Members entitled to vote shall elect a Board of Directors of the Association as prescribed by the Bylaws of the Association. The newly constituted Board of Directors shall thereafter manage the affairs and business of the Association subject to the terms of this Declaration.

E. Budget

During the Period of Declarant control the Board of Directors may, and after the Declarant no longer is the sole voting member, the Board of Directors shall prepare and adopt a budget for the Association no less frequently than annually. Within thirty (30) days after adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Association budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than ten (10) days nor more than fifty (50) days after mailing or other delivery of the summary. The proposed budget does not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

F. Power to Adopt Rules and Regulations

The Association may adopt, amend, repeal and enforce rules and regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Common Elements and the use of any other property, including Lots. Any such rules and regulations shall be reasonable and uniformly applied. Such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Copies of the currently effective Rules and Regulations shall be made available to each Owner upon request and payment of the reasonable expense of copying the same. Each Owner shall comply with such rules and regulations and shall see that Persons claiming through such Owner comply with such rules and regulations. The Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations. Such rules and regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of a conflict between the rules and regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

G. Power To Sue and Be Sued

The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). The Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, as to which the Association is a proper party in interest.

H. Authenticated Electronic Representation

To the extent not prohibited by applicable law, the Association may use technology or electronic

representation in completing its duties and responsibilities. In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit such authenticated electronic activity.

I. Suspension of Voting Rights

The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against such Member's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

J. Duration

No dissolution of the Association shall occur unless another association or equivalent entity has been created to succeed to the duties and responsibilities of the Association under this Declaration.

4. COVENANT FOR ASSESSMENTS

A. Creation of the Lien and Personal Obligation of Assessments

Other than Declarant, whose Properties shall be exempt from all assessments, each Owner of any Townhome Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, payable in monthly installments, and (2) special assessments for capital improvements and operating deficits, and (3) other special assessments as provided in this Declaration, such assessments to be established and collected as hereinafter provided. The assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Townhome Lot against which each such assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. 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 Townhome Lot 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.

B. Purpose of Assessments

The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area (including snow removal) and the Living Units upon Townhome Lots and for other purposes specifically provided herein. In addition, the annual assessment shall include repayment of sums advanced by the Declarant on behalf of the Association.

C. Maximum Annual Assessment and Notice

The Board of Directors shall establish the maximum annual assessment to be assessed against each Lot, which assessment shall include a pro rata portion of the amount of real estate taxes, special assessments and insurance premiums payable by the Association. Until January 1 of the year immediately following the conveyance of the first Lot by Declarant to an Owner, the maximum annual assessment shall be \$3,000.00 per Lot, payable at the monthly rate of \$250.00. Thereafter, the Board

of Directors shall establish the amount of the annual assessment against each Lot at least thirty (30) days prior to January 1 of each year. Any proposed increase of more than thirty percent (30%) greater than the annual assessment levied for the previous year shall require the consent of seventy-five percent (75%) of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of the annual assessment, special assessments and such other assessment notice as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto.

D. Reserve Fund

A portion of the annual assessment shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Association Responsibility Elements, and any capital improvements which the Association is required to maintain, and for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis (without limitation any drainage facilities owned or maintained by the association), and for the payment of insurance deductibles.

E. Special Assessments for Capital Improvements and Operating Deficits

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, which the Association is required to maintain, or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

F. Uniform Rate of Assessment

Both annual and special assessments must be fixed at a uniform rate for all Townhome Lots and may be collected on a monthly basis.

G. Date of Commencement of Annual Assessments: Due Dates

The annual assessments provided for herein shall commence as to all Townhome Lots on the first day of the first month following the date of conveyance of the Townhome Unit provided, however, that no assessment shall be made for any period prior to the issuance of the initial Certificate of Occupancy for the Unit.. 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 Townhome Lot at least thirty (30) days in advance of each annual assessment period. The annual assessments for each Townhome Lot sold by the Declarant to a third party shall become the obligation of the new Owner upon the closing of the purchase. Subsequent monthly installments of such assessments shall be paid by the new owner beginning on the first day of the month immediately following the closing of the purchase, and shall be payable to the Association c/o Pinnacle on Fleur, L.L.C. until the Declarant gives further notice as to whom such assessments are to be paid. The Board of Directors may, upon reasonable notice to the Owners of Townhome Lots, change the due dates upon which monthly assessments shall be payable. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Townhome Lot have been paid. A properly executed certificate from the Association

regarding the status of assessments on a Townhome Lot shall be binding upon the Association as of the date of its issuance.

H. Effect of Nonpayment of Assessments: Remedies of the Association

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Townhome Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the cost of all reasonable attorney's fees. 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 Townhome Lot.

I. Exemption from Assessments

The following portions of the Community shall be exempt from the Assessments, charges, and liens created under this Declaration: any property owned by a public body; any Common Element or Common Area; all utility lines and easements; any Lot owned by the Association; and **ANY LOT OWNED BY THE DECLARANT**. Declarant is not required to establish a budget as long as Declarant is the sole voting Member of the Association.

J. Subordination of Assessments Liens

If any Townhome Lot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriffs deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriffs deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriffs deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

K. Initiation Fee

At the time of closing on any Townhome Lot, Owner shall pay a non-refundable fee of \$500 (or such other amount as deemed appropriate by the Board of Directors) for purposes of reviewing the documentation submitted by Owner.

L. Surplus Funds

Any surplus funds of the Association remaining after payment of or provision for assessed expenses and any prepayment of or provision for reserves shall be retained by the Association as reserves or in other such funds as the Board may direct and need not be paid to the Owners or credited to them to reduce their future assessments.

M. Maintenance Schedule.

Commencing upon the termination of the period of Declarant control, the Board shall develop and observe a regular, periodic maintenance schedule for all aspects of the Common Areas for which it has an obligation to maintain, and shall no less than annually submit to the Members a report specifying the regular maintenance conducted on the Common Area in the previous year or such shorter period since the last report was submitted to the Members.

5. DECLARANT'S RIGHTS

A. Use Of And Entry Upon Townhome Lots

In addition to other rights set forth in this Declaration, Declarant reserves the right to use any of the Townhome Lots as models and to sell, assign, or conduct other businesses in connection with the construction and development of the project from any of such Townhome Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to show Townhome Lots then unsold. Declarant retains the right to be considered an Owner of any Townhome Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of Buildings and other improvements. Declarant reserves the right to enter upon and within any Living Unit, Townhome Lot, and Common Area in connection with any construction activity.

B. Common Area Landscaping

Declarant reserves the right to make changes in the number, location, or manner of construction of Buildings and other improvements. Declarant further reserves the right and is hereby vested with the sole control over all Common Area landscaping, plantings and the like. Declarant shall have the right to change the plantings and other landscaping elements within the Common Area from time to time in its sole discretion.

6. MAINTENANCE OF TOWNHOME LOTS

A. Maintenance by Owners of Townhome Lots

The Owner of each Townhome Lot shall furnish and be responsible for, at the Owner's own expense, all decoration, maintenance, repair and replacement of the structures, improvements, fixtures and equipment (but excluding the Association Responsibility Elements) located upon and within the Owner's Lot and Living Unit. All Living Units and property appurtenant thereto shall be kept in a safe, clean, orderly and sanitary environment free of insects, rodents, vermin and other pests and maintained in a good condition and state of repair at all times. Any exterior structure, improvement, fixture or equipment shall match, as nearly as possible, the original item that it repairs or replaces and shall be constructed or installed in accordance with local ordinances and building codes. Such property shall include, but is not limited to, the following:

- (a) Garage door, and all other doors and windows, including trim and any exterior brickmold or siding damaged by replacement;
- (b) Partition and interior walls;
- (c) Fireplaces, heating, ventilation and air conditioning;
- (d) Staircases, cabinetry, bookcases and counter tops;
- (e) Interior and exterior electrical wiring and facilities and light fixtures, including bulb replacement, for the exclusive use of the Living Unit;
- (f) Electrical lines for telecommunication and electrical facilities from the main box to a Living Unit, notwithstanding the fact that such wiring crosses other Lots or is located off-premises from the Owner's Lot.
- (g) Electronics, appliances, plumbing equipment and fixtures, garage door opener and security system;
- (h) Interior wall coverings, floor coverings and window treatments;
- (i) Decks and patios (including removal of snow and ice therefrom);
- (j) Flowers, plantings, gardens, trees, shrubbery and other landscaping planted by the Owner subject to the approval of the Association; and
- (k) Tower, antenna, satellite dish or similar reception devices installed by the Owner, including roof shingles and any exterior surface of the Building damaged by replacement or removal.
- (l) Elevators and associated mechanical system.

B. Maintenance by Association

The Association shall provide services on behalf of the Owners of each Lot for all decoration, operation, improvement, maintenance, repair, reconstruction, restoration, replacement, removal and preservation of the Common Areas and the Association Responsibility Elements. The Association shall perform all such maintenance in a good and workmanlike manner in accordance with all applicable laws, rules, ordinances, codes and regulations. Any exterior structure, improvement, fixture or equipment shall match, as nearly as possible, the original item that it repairs or replaces and shall be constructed or installed in accordance with local ordinances and building codes. Such services may include, but are not limited to, the following:

- (a) Paint, repair, replace and care for roofs, gutters, downspouts, foundations and siding, brickwork and other similar exterior surfaces of the Building (excluding windows, doors, garage doors, decks and patios);
- (b) Striping, repair and resurfacing of paved surfaces (excluding patio and including stoops located at the front entrance of any Living Unit), and other customary driveway, parking area, sidewalk and walkway maintenance to provide at all times ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street;

- (c) Removal of snow and ice from the driveways, parking areas, sidewalks, walkways, front entrance stoops, but not decks and patios;
- (d) Lawn care, routine mowing, use of pesticides to control infestation of weeds and insects and maintenance of irrigation systems installed by Declarant or the Association;
- (e) Maintenance and replacement of landscape plantings, general trimming of trees, shrubs and hedges, except those installed by the Owner on such Owner's Lot subject to the approval of the Association;
- (f) Paint, repair, replace and care for entrance signs and features, light posts, common outdoor furniture, recreational equipment or decorative structures installed by Declarant or the Association;
- (g) Repair, replace and care for any fencing and retaining wall structures or other stabilization plantings installed by Declarant or the Association;
- (h) Maintenance, repair and replacement of the Common Elements, including any private storm and sanitary sewers, and storm water drainage or detention areas installed by Declarant;
- (i) General policing to keep the Properties in a clean and orderly condition free of trash, debris and other unnatural articles; and
- (j) Decorate for seasonal, civic or community events and holidays.

C. Maintenance of Storm Water Detention Facilities by Association

Declarant shall be responsible only for the initial installation and construction of the storm water detention facilities. Upon completion of the initial construction, the Association, at its expense, shall be responsible for all maintenance, repair and replacement of the storm water detention facilities. Such maintenance obligations shall include, but are not limited to, reconstruction, repair, replacement, inspection, grading, dredging, mowing, replacement of permitted vegetation, removal of trash, litter and debris and any other duties required to be performed for maintenance under any storm water management plan on file with the City. Nothing shall be altered in, constructed in, or removed from the storm water detention facilities, except upon written consent of the Board of Directors.

D. Landscaping

The Association shall have sole control over all trees, shrubs, landscape plantings, retaining wall structures or other stabilization plantings and decorative features. The Board of Directors shall have the right to change the plantings and other landscaping elements within the Properties from time to time in its sole discretion subject to plantings allowed or required pursuant to any landscaping plan on file with the City or under a recorded easement for buffer landscaping and storm water detention management.

E. Utilities

Each Owner shall be responsible for payment of all charges incurred for electricity, water, trash removal, gas, sewer, telephone, telecommunications, cable, television and similar utility services to the Owner's Lot in the same manner as persons occupying single-family detached houses. All other charges for

utilities and common services as needed in connection with maintenance or operation of the Association Responsibility Elements shall be paid by the Association and the costs of the same shall be assessed against each Lot as part of the regular assessment.

F. Shared Facilities, Equipment and Fixtures

To the extent that facilities, equipment and fixtures, including fences, within any Lot shall be connected to similar facilities, equipment or fixtures affecting or serving other Lots, then the use thereof shall be subject to the rules and regulations of the Association.

G. Management

Contract Pursuant to authority granted in its Bylaws, the Association may enter into a contract for the professional management of its affairs, and the management fee thereof shall become a part of the regular assessment.

H. Responsibility for Willful or Negligent Acts

No Owner shall obstruct or interfere whatsoever with the duties and responsibilities of the Association to perform its maintenance obligations relating to the Association Responsibility Elements. An Owner shall be liable to the Association for the expense of any maintenance, repair or replacement to the Association Responsibility Elements rendered necessary by any intentional, willful, negligent or careless act of such Owner or by that of family, guests, tenants or licensees of such Owner. Any such expense for maintenance, repair or replacement shall be added to and become a part of the assessments to which such Lot is subject.

I. Snow Removal

The Association shall be responsible for snow removal from the driveways and walkways in the Common Area. Unless and until otherwise determined by the Board of Directors of the Association, the Association shall be responsible for snow removal from all Townhome Lots and from the driveway servicing each Townhome Lot, including any portions of the driveways within the Common Area, serving the Townhome Lots. Snow removal from patios and decks is the responsibility of the Owner.

J. Responsibility for Willful or Negligent Acts

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessments to which such Townhome Lot is subject.

7. INSURANCE AND INSURANCE ASSESSMENT FOR TOWNHOME LOTS

A. Insurance and Insurance Assessment

In addition to the annual assessments and the special assessments for capital improvements, the Association may levy assessments for insurance purchased by the Association. The Association shall obtain liability and casualty insurance for the Common Area and any other real or personal property owned by the Association, and for the Association Responsibility Elements. The casualty insurance shall be "all risk" coverage for 100% of the insurable value of the fixtures and improvements in the Common Areas, or which are included in the Association Responsibility Elements or otherwise owned by the Association, providing for loss or damage settlement on a replacement cost basis. The Association shall also obtain any other insurance required by law to be maintained including but not limited to, worker's compensation insurance,

and such other insurance as the Board of Directors shall deem necessary, advisable or appropriate. The insurance coverage obtained by the Association shall be written in the name of and the proceeds thereof shall be payable to the Association. Unless otherwise determined by the Board of Directors of the Association, each Owner of a Townhome Lot shall be responsible for obtaining homeowner's liability insurance and casualty insurance for property which is not part of the Common Areas or Association Responsibility Elements from insurers approved by the Board of Directors of the Association. The Board of Directors may require an Owner's casualty insurance to be obtained from the same insurer as the insurer under the Association's casualty insurance for the Association Responsibility Elements. All insurers must be authorized to conduct business in the State of Iowa. In the event of casualty loss, the Association shall be responsible for repair and restoration of the Common Area and Association Responsibility Elements, and the Owner shall be responsible for repair and restoration of all other portions of the buildings and improvements upon his/her Townhome Lot, except to the extent that the Board of Directors of the Association has determined to obtain casualty insurance for such portions which are not part of the Association Responsibility Elements in which case the Association shall apply any insurance proceeds received for such portions to such repair and restoration of such portions. If the insurance proceeds of the insurance obtained by the Association is insufficient to cover the costs of repair or replacement of the insured property damaged or destroyed, the Association shall make a reconstruction assessment against all Townhome Lots Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds.

B. Distribution to Mortgagee

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his mortgagee jointly.

C. No Limitation

This Article shall not limit the right of the Association to purchase insurance for the Common Area and make assessments therefor.

D. Annual Review of Policies

All insurance policies acquired by the Association shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

E. Other Insurance Requirements to Satisfy FHLMC

The Association must also obtain any additional coverage commonly required by private mortgage investors for developments similar in construction, location and use, including the following where applicable and available:

Agreed amount
Demolition cost
Increased cost of construction Boiler
and machinery

The insurer's minimum liability per accident under boiler and machinery coverage must equal the insurable value of the building housing such boiler or machinery or

\$2 million, whichever is less.

Deductibles may not exceed the lower of \$10,000 or 1 percent of the applicable amount of coverage. Funds for such deductibles must be included in the association's reserves and be so designated.

The Association's insurance policy must name the insured in substantially the same language indicated below:

Association of Owners of the Pinnacle on Fleur
Townhomes for the use and benefit of the individual
owners.

The Association must carry comprehensive general liability (CGL) insurance covering all Common Areas.

If not already included in the terms of the CGL coverage, there must be a "severability of interest" endorsement precluding the insurer's denial of an Owner's claim because of negligent acts by the Association or other Owners.

The Association must also carry any additional coverage commonly required by private Mortgage investors for developments similar in construction, location and use, including the following where applicable and available:

- (4) Comprehensive automobile liability
- (5) Bailee's liability
- (6) Elevator collision liability
- (7) Garage keeper's liability
- (8) Host liquor liability
- (9) Worker's compensation and employer's liability
- (10) Contractual liability.

The insurer's limit of liability per occurrence for personal injury or property damage under the terms of the above coverages must be at least \$1 million.

All policies documenting insurance coverage(s) obtained in accordance with FHLMC requirements for property insurance must have the insurance industry's standard mortgage clause. Such clause must provide that the insurer will notify the named mortgagee at least 10 days before any reduction in coverage or cancellation of the policy.

If a Mortgage on a Townhome Lot is owned in whole by FHLMC "(name of Seller/Servicer), its successors and assigns" should be named as mortgagee instead of Federal Home Loan Mortgage Corporation.

The mortgage clause of insurance policies obtained by the Association must be endorsed to fully protect the interest of FHLMC or the interests of FHLMC and the Seller/Servicer where applicable.

When a mortgage clause is not applicable (e.g., in a separate policy of comprehensive general liability), a certificate of insurance must be provided to the Seller/Servicer. This

certificate must contain the information required for certificates or other evidence of insurance in the FHLMC single family Seller/Servicer Guides, with the Seller/Servicer named as certificate holder instead of the mortgagee.

8. EASEMENTS AND ENCROACHMENTS

A. General Easements

Each Townhome Lot shall be subject to the following easements in favor of the Association and the other Owners of Townhome Lots:

- (1) Every portion of a structure upon a Townhome Lot which contributes to the support of any structure not on the same Townhome Lot is burdened with an easement of such support.
- (2) Each Townhome Lot is burdened with an easement through the Townhome Lot and through the attic and basement of any structure thereon for conduits, ducts, plumbing, wiring, pipes and other facilities for the furnishing of utilities and services to other Townhome Lots, including the location of utility meters on one Townhome Lot for the service to other Townhome Lots.
- (3) Each Townhome Lot is burdened with an easement of ingress and egress for construction, maintenance, repair and replacement of Association Responsibility Elements by the Association and the Declarant.
- (4) Each Townhome Lot is burdened with an easement for surface drainage for the benefit of all other Townhome Lots and the Common Area. Any berm or swale constructed for drainage purposes shall be preserved and maintained to accomplish the purpose for which it was constructed. No creak, stream, overland flowage, drainage or detention easement running through any Lot shall be dammed or altered in any way.
- (5) Each Townhome Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.
- (6) Each Townhome Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat or as required by law.
- (7) Each Townhome Lot is burdened with an easement through the Townhome Lot but outside of any structure thereon for purposes of reasonable ingress and egress by other Owners of Townhome Lots to the front and rear of the other Owners' Townhome Lots.
- (8) Those Lots that share one common driveway are burdened with an easement for common driveway usage with the adjacent Lot. No Owner shall park or allow to be parked any vehicular or other obstruction within the driveway appurtenant to a Living Unit which would impair use and access to the Living Units that such driveway exclusively serves.
- (9) Those Lots that share one common elevator are burdened with an easement for

common elevator usage with the adjacent Unit. No Owner shall use, limit the use, or allow the elevator to be used in such a manner that it would impair use and access to the Units that such elevator exclusively serves.

- (10) Each Lot is burdened with an easement for a fence constructed by Declarant or the Association and maintained by the Association.

B. Drainage, Utility and Sewer Easements

As may be noted on the Plat, Declarant may reserve certain areas of the Townhome Lots and Common Area for drainage, public utility and sewer easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Townhome Lots and Owners, to properly install and allow to be maintained all electrical, telephone, water, gas, sewer and other utility services, (including all lines, pipes, wires, cables, ducts, etc.,) to the Living Units constructed on the various Townhome Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such utility easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant and the Association to provide for and maintain appropriate drainage.

C. Additional Easement Rights of the Declarant

Declarant reserves unto itself, for the benefit of all Townhome Lots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise leave the location of any drainage, utility, and sewer easement and to grant such further easements, licenses and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Townhome Lot or Townhome Lots or any portion of Common Area. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Polk County, Iowa and any Owner of any Townhome Lot shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section C shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Townhome Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Townhome Lot. The rights and easements reserved by Declarant in this Section C shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Townhome Lot within the Properties.

D. Easement for Emergency Purposes

An easement is hereby dedicated and granted for use in case of emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Common Area and pedestrian walkways or sidewalks.

E. Easement for Signs

Declarant reserves unto itself for so long as it owns any Townhome Lot, the right and easement to erect and maintain such entryway, identification and "For Sale" sign or signs within the Properties as Declarant deems reasonably necessary.

F. Encroachment on Townhome Lots

If, by reason of the location, construction, settling or shifting of a Building, any part of a Building containing a Living Unit upon a Townhome Lot the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Townhome Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all appurtenances thereto. Upon the written demand from the Owner of an Encroaching Unit, the owner of the Townhome Lot upon which said unit encroaches shall deed to the Owner of the Encroaching Unit that portion of the Townhome Lot upon which the Encroaching Unit is located. The deed shall be by quit claim deed free and clear of any mortgages and encumbrances. All costs of abstracting, releases of mortgages, recording fees, engineering fees and legal fees shall be paid by the owner of the Encroaching Unit.

G. Driveways and Access for Townhome Lots

An easement is hereby reserved and granted to each Townhome Lot for driveway and access purposes over any portion of the Common Area wherein driveways are located. This easement shall extend from the Townhome Lot to the dedicated public street. This driveway easement shall be for ingress and egress purposes and no Townhome Lot Owner shall park or allowed to be parked any vehicle or other obstruction within the driveway area, except as provided in paragraph 9 below. Further, an easement is hereby reserved and granted for the use of all Townhome Lots served by one common driveway. To the extent that a driveway or portion thereof serving a Townhome Lot is located partially or wholly on another Townhome Lot or Lots, the Lot Owners served by such driveway shall have the benefit of an easement over that portion of the other Townhome Lot or Lots covered by the driveway. Further, there is hereby reserved and granted an easement for the benefit of each Townhome Lot served by a sidewalk and pedestrian walkway located partially or wholly on the Common Area or another Townhome Lot. This latter easement is for the purpose of allowing pedestrian access from the public or private street to the Townhome Lot served by such sidewalk or pedestrian walkway. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walkway which would impair the use or access by the Townhome Lot Owner which such sidewalk or pedestrian walkway serves. As long as any ingress or egress by driveway or sidewalk to any Townhome Lot is through the Common Area, any conveyances or encumbrance of the Common Area shall be subject to the easement right granted to Owners in this Declaration.

H. Sidewalks

An easement is hereby reserved and granted to each Owner and his invitees for pedestrian use over any sidewalk upon any Townhome Lot.

9. PARKING RIGHTS

Subject to the provisions of Paragraph 8G above, the paved driveway in front of each Owner's garage shall be for the exclusive benefit of such Owner and his guests. No one shall use these parking spaces for parking or storing of boats, snowmobiles, trailers, camping vehicles or other recreational vehicles, or for parking of trucks or other commercial vehicles except temporarily or incidentally for the making of pick-up and deliveries to neighboring Townhome Lots. No more than three vehicles per Townhome Lot may regularly be kept on the premises. Provision for storage off-site of more than three vehicles must be made by each Townhome Lot Owner. The garage shall at all times be maintained by the Owner in a condition which will allow parking of all owned vehicles in the garage and all vehicles shall be parked in the garage whenever practicable. If parking on the driveway is necessary, the vehicles should be pulled as close as possible to the garage door, but effort should be made to avoid parking vehicles in the

driveways overnight. No vehicles shall be parked so as to impede access from or to any Townhome Lot or any public street. No fence, barrier or other obstruction of any kind shall ever be placed or constructed so as to impede access from or to any Townhome Lot or public street. Except for the Declarant, all parking spaces within the Common Area other than driveways adjacent to the garage of a particular Townhome Lot are reserved for guests of the Owners only but are not to be utilized for Owners' vehicles. No vehicles may be parked in the guest spaces overnight. The drives within the Common Area are private and parking on such private drives is strictly prohibited except during construction by the Declarant.

10. PARTY WALLS

A. Each wall which is built as a part of the original construction of the homes and garages upon the Properties and placed on the dividing lines between the Townhome Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration and the rights of the Association, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

B. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

C. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

D. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Townhome Lot and shall pass to such Owner's successors in title.

11. ARCHITECTURAL CONTROL

No building, fence, wall or other structure, except as originally constructed by or on behalf of Declarant, shall be commenced, erected, altered or maintained upon Properties, nor shall any exterior addition to or change or alteration therein, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. This paragraph shall not apply to any construction, improvements or alterations made by Declarant, including the construction of fences on the Common Area.

12. GENERAL USE RESTRICTIONS

The following use restrictions are in addition to use restrictions previously filed of record and applicable to the Townhome Lots.

A. All Townhome Lots shall be known, described and used solely as residential lots and no structure shall be erected on any Townhome Lot except by the Declarant or the Association.

- B. Building setback lines as shown on the plat of record shall be strictly followed.
- C. The public utility easements shown on the recorded plat are hereby reserved for utility installation and maintenance.
- D. No Townhome Lot shall be subdivided in any manner.
- E. No Townhome Lot shall be used for any kind of trade, business, or employment except as allowed herein, nor shall any Townhome Lot be used for a multi-family dwelling, boarding house, or rooming house.
- F. The use of any open carport, driveway or parking area which may be in front of, adjacent to, or part of any Townhome Lot as a parking place for recreational or commercial vehicles or articles, including boats, is prohibited. All of said types of vehicles or articles shall be stored inside a garage at all times. No inoperable, dismantled or wrecked motor vehicles, trailers, automobiles or other vehicles or machinery or parts thereof including scrap metals of any type shall be permitted to be upon or remain upon any part of a Townhome Lot. This restriction shall furthermore apply to any vehicle, which though operable, is not in active use. This provision is intended to specifically prohibit vehicles which are not in active use from being left parked outside a garage for an extended period of time.
- G. No television or radio antenna, or satellite dish, in excess of one meter in diameter shall be placed upon any Lot or upon the roof of any Living Unit or Building in such a manner as to be visible from the exterior of the Building or the street. The placement of any antenna or satellite dish may be reasonably restricted by the Declarant or the Association.
- H. Fencing shall not be erected on any part of a Townhome Lot without prior approval of the Board of Directors.
- I. No swimming pools, tennis courts or similar structures shall be installed on any Townhome Lot.
- J. No Owner shall construct or modify any Association Responsibility Element.
- K. No rubbish container shall be visible from the street except on pick-up day and one day before and one day after pick-up day.
- L. All utility connection facilities and services shall be under ground. No individual water supply system or individual sewage disposal system shall be permitted on any Townhome Lot.
- M. No noxious or offensive activities not involving the maintenance of Townhome Lots or Common Area shall be carried on upon any Townhome Lot nor shall anything be done thereon which may be or may become an annoyance or a nuisance; nor shall any Townhome Lot be used for any unlawful purpose. Nor shall any Owner cause, or suffer or harbor the source of, any noise or activity which disturbs the peace, comfort and quiet enjoyment of other Owners or those claiming under or through other Owners.
- N. No basketball goal, whether attached to the Living Unit or affixed to a free-standing pole, soccer goal, baseball backstop or other similar sporting equipment shall be allowed to be constructed on any Lot without prior approval from the Board of Directors.
- O. No personal property shall be stored or left upon a Townhome Lot except within the Living

Unit or garage located upon the Townhome Lot. Garage doors shall be kept closed except during times of access to the garage.

P. Nothing shall be altered in, constructed in, or removed from the Common Area or the Association Responsibility Elements, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association.

Q. No boat, snowmobile, recreational vehicle, trailer or other vehicle other than automobiles shall be stored or parked in any driveway. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreational vehicle, trailer or other vehicle at Owner's expense.

R. No clothesline, drying apparatus, wood piles or storage structures or areas shall be so located on any Lot as to be visible from a street or from the ground level of any other Lot, except to the extent otherwise provided in rules and regulation adopted by the Association.

S. No types of refrigerating, cooling or heating apparatus shall be placed, allowed or maintained anywhere on a Lot, except to the extent otherwise provided in rules and regulations adopted by the Association.

T. The Board may adopt reasonable, non-discriminating rules and regulations, consistent with applicable state or federal laws and regulations, regarding the installation of satellite dishes, extension aerials, and antennas of any kind.

U. No wind generators of any kind shall be constructed, installed, enacted or maintained on the Lots.

V. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or unreasonable. Lot Owners shall not install exterior Christmas lighting and decorations before November 1 and shall remove such lighting and decorations by January 15. Other exterior holiday decorations displayed by Lot Owners shall be removed not later than two (2) weeks after the date of the holiday.

W. No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

X. Nothing shall be done or kept in any Townhome Lot or in the Common Area which will increase the rate of insurance on the Common Area or the Association Responsibility Elements, without the proper written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Townhome Lot or in the Common Area which will result in the cancellation of insurance on any Townhome Lot or any part of the Common Area or the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.

Y. Garbage containers will be provided by the refuse hauler, as selected by the Association, to Townhome Lot Owners, but shall be kept by Owners within the garage of the Townhome and shall be set outside only at the end of the driveway serving a Townhome Lot on designated garbage pick-up days.

Z. Failure of the Association or any Owner to enforce any covenant, condition or restriction,

this Declaration, the Articles of Incorporation or By-Laws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

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

13. PETS

Unless otherwise allowed by the Board of Directors, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Townhome Lot except that a total of no more than three (3) dogs and cats, collectively, per Unit, may be kept, provided they are not kept, bred or maintained for any commercial purposes. The Association may, by rules and regulations, prohibit or further limit the raising, breeding or keeping of any pet on any Townhome Lot. Any person owning or keeping a pet shall be responsible for and shall at all times clean up any waste or excrement from such pet(s) on the Common Areas. Failure to do so in a prompt or responsible manner may result in a fine or a special assessment by the Declarant or Association against such Townhome Lot. No pets shall be allowed to bark, make noise or otherwise disturb the peace, comfort and quiet enjoyment of any other Member. Failure to prevent any pet from disturbing the peace, comfort and quiet enjoyment of another Member may result in a fine or special assessment by the Declarant or Association against such Townhome Lot for each day of said disturbance.

14. SIGNS AND HOME OCCUPATIONS

A. Signs

No political signs and no advertising signs of any kind including sale or "for sale" signs or rental or "for rent" signs shall be displayed or otherwise be visible from outside the Lot, except by the Declarant, on any Townhome Lot or upon the Common Area without the prior written approval of Declarant. Further, no signs of any nature, kind or description shall be erected, placed or maintained on any Townhome Lot or upon the Common Area which identify, advertise or in any way describe the existence or conduct of a home occupation.

B. Home Occupations

No home occupation shall be conducted or maintained on any Townhome Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Townhome Lot and which is generally or regularly conducted in another location away from such Townhome Lot, provided the same is permitted under applicable ordinances.

15. PUBLIC ACCESS

Officers, employees or contracted agents of any governmental unit shall have the right and authority to enter upon the Common Area and any Townhome Lot for the administration of general public services including fire protection, law enforcement, water service and animal control.

16. ELEVATORS

All costs associated with the operation, maintenance, repair and cleaning of elevators shall be the sole responsibility of the Owner served by the elevator and shall not be the responsibility of the Association. If, for any reason, maintenance, repair and/or cleaning is not timely made by the Owner, the Association, in its discretion, may make the repair and assess the costs against the Owner. Such assessment shall be paid by the Owner and shall be enforced as provided in Paragraph 4(H) herein. In the event the repair is under an existing

warranty or is a covered insured event, the Association may work with the Owner to assert such claim, but the Association will not be required to expend any funds in providing such aid.

17. RESTRICTION ON RENTAL

In order to protect the integrity of this Development and to ensure that those persons residing therein have similar property interest in their Townhome Lots, no Townhome Lot and no portion of any Living Unit shall be leased or rented to any person not having an ownership interest therein, without receiving prior approval from the Declarant or the Association. To consider the request to rent or lease, the Owner must provide the Declarant or Association the following: 1) The name of the prospective tenant(s); 2) Names of all individuals that will occupy the Unit and relationship to the prospective tenant(s); 3) Description of vehicles and license plate numbers; 4) E-mail and phone number of prospective tenant; 5) A complete copy of the proposed Lease; 6) A non-refundable \$150 fee payable to the Association. No lease or rental shall be for a period of time of less than one year (with no option to sublease), and no lease or rental agreement to any such tenants or lessees shall be extended or renewed for a shorter period of time. No lease shall relieve the Owner of the Unit from liabilities and responsibilities to the Association and other Owners set forth in this Declaration of imposed under law. **Notwithstanding the foregoing, the Declarant may rent any unsold Unit at any time pending the sale of the Unit, provided that the Declarant continues to actively market that Unit for sale and the lease of the Unit provides for termination upon thirty (30) days notice to the tenant by the Declarant upon a sale of such Unit in order to allow completion of the sale of the Unit and occupancy thereof by the Buyer.**

18. GENERAL PROVISIONS

A. Duration

This Declaration shall run with the land and shall be binding upon all Townhome Lots and Townhome Lot Owners for a period of twenty-one (21) years from the date of recordation in the office of the Polk County Recorder, unless extended pursuant to the provisions of Section 614.24 of the Iowa Code by the proper filing of a verified claim in the office of the Polk County, Iowa Recorder by the Declarant or Townhome Lot Owner, or unless prior to the expiration of any such period it is amended or changed in whole or in part as hereinafter provided. Provided, however that the continuation of any easement rights established by the Declaration shall not be affected by the provisions of Section 624.24 of the Iowa Code but only by amendment as hereinafter provided. Invalidation of the covenants, conditions and restrictions of the Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

B. Enforcement

If the Owner, tenant or person in possession of any Townhome Lot or portion of a Townhome Lot violates or attempts to violate any of the covenants or restrictions herein established, the Declarant or Association may prosecute any proceedings in law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions, either to prevent him/her or them from so doing or to require removal of any violating structure or improvement or to recover damages for such violation, and shall be entitled to recover reasonable attorneys' fees and costs and expenses as a result thereof.

C. Amendment

This Declaration may be amended and/or changed by Declarant at any time by an instrument recorded in the Office of the Recorder of Polk County, Iowa. After Declarant has turned over operation of

the Association, amendments and/or changes by an instrument recorded in the Office of the records of Polk County, Iowa is permitted when signed or approved in writing by two-thirds (2/3) of the then Owners; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time within five (5) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies or to correct any of the provisions of this Declaration. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof.

D. Notice to Mortgagees

The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Townhome Lot specifying the defaults of the Owner of such Townhome Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its Bylaws or any other applicable documents which default has not been cured within sixty (60) days.

E. Annexation

Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of membership.

F. Assignment by Declarant

This Declaration may be assigned by Declarant to a successor-in-interest by written instrument executed by both parties and filed of record with the County Recorder. Upon such assignment, the initial Declarant shall have no further obligation in connection with the Properties.

G. No Waiver

Failure by the Declarant or Association to enforce any covenant or restriction herein contained or the Articles of Incorporation and Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

H. FHA/VA APPROVAL

So long as Declarant retains authority under this Declaration, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration, if those Federal Mortgage Agencies have an interest in the Properties or any portion thereof: Annexation of additional properties, dedication of Common Areas, and amendment of this Declaration.

I. Conflict with Other Documents

The terms of this Declaration shall prevail over contradictory or conflicting terms of any other document applicable to the Properties.

19. ADDITION AND REMOVAL OF PROPERTY

A. Additional Common Area

Declarant shall have the right at any time to convey additional Common Area to the Association from time to time. Nothing in this Section, however, shall be deemed to be an obligation on the part of

Declarant to convey additional Common Area to the Association in the future. The Association shall be obligated to accept any additional Common Area so conveyed by Declarant and to hold and maintain the additional Common Area pursuant to the terms of this Declaration.

B. Subjecting Additional Land to Declaration

Declarant shall have the irrevocable right to subject additional land to the terms of this Declaration at any time in the future without the consent of the Association. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration and Owners of Lots within the additional land shall automatically become Members of the Association in the same fashion as described in this Declaration and shall be subject to the same applicable terms, conditions, duties and assessments as described in this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the County Recorder. No approval of the Association, the Owners or any other person shall be necessary.

C. Removing Land from Operation of Declaration

Declarant shall have the right now and in the future to remove any portion of the Properties from the operation of this Declaration provided that the portion so removed has not yet been platted into individual lots and a plat for that portion has not been filed of record with the County Auditor. Declarant shall signify this removal by filing an amendment to this Declaration with the County Recorder. No approval of the Association, the Owners or any other person shall be necessary.

20. LIMITATION OF LIABILITY

Declarant shall not be liable to the Association or any Owner for damages or repairs to:

- (1) Any private street, sidewalk, driveway, curb, stoop, patio or other concrete improvement located within the Properties, including (but not limited to) cracking or chipping that may occur due to weather conditions; or
- (2) Any Living Unit beyond the express warranties set forth in the homeowner's warranty provided to the original owner including, but not limited to, any elevator serving the Living Unit; or
- (3) Any appliances within any living Unit, including, but not limited to, the furnace, air-conditioner, stove, oven, dishwasher and garbage disposal, beyond the express warranties set forth in the manufacturer's warranty provided to the original Owner.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this 10 day of March, 2023.

Pinnacle on Fleur, L.L.C., DECLARANT

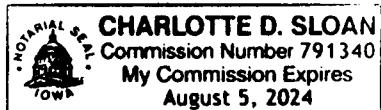
By: Jenna Kimberley
Jenna Kimberley, Vice President

STATE OF IOWA)
COUNTY OF Dallas) SS:
)

This record was acknowledged before me on this 10 day of March, 2023, by
Jenna Kimberley, Vice President of Pinnacle on Fleur, L.L.C.

Charlotte S
Notary Public in and for the State of Iowa

Notary Public in and for the State of Iowa



**AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR PINNACLE ON FLEUR
TOWNHOMES**

Preparer Information:

Lisa R. Wilson
222 N.W. Sunrise Drive
Waukee, Iowa 50263
(515) 369-2502

Taxpayer Information:

N/A

Return Document To:

Wilson, Egge & Loya, P.C.
222 N.W. Sunrise Drive
Waukee, Iowa 50263

Grantor:

Pinnacle on Fleur, L.L.C.

Grantee:

N/A

Legal Description:

Lots One (1) through Twenty-three (23), inclusive, and Outlot Z, in Pinnacle on Fleur, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Document or instrument number of previously recorded documents:

Book 19468, Page 239

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PINNACLE ON FLEUR TOWNHOMES**

THIS AMENDMENT TO DECLARATION is made this 7th day of Nov., 2025.

WHEREAS, a Declaration of Covenants, Conditions and Restrictions for Pinnacle on Fleur Townhomes was executed on March 10, 2023 by Pinnacle on Fleur, L.L.C., an Iowa limited liability company ("Declarant") and filed of record in Polk County, Iowa, on May 8, 2023 in Book 19468, Page 239 (hereinafter "Declaration").

WHEREAS, the undersigned Declarant, pursuant to rights granted under Article 18(C) of the Declaration as filed, has elected to amend the Declaration as filed in accordance with the terms hereafter.

NOW, THEREFORE, the undersigned Declarant does hereby modify the Declaration as follows:

1. Article 17 shall be deleted in its entirety and replaced with the following:

Leasing is allowed in Pinnacle on Fleur Townhomes, including, but not limited to, Airbnb, VRBO and HomeAway. All leases shall be subject to the terms of this Declaration and to the Articles of Incorporation, Bylaws and any rules or regulations adopted by the Association. No lease shall relieve an Owner from liabilities and responsibilities to the Association and other Owners as set forth in this Declaration, or otherwise imposed under the City of Des Moines ordinances and laws of the State of Iowa.

Notwithstanding the foregoing, this Article 17 shall not be amended to prohibit leasing without a vote of at least 90% of the members of the Association.

2. In all other respects, the Declaration shall remain unaffected and be enforceable as filed.

IN WITNESS WHEREOF, the undersigned has executed this Amendment to Declaration as of the date and year first above written.

-SIGNATURE PAGE TO FOLLOW-

-SIGNATURE PAGE-

PINNACLE ON FLEUR, L.L.C., an Iowa limited liability company, Declarant

By: Jenna Kimberley
Jenna Kimberley, Vice President

STATE OF IOWA)
COUNTY OF Polk) ss

This record was acknowledged before me on this 4th day of November 2025, by
Jenna Kimberley, Vice President of Pinnacle on Fleur, L.L.C.

