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All (CECILE FRAMPTON)

**SECOND AMENDMENT TO MASTER DECLARATION  
OF COVENANTS FOR THE WOODLANDS NO. 1**

TIMOTHY J. BRIEN  
RECORDER

This Second Amendment to Declaration is made on the 1st day of April, 1997, by the Association under the Master Declaration as amended referred to hereinbelow.

WHEREAS, Declarant executed the Master Declaration of Covenants for The Woodlands No. 1 on September 7, 1989, and filed the same on September 13, 1989, in Book 6147 at Page 607 of the Polk County, Iowa, records (the "Master Declaration"); and

WHEREAS, Declarant executed the First Amendment to the Master Declaration of Covenants for The Woodlands No. 1 on September 1, 1994, and filed the same on September 26, 1994, at Book 7091 at Page 403 of the Polk County, Iowa, records (the "First Amendment to the Master Declaration"); and

WHEREAS, the Master Declaration pertains to certain Properties as defined therein and described in Exhibits A and B thereto, and pursuant to the First Amendment to the Master Declaration, the Declarant has made additional real estate subject to the Master Declaration; and

WHEREAS, the Master Declaration provides that it may be amended upon approval by a two-thirds majority of the then outstanding votes of the Association, subject to the prior approval by the City of Clive, Iowa; and

WHEREAS, the City of Clive, Iowa, has approved this Second Amendment by Resolution of the City Council passed on the 9th day of January, 1997; and

WHEREAS, the Declarant has, pursuant to the Master Declaration and First Amendment thereto, waived its right to be the sole voting member of the Association, and the Association, acting by and through its Board of Directors and members, has determined to amend the Master Declaration as set forth herein.

FIRST: NOW, THEREFORE, in consideration of the premises, the Association hereby amends the Master Declaration by adding a new Article XI as follows:

**ARTICLE XI**

**PROTECTIVE COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR THE WOODLANDS PLAT NO. 1, THE WOODLANDS PLAT NO. 2,  
THE WOODLANDS PLAT NO. 3, AND THE WOODLANDS PLAT NO. 4**

**A. DEFINITIONS:**

For the purposes of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided:

1. The term "The Woodlands" shall mean and refer to the real property located in the residential subdivisions platted as The Woodlands Plat No. 1, The Woodlands Plat No. 2, The Woodlands Plat No. 3 and The Woodlands Plat No. 4, Official Plats, now included in and forming a part of the City of Clive, Iowa, which includes all of the real properties described in Exhibit B to the Master Declaration and all of the real properties described in numbered paragraph 1 of the First Amendment to the Master Declaration.
2. The term "Lot" or "lot" shall mean and refer to any individual parcel of land which is described as a lot upon any of the recorded plats of The Woodlands as defined at paragraph 1 above.
3. The term "Building Plot" or "building plot" shall mean and refer to one or more platted Lots, or one Lot and a portion or portions of adjacent Lots, or portions of Lots adjacent to each other of such total dimensions as to meet the building requirements or these covenants and restrictions.
4. Owner shall mean and refer to the record holder or holders of the fee simple title, or the actual holder or holders of said fee simple title if different than the record holder or holders or the holder or holders of the vendee's interest in a contract of sale to any lot or building plots designated in Article B hereof.
5. Outbuilding shall mean an enclosed, covered structure not directly attached to the residence to which it is appurtenant.

**B. LOTS SUBJECT TO THESE PROTECTIVE COVENANTS, RESTRICTIONS AND EASEMENTS:**

All Lots (except Lots dedicated to the City of Clive for use as public streets, parks or pedestrian walks) in The Woodlands shall be subject to these protective covenants, restrictions and easements to the extent stated herein.

**C. DESIGNATION OF USE:**

All Lots (except Lots dedicated to the City of Clive for use as public streets, parks or pedestrian walks) in The Woodlands shall not be improved, used or occupied for other than private residential purposes. No full or part-time business activity may be constructed or maintained on any lots in The Woodlands Plat 1 except model homes during the construction period.

D. BUILDING TYPES AND MATERIALS:

1. No building or structure shall be constructed, altered or maintained on any Building Plot other than one single-family dwelling with no less than a two-car attached or double basement garage.
2. No Factory-Built structure of closed construction nor any Factory-Built structure of open construction assembled away from the building site shall be hereafter built on any Lot in this tract.
3. The total area of the front elevation of any residence and garage located on any Lot shall be finished with a minimum of 25 percent brick or stone or, as an alternative, no brick or stone is required if all sides of the house and garage are finished with horizontal lapped siding with a maximum width of six inches (6").
4. No exposed tile foundations shall be permitted and all exposed exterior concrete or concrete block wall material shall be painted or veneered.
5. All buildings must have a roof of cedar wood shingles or cedar wood shakes or tile; provided, however, if the design of the dwelling is such that cedar wood shingles or cedar wood shakes or tile are not appropriate (i.e., flat roof), a waiver of this standard may be granted in writing by the Grantor; but in no event shall asphalt or fiberglass shingles be permitted on any lot.

E. BUILDING AREA:

No dwelling shall be constructed or permitted to remain upon any Building Plot in this subdivision unless it meets the following ground floor area requirements:

1. One-story dwellings must have a ground floor finished area of not less than 2,600 square feet.
2. One and one-half story dwellings must have 2,400 square feet of finished area on the first floor.

3. Two-story dwellings must have a total on the main floor and second floor of not less than 3,400 square feet.
4. Split entry dwellings must have a finished upper level of not less than 2,400 square feet.
5. Split level dwellings must have a finished area directly under roof (with only attic space above) of not less than 2,600 square feet.
6. No building shall be erected on any Lot unless the design and location is in harmony with existing structures in the tract. The building must not conflict with other buildings in the tract through improper orientation, setbacks, landscaping and screening, grading, traffic circulation, or architectural incompatibility.

All buildings must maintain regard for open view from the street side of any existing buildings on adjoining Lots. The building must conform in design, architecture, and aesthetic appearance to the majority of existing buildings in the tract.

7. In the computation of ground floor area, the same shall not include any porches, breezeways or attached or built-in garages.
8. No private dwelling house permitted above nor any other structure shall be erected on any Lot until the plans and specifications therefor have been submitted to and approved in writing by the Board of Directors of the Association as to outward appearance, color and design and location on the Lot; provided, however, if said Board of Directors fails to approve or disapprove such plans and specifications within 15 days after the same have been submitted, then such approval shall not be required.

F. BUILDING SETBACK:

The front yard setback shall be a minimum of 35' but this is to only permit flexibility for the siting of the home with regard to saving existing trees, but setbacks of 50' are recommended.

G. DRIVEWAYS:

No building or structure shall be constructed, altered or maintained on any building plot unless it has a driveway from a street running to the dwelling, which must be of sufficient area to park at least two cars entirely off the street. All driveways shall be constructed of concrete or asphalt.

H. TEMPORARY STRUCTURE OR EQUIPMENT AND RECREATIONAL VEHICLES:

No building or structure of a temporary character and no trailer, basement, tent, shack, garage, or outbuilding shall be used at any time as a residential dwelling on any Building Plot, either temporarily or permanently.

No recreational vehicle or boat shall be parked so that such vehicle or boat is visible from the street for a period of time longer than one week.

I. SIGNS:

No sign of any kind and description shall be placed, exposed to view or permitted to remain on any Lot, or any street adjacent thereto, except street markers, traffic signs and other government units, and signs not exceeding one hundred square inches (100") in area upon which there shall be exhibited the street number or name, or both, of the resident. In the event that any sign other than those described above shall be placed or exposed to view on any of the Lots restricted hereby, the officers or agents of the declarant are hereby given the right to enter upon such a Lot and remove such signs. Real estate signs by the builder-developer will be permitted until such development is completed. Signs, not exceeding eight square feet in size, shall be permitted to show property for sale or rent.

J. UTILITIES:

All utility connection facilities and services shall be underground. No individual water supply system or individual sewage disposal system shall be permitted on any building plot.

K. TOWERS:

No exterior towers or antenna of any kind shall be constructed, modified, or permitted on the ground of any building plot. Television or radio antennae are permitted on dwellings or garages, provided they do not exceed the height which is necessary to obtain reasonably good reception from radio

and TV towers located within a 35-mile radius, and are properly screened so as not to be visible from public streets.

L. NUISANCES:

No noxious or offensive activity or odors shall be permitted on or to escape from any building plot, nor shall anything be done thereon which is or may become an annoyance or a nuisance, either temporarily or permanently.

M. LIVESTOCK AND POULTRY PROHIBITED:

No animals, livestock or poultry of any kind shall be raised, bred or kept on any building plot hereby restricted, except for dogs, cats and other common household pets and those owners keeping dogs, cats or other common household pets on any building plot shall, in all respects, and at all times, comply with the laws of the State of Iowa, and the ordinances of the County of Polk and City of Clive, Iowa, with respect thereto.

N. EASEMENTS:

Easements for installation and maintenance of public utilities, sanitary sewer, storm sewers, overland flowage, sidewalks, and water mains as shown on any of the Official Plats of The Woodlands are hereby reserved and Mid-America Investment Co. shall have the right to make a specific grant of the "Public Utility Easements" shown thereon for construction, reconstruction and maintenance of underground electric lines and/or telephone lines to the appropriate public utility serving The Woodlands, or their successors, grantees or assigns, and to make a specific grant of sanitary sewer, storm sewer, overland flowage, sidewalk and water main easements to the City of Clive, Polk County, Iowa. The owner or occupant of a building plot shall, at his own expense, keep and preserve that portion of any sidewalk located on a sidewalk easement within his property in good repair and condition at all times, and shall neither erect nor permit erection of any building structure or fences of any kind, nor permit any growth of any kind which might interfere in any way with the use and maintenance of said telephone and electric services and said storm sewer, overland flowage, sanitary sewer and water main services and usage of said sidewalks. The City of Clive, Iowa, shall at all times have reasonable access to all lots for fire and police protection.

O. FENCES:

No chain link fences shall be permitted. No fences over three feet (3') in height will be permitted within the front thirty feet (30') of any building lot.

No fence will be permitted within two feet (2') of the front line of any building lot.

P. WEED CONTROL:

The owner of any lot or lots or parts of any lot, whether vacant or improved, shall have an affirmative duty to keep the same free of debris and keep the grass or other growth thereon neatly cut and trimmed at all times.

Upon complaint by any owner of any lot within The Woodlands, or upon its own, the Association shall have the right to demand compliance with the provisions of this Article, and if the debris is not removed, and/or the growth neatly cut and trimmed within fifteen (15) days after mailing notice to do so, by certified mail, to the last known address of said owner, then the Association, or its successor in interest, may go upon said premises and remove debris and/or cut and trim the growth thereon and the owner shall be liable to the Association, or its successor in interest, for the cost thereof.

Notice is hereby given that any tenant or party in possession under any kind of lease or other agreement or arrangement with the owner as defined in Article I hereof, shall take possession of any building plot or lot or lots or part thereof subject to all of the terms and conditions of this Article and shall be responsible for the compliance therewith and subject to the same penalties as the owner. Nothing herein, however, shall relieve the owner from the duty to comply with the terms of this Article or from the penalties which may be invoked under the terms of this Article.

Q. ACCESSORY STRUCTURES:

Any dog run, trash receptacle, tool shed, or other out structures of like nature, shall be of substantial construction and shall be properly screened by reasonable shrubbery or decorative fence or both. No metal buildings shall be permitted.

R. ENFORCEMENT:

If any entity shall violate or attempt to violate any of the covenants, conditions or restrictions contained in this document, it shall be lawful for the Association, or any owners owning lots or parts thereof in The Woodlands, to bring an action at law or in equity to enforce these covenants and to restrain any person from violating or attempting to violate any of these covenants or restrictions and for such other relief as may be permitted by law, including, but not limited to, injunctive relief and damages.

S. SEVERABILITY:

Invalidation of any of these covenants, conditions or restrictions by judgment or court order shall in no way affect any of the other covenants, conditions or restrictions contained herein which shall remain in full force and effect.

T. CONFLICTS:

In the event that any of the lots or building plots or properties covered by these covenants shall also be subject to city building restrictions or other restrictive covenants, the owner shall comply with the most restrictive covenants and restrictions applicable to such lots or properties.

U. EFFECTIVE DATE:

These covenants shall be effective immediately upon their adoption by the Association.

SECOND: NOW, THEREFORE, in consideration of the premises, the Association hereby amends the Master Declaration by amending the provisions of Article II, Section 1, of the Master Declaration by the insertion of a new sentence at the end of said Section 1 as follows:

Notwithstanding any other provisions of this Master Declaration, no additional properties, whether real or personal, and no additional Common Areas or Common Facilities shall be transferred or conveyed to the Association and no maintenance or care duties or obligations not presently performed by the Association shall be assumed by the Association without the prior written consent of two-thirds (2/3) of the owners of all lots within The Woodlands.



CERTIFICATION OF ASSOCIATION

The undersigned, President and Secretary of The Woodlands Association No. 1, hereby certify that the foregoing Second Amendment to Master Declaration has been approved by more than two-thirds of the votes of the members entitled to vote upon such an amendment and that it has been executed by the President and Secretary of the Association on behalf of the Association, all as provided by Article X, Section 2, and in accordance with all provisions of the Master Declaration. Except as amended hereby, the Master Declaration shall remain unchanged and in full force and effect.

WOODLANDS HOMEOWNERS  
ASSOCIATION NO. 1

By [Signature] President

By [Signature] Secretary

STATE OF IOWA       )  
                              ) ss.  
COUNTY OF POLK    )

On this 1st day of April, 1997, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Ivar Rachkind and Jana Fackrell, to me personally known, who being by me duly sworn, did say that they are the President and Secretary of said Association; that no seal has been procured by said Association; that said instrument was signed on behalf of said Association by authority of its Board of Directors; and that the said Ivar Rachkind and Jana Fackrell, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said Association, by it and by the officers voluntarily executed.

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





MASTER DECLARATION OF COVENANTS

FOR

THE WOODLANDS NO. 1

THIS DECLARATION, made on the date hereinafter set forth by Mid-America Investment Co., an Iowa corporation, with its principal office in Polk County, Iowa, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property (hereinafter referred to as the "Properties") situated in Polk County, Iowa, which is described on Exhibit "A" attached hereto and by this reference made a part hereof and on Exhibit "B" attached hereto and by this reference made a part hereof; and

WHEREAS, Declarant has submitted to the City of Clive, Iowa (hereinafter referred to as "City") the preliminary plat of The Woodlands No. 1 and a site plan and construction drawings for the boulevard entrance and entrance way improvements and entrance way wall for Woodlands Parkway, a public street and boulevard, and for the landscaping to be constructed within said boulevard public right of way, and which entrance way wall and improvements are to be constructed on easements and be a common area, and for limestone mail box clusters and for limestone street pillars and signs located within the public right of way at various locations within said plat, all as shown by the site plan and construction drawings aforesaid; and

WHEREAS, in consideration of the approval of the site plan and construction drawings to permit the construction of said entrance way and entrance way wall and the installation of said landscaping and limestone mail box clusters and limestone street pillars and signs, and the approval of the preliminary plat and final plat by City, Declarant has agreed to submit the Properties to this Declaration; and

WHEREAS, Declarant desires to create upon the Properties a mixed use community with an entrance way and entrance wall, landscaping, limestone mail box clusters and limestone pillars and street signs as common facilities for the benefit of the owners therein; and

WHEREAS, Declarant desires to provide for the ownership, preservation of values and amenities in the Properties and for the maintenance of the entrance way, entrance wall, landscaping within said boulevard and common areas, limestone street pillars and signs and limestone mail box clusters as common facilities and common areas, and to this end, desires to subject the Properties, to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the Properties and each owner thereof.

NOW, THEREFORE, Declarant, in consideration of the approval of the site plan and construction drawings for the entrance way, the entrance wall, landscaping within said boulevard, limestone street pillars and signs and limestone mail box clusters and the approval of the preliminary plat and final plat by the City and for other good and valuable consideration, hereby declares that all the Properties 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 Properties 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.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to The Woodlands Owners Association No. 1, its successors and assigns, a non-profit

corporation organized pursuant to Chapter 504A of the Code of Iowa 1989, as amended. The Articles of Incorporation for the Association have been executed by the incorporator thereof on the same date as this Declaration has been executed. The Articles of Incorporation and initial Bylaws for the Association are hereby incorporated by this reference.

Section 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 3. "City" shall mean and refer to the City of Clive, Iowa.

Section 4. "Common Areas" shall mean all real property (including the improvements thereto) owned and maintained by the Association for the common use and enjoyment of the Owners and shall also include the Common Facilities as hereinafter defined.

Section 5. "Common Facilities" shall mean and refer to all personal property, fixtures and improvements owned by the Association including those located on real property not owned by the Association such as on property conveyed to the City for which a license was granted.

Section 6. "Declarant" shall mean and refer to Mid-America Investment Co., its successors and assigns.

Section 7. "Declaration" shall mean and refer to this Declaration of Covenants to which the Properties are subject.

Section 8. "Lot" shall mean and refer to any and all lots contained in any plat or replats of the Properties or any portion thereof made and recorded in accordance with the statutes of the State of Iowa.

Section 9. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration, the Articles of Incorporation and Bylaws of the Association.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any part of the Properties, including contract vendees, 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.

Section 11. "Properties" shall mean and refer to that certain real property described above but shall exclude and not refer to any portion thereof conveyed, dedicated or granted to the City now or in the future.

## ARTICLE II

### COMMON AREAS

Section 1. Common Areas. The Common Areas shall consist of the following-described portion of the Properties, together with any improvements thereon, and subject to any and all utilities located thereon, easements and restrictions:

An irregularly shaped Entrance Structure Easement over and across a portion of Outlot "W" in The Woodlands Plat No. 1, an Official Plat, Clive, Polk County, Iowa is described as follows;

Beginning at the Southeast Corner of Outlot "W" in The Woodlands Plat No. 1, an Official Plat, Clive, Polk County, Iowa; thence, N00°00'00"E along the East Line of said Outlot "W", a distance of 414.79 feet to the Point of Beginning; thence Continuing N00°00'00"E along the East Line of said Outlot "W", a distance of 49.88 feet; thence Northwesterly along a 25.00 foot radius to the left, a distance of 39.39 feet; thence, S89°43'10"W along the Northerly Line of said Outlot "W", a distance of 49.88 feet; thence, S00°00'00"E, a distance of 35.00 feet; thence, N89°43'10"E, a distance of 40.00 feet; thence, S00°00'00"E, a distance of 40.00 feet; thence, N89°43'10"E, a distance of 35.00 feet to the Point of Beginning.

and

An irregularly shaped Entrance Structure Easement over and across a portion of Outlot "X" in The Woodlands Plat No. 1, an Official Plat, Clive, Polk County, Iowa is described as follows;

Commencing at the Northeast Corner of Outlot "X" in The Woodlands Plat No. 1, an Official Plat, Clive, Polk County, Iowa; thence, S00°00'00"E, a distance of 236.14 feet to the Point of Beginning; thence Continuing S00°00'00"E, a distance of 50.12 feet; thence Southwesterly along a 25.00 feet radius curve to the right, a distance of 39.15 feet; thence, S89°43'10"W, a distance of 50.12 feet; thence, N00°00'00"E, a distance of 35.00 feet; thence, N89°43'10"E, a distance of 40.00 feet; thence, N00°00'00"E, a distance of 40.00 feet; thence, N89°43'10"E, a distance of 35.00 feet to the Point of Beginning.

and

The entrance wall, lighting and landscaping on said easement area and the landscaping, flowers, shrubs, bushes, trees and lighting and sprinkler systems within the public street and public street right of way and boulevard known as Woodlands Parkway and easements located within The Woodlands Plat No. 1 plat in Clive, Iowa and limestone mail box clusters and limestone street pillars and signs located within the public right of way of various streets at locations within said plat, all as shown by the site plan and construction drawings for said plat.

together with such additional common areas conveyed by Declarant to the Association from time to time. The Common Areas shall also include Common Facilities including those located on property not owned by the Association. As used in this Declaration, the term Common Areas shall include and refer to Common Facilities and the term Common Facilities shall include and refer to Common Areas.

Section 2. Obligations of the Association. The Association shall be the owner of the Common Areas, and, subject to the rights of the Owners as set forth in the Declaration, shall be responsible for the management and control of the Common Areas conveyed to it and all improvements thereon, and shall keep the same in good, safe, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management. The Association's obligations shall include the maintenance, repair, reconstruction and replacement of the entrance way, entrance wall, lighting, landscaping within Woodlands Parkway, sprinklers, limestone pillars and street signs and limestone mail box clusters located in the common areas and all common facilities. The Association's obligations under this Section are for the exclusive benefit of the Owners and the City.

Section 3. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas subject to the terms of this Declaration (and subject to any reasonable and nondiscriminatory rules and regulations which may be enacted by the Association) which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

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

(b) the right of the Association, subject to City approval, to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and such conditions as may be agreed to by the Members; provided no such dedication or transfer shall be effective unless an approval of such dedication or transfer has been obtained from 2/3rds of the votes of members entitled to vote at a regular or special meeting of the Association; and

(c) the right and obligation of the Association to maintain underground utilities located within the Properties; and

(d) the right of the Declarant, its successors and assigns to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Areas; and

(e) the right of the Declarant to maintain within any House owned by Declarant, a sales office, together with access, ingress, and egress to and from said House over the Common Areas for Declarant and Declarant's invitees in conjunction with its business operated from said sales office subject to the ordinances of the City; and

(f) the right of Declarant to provide in the Common Areas, landscaping, outdoor furniture and recreational equipment, signs, decorative structures and necessary appurtenant utilities consistent with the ordinances of the City; and

(g) the Rules and Regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation and Bylaws, and those accompanying this Declaration; and

(h) the right of the Association, subject to the reasonable consent of the City, to mortgage any or all of the Common Areas with the assent of two-thirds (2/3rds) of the votes of the members entitled to vote.

Section 4. Title to Common Areas. The Declarant hereby covenants for itself, its successors and assigns, that it shall convey to the Association from time to time the fee title or easement rights to all Common Areas, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements,



conditions and restrictions whether or not of record or created by this Declaration or granted to any public authority. The transfer of title or easements to the initial Common Areas shall be accomplished on or before the recorded conveyance of any portion of the Properties by Declarant. Common Areas, if any, created by subsequent plats shall be conveyed or easements therefor given immediately following the recording of such subsequent plat in the Polk County Recorder's office.

Section 5. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, the right to enjoy the Common Areas to family members, tenants or contract purchasers who reside on the property and to no one else.

Section 6. Use of the Common Areas. The Common Areas shall be used strictly in accordance with the provisions of the Declaration and rules and regulations promulgated by the Association. No Owner shall obstruct or interfere whatever with the rights and privileges of other Owners or the Association in the Common Areas, and nothing shall be planted, altered, constructed upon, or removed from the Common Areas, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the Common Areas 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 Lot 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 V for the collection of delinquent assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Areas, 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.

Section 7. Duration. The ownership of the Common Areas and the Common Areas shall not be changed and shall continue in perpetuity except by approval of 2/3 of the membership entitled to vote and the prior written approval of the City.

Section 8. Dissolution. The Association shall not be dissolved, liquidated or its corporate existence terminated except upon the prior written approval of the City.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The owner or owners of the Properties or any subdivisions thereof shall be members of the Association; provided, however, in the event that any portion of the Properties is submitted to a horizontal property regime (condominium) or an owners association is established in connection with an attached housing development, the owners association or council of co-owners shall be the member in this Association. Membership shall be appurtenant to the ownership of the real property and shall be indivisible from such ownership.

Section 2. Voting Rights. Each member of the Association shall have a right to vote concerning the affairs of the Association. The votes appurtenant to each Lot and Outlot in the Properties shall be as follows:

Lots 1 to 33, inclusive. Each Lot shall be entitled to the number of votes determined pro rata, using the basis of 100 votes per acre, or pro rata for a fraction of an area, i.e. Lot 1 consists of 0.58 acres and is entitled to 58 votes.  
Outlot Y consists of 16.22 acres and is entitled to 1,622 votes.  
Outlot X consists of 4.97 acres and is entitled to 497 votes.  
Outlot W consists of 9.96 acres and is entitled to 996 votes.

In the event a portion of any Outlot is conveyed but not platted or replatted, the Grantee or Purchaser shall be entitled to the number of votes based upon a calculation of 100 votes per acre for the property purchased. As each or any portion of these Outlots are platted or replatted, an equitable division of the votes, based upon size of the lot shall be made as a part of the platting procedures by virtue of further covenants or addendums thereto recorded at the time the plat or replat is filed of record or noted on the final plat or replat document. Provided, no such allocation of votes shall deny the right of each lot having at least one vote. Upon such division or platting, the Board of Directors of the Association shall be notified in writing by the then owner or owners of the property so platted or divided as to the further division of the votes, together with a legal description for each such lot or parcel resulting from such division or platting.

NOTWITHSTANDING THE ABOVE, THE DECLARANT, ITS HEIRS, SUCCESSORS AND ASSIGNS, SHALL BE THE SOLE VOTING MEMBER OF THE ASSOCIATION UNTIL SUCH TIME AS DECLARANT NO LONGER OWNS ANY PORTION OF THE PROPERTIES, OR UNTIL THE DECLARANT WAIVES THIS RIGHT TO BE SOLE VOTING MEMBER, WHICHEVER FIRST OCCURS. SO LONG AS DECLARANT IS THE SOLE VOTING MEMBER OF THE ASSOCIATION, IT, ITS SUCCESSORS AND ASSIGNS, SHALL HAVE THE RIGHT TO ELECT ALL DIRECTORS.

Section 2. Board of Directors. The Owners entitled to vote shall elect a Board of Directors of the Association as prescribed by the Association's By-laws. The Board of Directors shall manage the affairs of the Association.

Section 3. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment against his or her Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for the entire Properties, hereby covenants, and each Owner of any portion of the Properties by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges, and (2) special assessments for capital improvements and operating deficits; and (3) special assessments as provided in Article VI below. Such assessments to be established and collected as hereinafter provided. The monthly and special 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 property against which each such assessment is made. The lien for the assessments shall be prior to all other liens on the property, except only tax liens on the Lot in favor of any assessing unit and special district, and all sums unpaid on a first mortgage of record. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to his successors in title.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Areas and Common Facilities and for other purposes specifically provided herein, including but not limited to, payment of legal liabilities or obligations of the Association and all fees, costs, expenses, and attorney fees in connection therewith.

Section 3. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association shall levy a special assessment if necessary to finance or perform any of its stated obligations and responsibilities

under this Declaration. Further, the Association may levy a special assessment in addition to the monthly assessments for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement not required of the Association under this Declaration or other discretionary expenditure, provided that any such assessment shall have the assent of a majority of the votes of members entitled to vote, in person or by proxy, at a meeting duly called for this purpose.

Written notice of any meeting called for the purpose of taking any action authorized under this Section 3 shall be sent to all members not less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 4. Rate of Assessment. Monthly and special assessments provided for in this Declaration shall be fixed in accordance with this Section. Each Lot, Outlot or portion thereof and the Owner(s) of each Lot, Outlot or portion thereof, shall be liable for a share of the total budget upon which any monthly or special assessment is based. The share appurtenant to each Lot, Outlot or a portion thereof shall be calculated by multiplying the total budget of the monthly or special assessment times a fraction, the numerator of which is the number of votes appurtenant to such Lot, Outlot or portion thereof and the denominator of which is the total votes outstanding in the Association.

Section 5. Due Dates of Monthly Assessments: Due Dates. The monthly assessments provided for herein shall be due as to each property on the first day of each month. The Board of Directors shall fix any increase in the amount of the monthly assessment at least

thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. 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 property have been paid. A properly executed certificate from the Association regarding the status of assessments on property shall be binding upon the Association as of the date of its issuance.

Section 6. 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 12% per annum or at the highest rate allowed by Iowa Law, whichever is higher. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the petition in such action, including reasonable attorney's fees. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

Section 7. Subordination of Assessments Liens. If any property 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 sheriff's 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 sheriff's 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 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. 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.

Section 8. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

(a) All property which is dedicated to and accepted by a public authority; and

(b) All Common Areas;

No other land or improvements located within the Properties shall be exempt from said assessments, charges or liens.

#### ARTICLE V

##### DECLARANT'S RIGHTS

Section 1. Declarant reserves the right to use any of the Properties, including the Common Areas, to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such property 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 Properties then unsold. Declarant retains the right to be considered an Owner of any Lot or portion of the Properties that remains unsold. Declarant's rights are subject to all applicable ordinances of the City.

Section 2. Declarant, its successors and assigns, reserve the right to add additional common areas by conveying the same to the Association from time to time. Nothing in this Section shall be deemed an obligation on the part of the Declarant to convey additional properties to the Association.

Section 3. Declarant is and shall be responsible for all duties and obligations of the Association hereunder and shall have all rights of the Association until the Association is established and the initial Common Areas are conveyed thereto. The Association shall be established prior to the recording of the final plat of The Woodlands No. 1.

#### ARTICLE VI

##### MAINTENANCE AND MANAGEMENT

Section 1. Maintenance of Common Areas and Common Facilities.

The Association shall perform the following maintenance tasks:

(a) maintain, repair, reconstruct and replace the Common Areas and Common Facilities, and all improvements thereon, specifically the entrance way, the entrance wall and lighting and the landscaping and sprinklers within the street and boulevard known as Woodlands Parkway and Easements and Common Areas, the limestone street pillars and signs and the limestone mail box clusters. The Association shall arrange for periodic inspections and for the maintenance, repair and reconstruction of said items.

(b) maintain all common areas and common facilities, including mowing, and weed control.

(c) such other reasonable and necessary maintenance, repair, reconstruction and replacement duties as are necessary and desirable to preserve the high quality of the Properties, Common Areas and Common Facilities.



Section 2. Other Maintenance Responsibilities. The Association, in addition to the maintenance of the Common Areas and Common Facilities described in Section 1 above shall be responsible for and perform all maintenance, repair, reconstruction and replacement of any and all Common Areas and Common Facilities, including but not limited to the following maintenance tasks:

(A) In the event that any further boulevards are constructed on streets which have been or are intended to be dedicated to City, the Association will be responsible for the repair, maintenance and replacement of the boulevard landscaping, even though the same shall have been dedicated to the City. Such repair, maintenance and replacement of the boulevard landscaping shall be in accordance with the site plan approved by the City allowing the construction of such boulevards.

(B) In the event that Declarant is allowed by the City and elects to install limestone pillars and street signs and limestone mail box clusters when the Outlots are platted, the Association shall maintain, repair and replace such limestone pillars, street signs and limestone mail box clusters.

Section 3. Financial Responsibility. The Association, through its Board of Directors, shall use its best efforts to obtain general liability insurance covering the Common Areas and Common Facilities for the benefit of and on behalf of itself, its members and any such insurance, if obtained, shall name the City of Clive as an additional insured for liability purposes. Any such insurance obtained shall be in an amount and in form reasonably calculated to protect the named insureds from liability with respect to any and all claims, demands and the like arising out of or connected with the ownership, operation or existence of the Common Areas.

Section 4. Right of City. The City, upon 30 days' written notice (except in case of emergency), shall have the right to require the Association to perform any and all of its maintenance, repair, reconstruction and replacement and management responsibilities with

respect to the entrance way, entrance wall, lighting, landscaping within Woodlands Parkway, sprinklers, limestone pillars and street signs and limestone mail box clusters, and other common areas and common facilities in accordance with this Declaration, the terms of the approval of the site plan and construction drawings, any conditions and covenants in connection with the platting of any portion of the Properties and its ordinances; and the City shall have the right to require the Association to enforce any and all rules and regulations adopted by the Association concerning the use, maintenance and operation of the common areas and common facilities.

Section 5. Responsibility for Willful or Negligent Act. In the event the need for maintenance or repair to the Common Areas, Common Facilities or improvements located thereon is caused through the willful or negligent act of an Owner, his or her family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the monthly assessments to which such Lot is subject.

#### ARTICLE VII

##### EASEMENTS AND ENCROACHMENTS

Section 1. Easement Maintenance. Declarant reserves unto the Association a nonexclusive easement over the common areas and the areas where the common facilities are located for the sole benefit of the Association in performance of its maintenance obligation under this Declaration. This easement shall not be for the benefit of the members or the public at large.

Section 2. Easement for Signs. Declarant reserves unto itself, its successors and assigns, for so long as it owns any portion of the Properties, the right and easement to erect and maintain identification and "For Sale" sign or signs within the Properties, including any Common Areas as Declarant deems reasonably necessary, provided the same are consistent with the ordinances of the City.

#### ARTICLE VIII

##### COVENANTS WITH THE CITY

Section 1. Right of Public Access. Officers, employees or

contracted agents of the City shall have the right and authority to enter upon the Common Areas and easements reserved or granted for the benefit of the Association for the administration of general public services including Emergency Fire Protection, Law Enforcement and administration of the Water Works Rules and Regulations and any applicable agreements for providing water service.

Section 2. Indemnification and Hold Harmless of the City. The Association, its successors or assigns, agree to defend, indemnify, protect and save harmless the City and its political subdivisions, including any of its elected officials, officers, employees or agents, from and against any judgments, awards, claims or expenses or other things whatsoever, including attorney fees, costs or disbursements, arising out of or in connection with any act or act of negligence, causes omissions, fault, misconduct, claims, damages, suits or other actions developed, brought or asserted by any person, firm, corporation, entity or estate, against the said City by reason of, in connection with, related to or growing out of, directly or indirectly, the duties and responsibilities which are imposed upon the Owners or the Association, its successors and assigns, with respect to its duties or obligations under this Declaration, including any rules or regulations in existence pursuant to this Declaration, or related to or growing out of, directly or indirectly, the ownership, maintaining, cleaning out, grading, repairing, construction, or reconstruction of the common areas, or any part thereof, or related to or growing out of, directly or indirectly, the existence of this Declaration and the purposes for which this Declaration is executed or the approval of this Declaration.

Declarant, its successors and assigns, including all subsequent owners in the Properties, hereby covenant not to sue, demand or claim any damages or other remedies against the City, its political subdivisions and its elected officials, officers, employees or agents by reason of, in connection with, related to or growing out of, directly or indirectly, the failure of the City to exercise any rights afforded to it under this Declaration, the approval of this

Declaration, the approval of the site plan and construction drawings and improvements on common areas or approval of common facilities, the issuance of a building permit for such purposes, any inspections performed relating to said permit or permits or any certification issued indicating compliance with any City ordinance regulating the issuance of said building permit or approvals.

Section 3. Liability of City. Neither the Declarant, Owners, Association nor any other person or other entity shall place any reliance upon the approval of this Declaration by the City, the approval of the site plan and construction drawings for the related improvements on the common areas or approval of common facilities, the issuance of a building permit for such purposes, any inspections performed relating to said permit or any certification issued indicating compliance with any City ordinance regulating the issuance of said building permit or approvals, as indicating the safety or quality of construction of any improvements located on the common areas, common facilities or within the Properties. Neither the issuance of, nor any inspections or certification made relating to the building permit or relating to any City ordinance or approval, including the approval of this Declaration, shall constitute an assumption by the City, or any elected officials, officers, agents or employees thereof, of any duty or responsibility of any person or entity to adequately construct, reconstruct, repair and maintain the common areas, common facilities and improvements located thereon or provide a safe premises or to, in any way, indicate a decrease in the risk associated with the use or existence of the improvements located on the common areas. A certification that the common areas or common facilities have been inspected pursuant to any City ordinance regulating the same shall not, in any way, constitute a representation, covenant, warranty or guaranty of the safety or quality of said improvements

by the City, or any elected officials, officers, agents or employees thereof. The Declarant, its successors and assigns, hereby expressly release and discharge, and agreed to hold harmless, defend and indemnify, the City, its elected officials, officers, agents and employees, from any and all duties, responsibilities, obligations, claims, demands, causes of action or liabilities arising out of or in any way related to the issuance of a building permit or any inspection performed or certification issued in connection with the building permit and approval of the improvements located on the common areas, common facilities and the approval of this Declaration.

Section 4. Amendment. This Article shall not be amended without the prior written approval of the City.

#### ARTICLE IX

##### USE RESTRICTIONS

Section 1. The Board of Directors of the Association shall have the right to adopt proper rules and regulations governing the common areas or common facilities, and such rules shall be observed and obeyed by the owners, their guests, lessees, assigns and licensees.

Section 2. Mailboxes. For any portion of the Properties developed as residential properties, the Association hereby reserves and shall retain the right to require installation of mail boxes of a uniform design, location and construction.

Section 3. No Waiver. Failure of the Association to enforce any covenant, condition or restriction, this Declaration, the Article of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of this right to enforce the same thereafter.

Section 4. Fines and Liquidated Damages. In addition to the enforcement rights granted to the Association for the collection of assessments, the Association shall have the right to maintain any

action at law or in equity appropriate for the enforcement of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration, the Articles of Incorporation and Bylaws. The Association is specifically granted a right to obtain affirmative or negative injunctions, restraining orders and similar equitable relief for repeated violations by any person whatsoever. The Association shall have the right to adopt a schedule of fines and/or liquidated damages to be imposed upon members, their families, tenants, invitees and guests for violations of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration and the Articles of Incorporation and Bylaws of the Association.

#### ARTICLE X

##### GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the City, the persons in ownership from time to time of the Lots and all parties claiming under them, shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed, unless otherwise provided herein, at any time by an instrument recorded in the Office of the Recorder of Polk County, Iowa, certified by the President and Secretary of the Association that the same has been approved by a 2/3rds majority of the then outstanding votes; 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. Likewise, the covenants with and rights of the City herein shall not be amended without the

prior approval of the City. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time without the approval of any other Owner or Owners for the purpose of clarification or correction of errors in the Declaration, provided such amendment shall not affect the substantive rights of any Owner. Further, Declarant may, at any time, amend this Declaration in order to satisfy the requirements of any of the Federal Mortgage Agencies. 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.

NOTWITHSTANDING ANY PROVISION OF THIS DECLARATION TO THE CONTRARY, NO AMENDMENT TO THIS DECLARATION SHALL BE EFFECTIVE, UNLESS AND UNTIL THE CITY HAS GIVEN ITS PRIOR WRITTEN APPROVAL TO SUCH AMENDMENT.

Section 3 Third Party Beneficiary. City is hereby declared to be a third party beneficiary of the provisions of this Declaration. As such, City has no duty or obligation to exercise its rights to enforce or perform any obligations reserved to it under the provisions of this Declaration. The rights of the City provided for in this Declaration shall be exercised by the City at its sole option and discretion. Whenever the approval of the City is required under this Declaration, the same shall not be unreasonably withheld or delayed.

Section 4. Binding Effect. This Declaration shall run with the land and shall be binding upon all parties claiming under them. Invalidation of the covenants, conditions and restrictions of this 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.

IN WITNESS WHEREOF, Mid-America Investment Co. has caused this Declaration to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 1989.

DECLARANT:

MID-AMERICA INVESTMENT CO.

By \_\_\_\_\_  
David B. Hawkins, President

STATE OF IOWA     )  
                          )   SS  
COUNTY OF POLK    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1989, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared David B. Hawkins, to me personally known, who, being by me duly sworn, did say that he is the President of Mid-America Investment Co. executing the within and foregoing instrument to which this is attached, that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said David B. Hawkins as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said  
county and state.



EXHIBIT A

An irregularly shaped Entrance Structure Easement over and across a portion of Outlot "W" in The Woodlands Plat No. 1, an Official Plat, Clive, Polk County, Iowa is described as follows;

Beginning at the Southeast Corner of Outlot "W" in The Woodlands Plat No. 1, an Official Plat, Clive, Polk County, Iowa; thence, N00°00'00"E along the East Line of said Outlot "W", a distance of 414.79 feet to the Point of Beginning; thence Continuing N00°00'00"E along the East Line of said Outlot "W", a distance of 49.88 feet; thence Northwesterly along a 25.00 foot radius to the left, a distance of 39.39 feet; thence, S89°43'10"W along the Northerly Line of said Outlot "W", a distance of 49.88 feet; thence, S00°00'00"E, a distance of 35.00 feet; thence, N89°43'10"E, a distance of 40.00 feet; thence, S00°00'00"E, a distance of 40.00 feet; thence, N89°43'10"E, a distance of 35.00 feet to the Point of Beginning.

and

An irregularly shaped Entrance Structure Easement over and across a portion of Outlot "X" in The Woodlands Plat No. 1, an Official Plat, Clive, Polk County, Iowa is described as follows;

Commencing at the Northeast Corner of Outlot "X" in The Woodlands Plat No. 1, an Official Plat, Clive, Polk County, Iowa; thence, S00°00'00"E, a distance of 236.14 feet to the Point of Beginning; thence Continuing S00°00'00"E, a distance of 50.12 feet; thence Southwesterly along a 25.00 foot radius curve to the right, a distance of 39.15 feet; thence, S89°43'10"W, a distance of 50.12 feet; thence, N00°00'00"E, a distance of 35.00 feet; thence, N89°43'10"E, a distance of 40.00 feet; thence, N00°00'00"E, a distance of 40.00; thence, N89°43'10"E, a distance of 35.00 feet to the Point of Beginning.

and

The entrance wall, lighting and landscaping on said easement area and the landscaping, flowers, shrubs, bushes, trees and lighting and sprinkler systems within the public street and public street right of way and boulevard known as Woodlands Parkway and Easements located within The Woodlans Plat No. 1 plat in Clive, Iowa and limestone mail box clusters and limestone street pillars and signs located within the public right of way of various streets at locations within said plat, all as shown by the site plan and construction drawings for said plat.

EXHIBIT B

Lots 1 to 33, inclusive, and Outlots W, X and Y in The Woodlands Plat No. 1, an Official Plat, Clive, Polk County, Iowa.

APPROVAL OF CITY

The Master Declaration of Covenants, Conditions and Restrictions for The Woodlands No. 1 have been reviewed and approved by the City Council of the City of Clive on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, at a regularly scheduled meeting of its City Council.

CITY OF CLIVE

By \_\_\_\_\_  
O. Gene Maddox, Mayor

By \_\_\_\_\_  
City Clerk

STATE OF IOWA )  
 ) SS  
COUNTY OF POLK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1989, before me, a Notary Public in and for the State of Iowa, personally appeared O. Gene Maddox and \_\_\_\_\_, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Clive, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its City Council, as contained in Ordinance No. \_\_\_\_\_ passed (the Resolution adopted) by the City Council, under Roll Call No. \_\_\_\_\_ of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, and that O. Gene Maddox and \_\_\_\_\_ acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said county and state.



BY-LAWS  
OF  
THE WOODLANDS OWNERS ASSOCIATION NO. 1

These are the By-laws of The Woodlands Owners Association No. 1 (hereinafter referred to as "Association"), a corporation organized pursuant to Chapter 504A of the Code of Iowa for the purpose of owning and administering certain common areas and the improvements located on the real property described on Exhibit A attached hereto for the benefit of the owners and their successors of the real property described on Exhibit B attached hereto, all in accordance with and pursuant to the Master Declaration of Covenants for The Woodlands No. 1, dated \_\_\_\_\_, 1989, and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ in the records of the Recorder of Polk County, Iowa (hereinafter referred to as "Declaration").

I.

MEMBERS AND VOTING RIGHTS

1. A. Membership. The owner or owners of the real property described on Exhibit B attached hereto or any subdivisions thereof shall be members of the Association; provided, however, in the event that any portion of the property described on Exhibit B is submitted to a horizontal property regime (condominium) or an owners association is established in connection with an attached housing development, the owners association or counsel of co-owners shall be the member in this Association. Membership shall be appurtenant to the ownership of the real property and shall be indivisible from such ownership.

B. Voting Rights. Each member of the Association shall have a right to vote concerning the affairs of the Association. The number of votes for each member shall be determined in accordance with the provisions of the Declaration. In no event shall any allocation of votes in accordance with the Declaration deny the right of each lot having at least one vote.

2. An owner of record shall be recognized as a member without further action for so long as he or she owns an ownership interest. If ownership is acquired but not of record, or if acquired other than by way of conveyance or other formal instrument of transfer (such as by death, judicial act or dissolution), the person acquiring or succeeding to ownership shall present to the Association evidence satisfactory to it of facts evidencing lawful ownership status prior to the exercise of any rights as a member of the Association. Failure to provide such evidence shall not, however, relieve any owner of his membership obligations. A fiduciary or other official acting in a representative capacity shall exercise all membership rights and privileges of the owner which he or she represents.

3. If more than one person is an owner of the same property, all such owners shall be members and remain jointly and severally liable for all membership obligations. In such cases, or if more than one fiduciary or other official is acting in the premises, the votes entitled to be cast by the owner of that property shall be cast by the person named for the purpose on a certificate signed by all such owners or fiduciaries or other officials and filed with the Association, and such person shall be deemed to hold votes appurtenant to such unit for the purposes of voting and determine the representation of such property owner at any meeting or for purposes otherwise provided herein. If such certificate is not executed and filed with the Association, such membership shall not be in good standing and the vote or votes appurtenant to that property shall not be considered in determining a quorum or any vote or for any other purpose until this Bylaw is complied with. Such certificate shall continue in force until revoked in writing and filed with the Association's secretary.

## II.

### MEMBERS' MEETINGS

1. The annual and any special meeting shall be held at a time and at a place within Polk County, Iowa, chosen by the Board of Directors, and all such meetings, annual or special, shall be held at such particular time and place as is set forth in the Notice thereof. The first annual meeting shall be held in calendar year 1990.
2. A special meeting shall be held whenever called by the President, or, in his absence or disability, the Vice President, or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from members entitled to cast 33 1/3% of the votes of the entire membership.
3. The Secretary or his designate shall give written notice to each member of the annual meeting. The person or persons calling a special meeting pursuant to paragraph 2 shall give like written notice of such special meeting. All notices shall set forth the time and place and purpose or purposes for which the meeting will be held. No action shall be taken at a special meeting which is not directly related to the purpose or purposes stated in the notice of meeting for which such meeting is held.
4. Notice of a members' meeting shall be given by mailing or delivering the same not less than ten (10), nor more than thirty (30), days prior to the date of the meeting. Notice shall be deemed duly given if mailed by first class mail to the member at the address of his property within the the property described on Exhibit B, unless at the time of giving such notice he has given written direction, delivered to an officer or member of the Board of Directors, specifying a different mailing address to be carried on the rolls of the Association. If more than one person is an owner of the same parcel of real property or if more than one fiduciary or other official is acting in the premises, notice shall be deemed given when given in accordance with this paragraph to the person named in the certificate filed with the Association in accordance with paragraph 3 of Article I. Notice of any

meeting may be waived in writing by the person entitled thereto. Notice given pursuant hereto shall be sufficient if given to all such owners of record with the Association Secretary as of the date of mailing.

5. A quorum at a members' meeting shall consist of the presence of members or other persons in person or by proxy, holding a majority of votes outstanding. The acts carried or approved by a vote of a majority of the votes represented at a meeting at which a quorum is present shall constitute the acts of the members unless a different rule is provided herein or by the Articles of Incorporation, or other agreement to which the Association is a party. The President, or, in his absence or disability, the Vice President shall preside at each members' meeting; if neither the President or the Vice President is available to preside, a chairman shall be elected by the members present at such meeting. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements herein and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided such subsequent meeting shall be held within sixty (60) days following such preceding meeting.

6. At any membership meeting, the presence of an owner and the exercise of the voting rights of an owner or person entitled to cast votes, by proxy shall be permitted and recognized provided such proxy must be in writing and signed by the person holding membership or entitled to cast votes and shall set forth the legal description of the property with respect to which such rights are appurtenant, the number of votes appurtenant thereto and the period for which the proxy is to be in force and effect. The decision of the Board of Directors as to the sufficiency of any proxy for recognition shall be final and not subject to appeal to the members.

7. At all meetings the order of business shall consist of the following:

- A. Election of chairman, if required.
- B. Calling roll and certifying of proxies.
- C. Proof of notice of meeting or waiver of notice.
- D. Reading and disposal of unapproved minutes.
- E. Reports of officers, if applicable.
- F. Reports of committees, if applicable.
- G. Election of Directors, if applicable.
- H. Unfinished business.
- i. New business.

### III. BOARD OF DIRECTORS

1. The affairs of the Association shall be managed by a Board of not less than three (3) nor more than seven (7) directors. The initial Board shall consist of such person(s) as the Declarant may appoint and need not be members of the Association. The initial Board shall serve until the first annual members' meeting following the sale of all the property described on Exhibit B or the 15th day of October, 1997, whichever first occurs. From and after such first annual meeting of the

members, the Board of Directors shall be selected from the members of the Association. An officer or designated agent of a corporate member qualifies to serve as a Director.

2. At the first such annual members' meeting and each meeting thereafter, not less than three (3) nor more than seven (7) Directors shall be elected and the term of office of each Director shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified or until he is removed in the manner as elsewhere provided.

3. Each Director shall be elected by ballot (unless dispensed by unanimous consent) and by a plurality of the votes cast at the annual meeting of the members of the Association. Each person entitled to vote shall be entitled to vote for as many nominees as there are vacancies to be filled by election and each member shall be elected by separate ballot (unless provided otherwise by unanimous consent of the members).

4. Except as provided in Paragraph 5 of this Article, vacancies in the Board of Directors may be filled until the date of the next annual meeting by a vote of a majority of the Directors remaining in office regardless of whether those remaining constitute a quorum.

5. The initial Directors shall be subject to removal only by Mid-America Investment Co. Thereafter a Director may be removed by concurrence of two-thirds (2/3) of the members of the Association at a special meeting called for that purpose. The vacancy in the Board of Directors so created shall be filled by the persons entitled to vote at the same meeting.

6. The initial Directors, and officers selected by the initial Directors, shall serve without compensation; thereafter, Directors shall receive such compensation and expenses as is approved by the persons entitled to vote at any annual or special meeting.

7. An organization meeting of a newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the directors at the meeting at which they were elected. No further notice of the organization meeting shall be necessary.

8. A majority of the Board may, by resolution, set the time and place for regular meetings of the Board and no notice thereof shall be required until such resolution is modified or rescinded. Special meeting of the Directors may be called by the President, Vice President, or any two Directors provided not less than two days' notice shall be given, personally or by mail, telephone, or telegraph, which notice shall state the time, place and purpose of the meeting.

9. A quorum, at a Directors' meeting shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting duly called at which a quorum is present shall constitute the acts of the Board of Directors, except where



approval by a greater number of Directors is required by Declaration or these By-Laws.

10. The presiding officer of a Directors' meeting shall be the President or in his absence, the Vice President. In the absence of the President and Vice President, the Directors present shall designate one of their number to preside.

11. The Board of Directors, by resolution approved by all members thereof, may designate from among its members such committees as it deems advisable and by resolution provide the extent and manner to which the same may have and exercise the authority of the Board.

#### IV.

#### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

All of the powers and duties of the Association shall be exercised by the Board of Directors including those existing under the common law and statutes and the Articles of Incorporation, Such powers and duties of the Directors shall include in addition to those elsewhere provided for but shall not be limited to the following:

1. To enforce the terms of and carry out the obligations set forth in the Declaration.
2. To make and collect assessments against members for all common expenses.
3. To use the proceeds of assessments in the exercise of its powers and duties.
4. The maintenance, repair, replacement, and operation of the common areas and improvements located thereon and making or providing for payment for all such work and approving or delegating to the officers authority to approve vouchers therefor.
5. The reconstruction, repair, restoration, or rebuilding of the common area property after casualty; the construction of new improvements or alterations if authorized; to make and amend regulations respecting the use and occupancy of the common area property and to permit or forbid an action or conduct within the discretion committed to them in these By-Laws, and Resolutions of the members.
6. To enforce by legal means the provisions of the Articles of Incorporation, the By-Laws of the Association, the Declaration and the regulations for the use of the common area property; and to take legal action in the name of the Association and on behalf of its members, including the imposition of penalties and fines against members of violation.
7. To contract for management of the common areas and to delegate to such contractor any or all powers and duties of the

Association except such as are specifically required by the By-Laws, or Resolution of the members to have approval of the Board of Directors or the membership of the Association.

8. To employ, designate, and remove personnel to perform the services required for proper operation of the common areas.
9. To carry insurance upon the common area property and insurance for the protection of unit owners, occupants, and the Association.
10. To pay the cost of all power, water, sewer, and other utility or other services rendered to the common area.
11. To conduct all votes or determinations by members other than at a membership meeting.
12. To borrow money from any bank, lending institution or agency for the use and benefit of the Association, and to secure the loan or loans by pledge of the assets of the Association, and from time to time to renew such loan and give additional security.
13. To do such other acts as are necessary and proper to effect the purpose of the Association as stated in these By-Laws and Articles of Incorporation provided such acts are not otherwise prohibited.

#### V.

#### OFFICERS

1. The officers of the Association shall be the President, who shall be a Director, a Vice President, who shall be a Director, a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors and may be pre-emptorily removed and replaced by vote of the Directors at any meeting. The initial officers and their successors until the first annual meeting shall be chosen by the initial Board of Directors and shall serve until the first annual membership meeting. The Board of Directors may from time to time create and fill other offices and designate the powers and duties thereof. Each officer shall have the powers and duties usually vested in such office, and such authority as is committed to the office by the By-Laws or by specific grant from the Board, but subject at all times to the provisions of the By-Laws and to the control of the Board of Directors.

2. The President shall be the chief executive officer of the Association. He shall preside at all membership meetings and meetings of the Board of Directors and shall have power to appoint committees from among the members to assist in the conduct of the affairs of the Association.

3. The Vice President shall preside over membership meetings in the absence or disability of the President, and shall otherwise exercise the powers and duties of the President in the event of the absence or

disability of the President, and shall generally assist the President and exercise such other powers and duties as are prescribed by the Directors.

4. The Secretary shall keep the minutes of all proceedings of membership and meetings and Directors' meetings and shall have custody and control of the minute book of the Association, and shall keep or be in charge and control of the records of the Association except those of the Treasurer.

5. The Treasurer shall have control of the funds and other property of the Association and shall keep the financial books and records thereof.

6. The compensation of all officers and employees shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee, nor the contracting with a Director for the management of the Regime.

7. Any instrument affecting an interest in real estate shall be executed pursuant to the terms of Article IX of the Articles of Incorporation.

#### VI.

#### FISCAL MANAGEMENT

1. The Board of Directors shall adopt a budget for each calendar year (which shall be the Association's fiscal year for income tax purposes) which shall include the estimated funds required to defray the common expenses and to provide and maintain funds for the following accounting categories according to good accounting practices:

- a) Current expenses which shall include all funds and expenditures to be made within the year for which the funds are budgeted, including a reasonable allowance for the contingencies and working funds, except expenditures chargeable to reserves or to additional improvements. The balance of this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year.
- b) Reserve for deferred maintenance, which shall include funds for maintenance items which occur less frequently than annually.
- c) Reserve for replacement which shall include funds for repair or replacement required because of damage, destruction, depreciation or obsolescence.

2. The Board of Directors shall assess against each property, and the owners thereof only shall be liable for, a share of the items in the budget adopted pursuant to Paragraph 1 which bears the same ratio to the total budget as the number of votes appurtenant to such property bear to the total votes of all members of the Corporation. The rate of

assessment shall be in accordance with the provisions of the Declaration. Such share shall be assessed for the fiscal year for which the budget was prepared annually in advance and notice of such assessments shall be mailed or delivered not less than thirty (30) days prior to the first day of such fiscal year. Such assessment shall be due and payable from the respective property owner or owners in 12 equal installments, each installment being due and payable the first day of each calendar month, which day falls within such fiscal year. In the event notice of such assessment is not timely given the amount of such assessment shall not change, but the due date for each installment which would otherwise be due and payable less than 30 days from the giving of such notice shall be due and payable on the due date of the first installment which is due not less than 30 days from the date such notice is mailed or delivered. In the event the annual assessment proves to be insufficient, the budget and assessments therefor, may be amended at any time by the Board of Directors if the total amount of the budget as amended does not exceed 105% of the total amount of the budget as originally adopted for the said fiscal year. In the event the budget as amended exceeds the limitation of the previous sentence, such budget may be adopted at a special members' meeting upon an affirmative vote of a majority of the vote represented at such meeting. The additional amount so budgeted shall be assessed to each owner in the same manner as assessments for the annual budget and shall be prorated along with the remaining installments due and payable in such year.

3. Assessments for common expenses for emergencies and extraordinary expenditures, which cannot be paid from the annual assessments for common expenses or the maintenance reserve fund shall be made only after notice of the need thereof to the owners concerned. After such notice and upon approval in writing by persons entitled to cast more than one half of the votes appurtenant to the units concerned, the assessment shall become effective, and it shall be due in such manner as the Board of Directors may require after thirty (30) days' notice thereof. In the event any expenditure for repair or replacement of any unit or common elements cannot be paid from annual assessments but can be at least 90% paid from insurance proceeds therefor, such expenditures may be made upon approval of the Board of Directors without approval of the members and an amended budget and assessment may be made therefor if necessary.

4. If an owner shall be in default in the payment of an installment upon an assessment, the Board of Directors may accelerate the remaining installment of the assessment upon notice thereof to such owner, and thereupon the unpaid balance of the assessment shall come due upon the date stated in the notice, but not less than ten (10) days after delivery thereof to such owner either personally or by registered or certified mail. Interest shall be computed and due on balance due under this paragraph but upon on such due date at the maximum rate of interest allowable by law from the date such balance becomes due and payable in accordance with the preceding sentence; such interest shall be in addition to any other payments for which said owner is liable.

5. The holder of a first mortgage on any property, upon its filing written request with the Association, shall be given written notice from

the Association of any default by the mortgagor in the performance of the mortgagor's obligations under these By-Laws, which is not cured within thirty (30) days.

6. All sums assessed but unpaid including, but not limited to, interest with respect to the real property described on Exhibit B or a portion or parcel thereof or against an owner shall constitute a lien on such real property prior to all other liens except (1) tax liens on the unit in favor of any assessing unit and special district, and (2) all sums unpaid on the first mortgage of record. Such lien may be foreclosed by the Association in the manner provided for the foreclosure of mortgages contained in the Code of Iowa in which event the unit owner shall be required to pay a reasonable rental for the unit. The Association may sue for money judgment for unpaid assessment and interest or sums due without foreclosing or waiving any lien which it holds.

7. If a mortgagee or purchaser of a property obtains possession as a result of foreclosure of a first mortgage, or deed in lieu of foreclosure, such mortgagee or purchaser, his successors and assigns, shall not be liable for the assessments chargeable to such property due prior to the acquisition of possession and such unpaid assessments shall thereafter be deemed to be common expenses collectible from all owners including the mortgagee or purchaser, his successors and assigns, all without prejudice to the right of the Association to collect the same from the defaulting unit owner personally. The owner pursuant to a voluntary conveyance or by inheritance or devise shall be jointly and severally liable with the grantor or prior owner for all unpaid assessment against the grantor or prior owner but without the prejudice to the right of such grantee or devisee to recover from grantor the amounts paid therefor. The grantee or other successor interest of an individual subject to a levy of assessment on account of default shall be liable for any such special assessment.

8. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the moneys of the Association shall be deposited. Withdrawal of moneys from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

9. An accounting of the Association's books shall be made annually and a copy of the report shall be made available for inspection by each member not later than ninety (90) days after the close of the fiscal year for which the report is made.

#### VII. AMENDMENT

1. These By-Laws may be amended, altered, repealed or new By-Laws adopted by the members at a regular or special meeting of the members upon the affirmative vote of 2/3rds of the votes outstanding.

2. No amendment may be adopted at either a special or regular membership meeting if not included in the notice thereof, except if notice of the proposed amendment has been given, a different amendment relative to the same subject matter may be adopted by those present, in person or by proxy and possessing the requisite percentage of membership and voting units, provided further no vote by proxy may be counted unless the proxy expressly provides for such contingency. Notice referred to herein shall be given in the manner prescribed in Article II Section 3 of these By-Laws and shall be given to the persons described in Article II Section 4 and the holder of any first mortgage of record which has notified the Association of his interest. More than one proposed amendment may be included in the notice of a meeting.

3. No modification or amendment of these By-Laws shall be effective if the same results in an amendment, modification or change in the terms of the Declaration, unless the Declaration is properly amended in accordance with its terms.

4. No modification or amendment of these By-Laws shall be effective unless set forth in an amendment executed and recorded in the office of the Recorder of Polk County, Iowa. Upon such recording, the amendment shall be effective against all persons regardless of whether such person had an ownership interest at the time the amendment was adopted.

#### IX.

#### DISSOLUTION OR LIQUIDATION

1. The Corporation shall not be voluntarily or involuntarily dissolved or liquidated without the prior written consent of the City of Clive. To that end, the City of Clive shall be deemed a voting member for the purposes of voting on a resolution recommending that the Corporation be dissolved, and the City of Clive for such vote shall be deemed to possess 51% of the outstanding votes in the Corporation.

#### X.

#### CONFLICTS

1. If the provisions of these Bylaws conflict with the express provisions of the Declaration, the provisions of the Declaration shall control.

#### XI.

#### GENERAL PROVISIONS

1. The invalidity of any portion or provision of these By-Laws shall not affect the validity of the remaining provisions or portions hereof.

2. The association shall not have a corporate seal.

3. The Board of Directors may require fidelity bonds from all directors, officers, or agents handling or responsible for Association

STATE OF IOWA        )  
                                   )  SS  
 COUNTY OF POLK        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1989, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Michael Kuperman, James W. McCulloh and Bruce C. Sherman, to me personally known, who, being by me duly sworn, did say that they are the Directors of The Woodlands Owners Association No. 1 executing the within and foregoing instrument to which this is attached, that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Michael Kuperman, James W. McCulloh and Bruce C. Sherman, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

\_\_\_\_\_  
 Notary Public in and for said  
 county and state.

funds and the expense of such bonds shall be a common expense of the Association.

4. The Association shall at all times maintain complete and maintain accurate written records of each unit and owner and the address of each, and setting forth the status of all assessments, accounts and funds pertinent to that unit and owner. Any person may rely on a certificate made from such records by an officer or agent of the Association as to the status of all assessments and accounts.

5. Each member shall have the obligations as such member as are imposed upon him by the recorded documents as an owner, and no member shall have any power or authority to incur a mechanic's lien or other lien effective against the common area property.

6. The Board of Directors may in its discretion issue written evidence of membership but the same shall be evidence thereof only and shall in no manner be transferrable or negotiable, and the share of the member in the assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to such assignment, hypothecation, or transfer of the property.

7. No provision or restriction otherwise void by reason of application of the rules against perpetuities or Section 558.68 of the Code of Iowa shall continue for a period longer than the life of the last to survive of the owners and shareholder of the developer and their children in being at the time of the initial recording of the Declaration of Condominium to the Regime and twenty-one (21) years thereafter.

8. Each owner or the lessee of his unit as applicable shall have a right to use and enjoy the common provided such use shall be limited to the use permitted by the Declaration and other rules and regulations of the Association.

These Bylaws are hereby adopted as the By-laws of The Woodlands Owners Association No. 1, this \_\_\_\_\_ day of \_\_\_\_\_, 1989.

THE WOODLANDS OWNERS ASSOCIATION NO. 1

By \_\_\_\_\_  
Michael Kuperman, Director

By \_\_\_\_\_  
James W. McCulloh, Director

By \_\_\_\_\_  
Bruce C. Sherman, Director