

**DECLARATION OF EASEMENTS, RESTRICTIONS AND COVENANTS  
FOR OAK CREEK**

**This Declaration of Covenants** (the "**Declaration**") is made this \_\_\_ day of \_\_\_\_\_, 2000, by Sturgeon Development, L.C., an Iowa limited liability company ("**Grantor**").

**RECITALS**

**WHEREAS**, Grantor is the owner of 170 acres of land, more or less, as legally described in Appendix "A" attached hereto (the "**Property**") which is now included in and forming a part of the City of Granger, Dallas County, Iowa, on which multiple commercial and residential buildings will be constructed upon separate Building Sites; and

**WHEREAS**, Grantor desires to grant certain easements and to establish certain rights, duties, obligations and responsibilities with respect to the construction, conduct, operation and maintenance of the Property, which easements, covenants and restrictions shall be binding upon the Owners of each Building Site and their respective successors and assigns, and which shall run with the land and each part thereof.

**NOW, THEREFORE**, Grantor, by execution and recording of this Declaration, hereby declares that the Property and all Building Sites therein, shall be held, occupied, sold and conveyed subject to easements, covenants and restrictions set forth in this Declaration.

**ARTICLE I  
DEFINITION OF TERMS**

"**Architectural Review Committee**," also referred to herein as "**ARC**" shall be the committees composed of no less than three (3) nor more than five (5) individuals, which are designated from time to time by the Boards of each Association, pursuant to the Bylaws of each Association, who shall have the powers and duties as set forth herein, and who need not be Members. One member of each Association's Committee shall be designated by the Board of the other Association. References herein to the ARC, unless otherwise indicated, shall mean the ARC of the Association of which the Building Site Owner would be a member, determined by whether the Building Site is commercial or residential.

"**Associations**" shall mean both the Oak Creek Business Owners Association and the Oak Creek Residential Owners Association, nonprofit corporations organized pursuant to Chapter 504A of the Code of Iowa, and their successors and assigns. References herein to an Association shall, unless otherwise indicated, mean the Association of which the Building Site Owner would be a member, determined by whether the Building Site is commercial or residential.

"**Boards**" shall mean the Boards of Directors of the Associations duly elected in accordance with the Articles of Incorporation and Bylaws of each Association. References herein to a Board, unless otherwise indicated, shall mean the Board of the Association of which the Building Site Owner would be a member, determined by whether the Building Site is commercial or residential.

"**Building Site**" shall mean any lot, tract, or portion thereof, or two or more contiguous lots, tracts, or portions thereof in the Property upon which a building or buildings and appurtenant structures may be erected.

"**Common Areas**" shall mean all real and personal property which each Association (or the Associations jointly) now or hereafter owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including easements held by the Associations for those purposes.

"**Design Criteria**" shall mean the minimum criteria and design standards prescribing the quality and character specifications for Improvements within the Property as set forth in Article VI of this Declaration.

"**Development Plan**" shall mean the Development Plan for Oak Creek, prepared by \_\_\_\_\_, dated \_\_\_\_\_, a copy of which is attached as Exhibit "B."

"**Grantor**" shall mean collectively Sturgeon Development, L.C., and its successors and assigns, unless the context indicates otherwise.

"**Improvements**" shall mean buildings, outbuildings, parking areas, loading areas, fences, walls, hedges, signs, lawns, landscaping, poles and a structure of any type or kind.

"**Owner**" shall mean the person, persons or entity who from time to time holds title to a Building Site.

"**Occupant**" shall mean an Owner and any person or entity from time to time entitled to the use and occupancy of a Building Site, or any part of a Building Site, under any lease, deed, license or other instrument or arrangement by which such person or entity has acquired rights with respect to the use and occupancy of a Building Site.

"**Permittee**" shall mean the Owner and all Occupants of any Building Site, and their respective partners, officers, directors, employees, agents, contractors, licensees, concessionaires, subtenants, customers, visitors, and business invitees.

"**Property**" shall mean the real property described in Appendix "A" attached hereto, and includes replats of the Property and all real property added later from time to time pursuant to Article XII hereof.

Words defined elsewhere in this Declaration shall have that meaning throughout the Declaration and not just in the Section in which such word is defined, unless the definition expressly states otherwise.

## **ARTICLE II PURPOSE OF PROTECTIVE COVENANTS**

The Property is subjected to this Declaration to ensure the proper use and development of each Building Site. It is the intent of this Declaration to provide easements, covenants, restrictions and standards to ensure that the Property, and each Building Site, shall be developed, improved, operated and maintained as an attractive, park-like setting for the type of permitted uses, with ample landscaped and open areas, and attractive, high quality Improvements, which can have individual character in a manner that is architecturally compatible with other Improvements in the Property, and roadways, driveways, parking areas, sidewalks, walkways and common areas appear and function as an integrated and unified Property; to encourage the erection of attractive Improvements at appropriate locations; to protect the Owners and Occupants of Building Sites from improper and undesirable use of surrounding Building Sites; to guard against depreciation in value of property; to guard against erection of Improvements constructed improperly or of unsuitable materials or design; to prevent haphazard and inharmonious improvements of property; to ensure the proper maintenance of the Common Areas, storm water detention system and the Property signage; and in general to provide adequately for quality development of the Property. This Section shall be used as a standard in judging performance and interpreting the provisions of this Declaration and in granting approval or disapproval of development by the Owners of Building Sites.

## **ARTICLE III EASEMENTS**

**3.01 Easements for Pedestrian and Incidental Uses.** The Owner of each commercial Building Site hereby grants to:

1. the Owners of each of the other Building Sites, for the use by each such Owner and its successors, assigns, Occupants and Permittees; and

2. the general public:
  - a. A non-exclusive, irrevocable easement and right-of-way for adequate and unobstructed pedestrian traffic over and across the roadways, driveways, parking areas, sidewalks and walkways located on the-granting Owner's Building Site; and
  - b. A non-exclusive, irrevocable right to use all common areas on the granting Owner's Building Site.

The Owner of each Building Site shall be responsible to construct, operate, maintain, repair and replace the roadways, driveways, parking areas, sidewalks and walkways located on such Owner's Building Site.

**3.02 Easements for Public Utilities.** If a Building Site abuts a public right-of-way, then to the maximum extent reasonably possible, each such Building Site shall obtain its natural gas, electricity, telephone, fiber optic, cable television, sanitary sewer, storm sewer, water and other utility services from where such utility service is located in the respective abutting public right-of-way, without necessity for an easement across any other Building Site. Notwithstanding the foregoing, in the event that the public utility company providing any such utility service to any Building Site determines that it is more desirable to furnish such utility service through an easement across another Building Site, then such Owner of such Building Site shall grant to the public utility company an easement for the installation, operation, use, maintenance, repair, replacement and removal of such utility service upon the following terms and conditions:

1. The location of all such utility easements shall be subject to the prior written approval of the Owner of the Building Site across whose property the same is to be located; and upon completion of construction of such utility facilities, the Owner of the Building Site and the public utility company shall join in execution of an agreement, in recordable form, appropriately identifying the type and location of each respective utility facility, which agreement is to be recorded at the expense of such utility company;
2. All such utility service lines are to be located underground; and
3. There is hereby reserved to and retained for the benefit of the Owner of each Building Site that is subject to any such public utility easement, the right to utilize and construct walkways, driveways, parking areas, signage, irrigation lines and equipment, and landscaping ("**Surface Improvements**") on, under and across the surface area of all such easements, and any person disturbing any such Surface Improvements in the course of operation, maintenance, repair or replacement of such utility facilities shall be responsible for repairing, restoring or replacing such Surface Improvement so as to place it into as good a condition as it was in prior to such work, and the right to require such utility service to relocate such utility line, at the public utility company's expense, to the extent

necessary to permit construction, alteration, repair or replacement of any Building upon such Building Site.

#### **ARTICLE IV COMMON AREAS**

4.01 **Maintenance and Control.** Each Association shall be responsible for the management and control, for the exclusive benefit of the Owners of any portion of the Property, of the Common Areas, conveyed to it or established by the Grantor or the Association, and all Improvements thereon and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management. In the event the need for maintenance or repair of any portion of the Common Areas or the Improvements thereon is caused through the willful or negligent acts of an Owner of a portion of the Property, its guests or invitees, the cost of such maintenance or repair shall be added to and become part of the assessment to which the Owner is subject and a lien upon the lot or a portion of the Property owned by such Owner, it shall become due and payable upon demand.

#### **ARTICLE V BUILDING SITES**

5.01 **Construction of Building Sites.** No Owner shall construct any Improvements or make any material modifications to the shape, height or exterior appearance of any Improvement on such Building Site without the prior approval of the plans therefor by the Architectural Review Committee (“ARC”); provided, nothing in this Section shall prohibit any Owner from maintaining, repairing, restoring or replacing any Improvements substantially in conformance to previously approved plans therefor. Each Owner shall construct its Improvements in a good and workmanlike manner, using first class materials, substantially in accordance with the plans therefor that have been approved by the ARC and in accordance with all applicable laws, rules, ordinances, codes and regulations. Each Owner shall confine all of its construction activities solely to its Building Site and shall use its best efforts to prevent and, if damaged, repair any damage to any of the Common Areas as mentioned in Section 4.01 of this Declaration.

5.02 **Maintenance of Building Sites.** Upon completion of the Improvements described above, each Owner shall operate, maintain, repair, restore and replace all Improvements on its Building Site.

#### **ARTICLE VI DESIGN CRITERIA**

6.01 **Design Criteria.** The minimum design criteria shall be the building design standards prescribing the quality and character specifications set forth in the Ordinance No. \_\_\_\_\_ of the City of Granger by which the zoning classification of P.U.D. was established for the Property.

Such Design Criteria may be modified or amended from time to time in the future by the Board in its sole discretion subject to any necessary approval and/or changes by any regulatory authorities of the City of Granger, or other governing bodies and such modifications or amendments shall be binding upon all of the Property. Neither the City of Granger nor a county may impose any specific Design Criteria other than as set forth in the above-referenced Ordinance.

## **ARTICLE VII ARCHITECTURAL REVIEW**

7.01 **Procedure.** The ARC shall review plans and specifications for all proposed Improvements within the Property as follows:

1. No Improvement shall be erected, placed, altered, maintained, or permitted to remain on the Property until plans and specifications showing plot layout and all exterior elevations, with materials and colors therefor and structural design, signs and landscaping, shall be prepared and submitted to and approved in writing by the ARC and approved in writing by the Board. Such plans and specifications shall be submitted in writing over the signature of the Owner or Occupant of the Building Site or its authorized agent. At least three (3) complete sets of all such plans and specifications for any Improvement shall be submitted to the ARC. The ARC may also require submission of samples of building materials and colors proposed for use on any Building Site, and may require such additional information as reasonably may be necessary for the ARC to evaluate completely the proposed Improvement in accordance with this Declaration and the Design Criteria. Reviews shall be coordinated with any required approvals of the City of Granger and, if required, approvals of other governing bodies. Approval of any Improvement by the ARC and the Board shall not constitute any determination that the Improvement or site plan and specifications are in compliance with any applicable building code or zoning subdivision ordinance.
2. The ARC shall recommend to the Board, the approval or disapproval of any Improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Building Site or the Property. All recommendations of the ARC shall be submitted in writing to the Board.
3. Approval or disapproval by the ARC and the Board shall be predicated upon strict compliance with the Design Criteria and the sole discretion of the ARC and the Board as to whether the proposed Improvements conform to the general character of the Property in accordance with the general guidelines and intent of Article II above. No application for a building permit shall be made or issued without receiving such approval as herein provided. The Board's approval may,

but need not, be made by a certificate in recordable form. The determination of the Board shall in all events be final and dispositive upon all parties. Approval shall be based, among other things, upon adequacy of site dimensions, adequacy of structural design, compatibility and harmony of external design with neighboring structures, effect of location and use of Improvements on neighboring structures, effect of location and use of Improvements on neighboring sites, relation of topography, grade, and finished ground elevation of the site being improved to that of neighboring sites; compatible building materials being consistently utilized on all four (4) exterior elevations of the Building; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration.

4. The Board may, and it is hereby authorized to, promulgate design and landscape guidelines for the information of affected persons, providing such guidelines shall be in conformity with the spirit and intent of this Declaration.
5. If any Improvement is changed, modified or altered without prior approval of the Board, then the Owner shall upon demand cause the Improvements to be restored to comply with the plans and specifications originally approved by the Board and will bear all costs and expenses of such restoration.
6. The Board shall adopt a schedule of reasonable fees for processing requests for Board approval for proposed Improvements. Such fees, if any, shall be payable to the Association at the time that plans and specifications are submitted to the ARC.
7. The Board and the ARC may retain professional advisors such as attorneys and architects as may be necessary in the exercise of their architectural review powers.
8. The Board and the ARC may perform such incidental acts as may be necessary in the exercise of their architectural review powers.
9. Any person, firm, or corporation violating this Section 7.01 shall be liable for all costs incurred in remedying such violation, including, but not limited to, removal of any construction commenced without such approval and attorneys' fees and court costs.

**7.02 Liability.** Neither Grantor, the ARC nor the Board, nor their respective successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Owner or occupant affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications. Every person who submits plans for approval agrees, by submission of such plans and specifications, and every Owner and Occupant agrees, by acquiring title thereto or an interest therein, that it will not bring any action or suit against

Grantor, the ARC or the Board or their respective successors or assigns to recover any such damages.

## **ARTICLE VIII GENERAL COVENANTS**

**8.01 Permitted Uses.** All Building Sites in the areas designated as “commercial” in the Development Plan, including amendments thereto, shall be used only for office, warehouse, light industrial, vehicle maintenance, hotel, retirement and nursing home, post office, service retail, convenience store and such other commercial uses as are permitted in the C-4 zoning ordinance of Granger in effect at the time of this Declaration. All Building Sites in the areas designated as “residential” in the Development Plan, including amendments thereto, shall be used only for single family and multi-family dwellings, including, but not limited to, detached houses, townhouses, condominium and apartment buildings, but specifically excluding mobile homes.

**8.02 Condition of Building Sites.** All Owners, tenants or subtenants of each Building Site shall maintain and repair their property and all structures, buildings, landscaping, and Improvements of whatever nature thereon in a safe, clean, and tasteful manner and in a first-class condition and repair at all times.

**8.03 Tree Removal and Maintenance.** Unless prior written approval is obtained from the ARC, no trees shown on the Development Plan shall be removed unless diseased or substantially damaged by wind, lightning or other natural forces.

**8.04 Waste and Refuse.** No waste material or refuse shall be dumped upon or permitted to remain on any Building Site other than in the trash enclosure outside the buildings constructed thereon.

**8.05 Weed Removal.** It shall be the duty of the Owner or Occupants of each and every parcel of land subject to these restrictions to keep their respective parcels of land free from noxious weeds; and in the event any such Owner does not comply with this provision within ten (10) days after the Board gives any such Owner written notice of comply, the Board shall have the right to enter onto such Owner’s parcel and cut any weeds thereon and charge the cost of such work to the Owner. If such charge is not paid within ten (10) days after such Owner is notified of the cost thereof, it shall become a lien on the land in question, enduring and collectible the same as the lien for the general assessment pursuant to the provisions of Article VIII hereof.

**8.06 Restriction on Subdivision.** Once a Building Site has been purchased from Grantor, or its successors or assigns, such parcel of land shall be considered a single unit, and it shall not be subdivided, nor shall such Building Site be sold, or leased, prior to completion of the Improvements to the entire Building Site without the prior written approval of Grantor, which



approval shall not be unreasonably withheld; provided, however, that single family and townhouse Building Sites may be sold without such approval.

**8.07 Specific Enforcement of Restrictions.** All provisions of these Protective Covenants shall be capable of being specifically enforced by the Board hereunder. In the event, in the opinion of the Board, it shall be necessary to secure the services of an attorney to enforce the provisions of these Protective Covenants, then the fee of such attorney, and all other costs in connection with the enforcement of these Protective Covenants, including, but not limited to, the costs of any contemplated or actual legal proceedings in such connection shall become a lien against the real property which is the subject of proceedings. If such costs and attorneys' fees are not paid within ten (10) days from the date of written notice thereof by the Board to the Owner of the real property in question, the said fee and costs shall thereupon constitute a lien against the property in question, the same as the lien for the general assessment pursuant to the Provisions of Article IX hereof.

## **ARTICLE IX MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

**9.01 Membership.** Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of the Building Site. Ownership of a Building Site shall be the sole qualification for membership.

**9.02 Voting Rights.** The voting rights of members and the reserved rights of the Grantor are specified in the respective Articles of Incorporation and Bylaws of each Association.

**9.03 Authority and Obligations.** Each Association, through its Board, shall have the right, power and authority to provide for the enforcement of this Declaration; to provide for any operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of the Improvements in the Common Areas of the Property or any Improvements hereafter made by the Association; to make additional common Improvements for the benefit of the Property; to levy, collect, and have jurisdiction, control and possession of assessments as hereinafter provided; to enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration; and to otherwise establish such procedures and policies necessary or deemed desirable in accordance with the spirit and letter of this Declaration, including the power to make variances in these Covenants, but only in accordance with the intent and purpose of Article II above.

## **ARTICLE IX COVENANT FOR MAINTENANCE ASSESSMENTS**

**10.01 Creation of Lien and Personal Obligation.** Grantor hereby covenants, and each Owner by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree, to pay to the Association assessments as provided in this

Declaration. The assessments levied by the Association and any other charges against the Owner set forth elsewhere in this Declaration, together with interest, costs and reasonable attorney's fees shall be a charge on the Building Site of each Owner and shall be a continuing lien upon the Building Site against which each such assessment or charge is made senior to all liens except the first mortgage of record and any ad valorem taxes. Such assessment or charge, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person, persons or entity who was the Owner of the Building Site at the time when the assessment or charge fell due. The personal obligation for delinquent assessment or charge shall not pass to the Owner's successor in title unless expressly assumed by such successor.

**10.02 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of carrying out the general duties and powers of the Association, including, but not limited to, operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of the Improvements to the Property constructed pursuant to Section 4.01 of this Declaration, and any legal or other costs of enforcement of this Declaration, and for such reasonable reserves as the Board deems necessary. In making such assessments, the amount to be levied shall be equal and limited to the actual cost to the Association of providing those functions and services set forth in this Declaration.

**10.03 Rate of Assessment.** The assessments levied upon and against each commercial Building Site and the Owners thereof, shall be a share of the total amount of each assessment prorated to each commercial Building Site and the Owner thereof on the basis of the ratio of the number of square feet in such Building Site to the total number of square feet of all commercial Building Sites within the Property. The rate of assessments levied against each residential Building Site shall be in accordance with covenants subsequently adopted by the Oak Creek Residential Owners Association.

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

1. Notice of all assessments may be given by mail addressed to the last known or usual post office address of the owner of the assessable property and deposited in the United States mail with postage prepaid, or may be given by posting a brief notice of the assessment upon the assessable property itself.
2. Every assessment shall become due and payable within thirty (30) days after notice is given as herein provided. From and after the date when the payment is due, it shall bear interest at the rate of ten percent (10%) per annum or the highest rate allowed by law, whichever is less, until paid and such payment and interest shall constitute a lien upon the assessable property and the lien shall continue in full force and effect until the assessment is fully paid. At any time after levying an assessment the Board may, execute and acknowledge with respect to any assessable property and cause same to be recorded and the Board may, upon payment, cancel or release any assessable property from the liability of assessment (as shown by recorded instrument) by executing, acknowledging

and recording (at expense of the Owner of the property affected) a release of such assessment with respect to any assessable property affected. Notwithstanding any other provision herein, the Association may bring an action at law against the Owner personally obligated to pay such assessment, or foreclose the lien against the assessable property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the cost of preparation and filing of the Petition in such action including reasonable attorneys' fees. No Owner of assessable property may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas or abandonment of its assessable property.

3. The term "**assessable property**" shall mean all Building Sites located within the Property.

## **ARTICLE XI DURATION OF THIS DECLARATION**

**11.01 Covenants Run with the Land.** Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of Grantor, the Associations, the City of Granger, and the Owners of each Building Site, and their successors and assigns and all parties and persons claiming under any of them, and shall be deemed covenants that run with the land.

**11.02 Duration - General.** It is the intent that all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be in full force and effect for 21 years from date of recording.

1. Grantor, the Associations, the City of Granger or any Owner acting jointly or severally, shall file all verified claims necessary to continue all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration in full force and effect for additional 21-year periods;
2. A verified claim filed by Grantor, the Associations (individually or jointly), the City of Granger or any Owner shall be valid and binding upon the Associations and all the then Owners of Building Sites (the "Interested Parties"), and their successors and assigns, with the same effect as if executed by all such persons, and in order to facilitate filing of any verified claim required to continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration in full force and effect, Grantor, the Associations and each Owner are hereby irrevocably appointed the attorney-in-fact for all of the other Interested Parties for the purpose of filing any such verified claim;

3. That in the event of any defect in the verified claim or its filing and recording at the Office of the Recorders for Dallas and Polk Counties, Iowa, no Interested Person or anyone claiming, by, through or under an Interested Person shall be entitled to assert such defect as a basis to avoid its duties and obligations under this Declaration;
4. That in the event an Interested Party fails or refuses to cooperate to file any verified claim required to continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration in full force and effect, such Interested Party hereby waives and shall be deemed to have waived the right to, and estopped to, assert any failure to file such verified claim as a defense to its duties and obligations under this Declaration; and
5. That each Interested Party by acquisition of its interest in the Property or under this Declaration, whether or not expressly provided in any instrument creating such interest, hereby waives its right to assert the failure to file any verified claim required by the Code of Iowa as a legal basis to avoid any duty or obligation upon it and its respective portion of the Property.

**11.03 Duration - Easements.** The easements granted in or pursuant to Article III of this Declaration, including amendments thereto or subsequently granted permanent easements affecting the Property, easements granted in any other Section of this Declaration, any other provisions of this Declaration expressly incorporated in Article III or such other Section of this Declaration to the extent applicable to such easements, and any other covenants, indentures, restrictions and reservations of this Declaration that are reasonably or necessarily incidental to the benefit or burden of such easement rights, shall continue in perpetuity, unless sooner modified or terminated as provided in this Declaration.

**11.04 Amendment of this Declaration.** This Declaration may not be altered, amended, modified, supplemented or terminated, in whole or in part, except in writing and as provided in this Section 11.04. Grantor, until such time it has sold eighty-five percent of the Building Sites and all Improvements on those Building Sites have been completed, and thereafter, the Owners possessing three-quarters (3/4ths) or more of the Association voting rights (on issues other than the election and removal of directors) may, by written declaration signed and acknowledged by them and recorded in the Offices of the Recorders for Dallas and Polk Counties, Iowa, alter, amend, supplement, add to, or terminate such conditions, covenants, indentures, restrictions and reservations of this Declaration, provided, however, that such alteration, supplement, addition, amendment or termination shall ensure provisions for the continued operation, maintenance, repair, restoration and replacement of Improvements to the Property constructed pursuant to Section 4.01 of this Declaration. No such alteration, amendment, modification, or change shall reduce or modify the rights or obligations granted to, or imposed upon, the Association with respect to the continued operation, maintenance, repair, restoration and replacement of Improvements to the Property constructed pursuant to Section 4.01 of this Declaration and the power to levy assessments therefor or to eliminate the requirement that

there be an Association unless some persons or entity be substituted for the Association and succeed to all of its rights and duties under this Declaration. Notwithstanding the foregoing, this Declaration shall not be altered, amended, modified, supplemented or terminated, in whole or in part, without the prior written consent of the Granger City Council.

## **ARTICLE XII ADDITIONAL LAND MAY BE MADE SUBJECT HERETO**

12.01 **Prerequisite.** The Grantor, from time to time, shall have the right at any time before it has conveyed all of the Property then subject hereto to render other land subject and subservient to this Declaration in all respects, if such land is contiguous, adjoining or adjacent to land or some point thereof (including land separated from the Property only by a street or road) then subject to this instrument by executing and delivering to both Boards and recording a supplement to this Declaration, stating:

1. A description of the land to be added to that land subject and subservient to this Declaration.
2. A statement that Grantor or an entity at least 50% controlled by Grantor is the owner in fee simple of such land; or, in lieu thereof, all other persons, firms or entity having an interest in such land to be added, may join in such supplement.
3. A statement of any additional restrictions or burdens to which the land to be added shall be subjected, if any, and a statement of any restrictions, burdens or provisions of this Declaration which shall in whole or in part not be applicable as to such land to be added or shall be applicable in modified form, if any.

12.02 **Applicability of Protective Covenants.** Following the execution, delivery and recording of such supplement, but subject to its terms, such land to be added, and the then or future Owners thereof, shall in all respects be fully subject to this Declaration and all rights, privileges, obligations, duties, liabilities, responsibilities, burdens and restrictions, including, but not limited to, the right to serve as an elected member of the Board and to the payment of assessments as though said land had originally been included in and subject to this Declaration.

12.03 **Additional Common Area.** Additional Common Area may be conveyed to the Association at any time, including land currently located within the Property, as well as land subsequently made subject to this Declaration, as part of the submission of additional land to the terms of these Protective Covenants. Such additional Common Area shall be conveyed to the Association established at the time of the execution of the supplement to these Protective Covenants.

## **ARTICLE XIII MISCELLANEOUS**

**13.01 Release Upon Sale.** Subject to the provisions of this Section 13.01, if an Owner sells, transfers, or assigns its Building Site (other than as security for a loan), then such Owner (but not the Building Site) shall be released from its future obligations under this Declaration. It shall be a condition precedent to such release and discharge that any and all amounts that shall then be due and payable by such Owner shall have been paid, that such Owner shall give notice to the Association of any such sale, transfer, conveyance, or assignment concurrently with the filing for record of the instrument effecting the same, and that the grantee, assignee or transferee thereof shall assume all of grantor, assignor or transferor Building Owner's rights and obligations in a writing that is delivered to the Association.

Notwithstanding anything in this Declaration to the contrary, it is expressly understood and agreed that nothing in this Declaration shall preclude the release of, or constitute a condition precedent to the release of, any first mortgagee who shall have acquired title to any Building Site, or portion thereof, through foreclosure or deed in lieu of foreclosure, from all unaccrued obligations under this Declaration effective upon the sale, transfer, conveyance or assignment of such mortgagee's title or interest in such Building Site.

**13.02 Estoppel Certificates.** Each Owner and the Association shall issue to Grantor, any other Owner, or the Association or to any mortgagee of, or purchaser from, any of the foregoing parties, an Estoppel Certificate in such form as may reasonably be requested stating:

1. Whether the Owner or Association to which the request has been directed knows of any default under this Declaration, and if there are known defaults, specifying the nature thereof;
2. If known, the nature and amount of any amounts owed to Grantor, the Owners of other Building Sites, or to the Association by any Owner about whose Building Site the request is made, and the nature and amount of any amounts owed by the Owner of any other Building Site or the Association to Grantor or the Owner about whose Building Site the request is made;
3. If directed to the Owner of any Building Site, the applicable share of any assessments for which that Owner is liable, and if directed to the Association, the applicable share of any assessments for which the Owner about whose Building Site the request is made is liable;
4. If directed to the Association, the nature and amount of any budget or approved expenditures that have been adopted by the Association;
5. Whether this Declaration has been amended, and if so, the nature of any such amendment;
6. Whether the person to whom the request is directed claims any offsets or defenses to any of its obligations under this Declaration, and if so, the nature of such offsets or defenses; and

7. Whether to the knowledge of the person to whom the request is directed, this Declaration is in full force and effect, or if it is claimed it is not in full force and effect, specifying the portions of, or manner in which, this Declaration is not in full force and effect.

**13.03 Payment Defaults.** In the event any Owner does not make any payments due under any provision of this Declaration within ten (10) days after such Owner is notified thereof, then such charge, together with interest thereon at the rate of ten percent (10%) per annum or the highest rate allowed by law, whichever is less, from the date such demand is made until paid, and the costs of collection, including reasonable attorneys' fees and expenses, shall become a lien on the Building Site in question, enduring and collectible the same as the lien for assessments of the Grantor pursuant to the provisions of Article X of this Declaration.

**13.04 Specific Enforcement of Restrictions.** All Owners of Building Sites within the Property covenant and agree, by acceptance of a deed to such Building Site, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the breach of the restrictions and covenants contained in this Declaration and that this Declaration may be specifically enforced by the Association.

**13.05 Severability.** In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

**13.06 Time of Essence.** Time is of the essence with respect to the performance of each of the conditions, covenants, terms and provisions of this Declaration.

**13.07 Governing Law.** This Declaration shall be construed in accordance with the laws of the State of Iowa.

**13.08 Captions.** The captions of the Articles, Sections and Subsections of this Declaration are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

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

STURGEON DEVELOPMENT, L.C.

By: \_\_\_\_\_

STATE OF IOWA            )  
  ) ss:  
COUNTY OF DALLAS    )

On this \_\_\_ day of \_\_\_\_\_, 2000, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he is a Managing Member of Sturgeon Development, L.C., an Iowa limited liability company, executing the foregoing instrument; that no seal has been procured by the limited liability company; that the instrument was signed on behalf of the limited liability company, by authority of its Members; and that the said \_\_\_\_\_, acknowledged the execution of the instrument to be the voluntary act and deed of Sturgeon Development, L.C. by it and by said Managing Member voluntarily executed.

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

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