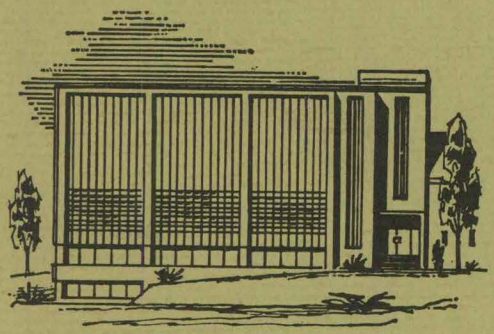
Zoning and Planning

Condemnation - Valuation



IOWA CITY

NOVEMBER 8-9, 1968

DAD'S DAY

- **PRACTICAL ANALYSIS OF AN ACTIVE FIELD**
- **MODERN DEVELOPMENTS**
- **PRACTICAL EXPERIENCE OF EXPERTS**

CO-SPONSORS

The University of Iowa College of Law

The Continuing Legal Education Committee of The Iowa State Bar Association

THE PROGRAM

Friday, November 8

9:00- 9:30 a.m. Registration--Ballroom Lobby, Iowa Memorial Union

Dean David H. Vernon will preside at all sessions.

Morning Session
Ballroom--Memorial Union

9:30-10:45 a.m. "Iowa Zoning Law"
Philip T. Riley
The current state of the law of zoning will be reviewed by a city attorney with extensive experience with zoning and the many attendant problems.

10:45-11:00 a.m. Coffee Break

11:00-12:15 p.m. "The Lawyer Before Zoning Commissions and on Review"
John Connolly III
Representation of clients before zoning commissions and obtaining review of administrative action will be explored in detail by an experienced practitioner in the field.

12:15- 1:30 p.m. Luncheon--Main Lounge, Memorial Union

Afternoon Session

1:30- 3:00 p.m. "Modern Zoning Developments"
Richard F. Babcock
Mr. Babcock is a nationally known specialist in zoning, and an author and authority on the subject. He will discuss various aspects: flexible, conditional, and floodplain zoning and the policies behind the decisions of the various parties in interest.

3:00- 3:15 p.m. Coffee Break

3:15- 4:00 p.m. "Private Plans—Controlling Conveyed Lands Through Covenants"
Prof. Clifford Davis

The desire to permit, or coerce, landowners to carry out private land-use plans through the enforcement of covenants conflicts with the equally important desire to avoid permanent or general restrictions on land use. Out of this conflict has come a body of incomprehensible law where the policies have been left unarticulated. Current schemes seeking to provide more flexibility in private plans to meet the policy objections to current restrictions will be considered, as will the ancient requirements of "privity" and "touching and concerning" (see Property Restatement Sec. 534).

4:00- 4:45 p.m. "Regional Planning"
Prof. Allan D. Vestal

Professor Vestal will discuss regional planning as seen by the lawyer who has served as member of both city zoning and regional planning bodies, and has participated in the decisional and advisory process.

6:00 p.m. Dinner
East Room, University Athletic Club

Saturday, November 9

Law Lounge—College of Law

9:00- 9:30 a.m. Coffee and rolls

Room 210—College of Law

9:30-11:30 a.m. "Condemnation—Valuations"

Three second-year law students, Danny F. Nicol, Milford, Iowa; Richard W. Starkeson, Palatine, Illinois; and Ronny R. Tharp, Chariton, Iowa, spent last summer conducting a survey financed by the Iowa State Bar Foundation. Practices surrounding eminent domain in Iowa during the 1960's were investigated. Valuation of land acquired by condemnation will be the focus of this inquiry.

After the students have made their presentation, comments will be made on their findings by Mr. Fisher and attorneys Meardon, Nolan, and Stevens.

THE PARTICIPANTS

Dean David H. Vernon, College of Law, The University of Iowa. A.B. '49, LL.B. '52, Harvard; LL.M. '53, J.S.D. '60, New York University. Dean Vernon has been on the faculty of the law schools of New York University, University of Houston, University of New Mexico, and the University of Washington. Dean Vernon has taught Conflict of Laws and written extensively in the area.

Prof. Allan D. Vestal, John F. Murray Professor of Law, The University of Iowa. A.B. '43, DePauw University; LL.B. '49, Yale University. Professor Vestal is a nationally known authority on federal jurisdiction and procedure. His bibliography includes casebooks, reference works, and many law review articles. His special interest recently has been in preclusion/res judicata. He is currently a commissioner on uniform state laws. He was visiting professor at the University of Utah in the summer of 1966. In August he published as coauthor a new course book "Procedure Before Trial." He is a member of the Johnson County Regional Planning Commission and the Iowa City Zoning Commission.

Richard F. Babcock, Esq., Ross, Hardies, O'Keefe, Babcock, McDugald and Parsons, Chicago, Illinois. A.B. '40, Dartmouth College; M.B.A., '49, University of Chicago; J.D. '46, University of Chicago. Phi Beta Kappa, Order of the Coif. Editor-in-chief of Chicago Law Review, 1945-46. Author—"The Zoning Game." Chairman, Advisory Committee, the American Law Institute Model Land Development Code project.

Prof. Clifford Davis, College of Law, The University of Iowa. S.B. '49, The University of Chicago; LL.B. '52, Harvard University. Professor Davis was in private practice in Texas before coming to Iowa. He is coauthor of "The Iowa Law of Workmen's Compensation" and teaches and writes in the field of modern social legislation, debtor-creditor relations, and property.

John Connolly III, Esq., Connolly, O'Malley and Conley, Des Moines, Iowa. A.B. '39, College of the Holy Cross; J.D. '41, Georgetown and Drake University.

Philip T. Riley, Esq., Corporation Counsel, city of Des Moines. B.S., U.S. Naval Academy; LL.B. '59, Boston College. Former U.S. assistant district attorney.

William L. Meardon, Esq., Iowa City, Iowa. B.A. '41, The University of Iowa; J.D. '48, The University of Iowa. Chairman, Johnson County Zoning Commission; special attorney, urban renewal, Iowa City. Former county attorney. Lecturer, trial techniques, College of Law.

D. C. Nolan, Esq., Nolan, Lucas and Nolan, Iowa City. Preparatory and legal education, Creighton University. Former assistant attorney general. State Senator for Johnson County 1953-65.

John C. Stevens, Esq., Lewis and Stevens, Muscatine. B.S. '40, Iowa State University; J.D. '48, The University of Iowa. Former special assistant attorney general of Iowa. Former assistant U.S. district attorney.

Mr. Roy R. Fisher, Jr., Roy R. Fisher, Inc., Davenport, Iowa. B.S. '47, Iowa State University. MAI-SREA. Member, Board of Governors, Society of Real Estate Appraisers. Member, Governing Council, American Institute of Real Estate Appraisers. Mr. Fisher has been on the faculty of institutes qualifying appraisers for the MAI-SREA designations. He has been a frequent witness for and against condemning bodies in both federal and state courts.

PHILIP T. RILEY

IOWA ZONING LAW

> "Until recent years, urban life was comparatively simple, but with the great increase, and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities."

The above was dredged not from a campaign speech in October of 1968 but from the 1926 opinion of the U.S. Supreme Court in the true progenitor of the appellate court zoning decisions, Village of Euclid et al vs. Ambler Realty Co.[1] The problems which then concerned the court differ only in emphasis or degree from those which now concern courts, urban planners, and objectors at re-zoning hearings.

The similarity of problems then and now is by no means an indication that zoning is static. While certain of the early zoning concepts and procedures are admittedly unchanged, the concerns of our times have expressed themselves in other zoning concepts which have changed and will undoubtedly continue to change in times to come as the problems which concerned the court in the Euclid case bear upon us.

Iowa has legislatively adopted the principles of zoning to such an extent that no privately owned property in the state is beyond a zoner's reach. Cities, towns,[2] counties,[3] even the air

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1 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303. This is one of the few non-Iowa citations in this paper; it is also the only mandatory zoning case citation in existence. 1 Riley, Iowa Zoning Law, p. 1

2 Chapters 373 and 414, 1966 Iowa Code.

3 Chapter 358A, idem.

above,[4] can now be covered by a zoning ordinance tailored to fit the locale, although public property in this state is not touched by zoning ordinances.[5] The Bloomfield case, which permitted a school district to install gasoline storage tanks and pump in a restricted residence district, held that the Iowa legislature has not delegated authority to municipalities to subject state agencies or subdivisions to local zoning regulations. The writer would submit as well that the federal government cannot be considered subservient to those local powers, holding as it does the power of eminent domain over local properties for proper public purposes.

While the principal reported zoning decisions in Iowa pertain to comprehensive zoning ordinances in cities and towns, the earliest zoning decisions dealt with what is now Chapter 415, 1966 Iowa Code, Restricted Residence Districts.[6] That chapter was the forerunner of present Iowa zoning statutes, and the case which first took it to the Iowa Supreme Court[7] laid groundwork for the successor zoning statutes. Chapter 415 permits a city or town council to establish a restricted district essentially residential in character upon petition of 60% of the owners of the realty in the proposed district, Section 415.1, idem, and to adopt appropriate controls over future construction in the district, Section 415.2, idem. When a comprehensive local zoning ordinance has been enacted, Chapter 415 is no longer operative in the community. Section 414.22, idem.

Because Iowa zoning law has been declared in the main in the context of Chapter 414, the writer will focus this paper on zoning statutes and cases interpreting city and town ordinances enacted under the aegis of that chapter; where cases dealing with Chapter 415 or 358A (county zoning), idem, relate to the principle under discussion, they will appear. A final section on county zoning, to the point of its substantive and procedural differences from city and town zoning, will complete the trip.

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4 Chapter 329, idem, airport zoning. Because of the dearth of reported cases dealing with this chapter, it will be left to some future writer.

5 City of Bloomfield vs. Davis County Com. Sch. Dist., 254 Ia. 900, 119 NW 2d 909.

6 First enacted as Chapter 138 of the Acts of the 37th General Assembly (1917).

7 City of Des Moines vs. Manhattan Oil Co., 193 Ia. 1096, 184 NW 823, 23 A.L.R. 1322. See also Downey vs. Sioux City, 208 Ia. 1273, 227 NW 125, and Marquis vs. City of Waterloo, 210 Ia. 439, 228 NW 870.

I - ZONING WITHIN THE CORPORATE LIMITS

A. The Source

Iowa'a zoning statutes, like those of many other states, were sired by the Advisory Committee on Zoning appointed in September, 1921, by Secretary of Commerce Herbert Hoover. The committee at his behest wrote standard enabling legislation to permit the states to control and promote municipal growth and development in an orderly fashion by passage of local zoning ordinances. Chapter 134 of the Acts of the 40th General Assembly was the enactment of essentially the Committee's proposed legislation, and those statutes have remained virtually unchanged to their present form as Chapter 414 of the 1966 Iowa Code.[8]

The initial legislative determination by the 40th General Assembly of the need for comprehensive municipal zoning was somewhat marred by a gap in the process which was not cured until the 41st General Assembly convened. That latter body closed the gap by delegating to Iowa municipalities the authority to establish a plan commission; although the Acts of the 40th General Assembly, in Section 3 of Chapter 134, had demanded that local zoning ordinances be enacted in conformity with a comprehensive plan and in Section 6 thereof had permitted those cities and towns where a plan commission already existed to appoint that body as the zoning commission,[9] no previous power to so act had been given to municipalities of this state. Sic transit standard enabling legislation.

The rather haphazard parentage above noted seems to have left its mark on the many local offspring enacted by Iowa cities and towns. To the present day, the emphasis of local governments appears to be given in the main to zoning and rezoning, with periodic and often belated attention to the community's comprehensive plan. Chapter 373 of the 1966 Iowa Code, "City Plan Commission", when reviewed for annotations, does not tire the researcher; other than a few case citations which advise that Chapter 373 does not even apply to their fact situations, the judicial well is dry. On the contrary, Chapter 414, the wellspring of Iowa zoning law, is replete with annotations on the comprehensive plan, each of which duly reiterates the statutory demand that a local zoning ordinance conform to that document.

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8 The sole addition since the initial enactment is the final sentence in (now) Section 414.21, idem.

9 Even then, the 41st General Assembly neglected to detail the manner of enacting a comprehensive plan, a keystone finally inserted by Chapter 261 of the Acts of the 42nd General Assembly.

The manner of adoption of the plan and the purposes to which it must attain are set forth in Sections 373.18 through 373.20 of the 1966 Iowa Code. They require a public hearing upon notice, a two-thirds vote of the plan commission, certification, and adoption by the council for the plan to become effective. While that initial adoption need only be by council majority after the two-thirds vote of the plan commission, subsequent amendments to the plan require only a majority vote of the plan commission but a three-fourths vote of the council to become effective.[10]

By the dual thrusts of acknowledging its need and relegating it to the background, Iowa case law has given the comprehensive plan the look of a bare license to zone, hung upon the municipal wall and exhibited when the judicial enforcers come by. Viability and currency are not demanded of such a plan by the Iowa courts,[11] although its enactment is clearly required.

All Iowa cities known to the writer which have entered the zoning field have taken advantage of Section 414.6, 1966 Iowa Code, and have assigned the planning commission the function of

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10 The equivalent sections pertaining to recommendation and passage of a zoning ordinance are 414.4 through 414.6, 1966 Iowa Code. Although some municipalities record the local zoning ordinance in the office of the County Recorder, Boardman vs. Davis, 231 Ia. 1227, 3 NW 2d 608, makes clear that a municipality's failure to do so does not invalidate the ordinance.

11 In Plaza Recreational Center vs. Sioux City, 111 NW 2d 758, 111 NW 2d 765 and 766, a 1961 case, the Court found "the record satisfactorily establishes that Sioux City has had a comprehensive plan for many years. As a matter of fact we recognized that fact in Call Bond & Mortgage Company v. City of Sioux City et al, 219 Iowa 572, 582, 259 NW 33, 37." The Call case had been decided by the Court in 1935. The reader may ponder on whether the plans in the cases were one and the same, but the Court closes the question by holding finally that "the council's discretion to change its plan is quite broad and it may amend the general ordinance any time it deems circumstances and conditions warrant such action." See also Brackett vs. City of Des Moines, 246 Ia. 249, 67 NW 2d 542, where the fact of enactment and subsequent amendments of a comprehensive plan were held sufficient to show full compliance with the requirement that the zoning regulations be in accordance therewith.

acting as the city's zoning commission. That additional assignment does in fact give one advisory body an opportunity to overview and coordinate the municipal functions of zoning, planning, and subdivision control.[12]

In the light of the rather easy legislative and judicial dismissal of the planning function, this writer will, like most lawyers, leave the planning field to the planners and move promptly to the zoning function, where the annotated Code is much more densely populated.

B. The Power

As enacted, the combinations of statutes adopted by the successive General Assemblies of Iowa granting to cities and towns the power to plan and zone are now viewed in this state as normal expressions of the police power to regulate use of property. In enacting that type of legislation Iowa followed and joined a number of other jurisdictions, and the zoning statutes in turn joined a host of other exercises of the police power in the Iowa Code of 1924.[13] Like those other exercises, the zoning statutes exhibit that dual effect which lies in the normal run of police powers: an ability to keep a particular portion of the peace to the benefit and burden of each property and thereby each property owner, by limiting the use to which his neighbors can put their properties as well as the use to which he can put his own. The Dillon rule and its source, the Iowa Constitution, left the basic police power in the state, leaving to municipalities only those powers delegated to them by the state.[14] Any such delegation as that of the power to zone property has been viewed by the courts of this state, as elsewhere, as a delegation to be strictly construed.[15]

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12 Section 409.14, idem, although a City council is also given the alternative of abolishing the plan commission and itself assuming the planning function, Section 373.1, idem.

13 Titles V, VI and VII, idem, inter alia.

14 Merriam vs. Moody's Executors, 25 Iowa 163, 170; Article III, Sec. 1, Constitution of the State of Iowa.

15 C.R.I.&P.R. Co. vs. Liddle, 253 Ia. 402, 112 NW 2d 852.

The "home rule" amendment to the Iowa Constitution,[16] in combination with Section 368.2 of the 1966 Iowa Code, does not appear to broaden the zoning powers granted to municipalities. Section 368.2 by its terms withholds from cities and towns the right to locally choose a manner of accomplishment of any local purpose where a manner or procedure has already been spelled out by statute. Until the legislature withdraws its hand, then, municipalities can expect to zone - and plan - only in the manner set forth in Chapters 414 and 373, respectively, of the Iowa Code. The writer frankly sees need for very little change in procedure or substance at the state level,[17] in view of the legislative and judicial history of zoning laws in Iowa.

C. The Machinery

Before you pick up the operator's manual, so ably written by my colleague, Mr. Connolly, I first would like to describe the framework of the machinery given to municipalities to perform the zoning function. I view it as a flexible container which is built to carry exceedingly fluid matter and which in its operation can build up such local pressures that it must have a safety valve. That valve is the zoning board of adjustment. The gears, wheels and other mechanisms put into the framework by the local authorities follow general patterns which have proved workable here and elsewhere over the years.

In Iowa as elsewhere, there are historically three basic classifications of zoning, with sub-classifications: residential, commercial (or business), and industrial (or manufacturing). Those classifications, with their sub-classes, declare generally the broad property uses which will be allowed in the districts, or zones, into which a community is divided. The sub-classes (e.g., residential districts may break into districts for single-family dwellings, duplexes, multiple dwellings) multiply in direct

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16 Chapter 462, Acts of the 62nd General Assembly, presumed - by the writer - passed as of date of this presentation.

17 One change under consideration would permit cities and towns to control zoning in the lands which lie beyond the corporate limits but within their natural areas of expansion, up to a set limit, in those counties which have not adopted county zoning ordinances.

response to a community's needs. Finally, the actual uses approved for each district are identified as accurately as possible, to leave no question in the minds of the owners of property within the various districts as to what they may or may not do.

In identifying property uses allowable within those districts, a comprehensive zoning ordinance can follow one of two basic forms - the inclusive or the exclusive ordinance. In the former, only those uses specifically named are allowed in the particular district; in the latter, the property may be put to any use, otherwise legal, not specifically excluded from a district by the terms of the ordinance. The inclusive ordinance is the basic form utilized by most cities, including those of this state, because of the simplicity with which it can be written in a graduated series of districts, from one with relatively severe restrictions, through districts whose restrictions are less severe, to a catch-all district. A standard manner of listing permitted uses in an inclusive ordinance is one which also permits accessory uses - uses so customarily incident to the main allowed uses, or so necessary or so commonly to be expected in connection with the main uses that it cannot be supposed that the ordinance was intended to prevent them.[18] Indeed, even without specific provision for accessory uses, it is doubtful the courts would forbid them.

The general forms of restriction permitted by Section 414.1, 1966 Iowa Code - height, number of stories, size and use of buildings and structures, percentage of lot occupation, yard size, population density, and general usage of property - have been upheld in concept by the Iowa courts, so long as the regulations be made in accordance with the community's comprehensive plan and be based on the legislative goals expressed in Section 414.3, idem.[19] In Iowa as elsewhere, those goals are broadly based in hopes of equally broad interpretation by the courts when the question of conformance to statute is raised. At some point, zoning restrictions can become arbitrary; being on the defensive team, I will not venture my opinion on when

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18 City of Emmetsburg vs. Mullen, 256 Ia. 885, 129 NW 2d 677, 679, citing 101 C.J.S., Zoning, §176.

19 Boardman vs. Davis, supra; Huff vs. City of Des Moines, 244 Ia. 89, 56 NW 2d 54; Deardorf vs. Bd. of Adjustment, 254 Ia. 380, 118 NW 2d 78.

that point is reached, but I can say that I have been on the receiving end of the Courts' declaration that it had been not only reached but passed.[20]

D. The Exceptions

I would like to return for a moment to that bare, dusty, license to zone - the comprehensive plan - and actually use it to make a point at this stage. That plan, with all its pretty colors, is a key to the more troublesome aspects of zoning. The map shows angry purple for heavy industrial, pale yellow for single family districts, and the spectrum of colors between; as applied to the canvas, they become clues to zoning's more active areas. As such, they bespeak the need for zoning. The clues might be described thus:

a) There is more residential than commercial and industrial land;

b) The colors are painted on with a broad brush, covering large segments of presumably similar properties; and

c) The plan is a good bit younger than the municipality, and it is keyed to community improvement.

In those three observations lie most of the problems that result in reported zoning decisions of our highest appellate court. I shall herein discuss each in more detail.

a. Re-zone?

A community plan commission worth its salt will strike a balance within the community which tends, among other and equally weighty things, to reflect the desires of the community and to preserve the value of its properties. The communities of this state can be expected to follow patterns found elsewhere, whereby

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20 C.R.I.&P.R. Co. vs. Liddle, supra. Other less personal, citations are Anderson vs. Jester, 206 Ia. 452, 221 NW 354, 357; Keppy vs. Ehlers, 253 Ia. 1021, 115 NW 2d 198; Stoner McCray System vs. Des Moines, 247 Ia. 1313, 78 NW 2d 843, 58 A.L.R. 2d 1304.

the ratio shown in a) above holds true, with residential land given over only grudgingly to commercial use, and commercial only with reluctance to industrial use. Such grudge and reluctance merely reflects the desires of those citizens who have bought and settled in the residential areas to maintain the values, be they monetary or psychic, they attach to their homes; those desires are reflected, if to a lesser degree, in the owners of properties in commercial districts. They have the effect, however, of making non-residential land more scarce and commercial incursions into residential territory more than a little difficult; and the resistance to re-zoning brings to the zoners, the councils, and the courts all of the pressures of the game.

Those pressures come in varied forms, and the easy relief is not always legal, nor is it always palatable to other property owners in the vicinity. The self-explanatory phrase "spot zoning" is known to the Iowa courts, and the Iowa Supreme Court has found the practice illegal because it results in unlike treatment for persons living in the same territory under similar conditions and circumstances.[21] The phrase also seems to be known or quickly learned by objectors at re-zoning hearings.

"Contract zoning" is another phrase, less frequently heard but not infrequently applicable. It describes a means used by an applicant for re-zoning whereby he offers some concrete and presumably enforceable promise at the time he applies for the re-zoning. The legislative character of zoning makes important the independent exercise of judgment by the legislators, the council. The applicant's need to prove his case to the council can take the form of impressive presentations of plans, sketches, schematics, models of that which will be constructed after the property is re-zoned. Such presentation can be quite effective, not only with the zoning commission and the council but also with potential objectors. It should be noted that such offer or preview of intended efforts is not binding, and the applicant's failure to follow through is therefore of no legal import. Such is not deemed contract zoning. The failure of the owner of

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21 Keppy vs. Ehlers, 253 Ia. 1021, 115 NW 2d 198; Keller vs. City of Council Bluffs, 246 Ia. 202, 66 NW 2d 113, 120, 51 A.L.R. 2d 251. Re-zoning of small areas, such as one lot or tract, is not per se illegal; before it will declare a "spot zoning" legal, however, the court requires a showing of substantial and reasonable grounds or basis for the discrimination in treatment. 66 NW 2d at 118. The court in Keller did not explain why such a case should not be handled exclusively by the board of adjustment under its powers to grant variances from the ordinance's terms.

re-zoned property to live up to his promise can well lead to ill will and even prompted a bill in the 62nd General Assembly of Iowa which would have required the applicant to post a bond assuring follow-through on his promises if he obtained the rezoning.[22]

However, if the applicant goes beyond bare promise - e.g., by filing restrictive covenants or deeding right-of-way in an attempt to obtain the re-zoning - some states have said that he has involved himself and the municipality in illegal contract zoning;[23] in other states, the courts look at the form and nature of such promises and the end result before determining the legality of the zoning and the binding effect of the applicant's promise.[24] The Iowa Supreme Court has not had occasion to rule upon this question, and the writer can only speculate upon its conclusions were it to do so. The practice is sufficiently common, however, to suggest that practitioners should be aware of the possible dangers if it is found wanting by the Iowa Court.[25]

b. Adjust?

The broad brush used in drawing a zoning map is clearly necessary for, as Anderson vs. Jester, supra, so clearly states, 221 NW at 357:

> "It would be impracticable, if not impossible, for the city council to hold hearings and make decisions in respect to the classifications and restrictions of each individual property ..."

There is no question but that a taking is effected when a zoning ordinance settles restrictions on a piece of property, even though that taking will not be recompensed if the restrictions are fair

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22 H.F. 323, 62nd General Assembly.

23 Zahodiakin Engr. Corp. vs. Zoning Ordinance Board, 14 N.J. Super 537, 82 A.2d 493. Of course, restrictive covenants affecting the property apart from the zoning are not disturbed or abrogated by a re-zoning. Burgess vs. Magarian, 214 Ia. 694, 243 NW 356.

24 Pressman v. Baltimore, 222 Md. 330, 160 A.2d 379; Sylvania Electric Products, Inc. vs. City of Newton, 183 NE 2d 118 (Mass. 1962). See also an excellent collection of cases in Rathkopf, The Law of Zoning and Planning, Chap. 74, Sec. 2, with pronounced editorial comment.

25 Midtown Properties, Inc. vs. Madison Twp. 68 N.J. Super. 197. There, a $200,000 investment by a developer after the council promised re-zoning was held insufficient to validate the "contract".

and reasonable.[26] Because of the broad brush effect, however, a constitutional means must be provided to assure redress to the individual whose property or situation varies from that of other similar properties or owners in the same zoning district. The means provided is the aforementioned safety valve, the zoning board of adjustment, whose strengths, vagaries, and range of movement have attracted considerable judicial attention over the years in Iowa. That board is constituted and charged to operate quite independent of the council, the zoning commission, and the municipal administrators. Its members are appointed by the council and hold their terms for five years, Section 414.8, 1966 Iowa Code. The board is empowered to correct errors in enforcement, to hear and grant exceptions written into the zoning ordinance, and to authorize variance from its regulations. Section 414.12, idem.

The nature of the independence granted to the board of adjustment by statute is that of an administrative body whose decisions are quasi-judicial in nature and will not, therefore, be disturbed if the board's action is not clearly arbitrary.[27] The statutes set out a form of judicial review of that action which is prompt (Section 414.19), thorough (Section 414.18), and detailed in the relief it provides. The hearing on appeal from the board's decision is in certiorari, is tried de novo, and can combine other relief as necessary to protect the appellant.[28] The statutory procedures are sufficiently specific that the writer will not further treat them here.

The zoning ordinance of the municipality cannot limit the power conferred on the board by Section 414.12, idem;[29] neither can it permit the board to function without drafting the guidelines within which it shall perform its function.[30] The apparent conflict of those two rules is simply resolved when one notes that Section 414.12 grants the board bare powers, without standards, policies, or limits to its discretion. Accordingly, a zoning

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26 Anderson vs. Jester, supra.

27 Anderson vs. Jester, supra.

28 C.R.I.&P.R. Co. vs. Liddle, supra.

29 Deardorf vs. Bd. of Adjustment, supra.

30 C.R.I.&P.R. Co. vs. Liddle, supra. See also Schultz vs. Bd. Adjustment, 258 Ia. 804, 139 NW 2d 448.

ordinance must of necessity establish those guidelines within which the board of adjustment shall operate in the exercise of those statutory powers. Indeed, the Liddle case tells us that if the ordinance fails to provide those guidelines for the powers to vary and to grant conditional uses (page 11 herein), it is likely that the court will strike down the intended property restriction and the property owner will be home free.

The constitutional need for the board of adjustment to authorize variance from the terms of the ordinance is sufficient reason alone for its existence. It is also probably the most difficult of its functions to explain, essentially because the board operates subject to the very pressures we have discussed. Section 414.12 does not require the board to make findings of fact or to record the reasons for its action.[31] With the decision-making process thus freed from need of visible proof that the guidelines are met and the statutes followed, the cases reveal that not infrequently judicial supervision must be exercised and judicial definition of the word "hardship" brought out and dusted off.[32] The footnoted cases tell what that word doesn't mean as much as what it does. Zimmerman holds that the fact that a property owner lives alone is not sufficient hardship to permit conversion of her single-family dwelling into a duplex in a single-family district, although the board there had thought otherwise. Deardorf determined that the fact of ownership before the property was re-zoned to a more restrictive classification did not permit variance, despite the resultant loss in land value, although the board there thought it did (without stating why).

The Deardorf case accepts for Iowa the definition of unnecessary hardship adopted by the New York courts,[33] which require that three criteria must be met before a hardship can be said to exist;[34]

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31 Deardorf vs. Bd. of Adjustment, supra, 118 NW 2d at 81.

32 Zimmerman vs. O'Meara, 215 Ia. 1140, 245 NW 715.

33 Otto vs. Steinhilber, 282 N.Y. 71, 24 NE 2d 851, 853.

34 118 NW 2d at 81.

1) The land in question cannot yield a reasonable return if used only for a purpose allowed in that zone;

2) The plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and

3) The use to be authorized by the variance will not alter the essential character of the locality.

The above constitute a hard hill to climb; from a practical viewpoint (I here invade Mr. Connolly's field and express my thanks that my presentation precedes his), it is sometimes difficult to identify them in the decisions in routine cases before a board, such as one where a home-owner wishes to weather-proof his front porch to provide an extra bedroom - and thereby jut out beyond the setback line; or in the worse case, where he has already done so before the building inspectors found out. In such instance, the board's lofty position as protector of constitutional rights is replaced by a more earthbound function as father-confessor to one in need of shriving for his wrongs. If the neighbors don't appear in objection, it is equally unlikely that the courts will have the opportunity to apply the New York rule to the case.

The breadth of the board of adjustment's power to vary the zoning regulations contained within the ordinance it monitors is made clear by one of the earlier and much-cited Iowa cases. Anderson vs. Jester, supra, made the point that "rigid adherence" to the general restrictive terms of the ordinance is the precise danger which requires the attention of the board. The court there stated that not only zoning district lines and height regulations, but uses and classifications of property as well, can vary from the ordinance's restrictions if the legal criteria be met.[35]

The second of the three statutory powers of the board of adjustment is that to hear and decide special exceptions to the more general use limitations, specifically listed and assigned for the board's approval or disapproval as to location and

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35 See also Keller vs. City of Council Bluffs, supra, (permitting convalescent home in residence district); and a further step in the writer's learning process, Radosevich vs. City of Des Moines, Polk County District Court, Equity No. 71835 (1967), where a filling station was permitted in a residential district from which the ordinance's terms excluded it.

operation in the named districts. This power speaks generally of unique uses, as opposed to the unusual physical characteristics of particular properties which require variance from the ordinance's terms. A use which by its nature causes planners and zoners to exercise caution in finding a place for it to alight (stockyards, fuel storage yards, and the like), or a use which might not be incompatible with any district if properly located (hospitals, cemeteries, community buildings, airports), falls into this area of the board's powers. All such uses have been clearly declared by a recent case to be the jurisdiction not of the city council but of the board of adjustment, where the ordinance requires that certain criteria must be met and standards passed upon before the property may be approved for the given use.[36] In the Depue case, the Iowa Supreme Court explained that the terms "conditional use", "special use", "special exception", are employed somewhat interchangeably in zoning ordinances in reference to uses which are each subject to a finding that, for example, the particular use of the property in question "is proper, essential, advantageous or desirable to public good, convenience, health or welfare".[37] Where such is the case, the board of adjustment, not the council, must make that quasi-judicial determination, under guidelines set forth in the ordinance to limit the board's range of its discretion.[38]

One conditional use which apparently has escaped the reach of the board of adjustment is a use which is only allowed by the terms of the ordinance after consent has been obtained from surrounding property owners.[39]

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36 Depue vs. Clinton, -- Iowa --, 160 NW 2d 860 (1968).

37 160 NW at 863.

38 Schultz vs. Bd. of Adjustment, supra. While this case involved interpretation of county zoning statute and ordinance, the rule applies to city and town zoning as well. See also C.R.I.&P.R. Co. vs. Liddle, supra.

39 Downey vs. Sioux City, 208 Ia. 1273, 227 NW 125. Here, a multiple dwelling could not be erected until a set percentage of owners of surrounding properties consented. The Iowa Supreme Court here rejected those authorities which view such consent power as an unconstitutional delegation of legislative power. 227 NW at 128. See also Huff vs. Des Moines, supra.

The third of the stated powers of the board of adjustment, to correct errors by administrative officials in the enforcement of zoning chapter or ordinance, has need of no guidelines.[40] The function permits the resolution of questions on ordinance interpretations by quasi-judicial forum on appeal from the decision of one performing a ministerial function; such power probably provides a more direct relief to the courts than do powers of the board relating to variances and exceptions.

Under this power, however, as in that to grant a conditional use, the terms and spirit of the ordinance must be strictly adhered to.[41] Under normal circumstances the jurisdiction of the board on such interpretations is exclusive[42] - i.e., the complainant must exhaust the administrative remedy thus provided before proceeding to the courts.

c. Conform?

The third of the clues in the comprehensive plan relates to the complex problem of the non-conforming use. The problem exists only to the extent the zoning ordinance in question attempts to freeze or phase out a property use which is no longer permitted in the current zoning classification of the property; it is normally a use left over from pre-zoning days or days when the parcel in question was subject to less restrictive zoning. The planner hopes that the ordinance provisions which freeze the use and/or the structure which defies the current restrictions will cause the property and its owner to gradually fade and, phoenix-like, be re-born in a more pleasing (conforming) form, all to the common good. The owner can be expected to have somewhat less breadth of vision than the planner and may even paint, slap on a new exterior, even modestly modernize his property. Further, if business is good, he may not only out-last the planner or the plan - he may even desire to expand.

Worse yet, the planner may have calculated a reasonable business life span for the non-conformist and built it into the ordinance, thus advising the latter of the period over which he may now amortize the use before it must cease altogether. While the Iowa Supreme Court has acknowledged that ordinance provisions requiring cessation of a non-conforming use after a reasonable amortization period might withstand a constitutional test,[43] that

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40 Zimmerman vs. O'Meara, supra.

41 Call Bond & Mortgage Co. vs. Sioux City, supra, 259 NW at 38.

42 Idem, 259 NW at 40.

43 Stoner-McCray System vs. City of Des Moines, supra, 247 Ia. at 1320.

Court has not yet seen a case involving an ordinance which meets such a challenge, and the vested rights of use held by a property owner who has improved his property before it became non-conforming still hold paramount position in Iowa.[44]

In view of the thrust of municipal blight-fighting, aesthetics, and various sociological considerations into the modern-day picture of community improvement, it becomes clear that to the extent zoning powers appear able to carry some part of the battle to improve the lot of cities and city dwellers, those powers will be called upon to do so. The extent to which they can legally thus perform will be argued by zoners, planners, councils and property owners, and will most assuredly be clarified in the courts of this state, just as they have been in other jurisdictions. It is apparent to the writer that the most probable vehicle to carry those considerations in the zoning context is the amortization or phase-out of the non-conforming use. Whether the load will prove too great for the vehicle is the question.

The Iowa Supreme Court's stated acceptance of the theory of amortization of the non-conforming use[45] does not precisely fit the holding in an earlier case.[46] Granger dealt with the efforts of an owner of property whose use under the then-current ordinance was non-conforming to reconstruct the building in which the non-conforming use was conducted. The court held that the owner retains the right to make such reasonable repairs as will permit continuation of that use.[47] The "reasonable repairs" there effected consisted of replacement of 186 feet of the walls and roof of a brick and frame building with steel and concrete block. How the court will mesh the owner's right to make such "repairs", needed due to "depreciation and deterioration",[48] with a municipality's stated right to phase him out of the use "under certain circumstances"[49] with a just and reasonable amortization

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44 McJimsey vs. City of Des Moines, 231 Ia. 693, 2 NW 2d 65.

45 fn. 43, supra.

46 Granger vs. Bd. of Adjustment, 241 Ia. 1356, 44 NW 2d 399.

47 The latitude granted the property owner in Granger is particularly puzzling in the light of Section 415.3, 1966 Iowa Code, whereby he who repairs a non-conforming use in a restricted residence district is guilty of maintaining a nuisance. This section has been held to be regulatory, not prohibitive. Funnell vs. Clear Lake, 239 Ia. 135, 30 NW 2d 722.

48 44 NW 2d at 403.

49 78 NW 2d at 849.

period remains to be seen; it is likely that the circumstances in question will be the subject of long and hard scrutiny when such a case arrives at the court.

In sum, it can be said that to date the court has permitted a zoning ordinance to prohibit the physical expansion or extension of a non-conforming use, which generally equates to the physical expansion or extension of the structure in which it has been conducted.[50] The trends of other states toward amortization of such uses[51] may yet find acceptability in Iowa. They will most assuredly be accepted by one or another Iowa municipality as one among many means of maintaining and improving the community; whether they will also find judicial acceptance will depend in great part on the court's view of the balance between individual and society in the zoning context.

II. ZONING OUTSIDE THE CORPORATE LIMITS

Chapter 358A, 1966 Iowa Code, is patterned after Chapter 414, idem, wherever the two can coincide. The initial zoning ordinance can be enacted by the board of supervisors[52] only after receipt of report from a zoning commission constituted pursuant to statute, Section 358A.8, idem, and after public hearing. A board of adjustment must likewise be appointed, and its duties are identical to those of boards within cities and towns. Section 358.15, idem.

The two sharpest variants from city and town zoning are:

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50 2 NW 2d at 69. See also fn. 7, relative to judicial approval of tighter controls in the context of Chapter 415, 1966 Iowa Code.

51 Rathkopf, The Law of Zoning and Planning, Chaps. 61 and 62.

52 As initially enacted in Chapter 184, Acts of the 52nd General Assembly (therafter Chapter 358A of the 1950 Iowa Code) the board of supervisors could not effect the purposes of the chapter until a majority of the resident real property owners in the area to be zoned, in numbers and in amount of assessment, either petitioned or voted approval. That restriction was removed by Chapter 266, Acts of the 58th General Assembly, and the matter of enactment is now in the hands of the board of supervisors.

1) All or any part of a county outside the corporate limits of cities and towns can be zoned, as deemed best by the board of supervisors to carry out the purposes of Chapter 358A;

2) No ordinance so adopted can apply to realty or improvements primarily adapted for use and actually being used for agricultural purposes.

One strong comparison to be found, reflective of a point earlier made in this paper, is the total failure of the enabling legislation to tell who or what body shall have the duty of drawing up the comprehensive plan with which the zoning ordinance must show accord.[53] In the absence of such direction, some boards of supervisors have contracted with consultants for the preparation of a comprehensive plan in some instances, while others have assigned the function to the county zoning commission and permitted that commission to seek out a consultant to perform the initial planning function.

A strange by-product of Chapter 358A, idem, was the determination by the Iowa Supreme Court[54] that for the purpose of enacting a zoning ordinance a county is a municipal corporation, thus placing it for that singular function within the purview of Section 366.1, idem, and permitting counties to enforce their zoning ordinances by fine or imprisonment. Section 358A.26, idem.

Beyond the above, the details of county zoning statutes and ordinances can best be left to my confrere, Mr. Connolly, as matters well within the scope of his paper. As heretofore stated, the major portion of discussion of the principles of county zoning can be found earlier in this treatment, intermingled in principle as well as in law with the zoning decisions pertaining to cities and towns.

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53 Section 358A.5, idem.

54 Wapello County vs. Ward, 257 Ia. 1231, 136 NW 2d 249.

CONCLUSION

I cannot better conclude than by citing the supreme law of the land; and in a zoning paper I should feel some duty to conclude with a rather timeless, or timely, statement from the opinion in Village of Euclid et al vs. Ambler Realty Co., supra, picking up the language of the Court from the end of the earlier quote:

> "Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations; which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise."

I have endeavored to suggest where Iowa law on the subject at hand has been and where it now stands. I have every confidence that the above quotation tells where it is going.

PHILIP T. RILEY

"THE LAWYER BEFORE ZONING COMMISSIONS AND ON REVIEW"

by

John Connolly III

OUTLINE ON PROCEDURE FOR PREPARATION AND PRESENTATION OF APPEAL TO ZONING BOARD OF ADJUSTMENT

I. MEMBERSHIP.

A. Five (5) members appointed by governing body of City or County.

II. RULES.

A. Board may adopt its own rules.

B. Meetings to be held at call of Chairman or as otherwise determined by the Board.

C. May administer oaths and compel attendance of witnesses.

D. All meetings must be public.

E. Records must be kept of its proceedings which are open to the public.

III. PROCEDURE - GENERALLY.

A. Complete form prepared by Board of Adjustment which identifies the parties, location of property, its use and zoning, and the decision or act appealed from.

B. Statement of your case in writing, outlining jurisdiction, reasons for appeal and all facts which you allege warrant decision in your favor.

C. Copy of adverse decision from which appeal taken.

D. Drawing, if appropriate, which sets forth measurements, location of improvements, and other physical facts affecting your case.

E. Payment of filing fee, varies, but approximately $10.00.

IV. EFFECT OF APPEAL.

A. Generally stays proceedings, for exceptions see Chapter 414.11, Code of Iowa.

V. BASIS FOR APPEAL.

A. Evidence must be presented by your statements, exhibits or witnesses for the record which supply the basis for appeal and jurisdiction.

1. Error in any order, requirement, decision or determination made by an administrative official concerning Chapter 414, Code of Iowa, or ordinance adopted pursuant thereto.

2. To hear and decide special exceptions under ordinances so directing - this varies by Ordinance.

3. Variances. (The most common situation) Requested from zoning regulations other than use.

B. Important elements of proof.

1. Property acquired in good faith, and

2. Exceptional narrowness, or

3. Exceptional shallowness, or

4. Peculiar shape of a specific piece of property, or

5. Exceptional topographical conditions, or

6. Other extraordinary or exceptional situations.

7. Show that strict application to terms of ordinance actually prohibits the use of client's property in a manner reasonably similar to other property in the district.

(a) Board must be satisfied from evidence presented that literal enforcement of the ordinance would result in unnecessary hardship.

(b) Variations granted shall be in harmony with the intended spirit and purpose of the Ordinance, and substantial justice done.

(c) Board may prescribe special safeguards in connection with granting of an appeal. (This frequently can guarantee protection for others and improve your chances for success - these limitations bear consideration in conferences and contacts prior to hearing.)

(d) Examples of special powers of Board - specific in some ordinances:

(1) Variations for public or public service buildings.

(2) Off street parking in residential districts.

(3) Extensions of a zoning district boundary under special circumstances. (Des Moines limit forty (40) feet.)

(4) Variances in zoning laws and regulations other than use.

(5) Grant a variance in use under special conditions even though prohibited by ordinance. (City of Depue v. Clinton, 160 N.W. 2d 860 (1968).

VI. SUPPLEMENTAL EVIDENCE AND METHODS OF PROOF.

A. Photographs of subject property. (8 x 10 suggested)

B. Photographs of surrounding property.

C. Surveys or drawings showing locations of improvements on subject property.

D. Plans of variance and desired changes, if appropriate.

OUTLINE FOR PREPARATION AND PRESENTATION

OF

PETITION FOR CHANGE IN ZONING

I. BACKGROUND.

A. Zoning Commission appointed by City Council or Board of Supervisors.

B. Zoning Commission recommends zoning ordinance, including boundaries of various use districts and regulation.

C. Zoning Commission must hold public hearings before making recommendations to Council or Board of Supervisors.

D. City Council or Board of Supervisors must hold public hearing after receipt of recommendation from Zoning Commission, and 15 days notice by publication must be given by the City Council or Board of Supervisors prior to its public hearing, and prior to adopting of any amendment or changes.

II. BASIS FOR REGULATIONS.

A. Lessen congestion in the street.

B. To secure safety from fire, flood, panic and other dangers.

C. To promote the health and general welfare.

D. To provide adequate light and air.

E. To prevent over-crowding of land.

F. To avoid undue concentration of population.

E. Construction detail and exterior of building if appropriate. (Use architect if one involved, this is frequently beneficial.)

F. Artist's rendering of completed development, if not misleading.

G. Stress special benefits and needs, such as modernizing of property, improvement of traffic, elimination of hazard, inability to economically develop site without variance similar to other property, difficulties of client in use of his property due to causes beyond his control, such as right of way acquisition, change of street, change of grade, need to curb obsolescence and decay, improvements to property and neighborhood.

H. Present consents in writing of neighbors which approve the granting of your appeal.

I. Present other witnesses who support your appeal, particularly neighbors.

VII. SHORT SUMMARY.

Including your request for variance and principal point establishing jurisdiction.

VIII. VOTE.

A. Majority vote of three members required for granting of your appeal.

IX. APPEAL.

A. Appeal from Board of Adjustment decision is to District Court by any aggrieved party within thirty (30) days of filing of decision in office of Board of Adjustment.

G. To facilitate adequate provision of transportation, water, sewerage, schools, parks and public requirements .

H. Reasonable consideration should be given as to the character of the area of the district, the peculiar suitability of such area for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city or town .

III. INITIATION OF REQUEST FOR CHANGE .

A. May be by act of City or Board or

B. By petition of the property owner, with varying rules as to contents of petition and required consents .

IV. PROTEST .

A. If protest to change or amendment is signed by the owners of twenty (20%) per cent or more either of the area of the lots included in the proposed change, or of those immediately adjacent in the rear thereof, extending the depth of one lot or not to exceed two hundred (200) feet therefrom or of those directly opposite thereto, extending the depth of one lot or not to exceed two hundred (200) feet from the street frontage of such opposite lots, such amendment shall not become effective except by a three-fourths (3/4) vote of the City Council or Board of Supervisors .

(This same rule applies in many ordinances when denial of the request for change is recommended by the Plan and Zoning Commission)

V. PRESENTATION AND PREPARATION .

A. Background .

1. Recognition of a zoning case as a living, personal,

emotional involvement, not as inanimate property only.

2. An appreciation of the character of the Zoning Commission, generally civic minded, successful, responsible citizens, each somewhat affected by their environment, associates, business experiences, and by membership in service and business organizations. Aren't we all to some degree?

3. That the Commission or Board is in fact a jury - experienced triers of the fact - chosen by others to hear and decide your case.

4. An awareness of the City or County employees who serve as experts and advisors to the Zoning Commission and Board of Adjustment, and who will make recommendations on your case.

B. Preparation.

1. Consultation with client.

(a) What change is desired?

(b) Is it best handled as a zoning case or Board of Adjustment?

(c) Is it reasonable?

(d) Check zoning maps, text, plat book, and personally inspect property.

(e) Agree on division of work.

(1) Who will circulate petition?

(2) Who will contact neighbors for consents and make the first presentation in that manner to the affected property owners?

(f) Discuss fee and agree upon method of payment,

hourly or contingent, and special considerations as to each, if any, such as minimum and maximum fee.

2. Petition.

(a) Draft petition for change or amendment desired, describing property by both legal description and local address. Must be signed by owners of property to be rezoned, or by some ordinances by fifty (50% per cent of area of property to be rezoned. of

(b) Letter of request for initiation of rezoning by the City Council or Board of Supervisors.

(c) Drafting of consent to rezoning petition to be signed by property owners within the affected area, usually two hundred (200) to two hundred fifty (250) feet surrounding the area to be rezoned, excluding streets and alleys, plus such additional neighbors who may support your request.

(d) Petition and consent to be filed with City Council or Board and fee for filing to be paid.

C. Attitude - relating to affected property owners.

1. Patience and personal contact.

2. Accuracy of representation.

3. Personal inspection of properties claiming damages and opposing your client.

4. If pictures, plans or architectural renderings are used, specifically inquire as to whether they fairly portray the actual plans of your client.

5. If your proposal creates specific problems and damages to surrounding property owners, recognize

them, admit them, and place in proper perspective.

6. Courtesy and appreciation of the fact that your opposition is as sincere in their opposition as you are in your proposal.

7. Avoid personal attacks and personalities - keep to the issues.

D. Interviews.

1. Plan and Zoning staff as to any particular problems and observations. This is suggested after your petition reaches them for study and research.

2. City Engineer, Traffic Engineer, and any other Departments whose advice will be sought by the Commission or City Council.

3. Civic organizations or churches in affected area and/or likely to participate in the hearing.

4. After notices of hearing have been mailed or published, as the case may be, check returns and replies prior to actual hearing date for a true appraisal of neighborhood attitude or change in position.

5. Legal Department, for determination and approval of any legal documents being submitted as a part of your case, such as restrictive covenants, amendments to proceedings, or technical interpretations of uses or terms.

E. Witnesses at hearing.

1. Attorney to outline and present case for the Petitioner. In this regard, the presentation should be carefully divided and assigned partially to others, if others are available who are qualified and authorities in particular aspects of the case.

2. The owner and petitioner. Usually more effective if his presentation is not technical, and is limited to description of his needs and proposed use and development.

3. Architect, if employed by your client for development of the property, together with a sketch of the proposed development or artist's conception thereof. An effort should be made to have these drawings as accurate as possible and truly representative.

4. Realtor, if involved, as to scarcity of property for your client's purpose; effect on community; best and highest use of property; and peculiar suitability of site for your client's use.

5. Civic support, if any.

6. Property owners in affected area who support position.

F. Exhibits.

1. Pictures - preferably arranged on a mat and large enough to be viewed by the Commission as you discuss your case. If they must be individually passed around, it detracts from your presentation.

2. Model of proposed development, if the case justifies the expenditure.

3. Plot plan.

4. Architect's plans or artist's rendering of improvements.

5. Consents not already of record in your behalf, and withdrawal of objections, if any.

G. Conclusion.

Brief statement as to request, and pick up of omissions, if any, by your witnesses. Avoid repetition and remember that, if successful, your chances of being back again before the

Commission are improved. For this reason and others, your statements and representations must be accurate and reflect your honest and best judgment.

"MODERN ZONING DEVELOPMENTS"

Richard F. Babcock
University of Iowa
November 8, 1968

I. INTRODUCTION

My function is to look into clouded crystal ball and describe what changes I divine will take place in next decade in government policy on land use.

Dwell on two arms of public control:

1. Eminent Domain
2. Police Power--regulation

Examples of how each of these may be reshaped to meet social demands of next decade.

II. EVIDENCE OF FERMENT AS RELATES TO:

A. Eminent Domain

Two illustrations both related to Highway Policy

1. Aesthetic and open space control
   --scenic easements
2. Destruction of Neighborhood Values
   --describe protests in Baltimore, Nashville, Washington, Chicago.
   --Nature of complaints--Negroes (low valuations--dual housing market)

B. Public Regulation

Here unrest with present structure evident at all levels of government and from all shades of political spectrum.

1. Federal

--HUD--demand for metro review of local proposals for federal assistance--open space--sewer, water.

--National Commission Urban Problems (Douglas Commission)--third alternative in zoning litigation--open space

--Kaiser Commission (local codes)

--Hackensack Meadows--Army Corps Engineers

2. State Level

--Growth of demands for state department of urban affairs: New Jersey--Delaware--Illinois--GOP candidate--New York (Urban Corp.)

3. Municipal

--Councils of Governments

--Consolidation of municipalities

Washington--Illinois

4. American Law Institute

Model Code

III. PROBABLE DIRECTION OF CHANGE

A. Eminent Domain - Highways

Scenic easements--techniques

Highway taking

(will recognize person, not land as test?)

--Negro appraisers?

--Replacement value? (like churches)

--Full compensation (as if hit by post office truck)

B. Public Regulation (four areas in which to expect change)

1. Regional Problems Must Be Accommodated in Local Decisions

Examples of regional impact: open space--densities--highway interchanges

Court attitudes (Vickers--Easttown)

Choice between state and regional decision-making

State is better choice. Why? (Pre-emption by state in some areas)

2. Yet Increased Demand For Greater Local Voice In Big Cities

Growth of neighborhood participation: (not really contra 1.) See for example changes in attitudes of courts toward aesthetic regulation.

3. Increased Flexibility in Substantive Policy

(Inadequacy of old system dating to 1920's)

--PUD--Staged development--use of Plan to predict

--need for new statutory powers: control of open space

--licensing--control over specific proposals of developers

4. Yet Increased Emphasis on Procedural Due Process As Offset To Substantive Flexibility

--Role of Plan as protection from arbitrary action.

New function of Plan.

--Redefinition of role of courts. Hands off substantive policy--fierce protection of procedural fair play. (Compare Federal courts review over FPC--FCC.)

IV. CONCLUSION

--How does all this relate to DesMoines, Dubuque or Davenport? (Only concern of major urban areas?)

--Suggest analogy to two counties in Chicago Metro area, one on periphery, another check by jowl with Cook County.

PRIVATE PLANS -- CONTROLLING CONVEYED LANDS THROUGH COVENANTS

Clifford Davis

While zoning has promoted planning on a broad scale and coerced cooperative land use in ways that courts never could, zoning has not displaced private arrangements for controlling land use or for sharing land use. Probably a greater percentage of owners are affected by such covenants now than ever before because the requirements of mortgage lenders and the F.H.A. indicate that few, if any, subdivisions are being created without some restrictions.

Private arrangements serve today in the creation and maintenance of shared facilities and in higher (or different) standards of land use, arrangements that zoning and its related political processes can provide or support only with difficulty, if at all. For example, consider a hypothetical city where the political decision has been made that the highest use is residential A with a minimum lot size of 70' or 80' by 150' (and sideyard requirements) and that parks will be of certain minimum size (for convenience of maintenance) at specific locations (for greater public convenience). A subdivider in this city that wishes to attract homeowners that will build or buy certain kinds of houses may wish to set up different sideyard requirements or minimum lot size, or architectural controls, and he may want to provide a recreation area where the city has no park planned. Such a facility whether a reservoir, tennis courts or other recreational area might well be built on land he provides but would have to be maintained by requiring all the owners in the tract to contribute a pro rata part of the costs, providing that owners in the subdivision, and only those owners, shall be entitled to the use of the cooperatively supported facility. To do any of these

things he will probably resort to private arrangements such as covenants, equitable charges or servitudes, property owner's associations or the condominium statute (the Horizontal Property Act., Chapter 499B, Iowa Code.)

Unfortunately, a long and often incomprehensible history has tended to make the use of private arrangements seem overly complex as well as subject to archaic rules that serve no purpose. In addition to these inherited problems, the draftsmen of most private arrangements have invited trouble by using ambiguous requirements or by using rigid requirements that have not been adaptable to changed circumstances, in either case with results that are sometimes unfortunate for their plans and the affected landowners. Finally the desire to promote private planning conflicts with the desire to avoid permanent or general restrictions on land use, especially those which seek to burden remote owners. Reference to this conflict may explain some of the rules governing covenants even though the rules seem to have failed in their purpose of resolving the conflict.

CREATION OF COVENANTS

A Brief Look at the Historical Rules at Law--Especially the Connection of Covenants to Estates.

The historical basis of covenants connected with a conveyance has been exhaustively explored, and the requirements for the running of such covenants at law has been both criticized and commended. When the Restatement of Property was being drafted, leading American authorities such as Clark and Simes, and our own Percy Bordwell (See The Running of Covenants -- No Anomaly, 36 Iowa L. Rev. 1 (1950), which collects the authorities), entered into the fray, examining the history of covenants, and attempting to rationalize the doctrine that covenants, sometimes affirmative as well as negative covenants, do run. In considering the requirements necessary to have covenants run, that is bind subsequent holders of affected estates, these authors sought to avoid artificial restraints or classifications,

while providing some appropriate safeguards.

Although they are controversial, the most frequently considered restrictions on the running of covenants at law are the requirements of the Restatement of Property. They seem an appropriate starting point to consider the ways such covenants are created although reference to Coke's report of Spencer's case 5 Co. Rep. 16a, 77 Eng. Rep. 72 (K.B. 1583) is appropriate since these requirements have been said to stem from that case.

The Restatement of Property has the following provisions relating to the requirements for the running of covenants upon conveyed lands in the United States.

§ 534 PRIVITY BETWEEN PROMISEE AND PROMISOR

The successors in title to land respecting the use of which the owner had made a promise are not bound as promisors upon the promise unless

(a) the transaction of which the promise is a part includes a transfer of an interest either in the land benefited by or in the land burdened by the performance of the promise; or

(b) the promise is made in the adjustment of the mutual relationships arising out of the existance of an easement held by one of the parties to the promise in the land of the other.

§ 535 PRIVITY AS BETWEEN PROMISOR AND SUCCESSOR.

The successors in title to land respecting the use of which the owner has made a promise are not bound as promisors upon the promise unless by their succession they hold

(a) the estate or interest held by the promisor at the time the promise was made, or

(b) an estate or interest corresponding in duration to the estate or interest held by the promisor at that time.

§ 547 PRIVITY BETWEEN BENEFICIARY AND SUCCESSOR

The benefit of a promise respecting the use of land of the beneficiary of the promise can run with the land only to one who succeeds to some interest of the beneficiary in the land respecting the use of which the promise was made.

The creation in connection with a conveyance requirement, sometimes called privity.

Section 534(a) provides that covenants run (i.e., bind successors as well as the original promisor and promisee) only when the original promises are made part of a conveyance. While this restriction had roots in Spencer's case, where there was a leasehold estate, the requirement has been applied where there is a conveyance of a fee. This has been justified on the grounds that where there is a conveyance at the time the covenant is imposed, the price of the land will be adjusted. (Sims, Covenants Which Run With Land (1901) p. 28.) Clark, Covenants and Interests Runing with Land (1929) p. 99 rejects this explanation and suggests that where values are adversely affected by the creation of a covenant, parties are free to pay for the covenant separately.

Another explanation for the connection with a conveyance requirement is that the courts which insisted upon it were making reference to the acts of the parties to determine the importance of the imposition of the covenant to the making of the transfer. Thus, the requirement that covenants that run must be included in a conveyance is related to underlying policy conflict between the desire to enforce such covenant and the desire to free land buyers from burdens on the future. In other words, the requirement that any covenant that runs with the land must be incorporated in the conveyance of the land can be rationalized as a reference to the judgment of the parties as to the importance of attaching the covenant and whether it was a condition without which no conveyance would be made. The requirement is thus a guarantee of importance, or seriousness, like a requirement of a writing in a contract. But it is more, it is related to the transfer of lands becuase if a convenant could not be attached when the grantor conveys, there might be no conveyance. Therefore, letting covenants that

are part of a conveyance be enforced against subsequent holders of the estate can be justified as part of the social price that must be paid to have the conveyance. And, correspondingly, where an attempt is made after a conveyance to make a covenant attach by agreement between neighboring owners there is no fear that the conveyance will not be made, therefore, there is no need to let such covenants run. Thus the connection with a conveyance requirement looks to the acts of affected parties that may be relevant to the underlying policy in a conflict: the desire of free use and conveyance of land on the one hand and the desire to control it by coercing cooperative and waste avoiding uses on the other.

If the tests such as privity had been rationalized and used in the way suggested, then in time a body of instances where conveyances were made simultaneously with promises might have developed, and the content of such promises then could be used as standards. No standards evolved, however, because the requirement did not avoid the inclusion of relatively less important restrictions. Conveyancers could see the test of connection to a conveyance and included in conveyances many covenants that were by no means so important that if there were no covenant there would be no conveyance. The requirement of a connection to a conveyance thus became a trap for the poorly advised rather than a true test of the social price of a conveyance.

More importantly the connection to conveyance requirement also suggests that those restrictions, or covenants, which are incorporated in the chain of title, and most likely those only, will be communicated to, or noticed by subsequent grantees. If there is notice of restrictions equity may bind those who accept the affected lands with notice.

Tulk v. Moxhay--Equity abandoned the estate concept.

No discussion of covenants can omit a reference to Tulk v. Moxhay, 2 Ph. 774, 41 Eng. Rep. 1143 (Ch. 1848) which enforced a covenant on the principle that those who take title with notice of a covenant cannot be

permitted to violate it. The logical place to give that notice is in the chain of title, so that the principle of Tulk v. Moxhay works well with the requirement that only those covenants that are incorporated in a conveyance can be enforced against subsequent owners, especially if it can be concluded that recording restrictions is sufficient to satisfy the requirement when any subsequent purchaser is charged with notice of the restrictions.

Notice that Iowa rejects the requirement of a connection with a conveyance, enforcing a covenant entered into between cooperating property owners providing for a set back building line, citing Tulk v. Moxhay with approval. Johnson v. Robertson, 156 Iowa 64 (1912).

Touch and Concern

Another ancient requirement, also said to have stemmed from Spencer's case, is that covenants that run must "touch and concern" the land. This requirement, despite its fine Elizabethan sound, is most ambiguous. Despite many efforts there is no absolute doctrinal definiteness in defining touch and concern. Bigelow, The Content of Covenants in Leases, 12 Mich. L. Ref. 639 (1919) suggests that if a covenant affects a party's legal rights, powers, or privileges as a landowner, and not as a member of the political community, it touches and concerns the land. The subsequent functional treatment of covenants makes it possible to consider this requirement on a functional basis. In the most important Iowa case the Iowa Supreme Court, through its indication of approval of a lien for assessments for maintenance of facilities in a subdivision, Phillips v. Smith, 240 Iowa 863, 38 N.W.2d. 87 (1949), has implied that covenants for the payment of maintenance assessments in a residential subdivision

touch and concern the affected lots just as a covenant to repair a fence will "touch and concern" adjoining lands. Sexaur v. Wilson, 136 Iowa 357, 113 N.W. 941 (1907).

But whatever the historic reasons, or current rationalizations, of the connection to a conveyance requirement, most subdivisions are restricted by having a written declaration, either stated on the recorded map of the subdivision, or in an instrument recorded simultaneously with the recording of the subdivision map. When this is done subsequent deeds out may incorporate by reference the recorded restrictions. Interesting problems arise where a subdivider makes representations about restrictions but fails to incorporate them in all the deeds or otherwise get them into the recording system. In Hegna v. Peters, 199 Iowa 259, 201 N.W. 803 (1925) the court considered as admissible newspaper advertisements and parol evidence of a scheme that was not recorded to show that it was publicly known that the affected tract was restricted. (Since some lots were restricted, the case also concluded that the lands not expressly restricted were impliedly restricted by a doctrine of reciprocal covenants.)

THE COMMON SCHEME

Any scheme or plan of restriction formed before the development of the land, and recorded before the sale of lots in the subdivision so that all subsequent owners have notice of the scheme before the development has the great advantage that owner parties expect it to be carried out. While zoning can effect a kind of warning to prospective land users about what the zoning or planning body hopes to effect in a given area, the zoning plan for undeveloped lands is likely to be distinguished from private plans because the zoning authority is not the owner and does not build its power to exclude certain uses or persons on the basis of ownership, or, in other words, zoning cannot say that acceptance of the scheme is a condition of acquiring ownership because any acquiring owner knows zoning is flexible and bends readily to

accommodate change through the variance, as well as by amendment.

While private plans have tended to get more sophisticated and in certain cases, e.g., the property owners association, have tended to become more analogous to local government bodies, the usual form of restricted covenant or property owners association is not the creation of a regime for government complete with representation or delegation of powers to write rules. [On the questions of whether a Property Owners' Association can change restrictions, for example proscribe previously permitted uses, see Huntington Palisades Property Owner's Corp. v. Metropolitan Finance Corp. 180 F.2d 132 (9th Cir. 1950), cert. denied, 339 U.S. 980. See also Van Deusen v. Ruth, 343 Mo. 1096, 125 S.W.2d 1 (1938); Brighton by the Sea, Inc. v. Rivkin, 201 App. Div. 726, 195 N.Y.S. 198 (1922), See 4 ALR 3d 570 (1965).

The typical set of covenants resembles Euclidian zoning in that it fixes a use area or areas, set back lines, and other fixed signposts that tell what is to be done and how, perhaps including some provisions for the collection of pro rata parts of the costs of providing services such as water systems and roads. The importance of such a common scheme to the running of covenants is at least threefold:

Important because it indicates an intent to make covenants run.

The existence of a declaration of restriction for a platted subdivision suggests that there is some plan; a plan intended to burden the land.

Where there is a subdivision with the provision of somewhat identical restrictions on every tract the intention to preserve the plan by requiring compliance of subsequent owners is easily found. But the omission of a substantial part of the subdivided parts of the subdivision or the introduction of great variation in the provisions restricting the lots tends to show that the restrictions were intended to be personal, Snow v. Van Dam, 291 Mass. 497 (1935) cited with approval in Grange v. Korff, 248 Iowa 118, 79 N.W.2d 743 (1956), and not intended to run.

The imposition of the plan on lots that seemingly escape express restriction has been achieved by fastening notice of a plan on the lots which do not have notice of a restriction from the record by making it necessary to inquire when the development shows signs of being a restricted development. Especially can this be done when the developer starts a subdivision and sells lots with restriction in the deed, not evidencing on the record an intent to bind the whole subdivision, but courts hold that the retained property is subject to the same restriction imposed on the conveyed property under a negative reciprocal easement, Grange v. Korff, 248 Iowa 118, 79 N.W.2d 743 (1956); Hegna v. Peters, 199 Iowa 249, 201 N.W. 803 (1925). See Powell, Real Property § 673.

Important because it gives enforcement rights to all owners in subdivision.

A scheme that shows an intention to make the benefits of the covenants run to all the affected lands gives all owners a right to enforce them. This gives rights to private prosecutors. Grange v. Korff, 248 Iowa, 118 at 125, 79 N.W.2d 743 (1956). The absence of a scheme may result in a holding that a covenant is appurtenant to the remaining lands of the grantor only. (An example

where a right to enforce was not intended to pass to lot owners. Kent v. Koch 333 P.2d 441 (1958).)

Importance of Reciprocity to Validity.

Where there is no scheme, or where there is a power reserved in the grantor to modify an apparent scheme, the covenants that were part of that scheme have been held personal covenants rather than one intended to run, with disastrous results for the plan. See, Suttle v. Bailey 68 N.M. 283, 361 P.2d 325. (A reserved power to modify restrictions is not acceptable to the F.H.A., see Data Sheet 40, 1959.) If the power to modify requires compliance with the "spirit" of the scheme, a fiduciary duty could be invoked to control the exercise of a reserved power to modify, see Rich v. West, 34 Misc. 2d 1002, 228 N.Y.S. 2d 195 (1962). In such a case there might be reciprocity.

PARTS OF THE COMMON SCHEME

Architectural Control and Minimum Cost

> No building, fence, wall or other structure shall be commenced, erected or maintained, nor shall any addition to or change or alteration therein be made, until the plans and specifications, showing the nature, kind, shape, height, materials, floor plans, color scheme, location and approximate cost of such structure and the grading plan of the lot to be built upon shall have been submitted to and approved in writing by (the developer or architectural control committee) and a copy thereof, as finally approved, lodged permanently with the (developer or architectural control committee). (The developer or architectural control committee) shall have the right to refuse to approve any such plans or specifications or grading plan, which are not suitable or desirable, in its opinion, for aesthetic or other reasons; and in so passing upon such plans, specifications and grading plans, it shall have the right to take into consideration the suitability of the proposed building or other structure, and the materials of which it is to be built, to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure, as planned, on the outlook from the adjacent or neighboring properties.

Architectural control provisions such as that set out above let the draftsman off easy. There is no need to draft specific controls for height

of hedges or fences and such delegation lets the shape of things change with the fashions.

But it must be remembered that there must be a common scheme and that the delegation of power to set a common scheme is not quite the same as having a scheme. However, the initial construction may have set a scheme (or standards) and restrictions governing the types of materials, percentage of reflection from roofs and the dollar or minimum square foot limitations, all of which are frequently found in subdivision restrictions, may be referred to in order to establish a scheme.

It has been suggested that the presence of a forum for discussion of design such as an architectural control committee provides a more satisfactory means of settlement of neighborhood disputes than the discussion of these matters over back fences, and can contribue to a neighborhood spirit of cooperation rather than spite and hostility. (Homes Association Handbook, Urban Land Institute, T.B. 50, p. 199).

Objections to having architectural control in the developer include the possibility that after he parts with all ownership in the development he cannot enforce covenants (See London County Council v. Allen [1914] 3 K.B. 642), therefore he may lose the power to approve, see 5 Powell § 683; 19 ALR 2d 1274, (1951) and 4 ALR 3d 570 (1965) on modification of restrictions.

211 P.2d 302, 19 ALR 2d 1260 (1949); Alliegro v. Home Owners of Edgewood Hills, 35 Del. Ch. 543, 122 A.2d 910 (1956); Jones v. Northwest Real Estate Co., 149 Md. 271, 131 A. 446 (1925); Parsons v. Duryea, 261 Mass. 314, 158 N.E.

761 (1927); Harmon v. Burow, 263 Pa. 188, 106 A.310 (1919); Hoffman v. Balka, 175 Pa. Super. 344, 104 A.2d 188 (1954).

Iowa Cases

Cataldo v. Compiono, 247 Ia. 999, 76 N.W.2d 214 (1956) involved a 44 lot subdivision on Fleur Drive in Des Moines, on the sale of the lots involved in the controversy, the grantor retained a right to repurchase if the design of the grantee's proposed building did not meet with his approval. The Court enforcing this repurchase option looked at: (1) restrictions providing that, "No building shall be erected on any lot unless the design and location is in harmony with existing structures and locations on the tract"; (2) the restriction "that said building if and when constructed shall be of such type and design that it will be a credit to the community"; and the testimony of the parties concerning what type of building was being contemplated at the time of the transaction. The court found that the grantee had never attempted to comply with the agreements and concluded that the grantor was entitled to specific performance of his right to repurchase.

The other type of design restriction litigated in Iowa is one in which the covenant specifically sets out minimal dimensions. The restriction in Jones v. Beiber, 251 Ia. 969, 103 N.W.2d 364 (1960) required all buildings erected to meet certain minimal standards, "... shall be of a permanent character, and be upon foundations and shall not be less than 14' by 18' in size." These quoted provisions may have helped support the conclusion that another restriction that no "trailer shall be used for living purposes" would be applied when a trailer was permanently placed on foundations, a

conclusion that once a trailer, it would remain a trailer even though on permanent foundations.

Restrictions as to minimum cost

A minimum cost restriction is one which attempts to make sure that all of the homes in the subdivision retain their market value. A minimum cost provision generally establishes a minimum dollar amount which must be met before any building may be put upon the land.

The present effectiveness of such restrictions now in use in Iowa is questionable due to the extremely low minimum dollar figure in relation to the rapidly rising costs of property and construction.

See Baker v. Smith, 242 Ia. 606, 47 N.W.2d 810 (1951)--1910 plat-$5,000[$4,000]; Gilliband v. Leiter, 242 Ia. 497, 47 N.W.2d 142 (1951)--1914 plat-$5,000; Grange v. Korff, 248 Ia 188, 79 N.W.2d 743 (1956)--1921 plat-$2,000; Thodos v. Shirt, 248 Ia. 172, 79 N.W.2d 733 (1956) 1929 plat-$3,000; Beeler Development Co. v. Dickens, 254 Ia. 1029, 120 N.W.2d 414 (1963)--1940 plat-$2,500. But in none of these cases was it urged that minimum cost provisions should be adjusted for inflation, or that the cost figure was an indication of cost at the time of platting so that the size and quality of the house was to be determined as of the date of platting, thus offsetting the effects of inflation. Certainly this is an open question in Iowa.

No Subdivision of platted lots

Maher v. Park Homes, Inc., 258 Iowa 1291, 142 N.W.2d 430 (1966) points out the importance of providing that no lot as shown on the plat shall be subdivided. There a corner lot was subdivided and a house was built on the back half of the original lot, which became two lots after subdivision. With no prohibition against subdivision of a lot, the objector

tried to keep the house out by insisting that the house on the subdivided lot could not meet the 100 foot setback requirement. This failed since the "front line" requirement did not offer sufficient definiteness and could not be applied to the lot now facing on the side street (Woodland Ave.). The court found an intent to keep houses 100 feet back from 18th Street, but not 100 feet back from the side street, therefore the house could be built 35 feet back from Woodland without violating the setback requirement.

In Beeler Development Co. v. Dickens, 254 Iowa 1029, 120 N.W.2d 414 (1963) the plat as filed included a covenant that "No residental lot shall be re-subdivided." (Also there was a stated time for expiration of the covenants, the importance of which must not be overlooked.) Lot 61 was triangular, surrounded by streets and contained 33,200 square feet (81/100ths of an acre) as compared to 6700 to 8600 feet in the other lots. Plaintiff attempted to resubdivide 61 into three lots of 13,000, 9,500, and 10,700 each, but was enjoined. Distinguishing Grange v. Korff, 248 Iowa 118, 79 N.W.2d 743 (1956) where a restriction of one house to 8.2 acres was held unreasonable where the surrounding lots were only 1/30th as large.

Setback restrictions

Maher v. Park Homes Inc., cited above involved the following setback restriction "No building shall be erected on any lot nearer than 100 feet from the front lot line ...." The defendant in this case purchased a resubdivided lot and had sought to build a home facing the sidestreet on the back half of the original lot. Plaintiff's sought an injunction to enforce the 100 foot setback as stated in the restrictive covenant, the court found that the result of forcing defendant to comply with these restrictions would be that no building could be erected upon the parcel in question, concluding that corner lots by necessity can have only one front lot line, that being the half of the lot facing the main drive. The court held that de-

fendants must have a 35 foot setback to conform with the general scheme of the other lots facing this sidestreet.

Another case which involved a setback restriction is Gilliland v. Leiter, 242 Ia. 47, 47 N.W.2d 742 (1951) where the restriction was "...and no buildings shall be located forward of the building line as indicated on the recorded plot of said addition," which referred to a dotted line 40 feet from the street line. Here the court found there had been a division of the plot prior to defendant's purchase and that compliance with the 40 foot setback would leave less than one-half of the lot available for construction and that on a steep grade. Evidence showed that 33 homes in the subdivision were located less than 40 feet from their lot line. The court held for the defendant pointing out his attempted compliance, that plaintiff would not be damaged in any way and that defendant's home actually would be a benefit to the neighborhood. As the above two cases point out the Iowa Court will not restrict the free use of land where the restrictions are ambiguous or too strict in the light of changed conditions so that there will be little or no benefit running to the covenantee and a great detriment to the covantor.

Residential Only Restrictions

Common formulas of words limiting land use to residential purposes only are: "for residence purposes exclusively", Baker v. Smith 242 Ia. 606 47 N.W.2d 810 (1951), "no buildings other than single private residences" Gilliland v. Leiter 242 Ia. 47, 47 N.W.2d 742 (1951) and "only for private residence purposes." Grange v. Korff 248 Ia. 188, 79 N.W.2d 743 (1956).

The interpretations of residential-only restrictions in Iowa has involved two types of structures, apartment buildings and trailers.

In Baker v. Smith 242 Ia. 606, 47 N.W.2d 810 (1951) the court was asked to determine whether a restriction "for residence purposes exclusively" meant "for single family" residence purposes,

and thus enable the plaintiff to enjoin defendant's erection of an apartment building. The court held the terms residence or residential purposes without more, merely limited the use of the property to living purposes as distinguished from business or commercial purposes and that the building of an apartment building would not be a violation of the covenant. See 175 ALR 1191, "Construction and Application of Covenant Restricting Use of Property to 'Residence' or 'Residential' Purposes." The court's indication that "a restriction will not be enlarged by construction or implication beyond the clear meaning of the terms, even to accomplish what the parties might have desired had they forseen the situations," would necessitate a wording like "and no buildings, other than single private residences and the outbuildings belonging thereto," Gilliland v. Leiter 242 Ia. 497, 47 N.W. 2d 742 (1951) to accomplish the desired results.

Iowa courts have not been quite as liberal in their interpretation of restrictive covenants limiting the use of land to residence purposes only when trailers rather than apartment buildings are involved.

In 248 Ia. 717, Thodas v. Shirk where the restriction was "No building shall be placed or erected on said premises except for residence purposes ...." and Grange v. Korff 248 Ia. 188, 68 N.W.2d 743 (1956) "said lot shall be used only for private residence purposes", the Iowa court looked to the intent of the parties as evidenced by the general scheme or plan of the development to hold a trailer court in each of the above cases to be a violation of their respective restrictive covenants.

In a later Iowa case, Jones v. Beiber, 251 Ia. 969, 103 N.W.2d 364 (1960) the court indicated that a restriction reading "All buildings erected upon the real estate ...." might be ineffective in prohibiting a trailer or other movable structure to be moved onto the land. But it held that a covenant that no "trailer ... shall be used for living purposes" was applicable to a trailer even when put on a foundation. One could say that

once a trailer, always a trailer.

ASSESSMENTS - AFFIRMATIVE COVENANTS

The Legal Basis

Although an English court, in Haywood v. Brunswick Building Society, 8 Q.B.D. 403 (1881) said equity must follow the law and refused to enforce an affirmative covenant, it has been noted that the relief sought in Haywood was a mandatory injunction to compel the repair of a building and that the court merely refused to make the owner "put his hand in his pocket." Iowa cannot be said to have adopted the view that affirmative covenants can not be enforced, even though other states, perhaps including Minnesota (Kettle River Ry. Co. v. Eastern Ry. Co., 41 Minn. 461, 43 N.W. 469 (1889) might have done so. See Lloyd, Enforcement of Affirmative Agreements Respecting the Use of Land, 14 Va. L. Rev. 419 (1928). The leading Iowa case, which discusses the requirements of Spencer's case fully, is Sexaur v. Wilson, 136 Ia. 357, 113 N.W. 941 (1907), where a covenant to repair a fence was enforced by a judgment against a grantee of the original promissor. (The Iowa Supreme Court reversed the trial court's judgment against the original promissor when it concluded that the covenant ran against the grantee, thus there is authority that affirmative covenants will be shifted onto the grantee by a conveyance and that the prior owner will be released.)

But probably the most important Iowa case, not for its holding, but its obvious implications is Phillips v. Smith, 240 Ia. 863, 38 N.W.2d 87 (1949) where the Iowa Court cited with approval Neponsit Property Owners Assn., Inc. v. Emigrant Industrial Sav. Bk., 278 N.Y. 248, 15 N.E.2d 793, 118 A.L.R. 973 (1938) stating that "We think the provision that the lot owner will pay the resort owner $6 per year for supervision and maintenance of grounds was, as stated therein, a covenant running with the land."

Even though the court declined to enforce the assessment because there was no service rendered, the implication is that there would have been a lien for the services had they been rendered. If the holding of Sexaur were applied, the owner would be subject to a personal judgment that was secured by a lien on the servient lot.

The approval of Neponsit has other implications, especially the fact that in Neponsit a property owners association enforced such a claim, that is the right to enforce the claim was given to an association that held the right in gross (as distinguished from giving it to another property owner). The enforcement of assessments by a property owners association has been upheld in Illinois, Merrionette Manor Homes Imp. Assn v. Heda, 11 Ill. App.2d 186, 136 N.E.2d 556 (1956) and there is every reason for Iowa to do the same since that is what Phillips v. Smith implies. This makes good sense. If an association is working, and if the developer had enough foresight to set up the machinery for the home owner's association (or at least put all purchasers on notice of the plan to create a home owners association) before the sale of any lots, the court should enforce the plan.

In addition to legal reasons (meeting the notice requirement of Tulk v. Moxhay) providing for the collection of assessments in advance of the first sale makes sense because mediational enforcement is made far easier in situations where there are explicit directions concerning land use and where these are explained to affected owners who deviate from the common scheme. Asher described the effectiveness of this mediation and adjustment by the association which he remarks is more effective in enforcement than court sanctions that would be slow and uncertain at best. Thus the hand-book given property owners by a developer may lead to effective compliance even though it could be urged that such restrictions and explanations are

not effective as notice since they were not recorded. (Asher cited in the Home Ass'n. Handbook, Urban Law Institute, T.B. 50) And having an association do the mediation is better than casting the burden on a lot owner or owners which creates bitter personal feelings.

Priority of Mortgages over Lien for Assesments

> Section ___. Subordination of assessment to mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

In the absence of some provision like that set out above, the imposition of a charge (See Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956)) for maintenance by covenants will be likely to result in the lien for the assessments being held superior to any mortgage that is subsequent to the recording of the covenants. In Prudential Insurance Co. v. Wetzel, 212 Wis. 700, 248 N.W. 791 (1933) the Wisconsin Supreme Court held that an assessment provided for in a 1919 set of covenants was superior to a December 1927 mortgage. The court stressed that the 1927 mortgage was chargable with notice of the 1919 agreement creating the lien, and accordingly took subject to the lien or charge.

Of course, a mortgage lender might well prefer to have the option to pay the maintenance assessments and have that payment secured by the mortgage. (On the question of whether such advances might be covered by FHA insurance coverage see Sec. 105(a)(1), Housing Act 1964, 79 Stat. 504 (1965), amending the National Housing Act, Sec. 204 (a), 12 U.S.C. Sec. 1710(a): F.C.A. 12 Sec. 1710(a).

Enforcement of Assessments Against Homesteads

Almost every lot sold subject to restrictive covenants seems likely to be a homestead. Can the assessments made under covenants be enforced against a homestead under 561.21 of the Iowa Code, which provides:

> 561.21 Debts for which homestead liable
>
> The homestead may be sold to satisfy debts of each of the following classes:
>
> 1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.
>
> 2. Those created by written contract by the persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledged by the same contract for the payment of the debt.
>
> 3. Those incurred for work done or materials furnished exclusively for the improvement of the homestead.
>
> 4. If there is no survivor or issue, for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead.

While the maintenance assessments may fit under Section 3, by arguing that work done on roads in a subdivision would by stretching the benefit to the homestead (note that it would touch and concern the land, Phillips), be superior to the homestead claim. And, if the implications of Sexaur v. Wilson that acceptance of a deed poll is the same as signing, it is possible the assessment might be superior to the homestead under Section 2. However, the idea that the covenant is an equitable charge (Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956)), which the homeowner takes subject to, as in Wetzel, would be the most likely grounds for a holding that assessments would be enforceable against a homestead.

DURATION

Stated time and provisions for extension

A stated time for the expiration of covenants has made the enforcement of such restrictions during the period easier, see Beeler Development Co. v. Dickens, 254 Ia. 1029, 120 N.W.2d 414 (1963), but the expiration of the stated time may leave owners in an awkward position (the time for expiration where the deed refer to a period of years from the date of the deed rather than giving a calander date is discussed in 56 Mich. 1. Rev. (1958) which collects cases that use the date of the first such deed on the theory that the restrictions were mutual from that date, as well as conflicting cases.)

It is more likely that the restrictions will provide for the extension past a stated time "unless" a stated percentage of the landowners vote to remove the restrictions. The delay before the covenants can be removed by consent distinguishes such a power from a reservation of a power to modify from the outset, and should not affect the right to enforce the restrictions during the stated period, but, as suggested above, may contribute to stronger enforcement.

The failure of the plan - what constitutes changed conditions and what are only trivial changes that will not bar enforcement

The changed circumstances that bar enforcement of a restrictive covenant are those which signal the failure of the plan. The situations, which give rise to litigation have been characterized, however, in two sets of problems. The first concern changes within the affected area, and these cases involve something like acquiesence or estoppel in that variations within the governed area are cited to say that the objectors

are barred because of the changes which have taken place without the enforcement of the plan. See, Gilliland v. Leiter, 242 Iowa 497, 47 N.W.2d 742 (1951) where widespread nonobservance of setback requirements was relied on to permit the defendant to build closer to the street than the 40 foot building line as others had.

The second, and more difficult problem concerns changes without the restricted area. Here there is often no change that can be cited as an acquiescence by the objector, the changes have been made by adjacent landowners, landowners that are free to act as they see fit. Where changed circumstances outside the affected area are cited to bar the enforcement of a plan within a restricted area the doctrine must be more a balancing of equities, the outside acts being cited to show that there will be little or no damage to the actor seeking to free his land for other uses. See annotation, Change of Neighborhood, 4 A.L.R. 2d 1111 (1949); Cowling v. Colligan, 312 S.W.2d 943, and especially Down v. Kroeger, 200 Cal. 743, 254 P. 1101 (1967). Also see Enforcement of Restrictive Covenants, Note 40, 9 Drake L. Rev. 133 at 140, which states that in Burgess v. Magarian, 214 Iowa 694, 243 N.W. 356 (1932), the defendants desired to construct a service station on a corner lot in a subdivision restricted to residences. A service station had been constructed diagonally across from the proposed station, but the existing station was outside the restricted area. It was held that this was not a sufficient change to justify refusing to enforce the restrictions. Baker v. Smith, 242 Iowa 606, 47 N.W.2d 810 (1951) was similar in that changes without the restricted area were not sufficient to justify termination of the restrictions. And in Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956) the degree of outside change was conceded to have reduced the desirability of the restricted area as residential but the showing of change was held to be insufficient.

Trivial Changes

Beeler Development Co. v. Dickens, 254 Ia. 1029, 120 N.W.2d 414 (1963) said that taking 6.5 feet off the side of one lot and adding it to another in the subdivision was "too slight" a violation of a restriction against subdivision of platted lots to operate as a waiver of the right to enforce the restriction. Similarly Thodos v. Shirk, 248 Ia. 172, 79 N.W.2d 733 (1956) characterized raising dogs and renting rooms as trivial, or temporary, changes that would not warrent a finding that the conditions had changed so that the restrictions could not be enforced, distinguishing carefully those permanent violations such as architectural changes which are more permanent and therefore more serious, for example the erection of a gas station. And it has been held in another state that the acquiesence of lot owners in the erection of a church in a residential only section (most states will enforce restrictive covenants against the erection of a church in a residential only area even though there is disagreement about the enforcing of zoning restriction against churches) will not operate as a waiver of the restrictions and that they can be enforced against commercial uses. Mechling v. Dawson, 234 Ky. 318, 28 S.W.2d 18.

The violation of a setback requirement by many lot owners in a subdivision will, however, bar the enforcement of the restriction against a lot owner who seeks to build in conformity with the existing scheme instead of in compliance with the restrictions state in the declaration of covenants. See Gilliland, supra, and Duration of Restrictive Covenants, 1 Drake L. Rev. 14.

PUBLIC ACTIONS

The twenty-one year cut off of Section 614.24

> 614.24 Reversions or use restrictions on land--preservation
> No action based upon any claim arising or existing by reason of the provisions of any deed or conveyance or contract or will reserving or providing for any reversion, reverted interests or use restrictions in and to the land therein described shall be maintained either at law or in equity in any court to recover real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession after twenty-one years from the recording of such deed of conveyance or contract or after twenty-one years from the admission of said will to probate unless the claimant shall, by himself, or by his attorney or agent, or if he is a minor or under legal disability, by his guardian, trustee, or either parent or next friend, shall file a verified claim with the recorder of the county wherein said real estate is located within said twenty-one year period. In the event said deed was recorded or will was admitted to probate more than twenty years prior to July 4, 1965, then said claim may be filed on or before one year after July 4, 1965. Such claims shall set forth the nature thereof, also the time and manner in which such interest was acquired. For the purposes of this section, the claimamt shall be any person or persons claiming any interst in and to said land or in and to such reversion, reverter interest or use restriction, whether the same is a present interest or an interest which would come into existence if the happening or contingency provided in said deed or will were to happen at once. Said claimant further shall include any member of a class of persons entitled to or claiming such rights or interests. Added Acts 1965 (61 G.A.) ch. 428, § 1.

Under this statute a claimant must file his claim and it will, under 614.18 be indexed under the description of the real estate in the "claimant's book." Whether this is an introduction of a tract index and is an improvement over the usual grantor-grantee index is beyond the scope of our present purposes, see the note in 47 Iowa L. Rev. 389 (1962) discussing the marketable title act. However, it puts a power to perpetuate the restrictions in the hands of any affected person, therefore, it seems reasonable to conclude that clauses which perpetuate restriction, unless a certain percent of affected owners act to terminate them, are valid.

The Conflict with Zoning

Although Burgess v. Magarian, 214 Ia. 694, 243 N.W.356 (1932) involved property zoned commercial by the City of Des Moines, the applicable ordinance expressly provided that it was "not intended ... to interfere with or abrogate or annul any easements, covenants or other agreements between parties." Therefore the enforcement of the restriction was not avoided by the ordinance, and the problem of a real conflict remains open. The probable future of this conflict is spelled out in Berger, Conflicts Between Zoning Ordinances and Restrictive Covenants; A Problem in Land Use Policy, 43 Neb. L. Rev. 449 (1964) See Grubel v. MacLaughlin, 286 F. Supp. 24 (1968) where an area was restricted by covenants to residential use but was subsequently zoned commercial only by the Virgin Islands Zoning Board and a Federal District Court held the zoning action was neither arbitrary or confiscatory and thus prevailed over the private covenants.

Compensation for others in the subdivision when restricted property is taken for uses inconsistent with covenants.

A change in use effected through condemnation is unlike a zoning change. In a zoning case the government relies upon the police power, but when a government condemns property for uses inconsistent with restrictive covenants, the better view would give others a right to damages. In United States v. Certain Lands in the City of Augusta, 220 F. Supp. 696 (1963) the court, applying Maine law, gave holders of restrictive covenants a right to compensation when a restricted lot was taken and spelled out the measure of damages. (The measure of damages can either be separate damage of each owner, although there is authority that affected owners can merely participate in the sum the condemning authority is obligated to pay for the single tract.) The conflict of authorities over such a right do not permit a firm answer about these questions, see Comment, 53 Mich. L. Rev. 451 (1955);

Aigler, Measure of Compensation for Extinguishment of Easements by Condemnation, 1945 Wis. L. Rev. 5; City of Houston v. Wynne, 279 S.W. 916 (1926); Wells v. City of Dunbar, 142 W. Va. 332, 95 S.E.2d 457 (1956).

Tax deeds and restrictive covenants.

See Polk County v. Basham 243 Iowa 225 (1943) which quotes § 448.3 of the present Iowa Code, which says tax sales are subject to restrictive covenants resulting from conveyance in chain of title to former owners.

FEE $43.00

JOHN E. O'NEILL
RECORDER
JOHNSON CO., IOWA

RESTRICTIVE COVENANTS OF GLENVIEW KNOLL

OF

RIVER HEIGHTS

The following restrictions and reservations are made a part of the plat and survey known as Glenview Knoll, a subdivision in West Half, Northeast Quarter of Section 28, Township 80 North, Range 6 West of the 5th P.M.; according to the plat thereof recorded in Book 7, Page 75 of the Plat Records of Johnson County, Iowa, and shall be binding upon all present and future owners of each and every lot and parcel of ground in said subdivision according to the terms herein specified as covenants running with the land and with the same force and effect as if contained in each subsequent conveyance of said lots or parcels:

1. All lots described herein shall be known, described and used solely as residential lots, and no structure shall be erected on any residential building lot other than one detached single family dwelling not to exceed two stories in height and a one or two car garage.

2. No buildings shall be erected on Lots 1, 2, 3 and 11 nearer than 40 feet to the highway designated as Bane Road on the west side of said lots, nor shall any building be erected on lots 6, 7 and 10 nearer than 25 feet to the front lot line; on lots 3, 4, 8 and 9 nearer than 30 feet to the front lot line; on lots 1 and 5 nearer than 35 feet to the front lot line and lots 2 and 11 nearer than 40 feet to the front lot line, nor shall any building be erected nearer to the side lot line of any lot than that number of feet contained in 10 percent of the total width of such lot.

3. No residential lot shall be re-subdivided.

4. No trailer, basement, tent, shack, garage, barn or other out building erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted, nor shall a business of any kind be conducted in any residence.

5. No building shall be erected on any lot unless the design and location is in harmony with existing structures and locations. Plans of proposed houses and their locations on the site shall be submitted to River Heights, Inc. for its written approval before commencement of construction.

This restriction is to apply to all present and future home owners in this area. In any case no dwelling shall be permitted on any lot described herein, having a ground floor square foot living area of less than 1,000 square feet in the case of one-story structure nor less than 800 square feet in the case of a one and one-half or two story structure. Garages and breezeways shall not be considered dwelling with living area above. Drives into all lots shall be from the private roadway except as to Lot 11 if permission for entry from the highway is obtainable.

6. Title holder of each lot, vacant or improved, shall keep his lot or lots free of weeds and debris and agrees to take all steps necessary to control erosion on his lot or lots. If in the opinion of River Heights Corporation, with the concurrence of a majority of the River Heights Property and Road Owners Association members such erosion is not properly controlled corrective action may be taken by such corporation and the costs thereof assessed against the property owner.

7. No obnoxious or offensive trade shall be carried on upon any lot nor shall anything be done thereon which may be or become any annoyance or nuisance to the neighborhood and no cottomwood or elm trees shall be planted on any lot or other area in said Glenview Knoll.

8. Construction of any residences shall be completed within one year from the date said construction is begun and excess dirt from excavation shall be hauled away or used only as a part of a graded landscape plan.

9. A perpetual easement is reserved over the front five feet of all lots for utility installation and maintenance and over the West 10 feet of lots 1, 2, 3 and 11 for a water line easement and over those areas between lots 6, 7, 9 and 10 as shown on said plat.

10. Title holder agrees to be bound by the provisions contained in a document designated "Instructions To Owners & Contractors" furnished at the time of execution of a contract or purchase, which provisions apply when a home is to be constructed on a lot.

11. Title holder agrees to restrain and keep from running at large all dogs between May 1 and October 1 of each year.

12. Title holders of each lot attached to and using the water system supplying water to the residents of Glenview Knoll shall pay an equal pro-rata share of the costs of operation, maintenance and repair of such water system and for such

purpose may be assessed by River Heights, Incorporated, or its successors or assigns operating such water system in an amount equal to the pro-rata share of such costs.

13. Title holders of each lot in this subdivision shall also pay an equal pro-rata share of the costs of maintenance and repair of the private roadways into such area including the drainage systems and for such purpose may be assessed by River Heights, Incorporated, or its successors or assigns, the pro-rata share of such costs.

14. The Recreation Access Areas set out in the plat of Glenview Knoll and all additions have been for the specific purpose of aiding in a planned beautification and recreation program for all of the residents of River Heights. Upon the sale of all lots in the River Heights area by the developers of said area, River Heights, Incorporated, the beneficial interest of such easements shall inure to the sole benefit of all the residents of River Heights.

15. Owners shall be responsible for any costs in connection with the carrying of natural gas to their residences and if electrical or telephone service is brought into the area underground, the owner of each lot agrees to continue such underground service into their properties at their own expense.

16. Subject to Covenant 14, these covenants are to run with the land and shall be binding on all parties and all persons claiming under them until 1997 at which time said covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then owners of the lots, it is agreed to change the said covenants in whole or in part.

17. If the parties hereto, or any of them or their heirs or assigns shall violate or attempt to violate any of the covenants or Restrictions herein before 1997 it shall be lawful for any other person or persons owning any other lots in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction and either to prevent him or them from so doing or to recover damages or other dues for such violation.

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

19. For purposes of construction, front lot line as used in enumerated covenants 2 and 9 shall mean that side of the lot which fronts on the private road area extending into this subdivision.

The above and foregoing restrictive covenants and restrictions are for the mutual benefit of all persons who shall acquire any of the lots in Glenview Knoll Subdivision and are imposed by the undersigned, River Heights, Incorporated, owner of all the lots in said subdivision.

IN WITNESS WHEREOF, we have hereunto set our hands at Iowa City, Johnson County, Iowa, this 28th day of June, 1967.

RIVER HEIGHTS, INCORPORATED

By J. J. Swaner
J. J. Swaner, President

(NO CORPORATE SEAL)

By Robert G. Stevenson
Robert G. Stevenson, Secretary

OWNER AND DEVELOPER

STATE OF IOWA)
) ss:
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this 28th day of June, 1967, before me a Notary Public in and for Johnson County, Iowa, personally appeared J. J. Swaner and Robert G. Stevenson, to me personally known, who being by me duly sworn did say that they are the President and Secretary respectively of River Heights, Incorporated; that the seal affixed to said instrument is the seal of said Corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said J. J. Swaner and Robert G. Stevenson acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

WITNESS MY HAND and seal at Iowa City, Johnson County, Iowa, this 28th day of June, 1967.

William M Tucker
Notary Public in and for Johnson County

(NOTARIAL SEAL)

My Commission Expires:

PROTECTIVE COVENANTS

FOR DEVELOPMENTS OF SINGLE-FAMILY DETACHED DWELLINGS

This information is offered as a general guide to sponsors who desire to obtain for individual properties maximum protection against inharmonious land uses.

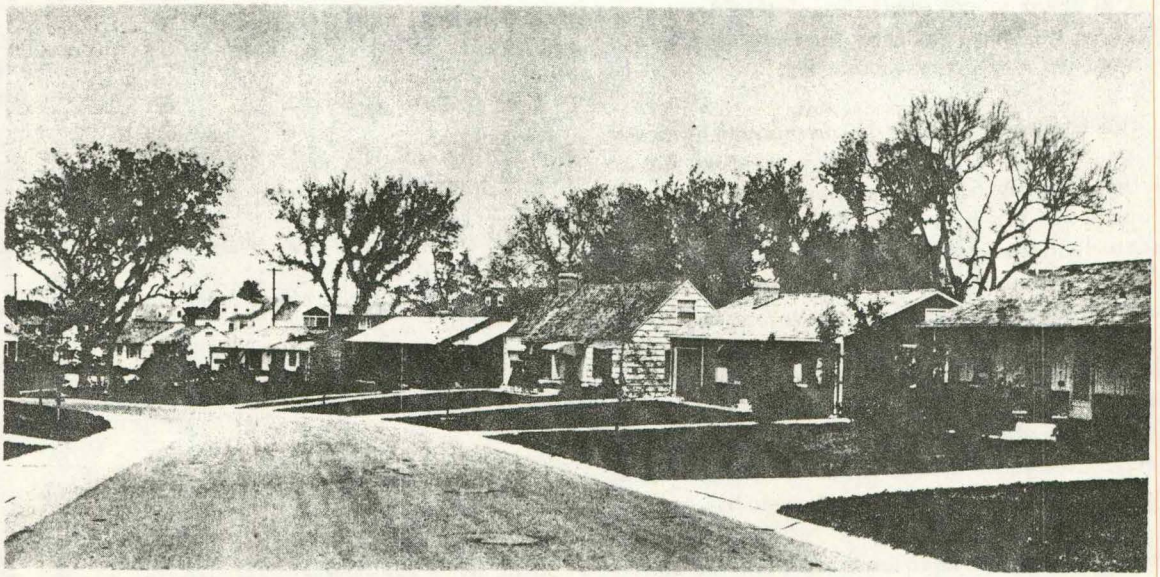
Protective covenants are essential to the sound development of proposed residential areas. Covenants properly prepared and legally sound contribute to the establishment of the character of a neighborhood and to the maintenance of value levels through the regulation of type, size and placement of buildings, lot sizes, reservation of easements, and prohibition of nuisances and other land uses that might affect the desirability of a residential area.

They should provide enforcement provisions, be recorded in public land records and be made superior to the lien of any mortgage that may be on record prior to the recording of the protective covenants.

Protective covenants regulating the use of land represent an express agreement between the subdivider and the lot purchasers. Through this agreement all parties seek to gain certain advantages, the subdivider to aid his land development program and the purchasers to protect their investments. Strict enforcement of suitable protective covenants gives best assurance to each lot owner that no other lot owners within the protected area can use property in a way that will destroy values, lower the character of the neighborhood, or create a nuisance.

In zoned communities protective covenants are an important supplementary aid in maintaining neighborhood character and values. The extent of zoning protection is limited to governmental exercise of police powers of maintaining and promoting public health, safety, and welfare. Protective covenants being agreements between private parties can go much further in meeting the needs of a particular neighborhood and in providing maximum possible protection.

Development sponsors should have their protective covenants drafted by legal counsel. The preliminary draft of the covenants should be submit-



Attractive developments are not assured of continuing appeal and stability unless protective covenants prevent inharmonious or injurious future use of individual properties

ted to FHA for comment at the same time that the sponsor presents his preliminary subdivision plan to FHA for comment.

The proper form of protective covenants varies in the different states. A generally acceptable and enforceable form is a written declaration by the owner of the entire tract which is recorded in land office records. Frequently in smaller complete developments, the covenants and conditions are stated on the recorded map. When a separate declaration is made it is good practice to record it simultaneously with the recordation of the subdivision map.

The written declaration of covenants is a preferable form for establishing a uniform scheme for the development and protection of the entire area. Piecemeal control by inserting covenants in individual deeds at the time properties are conveyed is not conducive to harmonious development.

DETAIL COMMENTS

AREA OF APPLICATION

In small developments complete protective covenants usually should be applied to the entire development area and, in addition, to any adjacent area which would possibly affect the properties within the development if put to a nonconforming use. Adjoining or nearby lands should be made subject at least to covenants regulating land use and type of building, lot size, and prohibition of nuisances and temporary structures.

For large tracts of land to be developed by sections it is desirable to establish protective covenants over the entire area in connection with the development of the first section, particularly with respect to land use, type of building, lot size, and prohibition of nuisances and temporary structures. Where only a section of a large development is to be made subject to all covenants, the protection should extend to and include a buffer area immediately adjacent to the section. When subsequent sections of the development are opened, complete protective covenants are extended to new sections and adjoining buffers in the same manner.

Where nonresidential uses such as parks or business are to be provided special covenants applying to specific locations should be included. The degree of the effect upon fully protected properties may then be anticipated.

SAMPLE CLAUSES

PART A. PREAMBLE

(Include the date, purposes, names and addresses of all parties and legal descriptions of all lands involved.)

PART B. AREA OF APPLICATION

B-1. FULLY-PROTECTED RESIDENTIAL AREA. The residential area covenants in Part C in their entirety shall apply to _____
(Include entire subdivision or suitable portion of it. Include any adjoining land in other ownership to which all residential covenants are to apply.)

B-2. PARTIALLY-PROTECTED ADJOINING RESIDENTIAL AREA. The residential area covenants numbered _____ *and* _____ *in Part C shall apply to* _____

B-3. PARK AREA. The park area covenants in Part D shall apply to _____

B-4. CIVIC AREA. The civic area covenants in Part E shall apply to _____
(Areas, if any, for churches, community buildings, schools, etc.)

B-5. BUSINESS AREA. The business area covenants in Part F shall apply to _____

PART C. RESIDENTIAL AREA COVENANTS

C-1. LAND USE AND BUILDING TYPE. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage for not more than two cars.

ARCHITECTURAL CONTROL

This is best accomplished by establishing an architectural control committee to review plans and specifications of buildings, fences, walls and planting as to location and exterior design. The covenant should apply both to new construction and to future alterations.

DWELLING QUALITY AND SIZE

A protective covenant establishing a minimum dwelling cost or quality and size is important in maintaining property values because protection is afforded to desirable dwellings from the encroachment of buildings below the standards of residential character originally established.

BUILDING LOCATION

The most satisfactory method of regulating the depth of front yards is by reference to building setback lines shown on the recorded plat as it is sometimes desirable to vary the setback because of topographic conditions.

On corner lots there should be little if any difference in setback distances from both streets. This prevents projection of the side or rear of a corner dwelling beyond the building lines of adjacent dwellings.

A minimum side yard regulation for principal buildings is essential to provide necessary light, air and privacy. Occasionally this covenant also establishes a minimum aggregate total of both side yards.

Generally, dwellings at rear of lots have had an adverse effect on the successful use of the remaining land in a subdivision and in maintaining its highest desirable value.

C-2. ARCHITECTURAL CONTROL. No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved. Approval shall be as provided in part G.

C-3. DWELLING COST, QUALITY AND SIZE. No dwelling shall be permitted on any lot at a cost of less than $_____ based upon cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall be not less than_____ square feet for a one-story dwelling, nor less than_____ square feet for a dwelling of more than one story.

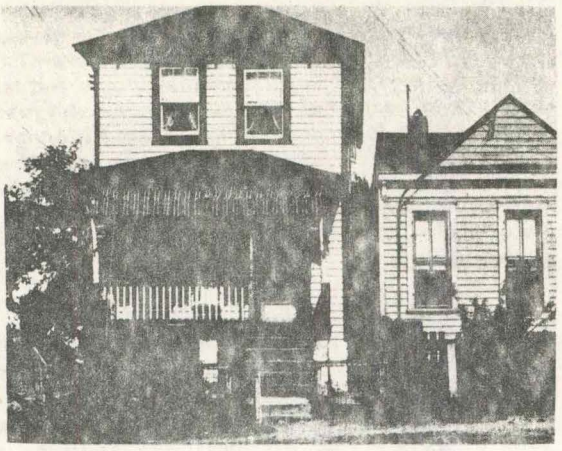
C-4. BUILDING LOCATION.

(a) No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. In any event no building shall be located on any lot nearer than _____ feet to the front lot line, or nearer than_____ feet to any side street line, except that on all lots abutting _____ (collector and arterial streets) *no building shall be located nearer than_____ and_____ feet respectively to the street property lines of said streets.*

(b) No building shall be located nearer than_____ feet to an interior lot line, except that no side yard shall be required for a garage or other permitted accessory building located_____ feet or more from the minimum building setback line. No dwelling shall be located on any interior lot nearer than_____ feet to the rear lot line.

(c) For the purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building, on a lot to encroach upon another lot.

(d) (Include any exceptions by lot number and permitted minimum.)



Architectural design, construction quality, side-yard dimensions and fences should be controlled to prevent neighborhood blight.

LOT AREA AND WIDTH

Unless the protective covenants specifically prohibit the resubdivision of lots, which is not considered advisable, as some allowance should be made for adjustment of location of buildings to fit exceptional topographic conditions, a covenant establishing minimum lot area and width should be included. Generally, there is no need of resubdividing if the development plan is properly prepared.

EASEMENTS

It is preferable that electric and telephone pole lines be erected along rear or side lot lines to avoid the unsightly appearance of these utilities with lead-in wires along streets. To provide for immediate or future installation and maintenance, the protective covenants should reserve easements for poles and wires along interior lot lines. Sometimes it is advantageous because of topography or subsurface conditions to also install sewer lines or other utilities along these easements.

NUISANCES

Protective covenants should prohibit trade or business, any activity obnoxious or offensive to residential use, and shacks or other structures for temporary occupancy.

(e) (Use of the following clause permits greater flexibility necessary in controlling house locations on steep topography.)

With written approval of the Architectural Control Committee, a one-story attached garage may be located nearer to a street than above provided, but not nearer than_____feet to any street line, where the natural elevation of the lot along the established minimum building setback line is more than either eight feet above or four feet below the established roadway level along the abutting street and where in the opinion of said committee the location and architectural design of such proposed garage will not detract materially from the appearance and value of other properties. Further-more, under similar conditions and approval, a dwelling may be located nearer to a street than above provided, but not nearer than_____feet to any street line.

C-5. LOT AREA AND WIDTH. No dwelling shall be erected or placed on any lot having a width of less than_____feet at the minimum building setback line nor shall any dwelling be erected or placed on any lot having an area of less than_____ square feet, except that a dwelling may be erected or placed on lots numbered_____ as shown on the recorded plat.

C-6. EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear five feet of each lot. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

C-7. NUISANCES. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

C-8. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

OTHER RESIDENTIAL COVENANTS

While protective covenants on the foregoing subjects usually are included in and are sufficient for most subdivisions, special conditions in some developments necessitate the inclusion of other protective covenants, such as preservation of screen planting, protection of water courses, prohibition against oil drilling or mining operations, installation of individual sewage disposal systems and exclusion of signs.

WATER SUPPLY

The water supply should be capable of providing satisfactory service which will permit the owner full continuous enjoyment at reasonable costs. Usually such service can best be obtained from a public system. However, if no public system is available then consideration should be given to the feasibility of obtaining service from an existing or proposed community system. Only after it has been determined that public or community service is not feasible should consideration be given to the installation of individual water supply system.

SEWAGE DISPOSAL

Each property should be provided with sewage disposal service which will permit the owner to fully enjoy the property without creating a health hazard or public nuisance. Connection to a public system typically can best accomplish these objectives. However, if it is not feasible to obtain sewer service from such a system, consideration should be given to using a community system. Only after it has been established that sewer service from a public or community system is not feasible should an investigation be made to determine if the soil and site conditions will permit the successful use of individual sewage disposal systems.

C-9. SIGNS. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

C-10. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

C-11. LIVESTOCK AND POULTRY. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

C-12. GARBAGE AND REFUSE DISPOSAL. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

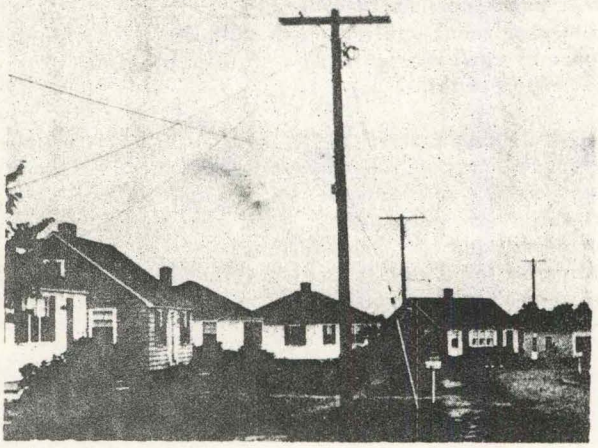
C-13. WATER SUPPLY. No individual water-supply system shall be permitted on any lot unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of _____ (state or local public health authority). *Approval of such system as installed shall be obtained from such authority.*

C-14. SEWAGE DISPOSAL. No individual sewage-disposal system shall be permitted on any lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of _____ (state or local public health authority). *Approval of such system as installed shall be obtained from such authority.*

Covenants should prevent intrusion of business uses which depreciate residential property values.

PROTECTIVE SCREENING

Use of protective screening is necessary in securing a reasonably effective physical barrier between residential properties and adjoining business uses, between arterial streets and lots backing into them, and in minimizing adverse views at block ends. Appropriate use of fences, walls and plant materials, or a combination thereof, generally serve to achieve objectives of protective screening.



Utility lines in streets injure neighborhood appeal. Provide easements along interior lot lines for installation at rear.

C-15. PROTECTIVE SCREENING. Protective screening areas are established as shown on the recorded plat, including a _____ foot strip of land on the residential lots along the property lines of _____
(arterial streets, other streets having adverse influences, business areas, etc.). *Except as otherwise provided herein regarding street intersections under "Sight Distance at Intersections", planting, fences or walls shall be maintained throughout the entire length of such areas by the owner or owners of the lots at their own expense to form an effective screen for the protection of the residential area. No building or structure except a screen fence or wall or utilities or drainage facilities shall be placed or permitted to remain in such areas. No vehicular access over the area shall be permitted except for the purpose of installation and maintenance of screening, utilities and drainage facilities.*

C-16. SLOPE CONTROL AREAS. Slope control areas are reserved as shown on the plan titled "_____", dated "_____", and recorded as a part of these covenants. Affected lots are _____ and _____, as shown on the recorded subdivision plat. Within these slope control areas no structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas of each lot and all improvements in them shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

C-17. SIGHT DISTANCE AT INTERSECTIONS. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

PARK, CIVIC AND BUSINESS AREA COVENANTS

If the subdivision plan includes a park or recreation area, business site, sites for social or civic activities, or other nonresidential uses, covenants should be included at least for front and side yards, height of buildings, and land uses.

Once the need for a local shopping area has been determined to be economically justified, particularly where the small local shopping area is concerned, it may become a great asset or a blight for its neighborhood. Experience indicates that business area covenants help assure success of the shopping center and the protection of the neighborhood.

A minimum-size neighborhood shopping center typically contains a food market, a drug store, variety store and several small shops and offices. A filling station may or may not be appropriate for the small center. Large shopping centers need covenants permitting two-story buildings, theatres, gasoline stations and other appropriate uses.

Covenants for all shopping centers abutting residential areas should contain appropriate provisions regulating types of business uses, building locations and size, architectural control, amount of parking, signs and other features related to safety and neighborhood protection. Covenants for a business area should be an integral part of the legal instrument which contains the covenants for the residential areas in a development.

ARCHITECTURAL CONTROL COMMITTEE

Initially the committee is selected by the developer, but as the development nears completion and the builder's interests lessen the membership of the committee should be selected by property owners enjoying the protection of the covenants. Experience has indicated that the control of this function usually should be retained by the developer through membership appointed by him until the development is substantially built up. It is usually advisable for the developer to designate a membership of disinterested persons including an architect and possibly a landscape architect to pass on the technical as well as aesthetic qualities of the plans.

C-18. LAND NEAR PARKS AND WATER COURSES. No building shall be placed nor shall any material or refuse be placed or stored on any lot within 20 feet of the property line of any park or edge of any open water course, except that clean fill may be placed nearer provided that the natural water course is not altered or blocked by such fill.

PART D. PARK AREA COVENANTS

(Include appropriate covenants for any designated area.)

PART E. CIVIC AREA COVENANTS

(Include appropriate covenants for any designated area.)

PART F. BUSINESS AREA COVENANTS

(Include appropriate covenants for any designated area.)

PART G. ARCHITECTURAL CONTROL COMMITTEE

*G-1. MEMBERSHIP. The Architectural Control Committee is composed of*_____
(names and addresses of three members). *A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties.*

In developments where adequate public maintenance of park areas, streets or other facilities is not available, it is advisable to establish a property owners' maintenance association or other acceptable community maintenance organization with adequate powers to provide maintenance and to assess the benefiting property owners at a reasonable rate and collect such assessments. Establishment of a property owners' association is also advisable to provide an effective means of obtaining adherence to protective covenants. The architectural control committee may be a part of the association.

G-2. PROCEDURE. The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

GENERAL PROVISIONS

Protective covenants to be effective should run with the land and be binding on all property owners in the protected area. They should be effective for a stipulated time, after which they are to be automatically extended for successive stated periods unless a change is agreed upon by a stipulated proportion of property owners affected by the instrument.

The periods for which covenants are to run without change should be sufficiently long to protect the original investments and permit amortization of the capital. Rights to modify should never be reserved to one individual.

The covenants should contain a general provision for prosecuting any proceedings in law or in equity against violations of any covenant.

PART H. GENERAL PROVISIONS

H-1. TERM. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

H-2. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

H-3. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

PART J. ATTEST

(Include the date and signatures of all parties. Include signatures of prior lien holders to evidence consent to subordination of existing lien to covenants.)

83305-P Rev. 4/59 FHA-Wash., D. C.

FEE 3.50

FILED NO. 330
BOOK 293 PAGE 386
1967 JUN 14 8 AM
JOHN E. O'DELL
RECORDER
JOHNSON CO., IOWA

PROTECTIVE COVENANTS AND RESTRICTIONS OF PART I VILLAGE GREEN ADDITION TO IOWA CITY, IOWA

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, being the owner of all lots in the Addition to Iowa City, Iowa, known as Part I Village Green Addition, the dedication of which addition is recorded in Book 293, page 207, in the office of the County Recorder of Johnson County, Iowa, for the mutual benefits of these persons who may purchase any of the lots in said Part I Village Green Addition now owned by the undersigned, hereby impose the following covenants and restrictions on each lot in said subdivision, and shall be binding upon all the present and future owners on each and every parcel of ground in said subdivision as covenants running with the land, and with such force and effect as if contained in each subsequent conveyance of land.

1. All lots described herein shall be used solely as residential lots, and no structures shall be erected on any residential building lot other than a one family dwelling and car storage facilities. None of the lots described herein shall be used for street purposes.

2. No building shall be erected on any residential building plot nearer than 25 feet to the street nor nearer than 10% of the width of the lot to any side lot line, or, on corner lots no building shall be erected nearer than 25 feet from any lot line that abuts a street within the subdivision.

3. No residential lot shall be re-subdivided into building

plots having less than 6,000 square feet of area nor a residual area of less than 6,000 square feet nor shall any buildings be erected on any residential building plot having an area of less than 6,000 square feet of area.

4. No dwelling erected on any lot described herein shall have a ground floor square foot living area of less than 1,000 square feet in the case of a one-story structure, nor less than 650 feet in the case on a one and one-half story structure. Garages and breezeways shall not be considered to be ground floor living area unless incorporated into the dwelling with living area above. All residential structures shall have a minimum living area of 1,000 feet.

4A. There shall be provided on each building lot sufficient off-street parking area for the parking of six automobiles, which area shall be surfaced.

5. No temporary structure for living quarters shall be erected on any lot described herein and no trailer, basement of an incompleted house, tent, shack, garage, barn or other out building erected in the tract shall at any time be used as residence temporarily or permanently nor shall any residence of a temporary character be permitted.

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

7. Construction of any residence shall be completed within one year from the date said construction is begun.

8. Before construction of any building on any lot in said

Addition shall be commenced, the plans for said building shall be submitted by the owner of any said lot located therein to Iowa City Development Company, Inc. and approved by Iowa City Development Inc. as being in harmony with existing structures in said addition. In the event Iowa City Development Company, Inc. and the owner are unable to agree regarding approval of the owner's plans, the owner shall obtain the services of an architect who shall meet with the Iowa City Development Company, Inc. or an architect designated by it, in an attempt to resolve any difference regardin said plans.

The following procedure will be followed by the owner in obtaining approval of said owner's building plans:

(a) Owner will submit a copy of the plans for the building which the owner intends to construct, as well as a plot plan demonstrating the grading and drainage which the owner proposes. These plans shall be submitted to Iowa City Development Company, Inc. prior to completing negotiations with the owner's contractor and no less than five days before the owner's contractor begins construction.

(b) When the plans submitted by the owner have been approved by Iowa City Development Company, Inc., they shall execute and deliver to the owner a written approval thereof and the owner shall not thereafter deviate from said plans, if said deviation affects the appearance of the exterior. A copy of the plans as approved shall remain on file with Iowa City Development Company, Inc. This procedure shall not obviate the necessity of complying with

ordinances of the City of Iowa City with reference to obtaining the building permit.

IOWA CITY DEVELOPMENT COMPANY,

By George Nagle Jr.
George Nagle, Jr., President

By Richard L. McCreedy
Richard L. McCreedy, Secretary

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

On this 10th day of January, 1967, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared George Nagle Jr. and Richard L. McCreedy, to me personally known, who, being by me duly sworn, did say that they are the president and secretary respectively of said corporation executing the within and foregoing instrument, that the seal affixed thereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said George Nagle, Jr. and Richard L. McCreedy 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
Johnson County, Iowa.
Edward W. Lucas

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SUGGESTED LEGAL DOCUMENTS FOR PLANNED-UNIT DEVELOPMENTS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

VETERANS ADMINISTRATION

FHA Form 1400
VA Form 26-8200
Revised April 1965

INSTRUCTIONS

The Federal Housing Administration and the Veterans Administration suggest the use of the attached legal documents for planned-unit developments. However, since the documents were prepared for nationwide use, they should be carefully examined for conformance with local laws. It is important that these forms be tailored to fit the needs of the particular development, and therefore a developer or his attorney should not hesitate to make appropriate changes. The pages are not bound so that this may be accomplished and the blank spaces may be completed.

Your attention is directed to Land Planning Bulletin No. 6 and Data Sheet 40, which are printed by the Federal Housing Administration and are available at local insuring offices.

If multifamily structures are to be built, the documents will have to be amended as they are prepared for single-family dwellings.

The following comments are made to assist in adapting these forms for use:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

First Whereas Clause: The legal description must include all common areas which will be conveyed to the homeowners' association as well as individual lots.

Article II, Section 2: This section is included to provide for annexation in staged developments, as explained in sections 4.36 and 4.37 of FHA Land Planning Bulletin No. 6, and should be deleted if a staged development is not contemplated. The general plan should contain: (1) a general indication of size and location of additional development stages and proposed land uses in each; (2) the approximate size and location of common properties proposed for each stage; (3) the general nature of proposed common facilities and improvements; and (4) a statement that the proposed additions, if made, will become subject to assessment for their just share of Association expenses. Unless otherwise stated therein, such general plan shall not bind the developer to make the proposed additions or to adhere to the plan in any subsequent development. The general plan shall contain a statement to this effect. However, if the developer does proceed with development, as provided in this section, he must then submit detailed plans for the land to be developed.

If it is anticipated that no applications will be made for FHA mortgage insurance, Federal Housing Administration should be deleted. If it is anticipated that no applications will be made for VA loan guarantee, Veterans Administration should be deleted. If submissions will be made to both agencies, no deletion is necessary.

Article IV: The date on which Class B membership will convert to Class A membership should correspond with the estimated time required to complete and market seventy-five percent (75%) of the houses in the planned-unit development.

Article V, Sections 1(f) and 4: These sections should be employed in those cases where the land planning makes it inadvisable or impracticable to provide a parking space or spaces for the homeowner on his own lot as, for example, with some townhouse-on-the-green plans.

Article VI, Section 1: This section is intended to make the obligation to pay assessments a covenant running with the land and binding on every owner. If additional or different phraseology is required by local law to produce this effect, appropriate changes should be made.

Article VI, Section 3(b): The method of computation of the maximum amount to which the assessments may be increased without a vote of the membership in conformance with the Consumer Price Index is set forth in Article XII, Section 4, of the By-Laws. For this purpose, developers and homeowners' associations should use "Consumer Price Index - United States City Average for Urban Wage Earners and Clerical Workers - All Items". The index is available on request from the U. S. Department of Labor, Bureau of Labor Statistics, Washington, D. C., 20210.

The United States City average numerical rating for the month of July 1964, was 108.3. This figure should be entered in the blank space in section 4 in all legal documents adopted up to December 31, 1965. For legal documents adopted in 1966, the numerical rating for July 1965, will be used.

Example No. 1:

A PUD is formed in September 1965. The base rating is 108.3. The maximum annual assessment would be inserted in the appropriate space. Let us assume an assessment of $125. The directors, at a meeting held in November 1967, decide to increase the assessment for the year 1968 above the amount of the stated maximum annual assessment pursuant to this section. For the purposes of this example, assume that the numerical rating for the month of July 1967 is 109.5.

The computation is as follows:

July 1967 rating	109.5%
Base rating	+ 108.3%
Adjustment percentage	101.11%
Maximum annual assessment	$125.00
Adjustment percentage	x 101.11%
New maximum annual assessment	$126.39

The adjustment percentage is applied to the original maximum annual assessment, so that the maximum annual assessment effective January 1968 is $126.39.

Example No. 2:

In the same PUD, the directors, at a meeting held in November 1968, decide to increase again the assessment pursuant to this section. Let us assume that the numerical rating for the month of July 1968, is 109.9.

The computation is as follows:

July 1968 rating	109.9%
Base rating	+ 108.3%
Adjustment percentage	101.48%
Maximum annual assessment	$125.00
Adjustment percentage	x 101.48%
New maximum annual assessment	$126.85

The adjustment percentage is applied to the original maximum annual assessment, so that the maximum annual assessment effective January 1969 is $126.85.

Article VI, Section 8: The rate of interest on delinquent assessments should correspond to the current FHA/VA interest rate.

Article IX: This covenant provides for exterior maintenance by the Association upon each lot subject to assessments. If there are dwellings on some lots which require far more maintenance than dwellings on other lots because of greater exterior exposures, the covenants could be changed to provide for a different basis upon which assessment would be calculated. If there are exterior features which the Association will not maintain, such as patios or carports, such features may be itemized under this Article following the words "glass surfaces". In no event should the Association provide interior maintenance of structures not owned by the Association.

If it is contemplated that the homeowners will provide their own exterior maintenance, the following paragraph may be substituted:

"In the event an owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject."

Article X: All use restrictions should be included in this Article.

Article XI: Provisions should be made in this Article for easements for public utilities.

Article XII, Section 4: If it is anticipated that no applications will be made for FHA mortgage insurance, Federal Housing Administration should be deleted. If it is anticipated that no applications will be made for VA loan guarantee, Veterans Administration should be deleted. If submissions will be made to both agencies, no deletion is necessary.

ARTICLES OF INCORPORATION

Article IV: The legal description must be the same as that set forth in the first Whereas clause of the Declaration of Covenants, Conditions and Restrictions.

Article VI: The date on which Class B membership will convert to Class A membership should correspond with the estimated time required to complete and market seventy-five percent (75%) of the houses in the planned-unit development.

Article VIII: The amount to be inserted in the blank space should be determined by negotiation between the developer and the field office of the Veterans Administration or the Federal Housing Administration. It should be approximately 150 percent of the estimated annual assessment.

Article IX, Section 2: This section is included to provide for annexation in staged developments, as explained in sections 4.36 and 4.37 of FHA Land Planning Bulletin No. 6, and should be deleted if a staged development is not contemplated. See comment to Article II, Section 2 of the Declaration of Covenants, Conditions and Restrictions.

Article XIII: In some jurisdictions state laws provide that non-profit corporations may be dissolved only with the assent of seventy-five percent (75%) of the membership. This Article should be altered to conform to local law.

Article XVII: If it is anticipated that no applications will be made for FHA mortgage insurance, Federal Housing Administration should be deleted. If it is anticipated that no applications will be made for VA loan guarantee, Veterans Administration should be deleted. If submissions will be made to both agencies, no deletion is necessary.

BY-LAWS

Article VII, Section 2: If cumulative voting is desired and is permitted by local law, provisions for such voting should be made in this section.

Article XII, Section 1: This section should conform with Article VI, Section 1 of the Declaration of Covenants, Conditions and Restrictions.

Article XII, Section 4: See comments under Article VI, Section 3(b) of the Declaration of Covenants, Conditions and Restrictions relating to the method of computation.

Article XII, Section 9: The rate of interest on delinquent assessments should correspond to the current FHA/VA interest rate.

Article XV, Section 1: If it is anticipated that no applications will be made for FHA mortgage insurance, Federal Housing Administration should be deleted. If it is anticipated that no applications will be made for VA loan guarantee, Veterans Administration should be deleted. If submissions will be made to both agencies, no deletion is necessary.

DEDICATION OF COMMON AREAS

There is attached a suggested form of dedication which may be entered on the plat, one purpose of which is to prevent an implication of dedication to public use.

DEED CLAUSE

There is attached a suggested provision to be included in deeds to the individual lots. This is important in those jurisdictions where land owners take title to the middle of abutting streets, streams, etc.

DEDICATION OF COMMON AREAS

_____(Declarant)

in recording this plat of _____
(name of subdivision)

has designated certain areas of land as _____
(park(s), playground(s), etc.)

_____

intended for use by the homeowners in _____
(name of subdivision)

for recreation and other related activities.

The designated areas are not dedicated hereby for use by the general public but are dedicated to the common use and enjoyment of the homeowners in _____ as more fully pro-
(name of subdivision)

vided in the Declaration of Covenants, Conditions and Restrictions applicable to _____ dated ____
(name of subdivision)

_____, 19____. Said Declaration of Covenants, Conditions and Restrictions is hereby incorporated and made a part of this plat.

February 1965

DEED CLAUSE

The fee title to any lot described as bounded by any street, lane, walkway, park, playground, lake, pond, pool or any other common property which has not been dedicated or accepted by the public and the fee title to any lot shown on the recorded plat of _____ (name of subdivision) as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the _____ Association for the common enjoyment of all of the residents in _____ _____ (name of subdivision).

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by _____

_____, hereinafter referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in _____

_____, County of _____.

State of _____, which is more particularly described as:

(Insert legal description)

FHA Form 1401
VA Form 26-8201

February 1965

AND WHEREAS, Declarant will convey the said properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

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

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to _____ _____, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to _____ _____, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require the assent of two-thirds (2/3) of the Class A members and two-thirds (2/3) of the Class B members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half of the required quorum

of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. If within ____ years of the date of incorporation of this Association, the Declarant should develop additional lands within the area described in Deed Book _____, page _____, of the records of _____ _____, such additional lands may be annexed to said Properties without the assent of the Class A members; provided however, that the development of the additional lands described in this section shall be in accordance with a general plan submitted to the Federal Housing Administration and the Veterans Administration with the processing papers for the first section. Detailed plans for the development of additional lands must be submitted to the Federal Housing Administration and the Veterans Administration prior to such development. If either the Federal Housing Administration or the Veterans Administration determines that such detailed plans are not in accordance with the general plan on file and either agency so advises the Association and the Declarant, the development of the additional lands must have the assent of two-thirds (2/3) of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. At this meeting, the presence of members or of proxies entitled to cast sixty percent (60%)

of all of the votes of the Class A membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at any such subsequent meeting shall be one-half (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.

ARTICLE III

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE IV

VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest

required for membership by Article III. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant. The Class B member(s) shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article III, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on _____, 19___.

ARTICLE V

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) the right of the Association to limit the number of guests of members;

(b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(c) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

(d) the right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed ____ days for any infraction of its published rules and regulations;

(e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than 30 days nor more than 60 days in advance; and

(f) the right of the individual owners to the exclusive use of parking spaces as provided in this Article.

Section 2. Delegation of Use. Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot.

Section 4. Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than _____ automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The Association shall permanently assign _____ vehicular parking spaces for each dwelling.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time

to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such 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 shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the Properties.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be _____ dollars ($) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the

membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D. C.) for the preceding month of July.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding _____ years and at the end of each such period of _____ years, for each succeeding period of _____ years, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only,

for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 6. Quorum for Any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of _____ percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such

assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

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

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of _____. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE IX

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

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

ARTICLE X

USE RESTRICTIONS

ARTICLE XI

EASEMENTS

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not

less than seventy-five percent (75%) of the Lot Owners. Any amendment must be properly recorded.

Section 4. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this _____day of _____, 19___.

_____
Declarant

By: _____

_____

(Add appropriate acknowledgement)

ARTICLES OF INCORPORATION

OF

_____

ASSOCIATION

In compliance with the requirements of _____
(reference to statute under

_____, the undersigned, all of whom
which incorporation is sought)

are residents of _____

and all of whom are of full age, have this day voluntarily associated themselves together for the purpose of forming a corporation not for profit and do hereby certify:

ARTICLE I

The name of the corporation is _____

_____, hereafter called the "Association".

ARTICLE II

The principal office of the Association is located at _____

_____.

ARTICLE III

_____, whose address is

_____, is hereby appointed the initial registered agent of this Association.

FHA Form 1402
VA Form 26-8202

February 1965

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the residence Lots and Common Area within that certain tract of property described as:

and to promote the health, safety and welfare of the residents within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association by annexation, as provided in Article IX herein, and for this purpose to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration", applicable to the property and recorded or to be recorded in the Office of _____

_____

and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) borrow money, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(e) have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of _____ by law may now or hereafter have or exercise.

ARTICLE V

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE VI

VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article V with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article V. When more than one

person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant (as defined in the Declaration). The Class B member(s) shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article V, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) on _____, 19____.

ARTICLE VII

BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of nine (9) Directors, who need not be members of the Association. The number of directors may be changed by amendment of the By-Laws of the Association. The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors are:

NAME	ADDRESS

At the first annual meeting the members shall elect three directors for a term of one year, three directors for a term of two years and three directors for a term of three years; and at each annual meeting thereafter the members shall elect three directors for a term of three years.

February 1965

ARTICLE VIII

LIABILITIES

The highest amount of indebtedness or liability, direct or contingent, to which this Association may be subject at any one time shall not exceed $_____ while there is a Class B membership, and thereafter shall not exceed 150 percent of its income for the previous fiscal year, provided that additional amounts may be authorized by the assent of two-thirds (2/3) of the membership.

ARTICLE IX

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. The Association may, at any time, annex additional residential properties and common areas to the Properties described in Article IV, and so add to its membership under the provisions of Article V, provided that any such annexation shall have the assent of two-thirds (2/3) of the entire Class A membership and two-thirds (2/3) of the entire Class B membership, if any.

Section 2. If within _____years of the date of incorporation of this Association, the Declarant should develop additional lands within the area described in Deed Book _____, page _____, of the Records of _____ _____, such additional lands may be annexed to said Properties without the assent of the Class A members, provided however, that the development of the additional lands described in this section shall be in accordance with a general plan submitted to the Federal Housing Administration and the Veterans Administration with the processing papers for the first section. Detailed plans for

the development of additional lands must be submitted to the Federal Housing Administration and the Veterans Administration prior to such development. If either the Federal Housing Administration or the Veterans Administration determines that such detailed plans are not in accordance with the general plan on file and such agency or agencies so advises the Association and the Declarant, the development of the additional lands must have the assent of two-thirds (2/3) of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

At this meeting, the presence of members or of proxies entitled to cast sixty percent (60%) of all of the votes of the Class A membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

ARTICLE X

MERGERS AND CONSOLIDATIONS

To the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of the entire Class A membership and two-thirds (2/3) of the entire Class B membership, if any.

ARTICLE XI

AUTHORITY TO MORTGAGE

Any mortgage by the Association of the Common Area defined in the Declaration shall have the assent of two-thirds (2/3) of the entire Class A membership and two-thirds (2/3) of the Class B membership, if any.

ARTICLE XII

AUTHORITY TO DEDICATE

The Association shall have power to dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by members entitled to cast two-thirds (2/3) of the votes of the entire Class A membership and two-thirds (2/3) of the entire Class B membership, if any, agreeing to such dedication, sale or transfer.

ARTICLE XIII

DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of the entire Class A membership and two-thirds (2/3) of the entire Class B membership, if any. Upon dissolution of the Association, the assets, both real and personal of the Association, shall be dedicated to an appropriate public agency to be

devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association.

ARTICLE XIV

DURATION

The corporation shall exist perpetually.

ARTICLE XV

MEETINGS FOR ACTIONS GOVERNED BY ARTICLES VIII THROUGH XIII

In order to take action under Articles VIII through XIII, there must be a duly held meeting. Written notice, setting forth the purpose of the meeting shall be given to all members not less than 30 days nor more than 60 days in advance of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum, except for Article IX, Section 2, where the quorum requirement is specifically set forth. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half of the required quorum of the preceding

meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership, if any, are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

ARTICLE XVI

AMENDMENTS

Amendment of these Articles shall require the assent of 75 percent (75%) of the entire membership.

ARTICLE XVII

FHA/VA APPROVAL

As long as there is a Class B membership the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mergers and consolidations, mortgaging of Common Area, dedication of Common Area, dissolution and amendment of these Articles.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of _____, we, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this _____day of _____, 19____.

_____

_____

_____

_____

_____

(Add appropriate acknowledgment)

BY-LAWS

OF

_____

ASSOCIATION

ARTICLE I

NAME AND LOCATION. The name of the corporation is _____ _____, hereinafter referred to as the "Association". The principal office of the corporation shall be located at _____ _____ but meetings of members and directors may be held at such places within the State of _____, County of _____, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to _____ _____, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon

any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to _____ _____, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of _____.

ARTICLE III

MEMBERSHIP

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership.

Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Section 2. Suspension of Membership. During any period in which a member shall be in default in the payment of any annual or special assessment levied by the Association, the voting rights and right to use of the recreational facilities of such member may be suspended by the Board of Directors until such assessment has been paid. Such rights of a member may also be suspended, after notice and hearing, for a period not to exceed _____ days, for violation of any rules and regulations established by the Board of Directors governing the use of the Common Area and facilities.

ARTICLE IV

PROPERTY RIGHTS: RIGHTS OF ENJOYMENT

Section 1. Each member shall be entitled to the use and enjoyment of the Common Area and facilities as provided in the Declaration. Any member may delegate his rights of enjoyment of the Common Area and facilities to the members of his family, his tenants or contract purchasers, who reside on the property. Such member shall notify the secretary in writing of the name of any such delegee. The rights and privileges of such delegee are subject to suspension to the same extent as those of the member.

Section 2. Irrespective of the fact that Section 1(b) of Article V of the Declaration gives the Association the right to charge reasonable

admission and other fees for the use of any recreational facilities situated upon the Common Area, this right shall not be exercised as to members for a period of five years from the date of the recordation of the Declaration, and after this period, only upon written approval of two-thirds (2/3) of the entire Class A membership.

ARTICLE V

BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of nine (9) directors, who need not be members of the Association.

Section 2. Election. At the first annual meeting the members shall elect three directors for a term of one year, three directors for a term of two years and three directors for a term of three years; and at each annual meeting thereafter the members shall elect three directors for a term of three years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could

take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE VI

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of

a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VIII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the

membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(c) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(d) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting, when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided herein, and in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, as hereinafter provided in Article XII, and

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period;

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any

assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained; and

(h) cause the exterior of the dwellings to be maintained.

ARTICLE IX

COMMITTEES

Section 1. The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes, such as:

(a) A Recreation Committee which shall advise the Board of Directors on all matters pertaining to the recreational program and activities of the Association and shall perform such other functions as the Board, in its discretion, determines;

(b) A Maintenance Committee which shall advise the Board of Directors on all matters pertaining to the maintenance, repair or

improvement of the Properties, and shall perform such other functions as the Board in its discretion determines;

(c) A Publicity Committee which shall inform the members of all activities and functions of the Association, and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interests of the Association; and

(d) An Audit Committee which shall supervise the annual audit of the Association's books and approve the annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting, as provided in Article XI, Section 8(d). The Treasurer shall be an ex officio member of the Committee.

Section 2. It shall be the duty of each committee to receive complaints from members on any matter involving Association functions, duties, and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, director or officer of the Association as is further concerned with the matter presented.

ARTICLE X

MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the

hour of _____ o'clock, P.M. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the entire membership or who are entitled to vote one-fourth (1/4) of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

ARTICLE XI

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary.

Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of

all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE XII

ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. By the Declaration each member is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assess-

ment, together with such 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 and shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance of the Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the Properties.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be _____ dollars ($) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D. C.) for the preceding month of July.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding _____

years and at the end of each such period of _____ years, for each succeeding period of _____years, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Method of Computation When Using the Consumer Price Index. The Consumer Price Index establishes the United States City Average numerical rating for the month of July, 19____ as _____. This will be the base rating. To determine the percentage to be applied to the maximum annual assessment for each subsequent year, divide this base rating into the numerical rating established by the Consumer Price Index for the month of July preceding the proposed assessment year. This adjustment percentage, if in excess of 100 percentum, is multiplied by the original maximum annual assessment to obtain the maximum assessment for the subsequent year.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

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

Section 7. Quorum for Any Action Authorized Under Sections 3 and 5. At the first meeting called, as provided in sections 3 and 5 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in sections 3 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing, signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of _____ percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. The following property subject to the Declaration shall be exempt from the assessments created therein: (a) all properties dedicated to and accepted by a local public authority, (b) the Common Area, and, (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of _____. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE XIII

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XIV

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: _____

_____

ARTICLE XV

AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XVI

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the directors of the

_____ Association,

have hereunto set our hands this _____ day of _____, 19 _____.

_____ _____

_____ _____

_____ _____

_____ _____

_____

(Add appropriate acknowledgment)

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of the _____

_____Association, a _____
(State)

corporation, and,

THAT the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the _____ day of _____, 19 _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this _____ day of _____, 19 ____.

_____
Secretary

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS TIMBER TRAILS ESTATES

THIS DECLARATION, made on the date hereinafter set forth by Harvey W. Henry and Lucas S. Van Orden, III, hereinafter referred to as "Declarants".

WITNESSETH:

WHEREAS, Declarant Harvey W. Henry is the owner of certain property in the Township of Newport, County of Johnson, State of Iowa, which is more particularly described as:

TIMBER TRAILS ESTATES, PART ONE

Commencing at the Northeast corner of the SW¼ NW¼ of Section 26, T80N, R6W of the 5th Principal Meridian, being the point of beginning; thence S 0° 01' 59" W, 169.52 feet along the Section line to the centerline of the County Road; thence S 42° 56' 00" E, 288.22 feet along the centerline of the County Road; thence S 32° 10' 00" E, 291.47 feet along said center-curve concave Westerly along said centerline; thence S 15° 02' 00" W, 421.47 feet along said centerline to the South Line of the SE¼ NW¼ of said Section 26; thence S 89° 07' 47" E, 274.70 feet along the South Line of the SE¼ NW¼ of said Section 26 to the Centerline of Prairie du Chien Road; thence N 82° 31' 35" E, 310.60 feet along the centerline of Prairie du Chien Road; thence Easterly 263.91 feet along a 1371.17 foot radius curve concave Southerly along the centerline of said road; thence S 86° 26' 45" E, 2.24 feet along the centerline of said road; thence N 0° 20' 02" W, 468.70 feet; thence S 86° 26' 45" E, 200.00 feet; thence N 0° 20' 02" W, 814.83 feet along the East line of the SE¼ NW¼ of said Section 26 to the Northeast corner of the SE¼ NW¼ of said Section 26; thence N 89° 02' 52" W, 1328.97 feet along the Section Line to the point of beginning, said tract containing 29.90 acres more or less.

On each lot as platted in Timber Trails Estates, Part One, there is hereby reserved an easement for utilities, walkways, and bridle paths of 20 feet on both sides of all of the boundary lines of each lot, as shown on the recorded plat thereof, except along boundary lines that border County Road, Prairie du Chien Road, or any road within the subdivision itself, provided, however, that there shall be no such easement on either side of the south line of Lot 11, but instead there shall be such a 20 foot easement on both sides of the south line of the following described tract:

Commencing at the NW corner of Lot 10, being the point of beginning; thence S 9° 53' 54" E, 75.00 feet along the west line of Lot 10; thence S 81° 43' 57" E, 237.52 feet to the SE corner of Lot 11; thence N 66° 27' 20" W, 270.46 feet along the south line of Lot 11, to the point of beginning.

AND WHEREAS, DECLARANT HARVEY W. HENRY IS ALSO THE OWNER OF CERTAIN PROPERTY IN THE TOWNSHIP OF NEWPORT, COUNTY OF JOHNSON, STATE OF IOWA, WHICH IS MORE PARTICULARLY DESCRIBED AS:

NW¼ NE¼, SECTION 26, TOWNSHIP 80 NORTH, RANGE 6 WEST OF THE 5TH PRINCIPAL MERIDIAN.

THIS PART HAS NOT YET BEEN SUBDIVIDED, BUT WHEN SUBDIVIDED, IT SHALL BE IN LOTS OF NOT LESS THAN ONE AND ONE-HALF (1½) ACRES. A SALE OF THE ENTIRE TRACT BEFORE SUBDIVIDING SHALL NEVERTHELESS BE SUBJECT TO THESE PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS.

UNTIL SUBDIVIDED, THIS PART SHALL BE CONSIDERED ONE LOT, AND THE OWNER THEREOF SHALL PAY DUES TO TIMBER TRAILS HOME OWNERS ASSOCIATION, INC. AND SHALL BE ENTITLED TO VOTE ON THE BASIS OF ONE LOT.

AND WHEREAS, DECLARANT LUCAS S. VAN ORDEN III IS THE OWNER OF CERTAIN PROPERTY IN THE TOWNSHIP OF NEWPORT, COUNTY OF JOHNSON, STATE OF IOWA, WHICH IS MORE PARTICULARLY DESCRIBED AS:

SW¼ NE¼ OF SECTION 26, TOWNSHIP 80 NORTH, RANGE 6 WEST OF THE 5TH PRINCIPAL MERIDIAN LESS THAT PART OWNED BY OMER J. KEMP.

THIS PART HAS NOT YET BEEN SUBDIVIDED, BUT WHEN SUBDIVIDED, IT SHALL BE IN LOTS OF NOT LESS THAN ONE AND ONE-HALF (1½) ACRES. A SALE OF THE ENTIRE TRACT BEFORE SUBDIVIDING SHALL NEVERTHELESS BE SUBJECT TO THESE PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS.

UNTIL SUBDIVIDED, THIS PART SHALL BE CONSIDERED ONE LOT, AND THE OWNER THEREOF SHALL PAY DUES TO TIMBER TRAILS HOME OWNERS ASSOCIATION, INC. AND SHALL BE ENTITLED TO VOTE ON THE BASIS OF ONE LOT.

AND WHEREAS, DECLARANTS WILL CONVEY THE SAID PROPERTIES, SUBJECT TO CERTAIN PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, LIENS AND CHARGES AS HEREINAFTER SET FORTH;

NOW THEREFORE, DECLARANTS HEREBY DECLARE THAT ALL OF THE PROPERTIES DESCRIBED ABOVE SHALL BE HELD, SOLD AND CONVEYED SUBJECT TO THE FOLLOWING EASEMENTS, RESTRICTIONS, COVENANTS, AND CONDITIONS, ALL OF WHICH ARE FOR THE PURPOSE OF ENHANCING AND PROTECTING THE VALUE, DESIRABILITY, AND ATTRACTIVENESS OF THE REAL PROPERTY. THESE EASEMENTS, COVENANTS, RESTRICTIONS, AND CONDITIONS SHALL RUN WITH THE REAL PROPERTY AND SHALL BE BINDING ON ALL PARTIES HAVING OR ACQUIRING ANY RIGHT, TITLE OR INTEREST IN THE DESCRIBED PROPERTIES OR ANY PART THEREOF, AND SHALL INURE TO THE BENEFIT OF EACH OWNER THEREOF.

ARTICLE 1.00

DEFINITIONS

SECTION 1.01 "ASSOCIATION" SHALL MEAN AND REFER TO TIMBER TRAILS HOME OWNERS ASSOCIATION, INC., ITS SUCCESSORS AND ASSIGNS.

SECTION 1.02 "PROPERTIES" SHALL MEAN AND REFER TO THAT CERTAIN REAL PROPERTY HEREINBEFORE DESCRIBED, AND SUCH ADDITIONS THERETO AS MAY HEREAFTER BE BROUGHT WITHIN THE JURISDICTION OF THE ASSOCIATION.

SECTION 1.03 "COMMON AREA" SHALL MEAN ALL REAL PROPERTY OWNED BY THE ASSOCIATION FOR THE COMMON USE AND ENJOYMENT OF THE MEMBERS OF THE ASSOCIATION. COMMON AREAS SHALL INCLUDE:

1. LAND INDICATED AS PARKS
2. LAND IN ROAD RIGHTS-OF-WAY
3. CUL-DE-SAC AREAS
4. LAND BETWEEN LOT LINES AND SHOULDERS OF COUNTY ROADS

SECTION 1.04 "LOT" SHALL MEAN AND REFER TO ANY PLOT OF LAND SHOWN UPON ANY RECORDED SUBDIVISION MAP OF THE PROPERTIES WITH THE EXCEPTION OF THE COMMON AREA.

SECTION 1.05 "MEMBER" SHALL MEAN AND REFER TO EVERY PERSON OR ENTITY WHO HOLDS MEMBERSHIP IN THE ASSOCIATION.

SECTION 1.06 "OWNER" SHALL MEAN AND REFER TO THE RECORD OWNER, WHETHER ONE OR MORE PERSONS OR ENTITIES, OF A FEE SIMPLE TITLE TO ANY LOT WHICH IS A PART OF THE PROPERTIES, INCLUDING CONTRACT SELLERS, BUT EXCLUDING THOSE HAVING SUCH INTEREST MERELY AS SECURITY FOR THE PERFORMANCE OF AN OBLIGATION.

SECTION 1.07 "DECLARANTS" SHALL MEAN AND REFER TO HARVEY W. HENRY AND LUCAS S. VAN ORDEN III, THEIR SUCCESSORS AND ASSIGNS IF SUCH SUCCESSORS OR ASSIGNS SHOULD ACQUIRE MORE THAN ONE UNDEVELOPED LOT FROM THE DECLARANTS FOR THE PURPOSE OF DEVELOPMENT.

SECTION 1.08 "DEVELOPER" OR "DEVELOPERS" SHALL MEAN THE SAME AS "DECLARANT" OR "DECLARANTS."

ARTICLE 2.00

MEMBERSHIP

SECTION 2.01 EVERY PERSON OR ENTITY WHO IS A RECORD OWNER OF A FEE OR UNDIVIDED FEE INTEREST IN ANY LOT WHICH IS SUBJECT BY COVENANTS OF RECORD TO ASSESSMENT BY THE ASSOCIATION, INCLUDING CONTRACT SELLERS, SHALL BE A MEMBER OF THE ASSOCIATION. THE FOREGOING IS NOT INTENDED TO INCLUDE PERSONS OR ENTITIES WHO HOLD AN INTEREST MERELY AS SECURITY FOR THE PERFORMANCE OF AN OBLIGATION. NO OWNER SHALL HAVE MORE THAN ONE MEMBERSHIP. MEMBERSHIP SHALL BE APPURTENANT TO AND MAY NOT BE SEPARATED FROM OWNERSHIP OF ANY LOT WHICH IS SUBJECT TO ASSESSMENT BY THE ASSOCIATION. OWNERSHIP OF SUCH LOT SHALL BE THE SOLE QUALIFICATION FOR MEMBERSHIP.

ARTICLE 3.00

VOTING RIGHTS

SECTION 3.01 CLASSES OF MEMBERSHIP: THE ASSOCIATION SHALL HAVE TWO CLASSES OF VOTING MEMBERSHIP.

SECTION 3.02 CLASS A MEMBERS: CLASS A MEMBERS SHALL BE ALL THOSE OWNERS AS DEFINED IN ARTICLE 2.00 WITH THE EXCEPTION OF THE DECLARANTS. CLASS A MEMBERS SHALL BE ENTITLED TO ONE VOTE FOR EACH LOT IN WHICH THEY HOLD THE INTEREST REQUIRED FOR MEMBERSHIP BY ARTICLE 2.00. WHEN MORE THAN ONE PERSON HOLDS SUCH INTEREST IN ANY LOT, ALL SUCH PERSONS SHALL BE MEMBERS. THE VOTE FOR SUCH LOT SHALL BE EXERCISED AS THEY AMONG THEMSELVES DETERMINE, BUT IN NO EVENT SHALL MORE THAN ONE VOTE BE CAST WITH RESPECT TO ANY LOT.

SECTION 3.03 CLASS B MEMBERS: THE CLASS B MEMBERS SHALL BE THE DECLARANTS. THE CLASS B MEMBERS SHALL BE ENTITLED TO THREE (3) VOTES FOR EACH LOT IN WHICH THEY HOLD THE INTEREST REQUIRED FOR MEMBERSHIP BY ARTICLE 2.00, PROVIDED THAT THE CLASS B MEMBERSHIP SHALL CEASE AND BE CONVERTED TO CLASS A MEMBERSHIP ON THE HAPPENING OF EITHER OF THE FOLLOWING EVENTS, WHICHEVER OCCURS EARLIER:

(A) WHEN THE TOTAL VOTES OUTSTANDING IN THE CLASS A MEMBERSHIP EQUAL THE TOTAL VOTES OUTSTANDING IN THE CLASS B MEMBERSHIP, OR

(B) ON JANUARY 1, 1990.

ARTICLE 4.00

PROPERTY RIGHTS

SECTION 4.01 MEMBERS' EASEMENTS OF ENJOYMENTS: EVERY MEMBER SHALL HAVE A RIGHT AND EASEMENT OF ENJOYMENT IN AND TO THE COMMON AREA AND SUCH EASEMENT SHALL BE APPURTENANT TO AND SHALL PASS WITH THE TITLE TO EVERY ASSESSED LOT, SUBJECT TO THE FOLLOWING PROVISIONS:

(A) THE RIGHT OF THE ASSOCIATION TO LIMIT THE NUMBER OF GUESTS OF MEMBERS;

(B) THE RIGHT OF THE ASSOCIATION TO CHARGE REASONABLE ADMISSION AND OTHER FEES FOR THE USE OF ANY RECREATIONAL FACILITY SITUATED UPON THE COMMON AREA;

(C) THE RIGHT OF THE ASSOCIATION, IN ACCORDANCE WITH ITS ARTICLES AND BY-LAWS, TO BORROW MONEY FOR THE PURPOSE OF IMPROVING THE COMMON AREA AND FACILITIES AND IN AID THEREOF TO MORTGAGE SAID PROPERTY, AND THE RIGHTS OF SUCH MORTGAGEE IN SAID PROPERTIES SHALL BE SUBORDINATE TO THE RIGHTS OF THE HOMEOWNERS HEREUNDER;

(D) THE RIGHT OF THE ASSOCIATION TO SUSPEND THE VOTING RIGHTS AND RIGHT TO USE OF THE RECREATIONAL FACILITIES BY A MEMBER FOR ANY PERIOD DURING WHICH ANY ASSESSMENT AGAINST HIS LOT REMAINS UNPAID; AND FOR A PERIOD NOT TO EXCEED 30 DAYS FOR ANY INFRACTION OF ITS PUBLISHED RULES AND REGULATIONS; AND

(E) THE RIGHT OF THE ASSOCIATION TO DEDICATE OR TRANSFER ALL OR ANY PART OF THE COMMON AREA TO ANY PUBLIC AGENCY, AUTHORITY, OR UTILITY FOR SUCH PURPOSES AND SUBJECT TO SUCH CONDITIONS AS MAY BE AGREED TO BY THE MEMBERS. NO SUCH DEDICATION OR TRANSFER SHALL BE EFFECTIVE UNLESS AN INSTRUMENT SIGNED BY MEMBERS ENTITLED TO CAST TWO-THIRDS (2/3) OF THE VOTES OF THE CLASS A MEMBERSHIP AND TWO-THIRDS (2/3) OF THE VOTES OF THE CLASS B MEMBERSHIP, IF ANY HAS BEEN RECORDED, AGREEING TO SUCH DEDICATION OR TRANSFER, AND UNLESS WRITTEN NOTICE OF THE PROPOSED ACTION IS SENT TO EVERY MEMBER NOT LESS THAN 30 DAYS NOR MORE THAN 60 DAYS IN ADVANCE.

SECTION 4.02 DELEGATION OF USE: ANY MEMBER MAY DELEGATE, IN ACCORDANCE WITH THE BY-LAWS, HIS RIGHT OF ENJOYMENT TO THE COMMON AREA AND FACILITIES TO THE MEMBERS OF HIS FAMILY, HIS TENANTS, OR CONTRACT PURCHASERS WHO RESIDE ON THE PROPERTY.

SECTION 4.03 TITLE TO THE COMMON AREA: THE DECLARANTS HEREBY COVENANT FOR THEMSELVES, THEIR HEIRS AND ASSIGNS, THAT THEY WILL CONVEY FEE SIMPLE TITLE TO COMMON AREAS TO THE ASSOCIATION, FREE AND CLEAR OF ALL ENCUMBRANCES AND LIENS, PRIOR TO THE CONVEYANCE OF THE FIFTH LOT IN EACH RESPECTIVE PART OF TIMBER TRAILS ESTATES.

ARTICLE 5.00

COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 5.01 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS: THE DECLARANTS FOR EACH LOT OWNED WITHIN THE PROPERTIES, HEREBY COVENANT, AND EACH OWNER OF ANY LOT BY ACCEPTANCE OF A DEED THEREFOR, WHETHER OR NOT IT SHALL BE SO EXPRESSED IN ANY SUCH DEED OR OTHER CONVEYANCE, IS DEEMED TO COVENANT AND AGREE TO PAY TO THE ASSOCIATION: (1) ANNUAL ASSESSMENTS OR CHARGES, AND (2) SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS, SUCH ASSESSMENTS TO BE FIXED, ESTABLISHED, AND COLLECTED FROM TIME TO TIME AS HEREINAFTER PROVIDED. THE ANNUAL AND SPECIAL ASSESSMENTS, TOGETHER WITH SUCH INTEREST THEREON AND COSTS OF COLLECTION THEREOF, AS HEREINAFTER PROVIDED, SHALL BE A CHARGE ON THE LAND AND SHALL BE A CONTINUING LIEN UPON THE PROPERTY AGAINST WHICH EACH SUCH ASSESSMENT IS MADE. EACH ASSESSMENT, TOGETHER WITH SUCH 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 SHALL NOT PASS TO HIS SUCCESSORS IN TITLE UNLESS EXPRESSLY ASSUMED BY THEM.

SECTION 5.02 PURPOSE OF ASSESSMENTS: THE ASSESSMENTS LEVIED BY THE ASSOCIATION SHALL BE USED EXCLUSIVELY FOR THE PURPOSE OF PROMOTING THE RECREATION, HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS IN THE PROPERTIES AND IN PARTICULAR FOR THE IMPROVEMENT AND MAINTENANCE OF THE PROPERTIES, SERVICES, AND FACILITIES DEVOTED TO THIS PURPOSE AND RELATED TO THE USE AND ENJOYMENT OF THE COMMON AREA, AND OF THE HOMES SITUATED UPON THE PROPERTIES.

SECTION 5.03 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENT: IN ADDITION TO THE ANNUAL ASSESSMENTS AUTHORIZED ABOVE, THE ASSOCIATION MAY LEVY IN ANY ASSESSMENT YEAR, A SPECIAL ASSESSMENT APPLICABLE TO THAT YEAR ONLY, FOR THE PURPOSE OF DEFRAYING, IN WHOLE OR IN PART, THE COST OF ANY CONSTRUCTION OR RECONSTRUCTION, UNEXPECTED REPAIR OR REPLACEMENT OF STREETS, ROADS, TRAILS, WATER SYSTEM, OR OF A DESCRIBED CAPITAL IMPROVEMENT UPON THE COMMON AREA, INCLUDING THE NECESSARY FIXTURES AND PERSONAL PROPERTY RELATED THERETO, PROVIDED THAT ANY SUCH ASSESSMENT SHALL HAVE THE ASSENT OF TWO-THIRDS (2/3) OF THE VOTES OF EACH CLASS OF MEMBERS WHO ARE VOTING IN PERSON OR BY PROXY AT A MEETING DULY CALLED FOR THIS PURPOSE, WRITTEN NOTICE OF WHICH SHALL BE SENT TO ALL MEMBERS NOT LESS THAN 10 DAYS NOR MORE THAN 20 DAYS IN ADVANCE OF THE MEETING SETTING FORTH THE PURPOSE OF THE MEETING.

SECTION 5.04 UNIFORM RATE OF ASSESSMENT: BOTH ANNUAL AND SPECIAL ASSESSMENTS SHALL BE FIXED AT A UNIFORM RATE FOR ALL LOTS AND MAY BE COLLECTED ON A MONTHLY BASIS.

SECTION 5.05 QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 5.03: AT THE FIRST MEETING CALLED, AS PROVIDED IN SECTION 5.03 HEREOF, THE PRESENCE AT THE MEETING OF MEMBERS OR OF PROXIES ENTITLED TO CAST SIXTY PERCENT (60%) OF ALL THE VOTES OF EACH CLASS OF MEMBERSHIP SHALL CONSTITUTE A QUORUM. IF THE REQUIRED QUORUM IS NOT FORTHCOMING AT ANY MEETING, ANOTHER MEETING MAY BE CALLED, SUBJECT TO THE NOTICE REQUIREMENT SET FORTH IN SECTION 5.03, AND THE REQUIRED QUORUM AT ANY SUCH SUBSEQUENT MEETING SHALL BE ONE-HALF (1/2) OF THE REQUIRED QUORUM AT THE PRECEDING MEETING. NO SUCH SUBSEQUENT MEETING SHALL BE HELD MORE THAN SIXTY (60) DAYS FOLLOWING THE PRECEDING MEETING.

SECTION 5.06 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. THE ANNUAL ASSESSMENTS PROVIDED FOR HEREIN SHALL COMMENCE AS TO ALL LOTS ON THE FIRST DAY OF THE MONTH FOLLOWING THE CONVEYANCE OF THE COMMON AREA. THE FIRST ANNUAL ASSESSMENT SHALL BE ADJUSTED ACCORDING TO THE NUMBER OF MONTHS REMAINING IN THE CALENDER YEAR. THE BOARD OF DIRECTORS SHALL FIX THE AMOUNT OF THE ANNUAL ASSESSMENT AGAINST EACH LOT AT LEAST THIRTY (30) DAYS IN ADVANCE OF EACH ANNUAL ASSESSMENT PERIOD. WRITTEN

NOTICE OF THE ANNUAL ASSESSMENT SHALL BE SENT TO EVERY OWNER SUBJECT THERETO. THE DUE DATES SHALL BE ESTABLISHED BY THE BOARD OF DIRECTORS. THE ASSOCIATION SHALL UPON DEMAND AT ANY TIME FURNISH A CERTIFICATE IN WRITING SIGNED BY AN OFFICER OF THE ASSOCIATION SETTING FORTH WHETHER THE ASSESSMENTS ON A SPECIFIED LOT HAVE BEEN PAID. A REASONABLE CHARGE MAY BE MADE BY THE BOARD FOR THE ISSUANCE OF THESE CERTIFICATES. SUCH CERTIFICATE SHALL BE CONCLUSIVE EVIDENCE OF PAYMENT OF ANY ASSESSMENT THEREIN STATED TO HAVE BEEN PAID.

SECTION 5.07 EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. ANY ASSESSMENTS WHICH ARE NOT PAID WHEN DUE SHALL BE DELINQUENT. IF THE ASSESSMENT IS NOT PAID WITHIN THIRTY (30) DAYS AFTER THE DUE DATE, THE ASSESSMENT SHALL BEAR INTEREST FROM THE DATE OF DELINQUENCY AT THE RATE OF SEVEN PERCENT PER ANNUM, AND THE ASSOCIATION MAY BRING AN ACTION AT LAW AGAINST THE OWNER PERSONALLY OBLIGATED TO PAY THE SAME, OR FORECLOSE THE LIEN AGAINST THE PROPERTY, AND INTEREST, COSTS, AND REASONABLE ATTORNEY'S FEES OF ANY SUCH ACTION SHALL BE ADDED TO THE AMOUNT OF SUCH ASSESSMENT. OR IN LIEU OF FORECLOSING SUCH LIEN, THE ASSOCIATION BY ITS PROPER OFFICER MAY CAUSE TO BE SERVED UPON SUCH LOT OWNER A NOTICE OF FORFEITURE NOTIFYING HIM THAT UNLESS SAID ASSESSMENT WITH SEVEN PERCENT INTEREST, COSTS OF SERVING THE NOTICE, AND $35.00 ATTORNEY FEES ARE PAID WITHIN THIRTY DAYS OF THE COMPLETED SERVICE OF SAID NOTICE, THE TITLE TO SAID LOT SHALL PASS TO THE TIMBER TRAILS HOME OWNERS ASSOCIATION, INC. IF THE TERMS AND CONDITIONS OF SAID NOTICE ARE NOT PERFORMED WITHIN THE SAID THIRTY DAYS, THE PARTY SERVING SAID NOTICE OR THE ASSOCIATION MAY FILE FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER A COPY OF THE NOTICE AFORESAID WITH PROOFS OF SERVICE ATTACHED OR ENDORSED THEREON, AND WHEN SO FILED AND RECORDED, THE SAID RECORD SHALL BE CONSTRUCTIVE NOTICE TO ALL PARTIES OF THE PASSING OF TITLE TO SAID LOT TO THE ASSOCIATION. PROCEEDINGS HEREUNDER EXCEPT AS TO THE PAYMENT OF ATTORNEY FEES SHALL BE THE SAME AS THOSE PROVIDED FOR THE FORFEITURE OF REAL ESTATE CONTRACTS IN CHAPTER 656 OF THE 1966 CODE OF IOWA. ANY LOT ACQUIRED BY THE ASSOCIATION BY EITHER OF THE METHODS SET OUT ABOVE SHALL BE SOLD WITHIN A REASONABLE TIME AT PUBLIC OR PRIVATE SALE, AND ANY SURPLUS REMAINING AFTER THE PAYMENT OF ALL ASSESSMENTS, INTEREST, COSTS, AND ATTORNEY FEES SHALL BE PAID OVER TO THE FORMER OWNER OF SAID LOT. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NONUSE OF THE COMMON AREA OR ABANDONMENT OF HIS LOT.

SECTION 5.08 SUBORDINATION OF THE LIEN TO MORTGAGES: THE LIEN OF THE ASSESSMENTS PROVIDED FOR HEREIN SHALL BE SUBORDINATE TO THE LIEN OF ANY PRIOR RECORDED MORTGAGE OR MORTGAGES. SALE OR TRANSFER OF ANY LOT SHALL NOT AFFECT THE ASSESSMENT LIEN.

SECTION 5.09 EXEMPT PROPERTY: THE FOLLOWING PROPERTY SUBJECT TO THIS DECLARATION SHALL BE EXEMPT FROM THE ASSESSMENT CREATED HEREIN: (A) ALL PROPERTIES DEDICATED TO AND ACCEPTED BY A LOCAL PUBLIC AUTHORITY; AND (B) THE COMMON AREA. HOWEVER, NO LAND OR IMPROVEMENTS DEVOTED TO DWELLING USE SHALL BE EXEMPT FROM SAID ASSESSMENTS.

ARTICLE 6.00

ARCHITECTURAL CONTROL

SECTION 6.01 SCOPE OF ARCHITECTURAL CONTROL: NO BUILDING, FENCE, WALL OR OTHER STRUCTURE, OR SEWAGE DISPOSAL SYSTEM SHALL BE COMMENCED, ERECTED OR MAINTAINED UPON THE PROPERTIES, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION THEREIN BE MADE UNTIL THE PLANS AND SPECIFICATIONS SHOWING THE NATURE, KIND, SHAPE, HEIGHT, ELEVATION, MATERIALS, AND LOCATION OF THE SAME SHALL HAVE BEEN SUBMITTED TO AND APPROVED IN WRITING AS TO HARMONY OF EXTERNAL DESIGN AND LOCATION IN RELATION TO SURROUNDING STRUCTURES AND TOPOGRAPHY BY THE BOARD OF DIRECTORS OF THE ASSOCIATION, OR BY AN ARCHITECTURAL CONTROL COMMITTEE COMPOSED OF THREE (3) OR MORE REPRESENTATIVES APPOINTED BY THE BOARD. IN THE EVENT SAID BOARD, OR ITS DESIGNATED COMMITTEE, FAILS TO APPROVE OR DISAPPROVE SUCH DESIGN AND LOCATION WITHIN THIRTY (30) DAYS AFTER SAID PLANS AND SPECIFICATIONS HAVE BEEN SUBMITTED TO IT, APPROVAL WILL NOT BE REQUIRED AND THIS ARTICLE WILL BE DEEMED TO HAVE BEEN FULLY COMPLIED WITH.

SECTION 6.02 REASONS FOR ARCHITECTURAL CONTROL: THE PRIMARY PURPOSE OF ARCHITECTURAL CONTROL, PROPERLY EXERCISED, IS TO PROTECT THE VALUE OF HOMES IN THE DEVELOPMENT. THIS CONTROL IS NOT TO BE VIEWED AS A MEANS FOR SUPPRESSING EXPRESSIONS OF INDIVIDUALITY.

SECONDARY PURPOSES OF ARCHITECTURAL CONTROL ARE:

1. TO PROTECT THE DEVELOPERS' INVESTMENT IN UNSOLD LOTS.
2. TO GIVE THE OWNERS ESSENTIAL INFORMATION REGARDING THE DEVELOPMENT.
3. TO OFFER ADVICE TO INSURE THE BEST POSSIBLE SOLUTION OF THE DESIGN PROBLEM FOR ALL CONCERNED.
4. TO HELP INSURE THE NEIGHBORHOOD THAT NOTHING SHALL BE DONE ON ANY LOT WHICH WOULD IMPAIR THE ATTRACTIVENESS OF ANY OTHER LOT.

ARTICLE 7.00

SPECIFIC PROVISIONS AND USE RESTRICTIONS

SECTION 7.01 TYPE OF HOUSING: NO DUPLEXES OR OTHER MULTI-FAMILY HOUSING SHALL BE PERMITTED.

SECTION 7.02 COMPLETION AND VALUE: CONSTRUCTION OF BUILDINGS ON ANY LOT SHALL BE SUBSTANTIALLY COMPLETE WITHIN ONE YEAR AFTER START OF CONSTRUCTION, AND THE TOTAL MARKET VALUE OF LAND AND BUILDING UPON COMPLETION SHALL NOT BE LESS THAN $30,000.00.

SECTION 7.03 CONSTRUCTION OTHER THAN HOUSES: TIMBER TRAILS HAS BEEN SPECIFICALLY ZONED TO ALLOW CONSTRUCTION OF STABLES. REFER TO COUNTY ZONING ORDINANCE FOR SPECIFIC DETAILS.

SECTION 7.04 ADOPTION OF CODES: IN ORDER TO MAINTAIN REASONABLE CONTROL OF CONSTRUCTION FOR THE BENEFIT AND SAFETY OF THE RESIDENTS, ALL CONSTRUCTION SHALL BE DONE UNDER THE REQUIREMENTS OF THE LATEST EDITION OF THE FOLLOWING CODES:

UNIFORM BUILDING CODE
UNIFORM MECHANICAL CODE
NATIONAL ELECTRIC CODE
IOWA STATE PLUMBING CODE

SECTION 7.05 RESTRICTION DURING CONSTRUCTION:

1. ALL CONSTRUCTION OPERATIONS SHALL BE CONFINED TO THE LOT ON WHICH CONSTRUCTION IS IN PROGRESS.
2. EXCAVATION AND FILLING SHALL BE DONE IN A MANNER SUCH THAT NATURAL DRAINAGE IS NOT ALTERED TO THE DEGREE THAT DAMAGE IS CAUSED TO ADJACENT PROPERTIES.

SECTION 7.06 LOCATION OF STRUCTURES: AS A GENERAL RULE LOT OWNERS ARE ENCOURAGED TO BUILD AS FAR BACK FROM MAIN DRIVES AND ROADS AS IS PRACTICABLE. FURTHER, ON THOSE LOTS THAT ARE CLEAR IN FRONT AND WOODED IN BACK, LOT OWNERS ARE ENCOURAGED TO BUILD IMMEDIATELY IN FRONT OF THE TREES, JUST IN THE TREE LINE, OR BACK IN THE WOODED AREA, LEAVING THE OPEN AREA FREE FOR USE AS A MEADOW.

IN NO INSTANCE SHALL ANY PART OF A HOUSE OR GARAGE BE LOCATED ANY CLOSER THAN 30' FROM THE FRONT PROPERTY LINE. CORNER LOTS SHALL BE DEEMED TO HAVE TWO FRONT PROPERTY LINES. SIDE LOT SET BACK SHALL NOT BE LESS THAN 30'. REAR YARD SET BACK SHALL NOT BE LESS THAN 50'. ONE STABLE OF APPROVED DESIGN, LOCATION AND SIZE MAY BE ERECTED ON ANY LOT.

SECTION 7.07 TEMPORARY STRUCTURES: THE ASSOCIATION SHALL HAVE THE RIGHT, POWER, AND AUTHORITY TO ESTABLISH REASONABLE RULES AND REGULATIONS GOVERNING THE ERECTION, PLACING, AND USE OF TEMPORARY STRUCTURES ON ANY LOT. SUCH STRUCTURES SHALL INCLUDE THE FOLLOWING: TRAILER, BASEMENT, TENT, SHACK, SHED, BARN, GARAGE, CONSTRUCTION STORAGE BUILDING, ETC.

SECTION 7.08 OFF-STREET PARKING: EACH LOT OWNER SHALL PROVIDE OFF-STREET PARKING IN AN AMOUNT ADEQUATE FOR INDIVIDUAL NEEDS. AS A GENERAL RULE NO VEHICLES SHALL BE ROUTINELY PARKED ON ANY ROADS.

SECTION 7.09 EXTERIOR FINISHES AND COLOR: THE FOLLOWING EXTERIOR FINISHES ARE ACCEPTABLE FOR STRUCTURES OF ALL KINDS:

1. RE-SAWN PLYWOOD, STAINED OR UN-STAINED
2. ROUGH SAWN BOARDS, STAINED OR UN-STAINED
3. OTHER SIMILAR SIDING MATERIALS SUCH AS SHINGLES
4. BRICK
5. STONE
6. CONCRETE MASONRY
7. SMOOTH PAINTED SIDINGS
8. IN GENERAL:
   - A. TYPE OF SIDING OR MASONRY MATERIAL SHALL BE SUBMITTED FOR APPROVAL
   - B. COLOR SELECTION OF MATERIALS, STAINS, AND PAINTS SHALL BE SUBMITTED FOR APPROVAL
   - C. NATURE TONES ARE RECOMMENDED
   - D. WHITE AND OTHER LIGHT COLORS FOR PAINT AND MATERIALS ARE NOT ACCEPTABLE; LIGHT REFLECTANCE SHALL NOT EXCEED 35%. (TRIM IS EXCEPTED FROM THIS RESTRICTION.)
9. ROOFING MATERIALS SHALL ALSO HAVE A LIGHT REFLECTANCE NOT TO EXCEED 35%. RECOMMENDED MATERIALS ARE:
   - A. CEDAR SHAKES AND SHINGLES
   - B. MEDIUM TO DARK ASPHALT SHINGLES
   - C. OTHER COMPOSITION SHINGLES
   - D. BUILT-UP ROOFS WITH MEDIUM TO DARK AGGREGATE SURFACING (WHERE VISIBLE)
   - E. OTHER ACCEPTABLE MATERIALS AS APPROVED.

SECTION 7.10 ELECTRIC SERVICE: AT THE PROPER TIME AS REQUIRED TO COINCIDE WITH HOUSE CONSTRUCTION OPERATIONS THE DEVELOPER WILL ARRANGE WITH THE POWER COMPANY FOR THE EXTENSION OF OVERHEAD ELECTRIC SERVICE TO EACH LOT AT NO COST TO THE LOT OWNER. THE LOT OWNER SHALL MAKE ALL REQUIRED PAYMENTS FOR TEMPORARY AND PERMANENT SERVICE CONNECTIONS.

SECTION 7.11 SEWAGE DISPOSAL: EACH LOT SHALL HAVE AN INDIVIDUAL HOME SEWAGE DISPOSAL SYSTEM INSTALLED AT THE COST OF THE LOT OWNER. SYSTEMS SHALL BE OF THE PROPER DESIGN, SIZE, CONSTRUCTION, CAPACITY, DEPTH, ELEVATION, AND LOCATION AS REQUIRED FOR COMPLETELY SATISFACTORY TREATMENT OF ALL HOUSEHOLD WASTES. THE INSTALLER AND THE ENTIRE INSTALLATION SHALL BE SUBJECT TO APPROVAL BY THE ARCHITECTURAL CONTROL COMMITTEE. (SEE SECTION 6.01.) SHOULD ANY UNSATISFACTORY CONDITIONS DEVELOP AT ANY TIME, IMMEDIATE ATTENTION SHALL BE GIVEN BY THE LOT OWNER TO SATISFACTORILY REMEDY THE SITUATION.

COUNTY AND STATE REGULATIONS SHALL BE FOLLOWED IN ADDITION TO THE ABOVE REGULATIONS.

SECTION 7.12 WATER SERVICE AND METER: AT THE PROPER TIME AS REQUIRED TO COINCIDE WITH HOUSE CONSTRUCTION OPERATIONS, THE DEVELOPER WILL PROVIDE WATER OF ADEQUATE VOLUME AND PRESSURE TO EACH LOT AT NO COST TO THE LOT OWNER.

WATER USE SHALL BE RECORDED BY METER WHICH WILL BE FURNISHED AT COST BY THE DEVELOPER TO THE HOME OWNER AT THE TIME THE HOUSE IS CONSTRUCTED; TO BE INSTALLED BY THE OWNER'S PLUMBING CONTRACTOR.

SECTION 7.13 WATER CHARGES: CHARGES FOR WATER USED WILL BE BASED ON THE TOTAL ACTUAL COST INCLUDING ANY RESERVE FUND DECIDED UPON BY THE ASSOCIATION, ANY REPAIR COSTS, AND THE COST OF ELECTRICITY. CHARGE WILL BE MADE BASED ON THE PORTION OF WATER USED AND WILL BE ASSESSED ONCE YEARLY UNLESS OTHER ARRANGEMENTS ARE MADE BY THE ASSOCIATION.

SECTION 7.14 EXTERIOR MAINTENANCE: IT SHALL BE THE RESPONSIBILITY OF EACH LOT OWNER TO DO THE FOLLOWING:

1. PROVIDE FOR MAINTENANCE OF TRAIL EASEMENTS LOCATED ON HIS PROPERTY. MAINTENANCE SHALL INCLUDE CUTTING OF WEEDS, REMOVAL OF DEAD TREES, FALLEN BRANCES, AND TRASH, AND OTHER WORK AS REQUIRED TO MAKE TRAILS ACCESSIBLE FOR HIKING AND RIDING. MAINTENANCE SHALL NOT DESTROY THE NATURAL CHARACTER OF THE TIMBER. WILD FLOWERS AND BIRD NESTING AND FEEDING AREAS SHALL BE PRESERVED. SHOULD OTHER LOT OWNERS DESIRE TO PROVIDE MAINTENANCE OF TRAIL EASEMENTS EITHER DUE TO LACK OF MAINTENANCE BY LOT OWNER, OR DUE TO A DESIRE TO ENHANCE TO THE NATURAL BEAUTY OF THE TRAIL EASEMENTS, SAID LOT OWNER SHALL ALLOW SUCH WORK TO BE DONE WITHOUT OBJECTION.
2. KEEP OUT ALL NOXIOUS WEEDS USING CARE NOT TO DESTROY WILD FLOWERS AND OTHER NATURAL VEGETATION.
3. PROVIDE FOR THE REMOVAL OF ALL TRASH, REFUSE, AND UNSIGHTLY OBJECTS OF ANY NATURE.
4. PROVIDE FOR THE CARE AND TREATMENT OF EXISTING TREES, REMOVING ONLY THOSE NECESSARY FOR BUILDING CONSTRUCTION, AND DUE TO DEATH, DISEASE, AND DAMAGE FROM WIND AND WEATHER. IF PROTECTIVE MEASURES ARE REQUIRED TO CONTROL DISEASE, ALL PROPERTY OWNERS SHALL COOPERATE TO CONTROL THE CONDITION(S).

SECTION 7.15 MAINTENANCE OF COMMON AREAS: ALL COMMON AREAS (SEE DEFINITION) SHALL BE MAINTAINED BY THE ASSOCIATION FOR THE BENEFIT OF ALL MEMBERS.

MAINTENANCE SHALL BE AS DETERMINED BY THE ASSOCIATION BUT SHALL AT LEAST INCLUDE REQUIREMENTS SET FORTH IN SECTION 7.14, PARAGRAPHS 1, 2, 3, AND 4.

MAINTENANCE OF THE DITCH, BANK AND SHOULDER ALONG THE COUNTY ROADS SHALL ALSO INCLUDE MOWING AND OTHER WORK AS REQUIRED TO MAINTAIN THE AREAS IN A REASONABLY ATTRACTIVE CONDITION. ALL FILLING, GRADING, AND DRAINAGE WORK SHALL REMAIN THE RESPONSIBILITY OF THE COUNTY.

SECTION 7.16 STREET CONSTRUCTION AND MAINTENANCE: AT THE PROPER TIME AS REQUIRED TO COINCIDE WITH HOUSE CONSTRUCTION OPERATIONS, THE DEVELOPER WILL PROVIDE FOR GRADING OF STREETS AND PLACING OF CRUSHED ROCK. SUBSEQUENT MAINTENANCE SHALL BE THE RESPONSIBILITY OF THE ASSOCIATION TAKING INTO CONSIDERATION THE FOLLOWING:

1. THE DEVELOPER PROVIDES ALL MAINTENANCE UNTIL THE FIFTH LOT IS SOLD. (SEE SECTIONS 4.03 AND 5.06.)
2. VOTING RIGHTS OF THE DEVELOPER AND LOT OWNERS SHALL DETERMINE THE SHARES OF MAINTENANCE COSTS. (SEE SECTION 7.31.)

SECTION 7.17 TRAIL EASEMENTS: EACH LOT OWNER SHALL GRANT OTHER LOT OWNERS THE RIGHT OF USING THOSE PORTIONS OF THE TRAILS ON HIS PROPERTY AND SHALL ALLOW THE REASONABLE USE OF THESE SAME AREAS BY OTHER THAN LOT OWNERS. TRAILS ARE NOT TO BE CONSIDERED AS BEING PROVIDED FOR THE GENERAL USE OF THE PUBLIC BUT REASONABLE OCCASIONAL USE BY RESIDENTS OF ADJOINING AREAS AND BY FRIENDS AND RELATIVES OF TIMBER TRAILS RESIDENTS SHALL BE ALLOWED. NO FENCES SHALL BE BUILT CLOSER THAN 20 FEET FROM THE PROPERTY LINES BETWEEN LOTS, THUS MAINTAINING A 40 FOOT STRIP ALLOWING AMPLE SPACE FOR A TRAIL FOR HIKING, RIDING HORSES, PLAYING, ETC.

SECTION 7.18 TREES AND PLANTINGS: THE DEVELOPER RESERVES THE RIGHT BUT SHALL NOT BE REQUIRED TO SET OUT STREET TREES ACCORDING TO A MASTER PLAN USING A VARIETY OF HARDY TREES. THE DEVELOPER RESERVES THE RIGHT BUT SHALL NOT BE REQUIRED TO SET OUT SHRUBS, PLANTS, TREES, AND FLOWERS IN ANY REASONABLE LOCATION, ASSORTMENT, COLOR, SIZE, AND NUMBER ON ANY STREET RIGHT-WAY, CUL-DE-SAC, OR COMMON PROPERTY. NOT TREES ON ANY LOT, ROAD RIGHT-OF-WAY, OR COMMON AREA SHALL BE CUT DOWN WITHOUT THE WRITTEN PERMISSION OF THE BOARD OF DIRECTORS OF THE ASSOCIATION; REASONABLE RULES AND REGULATIONS SHALL GOVERN PRUNING AND CLEARING OF TREES AND SHRUBS.

SECTION 7.19 FIRE PROTECTION: FIRE PROTECTION IS AVAILABLE FROM SOLON, IOWA. IN ADDITION, EACH HOME OWNER SHALL MAINTAIN IN TOP WORKING ORDER A MINIMUM OF ONE 17# ALL PURPOSE CLASS ABC DRY CHEMICAL FIRE EXTINGUISHER AND ONE 2½# CARBON DIOXIDE EXTINGUISHER. THE UNITS WILL BE FURNISHED AT COST BY THE DEVELOPER TO THE HOME OWNER AT THE TIME THE HOUSE IS CONSTRUCTED.

EACH HOME OWNER AGREES TO COME TO THE AID OF ANY NEIGHBOR IN THE CASE OF A FIRE EMERGENCY. ALL FIRE EXTINGUISHERS DISCHARGED IN CONTROLLING A FIRE SHALL BE RE-CHARGED AT THE EXPENSE OF THE ASSOCIATION WITH THE EXCEPTION OF THOSE BELONGING TO THE OWNER OF THE PROPERTY ON WHICH THE FIRE OCCURRED.

ALL PERSONS SHALL EXERCISE CAUTION IN USE OF FIRE FOR INCINERATION OF LEAVES, RUBBISH, OTHER DEBRIS, AND FOR OTHER PURPOSES. THE ASSOCIATION RESERVES THE RIGHT TO ESTABLISH APPROPRIATE REGULATIONS REGARDING FIRES.

SECTION 7.20 SUPPRESSION OF NUISANCES: THE ASSOCIATION SHALL HAVE THE RIGHT, POWER, AND AUTHORITY TO ESTABLISH REASONABLE RULES AND REGULATIONS FOR THE PREVENTION AND SUPPRESSION OF NUISANCES.

SECTION 7.21 RESTRICTION OF MOTOR DRIVEN VEHICLES: NO MOTOR DRIVEN VEHICLES EXCEPT FOR MAINTENANCE SERVICE SHALL BE PERMITTED ON THE TRAILS.

Section 7.22 No Hunting: There shall be no hunting on Timber Trails properties.

Section 7.23 Businesses, Trades, and Signs: No offensive trade shall be permitted. Neither shall businesses or trades which generate an excessive amount of traffic be permitted.

No business signs shall be permitted.

Section 7.24 Livestock: Livestock shall be allowed in accordance with County Zoning provision as related to A2 districts, provided, however, the number and type of animals shall be subject to review and approval by the Board of Directors; provided, further, however, that as long as the Declarant Lucas S. Van Orden III retains as owner at least 10 acres of the SW¼ NE¼ Section 26, Township 80 North, Range 6 West of the 5th Principal Meridian, the number and type of animals shall not be subject to review and approval by the Board of Directors as to animals owned by him or members of his family and kept on such land retained by him.

Section 7.25 Right to Sub-Divide: No lots may be re-sub-divided with the exception that the following described tract:

> Commencing at the NW corner of Lot 10, being the point of beginning; thence S 9° 53' 54" E, 75.00 feet along the west line of Lot 10, thence S 81° 43' 57" E, 237.52 feet to the SE corner of Lot 11; thence N 66° 27' 20" W, 270.46 feet along the south line of Lot 11, to the point of beginning,

being a part of Lot 10, may be conveyed separately from that lot.

Section 7.26 Method of Recording Lot Transfer: The transfer of lots from Developer to owner at time of purchase shall be by reference to the recorded plat of the appropriate part of Timber Trails Estates. The plat itself is in the nature of a deed, and it shall be used to settle the property interests of all parties concerned.

Section 7.27 More Restrictive Regulation to Prevail: In the event of a conflict between these Protective Covenants, Conditions and Restrictions and any zoning law, ordinance, or regulation, the more restrictive shall prevail.

Section 7.28 Rights of Harvey W. Henry Family: In view of his efforts in developing Timber Trails Estates, Harvey W. Henry shall always be allowed one vote in the affairs of the Association, and members of his family shall always be allowed to use the Common Areas without the necessity of paying any association dues or assessments. He and members of his family shall have these privileges of voting and of use regardless of whether he or any member or his family is the owner of a lot within the sub-division; provided, however, that if one or more swimming pools are built, Harvey W. Henry shall share in the expense of construction and maintenance of at least one of them.

Section 7.29 Swimming Pool Association: In the event that certain members of the Homes Association wish to build a swimming pool, then a separate swimming pool association shall be set up with Homes Association members participating on a volumtary basis. No objections may be made by any non-participating member regarding reasonable use of a portion of a common area for construction of a swimming pool. Other members of the Homes Association may join the Pool Association at any later date by paying a proportinate share of the construction costs plus interest at 7% into the Pool Association treasury; any such amount then being used to defray pool operational expenses, or said amount may be divided among Pool Association members on majority vote of its members.

Homes Association members who do not become Pool Association members by participating in pool construction costs may nevertheless use the pool providing however that they pay into the Pool Association treasury yearly an amount determined to be fair and equitable by the Pool Association members. In setting said yearly amount due consideration shall be given to the fact that said users have not contributed to the costs of construction.

Until such time as Pool Association members might make other rules, swimming shall be allowed under the following conditions:

Instead of paid lifeguards and supervisors, each home owner shall be given a key to the pool enclosure for use by his family. The children may swim with or without parental consent, at the option and liability of the parent. Timber Trails Homes Association, Inc. or the Swimming Pool Association shall in no event be liable for any injury or death to a user of the pool.

Section 7.30 Additions to Timber Trails Estates: The Declarants reserve the right to include part or all of the NE¼ NW¼, Section 26, Township 80 North, Range 6 West of the 5th Principal Meridian in Timber Trails Estates at any date in the future up to and including January 1, 1993, without a vote of the association members. No other lands may be added to Timber Trails Estates at any time unless approved by a two-thirds vote of the Class B membership votes present and voting at a duly called meeting of association members. Land added after January 1, 1993, may include the land described above.

Section 7.31 Assessment of Maintenance Costs: All maintenance assessment costs shall be assessed in exactly the same manner as voting rights are maintained.

Section 7.32 Use of Lots: The Association shall have the right, power, and authority to establish reasonable rules and regulations governing the use of lots.

Permitted uses shall include the following: recreation, camping, gardening, and other uses generally associated with life in a rural residential housing area.

ARTICLE 8.00

GENERAL PROVISIONS

SECTION 8.01 ENFORCEMENT: THE ASSOCIATION, OR ANY OWNER SHALL HAVE THE RIGHT TO ENFORCE, BY AN PROCEEDING AT LAW OR IN EQUITY, ALL RESTRICTIONS, CONDITIONS, COVENANTS, RESERVATIONS, LIENS AND CHARGES NOW OR HEREAFTER IMPOSED BY THE PROVISIONS OF THIS DECLARATION. FAILURE BY THE ASSOCIATION OR BY ANY OWNER TO ENFORCE ANY COVENANT OR RESTRICTION HEREIN CONTAINED SHALL IN NO EVENT BE DEEMED A WAIVER OF THE RIGHT TO DO SO THEREAFTER.

SECTION 8.02 SEVERABILITY: INVALIDATION OF ANY ONE OF THESE COVENANTS OR RESTRICTIONS BY JUDGEMENT OR COURT ORDER SHALL IN NO WISE AFFECT ANY OTHER PROVISIONS WHICH SHALL REMAIN IN FULL FORCE AND EFFECT.

SECTION 8.03 AMENDMENT: THE COVENANTS AND RESTRICTIONS OF THIS DECLARATION SHALL RUN WITH AND BIND THE LAND, AND SHALL INURE TO THE BENEFIT OF AND BE ENFORCEABLE BY THE ASSOCIATION, OR THE OWNER OF ANY LOT SUBJECT TO THIS DECLARATION, THEIR RESPECTIVE LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS, AND ASSIGNS, FOR A TERM OF TWENTY-FIVE (25) YEARS FROM THE DATE THIS DECLARATION IS RECORDED, AFTER WHICH TIME SAID COVENANTS SHALL BE AUTOMATICALLY EXTENDED FOR SUCCESSIVE PERIODS OF TEN (10) YEARS. THE COVENANTS AND RESTRICTION OF THIS DECLARATION MAY BE AMENDED DURING THE FIRST TWENTY-FIVE (25) YEAR PERIOD BY AN INSTRUMENT SIGNED BY NOT LESS THAN NINETY PERCENT (90%) OF THE VOTES OF THE LOT OWNERS, AND THEREAFTER BY AN INSTRUMENT SIGNED BY NOT LESS THAN SEVENTY-FIVE PERCENT (75%) OF THE VOTES OF THE LOT OWNERS. ANY AMENDMENT MUST BE PROPERLY RECORDED.

SECTION 8.04 NOTICES: ANY NOTICE REQUIRED TO BE SENT TO ANY OWNER UNDER THE PROVISIONS OF THIS DECLARATION SHALL BE DEEMED TO HAVE BEEN PROPERLY SENT WHEN MAILED, POSTPAID, TO THE LAST KNOWN ADDRESS OF THE OWNER.

ARTICLE 9.00

SECTION 9.01 RELEASE OF INTERESTS: GLORIA J. HENRY, WIFE OF HARVEY W. HENRY, AND DIANNA E. VAN ORDEN, WIFE OF LUCAS S. VAN ORDEN III, JOIN HEREIN FOR THE PURPOSE OF RELEASING THEIR STATUTORY INTERESTS IN THE ABOVE-DESCRIBED REAL ESTATE.

IN WITNESS WHEREOF, THE UNDERSIGNED, BEING THE DECLARANT HARVEY W. HENRY HEREIN, AND HIS SPOUSE, GLORIA J. HENRY, AND THE DECLARANT LUCAS S. VAN ORDEN III AND HIS SPOUSE, DIANA E. VAN ORDEN, HAVE HEREUNTO SET THEIR HANDS THIS 12TH DAY OF JANUARY, 1968.

HARVEY W. HENRY, DECLARANT

GLORIA J. HENRY, WIFE OF DECLARANT

LUCAS S. VAN ORDEN III, DECLARANT

DIANNA E. VAN ORDEN, WIFE OF DECLARANT

STATE OF IOWA)
SS:
COUNTY OF JOHNSON)

ON THIS 12TH DAY OF JANUARY, 1968, BEFORE ME, THE UNDERSIGNED A NOTARY PUBLIC IN AND FOR SAID COUNTY, IN SAID STATE, PERSONALLY APPEARED HARVEY W. HENRY AND GLORIA J. HENRY, HUSBAND AND WIFE; AND LUCAS S. VAN ORDEN III AND DIANNA E. VAN ORDEN HUSBAND AND WIFE, TO ME KNOWN TO BE THE IDENTICAL PERSONS NAMED IN AND WHO EXECUTED THE WITHIN AND FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME AS THEIR VOLUNTARY ACT AND DEED.

NOTARY PUBLIC IN AND FOR SAID COUNTY. MY COMMISSION EXPIRES JULY 4, 1969.

ARTICLES OF INCORPORATION

OF

TIMBER TRAILS HOME OWNERS ASSOCIATION, INC.

WE, THE UNDERSIGNED, BEING PERSONS OF FULL AGE AND CITIZENS OF THE STATE OF IOWA, IN ORDER TO FORM A CORPORATION NOT FOR PECUNIARY PROFIT AND FOR THE PURPOSES HEREIN EXPRESSED, DO HEREBY ASSOCIATE OURSELVES INTO A BODY CORPORATE UNDER AND IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 504A OF THE 1966 CODE OF IOWA, IOWA NONPROFIT CORPORATION ACT ENACTED BY THE SIXTY-FIRST GENERAL ASSEMBLY AS CHAPTER 388, AND ALL ACTS AMENDATORY THEREOF AND SUPPLEMENTAL THERETO, AND WE HEREBY ASSUME ALL THE POWERS AND PRIVILEGES GRANTED TO CORPORATE BODIES UNDER SAID CHAPTER AND ASSUME ALL THE DUTIES AND OBLIGATIONS IMPOSED BY SAID CHAPTER AND FOR SAID PURPOSE DO HEREBY ADOPT THE FOLLOWING:

ARTICLES OF INCORPORATION

ARTICLE I

NAME

SECTION 1.01 THE NAME OF THE CORPORATION IS "TIMBER TRAILS HOME OWNERS ASSOCIATION, INC."

ARTICLE II

PLACE OF BUSINESS

SECTION 2.01 THE PRINCIPAL PLACE OF BUSINESS OF THE CORPORATION AND MAILING ADDRESS SHALL BE 1225 SOUTH LINN STREET, IOWA CITY, IOWA 52240, AND THE NAME OF ITS REGISTERED AGENT AT SUCH IS HARVEY W. HENRY.

ARTICLE III

OBJECTS AND PURPOSES

SECTION 3.01 THE BUSINESS, OBJECTS AND PURPOSES OF THIS CORPORATION SHALL BE AS FOLLOWS:

(A) TO ESTABLISH AND MAINTAIN A SYSTEM OF ROADS AND TRAILS WITHIN, OVER, AND THROUGH TIMBER TRAILS ESTATES, PART ONE, A SUBDIVISION OF JOHNSON COUNTY, IOWA, LEGALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SE¼ NW¼ OF SECTION 26, T80N, R6W OF THE 5TH PRINCIPAL MERIDIAN, BEING THE POINT OF BEGINNING; THENCE S 0° 01' 59" W, 169.52 FEET ALONG THE SECTION LINE TO THE CENTERLINE OF THE COUNTY ROAD; THENCE S 42° 56' 00" E, 280.22 FEET ALONG THE CENTERLINE OF THE COUNTY ROAD; THENCE S. 32° 10' 00" E, 291.47 FEET ALONG SAID CENTERLINE; THENCE SOUTHERLY 315.60 FEET ALONG A 383.10 FOOT RADIUS CURVE CONCAVE WESTERLY ALONG SAID CENTERLINE; THENCE S 15° 02' 00" W, 421.47 FEET ALONG SAID CENTELINE TO THE SOUTH LINE OF THE SE¼ NW¼ OF SAID SECTION 26; THENCE S 89° 07' 47" E, 274.70 FEET ALONG THE SOUTH LINE OF THE SE¼ NW¼ OF SAID SECTION 26 TO THE CENTERLINE OF PRAIRIE DU CHIEN ROAD; THENCE N 82° 31' 35" E, 310.60 FEET ALONG THE CENTERLINE OF PRAIRIE DU CHIEN ROAD; THENCE EASTERLY 263.91 FEET ALONG A 1371.17 FOOT RADIUS CURVE CONCAVE SOUTHERLY ALONG THE CENTERLINE OF SAID ROAD; THENCE S 86° 26' 45" E, 2.24 FEET ALONG THE CENTERLINE OF SAID ROAD; THENCE N 0° 20' 02" W, 468.70 FEET; THENCE S 86° 26' 45" E, 200.00 FEET; THENCE N 0° 20' 02" W, 814.83 FEET ALONG THE EAST LINE OF THE SE¼ NW¼ OF SAID SECTION 26 TO THE NORTHEAST CORNER OF THE SE¼ NW¼ OF SAID SECTION 26; THENCE N 89° 02' 52" W, 1328.97 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING, SAID TRACT CONTAINING 29.90 ACRES MORE OR LESS;

ON EACH LOT AS PLATTED IN TIMBER TRAILS ESTATES, PART ONE, THERE IS HEREBY RESERVED FOR UTILITIES, WALKWAYS, AND BRIDLE PATHS 20 FEET ALONG ALL SIDES OF EACH LOT, AS SHOWN ON THE RECORDED PLAT THEREOF, EXCEPT ALONG SIDES THAT BORDER COUNTY ROAD, PRAIRIE DU CHIEN ROAD, OR ANY ROAD WITHIN THE SUBDIVISION ITSELF;

AND ALSO LATER PARTS AS MAY BE ADDED THERETO, TO ESTABLISH AND MAINTAIN A COMMUNITY WATER SYSTEM THEREIN, TO PROMOTE THE BEAUTIFICATION, IMPROVEMENT AND DEVELOPMENT OF SAID SUBDIVISION THROUGH COOPERATIVE PLANNING, TO PROMOTE AND ENCOURAGE OUTDOOR SPORTS, TO PROVIDE WAYS AND MEANS FOR ACCOMPLISHING AND CARRYING INTO EFFECT THE FOREGOING OBJECTS AND PURPOSES, AND, IN GENERAL, TO DO ANY AND ALL THINGS WHICH MAY BE INCIDENTAL TO, IMPLIED FROM OR APPROPRIATE TO THE PROMOTION AND ENCOURAGEMENT OF THE FOREGOING OBJECTS AND PURPOSES.

(B) EXERCISE ALL OF THE POWERS AND PRIVILEGES AND TO PERFORM ALL OF THE DUTIES AND OBLIGATIONS OF THE ASSOCIATION AS SET FORTH IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR TIMBER TRAILS ESTATES, HEREINAFTER CALLED THE "DECLARATION," APPLICABLE TO THE PROPERTIES, SAID DECLARATION HAVING BEEN MADE BY HARVEY W. HENRY AND LUCAS S. VAN ORDEN III, RECORDED OR TO BE RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF JOHNSON COUNTY, IOWA, AND AS THE SAME MAY BE AMENDED FROM TIME TO TIME AS THEREIN PROVIDED, SAID DECLARATION BEING INCORPORATED HEREIN AS IF SET FORTH AT LENGTH.

(C) FIX, LEVY, COLLECT AND ENFORCE PAYMENT BY ANY LAWFUL MEANS, ALL CHARGES OR ASSESSMENTS PURSUANT TO THE TERMS OF THE DECLARATION; TO PAY ALL EXPENSES IN CONNECTION THEREWITH AND ALL OFFICE AND OTHER EXPENSES INCIDENT TO THE CONDUCT OF THE BUSINESS OF THE ASSOCIATION, INCLUDING ALL LICENSES, TAXES OR GOVERNMENTAL CHARGES LEVIED OR IMPOSED AGAINST THE PROPERTY OF THE ASSOCIATION.

(D) TO CONSTRUCT, OPERATE, MAINTAIN, AND IMPROVE AND TO SELL, CONVEY, ASSIGN, MORTGAGE OR LEASE ANY REAL ESTATE AND ANY PERSONAL PROPERTY NECESSARY OR APPROPRIATE TO THE OPERATION OF SUCH AN ASSOCIATION.

(E) TO TAKE BY GIFT, PURCHASE, DEVISE OR BEQUEST REAL AND PERSONAL PROPERTY FOR THE USE AND PURPOSES APPROPRIATE TO ITS CREATION AND TO DEAL WITH, MANAGE AND CONTROL THE SAME.

(F) TO MAKE CONTRACTS AND BORROW MONEY IN FURTHERANCE OF THE GENERAL PURPOSES OF THE CORPORATION TO THE SAME EXTENT AS NATURAL PERSONS MAY DO SO AND TO SECURE THE SAME BY MORTGAGE, DEED OF TRUST, PLEDGE OR OTHER LIEN.

(G) TO CHARGE MEMBERSHIP FEES AND DUES; TO ENACT BY-LAWS FOR THE GOVERNMENT OF ITS INTERNAL AFFAIRS; AND, IF DESIRED, TO ISSUE EVIDENCE OF MEMBERSHIP IN THE CORPORATION IN THE FORM OF MEMBERSHIP CERTIFICATES.

(H) HAVE AND TO EXERCISE ANY AND ALL POWERS, RIGHTS AND PRIVILEGES WHICH A CORPORATION ORGANIZED UNDER THE NON-PROFIT CORPORATION LAW OF THE STATE OF IOWA BY LAW MAY NOW OR HEREAFTER HAVE OR EXERCISE.

ARTICLE IV

MEMBERSHIP

SECTION 4.01 EVERY PERSON OR ENTITY WHO IS A RECORD OWNER OF A FEE OR UNDIVIDED FEE INTEREST IN ANY LOT WHICH IS SUBJECT BY COVENANTS OF RECORD TO ASSESSMENT BY THE ASSOCIATION, INCLUDING CONTRACT SELLERS, SHALL BE A MEMBER OF THE ASSOCIATION. THE FOREGOING IS NOT INTENDED TO INCLUDE PERSONS OR ENTITIES WHO HOLD AN INTEREST MERELY AS SECURITY FOR THE PERFORMANCE OF AN OBLIGATION. NO OWNER SHALL HAVE MORE THAN ONE MEMBERSHIP. MEMBERSHIP SHALL BE APPURTENANT TO AND MAY NOT BE SEPARATED FROM OWNERSHIP OF ANY LOT WHICH IS SUBJECT TO ASSESSMENT BY THE ASSOCIATION. OWNERSHIP OF SUCH LOT SHALL BE THE SOLE QUALIFICATION FOR MEMBERSHIP.

ARTICLE V

VOTING RIGHTS

SECTION 5.01 THE ASSOCIATION SHALL HAVE TWO CLASSES OF VOTING MEMBERSHIP:

CLASS A. CLASS A MEMBERSHIP SHALL BE ALL THOSE OWNERS AS DEFINED IN ARTICLE IV WITH THE EXCEPTION OF THE DECLARANTS. CLASS A MEMBERS SHALL BE ENTITLED TO ONE VOTE FOR EACH LOT IN WHICH THEY HOLD THE INTEREST REQUIRED FOR MEMBERSHIP BY ARTICLE IV. WHEN MORE THAN ONE PERSON HOLDS SUCH INTEREST IN ANY LOT, ALL SUCH PERSONS SHALL BE MEMBERS. THE VOTE FOR SUCH LOT SHALL BE EXERCISED AS THEY AMONG THEMSELVES DETERMINE, BUT IN NO EVENT SHALL MORE THAN ONE VOTE BE CAST WITH RESPECT TO ANY LOT.

CLASS B. THE CLASS B MEMBERS SHALL BE THE DECLARANTS (AS DEFINED IN THE DECLARATION). THE CLASS B MEMBERS SHALL BE ENTITLED TO THREE (3) VOTES FOR EACH LOT IN WHICH THEY HOLD THE INTEREST REQUIRED FOR MEMBERSHIP BY ARTICLE IV, PROVIDED THAT THE CLASS B MEMBERSHIP SHALL CEASE AND BE CONVERTED TO CLASS A MEMBERSHIP ON THE HAPPENING OF EITHER OF THE FOLLOWING EVENTS, WHICHEVER OCCURS EARLIER:

(A) WHEN THE TOTAL VOTES OUTSTANDING IN THE CLASS A MEMBERSHIP EQUAL THE TOTAL VOTES OUTSTANDING IN THE CLASS B MEMBERSHIP; OR

(B) ON JANUARY 1, 1990.

ARTICLE VI

BOARD OF DIRECTORS

SECTION 6.01 FROM THE TIME OF THE FIRST ANNUAL MEETING THE AFFAIRS, FUNDS AND BUSINESS OF THIS CORPORATION SHALL BE CONDUCTED BY A BOARD OF THREE, FIVE, SEVEN, OR NINE DIRECTORS, ELECTED BY AND FROM THE MEMBERSHIP AT ITS ANNUAL MEETING, WHO SHALL ACT AS SUCH UNTIL THEIR SUCCESSORS ARE DULY ELECTED AND QUALIFIED.

SECTION 6.02 THE BOARD OF DIRECTORS SHALL ELECT A PRESIDENT, VICE-PRESIDENT, SECRETARY AND TREASURER AND SUCH OTHER OFFICERS AS THE BY-LAWS MAY REQUIRED. ALL OFFICERS SHALL BE MEMBERS OF THE CORPORATION. THE BOARD OF DIRECTORS MAY, FROM TIME TO TIME, APPOINT OR EMPLOY SUCH OTHER AGENTS OR ASSISTANTS AS MAY BE DEEMED NECESSARY TO FURTHER THE PURPOSE OF THE CORPORATION.

SECTION 6.03 THE BOARD OF DIRECTORS SHALL HAVE THE POWER TO FILL VACANCIES OCCURING IN ITS MEMBERSHIP BETWEEN THE ANNUAL MEETINGS OF THE MEMBERSHIP AND TO FILL VACANCIES OCCURING IN THE VARIOUS OFFICES OF THE CORPORATION.

SECTION 6.04 THE BOARD OF DIRECTORS SHALL ADOPT SUCH BY-LAWS AS THEY MAY DEEM NECESSARY FOR THE PROPER MANAGEMENT AND CONTROL OF THE BUSINESS AND INTERNAL AFFAIRS OF THE CORPORATION AND SHALL HAVE THE POWER TO AMEND, ALTER OR REPEAL SAID BY-LAWS AT ANY REGULAR OR SPECIAL MEETING OF THE BOARD.

SECTION 6.05 IN FURTHERANCE AND NOT IN LIMITATION OF THE GENERAL POWERS OF THE BOARD OF DIRECTORS, THEY ARE EXPRESSLY AUTHORIZED:

(A) TO FIX THE ANNUAL DUES AND ASSESSMENTS OF THE MEMBERSHIP,

(B) TO DETERMINE THE PROJECTS AND ACTIVITIES OF THE CORPORATION, TO FIX THE AMOUNTS TO BE EXPENDED BY THE CORPORATION IN FURTHERANCE OF SAID PROJECTS AND ACTIVITIES AND TO ALLOCATE THE FUNDS EXPENDED THEREFOR.

(C) TO FIX THE AMOUNTS TO BE RESERVED AS WORKING CAPITAL FOR ANY PROPER PURPOSE, INCLUDING THE RETIREMENT OF THE CORPORATION'S DEBTS; TO AUTHORIZE AND CAUSE TO BE EXECUTED MORTGAGES AND LIENS UPON ANY OR ALL OF THE REAL AND PERSONAL PROPERTY OF THE CORPORATION.

(D) WHEN AUTHORIZED BY THE AFFIRMATIVE VOTE OF A MAJORITY OF THE MEMBERSHIPS, ISSUED AND OUTSTANDING, TO SELL, LEASE OR EXCHANGE ALL OF THE PROPERTY AND ASSETS OF THE CORPORATION UPON SUCH TERMS AND CONDITIONS AS IT SHALL DEEM EXPEDIENT AND FOR THE BEST INTERESTS OF THE CORPORATION.

SECTION 6.06 A MAJORITY OF THE BOARD OF DIRECTORS SHALL CONSTITUTE A QUORUM FOR CONDUCTING ANY BUSINESS OF THE CORPORATION.

SECTION 6.07 NO CONTRACT OR OTHER TRANSACTION BETWEEN THIS CORPORATION AND ANY OTHER CORPORATION, AND NO ACT OF THIS CORPORATION, SHALL IN ANY WAY BE AFFECTED OR INVALIDATED BY THE FACT THAT ANY OF THE DIRECTORS OR OFFICERS OF THIS CORPORATION ARE PECUNIARILY OR OTHERWISE INTERESTED IN, OR ARE DIRECTORS OR OFFICERS OF, SUCH OTHER CORPORATION.

SECTION 6.08 UNTIL THE FIRST ANNUAL MEETING OF THE MEMBERS, THE FOLLOWING PERSONS SHALL ACT AS MEMBERS OF THE BOARD OF DIRECTORS:

HARVEY W. HENRY, IOWA CITY, IOWA
GLORIA J. HENRY, IOWA CITY, IOWA

AND THE FOLLOWING PERSONS SHALL BE THE OFFICERS OF THE CORPORATION AND HOLD THE OFFICE INDICATED AFTER THEIR RESPECTIVE NAMES:

HARVEY W. HENRY, PRESIDENT
GLORIA J. HENRY, VICE-PRESIDENT
GLORIA J. HENRY, SECRETARY
HARVEY W. HENRY, TREASURER

ARTICLE VII

MEETINGS OF MEMBERS

SECTION 7.01 THE ANNUAL MEETING OF THE MEMBERS OF THIS CORPORATION SHALL BE HELD ON THE FOURTH MONDAY OF MARCH IN EACH YEAR STARTING IN 1968.

SECTION 7.02 SPECIAL MEETINGS OF THE MEMBERS MAY BE CALLED BY THE PRESIDENT BY ORDER OF THE BOARD OF DIRECTORS OR AT THE WRITTEN REQUEST OF MEMBERS WHO ARE ENTITLED TO VOTE ONE-FOURTH (1/4) OF ALL OF THE VOTES OF THE ENTIRE MEMBERSHIP OR WHO ARE ENTITLED TO VOTE ONE-FOURTH (1/4) OF THE VOTES OF THE CLASS A MEMBERSHIP. NOTICE OF MEETINGS SHALL BE GIVEN AS MAY BE PROVIDED IN THE BY-LAWS OR BY SPECIAL RESOLUTION OF THE BOARD OF DIRECTORS.

ARTICLE VIII

NON-LIABILITY FOR CORPORATE DEBTS

SECTION 8.01 THE MEMBERS, DIRECTORS AND OFFICERS OF THIS CORPORATION AND THEIR PRIVATE PROPERTY SHALL NOT BE LIABLE IN ANY MANNER FOR ANY CORPORATE DEBTS, OBLIGATIONS, UNDERTAKINGS OR LIABILITIES OF THE CORPORATION. THIS PROVISION SHALL NOT BE AMENDED OR REPEALED EXCEPT BY UNANIMOUS VOTE OF THE MEMBERSHIP ENTITLED TO VOTE.

ARTICLE IX

EXECUTION OF INSTRUMENTS

SECTION 9.01 ALL DEEDS, MORTGAGES, CONTRACTS, CONVEYANCES AND OTHER INSTRUMENTS CREATING, CONVEYING, GRANTING, ENCUMBERING OR RELEASING ANY INTEREST IN REAL ESTATE AND ALL OTHER INSTRUMENTS OR CONTRACTS HAVING OR REQUIRING THE ACKNOWLEDGEMENT OF THIS CORPORATION SHALL BE EXECUTED BY EITHER THE PRESIDENT OR VICE-PRESIDENT AND COUNTERSIGNED BY EITHER THE SECRETARY OR TREASURER.

ARTICLE X

CORPORATE SEAL

SECTION 10.01 THIS CORPORATION SHALL NOT HAVE A CORPORATE SEAL.

ARTICLE XI

CORPORATE PERIOD

SECTION 11.01 THE CORPORATE PERIOD OF THIS CORPORATION SHALL BEGIN ON THE DATE WHEN THE SECRETARY OF STATE OF THE STATE OF IOWA ISSUES THE ORIGINAL CERTIFICATE OF INCORPORATION AND SHALL TERMINATE AT THE EXPIRATION OF FIFTY (50) YEARS FROM SAID DATE, UNLESS THE CORPORATION BE SOONER DISSOLVED OR THE CORPORATE PERIOD EXTENDED.

SECTION 11.01 THE CORPORATE PERIOD MAY BE RENEWED OR THE CORPORATION MAY BE DISSOLVED BY A THREE-FOURTHS (3/4) VOTE OF THE ENTIRE NUMBER OF CLASS A MEMBERSHIP VOTES PLUS A THREE-FOURTHS (3/4) VOTE OF THE ENTIRE NUMBER OF CLASS B MEMBERSHIP VOTES.

SECTION 11.03 UPON DISSOLUTION OF THIS CORPORATION, IF SUCH SHOULD EVER OCCUR, THE BOARD OF TRUSTEES SHALL, AFTER PAYING OR MAKING PROVISION FOR THE PAYMENT OF ALL DEBTS AND LIABILITIES OF THE CORPORATION, DISTRIBUTE ALL OF THE ASSETS OF THE CORPORATION TO SUCH HOME OWNERS ASSOCIATION AS THE MAJORITY OF THE BOARD OF DIRECTORS SHALL ELECT WHICH IS ORGANIZED AND OPERATED EXCLUSIVELY FOR EDUCATIONAL, SCIENTIFIC, OR CHARITABLE PURPOSES AND WHICH SHALL AT THE TIME QUALIFY AS AN EXEMPT ORGANIZATION OR ORGANIZATIONS UNDER SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE OF 1954 (OR THE CORRESPONDING PROVISION OF ANY FUTURE UNITED STATES INTERNAL REVENUE LAW), AND WHICH, IN THE JUDGMENT OF THE BOARD OF DIRECTORS, WILL CARRY ON PURPOSES SIMILAR TO OR CONSISTENT WITH THOSE OF THIS CORPORATION. ANY OF SUCH ASSETS NOT SO DISPOSED OF SHALL BE DISPOSED OF BY THE DISTRICT OR SIMILAR COURT OF THE COUNTY IN WHICH THE PRINCIPAL OFFICE OF THE CORPORATION IS THEN LOCATED, EXCLUSIVELY FOR SUCH PURPOSES OR TO SUCH HOME OWNERS ASSOCIATION AS SAID COURT SHALL DETERMINE WHICH IS ORGANIZED FOR SUCH PURPOSES.

ARTICLE XII

AMENDMENTS

SECTION 12.01 EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED, THESE ARTICLES MAY BE AMENDED AT ANY ANNUAL OR SPECIAL MEETING OF THE MEMBERS OF THE AFFIRMATIVE VOTE OF A MAJORITY OF THE CLASS A MEMBERSHIP VOTES PRESENT PLUS A MAJORITY OF THE CLASS B MEMBERSHIP VOTES PRESENT UPON SUCH NOTICE AS MAY BE PROVIDED IN THE BY-LAWS OF THE CORPORATION OR UPON APPROPRIATE RESOLUTION OF THE BOARD OF DIRECTORS.

DATED THIS 9th DAY OF January, 1968, AT IOWA CITY, IOWA.

INCORPORATORS	ADDRESS
Harvey W. Henry HARVEY W. HENRY	RR#2 Iowa City, Iowa
Gloria J. Henry GLORIA J. HENRY	RR#2 Iowa City, Iowa
Emil G. Trott EMIL G. TROTT	First National Bank Building Iowa City, Iowa 52240

STATE OF IOWA)
SS:
COUNTY OF JOHNSON)

BE IT REMEMBERED, THAT ON THIS 9th DAY OF January, 1968, BEFORE ME A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED HARVEY W. HENRY, GLORIA J. HENRY, AND EMIL G. TROTT, SAID PERSONS BEING PERSONALLY KNOWN TO ME TO BE THE IDENTICAL PERSONS WHO NAMES ARE SUBSCRIBED TO THE FOREGOING ARTICLES OF INCORPORATION AND EACH FOR HIMSELF ACKNOWLEDGED THE SAME TO BE HIS FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES THEREIN EXPRESSED.

WITNESS MY HAND AND NOTARIAL SEAL AT IOWA CITY, IN THE COUNTY OF JOHNSON, STATE OF IOWA, THE DAY AND YEAR LAST ABOVE WRITTEN.

Doris Cox

Doris Cox NOTARY PUBLIC IN AND FOR JOHNSON COUNTY, IOWA.

DORIS COX
NOTARIAL SEAL

BY-LAWS

OF

TIMBER TRAILS HOME OWNERS ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

SECTION 1.01 THE NAME OF THE CORPORATION IS TIMBER TRAILS HOME OWNERS ASSOCIATION, INC., HEREINAFTER REFERRED TO AS THE "ASSOCIATION". THE PRINCIPAL OFFICE OF THE CORPORATION SHALL BE LOCATED AT 1225 SOUTH LINN STREET, IOWA CITY, IOWA, BUT MEETINGS OF MEMBERS AND DIRECTORS MAY BE HELD AT SUCH PLACES WITHIN THE STATE OF IOWA, COUNTY OF JOHNSON, AS MAY BE DESIGNATED BY THE BOARD OF DIRECTORS.

ARTICLE II

DEFINITIONS

SECTION 2.01 "ASSOCIATION" SHALL MEAN AND REFER TO THE TIMBER TRAILS HOME OWNERS ASSOCIATION, INC., ITS SUCCESSORS AND ASSIGNS.

SECTION 2.02 "PROPERTIES" SHALL MEAN AND REFER TO THAT CERTAIN REAL PROPERTY DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND SUCH ADDITIONS THERETO AS MAY HEREAFTER BE BROUGHT WITHIN THE JURISDICTION OF THE ASSOCIATION.

SECTION 2.03 "COMMON AREA" SHALL MEAN ALL REAL PROPERTY OWNED BY THE ASSOCIATION FOR THE COMMON USE AND ENJOYMENT OF THE MEMBERS OF THE ASSOCIATION.

SECTION 2.04 "LOT" SHALL MEAN AND REFER TO ANY PLOT OF LAND SHOWN UPON ANY RECORDED SUBDIVISION MAP OF THE PROPERTIES WITH THE EXCEPTION OF THE COMMON AREA.

SECTION 2.05 "MEMBER" SHALL MEAN AND REFER TO EVERY PERSON OR ENTITY WHO HOLDS A MEMBERSHIP IN THE ASSOCIATION.

Section 2.06 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2.07 "Declarants" shall mean and refer to Harvey W. Henry, and Lucas S. Van Orden II, their successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 2.08 "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the County Recorder of Johnson County, Iowa.

ARTICLE III

MEMBERSHIP

Section 3.01 Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Section 3.02 Suspension of Membership. During any period in which a member shall be in default in the payment of any annual or special assessment levied by the Association, the voting rights and right to use of the recreational facilities of such member may be suspended by the Board of Directors until such assessment has been paid. Such rights of a member may also be suspended, after notice and hearing, for a period not to exceed six months, for violation of any rules and regulations established by the Board of Directors governing the use of the Common Area facilities.

ARTICLE IV

PROPERTY RIGHTS: RIGHTS OF ENJOYMENT

Section 4.01 Each member shall be entitled to the use and enjoyment of the Common Area and facilities as provided in the Declaration. Any member may delegate his rights of enjoyment of the Common Area and facilities to the members of his family, his tenants or contract purchasers, who reside on the property. Such member shall notify the secretary in writing of the name of any such delegee. The rights and privileges of such delegee are subject to suspension to the same extent as those of the members.

SECTION 4.02 IRRESPECTIVE OF THE FACT THAT SECTION 4.01 (B) OF ARTICLE 4.00 OF THE DECLARATION GIVES THE ASSOCIATION THE RIGHT TO CHARGE REASONABLE ADMISSION AND OTHER FEES FOR THE USE OF ANY RECREATIONAL FACILITIES SITUATED UPON THE COMMON AREA, THIS RIGHT SHALL NOT BE EXERCISED AS TO MEMBERS FOR A PERIOD OF FIVE YEARS FROM THE DATE OF THE RECORDATION OF THE DECLARATION, AND AFTER THIS PERIOD, ONLY UPON WRITTEN APPROVAL OF THOSE HOLDING TWO-THIRDS (2/3) OF THE VOTES OF THE ENTIRE CLASS A MEMBERSHIP.

ARTICLE V

BOARD OF DIRECTORS: SELECTION: TERMS OF OFFICE

SECTION 5.01 NUMBER. FROM THE TIME OF THE FIRST ANNUAL MEETING THE AFFAIRS, FUNDS AND BUSINESS OF THIS CORPORATION SHALL BE CONDUCTED BY A BOARD OF THREE, FIVE, SEVEN, OR NINE DIRECTORS, ELECTED BY AND FROM THE MEMBERSHIP AT ITS ANNUAL MEETING, WHO SHALL ACT AS SUCH UNTIL THEIR SUCCESSORS ARE DULY ELECTED AND QUALIFIED. UNTIL THE FIRST ANNUAL MEETING THERE SHALL BE ONLY TWO DIRECTORS, WHO SHALL BE HARVEY W. HENRY AND GLORIA J. HENRY.

SECTION 5.02 REMOVAL. ANY DIRECTOR MAY BE REMOVED FROM THE BOARD, WITH OR WITHOUT CAUSE, BY A MAJORITY VOTE OF ALL OF THE CLASS A MEMBERSHIP VOTES OF THE ASSOCIATION PLUS A MAJORITY VOTE OF ALL OF THE CLASS B MEMBERSHIP VOTES OF THE ASSOCIATION. IN THE EVENT OF DEATH, RESIGNATION OR REMOVAL OF A DIRECTOR, HIS SUCCESSOR SHALL BE SELECTED BY THE REMAINING MEMBERS OF THE BOARD AND SHALL SERVE FOR THE UNEXPIRED TERM OF HIS PREDECESSOR.

SECTION 5.03 COMPENSATION. NO DIRECTOR SHALL RECEIVE COMPENSATION FOR ANY SERVICE HE MAY RENDER TO THE ASSOCIATION. HOWEVER, ANY DIRECTOR MAY BE REIMBURSED FOR HIS ACTUAL EXPENSES INCURRED IN THE PERFORMANCE OF HIS DUTIES.

SECTION 5.04 ACTION TAKEN WITHOUT A MEETING. THE DIRECTORS SHALL HAVE THE RIGHT TO TAKE ANY ACTION IN THE ABSENCE OF A MEETING WHICH THEY COULD TAKE AT A MEETING BY OBTAINING THE WRITTEN APPROVAL OF ALL THE DIRECTORS. ANY ACTION SO APPROVED SHALL HAVE THE SAME EFFECT AS THOUGH TAKEN AT A MEETING OF THE DIRECTORS.

ARTICLE VI

MEETINGS OF DIRECTORS

SECTION 6.01 REGULAR AND SPECIAL MEETINGS. MEETINGS OF THE BOARD OF DIRECTORS SHALL BE HELD WHEN CALLED BY THE PRESIDENT OR AT WRITTEN REQUEST OF ANY TWO MEMBERS OF THE BOARD.

Section 6.0. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

NOMINATION AND ELECTION OF DIRECTORS

Section 7.01 Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among members.

Section 7.02 Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VIII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 8.01 Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(c) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(d) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 8.02 Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting, when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided herein, and in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, as hereinafter provided in Article XII, and

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period;

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) cause the Common Area to be maintained.

ARTICLE IX

COMMITTEES

Section 9.01 The Board of Directors shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes, such as:

(a) A Recreation Committee which shall advise the Board of Directors on all matters pertaining to the recreational program and activities of the Association and shall perform such other functions as the Board, in its discretion determines;

(B) A MAINTENANCE COMMITTEE WHICH SHALL ADVISE THE BOARD OF DIRECTORS ON ALL MATTERS PERTAINING TO THE MAINTENANCE, REPAIR, OR IMPROVEMENT OF THE PROPERTIES, AND SHALL PERFORM SUCH OTHER FUNCTIONS AS THE BOARD IN ITS DISCRETION DETERMINES;

(C) A PUBLICITY COMMITTEE WHICH SHALL INFORM THE MEMBERS OF ALL ACTIVITIES AND FUNCTIONS OF THE ASSOCIATION, AND SHALL, AFTER CONSULTING WITH THE BOARD OF DIRECTORS, MAKE SUCH PUBLIC RELEASES AND ANNOUNCEMENTS AS ARE IN THE BEST INTERESTS OF THE ASSOCIATION; AND

(D) AN AUDIT COMMITTEE WHICH SHALL SUPERVISE THE ANNUAL AUDIT OF THE ASSOCIATION'S BOOKS AND APPROVE THE ANNUAL BUDGET AND STATEMENT OF INCOME AND EXPENDITURES TO BE PRESENTED TO THE MEMBERSHIP AT ITS REGULAR ANNUAL MEETING, AS PROVIDED IN ARTICLE XI, SECTION 11.08(D). THE TREASURER SHALL BE AN EX OFFICIO MEMBER OF THE COMMITTEE.

SECTION 9.02 IT SHALL BE THE DUTY OF EACH COMMITTEE TO RECEIVE COMPLAINTS FROM MEMBERS ON ANY MATTER INVOLVING ASSOCIATION FUNCTIONS, DUTIES, AND ACTIVITIES WITHIN ITS FIELD OF RESPONSIBILITY. IT SHALL DISPOSE OF SUCH COMPLAINTS AS IT DEEMS APPROPRIATE OR REFER THEM TO SUCH OTHER COMMITTEE, DIRECTOR OR OFFICER OF THE ASSOCIATION AS IS FURTHER CONCERNED WITH THE MATTER PRESENT.

ARTICLE X

MEETINGS OF MEMBERS

SECTION 10.01 ANNUAL MEETINGS. THE FIRST ANNUAL MEETING OF THE MEMBERS SHALL BE HELD ON THE FOURTH MONDAY OF MARCH IN 1968 AND EACH SUBSEQUENT REGULAR ANNUAL MEETING OF THE MEMBERS SHALL BE HELD ON THE SAME DAY OF THE SAME MONTH OF EACH YEAR THEREAFTER, AT THE HOUR OF 7:30 O'CLOCK, P.M. IF THE DAY FOR THE ANNUAL MEETING OF THE MEMBERS IS A LEGAL HOLIDAY, THE MEETING WILL BE HELD AT THE SAME HOUR ON THE FIRST DAY FOLLOWING WHICH IS NOT A LEGAL HOLIDAY.

SECTION 10.02 SPECIAL MEETINGS. SPECIAL MEETINGS OF THE MEMBERS MAY BE CALLED AT ANY TIME BY THE PRESIDENT OR BY THE BOARD OF DIRECTORS, OR UPON WRITTEN REQUEST OF THE MEMBERS WHO ARE ENTITLED TO VOTE ONE-FOURTH (1/4) OF ALL OF THE VOTES OF THE ENTIRE MEMBERSHIP OR WHO ARE ENTITLED TO VOTE ONE-FOURTH (1/4) OF THE VOTES OF THE CLASS A MEMBERSHIP.

SECTION 10.03 NOTICE OF MEETINGS. WRITTEN NOTICE OF EACH MEETING OF THE MEMBERS SHALL BE GIVEN BY, OR AT THE DIRECTION OF, THE SECRETARY OR PERSON AUTHORIZED TO CALL THE MEETING, BY MAILING A COPY OF SUCH NOTICE, POSTAGE PREPAID, AT LEAST 10, BUT NOT MORE THAN 20, DAYS BEFORE SUCH MEETING TO EACH MEMBER ENTITLED TO VOTE THEREAT, ADDRESSED TO THE MEMBER'S ADDRESS LAST APPEARING ON THE BOOKS OF THE ASSOCIATION, OR SUPPLIED BY SUCH MEMBER TO THE ASSOCIATION FOR THE PURPOSE OF NOTICE. SUCH NOTICE SHALL SPECIFY THE PLACE, DAY AND HOUR OF THE MEETING AND, IN THE CASE OF A SPECIAL MEETING, THE PURPOSE OF THE MEETING.

Section 10.04 Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 10.05 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

ARTICLE XI

OFFICERS AND THEIR DUTIES

Section 11.01 Enumeration of Offices. The officers of this Association shall be a President and Vice-President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 11.02 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 11.03 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 11.04 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 11.05 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 11.06 Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 11.07 Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 11.04 of this Article.

Section 11.08 Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all check and promissory notes.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE XII

ASSESSMENTS

Section 12.01 Creation of the Lien and Personal Obligation of Assessments. By the Declaration each member is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such 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 and shall not pass to his successors in title unless expressly assumed by them.

SECTION 12.02 PURPOSE OF ASSESSMENTS. THE ASSESSMENTS LEVIED BY THE ASSOCIATION SHALL BE USED EXCLUSIVELY FOR THE PURPOSE OF PROMOTING THE RECREATION, HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS IN THE PROPERTIES AND IN PARTICULAR FOR THE IMPROVEMENT AND MAINTENANCE OF THE PROPERTIES, SERVICES AND FACILITIES DEVOTED TO THIS PURPOSE AND RELATED TO THE USE AND ENJOYMENT OF THE COMMON AREA, AND OF THE HOMES SITUATED UPON THE PROPERTIES.

SECTION 12.03 FIXING OF ANNUAL ASSESSMENTS. AFTER CONSIDERATION OF CURRENT MAINTENANCE COSTS AND FUTURE NEEDS OF THE ASSOCIATION, THE BOARD OF DIRECTORS MAY FIX THE ANNUAL ASSESSMENT.

SECTION 12.04 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. IN ADDITION TO THE ANNUAL ASSESSMENTS AUTHORIZED ABOVE, THE ASSOCIATION MAY LEVY IN ANY ASSESSMENT YEAR, A SPECIAL ASSESSMENT APPLICABLE TO THAT YEAR ONLY, FOR THE PURPOSE OF DEFRAYING, IN WHOLE OR IN PART, THE COST OF ANY CONSTRUCTION OR RECONSTRUCTION, UNEXPECTED REPAIR OR REPLACEMENT OF STREETS, ROADS, TRAILS, WATER SYSTEM, OR OF A DESCRIBED CAPITAL IMPROVEMENT UPON THE COMMON AREA, INCLUDING THE NECESSARY FIXTURES AND PERSONAL PROPERTY RELATED THERETO, PROVIDED THAT ANY SUCH ASSESSMENT SHALL HAVE THE ASSENT OF TWO-THIRDS (2/3) OF THE VOTES OF EACH CLASS OF MEMBERS WHO ARE VOTING IN PERSON OR BY PROXY AT A MEETING DULY CALLED FOR THIS PURPOSE, WRITTEN NOTICE OF WHICH SHALL BE SENT TO ALL MEMBERS NOT LESS THAN 10 DAYS NOR MORE THAN 20 DAYS IN ADVANCE OF THE MEETING SETTING FORTH THE PURPOSE OF THE MEETING.

SECTION 12.05 UNIFORM RATE. BOTH ANNUAL AND SPECIAL ASSESSMENTS MUST BE FIXED AT A UNIFORM RATE FOR ALL LOTS AND MAY BE COLLECTED ON A MONTHLY BASIS.

SECTION 12.06 QUROUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 12.03 AND 12.04. AT THE FIRST MEETING CALLED, AS PROVIDED IN SECTIONS 12.03 AND 12.04 HEREOF, THE PRESENCE AT THE MEETING OF MEMBERS OR OF PROXIES ENTITLED TO CAST SIXTY PERCENT (60%) OF ALL THE VOTES OF EACH CLASS OF MEMBERSHIP SHALL CONSTITUTE A QUORUM. IF THE REQUIRED QUORUM IS NOT FORTHCOMING AT ANY MEETING, ANOTHER MEETING MAY BE CALLED, SUBJECT TO THE NOTICE REQUIREMENT SET FORTH IN SECTIONS 12.03 AND 12.04, AND THE REQUIRED QUORUM AT ANY SUCH SUBSEQUENT MEETING SHALL BE ONE-HALF (1/2) OF THE REQUIRED QUORUM AT THE PRECEDING MEETING. NO SUCH SUBSEQUENT MEETING SHALL BE HELD MORE THAN SIXTY (60) DAYS FOLLOWING THE PRECEDING MEETING.

SECTION 12.07 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. THE ANNUAL ASSESSMENTS PROVIDED FOR HEREIN SHALL COMMENCE AS TO ALL LOTS ON THE FIRST DAY OF THE MONTH FOLLOWING THE CONVEYANCE OF THE COMMON AREA. THE FIRST ANNUAL ASSESSMENT SHALL BE ADJUSTED ACCORDING TO THE NUMBER OF MONTHS REMAINING IN THE CALENDAR YEAR. THE BOARD OF DIRECTORS SHALL FIX THE AMOUNT OF THE ANNUAL ASSESSMENT AGAINST EACH LOT AT LEAST THIRTY (30) DAYS IN ADVANCE OF EACH ANNUAL ASSESSMENT PERIOD. WRITTEN NOTICE OF THE ANNUAL ASSESSMENT SHALL BE SENT TO EVERY OWNER SUBJECT THERETO. THE DUE DATES SHALL BE ESTABLISHED BY THE BOARD OF DIRECTORS. THE ASSOCIATION SHALL UPON DEMAND AT ANY TIME FURNISH A CERTIFICATE IN

WRITING, SIGNED BY AN OFFICER OF THE ASSOCIATION, SETTING FORTH WHETHER THE ASSESSMENTS ON A SPECIFIED LOT HAVE BEEN PAID. A REASONABLE CHARGE MAY BE MADE BY THE BOARD FOR THE ISSUANCE OF THESE CERTIFICATES. SUCH CERTIFICATE SHALL BE CONCLUSIVE EVIDENCE OF PAYMENT OF ANY ASSESSMENT THEREIN STATED TO HAVE BEEN PAID.

SECTION 12.08 EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. ANY ASSESSMENTS WHICH ARE NOT PAID WHEN DUE SHALL BE DELINQUENT. IF THE ASSESSMENT IS NOT PAID WITHIN THIRTY (30) DAYS AFTER THE DUE DATE, THE ASSESSMENT SHALL BEAR INTEREST FROM THE DATE OF DELINQUENCY AT THE RATE OF SEVEN PERCENT PER ANNUM, AND THE ASSOCIATION MAY BRING AN ACTION AT LAW AGAINST THE OWNER PERSONALLY OBLIGATED TO PAY THE SAME OR FORECLOSE THE LIEN AGAINST THE PROPERTY, AND INTEREST, COSTS, AND REASONABLE ATTORNEY'S FEES OF ANY SUCH ACTION SHALL BE ADDED TO THE AMOUNT OF SUCH ASSESSMENT. OR IN LIEU OF FORECLOSING SUCH LIEN, THE ASSOCIATION BY ITS PROPER OFFICER MAY CAUSE TO BE SERVED UPON SUCH LOT OWNER A NOTICE OF FORFEITURE NOTIFYING HIM THAT UNLESS SAID ASSESSMENT WITH SEVEN PERCENT INTEREST, COSTS OF SERVING THE NOTICE, AND $35.00 ATTORNEY FEES ARE PAID WITHIN THIRTY DAYS OF THE COMPLETED SERVICE OF SAID NOTICE, THE TITLE TO SAID LOT SHALL PASS TO THE TIMBER TRAILS HOME OWNERS ASSOCIATION, INC. IF THE TERMS AND CONDITIONS OF SAID NOTICE ARE NOT PERFORMED WITHIN THE SAID THIRTY DAYS, THE PARTY SERVING SAID NOTICE OR THE ASSOCIATION MAY FILE FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER A COPY OF THE NOTICE AFORESAID WITH PROOFS OF SERVICE ATTACHED OR ENDORSED THEREON, AND WHEN SO FILED AND RECORDED, THE SAID RECORD SHALL BE CONSTRUCTIVE NOTICE TO ALL PARTIES OF THE PASSING OF TITLE TO SAID LOT TO THE ASSOCIATION. PROCEEDINGS HEREUNDER EXCEPT AS TO THE PAYMENT OF ATTORNEY FEES SHALL BE THE SAME AS THOSE PROVIDED FOR THE FORFEITURE OF REAL ESTATE CONTRACTS IN CHAPTER 656 OF THE 1966 CODE OF IOWA. ANY LOT ACQUIRED BY THE ASSOCIATION BY EITHER OF THE METHODS SET OUT ABOVE SHALL BE SOLD WITHIN A REASONABLE TIME AT PUBLIC OR PRIVATE SALE, AND ANY SURPLUS REMAINING AFTER THE PAYMENT OF ALL ASSESSMENTS, INTEREST, COSTS, AND ATTORNEY FEES SHALL BE PAID OVER TO THE FORMER OWNER OF SAID LOT. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NONUSE OF THE COMMON AREA OR ABANDONMENT OF HIS LOT.

SECTION 12.09 SUBORDINATION OF THE LIEN TO MORTGAGES. THE LIEN OF THE ASSESSMENTS PROVIDED FOR HEREIN SHALL BE SUBORDINATE TO THE LIEN OF ANY PRIOR RECORDED MORTGAGE OR MORTGAGES. SALE OR TRANSFER OF ANY LOT SHALL NOT AFFECT THE ASSESSMENT LIEN.

SECTION 12.10 EXEMPT PROPERTY. THE FOLLOWING PROPERTY SUBJECT TO THE DECLARATION SHALL BE EXEMPT FROM THE ASSESSMENTS CREATED THEREIN:
(A) ALL PROPERTIES DEDICATED TO AND ACCEPTED BY A LOCAL PUBLIC AUTHORITY,
(B) THE COMMON AREA.

ARTICLE XIII

BOOKS AND RECORDS

SECTION 13.01 THE BOOKS, RECORDS AND PAPERS OF THE ASSOCIATION SHALL AT ALL TIMES, DURING REASONABLE BUSINESS HOURS, BE SUBJECT TO INSPECTION BY ANY MEMBER. THE DECLARATION, THE ARTICLES OF INCORPORATION AND THE BY-LAWS OF THE ASSOCIATION SHALL BE AVAILABLE FOR INSPECTION BY ANY MEMBER AT THE PRINCIPAL OFFICE OF THE ASSOCIATION, WHERE COPIES MAY BE PURCHASED AT REASONABLE COST.

ARTICLE XIV

NO CORPORATE SEAL

SECTION 14.01 THE ASSOCIATION SHALL HAVE NO SEAL.

ARTICLE XV

AMENDMENTS

SECTION 15.01 THESE BY-LAWS MAY BE AMENDED, AT A REGULAR OR SPECIAL MEETING OF THE MEMBERS, BY A VOTE OF A MAJORITY OF A QUORUM OF MEMBERS PRESENT IN PERSON OR BY PROXY.

SECTION 15.02 IN THE CASE OF ANY CONFLICT BETWEEN THE ARTICLES OF INCORPORATION AND THESE BY-LAWS, THE ARTICLES SHALL CONTROL; AND IN THE CASE OF ANY CONFLICT BETWEEN THE DECLARATION AND THESE BY-LAWS, THE DECLARATION SHALL CONTROL.

ARTICLE XVI

MISCELLANEOUS

THE FISCAL YEAR OF THE ASSOCIATION SHALL BEGIN ON THE FIRST DAY OF JANUARY AND END ON THE 31ST DAY OF DECEMBER OF EVERY YEAR, EXCEPT THAT THE FIRST FISCAL YEAR SHALL BEGIN ON THE DATE OF INCORPORATION.

IN WITNESS WHEREOF, WE, BEING ALL OF THE DIRECTORS OF TIMBER TRAILS HOME OWNERS ASSOCIATION, INC., HAVE HEREUNTO SET OUR HANDS THIS 9th DAY OF January, 1968.

CERTIFICATION

I, THE UNDERSIGNED, DO HEREBY CERTIFY:

THAT I AM THE DULY ELECTED AND ACTING SECRETARY OF TIMBER TRAILS HOME OWNERS ASSOCIATION, INC., A NON-PROFIT IOWA CORPORATION, AND,

THAT THE FOREGOING BY-LAWS CONSTITUTE THE ORIGINAL BY-LAWS OF SAID ASSOCIATION, AS DULY ADOPTED AT A MEETING OF THE BOARD OF DIRECTORS THEREOF, HELD ON THE 9th DAY OF January, 196 .

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME THIS 9th DAY OF January, 196 .

Gloria J. Henry
SECRETARY

Declaration

OF CONDOMINIUM OWNERSHIP FOR 339 BARRY CONDOMINIUM

THIS DECLARATION made this day of 196 by F. & S. CONSTRUCTION COMPANY, INC., an Arizona corporation authorized to transact business in the State of Illinois (hereinafter referred to as the "Developer"),

WITNESSETH:

WHEREAS, the Developer is the owner in fee simple of the parcel or tract of real estate in the County of Cook, State of Illinois, legally described as follows:

> Lot 2 (except the West 195 feet thereof) in the Subdivision of Lots 2 and 3 and accretions in Lake Front Addition in the North East fractional quarter of Section 28, Township 40 North, Range 14 East of the Third Principal Meridian, lying West of the West boundary line of Lincoln Park, according to the plat of said Subdivision filed for record in the Recorder's Office of Cook County, Illinois, on September 6, 1912, as Document 5038117, in Cook County, Illinois.

commonly known as 339 West Barry Avenue, Chicago, Illinois; and

WHEREAS, the Developer intends by this Declaration to submit said property to the provisions of the Condominium Property Act of the State of Illinois;

NOW, THEREFORE, the Developer hereby declares as follows:

1. Definitions. As used herein, unless the context otherwise requires:

(a) "Act" means the "Condominium Property Act" of the State of Illinois.

(b) "Declaration" means this instrument by which the property is submitted to the provisions of the Act, as hereinafter provided, and such Declaration as from time to time amended.

(c) "Parcel" means the parcel or tract of real estate, described above in this Declaration, submitted to the provisions of the Act.

(d) "Property" means all the land, property and space comprising the Parcel, and all improvements and structures erected, constructed or contained therein or thereon, including the building and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the unit owners, submitted to the provisions of the Act.

(e) "Unit" means a part of the Property, including one or more rooms and occupying part of a floor, designed and intended for independent use as the home, apartment, residence, living quarters or dwelling for one family.

(f) "Common Elements" means all portions of the Property except the Units.

(g) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

(h) "Unit Owner" means the person or persons whose estates or interests, indivdually or collectively, aggregate fee simple absolute ownership of a Unit.

(i) "Majority" or "majority of the Unit Owners" means the owners of more than 50% in the aggregate in interest of the undivided ownership of the Common Elements. Any specified percentage of the Unit Owners means such percentage in the aggregate in interest of such undivided ownership of the Common Elements.

(j) "Plat" means the plats of survey of the Parcel and of all Units in the Property submitted to the provisions of the Act, said Plat being attached hereto as Exhibit A and by this reference made a part hereof and recorded simultaneously with the recording of this Declaration.

(k) "Record" means to record in the office of the Recorder of Deeds of Cook County, Illinois.

(l) "Building" means the building constructed by the Developer, located on the Parcel and forming part of the Property and containing the Units, as shown by the surveys of the respective floors of said Building included in the Plat.

2. Submission of Property to the Act. The Developer, as the owner in fee simple of the Parcel, hereby submits the Parcel and the Property to the provisions of the Condominium Property Act of the State of Illinois. The Developer expressly intends, by recording

this Declaration, to submit the Parcel and the Property to the provisions of the Act.

3. Plat. The Plat attached hereto as Exhibit A and recorded simultaneously herewith sets forth the measurements, elevations, locations and other data, as required by the Act, with respect to (1) the Parcel and its exterior boundaries; (2) the Building and each floor thereof; and (3) each Unit of the Building and its horizontal and vertical dimensions, including the elevations of the interior surfaces of the floors and ceilings and the measurements and locations of the interior surfaces of the perimeter walls of each Unit in the Building. Each unit is identified on the Plat by a distinguishing number or other symbol.

4. Units. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on the Plat. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number or symbol as shown on the Plat, and every such description shall be deemed good and sufficient for all purposes, as provided in the Act. Each Unit shall consist of the space enclosed and bounded by the interior surfaces of the floors and ceilings and perimeter walls of such Unit as shown on the Plat.

5. Common Elements. The Common Elements shall consist of all of the Property, except the individual Units, and shall include the land, corridors, halls, elevators, stairways, entrances and exits, lobby, management office, janitor's or custodian's apartment, laundry, mailroom, garage, storage areas, basement, roof, incinerator, pipes, ducts, electrical wiring and conduits, central heating and air-conditioning system, public utility lines, floors and ceilings (other than the interior surfaces thereof located within the Units), perimeter walls of Units (other than the interior surfaces thereof), structural parts of the Building, outside walks and driveways, landscaping, and all other portions of the Property except the individual Units. Structural columns located within the boundaries of a Unit shall be part of the Common Elements.

6. Ownership of the Common Elements. Each Unit Owner shall be entitled to the percentage of ownership in the Common Elements allocated to the respective Unit owned by such Unit Owner, as set forth in the schedule attached hereto as Exhibit B and by this reference made a part hereof as though fully set forth herein. The percentages of ownership interest in the Common Elements allocated to the respective Units, as set forth in Exhibit B, have been computed and determined in accordance with the Act, and shall remain constant unless hereafter changed by agreement of all Unit Owners. Said ownership interests in the Common Elements shall be undivided interests, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership as set forth in Exhibit B. The Common Elements shall remain undivided, as long as the Property is subject to the provisions of the Act, except as may be otherwise provided in the Act, and no Unit Owner shall bring any action for partition or division of the Common Elements. The ownership of each Unit and of the Unit Owners's corresponding percentage of ownership in the Common Elements shall not be separated.

7. Use of the Common Elements. Each Unit Owner shall have the right to use the Common Elements, in common with all other Unit Owners, as may be required for the purposes of access and ingress and egress to and use and occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend to each Unit Owner, the members of the immediate family of each Unit Owner, and the guests and other authorized occupants and visitors of each Unit Owner. Such right to use the Common Elements shall be subject to and governed by the provisions of the Act and of this Declaration and the By-laws herein and the rules and regulations of the Association hereinafter referred to. Each Unit Owner shall be deemed to have an easement, in common with the other Unit Owners, in, upon, across, over, through and with respect to the Common Elements to the extent of such right to use the Common Elements. The Assocation shall have the authority to lease or rent or to grant licenses or concessions with respect to the garage, laundry or other parts of the Common Elements, subject to the provisions of the Declaration and By-laws.

8. Common Expenses. Each Unit Owner shall pay his proportionate share of the expenses of maintenance, repair, replacement, administration and operation of the Common Elements (which expenses are herein sometimes referred to as "common expenses"). Such proportionate share of the common expenses for each Unit Owner shall be in the same ratio as his percentage of ownership in the Common Elements as set forth in Exhibit B attached hereto and made part hereof. Payment thereof shall be in such amounts and at such times as determined in the manner provided in the By-laws appended hereto as Exhibit C and recorded herewith. If any Unit Owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof shall constitute a lien on the interest of such Unit Owner in the Property as provided in the Act.

9. Association of Unit Owners. There has been formed, prior to the recording hereof, a not-for-profit

corporation under the General Not for Profit Corporation Act of the State of Illinois, having the name "339 Barry Home Owners Association" or similar name, which corporation (hereinafter referred to as the "Association") shall be the governing body for all of the Unit Owners for the maintenance, repair, replacement, administration and operation of the Property as provided in the Act and in this Declaration and in the By-laws. The board of directors of the Association shall be deemed to be the "Board of Managers" for the Unit Owners referred to herein and in the Act. The by-laws for the Association shall be the By-laws appended hereto as Exhibit C and made part hereof. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Unit Owners in accordance with the provisions of the Declaration and By-laws. Each Unit Owner shall be a member of the Association so long as he shall be a Unit Owner, and such membership shall automatically terminate when he ceases to be a Unit Owner, and upon the transfer of his ownership interest the new Unit Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. The Association may issue certificates evidencing membership therein. The aggregate number of votes for all members of the Association shall be One Hundred (100), which shall be divided among the respective Unit Owners in accordance with their respective percentages of ownership interest in the Common Elements as set forth in Exhibit B hereto.

10. Board's Determination Binding. In the event of any dispute or disagreement between any Unit Owners, or any question of interpretation or application of the provisions of the Declaration or By-laws, the determination thereof by the Board of Managers (being the Board of Directors of said Association) shall be final and binding on each and all of the Unit Owners.

11. Balconies. Each Unit Owner shall be entitled to the exclusive use and possession of the balcony or balconies directly outside of and adjoining the respective Unit owned by such Unit Owner, and located between the lines of the north and south perimeter walls of such Unit extended eastward, as shown on the Plat, subject to the provisions of this Declaration and the By-laws and the rules and regulations of the Association.

12. Garage. The garage in the Building shall be part of the Common Elements. Any Unit Owner desiring a garage stall or parking space for his automobile in said garage shall make application therefor to the Association, and such applications shall be given priority in the order in which they are received for such garage stalls or parking spaces which may be available from time to time, subject to the rules and regulations of the Association. The rentals for such garage stalls or parking spaces, to be paid by each such Unit Owner to the manager or managing agent in addition to the monthly assessments for the common expenses, shall be as approved by the Association from time to time. Garage stalls or parking spaces not rented to Unit Owners may be rented to others. Rentals and other income from said garage, less the operating expenses thereof, shall be applied and used in connection with the common expenses of the Property, as provided in the By-laws. The Association may prescribe rules and regulations with respect to the garage, and may lease the garage for operation by others upon such terms as the Board of Managers of the Association may deem desirable, subject to the provisions hereof.

13. Storage Areas. The storage areas in the Building, outside of the respective Units, shall be part of the Common Elements, and shall be allocated among the respective Unit Owners in such manner and subject to such rules and regulations as the Association may prescribe.

14. Separate Mortgages. Each Unit Owner shall have the right to make a separate mortage or encumbrance on his respective Unit together with his respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to make or create or cause to be made or created any mortage or encumbrance or other lien on or affecting the Property or any part thereof, except only to the extent of his Unit and his respective ownership interest in the Common Elements.

15. Separate Real Estate Taxes. It is understood that real estate taxes are to be separately taxed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that for any year such taxes are not separately taxed to each Unit Owner, but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements.

16. Utilities. Each Unit Owner shall pay for his own telephone and electricity and other utilities which are separately metered or billed to each user by the respective utility company. Utilities which are not separately metered or billed shall be treated as part of the common expenses.

17. Insurance. The Board of Managers shall have the authority to and shall obtain insurance for the

Property against loss or damage by fire and such other hazards ~~as are covered under standard extended coverage provisions~~ for the full insurable replacement cost of the Common Elements and the Units. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association or the Board of Managers, as the trustee for each of the Unit Owners in their respective percentages of ownership interest in the Common Elements as established in the Declaration. Premiums for such insurance shall be common expenses. Application of the insurance proceeds to reconstruction, and disposition of the Property where the insurance proceeds are insufficient for reconstruction, shall be as provided in the Act.

The Board of Managers shall also have the authority to and shall obtain comprehensive public liability insurance, in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Unit Owner and the Association, Board of Managers, manager and managing agent from liability in connection with the Common Elements, and the premiums for such insurance shall be common expenses.

Each Unit Owner shall be responsible for his own insurance on the contents of his own Unit, and his additions and improvements thereto and decorating and furnishings and personal property therein, and his personal property stored elsewhere on the Property, and his personal liability to the extent not covered by the liability insurance for all of the Unit Owners obtained as part of the common expenses as above provided.

18. Maintenance, Repairs and Replacements. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit; provided, however, such maintenance, repairs and replacements as may be required for the functioning of the air-conditioning and heating system and the plumbing within the Unit, and for the bringing of water, gas and electricity to the Unit, shall be furnished by the Association as part of the common expenses. Maintenance, repairs and replacements of the refrigerators, ranges and other kitchen appliances and lighting fixtures and other electrical appliances of any Unit Owner shall be at the expense of such Unit Owner. Maintenance, repairs and replacements of the Common Elements shall be furnished by the Association as part of the common expenses. The Association may provide, by its rules and regulations, for ordinary maintenance and minor repairs and replacements to be furnished to Units by Building personnel at common expense.

If, due to the negligent act or omission of a Unit Owner, or of a member of his family or household pet or of a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association. Maintenance, repairs and replacements to the Common Elements or the Units shall be subject to the rules and regulations of the Association.

To the extent that equipment, facilities and fixtures within any Unit or Units shall be connected to similar equipment, facilities or fixtures affecting or serving other Units or the Common Elements, then the use thereof by the individual Unit Owners shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Managers, or of the manager or managing agent for the Building, shall be entitled to reasonable access to the individual Units as may be required in connection with maintenance, repairs, or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units or the Common Elements.

19. Decorating. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating within his own Unit from time to time, including painting, wall papering, washing, cleaning, panelling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings, which constitute the exterior boundaries of the respective Unit owned by such Unit Owner, and such Unit Owner shall maintain such interior surfaces in good condition at his sole expense as may be required from time to time, which said maintenance and use shall be subject to the rules and regulations of the Association, and each such Unit Owner shall have the right to decorate such interior surfaces from time to time as he may see fit and at his sole expense. The interior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned or washed at the expense of each respective Unit Owner, and the exterior surfaces of such windows shall be cleaned or washed as part of the common expenses by the Association at such time or times as the Board of Managers shall determine. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Association. Decorating of the Common Elements (other than interior surfaces within the Units

as above provided), and any re-decorating of Units to the extent made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Elements by the Association, shall be furnished by the Association as part of the common expenses.

20. Alterations, Additions and Improvements. No alterations of any Common Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Association.

21. Encroachments. If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements, as the Common Elements and Units are shown by the surveys comprising the Plat attached hereto as Exhibit A, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved to the extent of such encroachments so long as the same shall exist.

22. Sale or Lease by a Unit Owner — First Option to Association. If any Unit Owner other than the Developer shall desire at any time to sell or lease his Unit, (which Unit, together with his respective percentage of ownership interest in the Common Elements, is herein sometimes referred to as "Unit Ownership"), he shall first give the Association at least thirty (30) days prior written notice of the proposed sale or lease, which notice shall state the name and address and financial and character references of the proposed purchaser or lessee and the terms of the proposed sale or lease. The Association shall have the right of first option with respect to any sale or lease by any Unit Owner as provided herein. During the period of thirty (30) days following the receipt by the Association of such written notice, the Association shall have the first right at its option to purchase or lease such Unit Ownership upon the same terms as the proposed sale or lease described in such notice.

If the Association shall give written notice to such Unit Owner within said 30 day period that it has elected not to exercise such option, or if the Association shall fail to give written notice to such Unit Owner within said 30 day period that it does or does not elect to purchase or lease such Unit Ownership upon the same terms as herein provided, then, such Unit Owner may proceed to close said proposed sale or lease transaction at any time within the next ninety (90) days thereafter; and if he fails to close said proposed sale or lease transaction within said 90 days, his Unit Ownership shall again become subject to the Association's right of first option as herein provided.

If the Association shall give written notice to such Unit Owner within said 30 day period of its election to purchase or lease such Unit Ownership upon the same terms as the proposed sale or lease described in said written notice to the Association, then such purchase or lease by the Association shall be closed upon the same terms as such proposed sale or lease.

The notices referred to herein shall be given in the manner hereinafter provided for the giving of notices.

The Board of Managers of the Assocation shall have the authority, on behalf of and in the name of the Association, to elect not to exercise such option and to give written notice of such election. A certificate executed by the president or secretary of the Association, certifying that the Association by its Board of Managers has elected not to exercise such option to purchase or lease such Unit Ownership upon the terms of such proposed sale or lease, shall be conclusive evidence of such election by the Association and of the compliance with the provisions hereof by the Unit Owner proposing to make such proposed sale or lease. Such certificate shall be furnished to such Unit Owner upon his compliance with the provisions hereof.

If the Board of Managers of the Association shall adopt a resolution recommending that the Association shall exercise its option to purchase or lease such Unit Ownership upon the terms of such proposed sale or lease, the Board of Managers shall promptly call a meeting of all of the Unit Owners for the purpose of voting upon such option, which meeting shall be held within said 30 day period. If Unit Owners owning not less than Seventy-Five Percent (75%) in the aggregate of the total ownership interest in the Common Elements, by affirmative vote at such meeting, elect to exercise such option to make such purchase or lease, then the Board of Managers shall promptly give written notice of such election as herein provided. In such event, such purchase or lease by the Association shall be closed and consummated, and, for such purpose, the Board of Managers shall have the authority to make such mortgage or other financing arrangements, and to make such assessments proportionately among the respective Unit Owners, and to make such other arrangements, as the Board of Managers may deem desirable in order to close and consummate such purchase or lease of such Unit Ownership by the Association.

If the Association shall make any such purchase or lease of a Unit Ownership as herein provided, the Board of Managers shall have the authority at any time thereafter to sell or sublease such Unit Ownership on behalf of the Association upon such terms as the

Board of Managers shall deem desirable, without complying with the foregoing provisions relating to the Association's right of first option, and all of the net proceeds or deficit therefrom shall be applied among all of the Unit Owners in proportion to their respective ownership interests in the Common Elements in such manner as the Board of Managers shall determine.

If a proposed lease of any Unit Ownership is made by any Unit Owner, after compliance with the foregoing provisions, a copy of the lease as and when executed shall be furnished by such Unit Owner to the Board of Managers, and the lessee thereunder shall be bound by and be subject to all of the obligations of such Unit Owner with respect to such Unit Ownership as provided in this Declaration and the By-laws, and the lease shall expressly so provide. The Unit Owner making any such lease shall not be relieved thereby from any of his obligations. Upon the expiration or termination of such lease, or in the event of any attempted subleasing thereunder, the provisions hereof with respect to the Association's right of first option shall again apply to such Unit Ownership.

The provisions hereof with respect to the Association's right of first option shall not apply to sales or leases made by the Developer.

If any sale or lease of a Unit Ownership is made or attempted by any Unit Owner without complying with the foregoing provisions, such sale or lease shall be voidable by the Association and shall be subject to each and all of the rights and options of the Association hereunder and each and all of the remedies and actions available to the Association hereunder or at law or in equity in connection therewith.

The foregoing provisions with respect to the Association's right of first option as to any proposed sale or lease shall be and remain in full force and effect until the Property as a whole shall be sold or removed from the provisions of the Act, as provided in the Act, unless sooner rescinded or amended by the Unit Owners in the manner herein provided for amendments of this Declaration. The Board of Managers of the Association may adopt rules and regulations from time to time, not inconsistent with the foregoing provisions, for the purpose of implementing and effectuating the foregoing provisions.

The Board of Managers shall have the power and authority to bid for and purchase any Unit Ownership at a sale pursuant to a mortgage foreclosure, or a foreclosure of the lien for common expenses under the Act, or at a sale pursuant to an order or direction of a court, or other involuntary sale, upon the consent or approval of Unit Owners owning not less than Seventy-Five Percent (75%) in the aggregate of the total ownership interest in the Common Elements.

23. Remedies. In the event of any default by any Unit Owner under the provisions of the Act, Declaration, By-laws or rules and regulations of the Association, the Association and the Board of Managers shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, By-laws or said rules and regulations or which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Unit Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of 7% per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the common expenses, and the Association shall have a lien for all of the same, as well as for non-payment of his respective share of the common expenses, upon the Unit and ownership interest in the Common Elements of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property. In the event of any such default by any Unit Owner, the Association and the Board of Managers, and the manager or managing agent if so authorized by the Board of Managers, shall have the authority to correct such default, and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board of Managers.

24. Amendments. The provisions of this Declaration may be amended from time to time upon the approval of such amendment or amendments by the Association pursuant to a resolution or written consent approving such amendment or amendments adopted or given by Unit Owners owning not less than Seventy-Five Percent (75%) in the aggregate of the total ownership interest in the Common Elements; provided, however, if the Act or this Declaration shall require the consent or agreement of all Unit Owners or of

all lien holders for any action specified in the Act or in this Declaration, then any amendment or amendments with respect to such action shall require unanimous consent or agreement as may be provided in the Act or in this Declaration. All amendments to this Declaration shall be recorded.

25. **Notices.** Notices provided for in the Act, Declaration or By-laws shall be in writing, and shall be addressed to the Association or Board of Managers, or any Unit Owner, as the case may be, at 339 West Barry Avenue, Chicago 14, Illinois, (indicating thereon the number of the respective Unit or apartment if addressed to a Unit Owner), or at such other address as hereinafter provided. The Association or Board of Managers may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners at such time. Any Unit Owner may also designate a different address or addresses for notices to him by giving written notice of his change or address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof, or, if addressed to a Unit Owner, when deposited in his mailbox in the Building or at the door of his Unit in the Building.

26. **Severability.** If any provision of the Declaration or By-laws or any section, sentence, clause, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Declaration and By-laws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby. If any provision of the Declaration or By-laws would otherwise violate the rule against perpetuities or any other rule, statute or law imposing time limits, then such provision shall be deemed to remain in effect only until the death of the last survivor of the now living descendants of John F. Kennedy, President of the United States, and of Robert F. Kennedy, Attorney General of the United States, plus 21 years thereafter.

27. **Rights and Obligations.** The rights and obligations of the respective Unit Owners under this Declaration and the By-laws shall be deemed to be covenants running with the land, so long as the Property remains subject to the provisions of the Act, and shall inure to the benefit of and be binding upon each and all of the respective Unit Owners and their respective heirs, executors, administrators, legal representatives, successors, assigns, purchasers, lessees, grantees, mortgagees, and others having or claiming an interest in the Property, subject to the provisions of the Act and this Declaration and the By-laws. Upon the recording or the acceptance by a Unit Owner at any time of any deed conveying a Unit or ownership interest in the Property, such Unit Owner shall be deemed to have accepted and agreed to and to be bound by and subject to each and all of the provisions of the Act and this Declaration and the By-laws.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed and its corporate seal affixed hereto, by its President and Secretary thereunto duly authorized, as of the day and year first above written.

F. & S. CONSTRUCTION COMPANY, INC.

By_____
President

Attest:_____
Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, a notary public in and for said County in the State aforesaid, do hereby certify that JACK HOFFMAN, President of F. & S. CONSTRUCTION COMPANY, INC., and ROBERT H. HAAG, Secretary of said corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as such President and Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said Secretary did also then and there acknowledge that he as custodian of the corporate seal of said corporation did affix the said corporate seal to said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this day of 196

_____
Notary Public

CONSENT OF MORTGAGEE

The undersigned ST. PAUL FEDERAL SAVINGS & LOAN ASSOCIATION OF CHICAGO, being the holder of the existing mortgage on the parcel or tract of real estate forming the subject matter of the foregoing Declaration, hereby consents to the recording of said Declaration and the submission of said parcel or tract of real estate to the provisions of the Condominium Property Act of the State of Illinois and agrees that its said mortgage shall be subject to the provisions of said Act and said Declaration and the exhibits appended thereto.

Dated:_____, 196_____.

ST. PAUL FEDERAL SAVINGS &
LOAN ASSOCIATION OF CHICAGO

By_____
President

Attest:_____
Secretary

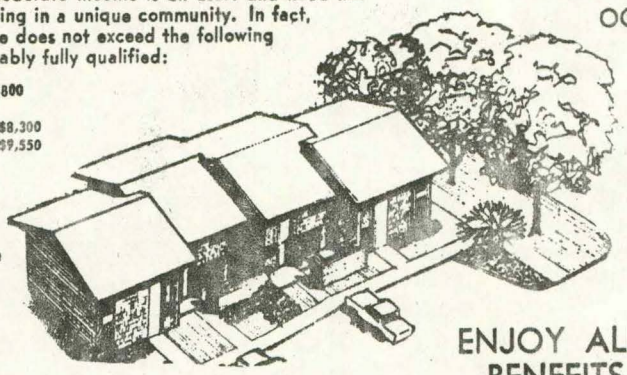
MANY NOW BUILT, READY TO MOVE IN SOON

YOU'RE INVITED TO SEE THE NEWEST CONCEPT IN LIVING FOR MODERATE INCOME FAMILIES

At Regency View moderate income is an asset and need not prevent you from living in a unique community. In fact, if your annual income does not exceed the following figures you are probably fully qualified:

SINGLE PERSON—$5,800
FAMILY OF 2—$7,050
FAMILY OF 3 OR 4—$8,300
FAMILY OF 5 OR 6—$9,550

OCTOBER OCCUPANCY



MEMBERSHIP FEE $345

TWO BEDROOMS

1½ Baths. Separate Dining Area.

$111 PER MONTH

ONE BEDROOM

One Bath

$98 PER MONTH

THREE BEDROOMS

1½ Baths

$129 PER MONTH

ENJOY ALL THE BENEFITS OF LIVING IN IOWA'S FIRST COOPERATIVE COMMUNITY!

YOUR OWN PRIVATE HOME WITH ALL OF THESE FEATURES:

You own your own home for far less than rent. Included in your monthly payments: • Your own private entrances • Sliding glass doors to your own patio • Luxurious kitchen includes: Range, 12 cu. ft. Refrigerator, Disposall • Full Basement • Private off-street parking • Children's play area • Completely landscaped • All exterior maintenance • Plus much, much more.

Regency View Manorhouses

EAST SIXTH & LYON DES MOINES

TELEPHONE: 265-5625, 265-5626

COOPERATIVE REPRESENTATIVE: FCH SERVICES, INC.

MODELS OPEN

DAILY and SUNDAY
NOON to 8 P.M.
SATURDAY
NOON to 5 P.M.
CLOSED THURSDAY

HOW TO GET THERE:

First street south of Des Moines Freeway via East Sixth Exit, or 2 blocks north of East 6th & Grand.

REGIONAL PLANNING COMMISSIONS

1. Problems in urbanized areas.

2. Provisions of Iowa Code, Chapter 473A.

Section 1. The governing bodies of two or more adjoining cities or towns, independently or together with the governing body or bodies of the county or counties within which such cities or towns are located, or the governing bodies of two or more adjoining counties, or a county and its major city or cities, or town or towns, or the governing bodies of one or more counties together with the governing bodies of one or more cities or towns adjoining such county or counties, or any of the above together with a school district, benefited water district, benefited fire district, sanitary district or any other similar district which may be formed under an act of the legislature, may cooperate in the creation of a joint planning commission which may be designated to be a regional or metropolitan planning commission, as agreed among the governing bodies. The governing bodies of cities, towns, counties, school districts or other governmental units may cooperate with the governing bodies of the cities, towns, and counties or other authorized governing bodies of any adjoining state or states in the creation of such a joint planning commission where such cooperation has been authorized by law by the adjoining state or states.

Section 2. The commission shall have not less than five members, appointed by the governing bodies of the area served by the commission. A majority of the members of the commission shall be citizens who hold no other public office or position except appointive membership on a city or town plan commission or other planning commission, board or agency. Citizen members shall be appointed for overlapping terms of not less than three nor more than five years or thereafter until their successors are appointed.

The appointing governing bodies shall determine the amount of compensation, if any, to be paid to the members of a commission. Any vacancy in the membership of a commission shall be filled for the unexpired term in the same manner as the initial appointment. The governing bodies shall have authority to remove any member for cause stated in writing and after a public hearing.

Section 4. The commission shall have the power and duty to make comprehensive studies and plans for the development of the area it serves which will guide the unified development of the area and which will eliminate planning duplication and promote economy and efficiency in the coordinated development of the area and the general welfare, convenience, safety, and prosperity of its people. The plan or plans collectively shall be known as the regional or metropolitan development plan. The plans for the development of the area may include, but shall not be limited to, recommendations with respect to existing and proposed highways, bridges, airports, streets, parks and recreational areas, schools and public institutions and public utilities, public open spaces, and sites for public buildings and structures; districts for residence, business, industry, recreation, agriculture, and forestry; water supply, sanitation, drainage, protection against floods and other disasters; areas for housing developments, slum clearance and urban renewal and redevelopment; location of private and public utilities, including but not limited to sewerage and water supply systems; and such other recommendations concerning current and impending problems as may affect the area served by the commission. Time and priority schedules and cost estimates for the accomplishment of the recommendations may also be included in the plans. The plans shall be based upon and include appropriate studies of the location and extent of present and anticipated populations; social, physical, and economic resources, problems and trends; and governmental

conditions and trends. The commission is also authorized to make surveys, landuse studies, and urban renewal plans, provide technical services and other planning work for the area it serves and for cities, towns, counties, and other political subdivisions in the area. A plan or plans of the commission may be adopted, added to, and changed from time to time by a majority vote of the planning commission. The plan or plans may in whole or in part be adopted by the governing bodies of the cooperating cities, towns, and counties as the general plans of such cities, towns, and counties. The commission may also assist the governing bodies and other public authorities or agencies within the area it serves in carrying out any regional plan or plans, and assist any planning commission, board or agency of the cities, towns, and counties and political subdivisions in the preparation or effectuation of local plans and planning consistent with the program of the commission. The commission may cooperate and confer, as far as possible, with planning agencies of other states or of regional groups of states adjoining its area.

Section 7. Nothing in this chapter shall be construed to remove or limit the powers of the cooperating cities, towns, counties, school districts, benefited water districts, benefited fire districts, sanitary districts, or similar districts as provided by state law. All legislative power with respect to zoning and other planning legislation shall remain with the governing body of the cooperative cities, towns, and counties. Each participating city, town, or county may continue to have its own planning commission or board but may under the joint agreement and in the interest of economy and efficiency and in the interest of uniform standards and procedures, request the metropolitan or regional planning commission to assume duties and functions of local planning agencies in whole or in part. The metropolitan or regional planning commission shall have the duty and function of promoting public interest and understanding of the economic and social

necessity for long-term coordinated planning for the metropolitan or regional area, but its official recommendations shall be made to the governing bodies of the cooperating cities, counties, school districts, benefited water districts, benefited fire districts, sanitary districts, or similar districts.

NOTE: The Regional Approach to Planning, 50 Iowa L. Rev. 582 (1965).

Mandelker, Comprehensive Planning Requirement in Urban Renewal, 116 Penn. L. Rev. 25 (1967).

Delogu, Beyond Enabling Legislation, 20 Maine L. Rev. 1 (1968).

Grove, Metropolitan Planning?, 21 Univ. of Miami L. Rev. 60 (1966).

REGIONAL PLANNING COMMISSIONS IN IOWA

Seven Metros

Black Hawk Metropolitan Planning Commission

Waterloo, Iowa

Dubuque County Metropolitan Area Planning Commission

Dubuque, Iowa

Bi-State Metropolitan Planning Commission

Rock Island, Illinois

Linn County Regional Planning Commission

Cedar Rapids, Iowa

SIMPCO

Sioux City, Iowa

Central Iowa Regional Planning Commission

Des Moines, Iowa

Council Bluffs Area Metropolitan Planning Commission

Council Bluffs, Iowa

Other Metro and Regional Projects

Franklin County

Jones County

Mills County

Cherokee County

Northwestern Iowa Regional

O'Brien, Lyon, Sioux, Osceola

Johnson County

Guthrie County

Cerro Gordo County

Calhoun County

Madison County

Other Metro and Regional Projects (continued)

Carroll County

Dickinson County

Ringgold County

JOHNSON COUNTY REGIONAL PLANNING COMMISSION

Membership

Clear Creek Community School District

Coralville

Iowa City

Iowa City Community School District

Johnson County

Lone Tree

Lone Tree Community School District

Solon

Tiffin

University Heights

Johnson County Conservation Commission

University of Iowa

3. Federal Encouragement of Regional Planning: Section 701 of the Housing Act of 1954. 40 U.S.C. § 460.

Urban planning. -- (a) In order to assist State and local governments in solving planning problems resulting from the increasing concentration of population in metropolitan and other urban areas, including smaller communities; to facilitate comprehensive planning for urban development, including coordinated transportation systems, on a continuing basis by such governments; and to encourage such governments to establish and improve planning staffs, the Secretary is authorized to make planning grants to --

(1) State planning agencies, . . . for the provision of planning assistance to (A) cities and other municipalities having a population of less than 50,000 according to the latest decennial census, and counties without regard to population: Provided, That grants shall be made under this paragraph for planning assistance to counties having a population of 50,000 or more, according to the latest decennial census, which are within metropolitan areas, only if (i) the Secretary finds that planning and plans for such county will be coordinated with the program of comprehensive planning, if any, which is being carried out for the metropolitan area of which the county is a part, and (ii) the aggregate amount of the grants made subject to this proviso does not exceed 15 per centum of the aggregate amount appropriated, after the date of enactment of the Housing Act of 1964 [Sept. 2, 1964], for the purposes of this section, (B) any group of adjacent communities, either incorporated or unincorporated, having a total population of less than 50,000 according to the latest decennial census and having common or related urban planning problems, (C) cities, other municipalities, and counties referred to in paragraph (3) of this subsection and areas referred to in paragraph (4) of this subsection, and (D) Indian reservations;

(2) official State, metropolitan, and regional planning agencies, or other agencies and instrumentalities designated by the Governor (or Governors

in the case of interstate planning) and acceptable to the Secretary, empowered under State or local laws or interstate compact to perform metropolitan or regional planning;

(3) cities, other municipalities, and counties which (A) are situated in areas designated by the Secretary of Commerce . . . as redevelopment areas or (B) have suffered substantial damage as a result of a catastrophe which the President, . . . has determined to be a major disaster;

(4) . . .

(5) State planning agencies for State and interstate comprehensive planning (as defined in subsection (d)) and for research and coordination activity related thereto;

(6) metropolitan and regional planning agencies, with the approval of the State planning agency . . . for the provision of planning assistance within the metropolitan area or region to cities, other municipalities, counties, groups of adjacent communities, or Indian reservations described in clauses (A), (B), (C), and (D) of paragraph (1) of this subsection;

(7) . . .

(8) . . .

(9) . . .

(10) . . . Planning assisted under this section shall, to the maximum extent feasible, cover entire urban areas having common or related urban areas having common or related urban development problems. The Secretary shall encourage cooperation in preparing and carrying out plans among all interested municipalities, political subdivisions, public agencies, and other parties in order to achieve coordinated development of entire areas. To the maximum extent feasible, pertinent plans and studies already made for areas shall be utilized so as to avoid unnecessary repetition of effort and expense. Planning which may be assisted under this section includes the preparation of comprehensive urban transportation surveys, studies and plans

to aid in solving problems of traffic congestion, facilitating the circulation of people and goods in metropolitan and other urban areas and reducing transportation needs. . . .

(b) A planning grant made under this section shall not exceed two-thirds of the estimated cost of the work for which the grant is made: . . . Provided, That not to exceed 5 per centum of any funds so appropriated may be used by the Secretary for studies, research, and demonstration projects, undertaken independently or by contract, for the development and improvement of techniques and methods for comprehensive planning and for the advancement of the purposes of this section, and for grants to assist in the conduct of studies and research relating to needed revisions in State statutes which create, govern, or control local governments and local govermental operations.

(c) The Secretary is authorized, in areas embracing several municipalities or other political subdivisions, to encourage planning on a unified metropolitan basis and to provide technical assistance for such planning and the solution of problems relating thereto.

(d) It is the further intent of this section to encourage comprehensive planning, including transportation planning, for States, cities, counties, metropolitan areas, urban regions, and Indian reservations and the establishment and development of the organizational units needed therefor. The Secretary is authorized to provide technical assistance to State and local governments and their agencies and instrumentalities, and to Indian tribal bodies, undertaking such planning and, by contract or otherwise, to make studies and publish information on related problems. In extending financial assistance under this section, the Secretary may require such assurances as he deems adequate that the appropriate State and local agencies are making reasonable progress in the development of the elements of comprehensive planning. Comprehensive planning, as used in this section, includes the

following, to the extent directly related to urban needs: (1) preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development; (2) programing of capital improvements based on a determination of relative urgency, together with definitive financing plans for the improvements to be constructed in the earlier years of the program; (3) coordination of all related plans of the departments or subdivisions of the government concerned; (4) intergovernmental coordination of all related planned activities among the State and local governmental agencies concerned; and (5) preparation of regulatory and administrative measures in support of the foregoing.

(e) . . .

(f) . . .

(g) In addition to the planning grants authorized by subsection (a), the Secretary is further authorized to make grants to organizations composed of public officials whom he finds to be representative of the political jurisdictions within a metropolitan area or urban region for the purpose of assisting such organizations to undertake studies, collect data, develop regional plans and programs, and engage in such other activities as the Secretary finds necessary or desirable for the solution of the metropolitan or regional problems in such areas or regions. To the meximum extent feasible, all grants under this subsection shall be for activities relating to all the developmental aspects of the total metropolitan area or urban region, including, but not limited to, land use, transportation, housing, economic development, natural resources development, community facilities, and the general improvement of living environments. A grant under this subsection shall not exceed two-thirds of the estimated cost of the work for which the grant is made.

CONTRACT FOR PLANNING SERVICES

Project Number - Iowa Project P-82

Planning Area JOHNSON COUNTY, IOWA

County of JOHNSON State of Iowa

Total Square Miles Covered by Planning Area 617

Name of Contractor POWERS-WILLIS & ASSOCIATES

Address BOX 368 - 1223 South Riverside Drive

IOWA CITY, IOWA

Planning Agency Iowa Development Commission

Address 250 Jewett Building

Des Moines, Iowa 50309

THIS AGREEMENT entered into as of this 29th day of June, 19 67, by the State of Iowa, acting by and through the Iowa Development Commission, party of the first part, herein referred to as the "Planning Agency" and the planning area, located in JOHNSON COUNTY, IOWA Iowa, party of the second part, hereinafter referred to as the "Planning Body" and the consulting firm POWERS-WILLIS AND ASSOCIATES, party of the third part, hereinafter referred to as the "Contractor."

WITNESSETH THAT:

WHEREAS: The Planning Agency, with the approval of the local Planning Body, desires to engage the Contractor to render certain technical and professional services described in the attached Scope of Services to be partially financed under Section 701 of the Housing Act of 1954, as amended.

NOW THEREFORE:

In consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto, legally intending to be bound hereby, do covenant and agree for themselves and their respective successors and assigns, as follows:

Section I - CONTRACTOR'S RESPONSIBILITIES

The Planning Agency hereby agrees to engage the Contractor and the Contractor hereby agrees to perform the services hereinafter set forth in Section V - Scope of Services, in connection with the project of the Planning Agency under the Federal Urban Planning Grant Contract.

1. PERSONNEL. The Contractor represents that he has, or shall secure at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the Planning Agency.

All of the services required hereunder will be performed by the Contractor or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

The Contractor hereby assigns the duties and responsibilities of Planner in Charge to Noel W. Willis (name), a member of the Contractor's firm for the duration of this contractual agreement.

None of the work or services covered by this Contract shall be subcontracted without a third-party contract approved by the Planning Agency.

2. TIME OF PERFORMANCE. The services of the Contractor are to commence within two weeks after the execution of this contract with the approval of all parties concerned, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of this contract, but in any event all of the services required hereunder shall be completed within 640 consecutive calendar days from the date of this Contract.

3. ASSIGNABILITY. The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Planning Agency thereto; provided, however, that claims for money due or to become due the Contractor from the Planning Agency under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Planning Agency.

4. INTEREST OF CONTRACTOR. The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

5. FINDINGS CONFIDENTIAL. Any reports, information, data, etc. prepared or assembled by the Contractor under this Contract which the Planning Agency requests to be kept as confidential, shall not be made available to any individual or organization by the Contractor without the prior written approval of the Planning Agency.

6. IDENTIFICATION OF DOCUMENTS. All reports, maps, and other documents completed as a part of this Contract, other than documents exclusively for internal use within the Planning Agency, shall carry the following notations on the front cover or a title page (or, in the case of maps, in the same block) containing the name of the planning agencies:

> The preparation of this (report, map, document, etc.) was financially aided through a federal grant from the Department of Housing and Urban Development, under the Urban Planning Assistance Program authorized by Section 701 of the Housing Act of 1954, as amended.
>
> Together with the date (month and year) the document was prepared and the name of the municipality, regional area or other planning area concerned.

The Contractor shall properly identify plans, reports, maps, charts, and other graphic material as follows:

Urban Planning Grant Project No. P-82

Prepared under contract for and financed in part by the Iowa Development Commission under the provisions of Chapter 28, Code of Iowa, as amended.

By: POWERS-WILLIS AND ASSOCIATES
(name of contractor)

BOX 368 - 1223 SOUTH RIVERSIDE DRIVE
(address)

IOWA CITY, IOWA 52240

7. NO COPYRIGHTS. No report, map, document, or other data prepared or completed under this Agreement shall be copyrighted by the Contractor, nor shall any notice of copyright be registered by the Contractor in connection with any report, map, document, or other data prepared or completed by him under this Contract.

8. OFFICE SPACE. The Contractor shall not make charge for any additional office space or additional office equipment in the planning locality. Should additional space or equipment be necessary it shall be obtained through a contractual agreement between the Planning Body and the Contractor.

9. PROGRESS REPORTS. The Contractor shall provide the Planning Agency with a Monthly Progress Report which will be submitted to the offices of the Planning Agency not later than the 5th of the month following the report period for each month. Monthly Progress Report forms will be provided by the Planning Agency upon request. A Narrative Progress Statement shall also be submitted by the Contractor by the 5th of the month following each calendar quarter ending in March, June, September, and December.

10. PRELIMINARY SUBMISSION OF MATERIALS. Prior to printing of the final plans or regulatory measures, the Contractor shall submit such documents to the Planning Body and to the Planning Agency for approval.

11. REPORTS AND DOCUMENTS. The contractor shall provide the Planning Agency with the following items:

(a) Four (4) copies of all preliminary reports.
(b) Ten (10) copies of all final reports to be distributed by the Iowa Development Commission to coordinating state agencies.
(c) One (1) complete set of all final maps at full scale.
(d) One (1) complete set of all topography maps and one (1) key map (if contained in the Scope of Planning Services attached and made a part of this Contract).

12. MEETINGS. The Contractor shall attend a minimum of 18 scheduled meetings during the contract period with the local planning body.

13. METHOD OF PAYMENT. The Planning Agency will pay to the Contractor the amount or amounts set forth in this section which shall constitute full and complete compensation for the Contractor's services hereunder. Such sum will be paid in the following manner, in every case, subject to receipt of a requisition for payment from the Contractor which has been authorized by the Planning Body specifying that he has performed the work under this Contract in conformance with the Contract and that he is entitled to receive the amount requisitioned under the terms of the Contract, as the following items are completed as required and as determined by the Planning Agency cooperatively with the Planning Body.

It is expressly understood and agreed that in no event will the total compensation and reimbursement, if any, to be paid hereunder exceed the maximum sum of $24,000.00 for all of the services required.

(See attached sheet for scheduled payments requested).

14. COMPENSATION. The Planning Agency agrees to pay the Contractor the total sum of Twenty four thousand dollars ($24,000.00) for the above services which includes all travel and subsistence expenses incurred in the performance of said services. Upon completion of the planning program by the Contractor a sum equal to ten per cent (10%) of the federal share will be withheld from the final payment pending final approval by the federal agency of said project.

Section II - PLANNING BODY RESPONSIBILITIES

1. LOCAL RESOLUTION. The Planning Body has by resolution dated August 17, 1966 authorized appropriate officials to enter into a contract for certain planning services and planning assistance by and through the Planning Agency.

2. CONTRACTUAL FEES DUE. The Planning Body will pay to the Planning Planning Agency the total sum of Eight thousand dollars ($8,000.00) on the following terms:

Within thirty (30) days after notification of approval of the Urban Planning Assistance Application by the Regional Office of the Department of Housing and Urban Development: The Johnson County Regional Planning Commission will submit to the Iowa Development Commission the sum of eight thousand dollars ($8,000.00) to be administered and disbursed by the Iowa Development Commission.

3. REVIEW OF PRELIMINARY PROPOSALS. The Planning Body shall review and approve all planning proposals and regulatory measures in preliminary or interim form, prior to their publication as final reports. Wherever feasible, regulatory measures shall also first be reviewed by competent legal personnel available to the Planning Body.

4. PLANNING BODY TO FURNISH AVAILABLE MATERIALS. The Planning Body shall without charge furnish to or make available for examination or use by the Contractor as he may request, pertinent to the services to be performed by him, copies of previously prepared reports, maps, plans, surveys, records, ordinances, codes, regulations, other documents, and information related to the planning project specified by this Contract. The Planning Body shall aid the Contractor to obtain such data from other public offices or agencies, local business firms, and private citizens whenever such data are necessary for the completion of the planning project specified in this Contract, without charge to the Contractor except when Planning Body funds are expended at the direction of the Contractor.

5. COOPERATION WITH CONTRACTOR. The Planning Body hereby agrees that its officers and employees, and the members of its Plan Commission, and the Commission's staff, will cooperate with the Contractor in the performance of his services under this Contract. A quorum of representatives of the Planning Body will be available at meetings of the Plan Commission called to discuss the planning project with the Contractor or his representative with a minimum of 18 informational meetings and not fewer than two (2) public hearings on the plan or plans.

6. MEETING INFORMATION. The local Planning Body shall submit to the Planning Agency a copy of the minutes of their meetings relative to the scope of planning services outlined for the duration of the contract.

Section III - PLANNING AGENCY RESPONSIBILITIES

1. DESIGNATION OF REPRESENTATIVE. The services performed by the Contractor under this Contract shall be under the general supervision of the Director of Planning Agency, or whomsoever he shall designate to represent the Planning Agency.

2. SETTLEMENT OF DISPUTES. In the event of any disagreement between the Contractor and the representative of either the Planning Body or the Planning Agency, or any disagreement between the representative of the Planning Body and the representative of the Planning Agency relating to the technical competence of the work being performed and its conformity to the requirements of this Contract, the decisions of the representative of the Planning Agency shall prevail.

3. REVIEW OF PRELIMINARY PROPOSALS. The Planning Agency shall review and approve all planning proposals and regulatory measures in preliminary or interim form, prior to their publication as final reports.

4. CONTINUING PLANNING PROGRAM. The Planning Agency agrees to meet its obligations to encourage and sponsor a continuing planning program for all Planning Bodies receiving "701 Project" grants by providing technical advice and assistance.

5. TERMINATION OF CONTRACT FOR CAUSE. If, through any cause, the Contractor or Planning Body shall fail to fulfill in timely and proper manner his obligations under this Contract, or if either party shall violate any of the covenants, agreements, or stipulations of the Contract, the Planning Agency shall thereupon have the right to terminate this Contract by giving written notice to the Contractor or Planning Body of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor under this Contract shall, at the option of the Planning Agency, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Contractor or Planning Body shall not be relieved of liability to the Planning Agency for damages sustained by the Planning Agency by virtue of any breach of the Contract by either party and the Planning Agency may withhold any payments for the purpose of setoff until such time as the exact amount of damages due the Planning Agency by either party is determined.

6. TERMINATION FOR CONVENIENCE OF PLANNING AGENCY. The Planning Agency may terminate this Contract at any time by a notice in writing from the Planning Agency to the Contractor or Planning Body. In that event, all finished or unfinished documents and other materials as described in Paragraph 1 above shall, at the option of the Planning Agency, become its property. If the Contract is terminated by the Planning Agency as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made; provided, however, that if less than 60 per cent of the services covered by this Contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the services covered by this Contract. If this Contract is terminated due to the fault of the Contractor or Planning Body, Paragraph 1, hereof, relative to termination shall apply.

7. STATE NOT FINANCIALLY OBLIGATED. The parties hereto agree that the rules and regulations in the Urban Planning Grant Contract between the State of Iowa and the Department of Housing and Urban Development shall be and are hereby made a part of this Contract. It is further agreed that the State of Iowa shall not, under any circumstances, be obligated financially under

this Contract, except to pay according to the terms of the Contract any money deposited in trust for that purpose by grant from the Federal Government or payment from the Planning Body, unless the Planning Agency is to render a contribution in staff services to this project, in which case the services to be provided are described on an attached sheet.

8. INTEREST OF MEMBERS OF PLANNING AGENCY AND OTHERS. No officer, member or employee of the Planning Agency and no member of its governing body, and no other public official of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested; nor shall any such officer, member or employee of the Planning Agency, or any member of its governing body, or public official of the governing body of the locality or localities in which the project is situated or being carried out, have any interest, direct or indirect, in this Contract or the proceeds thereof.

Section IV - CONTRACTUAL RESPONSIBILITIES

1. CONTRACTOR TO PAY LITIGATION COSTS. The Contractor agrees to pay the cost of any litigation arising from a failure of the Contractor to comply with the rules and regulations in this Contract or resulting from the negligence or incompetence of the Contractor.

2. PLANNING AGENCY HELD FREE FROM LITIGATION. In carrying out the provisions of this Contract or in exercising any power or authority granted to the Contractor thereby, there shall be no liability, personal or otherwise, upon the Planning Agency, it being understood that in such matters the Planning Agency acts for the State. Furthermore, the Contractor shall indemnify and save harmless the State and all of its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by any person or property resulting from operations of the Contractor or any persons working under him, in carrying out the terms of this Contract.

3. CONTRACT VOID WHEN NOT APPROVED BY HUD. It is hereby agreed by the parties to this Contract that should the Department of Housing and Urban Development disapprove of this Contract, then this Contract shall be void and shall not be binding on any of the parties to this Contract, and may be terminated prior to the expiration of the Contract period by unanimous written consent of the parties to this Contract with the written consent of the Department of Housing and Urban Development.

4. AGREEMENT MAY BE AMENDED. The scope of the services to be performed under this Contract may be amended or supplemented by unanimous written agreement by the parties to the Contract with the written consent of the Department of Housing and Urban Development. It is hereby agreed that no change in the services specified by this Contract shall be made that will change the total

amount payable under this Contract, unless such change, including any increase or decrease in the amount of the Contractor's compensation, is unanimously agreed upon by the Planning Agency, the Planning Body, and the Contractor and is incorporated in a written amendment to this Contract, and such amendment is approved in writing by the Department of Housing and Urban Development.

5. NON-DISCRIMINATION. There shall be no discrimination against any employee who is employed in the performance of the services specified by this Contract or against any applicant for such employment, because of race, religion, color, or national origin. This provision shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

6. U. S. OFFICIALS NOT TO BENEFIT. No members of or delegate to the Congress of the United States of America, and no Resident Commissioner, shall be admitted to any share or part hereof or to any benefit to arise herefrom.

7. SUCCESSORS AND ASSIGNS. The Planning Agency and the Contractor each binds himself, his partners, successors, executors, administrators, and assigns to the other party to this Contract, and to the partners, successors, executors, administrators, and assigns of such other party in respect to all covenants of this Contract.

8. MEETING NOTIFICATION. The local Planning Body and/or Contractor shall notify the Planning Agency of all scheduled meetings seven (7) days prior to the meeting date. The local Planning Body will also notify the Planning Agency of all meeting cancellations twenty-four hours in advance of the scheduled meeting.

9. AGREEMENT. This instrument contains the entire agreement between the parties and any statements, inducements or promises, not contained herein shall not be binding upon said parties.

If any of the provisions herein shall be in conflict with the laws of the State of Iowa, or shall be declared to be invalid by any court of record of this state, such invalidity shall be construed to affect only such portions as are declared invalid or in conflict with the law and such remaining portion or portions of the agreement shall remain in effect and shall be construed as if such invalid or conflicting portion of such agreement were not contained herein.

All items included in Section V: (1) Scope of Planning Services, (2) IDC Form UP-205 (Tally Sheet), (3) Consultant Method of Payment Sheet and Agency Review Sheet shall be attached and made an integral part of this contractual agreement.

This Contract shall inure to the benefit of, and be binding upon the successors in office of the respective parties.

IN WITNESS WHEREOF, the parties hereto have subscribed their signatures herein the day and year in this Contract.

PLANNING AREA:

JOHNSON COUNTY REGIONAL PLANNING COMMISSION

By: _____
(Authorized Agent)

ATTEST:

_____

CONTRACTOR:

POWERS-WILLIS AND ASSOCIATES
(Firm Name)

_____
(Authorized Agent)

IOWA DEVELOPMENT COMMISSION
State of Iowa:

By: _____
Ronald J. Gear, Planning Director
(Authorized Officer)

ATTEST:

_____
(Notary Public)

ATTORNEY GENERAL'S OFFICE (for contracts exceeding $7,500.00)

Approved as to legal form and legal adequacy:

September 12 19 69

_____
(Name and Title)
Assistant Attorney General

SCOPE OF SERVICES

COMPREHENSIVE REGIONAL PLANNING PROGRAM

(PART 1)

JOHNSON COUNTY REGIONAL PLANNING COMMISSION

SCOPE OF SERVICES. The contractor shall do, perform and carry out in a satisfactory manner as determined by the Planning Agency, the following:

A. Base Mapping.

1. Description of Work.

a. Congressional survey township maps shall be at a scale of 1" = 1000' or 1" = 1320' as directed by the Commission. Maps will show land lines, water courses, drainage threads, highways, roads and other pertinent features, and will form the basis for delineation of the several plans to be prepared and the official zoning map. An original and one reproduction will be prepared of each map.

b. These maps shall be photographically compiled into a county map at a scale of 1" = 4000' and shall be used for the above noted base. Two copies of this map will be prepared.

c. A regional map shall be prepared at a scale of 1" = 2000'. Map shall cover area generally bounded by the Coralville Reservoir, Lake McBride and Solon on the north, Tiffin and an area west of Highway #218 on the west, the west line of Range 5W on the east and the south line of Twp. 79N on the south. Area delineated shall hereafter be called the core. Two copies of this map will be prepared.

Minor changes or additions that may be necessary during the planning program will be made and the maps will be on stable translucent material permitting ozalid reproductions. A complete set of current USDA aerial photographs will be obtained to assist in the map preparation.

2. End Result.

a. Congressional survey township base maps at a scale of 1" = 1000' or 1320'.

b. Compiled Johnson County Base Map - scale 1" = 4000'.

c. A regional or core map - at a scale of 1" = 2000'.

B. Existing Land Use.

1. Description of Work. Existing land use in the unincorporated area (status as of April 15, 1966), along interstate highways, around the Coralville Reservoir and Lake McBride; and around the fringe of member communities outside of the core, shall be inventoried and recorded in the field.

The results will be analyzed and compared with existing zoning districts and land use plans of adjacent incorporated areas. Areas of mixed land use, areas in transition, and areas requiring special attention will be noted and studied. The information will be graphically presented and discussed in a written report.

2. End Result. An inventory, analysis and graphic presentation of the land use in the unincorporated areas of the "core" and the areas immediately surrounding member communities outside the core, also an inventory tabulation and analysis of rezoning and board of adjustment requests.

C. Future Land Use Plan.

1. Description of Work. Based upon the existing land use inventory, the Future Land Use Plans in existence, the existing Economic and Population projections for Johnson County and the political subdivisions or other bodies thereof, and a study of future needs and potential use, a future land use plan will be prepared for the areas encompassed by the existing land use study. A large, multicolored land use plan will be prepared and the plan will be discussed in a written report.

2. End Result. A Future Land Use Plan for the unincorporated areas of the "core" and the immediate surrounding areas of member communities outside the "core".

D. Zoning Ordinance and District Boundary Review.

1. Description of Work.

a. An inventory and review of all zoning ordinances in Johnson County will be undertaken. Differences in procedures, definitions, and development standards will be noted. Number and type of districts and district regulations will be compared.

b. An inventory of rezoning requests in the unincorporated portions of the planning area will be made for several recent years. Location, change requested and proposed use of the land will be noted, and analyzed, to determine land use transition trends, and appropriateness of current zoning boundaries.

c. An inventory of Board of Adjustment case requests in the unincorporated area of the county, for several recent years will be made. Type, location, action taken, and reason for request will be tabulated and analyzed to determine appropriateness of district regulations, ordinance provisions, and procedures.

d. A proposed master zoning text will be prepared, reconciling districts, regulations, terminology, definitions, and procedures to the best degree possible. New districts and regulations will be proposed, or required. It will be the intent of the master text and district regulations to provide the number of variety of districts required throughout the planning area. Appropriate districts and regulations may be adopted within the framework of the master text by members governing bodies, in accordance with local needs.

e. Adjustments shall be proposed to the district boundaries existing in the planning area which take into account:

1) New districts as proposed by master text.

2) Quantitative adjustments indicated by Future Land Use Plan.

3) Qualitative adjustments or changes as indicated by Future Land Use Plan.

4) Land use changes and trends.

2. End Result.

a. A thorough review of existing Zoning ordinances with recommendations for appropriate expansion or modification to standardize texts, districts and regulations.

b. Proposed adjustments to the district boundaries and provision for new districts as indicated.

All of which will better guide and implement the development and transition of land use in the study area.

E. Reports.

1. Description of Work. Preliminary reports will be issued over each phase of the work except the mapping phase for the review of the Commission and other member agencies. One hundred (100) copies of each preliminary report would be issued.

Upon completion of the review, a final report would be prepared presenting the Future Land Use Plan, the Master Zoning Ordinance text and a delineation of the proposed district boundaries. Two hundred fifty (250) copies of the final report would be submitted.

2. End Result. One hundred (100) copies of each preliminary report and two hundred fifty (250) copies of the final report.

TABULAR SUMMARY OF WORK PROGRAM

JOHNSON COUNTY REGIONAL PLANNING COMMISSION

	Work Element	Performed By	Estimated Man Weeks	Estimated Cost
A.	Base Mapping	Consultant		
	1a. 17 Congressional Township Maps, 1" = 1000' or 1" = 1320' at $250.00 each		10	$4,250.00
	1b. Mylar reproduction of each of 17 Township Maps			500.00
	2. 2 Composite Maps of County at 1" = 4000'			500.00
	3. Regional Map at 1" = 2000' (2)		2	750.00
	4. USDA Aerial Map at 1" = 1000' or 1" = 1320'			600.00
B.	Existing Land Use	Consultant		
	1. Field Inventory		6	2,500.00
	2. Analysis and Graphic Presentation		3	1,500.00
C.	Future Land Use Plan	Consultant		
	1. Land Use Analysis Projections and Drawing		5	2,000.00
	2. Future Land Use Mapping and Presentation		2 1/2	1,000.00
D.	Zoning Ordinance and District Boundary Review	Consultant		
	1. Zoning Ordinance Review		5	2,000.00
	2. Rezoning Request Analysis		4	1,500.00
	3. Board of Adjustment Case Analysis		4	1,500.00
	4. Master Zoning Ordinance Text		4	1,500.00
	5. District Boundary Recommendation		4	1,500.00
E.	Reports	Consultant		
	1. Preliminary Report #1 (B)		1/2	200.00
	2. Preliminary Report #2 (C)		1/2	200.00
	3. Preliminary Report #3 (D)		1	400.00
	4. Final Report		4	1,600.00
		TOTAL PROJECT COST		$24,000.00

2/3 Federal Share	$16,000.00
1/3 Local Share	8,000.00
	$24,000.00

SCHEDULE OF PAYMENTS
JOHNSON COUNTY REGIONAL PLANNING PROGRAM
(PART 1)

A. $ 1,650.00 upon completion of 25% of Item A-1a and Item A-4; Congressional Township Base Maps and Aerial Photo Purchase.

B. $ 1,075.00 upon completion of 50% of Item A-1a; Congressional Township Base Maps.

C. $ 1,050.00 upon completion of 75% of Item A-1a; Congressional Township Base Maps.

D. $ 1,075.00 upon completion of 100% of Item A-1a; Congressional Township Base Maps.

E. $ 1,750.00 upon completion of Items A-1b, 2, and 3; Mylar Reproduction, Composite County Maps and Regional Base Maps.

F. $ 2,500.00 upon completion of Item B-1; Existing Land Use Field Inventory.

G. $ 1,700.00 upon completion of Item B-2; Analysis and Graphing Presentation of Existing Land Use and Item E-1; Preliminary Report #1.

H. $ 2,000.00 upon completion of Item C-1; Future Land Use Analysis, Projections and Planning.

I. $ 1,200.00 upon completion of Item C-2; Future Land Use Mapping and Presentation and Item E-2; Preliminary Report #2.

J. $ 2,000.00 upon completion of Item D-1; Zoning Ordinance Review.

K. $ 1,500.00 upon completion of Item D-2; Rezoning Request Analysis.

L. $ 1,500.00 upon completion of Item D-3; Board of Adjustment Case Analysis.

M. $ 1,500.00 upon completion of Item D-4; Master Zoning Ordinance Text.

N. $ 1,900.00 upon completion of Item D-5; District Boundary Recommendations and Item E-3; Preliminary Report #3.

O. $ 1,600.00 upon completion of Item E-4; Final Report.

Total Payments shall not exceed $ 24,000.00.

Powers - Willis and Associates
Planners - Engineers - Architects
Iowa City, Iowa

JOHNSON COUNTY REGIONAL PLANNING COMMISSION

AGENCY REVIEW

The public and semi-public agencies indicated below (X) will receive a copy of the preliminary comprehensive plan for their review. It will be the contractual responsibility of the consulting firm to obtain the conformation of this review by securing the signature of an appropriate official in each agency.

Coordinating Agency	Item	Signature
City Councils	All	
City Engineer's Office		
School Board		
Parks Board		
Utility Board		
Hospital Board		
Library Board		
Industrial Development Board		
Chamber of Commerce		
Parochial School Board		
Cemetery Board		
College - University Board	All	
Board of Supervisors	All	
County Engineer's Office	All	
County Conservation Board	All	
County Board of Education		
Soil District Commissioners (3)		
Iowa Highway Commission		
Iowa Natural Resources Council		
Soil Conservation Service USDA		
Local Planning and Zoning Commission	All	

Powers - Willis and Associates
Planners - Engineers - Architects
Iowa City, Iowa

Form UP-209

5. Federal Loans and Grants. 42 U.S.C. § 3331 (Nov. 3, 1966).

§ 3331. Congressional findings and declaration of purpose

(a) The Congress hereby finds that the welfare of the Nation and of its people is directly dependent upon the sound and orderly development and the effective organization and functioning of the metropolitan areas in which two-thirds of its people live and work.

It further finds that the continuing rapid growth of these areas makes it essential that they prepare, keep current, and carry out comprehensive plans and programs for their orderly physical development with a view to meeting efficiently all their economic and social needs.

It further finds that metropolitan areas are especially handicapped in this task by the complexity and scope of governmental services required in such rapidly growing areas, the multiplicity of political jurisdictions and agencies involved, and the inadequacy of the operational and administrative arrangements available for cooperation among them.

It further finds that present requirements for areawide planning and programming in connection with various Federal programs have materially assisted in the solution of metropolitan problems, but that greater coordination of Federal programs and additional participation and cooperation are needed from the States and localities in perfecting and carrying out such efforts.

(b) It is the purpose of this subchapter to provide, through greater coordination of Federal programs and through supplementary grants for certain federally assisted development projects, additional encouragement and assistance to States and localities for making comprehensive metropolitan planning and programing effective.

§ 3334. Coordination of Federal aids in metropolitan areas; rules and regulations

(a) All applications made after June 30, 1967, for Federal loans or

grants to assist in carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review--

(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

(b) (1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of

this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph (1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c) of this section, or such application, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this subchapter, involves a major change in the project covered by the application prior to such amendment.

(c) The Bureau of the Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.

§ 3335. Grants to assist in planned metropolitan development -- Supplementary grants

(a) The Secretary is authorized to make supplementary grants to applicant State and local public bodies and agencies carrying out, or assisting in carrying out, metropolitan development projects meeting the requirements of this section.

Criteria

(b) Grants may be made under this section only for metropolitan development projects in metropolitan areas for which it has been demonstrated, to the satisfaction of the Secretary, that --

(1) metropolitanwide comprehensive planning and programing provide an adequate basis for evaluating (A) the location, financing, and scheduling of individual public facility projects (including but not limited to hospitals and libraries; sewer, water, and sewage treatment facilities; highway, mass transit, airport, and other transportation facilities; and recreation and other open-space areas) whether or not federally assisted; and (B) other proposed land development or uses, which projects or uses, because of their size, density, type, or location, have public metropolitanwide or interjurisdictional significance;

(2) adequate metropolitanwide institutional or other arrangements exist for coordinating, on the basis of such metropolitanwide comprehensive planning and programing, local public policies and activities affecting the development of the area; and

(3) public facility projects and other land development or uses which have a major impact on the development of the area are, in fact, being carried out in accord with such metropolitanwide comprehensive planning and programing.

Grant to unit of general local government or other applicant

(c) (1) Where the applicant for a grant under this section is a unit of general local government, it must demonstrate to the satisfaction of the Secretary that, taking into consideration the scope of its authority and responsibilities, it is adequately assuring that public facility projects and other land development or uses of public metropolitanwide or interjurisdictional significance are being, and will be, carried out in accord

with metropolitan planning and programing meeting the requirements of subsection (b) of this section. In making this determination the Secretary shall give special consideration to whether the applicant is effectively assisting in, and conforming to, metropolitan planning and programing through (A) the location and scheduling of public facility projects, whether or not federally assisted; and (B) the establishment and consistent administration of zoning codes, subdivision regulations, and similar land-use and density controls.

(2) Where the applicant for a grant under this section is not a unit of general local government, both it and the unit of general local government having jurisdiction over the location of the project must meet the requirements of this subsection.

Secretary's consideration of comments of State bodies

(d) In making the determinations required under this section, the Secretary shall obtain, and give full consideration to the comments of the body or bodies (State or local) responsible for comprehensive planning and programing for the metropolitan area.

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33 U.S.C. § 466(f)

Notwithstanding any other provisions of this section, the Secretary [of Health, Education and Welfare] may increase the amount of a grant made under subsection (b) of this section by an additional 10 per centum of the amount of such grant for any project which has been certified to him by an official State, metropolitan, or regional planning agency empowered under State or local law or interstate compact to perform metropolitan or regional planning for a metropolitan area within which the assistance is to be used, . . . as being in conformity with the comprehensive plan developed or in process of development for such metropolitan area. [Metropolitan area is

defined in the subsection.]

42 U.S.C. § 1500b

(a) The Secretary [of Housing and Urban Development] shall enter into contracts to make grants . . . only if he finds that such assistance is needed for carrying out a unified or officially coordinated program, meeting criteria established by him, for the provision and development of open-space land as part of the comprehensively planned development of the urban area.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
360 NORTH MICHIGAN AVENUE, CHICAGO, ILLINOIS 60601

REGION IV

March 23, 1967

Mr. William C. Hubbard
Mayor
Civic Center
410 E. Washington Street
Iowa City, Iowa 52240

Dear Mr. Hubbard:

Subject: Open Space Land Program
Iowa-OSA-6

A review of your application indicates that we will need the following additional or corrected information:

1. A Land Acquisition Policy Statement, as described in pages 13-15 of the enclosed Letter No. OS-5.

2. A supplemental opinion of Counsel evidencing the absence of litigation pending or threatened (see Attachment D to Letter No. OS-5).

3. A statement from the Johnson County Regional Planning Commission certifying that the proposed sites are consistent with comprehensive planning for the urban area.

4. For Code Item 114, a revised statement describing present and proposed activities of local governing bodies to preserve open space land in the urban area and citing appropriate portions of any tax provisions or zoning, subdivision, and other regulations. Please refer to page 6 of Letter OS-5.

5. A statement indicating that there will be no displacement of site occupants.

6. A revised certificate of recording officer, as shown in Attachment C to Letter OS-5.

Sincerely yours,

Edward Bruder

Edward Bruder
Assistant Regional Administrator
for Metropolitan Development

Enclosure

JOHNSON COUNTY
REGIONAL PLANNING COMMISSION

19 April 1967

Mr. Edward Bruder
Assistant Regional Administrator
for Metropolitan Development
Department of Housing and Urban Development
360 North Michigan Ave.
Chicago, Illinois 60601

Project: Open Space Land Program
Iowa-OSA-6
City of Iowa City, Iowa

Dear Mr. Bruder,

At the 19 April 1967 meeting of the Johnson County Regional Planning Commission, the above subject was brought under discussion.

It is the feeling of the Commission that the request by the City of Iowa City, Iowa for the Open Space Land grant requested from your office is consistent with future planning for the entire area. Although we do not have a full study project underway as yet, it is comtemplated that we shall have in the near future. 100% of the population of this urban area is represented on the Commission.

Very truly yours,

Richard W. Burger

Richard W. Burger, Chairman
Johnson County Regional
Planning Commission

RWB/gh

"CONDEMNATION-VALUATION"
by
Danny F. Nicol
Richard W. Starkeson
Ronny R. Tharp

I. Offer.

A. How is the offer determined?

1. What factors are considered in determining the amount of compensation to be offered?

a. The Iowa State Highway Commission bases its offer upon the before and after market value method of valuation. At least one professional appraisal is obtained for each parcel of land acquired.

b. The electrical utilities consider the land areas actually occupied by pole structures, the money paid for taxes on this land, the land which is covered by overhanging transmission wires, the monetary expense of weed control, the inconvenience of land use near the pole structures, and good will. The same amount compensation is offered to each landowner.

c. The pipeline utilities consider the market value of developed land but not undeveloped land. The offer is an arbitrary decision based in part upon what the landowners will accept.

d. The counties vary in the factors considered in determining their offer, but most offers are based upon taxable valuation, the ability of the county to pay, the customs of the area, and what the landowners will accept.

e. The cities base their offers upon an estimation of market value, but may not obtain a professional appraisal.

2. Do the offers accurately reflect current market value?

a. The power companies review their schedules of compensation at various time intervals, ranging from the beginning of each new project to once every several years.

b. County offers based upon taxable valuation are reviewed only periodically and vary from actual market value.

c. The Highway Commission and other purchasing bodies which obtain professional appraisals most closely reflect actual market value.

B. Is the offer fair?

1. There is no exact way to value an easement for a buried pipeline in undeveloped land.

2. Although considering similar factors, the offers made by the electrical utilities vary considerably. See appendix, Table A.

3. The offers made by the counties vary considerably. See appendix, Table B.

II. Negotiation.

A. The negotiation procedures are similar for each purchasing body.

1. The landowner is normally told who is taking his land, what project his land will be used for, why the project is necessary, how the project will benefit the landowner, how much of his land is needed, and how much he is being offered for the land.

2. The Highway Commission is the only purchasing body which informs the landowners of their rights under the eminent domain system.

B. How successful are the negotiation procedures?

1. Many of the landowners feel that the negotiator does not do a good job of explaining the project or the need to take the landowner's land, that the negotiator creates a false impression, or that the negotiator is irritating or disagreeable in some way.

2. Many of the landowners feel that the project is unnecessary and that the offer is unfair.

C. How can the lawyer aid the landowners?

1. The lawyer can inform the landowner of his basic rights.

   a. The landowner is not well informed of his rights under the eminent domain system.

   b. If the landowners were better informed, there would be more condemnation proceedings.

2. The lawyer can aid the landowner in obtaining concessions from the company or government body.

   a. Concessions can be obtained during the public hearing at the Commerce Commission.

   b. Concessions can be obtained during negotiations.

3. The lawyer can aid the landowner in obtaining more compensation.

D. Why don't more landowners consult legal counsel?

1. The majority of the landowners do not consult a lawyer because they believe that the amount of money gained would not be worth the time and effort involved or that the lawyer's fees would be as much or greater than the money gained.

2. These presumptions are not valid.

III. Condemnations

A. Results - What's likely to happen at condemnation?

1. Condemnation award compared to the offer

a. Will the condemnation award be more or less than the offer?

b. How does this vary?

(1). Several divisions of the data show no important distinctions.

(2). Differences for different parts of the state

(3). Differences for different type condemning bodies

c. Conclusions

(1). Condemnation results vary for different parts of the state. The western part of the state more often raises the offer.

(2). Condemnation results vary for different type condemning bodies. Utility condemnations more often raise the offer.

2. The amount of the increases and decreases

a. What are the average increases and decreases?

b. How do these vary?

(1). Differences for different parts of the state

(2). Differences for different type condemning bodies

c. Conclusions

(1). Condemnations in the western part of the state are most beneficial to the property owner. When there is a decrease it is a smaller one than in the eastern part of the state. When there is an increase it is a larger one than in the eastern part of the state. One exception: Highway condemnations in the eastern part of the state increase the offer by a larger percentage.

(2). Condemnations by utilities are more beneficial to the property owner in all cases.

3. General conclusions

a. Seventy-five to ninty percent of the condemnations result in an award which is larger than what was offered for the property.

b. When the condemnation award is not larger than the offer it will in all probability be exactly equal to the offer. There is very little chance that the property owner will end up with less than was originally offered him. This chance ranges from 0.49% to 4.0% and is never more than 4.0%.

c. The condemnation juries in the western part of the state are more favorable to the property owner than the juries in the eastern part of the state. They will increase the offer more often and increase it by a larger percent.

d. All juries seem to differentiate between condemnations by utilities and other condemning bodies. The utility juries also increase the offer more often and by a larger percent.

B. Reasons - What is responsible for producing these results?

1. The jury's problem

a. What is the jury given to decide?

(1). Questions of the value of land taken

(2). Questions of the value of easements taken

(3). Questions of the value of resulting damages

b. What can the jury decide easily?

(1). Agreement that there is no problem on land value

(a). Majority of jurors are real estate agents

(b). Consider comparable sales the best indication - these are usually known or available

(c). Highway commission bases its offers on these comparable sales and explains them to jury

(2). Is nothing to guide the jury in valuing easements or damages

2. The jury's approach

a. Damages

(1). Jury doesn't use the before and after test

(2). The method they use is summing all elements of

damage. This is because items of damage are presented as specific factual situations.

(3). What will they consider?

(a). Tangible items of damage - quantity helps

(b). Intangible items of damage! - examples: forced sale, loss of complete control of land

(c). There is a limit of reason

(d). Popular specific items: inconvenience, unsightliness, change of water flow

(4). How the jury arrives at their figures

(a). If replaceable, will use some portion of replacement cost

(b). If not replaceable , consider what parties ask for, consider it will be biased, result is splitting the difference

(5). Conclusion - approach to a higher jury award

(a). Come up with all reasonable items of damages, some can be a little bit speculative.

(b). Place a specific figure on each element.

b. Easements

(1). Again, jury doesn't use before and after test

(2). Some consider whole value of easement tract

(3). Some consider partial value of easement tract

(4). Items of damage which accompany an easement condemnation:

(a). Inconvenience

(b). Greater cost of weed spraying

(c). Unsightly appearance

(d). Difficulty in selling property

(e). Restrictions on placement of buildings

(f). The utilities right to enter on the property at any time

(g). The utilities right to construct another line in the easement strip

(h). Danger of harm

(i). Loss of television reception if a power line will be built

3. The nature of the condemnation jury

a. They are an equitable body! Equitable considerations influence their award, especially in connection with other plausable arguments.

b. It is doubtful if these equitable arguments have to be logical, but they do have to be reasonable!

c. The landowner has to be sincere. He has to convince the jury that his damage is real.

d. Caution: Don't make the jury mad!

IV. Compensation beyond condemnation

A. The provision for compensation

1. Constitutional provision for compensation for property taken

2. Other elements specifically included

a. "Consequential damages"

b. Reduction in value of personal property

B. The measure of compensation

1. Fair market value is the measure for all damages

a. If entire property is taken, the test is the entire market value

b. If part of property is taken, the test is the market value of the entire tract immediately before the taking minus the market value of the remaining tract immediately after the taking - the "before and after" test

2. The time of measurement is the time of the condemnation commission hearing

3. The measurement is for the highest and best use of the property

a. A prospective use may be considered

(1). This may depend on extrinsic conditions

(2). The potential use must be reasonable

b. Illegal uses are generally not considered

c. Special value to the owner may not be considered

4. Compensation should include severance damages

a. There must be one intergal parcel to have severance damage

(1). There must be unity of ownership of the entire parcel

(2). The owner must own the like estate in all tracts

b. The measure of damage is the decrease in the value of the whole parcel

5. The measure of compensation must not off set any benefits to the remaining tract which result from the project for which the land is taken

C. Evidence of value

1. Items of value and damage are distinguished

a. All value testimony must relate to the effect on market value

b. No dollar amounts may be attached to either items of value or damage

c. Separate items of damage may not be considered

2. Specific items which may be introduced

a. Opinions of witnesses

(1) The owner may testify

(2) Others must be qualified

(a) An expert need not be a real estate agent

(b) Non expert is qualified if has lived near the property

b. Prior sales of the property

c. Sales of comparable land

(1) The court has discretions as to what is comparable

(2) This is subject to review

d. Rental value of the land

e. Appraisals

Table A

Items to Be Compensated	Electric Utility		
	A.	B.	C.
A. Poles, each			
1. For each pole, located in cultivated land, the center of which is located less than three feet from a fence or property line.	$15.00	$25.00	$30.00
2. For each pole, located in cultivated land, the center of which is located three feet or more from a fence or property.	$50.00	$125.00	$70.00
3. For each pole, located in permanent pasture or nontillable land, the center of which is located less than three feet from a fence or property line.	$5.00	$25.00	$30.00
4. For each pole, located in permanent pasture or nontillable land, the center of which is located three feet or more from a fence or property line.	$10.00	$25.00	$30.00

B.	For each rod of line with the poles located adjacent to the fence line, or in timber permanent pasture, or land unfit for cultivation.	None	None	$0.75
C.	For each rod of line which crosses an open cultivated field.	$3.00	addi-tional $50 per pole	?
D.	Anchors, Each			
	1. For an anchor located less than three feet from a fence or property line in cultivated land.	$15.00 $5.00 (each add.)	$15.00	$30.00
	2. For an anchor located three feet or more from a fence or property line.	$50.00 $10.00 (each Add.)	$50.00	$30.00
	3. For an anchor located less than three feet from a fence or property line in permanent pasture or nontillable land.	$5.00 $2.00 (each add.)	$15.00	$30.00

4.	For an anchor located three feet or more from a fence or property line in permenent pasture or nontillable land.	$10.00 $5.00 (each add.)	$15.00	$30.00
E.	For overhang of property only, on which there is no other construction and specifically including above tree trimming and ingress and egress rights.	$20.00 per ease- ment	$25.00 per 1/4 mile	$0.75 per rod -
F.	Minimum compensation for each ease-ment obtained.	$20.00	$25.00	$35.00

Table B

Summary of the Compensation Offered in 1968 by Reporting Counties:

Number of Counties This Amount		Compensation Offered Per Acre
15	1.	The landowner is required to donate all or a portion of the land.
1	2.	$200 for all land purchased
1	3.	$250 for all land purchased
1	4.	$300 for cultivated land; $150 for uncultivated land
1	5.	$300 for cultivated land; $200 for uncultivated land

1 6. $400 for all land purchased

1 7. $500 for cultivated land; $300 for uncultivated land

1 8. $500 for all land purchased

1 9. $600 for all land purchased

5 10. 1 times tax appraisors 100% valuation

2 11. 1.12 of tax appraisors 100% valuation

1 12. 1.15 of tax appraisors 100% valuation

1 13. 1.3 times tax appraisors 100% valuation

1 14. 1.5 times tax appraisors 100% valuation

1 15. 1.7 times tax appraisors 100% valuation

2 16. 2.5 times tax appraisors 100% valuation

1 17. 4 times tax appraisors 100% valuation

1 18. 4.33 times tax appraisors 100% valuation

3 19. 4 times 27% of the tax appraisors 100% valuation

1 20. 4.5 times 27% of the tax appraisors 100% valuation

2 21. 5 times 27% of the tax appraisors 100% valuation

1 22. 6 times 27% of the tax appraisors 100% valuation

1 23. 2 times assessed taxable valuation (60%) plus $125 per acre.

2 24. 3 times assessed taxable valuation (60%)

1 25. 3 times assessed taxable valuation (60%) for the first 50 feet of R.O.W.; 5 times taxable value for additional width

2 26. 3.5 times assessed taxable valuation (60%)

1 27. 3.7 times assessed taxable valuation (60%)

9 28. 4 times assessed taxable valuation (60%)

3 29. 4.5 times assessed taxable valuation (60%)

13 30. 5 times assessed taxable valuation (60%)

1 31. 5.25 times assessed taxable valuation (60%)

13 32. 6 times assessed taxable valuation (60%)

3 33. 7 times assessed taxable valuation (60%)

2 34. The questionnaire was returned, but compensation was not indicated.

TABLE C

THE CONDEMNATION AWARD COMPARED TO THE OFFER
AND
THE AVERAGE DECREASES AND INCREASES

	Offer at condemnation			Average percentage change	
	Decrease	Equal	Increase	Decrease	Increase
Highway	1.58	21.15	77.27	27.95	75.75
Utility	2.47	11.11	86.42	14.10	138.15
County	3.70	18.41	77.89	30.00	85.96
Western highway	0.49	15.61	83.90	50.00	41.42
Eastern highway	4.00	25.00	71.00	26.03	97.92
Central highway	0.69	22.41	76.90	24.60	88.10
Western utility	0.00	4.17	95.83	00.00	287.44
Eastern utility	3.51	14.04	82.46	14.10	65.10
Western county	0.76	5.18	94.06	0.06	103.21
Eastern county	3.01	23.27	73.72	32.17	60.79
Central county	0.40	22.73	76.87	17.20	86.50

TABLE D

THE INCREASES BY THE SIZE OF THE INCREASE

The percentage of the total number of condemnations which increased the offer:

	0 to 10%	10 to 20%	20 to 30%	30 to 40%	40 to 50%	50 to 75%	75 to 100%	100 to 150%	150 to 200%	more than 200%
Highway	21.0	25.0	16.0	9.0	7.0	9.7	3.2	4.5	1.5	3.7
Utility	24.0	11.0	9.0	3.0	7.0	5.7	8.6	10.0	4.3	7.1
County	9.0	17.0	9.0	0.0	13.0	13.0	4.3	17.4	8.7	8.7
Western highway	24.0	30.0	11.0	9.0	5.0	10.5	1.7	4.6	2.4	1.7
Eastern highway	20.0	23.0	21.0	9.0	8.0	7.0	2.1	4.0	1.4	2.8
Central highway	20.0	22.0	16.0	9.0	7.0	10.8	4.9	4.0	0.9	5.8
Western utility	8.7	0.0	4.3	0.0	0.0	4.3	4.3	26.1	4.3	47.8
Eastern utility	32.0	17.0	11.0	4.0	11.0	6.4	10.6	2.1	4.2	2.1
Western county	16.0	20.0	17.0	9.0	8.0	11.3	4.1	7.2	2.5	5.0
Eastern county	35.0	19.0	12.0	5.0	12.0	4.7	9.3	0.0	2.3	2.3
Central county	8.0	11.0	17.0	3.0	9.3	22.3	17.0	6.4	2.4	3.6

TABLE E

THE PERCENTAGE OF CONDEMNATIONS WHICH ARE APPEALED
AND
THE DISPOSITION OF THE APPEALS

	Condemnations appealed	Disposition: Information not available	Settled	Tried
Highway	26.72	28.45	55.11	16.44
Utility	26.00	50.00	38.46	11.54
County	2.04	50.00	0.00	50.00
Western highway	21.45	32.20	64.41	3.39
Eastern highway	22.94	32.08	50.94	16.98
Central highway	33.63	24.78	52.21	23.01
Western utility	20.00	100.00	0.00	0.00
Eastern utility	20.00	38.09	47.62	14.29

TABLE F

THE SETTLEMENT AWARD COMPARED TO THE CONDEMNATION AWARD
AND
THE AVERAGE DECREASES AND INCREASES

	Condemnation award changed by settlement			Average percentage change	
	Decrease	Equal	Increase	Decrease	Increase
Highway	10.40	12.80	76.80	27.06	521.91*
Utility	10.00	0.00	90.00	20.00	39.50
County	No county appeals disposed of by settlement				
Western highway	10.53	15.79	73.68	21.99	80.83
Eastern highway	22.22	18.52	59.26	30.42	41.77
Central highway	5.00	8.33	86.67	27.12	907.15*
Western utility	No appeals disposed of by settlement				
Eastern utility	10.00	0.00	90.00	20.00	39.50

TABLE G

THE TRIAL AWARD COMPARED TO THE CONDEMNATION AWARD
AND
THE AVERAGE DECREASES AND INCREASES

	Condemnation award changed by trial			Average percentage change	
	Decrease	Equal	Increase	Decrease	Increase
Highway	21.62	0.00	78.38	8.34	163.19
Utility	0.00	66.67	33.33	0.00	20.00
County	0.00	0.00	100.00	0.00	5.56
Western highway	0.00	0.00	100.00	0.00	37.11
Eastern highway	22.22	0.00	77.78	13.25	116.11
Central highway	23.08	0.00	76.92	6.71	192.27
Western utility	No appeals disposed of by trial				
Eastern utility	0.00	66.67	33.33	0.00	20.00

THE FEDERAL AID HIGHWAY ACT OF 1968

Its Implications for Just Compensation

"For those whose property is taken to make way for public improvement, is the fair market value standard of compensation enough . . .?" (Senator Muskie's introduction to the opening hearings on Intergovernmental Cooperation, 9 May 1968.)

I. The Policy of § 30, Relocation Assistance.

A. § 30 amends Title 30, U.S.C., by adding a new chapter, "Highway Relocation Assistance."

B. § 501, Title 23, declares Congress' policy to be that persons, businesses, farm operators and organizations displaced by highway programs must be assured prompt and equitable relocation and reestablishment.

C. Specifically, § 501 declares it "necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit or the public as a whole."

D. This act, although based on the notion of making "whole" again those directly injured by federally-aided highway construction, only provides for payments for those forced to physically move.

II. History of § 30, Relocation Assistance.

A. The Senate Subcommittee on Governmental Operations, Committee on Intergovernmental Cooperation, held extensive hearings in 1965 on the need for additional compensation to persons and businesses injured by land acquisition for federal programs.

1. A Uniform Relocation Assistance Act of 1965 unanimously passed by the Senate was substantially the same as § 30 of the Federal-Aid Highway Act of 1968.

2. The Committee continued hearings in the 90th Congress and proposed the Intergovernmental Cooperation Act, which included Title VIII on Relocation Assistance.

B. Both the Senate and House Committees on Public Works lifted Title VIII of the Intergovernmental Cooperation Act bill and inserted it nearly intact into the Federal-Aid Highway Act of 1968, which authorized additional highway construction.

C. The Committee reports show that the primary concerns of the Congress were:

1. The insufficiency of payments equalling market value to compensate property owners and tenants.

a. Housing equal to that condemned is often not available at the same price range.

b. Moving expenses are an inevitable result of building condemnations.

c. Loss of business profits are an inevitable result of business condemnations.

2. There is great disparity among compensation allowed under various state and federal land acquisitions for different federal programs.

   a. If states acquired the land for the federally aided project, the compensation might differ than when land was acquired by the federal government directly.

   b. The items and amounts of compensation allowed under different federal programs and departments were different.

   c. Some states did not implement the federally reimbursable compensation programs.

3. Highway and redevelopment programs had a severe impact upon urban areas, where large numbers of families and businesses had to be relocated.

   a. Highway and redevelopment programs typically affected low income population areas which could least afford to bear the uncompensated injuries of condemnation.

   b. Housing at the same rental level was not available for displaced persons, or if it were, it was not of the same quality.

   c. Small businesses, dependent upon patronage of the local immediate area, frequently failed to survive following a relocation.

D. Title VIII of the Intergovernmental Cooperation Act, when transplanted into the Federal-Aid Highway Act of 1968, applied only to the highway programs, and no longer created uniformity of compensation in all federal land acquisition programs.

III. Provisions of § 30, Relocation Assistance.

A. The federal government will not approve nor provide federal reimbursement for any highway project after July 1, 1970, in a state which has not complied with all the provisions of § 30, Relocation Assistance.

B. Relocation assistance services.

1. The state must provide a relocation assistance program to determine the needs of displaced businesses, families, individuals, and farm operations.

2. The state must assist these persons to be displaced in finding new suitable locations and in reestablishing.

3. The state must assure prior to approval of a project that there will be available housing for displaced persons, of the same quality, at about the same price level, accessible to their employment places, and in not less desireable areas.

4. The State may use any services of any state agency or federal agency in meeting these requirements.

C. Moving expenses.

1. All displaced individuals, families, businesses and farm operations are entitled to receive "actual reasonable" moving expenses.

   a. The person must move from "the property."

   b. The property may be only partially acquired for the project.

2. Individuals and families may elect to accept a $ 300 payment in lieu of actual reasonable moving expenses.

3. Farm operations which "move or discontinue" may elect to accept a payment equalling one year's average net income (up to $5000) in lieu of actual reasonable moving expenses.

4. Businesses which "move or discontinue" may elect to accept a payment equalling one year's average net income (up to $5000) in lieu of actual reasonable moving expenses, but only if:

   a. The highway commission determines that moving will cause a "substantial loss of patronage", or if

   b. It is not a part of a several branch business.

D. Higher housing cost payments.

1. The owner-occupant of a dwelling is entitled to receive a payment (up to $5000) of the amount necessary to purchase an average-priced comparable dwelling on the private market, less the acquisition payment made to the owner-occupant.

2. A tenant of a dwelling is entitled to receive a payment (up to $1500) to equal the additional rent (for two years) required for the rental of a comparable dwelling of average rent.

E. Expenses incidental to transfer are paid by the state. These include:

1. Recording fees and transfer taxes.

2. Mortgage prepayment penalties.

3. Pro rata amount of property taxes for the period after title or possession vests.

F. No payments are taxable under the Internal Revenue Code.

G. Federal reimbursement will be 100% until July 1, 1970

1. Subsequently, reimbursement will be in the same ratio as for the other costs of the project.

H. State compliance becomes mandatory after July 1, 1970, in order for a state to continue to receive federal reimbursement on a highway project.

I. The act does not prohibit any person from exercising any right or remedy under local law to a review of a determination made by the state agency under the chapter.

1. It specifically provides for a right to review by the head of the state agency.

J. § 32 states that nothing in the new chapter 5 of Title 23, U.S.C., shall be construed as creating in eminent domain proceedings "any element" of damages not in existence on the date of enactment.

IV. Effects of the Law in Iowa

A. None of the new compensation payments provided are now payable to persons affected in Iowa.

1. Enabling legislation would be required for the Iowa State Highway Commission to make the payments authorized.

2. It seems likely that the legislature will pass the required legislation.

a. The cost to the state for the payments provided will be nothing until July, 1970

b. After such time, the legislation will be required for the state to continue receiving federal reimbursement for highway construction.

B. The legislature should strongly consider amending the provision of Chapter 472, Iowa Code, providing for payment of actual costs of moving personal property up to $500.

1. The present provision, if the Federal-Aid Highway Act provisions were implemented, would allow a condemnee to receive double compensation for moving expenses for the first $500.

2. The Federal-Aid Highway Act applies only to land acquisition for highway projects, so a repeal of the Iowa provision would leave uncompensated those condemned for other than highway purposes.

C. It is unlikely that the Iowa Supreme Court will alter its strict adherence to the "fair market value" formula being the only criterion for determining compensation for condemnees.

1. The committee hearings and language of the act clearly indicate what Congress' intent was in regard to what constituted "just compensation" for dislocated individuals.

2. The amendment including § 32, Eminent Domain, clearly shows that it did not intend to force this interpretation on local courts.

3. The Iowa court has consistently refused to allow loss of business profits to be considered in determining the value of business property either before or after condemnation.

4. The Iowa court has consistently refused to allow compensation for individual items of damage, including injuries to business, and moving expenses.

D. Reasons for expecting some legislation from the General Assembly allowing compensation for additional injuries.

1. The clear congressional determination that the fair market value formula is not enough to give just compensation.

2. The evidence accumulated by the congressional committees over the last several years supporting that proposition.

3. The amendments to Chapter 472, Iowa Code, in the last several years allowing:

   a. Condemnation commissions to divide an award into value for property taken and consequential damages.

   b. Condemnees to receive actual moving expenses up to $500 where a dwelling is condemned.