

JULIE M. HAGGERTY
COPY SENT TO AUDITOR



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Fee Amt: \$12.00 Page 1 of 2
Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2015-00040330

BK **15338** PG **248-249**

Prepared by: James E. Newwig, Attorney at Law, 6701 Westown Parkway, Suite 100, West Des Moines, IA 50266
515-274-1450

COPY

VERIFIED CLAIM
(IOWA CODE SECTIONS 614.24 AND 614.25)

RE: Lot 3 in Country Club Plat 4, an Official Plat; City of Clive, Polk County, Iowa; except that portion described as follows: Beginning at the northwest corner of Lot 3; thence N 89 degrees 43 minutes 37 seconds E, 433.79 feet along the north line of Lot 3 to a point; thence S 49 degrees 48 minutes 44 seconds E, 380.30 feet along the east line of Lot 3 to a point; thence S 14 degrees 17 minutes 53 seconds W, 174.64 feet along the east line of Lot 3 to a point; thence S 17 degrees 00 minutes 11 seconds E, 48.92 feet along the east line of Lot 3 to a point; thence S 89 degrees 34 minutes 13 seconds E, 682.84 feet to a point on the east right-of-way line of Lake Point Drive; thence N 00 degrees 25 minutes 27 seconds E, 270.10 feet along said right-of-way line to a point of curvature; thence northerly along said right-of-way line, along a curve to the left, having a radius of 690.06 feet, and an arc length of 116.79 feet to the point of beginning.

STATE OF IOWA, COUNTY OF POLK, ss:

I, Mark Miller, being first duly sworn and under oath, state of my personal knowledge that all of the following is true and correct:

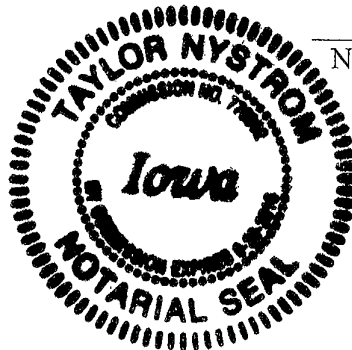
1. I am the current President of the Country Club Owners' Association.
2. I am duly authorized by the Country Club Owners' Association to file this Verified Claim of record with the Polk County Recorder.
3. On October 27, 1994, a Declaration of Easements, Restrictions and Covenants was filed of record in Book 7107 Page 802 in the office of the Polk County Recorder. Said Declaration concerns the above described real estate.
4. This Verified Claim is filed, under Iowa Code sections 614.24(1) and 614.25, for the purpose of extending for a further period of twenty-one years from the date of filing of this Verified Claim the Declaration of Easements, Restrictions and Covenants referenced in paragraph 3 above and all of the terms and provisions provided in said Declaration.

WHEREFORE, pursuant to Iowa Code sections 614.24(1) and 614.25, this Verified Claim is filed to effect the extension, for a further period of twenty-one years from the date of filing of this Verified Claim, of the Declaration of Easements, Restrictions and Covenants filed of record on October 27, 1994, in Book 7107 Page 802 in the office of the Polk County Recorder, and all of the terms and provisions provided in said Declaration.

Dated this 26 day of Sept, 2014.

Mark C Miller
Mark Miller

This instrument was acknowledged before me on September 26, 2014, by Mark Miller.



Taylor Nystrom
Notary Public in and for the State of Iowa

4600
10073

INST # 027058
RECORDING FEE 46.00
AUDITOR FEE _____

DECLARATION OF EASEMENTS, RESTRICTIONS AND COVENANTS

TGB, Ltd., an Iowa general partnership (Developer), is the owner of certain properties, more particularly described in Exhibit "A" (the "Site") attached hereto.

In consideration of the approval by the City of Clive, Iowa, of the Development Plan for the Sites, and in consideration of the City's rezoning of the property described on Exhibit "A" (having been zoned R-4 prior to this date), said Exhibits being attached hereto; Developer desires that such Sites be encumbered by certain Easements, Restrictions and Covenants, all as more fully set forth herein. Such Easements, Restrictions and Covenants shall be for the benefit of the City of Clive, Iowa, and may not be modified or amended without the approval of the City of Clive, Iowa.

FILED FOR RECORD
POLK COUNTY, IOWA

9 OCT 27 AM 11:27.7

EDMUND J. BRIEN
RECORDER

- I. DECLARATION OF DEVELOPMENT PLAN. A Development Plan has been approved by the City of Clive as a part of the property Owner's request to rezone the property described in Exhibit "A" from a zoning classification of R-4 to C-3, and said Development Plan is incorporated herein by this reference. Copies of the Development Plan, with Amendments, if any, may be obtained from the City Clerk, City of Clive, 8505 Harbach Boulevard, Clive, IA 50325. All development of the Sites shall be in strict conformance with the Development Plan and this restriction shall constitute a covenant running with the land. The Development Plan may be modified or amended only upon application of the Owner of the Sites, after action by the Planning and Zoning Commission and the Clive City Council.
- II. DEDICATIONS OF EASEMENTS. Public and Private Easements shall be dedicated and established on the Sites noted above at the time the Final Site Plans are approved as follows:
 - A. Public Access Easements. Public Access Easements will be established for public access across and through the properties noted herein and from abutting properties to the north and south for the general benefit of the public and the City of Clive and, in order to promote the orderly flow of traffic, service vehicles and safety equipment.
 - B. Private Easements. Private Easements, all as described herein and now or subsequently described in the City of Clive's Final Site Plans for the properties noted above, as amended from time to time ("Final Site Plans"), are or shall be established for truck and service vehicle and reciprocal ingress and egress, and parking.

RETURN TO:
CITY OF CLIVE, IOWA
8505 HARBACH BLVD.
CLIVE, IOWA 50325-1029

BOOK 7107 PAGE 802

1. Truck and Service Vehicle Ingress and Egress. It shall be the responsibility of Owner to maintain all roadways in a safe and useable condition at all times to permit the movement of trucks and other vehicles across such roadways for access to and from public thoroughfares adjacent to the properties noted above and referred to herein.

2. Reciprocal Ingress/Egress Easements. Developer shall dedicate and establish reciprocal non-exclusive ingress/egress rights and easements for the benefit of the Owner of each parcel located within the properties noted above and its respective customers, employees and business invitees upon and across the driveways and roadways situated within the properties noted and referred to herein, all to be identified on the Final Site Plans. Owner shall maintain all such driveways and roadways located in the properties noted above in reasonable good repair. All costs of road maintenance, including but not limited to snow removal, shall be prorated between the various parcels of land which abut roadway, as referred to above, based upon the amount of acreage to each parcel, if applicable.

III. DECLARATION OF RESTRICTIVE COVENANTS. Developer hereby establishes and places the following restrictive covenants on the properties specifically referred to and noted herein:

A. Open Space Preservation. It shall be the responsibility of each Owner or Lessee of any portion of the properties noted above to establish, maintain, protect and preserve certain natural features of the Sites.

1. Trees. All trees identified in the Final Site Plans shall be protected as follows:

(a) No such designated tree shall be removed unless diseased or substantially damaged by wind, lightning or other natural forces without consent of the City. All diseased or substantially damaged trees or vegetation shall be promptly replaced by the respective Owner or Lessee of that portion of the property noted above.

(b) Such trees shall be trimmed and treated on regular occasions by each Owner or Lessee of any portion of the property noted above so as to minimize the effects of diseases, pests or minor damage.

2. Slopes and Natural Vegetation. All slopes and vegetation within the Sites shall be maintained. Vegetation shall be pruned and thinned to the extent weedy growth must be removed to permit the natural survival of trees and ground cover. Damage to turf in slope areas shall require restoration to its natural state.
 3. Lawn Care. All lawn areas, including shrubs and slope retention structures on the Sites, and up to the building lines of all buildings or other structures or improvements, shall be mowed and trimmed by each Owner or Lessee of any portion of the property noted above.
 4. Landscaping/Buffer Zone. Developer shall include adequate berming and/or landscaping in the buffer area between the commercial site and the townhome site so as to insure that headlights are screened from the townhome site.
- B. Trash Receptacles. Trash receptacles or garbage cans placed outside shall have lids or covers, shall be screened from public view and shall be a steel container-type receptacle. Such designated areas shall be located at the rear of the building or commercial establishment, if possible.
- C. Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, shed or other building shall be used on the Sites at any time as a residence or storage facility.
- D. Parking Area, Driveway or Roadway Obstructions. No obstruction of access to parking areas, driveways or roadways shall be permitted. No parking spaces on driveways or roadways shall be permitted. No parking spaces on driveways or roadways shall be used for storage of any vehicle, boats, snowmobiles, trailers or other equipment.
- E. Completion of Improvements. Pursuant to the Development Plan, this Exhibit is a part of said Development Plan. The improvements for the Sites shall be commenced subsequent to approval of the respective Final Site Plans, and may be completed in two (2) phases involving two (2) separate parcels, as follows:
1. The first parcel, or Phase I, would be for the Bank/office building and shall, at the option of the Owner, be completed prior to the 1st day of July, 1997.

2. The second parcel, or Phase II, shall contain the shopping center/office rental space and all improvements and such Phase II, or second parcel, shall be completed at the option of the Owner, prior to the 1st day of July, 1997.

The term "completed," for the purpose of this covenant, shall be interpreted to mean that a Building Permit has been issued by the City of Clive as permitted pursuant to the Clive City Zoning Ordinance.

Failure to complete all construction and improvements within said period of time shall be deemed sufficient cause for the City Council, in accordance with the provisions of Section 32 of its Zoning Ordinance, to rezone only that property, previously rezoned or classified, i.e. property described in Exhibit "A," unless an extension is recommended by the Planning and Zoning Commission and approved by the City Council for due cause shown.

For the purpose of this provision, and its interpretation, the term "unimproved" property shall mean all property situated within the Development Plan upon which the installation of improvements have not been commenced.

- F. Architectural Uniformity. Each of the structures, i.e. Bank/office and office/retail shopping center buildings, located upon the Sites shall be architecturally compatible. It is intended that the architectural uniformity shall show compatibility with the structures referred to herein and shall comply with the terms and provisions of Section 15-1 under the C-3 Commercial District Regulations of the City of Clive Zoning Ordinance.

Developer shall maintain a minimum of 50 percent brick on the proposed Bank building and the proposed office building and a minimum of 25 percent brick on the shopping center structure. The reduction as to the shopping center structure is based upon the design plan of that structure calling for a wind story building with a hip roof limiting the use of brick to below the roof line around the entire structure, contemplating majority glass fronts with brick surround and front brick pillars.

- G. Sign Uniformity. Any and all signs placed on the Sites shall comply with all of the terms and provisions of Section 15-1, C-3 Commercial District Regulations of the City of Clive Zoning Ordinance.

Building signage shall be as shown on the Final Site Plan. Any revision of said signage shall require City approval of a revised Final Site Plan.

Each individual tenant sign shall be composed of back-lighting with lettering listing the store name only. All electrical connections and fasteners shall be concealed.

All signs shall include white and any second color.

- H. Lighting. There shall be no outdoor lights located on the properties which will be directed away from the boundary lines of the residential properties.
- I. Construction Costs. All costs of construction for interior roadways, and extension of public utilities, if any, shall be paid by Developer or his assigns, pursuant to its Development Plan and, more specifically, the respective Site Plans, whether in Phase I or Phase II.
- J. Use Restrictions. No cocktail lounges, taverns or bars, as commonly defined, shall operate in the shopping center. No more than two restaurants shall be permitted in the commercial shopping center building on the subject site. Collectively, such restaurants shall not occupy more than 5,000 square feet of space in the subject building.
- K. Noise Abatement. The operation of truck loading and unloading activities, building equipment compressors and other noise generating devices, trash and refuse collection activities and the conduct of routine business activities shall be accomplished in a manner that does not unreasonably disturb the general peace and quiet of surrounding residential properties. Excessively loud activities on the Site, if any, shall be kept to a minimum and shall be limited to routine business hours, specifically no earlier than 7:00 a.m., nor later than 9:00 p.m.
- L. Outdoor Sales. No outdoor storage and/or sales shall be permitted except as follows:
 - A. Sidewalk sales shall be coordinated and held concurrently for all commercial establishments within the shopping center area;
 - B. Said sales shall be limited to five days per year, one time per year; and

C. Such sales shall be located in front of the establishment only and conducted on the sidewalk only and not in the parking lot.

M. Fence. As a part of the improvements constructed on the subject property, there shall be constructed an opaque fence constructed in an architecturally pleasing manner with principal building materials being brick columns with in-fill of solid wood fence between such columns or similar materials as may be approved by the City. The fence shall be located on the berm located at the north edge of the subject property and shall run from Lakepoint Drive (most westerly location) across the berm to the east property line of the subject property. The fence shall continue to be maintained by the property owner unless and until the City of Clive approves a change by way of a site plan amendment for Lot 1.

IV. DECLARATION OF COMMON AREA MANAGEMENT AND SITE PLAN CONFORMITY. Developer covenants and agrees that Owners shall maintain and cause to be maintained all private easements on the Sites noted above and shall maintain the private easements noted above in conformity with the Final Site Plans then in effect. In the event any portion of the Sites noted above shall be sold, the party or parties acquiring such portion of the properties noted above shall have full liability to the City for the maintenance of all private easements included within the properties acquired by such party or parties. If a third party shall acquire that portion of the properties noted above identified as a portion of the lots on the Development Plan for the Sites notes above, filed with the City of Clive, that party shall have full liability to the City for the maintenance of all private easements within the entire Sites noted above.

V. ADDITIONAL PROVISIONS.

A. Right of Entry. Developer and each subsequent Owner or Lessee of any portion of the properties noted above, by acceptance of a Deed or Lease therefore, whether it shall be so expressed in such Deed or Lease, hereby grants and conveys to the City of Clive, and those acting for it, an unconditional right of entry in and on all driveways and roadways within the properties noted above for the purpose of police protection, fire protection, ambulance service and for all other municipal purposes, such as garbage collection and the reading service for water meters and all utilities.

B. Clive Enforcement. Developer and each Owner or Lessee of any portion of the property noted above by

acceptance of a Deed or Lease therefore, whether or not expressed in such Deed or Lease, agrees to take action requested by the City of Clive to fulfill the enforcement of Easements, Covenants and Restrictions contained herein which inure to the benefit of the City or the public generally. Clive shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions and covenants now or hereafter imposed by the provisions of this document. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

- C. Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the enforceability of the remaining portions of this Declaration, or any part thereof, which shall remain in full force and effect.
- D. Binding. This Declaration shall constitute and be maintained in existence as part of the Development Plan and Final Site Plans for the Sites shall be binding upon Developer, its successors in interest and/or assigns, if any, and shall be a perpetual covenant running with the land.
- E. Construction. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

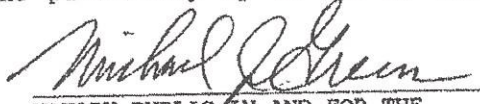
TGB, LTD.

By John W. Grubb
John W. Grubb

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this 11 day of August, 1994, before me the undersigned a Notary Public in and for the State of Iowa, personally appeared John W. Grubb to me personally known, who being by me duly sworn, did say that he is a partner of TGB, Ltd., a general partnership and that the instrument was signed on behalf of the partnership by authority of the partners and that

the partners acknowledge the execution of the interest to be the voluntary act and deed of the partnership by it and by each partner voluntarily executed.


NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

ajg7286.MJG

Exhibit "A"

Lot 3 in COUNTRY CLUB PLAT 4, an Official Plat, now included in and forming a part of the City of Clive, Polk County, Iowa, except that portion described as follows: Beginning at the northwest corner of Lot 3; thence N89°43'37"E, 433.79 feet along the north line of Lot 3 to a point; thence S49°48'44"E, 380.30 feet along the east line of Lot 3 to a point; thence S14°17'53"W, 174.64 feet along the east line of Lot 3 to a point; thence S17°00'11"E, 48.92 feet along the east line of Lot 3 to a point; thence S89°34'13"E, 682.84 feet to a point on the east right-of-way line of Lake Point Drive; thence N00°25'27"E, 270.10 feet along said right-of-way line to a point of curvature; thence northerly along said right-of-way line, along a curve to the left, having a radius of 690.06 feet, and an arc length of 116.79 feet to the point of beginning.