

MASTER  
DECLARATION  
OF  
COVENANTS  
FOR  
COUNTRY CLUB

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

WITNESSETH:

WHEREAS, Declarant is the owner of certain property (hereinafter referred to as the "Properties") situated in Polk County, Iowa, which is described on Exhibit "A" attached hereto and which shall be known as:

Outlots B, C, D, E, F and G COUNTRY CLUB PLAT 1, an Official Plat, Clive, Polk County, Iowa, and

Outlot A, COUNTRY CLUB PLAT 1, an Official Plat, Clive, Polk County, Iowa (hereinafter referred to as "Common Areas");

and,

WHEREAS, Declarant has submitted the preliminary plat of Country Club Plat 1 and a site plan for the lakes and dam to the City of Clive, Iowa (hereinafter referred to as "City"); and

WHEREAS, in consideration of the approval of the Site Plan and Building Permit to construct a dam and lakes and the approval of the Preliminary Plat and Final Plat by City, Declarant has agreed to submit the Properties to this Declaration; and

WHEREAS, Declarant desires to create upon the Properties a mixed use community with private lakes, a dam, open spaces and other common facilities for the benefit of the owners therein; and

WHEREAS, Declarant desires to provide for the ownership, preservation of values and amenities in the Properties and for the maintenance of the dam, lakes and common facilities and Common Areas;

and to this end, desires to subject the Properties, to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the Properties and each owner thereof.

NOW THEREFORE, Declarant, in consideration of the approval of the Site Plan and Building Permit for the lake and dam and, the approval of the Preliminary Plat and Final Plat by the City and for other good and valuable consideration, hereby declares that all the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Properties and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to COUNTRY CLUB OWNERS ASSOCIATION, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa 1987, as amended. The Articles of Incorporation for the Association have been executed by the incorporator thereof on the same date as this Declaration has been executed. The Articles of Incorporation and initial Bylaws for the Association are hereby incorporated by this reference.

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

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

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

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

Section 5. "Declarant" shall mean and refer to Iowa Realty Co., Inc., its successors and assigns.

Section 6. "Declaration" shall mean and refer to this Declaration of Covenants to which the Properties are subject.

Section 7. "Lot" shall mean and refer to any and all lots contained in any plat or replats of the Properties or any portion thereof made and recorded in accordance with the statutes of the State of Iowa.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration, the Articles of Incorporation and Bylaws of the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any part of the Properties, including contract vendees, but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the property by provision or operation of law.

Section 10. "Properties" shall mean and refer to that certain real property described above but shall exclude and not refer to any portion thereof conveyed, dedicated or granted to the City now or in the future.

## ARTICLE II

### COMMON AREAS

Section 1. Common Areas. The Common Areas shall consist of the following-described portion of the Properties, together with any improvements thereon, including the lakes, silt basins, shoreline and

appurtenances thereto, dam and spillways and subject to any and all utilities located thereon, easements and restrictions:

Outlot A in COUNTRY CLUB PLAT 1, an Official Plat, Clive, Polk County, Iowa

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

Section 2. Obligations of the Association. The Association shall be the owner of the Common Areas, and, subject to the rights of the Owners as set forth in the Declaration, shall be responsible for the management and control of the Common Areas conveyed to it and all improvements thereon, and shall keep the same in good, safe, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management. The Association's obligations shall include the maintenance, repair, reconstruction and replacement of the dam, dam system, silt basins, spillways, lakes, shoreline and appurtenances thereto and all utility services and lines located in the Common Areas and all Common Facilities. The Association's obligations under this Section are for the exclusive benefit of the Owners and the City.

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

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

- (b) the right of the Association, subject to City approval, to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and such conditions as may be agreed to by the Members; provided no such dedication or transfer shall be effective unless an approval of such dedication or transfer has been obtained from 2/3rds of the votes of members entitled to vote at a regular or special meeting of the Association; and
- (c) the right and obligation of the Association to maintain underground utilities located within the Properties; and
- (d) the right of the Declarant, its successors and assigns to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Areas; and
- (e) the right of the Declarant to maintain within any House owned by Declarant, a sales office, together with access, ingress, and egress to and from said House over the Common Areas for Declarant and Declarant's invitees in conjunction with its business operated from said sales office subject to the ordinances of the City; and
- (f) the right of Declarant to provide in the Common Areas, landscaping, outdoor furniture and recreational equipment, signs, decorative structures and necessary appurtenant utilities consistent with the ordinances of the City; and
- (g) the Rules and Regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation and Bylaws, and those accompanying this Declaration; and
- (h) the right of the Association, subject to the reasonable consent of the City, to mortgage any or all of the Common Areas with the assent of two-thirds (2/3rds) of the votes of the members entitled to vote.

Section 4. Title to Common Areas. The Declarant hereby covenants for itself, its successors and assigns, that it shall convey to the Association from time to time the fee title to all Common

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

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

Section 6. Use of the Common Areas. The Common Areas shall be used strictly in accordance with the provisions of the Declaration and rules and regulations promulgated by the Association. No Owner shall obstruct or interfere whatever with the rights and privileges of other Owners or the Association in the Common Areas, and nothing shall be planted, altered, constructed upon, or removed from the Common Areas, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the Common Areas to the prior condition and charge and assess the cost thereof against the Owner who violates this section and such cost shall become a special assessment and a lien upon the Lot of such Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of such restoration as provided in Article V for the collection of delinquent assessments. If an owner interferes with the rights and privileges of another Owner in the use of the Common Areas, the Association or the offended Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable

attorneys' fees as the Court may allow together with all necessary costs and disbursements incurred in connection therewith.

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

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

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

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

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

	<u>Acres</u>	<u>Number of Votes</u>	<u>Fraction of Total</u>
Outlot B	141.128	14,112.8 votes	14,112.8/33,219.8
Outlot C	32.536	3,253.6 votes	3,253.6/33,219.8
Outlot D	15.642	1,564.2 votes	1,564.2/33,219.8
Outlot E	48.838	4,883.8 votes	4,883.8/33,219.8
Outlot F	35.661	3,566.1 votes	3,566.1/33,219.8
Outlot G	58.393	5,839.3 votes	5,839.3/33,219.8
TOTAL	332.198	33,219.8 votes	1

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

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

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

Section 3. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and for a period not to



exceed sixty (60) days for any infraction of its published rules and regulations.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

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

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

obligations of the Association and all fees, costs, expenses, and attorney fees in connection therewith.

Section 3. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association shall levy a special assessment it necessary to finance or perform any of its stated obligations and responsibilities under this Declaration. Further, the Association may levy a special assessment in addition to the monthly assessments for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement not required of the Association under this Declaration or other discretionary expenditure, provided that any such assessment shall have the assent of a majority of the votes of members entitled to vote, in person or by proxy, at a meeting duly called for this purpose.

Written notice of any meeting called for the purpose of taking any action authorized under this Section 3 shall be sent to all members not less than 5 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

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

number of votes appurtenant to such Lot, Outlot or portion thereof and the denominator of which is the total votes outstanding in the Association.

Section 5. Due Dates of Monthly Assessments: Due Dates. The monthly assessments provided for herein shall be due as to each property on the first day of each month. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified property have been paid. A properly executed certificate from the Association regarding the status of assessments on property shall be binding upon the Association as of the date of its issuance.

Section 6. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa Law, whichever is higher. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the petition in such action, including reasonable attorney's fees. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

Section 7. Subordination of Assessments Liens. If any property subject to a lien created by any provision in this Declaration shall

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

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

- (a) All property which is dedicated to and accepted by a public authority; and
- (b) All Common Areas;

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

## ARTICLE V

### DECLARANT'S RIGHTS

Section 1. Declarant reserves the right to use any of the Properties, including the Common Areas, to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such property prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to show Properties then unsold. Declarant retains the right to be considered an Owner of any Lot or portion of the Properties that remains unsold. Declarant's rights are subject to all applicable ordinances of the City.

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

Section 3. Declarant is and shall be responsible for all duties and obligations of the Association hereunder and shall have all rights of the Association until the Association is established and the initial Common Areas are conveyed thereto. The Association shall be established prior to the recording of the final plat of Country Club Plat 1.

## ARTICLE VI

### MAINTENANCE AND MANAGEMENT

Section 1. Maintenance of Common Areas. The Association shall perform the following maintenance tasks:

- (a) maintain, repair, reconstruct and replace the Common Areas and all improvements thereon, specifically including the lakes, shoreline, silt basins, dam, dam systems, utilities, spillways and appurtenances thereto. Specifically, the Association shall maintain the dam in accordance with the specifications, terms and conditions contained in the permit issued by the Iowa Department of Natural Resources, Water Storage Permit No. 6661, which Permit was executed on May 10, 1988. The Association shall, to the extent available, arrange for periodic inspections and perform all proper maintenance, repair, reconstruction and replacement of the dam to insure that the spillway and appurtenant works perform as originally designed in accordance with the Permit issued by the Department of Natural Resources of the State of Iowa.
- (b) maintain all common areas, including mowing, and weed control.
- (a) such other reasonable and necessary maintenance, repair, reconstruction and replacement duties as are necessary and desirable to preserve the high quality of the Properties and Common Areas.

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

- (a) In the event any boulevards are constructed on streets which have been or are intended to be dedicated to City, the Association will be responsible for the repair, maintenance and replacement of the boulevard landscaping, even though the same shall have been dedicated

to the City. Such repair, maintenance and replacement of the boulevard landscaping shall be in accordance with the site plan approved by the City allowing the construction of such boulevards.

- (b) In the event that Declarant is allowed by the City and elects to install non-standard street signs or markers within the Properties, the Association shall maintain, repair and replace such non-standard street signs and markers.

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

Section 4. Right of City. The City, upon 30 days' written notice (except in case of emergency), shall have the right to require the Association to perform any and all of its maintenance, repair, reconstruction and replacement and management responsibilities with respect to the lake, silt basins, dam, spillways, shoreline and appurtenances thereto, and other Common Areas and Common Facilities in accordance with this Declaration, the terms of the approval of the Site Plan for the lake and dam, any conditions and covenants in connection with the platting of any portion of the Properties and its ordinances; and the City shall have the right to require the Association to enforce any and all rules and regulations adopted by the Association concerning the use, maintenance and operation of the Common Areas and Common Facilities.

Section 5. Responsibility for Willful or Negligent Act. In the event the need for maintenance or repair to the Common Areas, Common

Facilities or improvements located thereon is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such of maintenance or repairs shall be added to and become a part of the monthly assessments to which such Lot is subject.

## ARTICLE VII

### EASEMENTS AND ENCROACHMENTS

Section 1. Easement Lake Maintenance. Declarant reserves unto the Association as easement over various private properties along the entire shore line of the lake for a distance of 25 feet parallel to the boundary line of that part of the Common Areas consisting of the lakes and shorelines. The lakes and shorelines are described as Outlot A in Country Club Plat 1. This easement shall be a non-exclusive easement for the sole benefit of the Association in performance of its maintenance obligation on the lake and the shore lines. This easement shall not be for the benefit of the members or the public at large.

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

## ARTICLE VIII

### COVENANTS WITH THE CITY

Section 1. Right of Public Access. Officers, employees or contracted agents of the City shall have the right and authority to enter upon the Common Areas and easements reserved or granted for the benefit of the Association for the administration of general public services including Emergency Fire Protection, Law Enforcement and administration of the Water Works Rules and Regulations and any applicable agreements for providing water service.



Section 2. Indemnification and Hold Harmless of the City. The Association, its successors or assigns, agree to defend, indemnify, protect and save harmless the City and its political subdivisions, including any of its elected officials, officers, employees or agents, from and against any judgments, awards, claims or expenses or other things whatsoever, including attorney fees, costs or disbursements, arising out of or in connection with any act or act of negligence, causes omissions, fault, misconduct, claims, damages, suits or other actions developed, brought or asserted by any person, firm, corporation, entity or estate, against the said City by reason of, in connection with, related to or growing out of, directly or indirectly, the duties and responsibilities which are imposed upon the Owners or the Association, its successors and assigns, with respect to its duties or obligations under this Declaration, including any rules or regulations is existence pursuant to this Declaration, or related to or growing out of, directly or indirectly, the ownership, maintaining, cleaning out, grading, repairing, construction, or reconstruction of the Common Areas, or any part thereof, including but not limited to the existences of flowage or drainage of water in or out of the lakes, dam, silt basins and spillway located in the properties, or related to or growing out of, directly or indirectly, the existence of this Declaration and the purposes for which this Declaration is executed for the approval of this Declaration.

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

the issuance of a building permit for such purposes, any inspections performed relating to said permit or permits or any certification issued indicating compliance with any City ordinance regulating the issuance of said building permit or approvals.

Section 3. Liability of City. Neither the Declarant, Owners, Association nor any other person or other entity shall place any reliance upon the approval of this Declaration by the City, the approval of the Site Plan for the lakes and dam and related improvements on the Common Areas or approval of Common Facilities, the issuance of a Building Permit for such purposes, any inspections performed relating to said Permit or any certification issued indicating compliance with any City ordinance regulating the issuance of said Building Permit or approvals, as indicating the safety or quality of construction of any improvements located on the Common Areas, Common Facilities or within the Properties. Neither the issuance of, nor any inspections or certifications made relating to the Building Permit or relating to any City ordinance or approval, including the approval of this Declaration, shall constitute an assumption by the City, or any elected officials, officers, agents or employees thereof, of any duty or responsibility of any person or entity to adequately construct, reconstruct, repair and maintain the Common Areas, Common Facilities and improvements located thereon or provide a safe premises or to, in any way, indicate a decrease in the risk associated with the use or existence of the improvements located on the Common Areas. A certification that the Common Areas or Common Facilities have been inspected, including the dam, dam systems, lakes, spillways, shorelines, silt basins and appurtenances thereto, pursuant to any City ordinance regulating the same shall not, in any way, constitute a representation, covenant, warranty or guaranty of the safety or quality of said improvements by the City, or any elected officials, officers, agents or employees thereof. The Declarant, its successors and assigns, hereby expressly release and discharge, and

agreed to hold harmless, defend and indemnify, the City, its elected officials, officers, agents and employees, from any and all duties, responsibilities, obligations, claims, demands, causes of action or liabilities arising out of or in any way related to the issuance of a Building Permit or any inspection performed or certification issued in connection with the Building Permit and approval of the improvements located on the Common Areas, Common Facilities and the approval of this Declaration.

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

## ARTICLE IX

### USE RESTRICTIONS

Section 1. The Board of Directors of the Association shall have the right to adopt rules and regulations governing the Common Areas or Common Facilities, and such rules shall be observed and obeyed by the owners, their guests, lessees, assigns and licensees. Provided, no such rules or regulations adopted by the Board of Directors shall, in any way, modify, amend, repeal or alter the provisions of Sections 1, 2, 3 and 4 of this Article.

Section 2. No person, whether a member of the Association or not, shall be allowed to swim in the lakes forming a part of the Common Areas.

Section 3. No person, whether a member of the Association or not, shall be allowed to use a motor boat, a power boat or any other motorized or powered vessel of any kind or type on the lakes which form a part of the common areas.

Section 4. No owner shall change any elevations or grades within the easements areas for the maintenance of the lake in favor of the Association.

Section 5. Mailboxes and Yard Lights. For any portion of the Properties developed as residential properties, the Association hereby

reserves and shall retain the right to require installation of mailboxes and yard lights of a uniform design, location and construction.

Section 6. No Waiver. Failure of the Association to enforce any covenant, condition or restriction, this Declaration, the Article of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of this right to enforce the same thereafter.

Section 7. Fines and Liquidated Damages. In addition to the enforcement rights granted to the Association for the collection of assessments, the Association shall have the right to maintain any action at law or in equity appropriate for the enforcement of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration, the Articles of Incorporation and Bylaws. The Association is specifically granted a right to obtain affirmative or negative injunctions, restraining orders and similar equitable relief for repeated violations by any person whatsoever. The Association shall have the right to adopt a schedule of fines and/or liquidated damages to be imposed upon members, their families, tenants, invitees and guests for violations of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration and the Articles of Incorporation and Bylaws of the Association.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the City, the persons in ownership from time to time of the Lots and all parties claiming under them, shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without

proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed, unless otherwise provided herein, at any time by an instrument recorded in the Office of the Recorder of Polk County, Iowa, certified by the President and Secretary of the Association that the same has been approved by a 2/3rds majority of the then outstanding votes; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Likewise, the covenants with and rights of the City herein shall not be amended without the prior approval of the City. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time without the approval of any other Owner or Owners for the purpose of clarification or correction of errors in the Declaration, provided such amendment shall not affect the substantive rights of any Owner. Further, Declarant may, at any time, amend this Declaration in order to satisfy the requirements of any of the Federal Mortgage Agencies. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof.

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

Section 3. Third Party Beneficiary. City is hereby declared to be a third party beneficiary of the provisions of this Declaration. As such, City has no duty or obligation to exercise its rights to enforce or perform any obligations reserved to it under the provisions

of this Declaration. The rights of the City provided for in this Declaration shall be exercised by the City at its sole option and discretion. Whenever the approval of the City is required under this Declaration, the same shall not be unreasonably withheld or delayed.

Section 4. Binding Effect. This Declaration shall run with the land and shall be binding upon all parties claiming under them. Invalidation of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way affect any of the other provisions hereof, but the same shall remain in full force and effect.

IN WITNESS WHEREOF, Iowa Realty Co., Inc. has caused this Declaration to be executed this 22 day of September, 1988.

STATE OF IOWA    )  
                                  ) ss:  
COUNTY OF POLK)

DECLARANT:  
IOWA REALTY CO., INC.  
By /s/ William C. Knapp  
William C. Knapp, Chairman

On this 22 day of September, 1988, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared William C. Knapp to me personally known, who, being by me duly sworn, did say that he is the Chairman of the Board of Iowa Realty Co., Inc. executing the within and foregoing instrument to which this is attached, that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said William C. Knapp as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

/s/ Kathy O. Kintner  
Notary Public for the State of Iowa  
[Seal]

EXHIBIT A TO MASTER DECLARATION

LEGAL DESCRIPTION

THE EAST ½ OF THE SOUTHWEST ¼ AND THE WEST ½ OF THE SOUTHEAST ¼ OF SECTION 31, TOWNSHIP 79 NORTH, RANGE 35 WEST OF THE 5TH P.M., AND

THE WEST ½ OF THE SOUTHWEST FRACTIONAL ¼, OF SECTION 31, TOWNSHIP 79 NORTH, RANGE 25 WEST OF THE 5TH PM, EXCEPT HIGHWAY, AND EXCEPT BEGINNING AT THE SOUTHEAST CORNER OF THE WEST ½ OF THE SOUTHWEST ¼ OF SAID SECTION 31, THENCE WEST ALONG AND ADJACENT TO UNIVERSITY AVENUE, 250 FEET, THENCE NORTH 697 FEET, THENCE EAST 250 FEET, THENCE SOUTH 197 FEET TO THE POINT OF BEGINNING, AND

THE NORTHWEST FRACTIONAL ¼ OF SECTION 31, TOWNSHIP 79 NORTH, RANGE 25 OF THE 5TH P.M., EXCEPT THAT PART DEEDED TO POLK COUNTY, IOWA, RECORDED IN BOOK 5394, PAGE 383.

ALL BEING IN THE CITY OF CLIVE, POLK COUNTY, IOWA

APPROVAL OF CITY

The Master Declaration of Covenants, Conditions and Restrictions for Country Club have been reviewed and approved by the City Council of the City of Clive on the 22nd day of September, 1988, at a regularly scheduled meeting of its City Council.

CITY OF CLIVE

By /s/ O. Gene Maddox  
O. Gene Maddox, Mayor

By /s/ Marjorie S. Roberts  
Marjorie S. Roberts, City Clerk  
[Seal]

STATE OF IOWA    )  
                          ) ss:  
COUNTY OF POLK)

On this 22nd day of September, 1988, before me, a Notary Public in and for the State of Iowa, personally appeared O. Gene Maddox and Marjorie S. Roberts, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Clive, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained is Ordinance No.      passed (the Resolution adopted) by the City Council, under Roll Call No. 88-156 of the City Council on the 22nd day of September, 1988, and that O. Gene Maddox and \_\_\_\_\_ acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

/s/ Christine K. Smith  
Notary Public in and for Said County  
and State  
[Seal]