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Polk County Iowa
TIMOTHY J. BRIEN RECORDER
File# 2003-00034924
BK **10131** PG **911-922**

RETURN TO:

Prepared by and after recording return to: Eugene E. Olson, 317 Sixth Avenue, Suite 300, Des Moines, Iowa 50309 (515) 243-8157

DECLARATION OF HOMEOWNERS' ASSOCIATION
FOR
THE NEIGHBORHOOD AT 86TH

This Declaration is made this 21st day of August, 2003, by **JEFFREY N. JOCHIMS** ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate in the City of Johnston, Polk County, Iowa, as described in Exhibits "A" and "B" attached hereto ("Property"); and

WHEREAS, Declarant desires to develop the Property as a planned community known as "The Neighborhood at 86th"; and

WHEREAS, Declarant desires to establish a Homeowners' Association to provide for the maintenance of common facilities, common areas and other improvements for the benefit of lot owners within the Property;

NOW, THEREFORE, Declarant by the execution and recording of this document, hereby declares that all Property described in the attached Exhibits "A" and "B" shall be held, occupied, sold and conveyed subject to the Covenants and Restrictions set forth herein.

ARTICLE I.
Definitions

Section 1. **"Association"** shall mean The Neighborhood at 86th Homeowners' Association, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa, as well as any of its successors or assigns. The Articles of Incorporation and the By-Laws of the Association are hereby incorporated by reference in this Declaration.

Section 2. **"Board of Directors"** shall mean the Board of Directors of the Association.

Section 3. **"City"** shall mean the City of Johnston, Polk County, Iowa.

Section 4. **"Common Area"** shall mean the real estate described in the attached Exhibit "B" together with all improvements thereon and other improvements which are owned, leased, held or maintained by the Association for the common use and enjoyment of the Owners.

Section 5. ***"Declarant"*** shall mean Jeffrey N. Jochims, as well as his successors or assigns. Declarant shall have the right to assign any or all of his right, title or interest in the Property and under this Declaration without the consent of the Association or any other person

Section 6. ***"Declaration"*** shall mean this Declaration of Homeowners' Association to which the Property is subject.

Section 7. ***"Lot"*** shall mean any platted lot or subdivisions thereof contained in any plat or replats of the Property made and recorded with the Polk County Auditor in accordance with the subdivision statute of the State of Iowa and ordinances of the City as they presently exist or as they may be amended in the future.

Section 8. ***"Member"*** shall mean those persons entitled to membership in the Association as provided in this Declaration and the Articles of Incorporation and By-Laws of the Association.

Section 9. ***"Owner"*** shall mean the record titleholder, as disclosed by the records of the Polk County Recorder, whether one or more persons or entities, of a fee simple title to any Lot and shall also include vendees pursuant to an Installment Real Estate Contract. This term shall not include those persons having an interest in any Lot as a vendor under an Installment Real Estate Contract or those persons having an interest solely for security purposes in the performance of an obligation or debt. The term also excludes those persons having a lien against any Lot by operation of law or otherwise. Furthermore, the term shall not be construed to include the City or any governmental entity as to any Lot or right of way owned by it now or in the future.

Section 10. ***"Property"*** shall mean the real estate described in Exhibits "A" and "B" and any and all improvements thereon but shall exclude any portion thereof which has been conveyed, dedicated or granted to the City or other governmental entity now or in the future. Any part of the Property conveyed now or in the future to the City or other governmental entity shall be free and clear of all obligations set forth in this Declaration. The term "Property" shall also include any and all land added to this Declaration by Declarant in the future as permitted by Article V, Section 3 below.

ARTICLE II.

Common Area

Section 1. **Common Area.** The Common Area shall be defined as Outlot X, The Neighborhood at 86th, an Official Plat, now included in and forming a part of the City of Johnston, Polk County, Iowa. Additional Common Area may be added as land is added in the future as permitted by Article V below. Consequently, the attached Exhibit "B" may be amended at any time by Declarant or the Association by filing a revised Exhibit "B" with the Recorder of Polk County, Iowa.

Section 2. **Obligations of Association.** The Association shall be the owner of Outlot X and shall maintain Outlot X, as well as all lawns and driveways which are not owned by the

Association. In addition, the Association shall be responsible for the management and control of the Common Area conveyed to it, together with all improvements located on the Common Area, and all driveways and lawns. The Association shall be responsible for keeping the Common Area in good, safe, clean and attractive condition, and in good order and repair in compliance with the standards of sound property management.

Section 3. Owners' Easements. Every Owner shall have a nonexclusive right and easement regarding the use of the Common Area subject to the terms of this Declaration and subject to any reasonable Rules and Regulations or By-Laws which may be enacted at any time by the Association. This right and easement of enjoyment shall be appurtenant to the title of every Lot and shall pass with the title and run with the land in any conveyance, subject to the following limitations and limitations set forth elsewhere in this Declaration. No Lot Owner or other person, other than the Declarant or the Association, shall change the grade or elevation of the Common Area nor construct any fence or place any obstruction on or over the Common Area. The Association shall have the following rights:

- A. The Association shall have the right to summarily suspend the voting rights, without notice and the above-described right and easements regarding use of Common Area, of any Owner for the period during which any assessment under this Declaration against his or her Lot remains unpaid or for any period during which the Owner is in violation of this Declaration, any Covenants or of any Rules and Regulations of the Association or By-Laws; and
- B. The Association shall have the right to dedicate and transfer any or all parts of the Common Area to the City or any municipality or governmental subdivision provided the Association obtains prior written approval from Declarant if the dedication or transfer takes place before January 1, 2013. The governmental entity must also approve of any dedication and transfer. If the transfer or conveyance is merely for the purpose of granting an easement to locate a utility line or sewer, the Board of Directors shall have a right to convey the easement provided prior written approval of Declarant is obtained if the conveyance is made prior to January 1, 2013; and
- C. Declarant shall have the right at no cost to designate, establish, grant, dedicate, install or maintain utility, sewer or drainage easements and lines under, across, over and through the Common Area at any time; and
- D. The Association shall have the right to promulgate reasonable Rules and Regulations regarding the use of the Common Area.
- E. The Association shall not have the right to mortgage, grant a deed of trust or encumber any of the Common Area for security purposes.

Section 4. Use of Common Area. The Common Area shall be used strictly in accordance with the provisions of this Declaration as well as the By-Laws and the Rules and Regulations promulgated by the Association from time to time. No Owner or any other person shall obstruct or interfere with the rights and privileges of other Owners or the Association in the

Common Area. Nothing shall be planted on, altered on, constructed on, or removed from the Common Area by any person except by prior written consent of the Board of Directors of the Association. If an Owner violates this section, the Association shall have the right to repair or restore the Common Area to their prior condition and assess the costs thereof against the Lot of the Owner who violates this Section. The cost shall become a special assessment and a lien upon the Lot of the Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of repair and restoration as it has for the collection of delinquent assessments under Article IV below. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Area, the Association or the offended Owner may in addition commence a legal action to enjoin the interference or bring other legal action seeking damages. If the Association or offended Owner prevails, they shall also be entitled to recover reasonable attorney fees and costs associated with the action.

Section 5. Duration. Unless the Common Area are conveyed to a municipality or other governmental authority, as described in Article II, Section 3, paragraph B, the maintenance duties, easement rights and ownership of the Common Area, except lawns and driveways which are owned by Lot Owners but maintained by the Association, shall remain in the Association in perpetuity.

ARTICLE III.

Membership and Voting Rights in the Association

Section 1. Membership. Every Owner of a Lot shall automatically be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. Furthermore, all future Lots, if any, platted by Declarant outside the Property as described below in Article V, Section 2, may at Declarant's discretion be subjected to these Covenants pertaining to the Homeowners' Association and the Membership automatically shall be expanded to include the new Lot Owners outside the Property without the approval of the Association or Members. If Lots are added to the Association at Declarant's discretion outside the Property, all Lots and owners thereof shall be subject to all of the applicable terms and conditions set forth in this Declaration.

Section 2. Voting Rights. Declarant shall be the sole voting member of the Association until such time as Declarant, or his successor in interest or assignee, no longer owns any land within the Property described in the attached Exhibit "A" or the area described in Article V, Section 2, below or until Declarant, or his successor in interest or assignee, waives his right in writing to be the sole voting member, whichever occurs first, but in no event later than December 31, 2009. **So long as Declarant or its successor in interest or assignee shall be the sole voting member of the Association, Declarant shall have the right to elect all directors of the Association and to exclusively exercise the Membership voting rights described in this Declaration.** Thereafter, each Lot Owner shall be entitled to vote concerning the affairs of the Association. If any Lot is owned by more than one person, the one vote shall be exercised collectively but in no event shall more than one vote be cast with respect to any one Lot.

Section 3. Board of Directors. The Owners and Members entitled to vote shall elect a Board of Directors of the Association as prescribed in its By-Laws. The Board of Directors shall manage the affairs of the Association.

ARTICLE IV.
Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot by acceptance of a deed, contract or other conveyance therefor, whether or not it shall be so expressed in the conveying documents, shall be deemed automatically to accept all the terms of this Declaration, as well as all other Covenants, Conditions and Restrictions filed of record at the time of the conveyance of a Lot, and shall also be deemed to covenant and agree to pay the Association:

- A. Periodic assessments or charges as determined by the Board of Directors of the Association; and
- B. Special assessments for capital improvements, operating deficits or other extraordinary expenses; and
- C. Any other assessment provided in this Declaration.

All unpaid assessments, together with interest, costs and reasonable attorney fees incurred in collecting the assessments, shall be a charge and encumbrance on the defaulting Owner's Lot and shall be paramount to and prior to all other liens on the Lot, except only tax liens on the Lot in favor of any assessing governmental unit or district and except for a lien of any first mortgage of record against the Lot filed prior to the time the assessment became delinquent. The assessment, together with interest, costs and reasonable attorney fees, shall also be a personal obligation of the defaulting Owner of the Lot at the time when the assessment becomes due. All assessments and charges under this Declaration shall be due even though Declarant is the sole voting member of the Association as described above in Article III.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used to maintain and repair the Common Area, lawns and driveways for the benefit of Lot Owners consistent with this Declaration. The assessments may also be used by the Association to pay other expenses including, but not limited to, expenses incurred in enforcing any Covenants, Conditions or Restrictions applying to the Property, payment of legal liabilities, taxes, fees, costs, debts or obligations of the Association, payment of insurance premiums, and payment of all fees, costs, expenses, accounting fees or attorney fees in connection with the operation of the Association as well as the defense or prosecution of any legal action.

Section 3. Special Assessments for Capital Improvements and Operating Deficits. In addition to the periodic assessments authorized above, the Association shall have the authority to levy special assessments if deemed necessary by the Board of Directors to finance or perform any of the Association's obligations under this Declaration. Furthermore, the Association may levy a special assessment in addition to the periodic assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction of a capital improvement to the Common Area or driveways. So long as Declarant is the sole voting member of the Association, no special assessment shall be levied for any capital improvement which would be considered the usual and

customary responsibility of a developer, such as the initial paving of the streets, driveways and installation of sewer lines.

Section 4. Monthly Assessment. From the date hereof until December 31, 2004, the maximum monthly assessment for each Lot shall not exceed \$75.00 plus applicable interest and penalty for late payment, if any, plus any assessment for insurance as set forth in Section 3 of Article VI if deemed necessary. After December 31, 2004, the monthly maximum assessment may be increased as follows:

- A. The maximum assessment may be increased effective January 1, 2005 and January 1 of each year thereafter by not more than ten percent (10%) of the actual monthly assessment of the previous year, or not more than ten percent (10%) of what the maximum monthly assessment could have been for each of the previous years (even if no increase was actually assessed), which increase may be imposed without any vote of the Membership. The Board of Directors shall have sole authority to make this permitted increase.
- B. The monthly maximum assessment may be increased in excess of that permitted in Paragraph A above by a majority vote of the Members who are present and entitled to vote at a regular meeting or special meeting of the Association called for that purpose.
- C. Due Dates of Monthly Assessments. Except as provided below in this Section, the monthly assessment shall be due as to each Lot on the first day of the first month following the date of conveyance by Declarant to an Owner of a Lot if there is a completed Living Unit or other building constructed thereon and if the Living Unit or building is occupied. Lots which do not have completed Living Units or other building constructed thereon or which have Living Units or other buildings which are not occupied, shall be exempt from all assessments for eighteen (18) months from the date Declarant conveys the Lot to a buyer. Thereafter, assessments shall be paid monthly even if the Lot is vacant or even if there is a Living Unit or building on the Lot which is not occupied. Assessments may be billed in any fashion deemed appropriate by the Board of Directors of the Association, e.g., monthly, quarterly or other time increment. In no event shall any Lot owned by Declarant be assessed at any time unless there is a completed and occupied Living Unit or building on that Lot. Upon request, the Association shall furnish a Certificate in recordable form signed by an officer of the Association, setting forth whether or not the assessments on a specific Lot have been paid. A properly executed Certificate from the Association shall be binding upon the Association as to the status of assessments as of the date of its issuance and may be relied upon by the public, including any prospective new buyer or lending institution.

Section 5. Effect of Non Payment 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 highest rate allowed by Iowa law unless the Board of Directors establishes a lower rate of interest and in addition the delinquent Owner shall pay a late payment penalty as determined by the

Board of Directors pursuant to the Association By-Laws. The Association shall have the right to file a Notice of Assessment Delinquency with the office of the Recorder of Polk County, Iowa. The Association may also bring an action for damages or injunctive relief, or both, against the Owner personally obligated to pay the same or may foreclose the lien against the Lot in the manner provided for foreclosure of a mortgage under Iowa law, or both. There shall be added to the amount of assessment the cost of making title searches, lien searches and mortgage searches against the Lot, the cost of preparing and filing the Petition in such action, including reasonable attorney fees and costs. No Owner or other person may waive or otherwise escape liability for the assessments provided in this Declaration by virtue of non-use of the Common Area or abandonment of his or her Lot or for any other reason.

Section 6. Subordination of Assessment Liens. If any Lot subject to a lien created by this Declaration shall be subject to the lien of a first mortgage of record, the following shall apply:

- A. The foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of any first mortgage; and
- B. The foreclosure of the first mortgage or any acceptance of a deed in lieu of foreclosure on any first mortgage shall operate to extinguish the lien of all assessments which came due after the first mortgage was filed to the date of a mortgage foreclosure decree or deed in lieu of foreclosure without the necessity of joining the Association as a defendant in the foreclosure action. Any unpaid assessments so extinguished by foreclosure or a deed in lieu of foreclosure shall be deemed to be an expense of the Association. This shall not extinguish the Association's right, however, to attempt collection of said sums from the defaulting Owner personally.

Section 7. Reserves For Replacements. If reserves for replacements have been established on the books of the Association for specific purposes, the funds so allocated for these reserves shall not be spent for any other purpose unless a different spending arrangement is approved by a majority of the membership in attendance at a duly called meeting thereof. The Board of the Association shall not have the unilateral right to change the spending of reserved funds.

ARTICLE V.

Declarant's Rights

Section 1. Additional Common Area. Declarant, or his successor in interest or assignee, shall have the right at any time to convey additional Common Area to the Association from time to time within the Property and within the area described in Section 2 of this Article. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant, or his successor in interest or assignee, to convey additional Common Area to the Association in the future. The Association shall be obligated to accept any additional Common Area so conveyed by Declarant, or his successor in interest or assignee, and to hold and maintain the additional Common Area pursuant to the terms of this Declaration.

ARTICLE VI.

Insurance

Section 1. Casualty Insurance. The Association may purchase a comprehensive casualty insurance policy affording property damage and extended coverage insurance for those properties and vehicles, if any, which are the responsibility of the Association in an amount sufficient to replace the insured property or vehicle if such a replacement policy is reasonably available, at the Association's discretion. If such coverage is not reasonably available, the Association may purchase insurance coverage which under the circumstances would be reasonable, all at the Association's discretion.

Section 2. Liability Insurance. The Association may also purchase a general comprehensive public liability insurance policy in such amount as the Board of Directors shall deem appropriate. The policy shall cover the Association, its Board of Directors, any committee of the Association, and all persons acting as agents or employees of the Association. The Association shall also be authorized at its discretion to maintain such other additional insurance as it deems necessary, including, but not limited to, directors' and officers' liability insurance and workers compensation insurance.

Section 3. Assessment for Insurance. The premiums for any insurance maintained by the Association may become a separate monthly assessment over and above the assessments described above in Article IV of this Declaration, which assessments shall be included in the monthly assessment. The assessment for insurance shall not be subject to the limitation described above in Article IV, Section 4 regarding annual increases.

ARTICLE VII.

Duration; Miscellaneous

Section 1. Terms; Gender. Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Section 2. Duration. This Declaration shall continue and remain in full force and effect at all times as to the Property, regardless of how title was acquired, for a period of 21 years from and after the date of the filing of this Declaration with the Polk County Recorder's Office, unless amended by an affirmative vote of two-thirds (2/3) of the Lots within the Property, excluding Common Area (with each Lot entitled to one (1) vote). This Declaration may be extended for additional periods of 21 years by the filing of a claim in accordance with Section 614.24 and Section 614.25 of the Code of Iowa, 2003, as amended, or any successor statute. Pursuant to these sections, the Association shall also be deemed to be a claimant allowed to file a verified claim

within the meaning of these sections. Any amendment at any time to this Declaration shall require the affirmative vote of 2/3 of the Lots within the Property, excluding Common Area, with each Lot entitled to one vote. Any amendment shall be accompanied by an affidavit by any officer of the Association certifying that two-thirds (2/3) of the votes allocated to the Lots (excluding Common Area) have voted in favor of such amendment as disclosed by the records of the Association. In determining ownership for purposes of consent, the records of the Association shall be conclusive. The Association is hereby appointed as attorney in fact to file of record with the Polk County Recorder any written notice of extension of this Declaration at any time as may be required by law.

Section 3. Delays in Enforcement. No delay on the part of the Association or any Owner in exercising any rights, power or remedy herein allowed shall be construed as a waiver or acquiescence therein. No right, claim or action shall accrue to and no action or claim shall be brought or maintained by anyone against Declarant or any officer, employee or agent thereof on account of any action or inaction under this Declaration.

Section 4. Severability. In the event that any one or more of the terms or conditions of this Declaration shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall in no way affect, modify, change, abrogate or nullify any of the remaining Covenants, Conditions, Restrictions or terms not so expressly held to be void and the remaining parts of this Declaration shall remain in full force and effect.

Section 5. Reasonable Period for Enforcement. If any of the terms or conditions of this Declaration shall be held by a court of competent jurisdiction to be void or unenforceable by reason of the period of time herein stated for which the Declaration may be effective, such terms shall be reduced to a reasonable period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of Iowa or other applicable law, all as determined by the court.

Section 6. Assignment. Declarant shall have the absolute right to transfer, convey or assign any or all of his right, title and interest hereunder to any successor in interest or assignee without approval of any Member, Owner, Association or any other person; provided, however, that such transfer, conveyance or assignment shall not be effective until it has been filed of record with the Office of the Recorder of Polk County, Iowa. Any such transfer, conveyance or assignment shall provide that the successor in interest or assignee shall assume all of the obligations as well as rights of Declarant hereunder and after such filing with the Polk County Recorder, Declarant shall be automatically released totally from all obligations and duties under this Declaration.



JEFFREY N. JOCHIMS

STATE OF IOWA :
: SS
COUNTY OF POLK :

On this 21st day of August, 2003 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jeffrey N. Jochims, a single person, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

Streetar Cameron
Notary Public in and for the State of Iowa

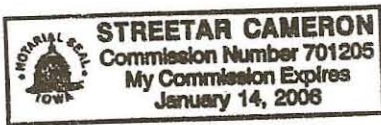


EXHIBIT "A"

Lots 1 through 27, The Neighborhood at 86th, an Official Plat, now included in and forming a part of the City of Johnston, Polk County, Iowa.

EXHIBIT "B"

Outlot X, The Neighborhood at 86th, an Official Plat, now included in and forming a part of the City of Johnston, Polk County, Iowa.

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Revenue Tax: \$0.00
Polk County Iowa
TIMOTHY J. BRIEN RECORDER
File# 2004-00116314
BK **10481** PG **978-980**

Prepared by and after recording return to: Streetar Cameron, 317 Sixth Avenue, Suite 300, Des Moines, Iowa 50309 (515) 243-8157

AMENDMENT TO DECLARATION OF HOMEOWNERS' ASSOCIATION
FOR
THE NEIGHBORHOOD AT 86TH

THIS AMENDMENT to Declaration of Homeowners' Association for The Neighborhood at 86th ("Amendment") is made on this 12th day of April, 2004 by **JEFFREY N. JOCHIMS** ("Declarant"), and relates to the Declaration of Homeowners' Association for The Neighborhood at 86th dated August 21, 2003, filed September 8, 2003 in Book 10131, Page 911 of the records of the Recorder of Polk County, Iowa ("Original Declaration").

WHEREAS, the Original Declaration contained various internal references to Article V, Sections 2 or 3; and whereas, in fact, Article V contains only Section 1; and

WHEREAS, the Declarant is still the owner of one hundred percent (100%) of the lots within the property and has the ability to amend the Original Declaration as is set forth in Article III of the Original Declaration.

NOW, THEREFORE, the Declarant hereby amends the Original Declaration in order that any reference to sections of Article V shall now refer only to Article V, Section 1.

In all other respects, the Original Declaration is hereby reconfirmed.



JEFFREY N. JOCHIMS

STATE OF IOWA :
: SS
COUNTY OF POLK :

On this 12th day of April, 2004 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jeffrey N. Jochims, a single person, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

Todd A. Elverson



Notary Public in and for the State of Iowa
CONSENT OF MORTGAGEE

THE UNDERSIGNED, FIRST AMERICAN BANK, Mortgagee of the property referenced in the Amendment to Declaration of Homeowners' Association for The Neighborhood at 86th, pursuant to the Mortgage dated Sept. 17, 2003, filed Sept. 26, 2003 in Book 10176, Page 790 of the records of the Recorder of Polk County, Iowa, hereby consents to the attachment Amendment and agrees that the Mortgage shall be subject to such amendment.

[Signature]
Its S. V. P.

STATE OF IOWA :
: SS
COUNTY OF POLK :

On this 14th day of MARCH, 2004, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared DEAN L. PEYTON, to me personally known who being by me duly sworn, did say that he is the SENIOR VICE PRES of the financial institution executing the within and foregoing instrument; that said instrument was signed on behalf of the financial institution by authority of its Board of Directors; and that DEAN L. PEYTON as such officer,