

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS FOR KETTLESTONE HEIGHTS TOWNHOMES**

**Preparer Information:**

Lisa R. Wilson  
475 Alice's Road, Suite A  
Waukee, Iowa 50263  
(515) 369-2502

**Taxpayer Information:**

Kettlestone Heights, L.L.C.  
660 Daybreak Drive  
Waukee, Iowa 50263

**Return Document To:**

Wilson, Guerrero & Egge, P.C.  
475 Alice's Road, Suite A  
Waukee, Iowa 50263

**Grantor:**

Kettlestone Heights, L.L.C.

**Grantee:**

N/A

**Legal Description:**

Lots 1 through 90, inclusive, and Outlot "Z", in Kettlestone Heights Plat 2, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa.

**Document or instrument number of previously recorded documents:**

N/A

**DECLARATION OF  
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR  
KETTLESTONE HEIGHTS TOWNHOMES**

**THIS DECLARATION**, made on the date hereinafter set forth by Kettlestone Heights, L.L.C., an Iowa limited liability company, with its principal place of business in Dallas County, Iowa, hereinafter referred to as "Declarant."

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain property in the City of Waukee, Dallas County, Iowa, to be known as Kettlestone Heights Townhomes, which is more particularly described as Lots 1 through 90, inclusive, and Outlot "Z", in Kettlestone Heights Plat 2, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa (the "Properties").

**NOW THEREFORE**, Declarant hereby declares that all of the Properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property 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.

**1. DEFINITIONS.**

A. "Association" shall mean and refer to Kettlestone Heights Townhomes Owners Association, Inc., its successors and assigns, a non-profit corporation organized pursuant to Chapter 504 Revised of the Code of Iowa.

B. "Association Responsibility Elements" shall mean the following, whether located upon a Townhome Lot or upon the Common Area:

- (1) The exterior surface of the Buildings upon a Townhome Lot, excluding windows, doors, patios and decks.
- (2) The structural portion of the Building upon a Townhome Lot.
- (3) The roof, gutters, downspouts, and foundations of the Buildings upon a Townhome Lot.
- (4) Any common wall between residential or garage structures upon Townhome Lots, except the interior surfaces thereof.
- (5) The yard surrounding the residential or garage structure upon a Townhome Lot, except for trees and shrubbery.
- (6) Streets, driveways and sidewalks upon a Townhome Lot or in the Common Area.

(7) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a residential or garage structure which are carrying any service to more than one Townhome Lot.

(8) The Common Area, including, but not limited to, any landscape buffer areas, private storm and sanitary sewers, private water mains and storm water drainage and detention areas, located thereon.

(9) Landscaping sprinkler system, if any.

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

D. "Building" shall mean and refer to any single-family attached or detached dwelling unit that may be constructed on a Townhome Lot or a part of more than one Townhome Lot, and shall include any attached garage.

E. "Common Area" shall mean Outlot "Z" and all real property (including the improvements thereto) owned or controlled by the Association for the common use and enjoyment of the Owners, including, but not limited to, drives, streets, landscaping, detention areas, project and street signs and sprinkler system.

F. "Declarant" shall mean and refer to Kettlestone Heights, L.L.C., an Iowa limited liability company, and its successors-in-interest and assigns.

G. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Easements and Restrictions to which the Properties are subject, as the same may be amended from time to time.

H. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Properties, or any portion thereof, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, or successors to their interest.

I. "Living Unit" or "Unit" shall mean and refer to any portion of a Building situated upon a Townhome Lot and designed and intended for use and occupancy as a resident by a single family or individual.

J. "Townhome Lot" or "Lot" shall mean and refer to the lots numbered 1 through 99, as shown on the recorded plat of Kettlestone Heights Plat 2, and any additional property which may later be brought within the jurisdiction of the Association and the Declaration, but does not include the Common Areas. With respect to any single-family portion of any Building that may be constructed on a part of more than one of such lots, "Townhome Lot" shall mean and refer to the real estate conveyed in connection with such dwelling unit.



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

L. "Owner" shall mean refer to the record owner, whether one or more persons or entities, including the Declarant, of a fee simple title to any Townhome Lot, 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. A vendee in possession under a recorded contract of sale of a Townhome Lot shall be deemed the owner of the Townhome Lot.

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

## **2. PROPERTY RIGHTS IN COMMON AREAS.**

### **A. Management and Maintenance by the Association**

The Association, subject to the rights of the Owners as set forth in the Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Common Area conveyed to it and all improvements thereon, and the Association Responsibility Elements and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.

No person other than the Owner of a Townhome Lot and his invitees shall have the right to enter upon, use or affect an Association Responsibility Element located within a Townhome Lot, except that the Association and its designates may enter upon and within a Townhome Lot and the Buildings and Living Unit located thereon at reasonable times for the following purposes:

- (1) Installation, repair, removal, replacement, maintenance or inspection of an Association Responsibility Element.
- (2) Enforcement of any provision of this Declaration or the Articles of Incorporation or the By-Laws of the Association.
- (3) Mowing and maintenance of grass and landscaped areas.

In the event that the need for maintenance, replacement or repair of any portion of the Common Area, the improvements thereon, or of any Association Responsibility Elements is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the cost of such maintenance, replacement or repair shall be added to and become part of the assessment to which the Owner is subject and a lien upon the Townhome Lot and Living Unit of such Owner and shall become due and payable upon demand.

**B. Owner's Easement and Right of Enjoyment.**

Every Owner of a Townhome Lot shall have a right and easement of enjoyment in and to the Common Area which rights may be delegated to family members, lessees and guests of every Owner (subject to any reasonable and non-discriminatory rules and regulations which may be enacted by the Association), which shall be appurtenant to and shall pass with the title to every Townhome Lot, subject to the following provisions:

(1) The right of the Association to suspend the voting rights of the Owner for any period during which any assessment against his Townhome Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; provided, however, that nothing contained in this paragraph shall be deemed to deny an Owner access to and from his Townhome Lot.

(2) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3<sup>rds</sup> of the Members has been recorded.

(3) The right and obligation of the Association to maintain sewer and other underground utilities located within the Properties.

(4) The right of the Declarant or the Association to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Area;

(5) The right of Declarant or the Association to provide in the Common Area, landscaping, outdoor furniture and recreational equipment, signs, decorative structures and necessary appurtenant utilities;

(6) The provisions of this Declaration and of Rules and Regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation and Bylaws and those accompanying the Declaration; and

(7) The right of the Association to mortgage any or all of the Common Area with the assent of two-thirds (2/3<sup>rds</sup>) of the votes of the Members.

**C. Title to Common Area.**

The Declarant hereby covenants for itself, its successors and assigns, that it shall convey to the Association the fee title to all Common Area, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions created by this Declaration, or granted to the City of Wauke, Iowa. The transfer of title to the Common Area shall be accomplished on or before the recorded conveyance of the first Lot by the Declarant.



Until the construction work on all Living Units within the Properties, and appurtenant improvements incidental to said Living Units, is completed, Declarant or its assignee shall have the right to enter upon the Common Area, any Townhome Lot or Living Unit for the purpose of completing such work and performing under applicable guarantees.

**D. Use of the Common Area.**

The Common Area shall be used strictly in accordance with the provisions of the Declaration. No Owner shall obstruct or interfere whatsoever with the rights and privileges of other Owners or the Association in the Common Area, and nothing shall be planted, altered, constructed upon, or removed from the Common Area, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the Common Area 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 Townhome Lot and Living Unit 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 4 for the collection of delinquent assessments. 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 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.

**E. Duration.**

The Common Area as described in Section 1(E), shall not be changed and shall continue in perpetuity except by approval of all members of the Association, subject to the provisions for dedication or transfer in Section B(2) above and the right to mortgage in Section B(7) above.

**3. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.**

**A. Membership.**

Every owner of a Townhome Lot which is subject to assessment shall be a member of the Association and entitled to one vote in the affairs of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Townhome Lot which is subject to assessment. Ownership of a Townhome Lot shall be the sole qualification for membership.

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

**B. Designation of Association Directors.**

Subject to Section 16(D), Declarant shall have the right to name all members of the Board of Directors of the Association until it no longer owns a Townhome Lot in Kettlestone Heights Plat 2. Thereafter the Board of Directors shall be selected in the manner specified in the Bylaws of the Association.

**4. COVENANT FOR ASSESSMENTS.**

**A. Creation of the Lien and Personal Obligation of Assessments.**

The Declarant, for each Townhome Lot owned within the Properties, hereby covenants, and each Owner of any Townhome Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, payable in monthly installments, and (2) special assessments for capital improvements and operating deficits, and other special assessments as provided in this Declaration; such assessments to be established and collected as hereinafter provided. The annual 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 Townhome Lot against which each such assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. 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 Townhome Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**B. Purpose of Assessments:**

The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area (including snow removal) and the Living Units upon Townhome Lots and for other purposes specifically provided herein. In addition, the annual assessment shall include repayment of sums advanced by the Declarant on behalf of the Association.

**C. Maximum Annual Assessment:**

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for each Unit Owner shall be One Thousand Five Hundred Dollars (\$1,500.00) per Lot, payable at the monthly rate of \$125.00.

- (1) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year not more than 30% above the maximum assessment for the previous year without a vote of the membership.



- (2) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 30% by a vote of a majority of the members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (3) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.
- (4) A portion of such annual assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, the building exteriors or of any capital improvements which the Association is required to maintain. As long as the Declarant owns any Townhome Lot, at closing on any sale or transfer of Declarant's Lots, the Declarant may collect from the prospective Lot Owner an amount equal to two months of assessments for each Lot. Once all of the Townhome Lots have been sold by the Declarant, then the Association may collect such funds.

**D. Special Assessments for Capital Improvements and Operating Deficits.**

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, which the Association is required to maintain, or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

**E. Notice and Quorum for an Action Authorized under Sections C and D**

Written notice of any meeting called for the purpose of taking any action authorized under Section C or D shall be sent to all members not less than fifteen (15) days, no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of all the votes of the members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, 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 thirty (30) days following the preceding meeting.

**F. Uniform Rate of Assessment.**

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



**G. Date of Commencement of Annual Assessments: Due Dates.**

The annual assessments provided for herein shall commence as to all Townhome Lots in any phase on the first day of the first month following the date of conveyance of the Common Area pertaining to that phase. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Townhome Lot at least thirty (30) days in advance of each annual assessment period. The annual assessments for each Townhome Lot sold by the Declarant to a third party shall become the obligation of the new Owner upon the closing of the purchase. Subsequent monthly installments of such assessments shall be paid by the new owner beginning on the first day of the month immediately following the closing of the purchase, and shall be payable to the Association until the Declarant gives further notice as to whom such assessments are to be paid. The Board of Directors may, upon reasonable notice to the Owners of Townhome Lots, change the due dates upon which monthly assessments shall be payable. 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 Townhome Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Townhome Lot shall be binding upon the Association as of the date of its issuance.

**H. 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 Townhome Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the cost of 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 Area or abandonment of his Townhome Lot.

**I. Subordination of Assessments Liens.**

If any Townhome Lot 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.

**J. Declarant Exempt From Assessments.**

Notwithstanding anything in this Declaration to the contrary, Townhome Lots owned by the Declarant shall be exempt from the assessments described in this Section 4 or elsewhere herein.

**5. DECLARANT'S RIGHTS.**

**A. Use of and Entry Upon Townhome Lots.**

Declarant reserves the right to use any of the Townhome Lots as models and to sell, assign, or conduct other businesses in connection with the construction and development of the project from any of such Townhome Lots 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 Townhome Lots then unsold. Declarant retains the right to be considered an Owner of any Townhome Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of Buildings and other improvements. Declarant reserves the right to enter upon and within any Living Unit, Townhome Lot, and Common Area in connection with any construction activity.

**B. Common Area Landscaping.**

Declarant reserves the right and is hereby vested with the sole control over all Common Area landscaping, plantings and the like. Declarant shall have the right to change the plantings and other landscaping elements within the Common Area from time to time in its sole discretion.

**6. MAINTENANCE OF TOWNHOME LOTS.**

**A. Maintenance by Owners of Townhome Lots.**

The Owner of each Townhome Lot shall furnish and be responsible for, at his own expense, all maintenance, and repairs of his Townhome Lot and all structures, improvements and equipment located thereon, except for the Association Responsibility Elements. Specifically, the Owner shall be responsible for decorating and replacements within his Living Unit, including the heating and air conditioning systems and any



partitions and interior walls. He shall be responsible for the maintenance, repair and replacement of all windows in his Living Unit, the doors leading into the Living Unit, all decks and patios attached to or adjacent to his Living Unit, all windows, doors and interior surfaces of his garage and any and all other maintenance, repair, and replacements of the improvements on his Townhome Lot unless otherwise provided herein.

**B. Maintenance Obligations of Association.**

In addition to maintenance of the Common Areas and any improvements located thereon, the Association shall provide all maintenance, repair and replacement of the Association Responsibility Elements.

**C. Responsibility for Willful or Negligent Acts.**

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

**D. Snow Removal.**

The Association shall be responsible for snow removal from the streets, driveways and walkways in the Common Area. Unless and until otherwise determined by the Board of Directors of the Association, the Association shall be responsible for snow removal from all Townhome Lots and from the driveway servicing each Townhome Lot, including any portions of the driveways within the Common Area, serving the Townhome Lots.

**7. INSURANCE AND INSURANCE ASSESSMENT FOR TOWNHOME LOTS**

**A. Insurance and Insurance Assessment.**

In addition to the annual assessments and the special assessments for capital improvements, the Association may levy assessments for insurance purchased by the Association. The Association shall obtain liability and casualty insurance for the Common Area and any other real or personal property owned by the Association, and for the Association Responsibility Elements. The casualty insurance shall be "all risk" coverage for 100% of the insurable value of the fixtures and improvements in the Common Areas, or which are included in the Association Responsibility Elements or otherwise owned by the Association, providing for loss or damage settlement on a replacement cost basis. The insurance coverage obtained by the Association shall be written in the name of and the proceeds thereof shall be payable to the Association. Unless otherwise determined by the Board of Directors of the Association, each Owner of a Townhome Lot shall be responsible for obtaining homeowner's liability insurance and casualty insurance for property which is not part of the Association Responsibility Elements from insurers approved by the Board of Directors of the Association; the Board of Directors may require an Owner's casualty insurance to be obtained from the same

insurer as the insurer under the Association's casualty insurance for the Association Responsibility Elements. All insurers must be authorized to conduct business in the State of Iowa. In the event of casualty loss, the Association shall be responsible for repair and restoration of the Common Area and Association Responsibility Elements, and the Owner shall be responsible for repair and restoration of all other portions of the buildings and improvements upon his Townhome Lot, except to the extent that the Board of Directors of the Association has determined to obtain casualty insurance for such portions which are not part of the Association Responsibility Elements in which case the Association shall apply any insurance proceeds received for such portions to such repair and restoration of such portions. If the insurance proceeds of the insurance obtained by the Association is insufficient to cover the costs of repair or replacement of the insured property damaged or destroyed, the Association shall make a reconstruction assessment against all Townhome Lots Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds.

**B. Distribution to Mortgagee.**

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his mortgagee jointly.

**C. No Limitation.**

This Article shall not limit the right of the Association to purchase insurance for the Common Area and make assessments therefor.

**D. Periodic Review of Policies.**

All insurance policies acquired by the Association shall be reviewed periodically by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

**8. EASEMENTS AND ENCROACHMENTS.**

**A. General Easements.**

Each Townhome Lot shall be subject to the following easements in favor of the Association and the other Owners of Townhome Lots:

(1) Every portion of a structure upon a Townhome Lot which contributes to the support of any structure not on the same Townhome Lot is burdened with an easement of such support.

(2) Each Townhome Lot is burdened with an easement through the Townhome Lot and through the attic and basement of any structure thereon for conduits, ducts, plumbing, wiring, pipes and other facilities for the furnishing of



utilities and services to other Townhome Lots, including the location of utility meters on one Townhome Lot for the service to other Townhome Lots.

(3) Each Townhome Lot is burdened with an easement of ingress and egress for construction, maintenance, repair and replacement of Association Responsibility Elements by the Association and the Declarant.

(4) Each Townhome Lot is burdened with an easement for surface drainage for the benefit of all other Townhome Lots and the Common Area.

(5) Each lot is burdened with encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.

(6) Each Townhome Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.

(7) Each Townhome Lot is burdened with an easement through the Townhome Lot but outside of any structure thereon for purposes of reasonable ingress and egress by other Owners of Townhome Lots to the front and rear of the other Owners' Townhome Lots.

**B. Drainage, Utility and Sewer Easements.**

As may be noted on the Plat, Declarant may reserve certain areas of the Townhome Lots and Common Area for drainage, public utility and sewer easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Townhome Lots and Owners, to properly install and allow to be maintained all electrical, telephone, water, gas, sewer and other utility services, (including all lines, pipes, wires, cables, ducts, etc.,) to the Living Units constructed on the various Townhome Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such utility easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant and the Association to provide for and maintain appropriate drainage.

**C. Additional Easement Rights of the Declarant.**

Declarant reserves unto itself, for the benefit of all Townhome Lots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise leave the location of any drainage, utility, and sewer easement and to grant such further easements, licenses and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Townhome Lot or Townhome Lots or any portion of Common Area. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, amended subdivision plat or

amendment to the subdivision plat recorded in the Office of the Recorder of Dallas County, Iowa and any Owner of any Townhome Lot shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section C shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Townhome Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Townhome Lot. The rights and easements reserved by Declarant in this Section C shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Townhome Lot within the Properties.

**D. Easement for Emergency Purposes.**

An easement is hereby dedicated and granted for use in case of emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Common Area and pedestrian walkways or sidewalks.

**E. Easement for Signs.**

Declarant reserves unto itself for so long as it owns any Townhome Lot, the right and easement to erect and maintain such entryway, identification and "For Sale" sign or signs within the Properties as Declarant deems reasonably necessary.

**F. Encroachment on Townhome Lots.**

If, by reason of the location, construction, settling or shifting of a Building, any part of a Building containing a Living Unit upon a Townhome Lot (the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Townhome Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all appurtenances thereto. Upon the written demand from the Owner of an Encroaching Unit, the owner of the Townhome Lot upon which said unit encroaches shall deed to the Owner of the Encroaching Unit that portion of the Townhome Lot upon which the Encroaching Unit is located. The deed shall be by quit claim deed free and clear of any mortgages and encumbrances. All costs of abstracting, releases of mortgages, recording fees, engineering fees and legal fees shall be paid by the owner of the Encroaching Unit.

**G. Driveways and Access for Townhome Lots.**

An easement is hereby reserved and granted to each Townhome Lot for driveway and access purposes over any portion of the Common Area wherein driveways are located. This easement shall extend from the Townhome Lot to the dedicated public or private street. This driveway easement shall be for ingress and egress purposes and no Townhome Lot Owner shall park or allowed to be parked any vehicle or other obstruction within the driveway area, except as provided in Section 9 below. Further, an easement is hereby reserved and granted for the use of all Townhome Lots served by one common driveway. To the extent that a driveway or portion thereof serving a Townhome Lot is



located partially or wholly on another Townhome Lot or Lots, the Lot Owners served by such driveway shall have the benefit of an easement over that portion of the other Townhome Lot or Lots covered by the driveway. Further, there is hereby reserved and granted an easement for the benefit of each Townhome Lot served by a sidewalk and pedestrian walkway located partially or wholly on the Common Area or another Townhome Lot. This latter easement is for the purpose of allowing pedestrian access from the public or private street to the Townhome Lot served by such sidewalk or pedestrian walkway. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walkway which would impair the use or access by the Townhome Lot Owner which such sidewalk or pedestrian walkway serves. As long as any ingress or egress by driveway or sidewalk to any Townhome Lot is through the Common Area, any conveyances or encumbrance of the Common Area shall be subject to the easement right granted to Owners in this Declaration.

#### **H. Sidewalks.**

An easement is hereby reserved and granted to each Owner and his invitees for pedestrian use over any sidewalk upon any Townhome Lot.

### **9. PARKING RIGHTS.**

Subject to the provisions of Section 8(G) above, the paved driveway in front of each Owner's garage shall be for the exclusive benefit of such Owner and his guests. No one shall use these parking spaces for parking or storing of boats, snowmobiles, trailers, camping vehicles or other recreational vehicles, or for parking of trucks or other commercial vehicles except temporarily or incidentally for the making of pick-up and deliveries to neighboring Townhome Lots. No more than two vehicles per Townhome Lot may regularly be kept outside of the garage on the premises. Provision for storage off-site of more than four vehicles (two to be parked in the garage and two in the driveway) must be made by each Townhome Lot Owner. The garage shall at all times be maintained by the Owner in a condition which will allow parking of at least two vehicles in the garage. If parking on the driveway is necessary, the vehicles should be pulled as close as possible to the garage door, but no more than two vehicles shall be parked in a driveway at any given time. No vehicles shall be parked so as to impede access from or to any Townhome Lot or any public street. No fence, barrier or other obstruction of any kind shall ever be placed or constructed so as to impede access from or to any Townhome Lot or public street. The drives within the Common Area are private and parking on such private drives is strictly prohibited, except during construction by the Declarant.

### **10. PARTY WALLS.**

A. Each wall which is built as a part of the original construction of the homes and garages upon the Properties and placed on the dividing lines between the Townhome Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration and the rights of the Association, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

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

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

E. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Townhome Lot and shall pass to such Owner's successors in title.

## **11. ARCHITECTURAL CONTROL.**

No building, fence, wall or other structure, except as originally constructed by or on behalf of Declarant shall be commenced, erected, altered or maintained upon Properties, nor shall any exterior addition to or change or alteration therein, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. This section shall not apply to any construction, improvements or alterations made by Declarant, including the construction of fences on the Common Area.

## **12. GENERAL USE RESTRICTIONS.**

The following use restrictions are in addition to use restrictions previously filed of record and applicable to the Townhome Lots.

A. All Townhome Lots shall be known, described and used solely as residential lots and no structure shall be erected on any Townhome Lot except by the Declarant or the Association.

B. Building setback lines as shown on the plat of record shall be strictly followed.

C. The public utility easements shown on the recorded plat are hereby reserved for utility installation and maintenance.

D. No Townhome Lot shall be subdivided in any manner.



E. No Townhome Lot shall be used for any kind of trade, business, or employment except as allowed herein, nor shall any Townhome Lot be used for a multi-family dwelling, boarding house, or rooming house.

F. The use of any open carport, driveway or parking area which may be in front of, adjacent to, or part of any Townhome Lot as a parking place for recreational or commercial vehicles or articles, including boats, is prohibited. All of said types of vehicles or articles shall be stored inside a garage at all times. No inoperable, dismantled or wrecked motor vehicles, trailers, automobiles or other vehicles or machinery or parts thereof including scrap metals of any type shall be permitted to be upon or remain upon any part of a Townhome Lot. This restriction shall furthermore apply to any vehicle, which though operable, is not in active use. This provision is intended to specifically prohibit vehicles which are not in active use from being left parked outside a garage for an extended period of time.

G. No Owner or other person shall install any telephone wire, air-conditioning Unit, or other machine or device on the exterior of the Building except as hereafter provided. No tower, antenna, satellite dish or similar reception device shall be placed on any Building or Common Area unless the tower, antenna, satellite dish or similar reception device is one which cannot be prohibited pursuant to the federal Over-the-Air Reception Devices Rule, 47 C.F.R. §1.4000, or other similar governmental mandate in effect at the time of placement, AND the location thereof is first approved in writing by the Association. Any tower, antenna, satellite dish or similar reception device not removed by the Owner upon sale of a Unit shall be deemed to have a date of placement, as to the new Owner, as of the date of closing. The directors of the Association shall adopt regulations governing the placement and maintenance of those towers, antennas, satellite dishes and other reception devices which cannot be prohibited. No Owner shall place, or allow the placement of, a tower, antenna, satellite dish or similar reception device upon a Building or Common Area except for the personal use of the Owner or permissible tenants of the Owner and without first obtaining the consent of the Association as to the location of device. The Owner shall be responsible to the Association for any expense, liability, or damage of any kind incurred as a result of any tower, antenna, satellite dish or similar reception device placed or maintained on a Building or Common Area in violation of this paragraph. The Association will not be responsible for any loss or damage to any tower, antenna, satellite dish or similar reception device.

H. Fencing shall not be erected on any part of a Townhome Lot.

I. No swimming pools, tennis courts or similar structures shall be installed on any Townhome Lot.

J. No Owner shall construct or modify any Association Responsibility Element.

K. No rubbish container shall be visible from the street except on pick-up day and one day before and one day after pick-up day.

504RDN-569699  
KETTLESTONE HEIGHTS TOWNHOMES OWNERS ASSOCIATION, INC.  
LISA R WILSON  
475 SE ALICE'S RD STE A  
WAUKEE, IA 50263



\* W 0 1 1 7 5 0 9 9 \*



# IOWA

No: W01175099  
Date: 04/23/2018

## SECRETARY OF STATE

504RDN-569699  
KETTLESTONE HEIGHTS TOWNHOMES OWNERS ASSOCIATION, INC.

### ACKNOWLEDGEMENT OF DOCUMENT FILED

The Secretary of State acknowledges receipt of the following document:

Articles of Incorporation

The document was filed on Apr 9 2018 3:23PM, to be effective as of Apr 9 2018 3:23PM.

The amount of \$20.00 was received in full payment of the filing fee.



A handwritten signature in blue ink that reads "Paul D. Pate".

PAUL D. PATE SECRETARY OF STATE



509699

876925 ARTI \$20.00 KARE 2 4/18/18

**ARTICLES OF INCORPORATION  
OF  
KETTLESTONE HEIGHTS TOWNHOMES OWNERS ASSOCIATION, INC.**

TO THE SECRETARY OF STATE OF IOWA:

The undersigned, acting as incorporator of a corporation pursuant to the provisions of the Iowa Nonprofit Corporation Act, under Chapter 504A of the Code of Iowa, adopts the following Articles of Incorporation for such Corporation.

ARTICLE I  
NAME

The name of the Corporation is Kettlestone Heights Townhomes Owners Association, Inc., hereinafter called the "Association".

ARTICLE II  
CORPORATE EXISTENCE

The existence of this Corporation shall commence upon the filing of these Articles of Incorporation with the Secretary of State and the period of its duration is perpetual.

ARTICLE III  
PURPOSE AND POWERS OF THE ASSOCIATION

The Corporation does not contemplate private profit or gain to the members thereof, and the purposes and objectives for which it is formed are to provide for an entity to own, operate and maintain certain real property for and on behalf of the owners of certain lots situated in Waukee, Dallas County, Iowa, known as Kettlestone Heights Townhomes ("Property").

To achieve this purpose, the Association shall have unlimited power to engage in and do any lawful act concerning any and all lawful business for which corporations may be organized under this Act and consistent with the provisions herein.

ARTICLE IV  
REGISTERED AGENT AND OFFICE

The address of the initial registered office of the Corporation is 475 Alice's Road, Suite A, Waukee, Iowa, 50263, and the name of its initial registered agent at such address is Lisa R. Wilson.

ARTICLE V  
MEMBERS

The members of this Corporation shall be those owners of record of a fee or undivided fee interest in the Property. The voting rights of the members shall be as provided in the Bylaws of the Corporation.

3



ARTICLE VI  
DIRECTORS

The number of directors constituting the initial Board of Directors of the Corporation is two (2). The names of the persons who are to serve as the initial directors are:

Toby T. Torstenson  
Bradley H. Stanbrough

The term of office of the initial Board of Directors shall be until successor Directors shall have been elected and shall have qualified. Until the terms of the initial Board of Directors expires, they shall be subject to removal as provided in the Bylaws.

ARTICLE VII  
BYLAWS

The initial Bylaws of the Corporation shall be adopted by its initial Board of Directors, but the power to thereafter alter, amend or repeal the same or adopt new Bylaws is reserved to the members of the Corporation, subject to the restrictions contained in the initial Bylaws and amendments thereto.

ARTICLE VIII  
LIQUIDATION/DISSOLUTION

In the event of liquidation/dissolution, assets of the Corporation, if any remain, shall be distributed to a public body or conveyed to a nonprofit organization with similar purposes and shall not be contrary to Iowa law.

ARTICLE IX  
CORPORATE DEBTS

Neither the members, the Board of Directors, nor their private property shall be liable for corporate debts, obligations or undertakings.

ARTICLE X  
INDEMNIFICATION

This Corporation shall indemnify any present or former director, officer, employee, member or volunteer of this Corporation, and each such person who is serving or who has served at the request of this Corporation, as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, other enterprise or employee benefit plan to the fullest extent possible against expenses, including attorney fees, judgments, fines, settlements and reasonable expenses, actually incurred by such person relating to his conduct as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, other enterprise or employee benefit plan, except that the mandatory indemnification required by this sentence shall not apply (i) to a breach of the duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or (iii) for a transaction from which such person derived an improper personal benefit.

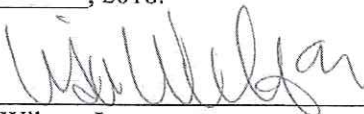
ARTICLE XI  
AMENDMENT

Amendment of these Articles shall require the consent of sixty-seven percent (67%) of the members.

ARTICLE XIII  
INCORPORATOR

The name and address of the incorporator is Lisa R. Wilson, 475 Alice's Road, Suite A, Waukee, Iowa, 50263.

Dated this 9<sup>th</sup> day of April, 2018.

  
\_\_\_\_\_  
Lisa R. Wilson, Incorporator

FILED  
IOWA  
SECRETARY OF STATE  
4/9/18  
3:23 PM  
W01175099