

**BK: 2016 PG: 4088**  
**Instr. Number: 4088**  
**Recorded: 3/28/2016 at 2:25:11.0 PM**  
**Fee Amount: \$97.00**  
**Revenue Tax:**  
**Chad C. Airhart Recorder**  
**Dallas County, Iowa**

Prepared by and return to: Ashley J. Aust, Hubbell Realty Company, 6900 Westown Parkway, West Des Moines, Iowa, 50266 (515) 280-2032

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS  
APPLICABLE TO  
PEMBERLEY HILLS**

This Amended and Substituted Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Pemberley Hills (the "Declaration"), is made this 24<sup>th</sup> day of March, 2016, by **BARNES ESTATES, LLC**, an Iowa limited liability company (the "Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of that real property described as follows:

All lots included in Pemberley Hills Plat 1, an Official Plat in the City of West Des Moines, Dallas County, Iowa,

And

A part of lots 2 and 3, Barnes Farm, an Official Plat in the City of West Des Moines, Dallas County, Iowa and more particularly described as follows:

Beginning at the Northeast corner of said Lot 2; thence South 00°19'00" East along the East line of said Lot 2, a distance of 250.00 feet to the Southeast corner of said Lot 2; thence South 89°42'47" West along the South line of said Lot 2, a distance of 50.00 feet; thence South 0°19'00" East, 76.58 feet to the Northeast corner of Street Lot 'G', Pemberley Hills Plat 1, an Official Plat; thence South 89°43'10" West along the Northerly lines of said Street Lot 'G' and Lots 9 through 14, Pemberley Hills Plat 1, a distance of 515.06 feet to the Southeast corner of Lot 28, Pemberley Hills Plat 1; thence North 00°16'50" West along the East line of said Lot 28, a distance of 133.25 feet to the Northeast corner of said Lot 28 and the South line of Street Lot 'C', Pemberley Hills Plat 1; thence North 89°43'10" East along said South line, 34.94 feet to the Southeast corner of said Street Lot 'C'; thence North 00°15'03" West along the Easterly line of Street Lot 'C' and Street Lot 'D', Pemberley Hills Plat 1, a distance of 193.28 feet to the North line of Lot 2, Barnes Farm; thence North 89°42'47" East along said North line, 529.81 feet to the point of beginning and containing 3.99 acres (173,898 square feet). The property is

subject to any and all easements, covenants and restrictions of record, (hereinafter referred to as "Pemberley Hills").

**WHEREAS**, Declarant is Declarant pursuant to that certain Declaration of Covenants recorded in Book 2015 at Page 12957 in the Dallas County, Iowa Recorder's Office and Declarant has authority to amend the Declaration at any time so long as Declarant has any ownership interest in any Lot; and

**WHEREAS**, Declarant desires to amend the Declaration to establish additional covenants, conditions, easements and restrictions governing Pemberley Hills for the benefit of the Owners of Lots in Pemberley Hills.

**NOW, THEREFORE**, Declarant hereby publishes and declares that Pemberley Hills shall be held, sold and conveyed subject to the following covenants, conditions, easements and restrictions, limitation and obligations, all of which are for the purpose of protecting the value and desirability of Pemberley Hills, and all of which shall run with the land and shall be a burden upon and a benefit to, any and all parties acquiring or owning any right, title or interest in any part of Pemberley Hills, and their, heirs, successors, assigns, grantees, executors, administrators, and devisees.

## **ARTICLE I INTENT; DEFINITIONS**

**1.01** **Intent.** It is the intent of this Declaration to provide conditions, covenants, easements, restrictions and reservations to ensure the proper use and appropriate development of improvements and to protect the value and desirability of property within Pemberley Hills. It is further the intent to provide for the Association to perform the operation, maintenance, repair, replacement, alterations, improvement or modification of Declarant Improvements and to perform modifications within Pemberley Hills, of the storm water detention pond and related easements for the benefit of Pemberley Hills as said Association shall undertake or as it agrees to perform on behalf of its members, and to enforce this Declaration.

**1.02** **Definitions.**

- (a) **"Association"** shall mean Pemberley Hills Owners Association, a non-profit corporation and its successors and assigns.
- (b) **"Board"** shall mean the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.
- (c) **"Bylaws"** shall mean and refer to the Bylaws of the Association, as adopted by the Board of Directors, and as the same may be amended from time to time.
- (d) **"City"** shall mean the City of West Des Moines, Dallas County, Iowa.
- (e) **"Common Areas"** shall mean and include any common area designated by the Declarant and any land owned by the Association.
- (f) **"Declarant"** shall mean Barnes Estates, LLC and its successors and assigns.
- (g) **"Lot"** shall mean and refer to any platted lot, tract, or portion thereof and any Lots created by any subdivision of any such Lots.

- (h) **“Owner”** shall mean and refer to the record Owner, whether one or more persons or entities, or the fee simple title Owner to any Lot that is part of the Property, including contract sellers and vendees (deemed co-owners), 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.
- (i) **“Pemberley Hills”** shall have the meaning set forth on page 1 hereof together with all additional real estate which is hereafter made subject to this Declaration pursuant to one or more amendments to the Declaration and any plats or replats of any portion of said real estate.

**ARTICLE II**  
**GENERAL USE RESTRICTIONS AND BUILDING SPECIFICATIONS**

**2.01 Uses.**

(a) Single-Family Residences. The use of single-family Lots in Pemberley Hills shall be limited to single-family residential dwellings and shall be developed with not more than one single-family dwelling on each Lot in the final applicable plat or replat and may be developed only with such other uses of land or structures customarily incidental and subordinate to the single-family residential use as permitted by the City’s zoning ordinance, unless such uses or structures are otherwise regulated or prohibited by this Declaration. No modular, manufactured, or mobile homes are permitted to be built or used in Pemberley Hills.

(b) Business Activity. No full-time or part-time business activity may be conducted on any Lot or in any building or structure constructed or maintained on any Lot, except to the extent of a home occupation permitted by the City’s Zoning Ordinance and except that home builders may maintain model homes during construction and Declarant may maintain a sales office during its development and sales of the Lots in Pemberley Hills.

**2.02 Architectural Standards.** The following Architectural Standards shall apply to the development of all Lots in Pemberley Hills:

(a) Character. No building or structure shall be constructed, altered or maintained upon any Single-Family Lot other than a detached single-family dwelling with an attached or detached private garage and may have such other accessory structures permitted by this Declaration. In order to preserve the general design for development of the Lots in Pemberley Hills as a fine residential subdivision of the City, no single-family dwelling of any kind, or addition thereto, shall be erected upon any Lot unless the plan, design, building materials, exterior colors and location thereof shall have been first approved by Declarant, or if the Declarant no longer owns any Lots in Pemberley Hills or otherwise delegates this responsibility to the Association, by the Board, or such person or persons designated by it for this purpose, which approval shall not be unreasonably withheld or delayed.

(b) Siding. Siding material variations on the elevation for accent purposes are encouraged, but the overall character and predominant siding must be consistent on all four elevations of the structure. Siding shall not have a reveal of greater than 8 inches. Exterior colors shall be earth tones, which may include muted tones of reds, yellows, greens or blues. No bright colors of any kind are permitted. Exterior materials may be pre-finished. All siding shall be cement board siding with a minimum 30 year warranty or engineered wood siding with a minimum 50 year warranty unless otherwise first approved by

Declarant, or if the Declarant no longer owns any Lots in Pemberley Hills or otherwise delegates this responsibility to the Association, by the Board, or such person or persons designated by it for this purpose, which approval shall not be unreasonably withheld or delayed.

(c) Roof Materials. Roof material shall be slate, tile, cedar shakes or composition shingles. Composition shingles shall be architectural grade with a minimum 30 year warranty. Shingle colors shall be muted earth tones and be compatible with and complimentary to the exterior materials and colors. White, white blend and non-earth tone color roof shingles are not acceptable. Metal roofs are not acceptable. All flashing and vents shall closely match or blend with the surrounding roof area. All vents and other roof penetrations should be located on the rear elevation wherever possible. Gutters should be part of the fascia detailing. Gutters and downspouts shall closely match the colors of the surface to which they are attached.

(d) Garage. All houses shall have, as a minimum, a two-car attached or detached garage. Each house shall provide off-street parking for two cars on paved surfaces.

(e) Minimum Single-Family House Size. All single-family homes, shall contain a minimum square footage of living space exclusive of attached garages, breezeways, porches, and finished basement area as follows:

(i) One-story dwellings must have a minimum 1,600 square feet of finished area directly under the roof.

(ii) One and one-half story dwellings must have a minimum of 2,000 square feet of finished area.

(iii) Two story dwellings must have a minimum of 2,000 square feet of finished area.

(iv) All split-level, raised ranch, or split foyer dwellings must have a minimum of 2,000 square feet of finished area.

(f) Minimum Finished Basement Floor Levels. If a minimum basement floor elevation requirement is shown on the final plat of the applicable Lot, the single-family home constructed on such Lot shall have a finished basement floor elevation as shown on the applicable final plat.

(g) Decks and Porches. Decks attached to a single-family dwelling must be built from cedar, redwood, composite decking or other product approved by Declarant, or once the Declarant no longer owns any Lots in Pemberley Hills or has delegated such approval to the Association, approved by the Board. Unpainted natural wood decks, though appropriate for rear yard spaces, are not acceptable as front entry porches. Front entry porches should be designed as integral, yet dominant features that invite entrance to the dwelling. Columns supporting porch roofs should be a minimum of 6" x 6". Built up box columns or tapered round columns are encouraged. Handrails shall match the architectural style of the home. All steps to front entry porches must be cast in place concrete. No wood steps or precast steps to front porches are permitted.

## **2.03 Landscaping.**

(a) Landscaping Requirements. On each Lot, the Owner from the time the dwelling is first occupied is required to plant, within ninety (90) days following the date of commencement of occupancy in the event not already planted, one tree in the front yard on such Lot from any of the following species of trees: Red Maple (*Acer rubrum*), Norway Maple (*Acer platanoides*), Northern Red Oak (*Quercus borealis*),

Burr Oak (*Quercus macrocarpa*), or Non-Fruit Bearing Crabapple, or any other species approved by Declarant, in writing, or once the Declarant no longer owns any Lots in Pemberley Hills or has delegated such approval to the Association, approved by the Board, a copy of which additional approved trees shall be kept on file with the Association. The tree planted in the front yard shall be a minimum of 2" caliper in diameter, 10' - 12' in height, and have a minimum spread of 4'. The tree shall be planted in the front yard of the Lot, outside the public right-of-way, upon such Lot, and not within an easement area without the consent of the easement holder.

In addition to the tree required above, the following minimum quantities of landscape plants shall be planted, or maintained in the event already installed, on the applicable Lot by the Owner from the time the dwelling is first occupied, within ninety (90) days following the date of commencement of occupancy in the event not already planted:

- (i) One additional tree on all Single-Family Lots which may be either deciduous trees whose trunks are at least 2" in caliper in diameter or evergreens that are at least 6' in height; and
- (ii) Ten (10) natural perennial plantings, deciduous shrubs and/or evergreen shrubs concentrated on the front and side yards within view from the street.

After such landscaping materials are planted the Owners of each Lot shall maintain, replace and replant such landscaping materials so as to maintain the minimum landscaping required by this Section.

Within ninety (90) days after completion of the single-family home upon a Single Family Lot, the front yard, side yards and rear yard shall be fully sodded.

If weather conditions make the time elements of the requirements of this Section 2.03(a) impossible to fulfill, Declarant, or once Declarant no longer owns any Lots in Pemberley Hills or has delegated such approval to the Association, the Board, shall establish a reasonable period of time for compliance.

It is the ultimate responsibility of the first and all subsequent Owners of a Lot to install and maintain landscaping; and Declarants have no responsibility to install or maintain landscaping on any Lots.

(b) Front Yard Requirements: Sodding. A minimum of seventy-five percent (75%) of the front yard of each Lot (excluding the driveways and sidewalk areas) must be maintained as a groomed yard. With the exception of permitted landscaping features, the front, sides and back yards of each lot shall be completely sodded following the completion of the single family home. If weather conditions make it impossible to comply with the foregoing requirements, Declarant, or if Declarant no longer owns any Lots in Pemberley Hills or has delegated such approval to the Association, the Board, shall establish a reasonable time within which to complete the sodding.

**2.04 Fences and Hedges.** No fences, walls, hedges or barriers shall be permitted upon Lots or adjoining property lines except as follows:

(a) All fences must be approved in writing by Declarant, or if Declarant no long owns any Lots in Pemberley Hills or has delegated such approval to the Association, the Board.

(b) Fences that are on rear or side yard lot lines abutting the Common Areas must be decorative iron or aluminum and be no higher than four feet (4') in height above ground level. No solid fences or hedges are permitted along such lot lines. If a Lot contains a swimming pool, a six foot (6')

high decorative iron or aluminum fence will be allowed in the rear and side yards of Lots abutting any such Common Areas.

(c) Walls, fences, or hedges located along the rear property lines and side property lines of Lots and not abutting Common Areas shall be decorative iron, decorative aluminum or wood and shall not exceed six feet (6') in height above ground level.

(d) Notwithstanding anything in this Declaration to the contrary, no Lot Owner shall have the right to erect a fence within or across any easement area shown upon the Final Plats of Pemberley Hills or recorded of record in the Dallas County, Iowa, Recorder's Office without the prior consent of the City or utility company or companies for whose benefit such easement runs. Any fence erected within or across an easement area without such consent may be taken down by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Lot Owner to restore or repair such fence.

(e) The fence fabric or fence screening materials, shall be mounted on the exterior face of the fence posts or fence framing. No chain link fence shall be permitted. All fences shall be kept in good repair and attractive appearance.

(f) No fences shall be built forward of the center line of the house built on a lot other than a front yard decorative fence. Except for permitted decorative fences, fences abutting Common Area, all fences shall be either wood, vinyl, or decorative wrought iron. All wood fences shall be natural in color, stained or painted in soft, earth-tone colors so as to blend in with the terrain. No front yard fences shall be permitted.

(g) No animal runs shall be permitted on any Lot in Pemberley Hills.

**2.05 Mailboxes.** If required by the City of West Des Moines, Iowa ordinances or the United States Postal Service regulations, Declarant shall install "cluster-style" mailboxes to serve groups of the Single Family Lots, substantially in accordance with the requirements of such ordinances or regulations, which mailbox, upon installation, shall become the property of the United States Postal Service without any further deed or transaction. Thereafter, the United States Postal Service shall maintain, repair and replace said mailboxes and any keys to said mailboxes.

**2.06 Playhouses, Utility Buildings and Other Accessory Structures.** Playhouses, utility buildings, storage sheds and other similar structures shall be approved in writing by the Declarant, or if Declarant no longer owns any Lots in Pemberley Hills or has delegated such approval to the Association by the Board; provided that the exterior and the roof of any such structure shall be constructed of the same material, have the same color and appearance as the residential house on the same Lot and are located only in rear yards. No such improvements shall be located in the closer than twenty feet (20') from any lot line.

Any animal houses and animal shelters shall be approved in writing by the Declarant, or if Declarant no longer owns any Lots in Pemberley Hills or has delegated such approval to the Association by the Board. Any animal houses and animal shelters shall be located at the rear of the house or garage provided that the exterior and the roof of any such structure shall be constructed of the same material, have the same color and appearance as the residential house on the same Lot. No animal house or animal shelter shall be located closer than twenty feet (20') from any lot line and no animal house. Any animal house or animal shelter shall not exceed seventy-two (72) square feet in area.

**2.07 Driveways.** No single-family home shall be constructed, altered, or maintained on any Lot unless it has a driveway from a street running to the single-family home. All parking and driveway areas

shall be hard surfaced, using a suitable thickness of Portland cement, or clay or concrete interlocking pavers installed in a manner suitable for vehicular travel.

**2.08 Sidewalks.** Except as hereinafter expressly provided to the contrary, four-foot (4') wide public sidewalks are required within the public right-of-way along all public streets abutting Lots on one side of the public right-of-way, as shown on the Final Plat, provided, however, Declarant may allow a lesser width of sidewalk for such distance as necessary to avoid a conflict between sidewalks and any fire hydrants. At the time a building is built upon such a Lot, the Owner of the Lot shall be responsible for construction of the public sidewalk along the portion of public street frontage(s) abutting said Lot and within any sidewalk easement areas on such Lot according to City specifications. The Declarant and the Association shall have no obligation to a purchaser or Owner of a Lot to install, maintain, or repair sidewalks.

**2.09 Garbage Cans and Equipment; Outside Storage; Holiday Displays.** No trash receptacles, garbage cans or recycling bins shall be permitted to be located upon a Lot unless hidden by an attractive screen of suitable height or unless sunken to ground level in a hole lined with permanent cribbing, except that garbage cans, trash sacks, recycling bins, yard refuse bags and other materials for collection by an authorized refuse collector may be placed at the pickup area designated by the City or its authorized refuse collection company on the evening of the day before the scheduled collection and may remain until the evening of the day of the scheduled collection of the same. Items such as compost containers, lawn or garden equipment, building materials, and other similar items shall be placed out of public view. No firewood shall be stored on any Lot. No material of any kind whatsoever may be stored in the front yard or side yard of a house (except that garden hoses may be stored in a side yard adjacent to an outside faucet if neatly coiled or contained on a hose reel), and no material of any kind shall be stored in a rear yard unless appropriately covered or screened from view by neighbors. No clothes lines shall be permitted. No clothing, rugs or other items shall be hung on or from any railing, landscaping or window. All repair of motorcycles, automobiles or other vehicles shall be done out of public view. No inflatable exterior holiday decorations shall be allowed on any Lot. No exterior holiday decorations shall be erected more than six (6) weeks prior to the holiday and all exterior holiday decorations shall be removed within three (3) weeks following the holiday. If the Owner of a Lot has not removed such holiday display within the foregoing time periods, and if the Owner of such Lot fails to remove such holiday display within fifteen (15) days after such Owner receives written notice given by certified mail, return receipt requested, or delivered in person, from the Declarant, the Association or from any Owner within five hundred (500) feet of such Lot, the Declarant, the Association or such Owner of the applicable Lot within five hundred (500) feet of the offending Lot shall have the right and easement to enter upon the premises and remove and dispose of the holiday display at the expense of the Owner of the applicable Lot where such holiday display is located, and shall have the right of action against the Owner of the applicable Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Dallas County, Iowa, until such amount, plus the reasonable costs, including attorney's fees of collecting such amount and costs of filing of such lien, incurred by the lienholder, is paid.

**2.10 Motor Vehicles, Boats, Recreational Vehicles, Trucks and Tents.** No inoperable vehicle, and no camper (including fold down camper), motor home, boat, tractor, trailer, three-quarter ( $\frac{3}{4}$ ) ton or larger truck, bus, snowmobile, or all-terrain vehicle, shall be parked or maintained on any Lot (except inside a garage) or on the public street adjacent to any Lot for a period of longer than three (3) consecutive days or for longer than a total of thirty (30) days in any calendar year. No tent shall be maintained on any Lot for longer than a total of thirty (30) days in any calendar year.

**2.11 Temporary Structures; Mobile Homes.** With the exception of temporary sales offices placed by Declarant or its agents, there shall be no temporary structures or partially completed structures shall be erected or occupied on any Lot. No mobile homes shall be permitted to be located upon or occupied on any Lot at any time.

**2.12 Swimming Pools.** Hot tubs and below-ground swimming pools are allowed provided that any hot tubs which are not below ground are skirted in wood or other materials approved, in writing, by Declarant, or once Declarant has relinquished control of the appointment of the Board, adopted or approved by the Board, which list of approved materials shall be kept on file with the Association and shall be uniformly applied. In the event there is a change in the approved materials for hot tubs, then all existing hot tubs that contain previously approved material may continue so long as such materials are maintained in good condition and repair and all replacements of such material shall conform to the new criteria. All swimming pools and hot tubs shall be located only in rear yards. Any outdoor hot tub must be located within ten (10) feet of the dwelling. No above-ground swimming pools are allowed. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or any other purpose.

**2.13 Satellite Dishes.** Satellite dishes or parabolic devices in excess of 22" in diameter used to receive television or other signals from satellites shall not be permitted. Declarant, or once Declarant has relinquished control of the appointment of the Board of Directors of the Association or delegated this responsibility to the Association, the Board of Directors of the Association, may increase or decrease the permitted size of satellite dishes or parabolic devices by a written notice of Declarant or resolution of the Board of Directors of the Association which shall be kept on file with the Association and shall be uniformly applied, except that any previously lawfully existing satellite dish or parabolic device that is in excess of the newly established maximum diameter for such devices may be maintained and repaired, but not replaced. The satellite dishes or parabolic devices shall be mounted on the rear elevation or the rear half of the side elevation only. In no event shall a satellite dish or parabolic device be mounted on the front elevation or the front half of a side elevation and in no event shall more than one satellite dish or parabolic device shall be located on any Lot.

**2.14 Towers and Antennas.** No extension tower, projection tower, receiver or antennas of any kind shall be constructed or maintained on any Lot or on the exterior of any building on a Lot.

**2.15 Livestock and Poultry Prohibited.** No animal, livestock, pigs or poultry of any kind shall be raised, bred or kept on a Lot except that dogs and cats may be kept so long as they are not kept, bred or maintained for commercial purposes or sale to the public. In no event, however, shall more than two dogs or cats, collectively, be maintained on any one Lot at any one time. All animals shall be tied, kept on a leash, fenced, or confined within an underground electrical fence area which outside perimeters are at least ten (10) feet from all property lines. Any person owning or keeping an animal shall be responsible for and shall at all times clean up any waste or excrement from such pets. Failure to do so in a responsible manner shall result in a fine or special assessment by the Association against such Lot on which the pet is or has been kept. Owners shall bear full responsibility for any animals kept on the Owner's Lot.

**2.16 Model; Sales Office.** Declarant reserves the right to maintain one or more house as a model or a sales and display office for itself, for its marketing firm, and/or for builders of homes within its plats; display or post signs of any type or size which are a part of the development and marketing of Pemberley Hills; and to have agents and employees equipment and material on any house used as a model or sales office.

**2.17 Utilities and Utility Meters.** All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground. Utility meters shall be hidden architecturally or through the use of remote reading devices. No private wells or septic systems shall be permitted on any Lot. No window mounted heating or air-conditioning units are permitted.

**2.18 Security Lighting.** Security lighting for driveways, parking and other external areas shall be designed, located and directed in a fashion, which will avoid direct lighting onto adjacent homes or Lots. Other than security lighting, no light poles are permitted on any Lot, except for decorative lights in the back yards for pool lighting or patio lighting and except for any Common Areas on which a common element is located, unless specifically approved by Declarant, or if the Declarant no longer owns any lots or has delegated such consent to the Association, of the Board.

**2.19 Noxious Activities.** No noxious or offensive activity, noise or odors shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance or nuisance, either temporarily or permanently.

**2.20 Maintenance of Lot.** The Owner of any Lot, whether vacant or improved, shall keep the Lot free of debris and shall keep the Lot mowed so that the grass or weeds do not exceed six (6) inches in height. Each Owner of a Lot shall cut such grass or weeds and/or remove such debris within fifteen (15) days after such Owner receives written notice given by certified mail, return receipt requested, or delivered in person, from the Association or from any Owner within five hundred (500) feet of such Lot. If the grass or weeds are not mowed within fifteen (15) days of receiving notice, the Association or Owner within five hundred (500) feet of the offending Lot shall have the right and easement to enter upon the premises and mow or cut the weeds or grass or remove the offending debris at the expense of the Owner of the Lot where such grass or weeds are not so mowed or such debris is located, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Dallas County, Iowa until such amount, plus the reasonable costs, including attorney's fees of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

**2.21 Construction Clean Up and Maintenance.** Each Owner shall confine all of its construction activities solely to its Lot, shall keep its construction site clean, shall prevent any damage to any of the Declarant Improvements constructed or to be constructed by Declarant or by anyone else, and shall prevent any dirt, construction debris or other material from its Lot from being washed, blown, thrown, dumped, deposited or otherwise getting into the storm sewers, any storm water detention ponds, any overland flowage ways, the public streets, the public sidewalks, the Common Areas, or onto any other Lot in Pemberley Hills. Weekly clean up of trash and debris is required. During construction, the Owner shall install and maintain silt fences or equivalent erosion control on the downhill property line(s) from construction on its Lot. Owners are responsible for their contractors or subcontractors. Such Owner shall promptly repair any such damage and restore all such facilities, other Lots and public streets to their condition immediately prior to such damage, destruction or deposit of dirt, construction debris or other material. If an Owner fails to adequately keep its construction site or the street clean or fails to repair any such damage and restore such facilities, other Lots or public streets, and such failure continues for more than three (3) days after written notice from the Declarant in whose plat such Lot is located or the Association, then such Declarant or the Association shall have the right and easement to enter upon the premises and perform such clean up, repair or restoration at the expense of the Owner of the Lot where such construction site is not adequately maintained or whose construction activity caused dirt and debris to be deposited upon the Lots of others or the public streets, and shall have a right of action against the Owner of such Lot for

collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum, or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Dallas County, Iowa until such amount, plus the reasonable costs, including attorney's fees, of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

**2.22 Requirement and Limitations with Respect to Public Easements Located upon an Owner's Lot.** Easements for the installation and maintenance of sanitary sewers, public utilities, storm sewers, surface water flowage areas and drainage ponds and related facilities, and/or water mains are reserved as shown on the recorded plats of any portion of Pemberley Hills as the same hereafter are filed from time to time, or any replat of any portion thereof. The Owner of any Lot in Pemberley Hills shall, at such Owner's expense, keep and preserve that portion of such easements within such Owner's property, at all times, in good condition, and shall neither erect nor permit erection of any building or structure of any kind nor permit any growth of any kind within such easement area nor change the grade of any such easement area in any manner that might interfere in any way with the use, maintenance, repair, restoration or replacement of any of the utility services, drainage, or sidewalks located in said easement area, without the prior consent of the City, or utility company or person or entity for whose benefit such easement runs. Any such building or structure erected, growth permitted, or change in grade made within an easement area without such consent may be removed or regraded by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Owner to restore, repair or replace such building, structure, growth or change in grade.

**2.23 Signage.** Signage within Pemberley Hills impacts the aesthetics of the neighborhood and property values. Declarant or the Association may erect a Pemberley Hills development identification sign within a signage easement at the entrance of the development and within the development. Any signage within Pemberley Hills shall meet the following requirements and restrictions.

- (a) In connection with the development of any plat within Pemberley Hills, Declarant may erect project signage, real estate signage, financing signage, contractor, supplier or subcontractor signage related to construction and financing of such plat development and sale of the developed within such plat.
- (b) In connection with the construction of any residence or building upon any Lot in Pemberley Hills the Owner or person constructing such residence or building may erect project signage, financing signage, contractor, supplier or subcontractor signage, or real estate signage related to the construction and financing of such residence or building and the sale of such residence or sale or lease of such building; provided, however, none of the foregoing signs shall be larger than 30" wide by 24" high without the written approval of Declarant or if Declarant no longer owns any Lots in Pemberley Hills or otherwise delegates this responsibility to the Association, the written approval of the Board.
- (c) Once a Lot is sold and occupied as a residential dwelling unit, signage on that Lot shall be limited to (i) address signage, (ii) owner identification signs, (iii) signs advertising real estate for sale ("For Sale Signs"), (iv) sign for garage sales ("Garage Sale Signs"), (v) signs for special event signs (such as birthdays, graduations, or anniversaries, hereafter "Event" Signs), (vi) signs for political campaigns and public voting matters ("Political Signs"), and (vii) other signs approved in writing by Declarant or, after Declarant delegates such function to the Association or no longer owns a Lot in Pemberley Hills, approved by the Board. For Sale Signs shall only be displayed while the applicable single-family home is for sale and must be removed the day following the closing of the sale. Garage Sale Signs and Event Signs shall only be displayed one

day before the sale or event, during the sale or event and must be removed by the day following the sale or event. Political Signs shall only be displayed up to two weeks prior to date of the vote or election, the day of the vote or election, and must be removed by the day following the vote or election. Political Signs not related to an election shall only be displayed for a maximum of two weeks. Other signs permitted by Declarant or the Board shall only be displayed for such time as authorized by Declarant or the Board, as applicable. All of the foregoing described signs shall be limited to no more than a 30" wide by 24" high yard sign and shall be professionally constructed. No hand painted signs will be allowed. Except for address and owner identification signs, no signs shall be erected on any building elevation, erected so that it is visible through window or glass openings or, except for vehicles with professionally made business signage on the vehicle, attached to vehicles parked within the neighborhood.

(d) The Declarant or the Association may establish and amend from time to time rules governing any signage, if any, to be erected within the Common Areas and all such rules shall be on file with the Association. No one shall erect any signs within the Common Areas without the consent of the Declarant or the Association.

### **ARTICLE III** **MEMBERSHIP AND VOTING RIGHTS**

**3.01 Membership.** Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification of membership.

**3.02 Voting.** The Owners of a Lot shall be entitled to one vote for each Lot owned.

**3.03 Declarant as Sole Voting Member.** Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Association for so long as it holds title to any Lot, or until Declarant waives, in writing, its right to be the sole voting Member. As such sole voting Member, Declarant shall have the right to elect all Directors of the Association and to cast all votes as it deems appropriate.

**3.04 Board of Directors.** The voting Members shall elect a Board of Directors of the Association as prescribed by the Association's Bylaws. The Board of Directors shall manage the affairs of the Association.

**3.05 Suspension of Voting Rights.** The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against the Member's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

**3.06 Notice of Member's Meetings.** Unless the Articles of Incorporation or Bylaws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary, or the officer or persons calling the meetings, to each Member entitled to vote at such meeting. So long as Declarant is the sole voting member of the Association, no regular or special membership meeting of the Association need be held.

**ARTICLE IV**  
**COVENANT FOR ASSESSMENT**

**4.01 Creation of a Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot 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 as provided in this Declaration and the Articles of Incorporation and Bylaws of the Association. The assessments levied by the Association and any other charges against the Owner of a Lot set forth elsewhere in this Declaration, together with any interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made senior to all liens except the first mortgage of record and any ad valorem taxes. Such assessment or charge, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment or charge fell due. The personal obligation for delinquent assessment or charge shall not pass to said Owner's successor in title unless expressly assumed by them.

**4.02 Purpose of Assessment.** The assessments levied by the Association shall be used exclusively for the purpose of carrying out the general duties, powers and obligations of the Association, including but not limited to, operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of the Storm Water Management Easement at Pemberley Hills and other improvements to Pemberley Hills constructed by Declarant, insurance coverage of the Association and its property, any legal or other costs of enforcement of this Declaration, and for such other reasonable reserves as the Board deems necessary. In making such assessments, the amount to be levied shall equal to the actual cost to the Association providing those functions and services set forth in this Declaration.

**4.03 Rate of Assessment.** The assessments levied upon and against Pemberley Hills and the Owners thereof shall be a share of the total amount of each assessment prorated equally among such Lots within Pemberley Hills and the Owners thereof as of the beginning of the period for which such assessment applies.

**4.04 Procedures.** All assessments shall be made in the manner and subject to the following procedures, to wit:

- (a) Notice of all assessments may be given by mail addressed to the last known mailing address of the Owner of the Lot or may be given by personal delivery to the Lot itself.
- (b) Every assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided. From and after the date when said payment is due, it shall bear interest at a rate of twelve percent (12%) per annum until paid and such payment and interest shall constitute a lien upon the assessable property and said lien shall continue in full force and effect until the assessment is fully paid. At any time after the passage of the resolution levying an assessment and its entry in its minutes, the Board may, in addition, execute and record in the applicable Recorder's Office in Dallas County, Iowa, and the Board may, upon payment, cancel or release any assessable property from the liability of assessment (as shown by recorded instrument) by executing, acknowledging and recording (at the expense of the Owner of the property affected) a release of such assessment with respect to any assessable property affected, and the Board shall cause to be noted from time to time in the minutes of its proceedings, the payment made on account of assessments. Notwithstanding any other provisions herein, the Association may bring an action at law against the Owner personally obligated to pay such assessment, or foreclose the lien against the assessable property in the

manner provided for foreclosure of a mortgage, or both, there shall be added to the amount of such assessment, the cost of preparation, and filing the Petition in such action including reasonable attorneys' fees. No Owner of assessable property may waive or otherwise escape liability for the assessments provided for herein by non-use or the common areas or abandonment of its assessable property.

- (c) The assessments shall commence as to each respective Lot on the date of conveyance to an Owner of a Lot with a completed building constructed thereon and for which a certificate of occupancy has been issued (with a pro rata proration of the assessment being due from the owner if the closing date is after the assessment payment period) and as set by the Board thereafter. LOTS OWNED BY THE DECLARANT THAT DO NOT HAVE COMPLETED BUILDINGS OR LIVING UNITS CONSTRUCTED THEREON AND COMPLETED UNITS OWNED BY THE DECLARANT THAT ARE NOT SOLD, LEASED OR OCCUPIED OR THAT ARE USED AS MODEL UNITS OR SALES OFFICES SHALL BE EXEMPT FROM THE ASSESSMENTS DESCRIBED IN THIS DECLARATION.
- (d) 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 Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.
- (e) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The assessment, and any late fees, interest, or administrative fee shall be paid prior to or at the closing of sale or transfer of any Lot. The sale or transfer of any Lot pursuant to foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments against such Lot that became due prior to the date of such sale or transfer.

## **ARTICLE V** **EASEMENTS**

**5.01 Signage, Entrance Landscaping and Irrigation.** Declarant hereby grants to the Association, for and on behalf of the Owners of all Lots within Pemberley Hills, an easement for the purpose of installing, maintaining, operating, repairing, replacing and removing any signage, flags, other entrance features and landscaping in, on, over, and under such easement areas as are dedicated for such purposes. This easement is subject to the following:

(a) The signs shall be Pemberley Hills identification signs. All such signs shall conform to the ordinances, rules, and regulations of the City. Any electrical service for such signs shall be separately metered or otherwise separately billed by the public utility furnishing such electrical service and charged to the Association. Neither Declarant nor the Association is required to install or maintain signs in any or all of these sign easement areas.

(b) Declarant may install entrance features, signs and landscaping and the Association may install entrance features, signs and landscaping and the Association shall maintain, operate and replace all signs, entrance features, landscaping within such signage and landscaping easement areas, including, but not limited to, paying for any electrical or water service for such operation and maintenance.

(c) Neither Declarant nor the Association shall locate any such signage, entrance features, or landscaping in a manner to obstruct any vision triangles that overlap a portion of any such easement area, if any.

(d) The Owner of the Lot upon which any such easement is located shall not make any modifications or improvements to any such easement area without the consent of the Association, which consent shall be in the Association's sole discretion.

**5.02 Common Area to be Conveyed to and Maintained by Association.** Various Outlots will be developed as Common Areas within Pemberley Hills and will be conveyed to the Association. The Common Areas shall be subject to an easement that is hereby granted to the Owners of the Lots within Pemberley Hills for the use and enjoyment of the Owners of Lots within Pemberley Hills and their family, guests and invitees subject to the rules and regulations as may be established, modified or repealed from time to time by the Declarant or the Association and distributed to the Owners of Lots within Pemberley Hills and kept on file with the Association, and the Association may impose reasonable fees for the use of some of the facilities if it determines such charges to be appropriate. The Association shall own, maintain and repair these Outlots and all Improvements located thereon, and may, in its sole discretion replace, relocate or demolish any Improvement that is no longer in good condition and repair.

Declarant, for so long as it owns any portion of Pemberley Hills, reserves to itself and its successors and assigns, the right to grant perpetual, alienable easements under, through and across any of the Common Areas for the construction, maintenance, repair and replacement of any water mains, sanitary sewer lines or storm sewer or surface water drainage facilities to be granted to the City of West Des Moines or any public utility easements for the construction, maintenance, repair and replacement of any electrical service, natural gas service, telephone service, cable television service or data transmission service to serve or extend service of the same to any Lots in Pemberley Hills. These reservations and rights expressly include the right to cut trees, bushes, or shrubbery, rights to change the grade of the Common Area, or to take any other similar action reasonably necessary to provide economical and safe utility installation and maintain reasonable standards of health, safety and appearance; provided that Declarant shall cause the surface of such Common Area and any improvement in such Common Area that is damaged as a result of the use of such easement area to be restored to a similar condition to prior to such work or shall place the burden for such restoration upon the grantee of such easement. This right shall not create any obligation on the part of Declarant to provide or maintain any such utility or service.

**5.03 Easements Subject to Concurrent Public Utility Easements.** All of the easements granted in this Article are subject to the following concurrent easements granted in part or all of these respective easement areas: (a) any sanitary sewer easements, storm sewer and/or surface water flowage easements, or trail easements granted to the City, and (b) any public utility easements granted to the electric company or companies providing electrical service within the City, to the natural gas company or companies providing natural gas services within the City, to the telephone company or companies providing telephone service within the City, to the cable television company or companies providing cable television service within the City, and to the data transmission company or companies providing data transmission services within the City.

## ARTICLE VI

### **STORM WATER DETENTION AND SURFACE WATER FLOWAGE**

**6.01 Easement.** Pursuant to that certain Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement, granted by Barnes Estates, LLC to the City, dated May 26, 2015 and filed for record in the Office of the Recorder for Dallas County, Iowa, on June 22, 2015 in Book 2015

at Page 9685, a storm water detention and surface water flowage easement was created over the following described land:

Outlot Y and Outlot Z of Pemberley Hills Plat 1, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa, (hereinafter referred to as the "Storm Water Detention Easement").

**6.02 Obligations of the Association.** The Association shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Storm Water Detention Easement conveyed to it and all improvements thereon, including but not limited to maintaining the storm water detention and retention ponds or basins, the grass and bioretention swales, riparian buffer, the overall structure, plantings, grade, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the Storm Water Detention Easement.

In the event that the need for maintenance or repair of any portion of the Storm Water Detention Easement or the improvements thereof, or of any other elements of the Storm Water Detention Easement is caused through the willful or negligent act of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the cost of such maintenance or repair, shall be added to and become part of the assessment to which the Owner is subject, shall be a lien upon the Lot and any buildings of such Owner, and shall become due and payable upon demand.

**6.03 Title to Easement Area.** The Declarant hereby covenants for itself, its successors and assigns, that it shall convey title to the Storm Water Detention Easement to the Association, prior to the sale of the last Lot in Pemberley Hills, by warranty deed, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions of record or created pursuant to this Declaration.

**6.04 Duration.** The Storm Water Detention Easement shall not be diminished and shall continue in perpetuity, unless this Declaration and that certain Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement are terminated and the Storm Water Detention Easement is partitioned among the Owners.

## **ARTICLE VII DECLARANT'S RIGHTS**

Declarant reserves the right to use any of the Lots as models and to sell, assign, or conduct other business in connection with the construction and development of the project from any such 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 agents, and to show the Lots then unsold. Declarant also reserves the right to make changes in the number, location, or manner of construction of buildings and other improvements on the Property provided that in all cases such changes shall be accomplished in a manner consistent with applicable laws and ordinances.

Declarant reserves the rights and is hereby vested with the sole control over all common areas (including the Storm Water Detention Easement), including landscaping, plantings, and the like. Declarant shall have the right to change landscaping within these areas from time to time.

Declarant further reserves the right to convey, or cause the Association to convey, a portion of any common area, if any, if necessary due to encroachments thereon by any buildings. Declarant shall also have the right to add additional real property, Lots and common areas to Pemberley Hills.

The rights of the Declarant shall continue only so long as Declarant owns one or more Lots.

**ARTICLE VIII**  
**GENERAL PROVISIONS**

**8.01 Rights of Enforcement.** In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Owner of any Lot, and the Association shall have the right to enforce the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorney's fees and the costs and expenses incurred as a result thereof.

**8.02 Insurance.** The Association shall purchase and maintain property and liability insurance on the Storm Water Detention Easement and any property owned by the Association, directors and officers liability insurance and such other insurance as the Board of Directors deems necessary and appropriate. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors the Owner's right to adjust with the insurance companies all losses under policies purchased by the Association.

**8.03 Amendment.** Declarant may amend this Declaration at any time without the approval by the other Owners so long as Declarant has any ownership interest in any Lot. Thereafter, this Declaration may be amended or changed at any time by an instrument recorded in the office of the Recorder for Dallas County, Iowa, signed or approved in writing by at least fifty-one percent of the then Owners.

This Declaration may also be amended by the Declarant, if it then has any ownership interest in Pemberley Hills, at any time 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 Property or any portion thereof.

**8.04 Covenants Binding and Running with the Land; Duration.** Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of the Declarant, the Association and the Owners of each Lot in Pemberley Hills, and their successors and assigns and all parties and persons claiming under them, and shall be deemed covenants that run with the land and shall continue for the applicable periods specified in this Declaration.

The easements granted in or pursuant to this Declaration, any other provisions of this Declaration expressly incorporated in any Section of this Declaration granting such easements to the extent applicable to such easements, and any other covenants, indentures, restrictions and reservations of this Declaration that are reasonably necessarily incidental to the benefit or burden of such easement rights, including any rights of assessment for liens for the payment of costs associated therewith, shall continue in perpetuity, unless sooner modified or terminated as provided in this Declaration.

Except as provided in the preceding paragraph of this Section, the covenants, indentures, restrictions and reservations in this Declaration shall be for an initial period of twenty-one (21) years from the date of recordation in the Dallas County, Iowa, Recorder's Office, and shall automatically extend for successive periods of twenty-one (21) years each unless prior to the expiration of any such twenty-one-year period it is amended or changed in whole or part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment of decree shall in no way affect any of the provisions hereof, but the same shall remain in full force and effect.

It is the intent that, notwithstanding anything in the Code of Iowa to the contrary, all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be covenants running with the land for the full period specified in this Declaration without further action by either Declarant, Association, or any Owner of any Lot. However, in the event that Section 614.24 of the Code of Iowa, as the same may be amended or replaced, may require that a verified claim be filed in the Dallas County, Iowa, Recorder's Office prior to the twenty-first anniversary of the date of this Declaration or the twenty-first anniversary of the last filing of such verified claim in order to continue all or some of the covenants of this Declaration, including, but not limited to, any covenant, term provision or restriction that is or may be considered a use restriction, reversion or right of reverter, in effect throughout the applicable periods specified in this Declaration, then:

(a) the Association, or the Owner of the Lots acting jointly or severally, may file all verified claims necessary to keep all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable period specified in this Declaration, and each Owner of a Lot, by virtue of its acceptance of a deed to such Lot, shall be deemed to have granted a power of attorney to the Association, as the agent or attorney in fact for such Owner, to file such verified claim on behalf of such Owner, which power of attorney is coupled with an interest and irrevocable;

(b) a verified claim filed by the Association or any Owner of a Lot shall be valid and binding upon the Association and all the then Owner of Lots and their successors and assigns, with the same effect as if executed by all such persons, and in order to facilitate filing of any verified claim required to so continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration in full force and effect, the Association and each Owner of a Lot is hereby irrevocably appointed the attorney-in-fact for all of the other Owners of Lots for the purpose of filing any such verified claim;

(c) that each Owner of a Lot by acquisition of its interest in the Lot or under this Declaration, whether or not expressly provided in any instrument creating such interest, hereby waives its right to assert failure to file any verified claim required by the Code of Iowa as a legal basis to avoid any duty or obligation upon it and its respective portion of the Property throughout the applicable period specified in this Declaration.

**8.05 No Public Dedication.** Nothing contained in the Declaration shall be deemed to be a gift or dedication of any portion of the Property to general public, or for the general public, or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration shall be strictly limited to and for the benefit of the Owners of the Lots and the purposes herein expressed.

**8.06 Release Upon Sale.** Subject to the provisions of this Section, if an Owner of a Lot sells, transfers, or assigns its Lot (other than as security for a loan), then it shall be released from its future assessment obligations under this Declaration. It shall be a condition precedent to such release and discharge that any and all amounts that shall then be due and payable by such Owner under the terms of this Declaration have been paid.

Notwithstanding anything in this Declaration to the contrary, it is expressly understood and agreed that any first mortgagee who shall have acquired title to any Lot or portion thereof, through foreclosure or deed in lieu of foreclosure, shall not be personally liable for any obligations under this Declaration that arose with respect to the obligations of the Owner of such Lot prior to the date such mortgagee so acquired title thereto; provided, however, that any existing lien or right to a lien against such Lot or Parcel allowed by this Declaration or as a result of enforcement of this Declaration with respect to matters

occurring before such mortgagee so acquired title thereto shall continue and remain in full force and effect.

**8.07 Severability.** In the event any provision of this Declaration is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

**8.08 Time of Essence.** Time is of the essence with respect to the performance of each of the conditions, covenants, terms and provisions of this Declaration.

**8.09 Governing Law.** The Declaration shall be construed in accordance with the laws of the State of Iowa.

**8.10 Captions.** The captions of the Articles, Section and Subsections of this Declaration are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

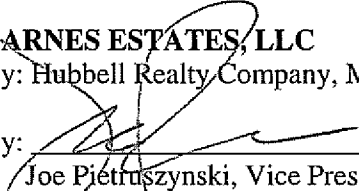
**8.11 Authority to Execute.** Declarant hereby represents and covenants that the provisions of the Articles of Incorporation and Bylaws of Declarant have not been modified or revoked and remain in full force and effect and are true and correct as of this date.

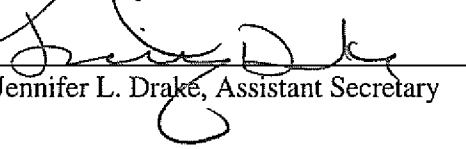
**IN WITNESS WHEREOF,** Declarant has duly executed this Declaration as of the date and year first above written.

[Signatures appear on following page.]

**BARNES ESTATES, LLC**

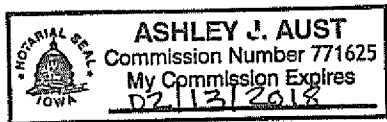
By: Hubbell Realty Company, Managing Member

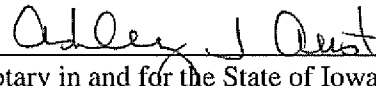
By:   
Joe Pietruszynski, Vice President

By:   
Jennifer L. Drake, Assistant Secretary

STATE OF IOWA                    )  
  ) SS.  
COUNTY OF DALLAS            )

This instrument was acknowledged before me on this 24<sup>th</sup> day of March, 2016, by Joe Pietruszynski and Jennifer L. Drake as Vice President and Assistant Secretary respectively of Hubbell Realty Company, managing member for Barnes Estates, LLC.



  
Notary in and for the State of Iowa