

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
TIMBER RIDGE ESTATES, Phase II  
MADISON COUNTY, IOWA**

Exclusive Properties, L.L.C., hereinafter referred to as "Declarant", is now the fee simple owner and record titleholder of the following-described real estate:

A part of the Northeast Quarter of Section 29, Township 77 North, Range 26 West of the 5<sup>th</sup> P.M., Madison County, Iowa, more particularly described as follows:

Beginning at the Center of said section 29, Township 77 North, Range 26 West of the 5<sup>th</sup> P.M., Madison County, Iowa; thence North 83°19'09" East 911.45 feet along the South line of the Northeast Quarter of said Section 29; thence North 07°19'20" West 432.56 feet along the West line of existing Parcel "A"; thence North 83°19'09" East 325.96 feet along the North line of existing Parcel "A"; thence South 01°02'25" East 434.64 feet along the East line of Parcel "A" to a point on the South line of said Northeast Quarter; thence North 83°19'09" East 735.29 feet along the South line of said Northeast Quarter; thence North 16°41'00" West 596.85 feet; thence North 40°41'27" West 710.00 feet; thence North 53°57'52" East 120.00 feet; thence North 15°01'13" West 670.00 feet; thence North 28°52'05" East 330.00 feet; thence North 78°27'06" West 760.00 feet; thence North 01°50'36" East 220.00 feet to a point on the North line of said Northeast Quarter; thence South 83°15'35" West 616.94 feet along the North line of said Northeast Quarter to the North Quarter Corner of said Section 29; thence South 00°13'26" West 2640.38 feet to the Point of Beginning containing 80.060 acres including 4.357 acres of County Road right-of-way

which real estate is being platted as Timber Ridge Estates, Phase II Madison County, Iowa.

Said owners do hereby impose and subject said real estate to certain regulations, covenants, restrictions and easements as to the use and occupancy thereof, as follows:

**ARTICLE I**

**Definitions**

Section 1. "Association" shall refer to Timber Ridge Estates Homeowners' Association, Inc., which shall be a non-profit residential real estate management association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the property, except that a vendee in possession under a recorded contract of sale of any lot shall be considered the owner rather than the contract seller being the owner. Those having an interest merely as security for the performance of an obligation shall not be considered an owner.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described and such additional real property which includes lots or plats as may hereafter become subject by covenants of record to assessment by the Association or hereinafter become Common Area.

Section 4. "Common Area" shall mean and refer to the private roadway maintained by the Association, including the improvements thereon, ownership of which shall be maintained by the Association for the common use and enjoyment of the owners. The Common Area shall also be all portions of paving, rock roads, and utilities located in the Common Area.

Section 5. "Lots" shall mean and refer to the numbered lots as shown upon any Plats within the Property.

Section 6. "Association Responsibility Elements" shall mean the following, whether located upon a "Lot" or upon the "Common Area": (a) The access roads constructed by the Declarant or the Association and owned by the Association. (b) Conduits, ducts, plumbing, wiring, pipes and other facilities located on the above roads which are carrying any service to any "Lot". (c) Street signs owned by the Association, including such signs located on property owned by Madison County, Iowa.

## ARTICLE II

### Property Rights and Maintenance

Section 1. Owners' Easements and Enjoyment. Every Owner shall have a right and

easement and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Board of Directors of the Association to dedicate or transfer any part of the Common Area to any public agency, authority or utility for such purposes. No such dedication or transfer by the Board of Directors shall be effective unless an instrument agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate to any person who resides within the subdivision, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family or his tenants.

Section 3. Association Responsibility Elements. No person, other than the owner of a Lot, his or her invitees and other users of the roads, shall have the right to enter upon, use or affect an Association Responsibility Element located adjacent to a Lot except that the Association and its designees may enter the Common Area at reasonable times for the following purposes: (a) Enforcement of any provision of this Declaration or the Articles of Incorporation or the By-Laws of the Association. (b) Mowing and maintenance of grass areas. (c) Snow removal. (d) Inspection, maintenance or repair of any Association Responsibility Element. and (e) For any other reasonable purpose of the Association.

Section 4. Maintenance. The Association shall be responsible for the maintenance of the Common Area and the improvements thereon, as well as the Association Responsibility Elements as herein defined.

### ARTICLE III

#### Homeowners' Association, Membership and Voting Rights.

Section 1. Homeowners' Association. The management and administration of the

properties shall be governed and managed by a Homeowners' Association organized and existing under Chapter 504A of the Code of Iowa.

Section 2. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership is mandatory and shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3. All owners shall be entitled to one vote in the Association for each Lot. When more than one person holds an interest to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine; but, in no event, shall more than one vote be cast with respect to any Lot.

Section 4. Notwithstanding any other provisions of this Declaration, the Declarant, its successors and assigns, shall be the sole voting membership of the Association until Declarant no longer owns any portion of the property, or until Declarant waives in writing this right to be the sole voting membership, whichever first occurs. While the sole voting member, the Declarant, its successors and assigns, shall have the right to elect all Directors of the Association. Declarant shall waive, in writing, its right to be the sole voting membership when all lots have been sold.

#### ARTICLE IV

##### Covenants for Maintenance Assessments.

Section 1. Creation of Liens and Personal Obligations of Assessments. The Declarant, for each Lot owned within the properties, hereby covenants, and each Owner of any Lot by acceptance of a Deed thereof, whether or not it shall be so expressed in such deed, is deemed to consent and agree to pay to the Association: (1) Annual assessments or charges; and (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, together with

interest, costs and reasonable attorney's fees, which shall be a charge upon each Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such Lot at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to the owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by and for the Association shall be used exclusively to promote the health, safety and welfare of the residents of the property and for the improvement and maintenance of the Common Area and the Association Responsibility Elements.

Section 3. Annual Assessment. (a) For the period commencing January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment shall be fixed by the Board of Directors of the Association. (b) The Board of Directors shall fix the annual assessment each year thereafter. (c) A Lot shall not be subject to assessment until the first day of the month following the date of possession of such Lot.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessment 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, which shall include the surfacing or maintenance of any such roads.

Written notice of any meeting called for the purpose of taking any action authorized under this Section shall be sent to all Members entitled to vote not less than 10 days nor more

than 30 days in advance of the meeting. The acts approved by a majority of lot holders present at the meeting shall constitute acts of the members.

Section 6. Uniform Rate of Assessment. Annual assessments, special assessments for capital improvements, and insurance assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis, except as otherwise specifically provided herein.

Section 7. Date of Commencement of Annual Assessments: Due Dates. Annual assessments 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 Lot at least 30 days in advance of each annual assessment period. Written notice by ordinary mail of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. A properly executed Certificate of the Association as to the status of an assessment on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Insurance and Insurance Assessments. In addition to the annual assessments and 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 for the Association Responsibility Elements. This provision shall not relieve any owner of any Lot from obtaining homeowners' liability insurance and casualty insurance for the property of such owner. In the event of a casualty loss upon the Common Area, the Association shall be responsible for the repair and restoration of the Common Area and the Owner shall be responsible for the repair and restoration of any building or improvements on his Lot.

Section 9.     Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments not paid within 30 days after the due date shall bear interest from the due date at the rate of 12% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against property. 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 Lot.

Section 10.     Utilities. Each Owner shall be responsible for payment of all utility services to his Lot, including but not limited to, electricity, water, gas, telephone, sewer services, and cable television services. Each lot requires its own septic service at the owner's expense. Percolation tests, should they be required by the Madison County Public Health Department, are the responsibility of the owners. Each Owner, or group of Owners, shall also be responsible for servicing their private mechanical sanitary sewer systems or any other type of sewer system used, per manufacturers or designers recommendations but in no case less than annually, as well as maintaining same so as to be in compliance with all health, safety and other local, county, state and federal codes, rules, regulations or laws of every kind or nature applicable thereto. Further, each Owner, or group of Owners, shall supply written proof and documentation of the routine maintenance of their respective private mechanical sanitary sewer system, or other system used, to the Association, as the Association requires from time to time. If Owner, or group of Owners, does not comply with this requirement, and after written notice by the Association (in the form as set by the Association), the Association may, but is not required to, treat the respective Owner or Owner's sewer system as an "Association Responsibility Element", enter upon the Lot(s), and inspect, service, repair and/or maintain said sewer system as the association sees fit, and

charge the cost of same directly to the respective Lot Owner or Owners as a Special Assessment, as elsewhere provided. There shall be no surface drainage of any sanitary sewer system.

Section 11. Assessments for County Related Improvements. Notwithstanding any other provisions of this Article, the Board of Directors may establish an assessment for the maintenance, improvements or reconstruction of street signs, street lights, fences and sidewalks, if necessary, to comply with any directive of Madison County, Iowa.

## ARTICLE V

### Use of Residential Lots and Restrictions

Section 1. Use and Restrictions. Subject to the provisions of this Declaration, the following shall govern and restrict the use, occupancy and alienation of lots within Timber Ridge Estates, Phase II:

a. Lots within the Subdivision are to occupied and used only for residential purposes by lot owners and their families, tenants and social guests. No occupant of a lot shall create a nuisance to other occupants or interfere with the peaceable possession of occupation of other lots. There are no restrictions on occupancy or alienation by reason of age, race, sex or religion.

b. These general restrictions shall apply to all lots within the Subdivision:

1. All setbacks will be in accordance with the Madison County regulations and building setbacks as shown on the recorded plat.

2. Easements for installation and maintenance of utilities, roads and drainage facilities are reserved as shown on the recorded plat of Timber Ridge Estates, Phase II. In the drainage easement areas there shall be no construction of disturbance of the soil, and no trees or shrubs shall be planted in the drainage easement areas. In the the other



easement areas there shall be no building or structure of any kind erected nor any growth of any kind planted or maintained which might interfere in any way with the use and patrolling of any of the utility services and roadways located in the easement areas. The Owner or occupant of lot shall at his or her expense keep and preserve that portion of the easement or easements within his or her property at all times in good repair and condition.

3. Drainage of storm and surface waters in the plat will be by open surface water drainage courses in true keeping with the rural nature of the zoning classification. Each Owner will be responsible for accepting any upstream drainage including drainage from streets and street culverts, and passing the water across the street to the downstream side. The Owner shall not divert drainage from its natural course to another lot without the express written consent of the other Owner. Each Lot Owner agrees to maintain, keep free of weeds and debris and keep in good repair, at no costs or expense to Madison County, any surface water drainage, or storm drainage way, located on, over and across the Lot. Madison County in no way assumes responsibility for maintenance of surface water drainage courses or any damage that may be caused by the surface after drainage course to each of every Lot or improvements placed thereon, in the Plat.

4. No building or structure of a temporary character and no trailer, basement, tent, shack, garage or Outbuilding shall be used at any time as a residential dwelling on any lot, either temporarily or permanently.

5. No boat, snow mobile, recreational vehicle, trailer, or other vehicle other

than automobiles shall be stored or parked on any Lot unless enclosed in a House or Outbuilding. The Association may limit or prohibit the parking of automobiles on any street or driveway. In the event of violation of this provision the Association may, after reasonable notice, remove such boat, snow mobile, recreational vehicle, trailer or other vehicle and assess the costs of such removal to the Owner of the Lot.

6. The Owner or person in possession of each Lot, whether vacant or improved, shall keep the same mowed and free of debris. Each Owner agrees that after written notice given by certified mail to such Owner or person in possession by the Association or any property within 500 feet of such lot, such weeds and/or such debris shall be removed within fifteen (15) days, failing which the Association giving such notice may enter upon the property to cut or cause to be cut such weeds, remove or cause to be removed such debris, and shall have a right of action against the Owner of such lot for the collection of the costs thereof.

7. Each Owner shall be responsible for the repair, maintenance and replacement of utility services and lines serving his or her Lot.

8. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdictions, shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of property shall be the same as the responsibility for the maintenance for the repair of the property concerned.

9. No lot shall be subdivided, partitioned, replatted or in any way divided so as to create more than one parcel of real estate for the purpose of constructing and

maintaining a House thereon.

10. No signs of any kind shall be displayed to the public view on any lot, except, signs of not more than six (6) square feet advertising property for sale or rent, or signs used by a builder to advertise the property during construction. Excluded from this provision is subdivision marketing signage as erected by Declarant, which is specifically allowed.

11. If any lot owner decides to erect a fence upon his lot in conformity to these Conditions, Covenants and Restrictions, the total cost of installation of such fence shall be borne by said lot owner as well as the cost of all future maintenance of the fence. No adjoining lot owner shall be required to participate in the cost of the erection or maintenance of any fence. Any fence erected shall be the sole property of the lot owner and can be removed by such lot owner at his discretion. Nothing in this paragraph shall be deemed to preclude a fencing agreement between adjoining lot owners for erection and maintenance of a common fence; however, for any such common fence agreement to be enforceable upon future lot owners, such fencing agreement must be in writing and filed on record in the Madison County Recorder's office in order to apprise prospective purchasers of their obligations with respect to such fencing.

## Section 2. Architectural control.

a. No building or structure, nor any addition or alteration thereof shall be constructed, altered, or maintained on any building plot unless and until detailed plans, specifications, proposals, and site plans (hereinafter collectively referred to as "Plans") shall have been filed in writing and have been approved in writing by the Association. The Association shall have a right

to charge a fee for filing of such plans.

b. Submitted plans shall contain details of design, color scheme, elevation, site grade, fencing, roofing, solar systems, and location of dimensions of structures, walks, driveways, landscaping, yard lights, and mailboxes and shall also state the type of construction, including the submission of proposed external details. The Association shall not unreasonably withhold approval of plans submitted pursuant hereto provided, however, that failure to meet covenants, restrictions and conditions contained herein shall be grounds for the Association's reasonable disapproval of such plans.

c. Failure of the Association to disapprove plans within sixty (60) days of submission of said plans shall be deemed to be approval thereof. The Association and its designated architect shall not be liable to anyone in damages who has submitted plans for approval, or to any Owner by reason of mistaken judgment, negligence, or nonfeasance of itself, its agents or employees arising out of or in connection with the approval or disapproval of any such plans.

d. Plans approved by the Association shall permit the Owner of a building plot to construct in accordance with said plans and in conformity of the applicable codes. Dirt removal, excavation or construction shall not be commenced until approval therefore has been received from the Association.

e. Any deviation in construction on any building plot from approval plan, which in the judgment of the Association is of substantial detriment to the appearance of the structure or surrounding area, shall be corrected to conform to the approval plans at the expense of the Owner of the building plot.

f. The Association may grant permission to allow reasonable variances from the strict

application of the provisions of this Declaration of Covenants, Conditions and Restrictions.

g. Each dwelling must have a minimum of 200 square feet of masonry or stone on the front side of the dwelling.

Section 3. Minimum dwelling floor area requirements. a. One-story dwellings must have a ground floor finished area of not less than 1,800 square feet. b. One and one-half story dwellings must have not less than 1,500 square feet of finished area on the ground floor and a total on the ground floor and second floor of not less than 2,300 square feet of finished area. c. Two-story dwellings must have not less than 1,300 square feet of finished area on the ground floor and a total on the ground floor and second floor of not less than 2,600 square feet of finished area. d. Split-entry dwellings must have not less than 1,900 square feet of finished area directly under the roof and a total finished area of 2,400 square feet.

In the computation of floor area, the same shall not include any porch breezeways, garages, attics, cellars, and basements.

Section 4. Design and construction of House and Outbuildings.

a. No mobile home or manufactured home, as defined in the Code of Iowa, shall be placed upon or erected on any Lot.

b. No House, Outbuilding, or any other structure shall be constructed, altered or maintained on any lot unless it has a driveway running from a street to the home which must be of a sufficient area to park at least two (2) automobiles entirely off the street. All driveways shall be constructed of concrete, bituminous surfacing, or three-quarter (3/4) inch limestone gravel. The maximum size of outbuildings shall not exceed the square footage of the main level of the dwelling and must have overhangs on all sides.

c. All dwellings must have, at a minimum, double-attached or double-basement garages.

In addition, the garage opening, whether attached or part of any Outbuilding, shall be designed in such a manner that it does not face the front boundary of the lot upon which it is constructed.

d. No more than twelve (12) inches of concrete block, poured concrete, or clay tile foundation shall be exposed on any building and any such exposed materials shall be painted or covered with brick or stone veneer.

e. Any dog run, trash receptacle, or other outside structure of like nature shall be properly screened by reasonable shrubbery or decorative fence to maintain a neat lot appearance.

f. All Houses, or Outbuildings, or improvements of any kind must be completed within twelve (12) months of the commencement date of the construction.

g. No above ground or non-permanent swimming pools shall be permitted on any lot.

h. No chain link fence, snow fence or temporary fence of any kind shall be permitted on any lot except that a chain link fence may be permitted around a dog run or tennis court, provided the chain link fence is black.

i. Each Owner of a lot will be required before occupancy of a Dwelling or Outbuilding to plant four (4) hardwood trees (2" caliper or more). In addition, the front yard, up to the building setback line, shall be seeded. The 30 foot area immediately surrounding the House shall be sodded prior to occupancy. If said occupancy will occur during a season which makes it impossible to accomplish each task, occupancy shall occur and said work will immediately be completed by the Owner when weather conditions first permit.

j. All painted surfaces on any House or Outbuildings shall be painted in earth tones or

neutral colors.

k. Any LP gas tank located on any Lot shall be buried below ground.

l. Each Lot Owner shall install, maintain and operate exterior lights approved by the Association, which shall be powered by the residents located on such lot and controlled by an operating photocell.

m. No towers shall be constructed on any Lot, however, antenna and satellite dishes are permissible, provided that the same are screened in such a fashion so as not to be visible from the road ways or from any other lot.

n. Notwithstanding the provisions of this subsection to the contrary, guest houses may be permitted in Outbuildings subject to the approval of the plans of such Outbuildings. No guest house shall be used for permanent living quarters, nor shall any guest house be allowed on a lot which does not have a house erected thereon.

#### Section 5. Animals and Household Pets.

No animals, livestock or poultry of any kind, shall be raised, bred or kept on any Lot except that dogs, cats, and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. In no event, however, shall more than two (2) dogs and two (2) cats be maintained on any one lot at any one time. Dogs must be tied or fenced in a dog run.

### ARTICLE VI

#### Other Rules and Regulations.

Other Rules and Regulations. The Association shall have the authority to amend and adopt reasonable rules and regulations governing the use of the property and such rules shall be observed and

obeyed by the owners, their guests, and licensees. Such rules after being properly adopted shall have the same force and effect as if contained in this Declaration. The initial Rules and Regulations promulgated by the Declarant shall be deemed properly adopted by the Association without any formal action.

## ARTICLE VII

### Remedies

In addition to the remedies to enforce the lien provided in Article VI, the Association shall have the right to enforce the provisions of this Declaration and Exhibits hereto, and any Rules and Regulations properly adopted by the Association against an individual lot owner or the occupant of any lot. The Association shall have the right to proceed at law or in equity to enforce any lien or any of the above items against the lot owner including an action for damages or Injunction and reasonable attorneys fees, and shall have the right to proceed against any tenant or other occupant who is violating any of the Rules and Regulations or provisions of this Declaration. In the event of any default by any lot owner under the terms of this Declaration, the Association shall have the right to correct such default and seek reimbursement from the lot owner. Any such costs, damages, or expenses in connection with this paragraph shall be a lien against the lot owner enforceable at law or in equity.

## ARTICLE VIII

### Miscellaneous.

Section 1. Non-Waiver of Provisions. Failure of the Association or any Owner to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or By-Laws of the



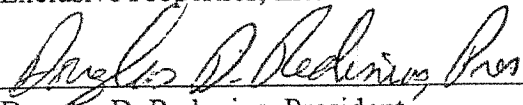
Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

Section 2. Severability. Invalidity of a covenant, restriction, agreement, undertaking or other provision of this Declaration document or Exhibit thereto shall not affect the validity of the remaining portions thereof.

Section 3. Covenant running with the Land. The provisions of this Declaration of Covenants, Conditions and Restrictions shall be deemed to be covenants running with the land inuring to the benefit fit and binding upon the parties, their successors and assigns and shall remain in full force and effect until December 31, 2023, at which time said covenants shall automatically be extended for successive periods of ten (10) years, unless by vote of the majority of the then owners of the lots, it is agreed to delete said Covenants, Conditions and Restrictions in whole, or in part. No new or additional Covenants, Conditions or Restrictions shall be added unless all of the owners of the lots agree in writing to any such additional Covenants, Conditions or Restrictions.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2004.

Exclusive Properties, Inc.

  
Douglas D. Redenius, President

STATE OF IOWA, COUNTY OF MADISON,

This instrument was acknowledged before me on \_\_\_\_\_,  
2004, by Douglas D. Redenius as President of Exclusive Properties, L.L.C.

\_\_\_\_\_  
Notary Public