

**COVENANTS AND USE RESTRICTION**  
FOR PHASE ONE & PHASE TWO OF  
STONEHILL COMMUNITY SUBDIVISION NO. 1”,  
IN THE CITY OF DUBUQUE, IOWA

The undersigned owners of the following described real property: Blocks 1-8 “Phase One of the Stonehill Community Subdivision No.1”, and Blocks 1-10 of “Phase Two of Stonehill Community Subdivision No. 1”, in the City of Dubuque, Iowa

Hereby amend the existing Covenants, (see Dubuque County Instruments No. 19326-98 and 2018- 00000383) to make the following declaration as to the limitations, restrictions, and obligations and uses to which above described property may be put, hereby specifying that said declaration shall constitute covenants to run with all of the above described property and any and all later subdivision thereof as provided by law, and shall be binding on all parties and persons claiming under them and for the benefit of and limitation upon all future owners of the above described property, or any subdivisions thereof in Dubuque County, Iowa.

**ARTICLE 1--- DEFINITIONS**

The following terms used herein shall have the following meaning:

- Section 1.     “Association” means Stonehill Community Association, its successors and assigns.
- Section 2.     “Property” means the above described real property.
- Section 3.     “Owner” means the record owner, whether one or more persons or entities, of fee simple title to any Lot which is part of the Property, including contact vendors, but excluding those having such interest merely as security for the performance of an obligation.
- Section 4.     “Common Area” means all property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners.
- Section 5.     “Lot” means any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area.
- Section 6.     “Declarant” means all the signatories to these Covenants.
- Section 7.     “Improved Lot” means any lot upon which is located all or any portion of a completed permanent structure.

## ARTICLE II --- PROPERTY RIGHTS

### Section 1.

**“Owners’ Easement of Enjoyment”** Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of every Lot, subject to the following provisions:

- a. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- b. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for the entire period during which any assessment against his Lot remains unpaid, and for any period not to exceed 60 days for any infraction of its published rules and regulations;
- c. The right of the Association to dedicate or to transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by Association members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3rds) of the members has been recorded;
- d. The right to construct, install, and build recreational facilities, including but not limited to a dam, dike, levee or barrier related to, or in connection with, a lake or pond, which may be constructed in whole or in part upon the Common Area.

### Section 2.

**“Declaration of Use”** Any Owner may delegate in accordance with the By-Laws and the Stonehill Policy book, his right of enjoyment to the Common Area and facilities to the member’s family, invited guests, and contract purchasers who reside on the property and their family members and invited guests.

## ARTICLE III--- MEMBERSHIP AND VOTING RIGHTS

### Section 1.

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, except as otherwise provided in the Declaration, shall be members of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot subject to assessment.

## ARTICLE IV --- COVENANT FOR ASSESSMENT

### Section 1.

**Creation of the Lien and Personal Obligation of Assessments.** The Declarant for each Lot owned within the Property, hereby covenants and each Owner by acceptance of a deed shall be deemed to this covenant and agree to pay to the Association:

- 1) An annual assessment or charges as fixed by the Directors as provided herein,
- 2) A special assessment for capital improvements,
- 3) A special assessment for building maintenance and such assessments to be established and collected as herein provided.

The annual and special assessments, together with the interest, costs, and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment

is made. Each such assessment, together with interest, cost and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

## **Section 2.**

**Purpose of Assessments.** The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in Property and for the improvement and maintenance of the Common Area and for the uniform desirable maintenance of the exterior of the buildings located on the Property.

## **Section 3.**

**Annual Assessments.** Annual Assessments shall be imposed on all lots.

- a) The Board of Directors may fix the annual assessment at any amount not in excess of the maximum determined herein.
- b) The annual assessment may not be increased by more than 6% above the assessment from the previous year without a vote of the membership.
- c) The annual assessment may be increased above 6% by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

## **Section 4.**

**Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair and /or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly call for this purpose.

## **Section 5.**

**Special Assessments for Building Maintenance.** In addition to the annual and special assessments authorized above, the Association may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair and/or replacement of the external components (windows, doors, and garage doors are not considered external components), materials and/or surfaces of any building, unit or townhouse located on any Lot of the property; such assessment shall be a lien against any Lot upon which such work was performed. Such assessment shall be levied by the Board of Directors of the Association to the Owner of the building, unit or townhouse and are due within thirty (30) days from written demand. The Board may, but is not required to, authorize any repair, replacement or restoration of an emergency nature to protect any building or the contents thereof and may assess the related costs against the Owner of said building.

## **Section 6.**

**Notice and Quorum for Any Action Authorized under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members 60 days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty-six and two-thirds percent (66 2/3%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, "but shortened to 40 day advance notice" and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be more than 60 days following the preceding meeting.

**Section 7.**

**Rate of Assessment.** The Annual assessment authorized in this Article must be at a uniform rate for all Lots. Any Special assessments authorized must be at a uniform rate for all lots.

**Section 8.**

**Date of Commencement of Annual Assessment Due Dates.** The annual assessments provided herein shall commence as to all Lots on the first day of January of the assessment year, unless otherwise fixed. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice 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 specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 9.**

**Effect of Non-payment of Assessments: Remedies of the Association.** Any assessment authorized herein not paid within thirty (30) days after the due date shall bear interest from the due date of twelve percent (12%) per annum. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same, or foreclose the lien against the property. In addition to the assessment amount and interest, a delinquent owner will also be responsible for all legal fees, including but not limited to attorney fees and court costs, reasonably incurred to collect the amount. No owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Area or abandonment of his/her Lot.

**Section 10.**

**Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to the mortgage foreclosure or any proceeding in lieu thereof shall not extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**ARTICLE V --- EXTERIOR MAINTENANCE**

The Association shall maintain the Common Area, all improved lots and the exterior surfaces of all buildings located on the premises. Any temporary or permanent obstruction placed or existing on any lot which interferes with such maintenance shall be sufficient cause for the Association to refuse to maintain the obstructed portion of the lot so long as the obstruction remains. The Board of Directors of the Association may adopt rules governing the placement of permanent plantings in the Common Area.

**ARTICLE VI --- PARTY WALLS**

**Section 1.**

**General Rules of Law That Apply.** Each wall which is built as part of the original construction of the townhouses upon the Property and placed upon the dividing line between lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, Code of Iowa Chapter 563, and

the general rules of law regarding party walls and liability for property damage arising from negligence or willful acts or omissions shall apply thereto.

**Section 2.**

**Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to the interest of each therein, except when such repair or maintenance arises out of the neglect or negligence of one Owner, that Owner must bear the entire expense of such maintenance or repair.

**Section 3.**

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

**Section 4.**

**Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole and entire cost of repair and/or replacement as well as furnishing all necessary protection against such elements.

**Section 5.**

**Right to Contribute or Indemnity Runs With Land.** The right of any owner to contribution or indemnity from any other owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 6.**

**Disputes.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party may choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators, the costs of such arbitration to be borne by each individual Owner(s) involved; provided, however, this section shall not be construed to limit the rights of any owner at law or in equity.

**ARTICLE VII --- ARCHITECTURAL CONTROL**

No building, fence, exterior wall or other exterior structure of any kind shall be commenced, erected or maintained upon the property, nor shall any exterior addition, change or alteration of any kind be made until the plans and specifications showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board.

## ARTICLE VIII --- GENERAL PROVISIONS

### Section 1.

**Enforcement.** The Association, or any Owner, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

### Section 2.

**Severability.** Invalidation of any of these covenants or restrictions by judgement or court order shall not affect any other provisions which shall remain in full force and effect.

### Section 3.

**Amendment.** The Use Restrictions contained in this Declaration shall run with and bind the land, for a term of up to twenty-one (21) years from the date this declaration is recorded. The Covenants may be extended by the filing of a verified claim in accordance with Iowa Code Section 614.24 prior to the expiration date. These amended Covenants and Use Restrictions may be amended at any duly called homeowner's meeting, provided: (1) that the notice of the meeting shall contain a full statement of the proposed amendment; (2) that the amendment shall be approved by at least sixty six and two thirds (66 2/3%) of the then existing homeowners; and (3) said amendment shall be set forth in a duly recorded amendment to these amended Covenants and Use Restrictions.

### Section 4.

**Annexation.** Additional residential property, common area and/or related property may be annexed to the property and be subjected to the jurisdiction of the association with the consent of one-half (1/2) of the members.

### Section 5.

**Storage.** There shall be no storage of unused, old automobiles, machinery, appliances or junk of any kind, shall be kept on the property. No vehicle built for, or adapted to or modified for racing purposes shall be kept or stored on the Property, except within a garage. No campers, trailers or recreational vehicles shall be kept on the Property other than on an area designated by the Board for such articles. There shall be no storage of timber, firewood, lumber or other material for fuel or construction anywhere on the Property except as follows:

- a) Storage by the developer or any other contractor while actually engaged in construction, development, improvement or repair on the Property or Storage inside any completed building.
- b) Storage of firewood in an orderly fashion, in a quantity not exceeding one (1) cord (defined as having dimensions of 4 feet by 4 feet by 8 feet), if stacked and located in an area approved or designated by the Board of Directors of the Association or a committee appointed by the Board to perform that function.

### Section 6.

**Activities.** No obnoxious, offensive trade or activity shall be conducted on the Property nor shall anything be done or permitted which may be or become an annoyance or nuisance to the neighbors. All pets must be on a leash at all times, except when in a dwelling. No farm animals, including but not

limited to chickens, fowl, or livestock of any kind may be raised or kept on the property. No kennels, pens, or runs shall be permitted on the Property.

#### **Section 7.**

**Businesses.** No business that generates customer traffic to the owners property shall be allowed, nor shall any educational institution, school, or children's daycare shall be conducted, held or carried on upon the Property. Nothing contained in this section shall be construed to prohibit sales or development of the Property.

#### **Section 8.**

**Signs.** No signs, billboards or advertising devices, except those used only for the sale of the Property, shall be placed on any lot or building on the Property.

#### **Section 9.**

**Insurance.** Each Owner or Owners (if more than one person) of a townhouse building located on the Property shall:

- a) Insure and keep insured said townhouse building for a minimum of ninety percent (90%) of its replacement value, and the proceeds of such insurance shall be used, and available, to repair, replace or restore the damaged premises to the same condition that existed before the event, or events, which caused any loss.
- b) Waive and release any right of action or subrogation that said owner(s) may have against the association and/or any other owner of a townhouse located in the same block of the building from any liability for loss by fire to said owner(s) townhouse building or contents regardless of the cause of the loss or damage unless such activity was illegal or unlawful.

#### **Section 10.**

**Motor Vehicle Usage.** No motor vehicles shall be allowed off the hard surfaced parking areas, except for property development, maintenance, improvement, emergency or construction.

#### **Section 11.**

**Rental of Owner's Townhouse.** No owner may rent (short or long term), lease, consign, or loan their property to anyone except for the following:

- a. Rental by the owner(s) to their parents and/or children.
- b. Owners of record, at the time this Covenants is adopted, may rent their property during their ownership, but this allowance cannot be transferred to any future owners, when the property changes ownership.