

# **BRIARDALE SQUARE HOMEOWNERS ASSOCIATION**

## **DOCUMENTS**

Articles of Incorporation

Declaration of Covenants

Bylaws

**UPDATED: OCTOBER 2014**

***This Packet of Documents Prepared For:***

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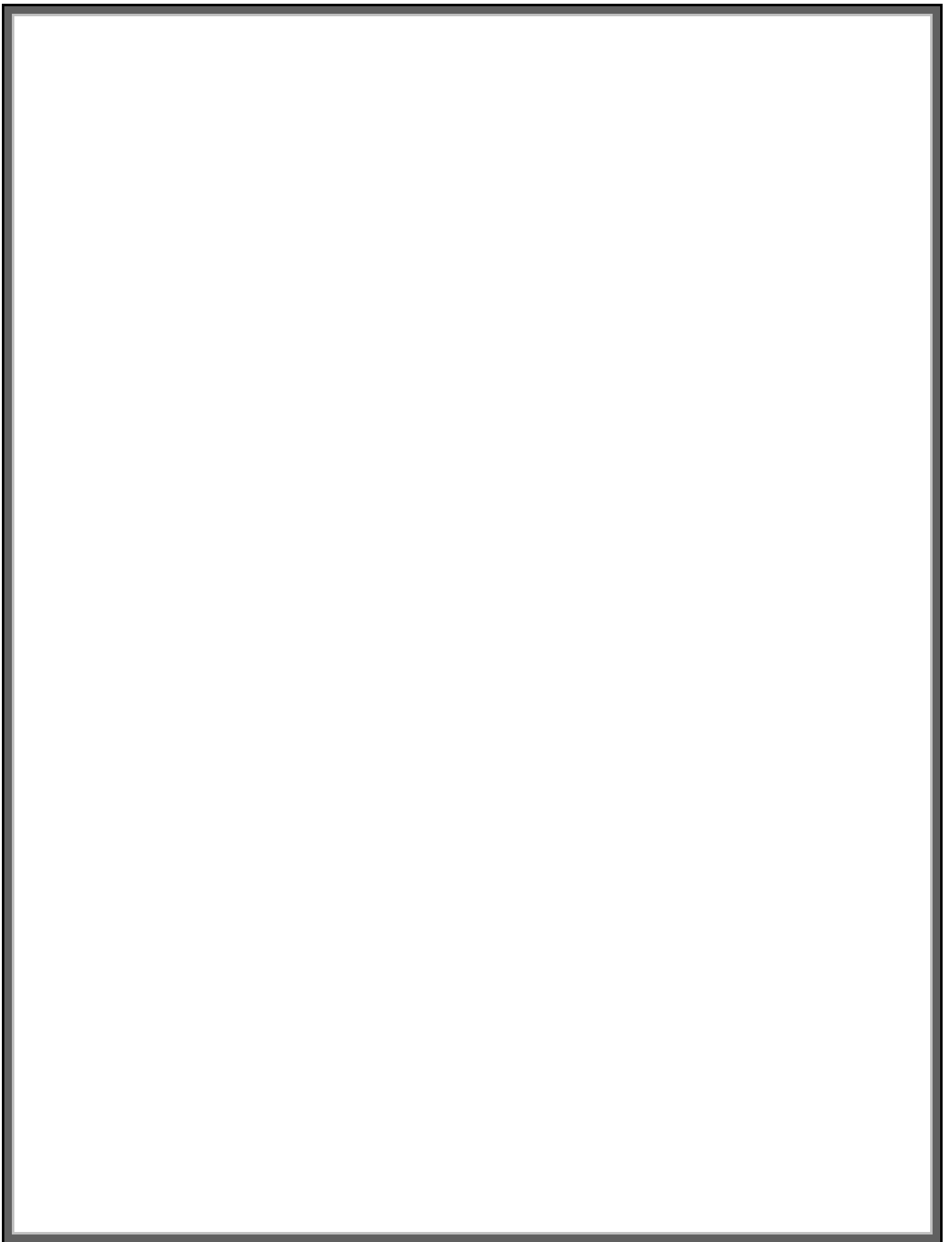
**Briardale Square Homeowners Association**

**PO Box 741**

**Ames, Iowa 50010**

**Web address: [briardalesquare.org](http://briardalesquare.org) / [briardalesquare.com](http://briardalesquare.com)**

**NOTE TO OWNERS & RESIDENTS:** This packet of documents is to be left in the unit listed above for the next residents. If you move, please leave this packet in the top drawer in the kitchen, nearest the refrigerator. If you wish extra copies, they may be obtained (at your expense) from the Association Manager. **THANK YOU.**



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## Notes to Briardale Square Residents

October 2014

1. Briardale Square Townhome complex is zoned as a “Planned Resident District” (Sec. 29.1203 of the Code of Iowa). A Townhome differs from a Condominium in two ways: a townhome is a block of attached buildings usually three to eight long; the unit and the land upon which it sits is owned by the resident.
2. When you buy or rent property in this complex you agree to a number of restrictive Covenants adopted by the original owners and developers of Briardale Square. The Covenants are enforced by the Briardale Square Homeowners Association Board of Directors. Please become familiar with the attached Bylaws, Articles, and Covenants.
3. To maintain consistency within our Complex, owners or residents may not build, modify, or add-on to the exterior of townhomes (i.e. deck, patio, egress windows) without the approval of the Board of Directors.
4. In no event shall more than **two unrelated persons** occupy, use, purchase, own, rent or live in any townhouse on the Property, now or in the future.
5. Residents have access to the Clubhouse. To reserve the Clubhouse, call Carol Lamb: 515-290-1603. A \$100 damage deposit is required when you pick up the key. If the Clubhouse is left in satisfactory condition, the deposit will be returned. If there is any damage other than normal wear and tear, your deposit will be used to pay for clean-up and repair.
6. If you have questions and/or concerns, please call the answering machine, 515-233-1439. The machine is monitored daily. You may also leave comments and questions on these websites: [briardalesquare.com](http://briardalesquare.com) or [briardalesquare.org](http://briardalesquare.org).
7. The Board of Directors meets on the second Monday night of each month in the clubhouse. The Board meeting schedule is also posted on the Briardale Square website. Please feel free to attend these meetings to ask questions, present issues or concerns you wish to address, or simply to take an interest in Briardale Square matters. Of course, if you have immediate issues, please call 515-233-1439.
8. Association fees are due on the first day of each month and are late the first business day after the 10th; bills are NOT sent unless you are late. A finance charge of 10% is made each month on unpaid amounts. The Association provides each owner with deposit slips if they pay directly to the bank. If you have signed up for automatic withdrawal with your bank, you will not need a deposit slip. The Association uses First National Bank in Ames. Contact the current treasurer, John Mathias, 515-232-9031, for slips, information and other questions.
9. Contracting for garbage/trash collection is the responsibility of each resident. There are several trash firms in Ames and all service Briardale. Please remember to put trash out on

collection day (or the night before), and return your bins after trash pick up. Bins should be left out of sight from the street except on collection day. Dumpsters are sometimes placed in front of a unit for the owner's use or in a parking area for a contractor's use. They are not to be used for other trash. Please do not leave furniture, appliances, electronics, mattresses or other household items on the curb. Disposal of these items is your responsibility.

10. Because we all want to keep Briardale Square attractive, please keep your units free of clutter visible from the street. Keep the trees and shrubs on your property pruned and your areas weeded. The Association may require weeding or trimming at the owner's expense when your Lot gets overgrown. Yard bags and labels for your yard waste are available from various Board Members (please see spring/fall newsletters for information). When you have waste ready for pick up, contact the number on the label for pick up; bags will not be picked up until you call to make arrangements.
11. We live in close proximity to each other and share common walls, so please be considerate of your neighbors with respect to your music and when holding parties/gatherings indoors or outdoors.
12. We all love our pets, but some can create problems. We live in a pet friendly complex, however some dogs are barred outright (see Covenants). Dogs **must** be on a leash when on common areas. You are allowed one dog which weighs less than 30 pounds. If the size restriction is ignored, the Association levies a \$50 per month fine as long as the dog remains in the unit. This fine will be added to the monthly maintenance assessment. Also, because we have children playing in the common areas, you must pick up after your pet. We adhere to the City of Ames ordinances regarding pets which include the city's ordinance pertaining to barking dogs.
13. Briardale Homeowners Association "Declarations" state that each home has two designated spots in addition to their respective garage. Boats, trailers, campers and junk vehicles may not be parked more than 48 consecutive hours on any Lot, parking area or Common Area in the Property.

The Board recognizes that owners might need to park an additional car or a visiting car outside their designated spots for longer than 48 hours. The large west parking lot off Truman Place facing Hoover has been designated as temporary long-term parking. If you use the long-term parking lot, you are responsible for maintaining your vehicle. Vehicles with flat tires or that won't start, junk vehicles or vehicles that are not moved at least once a month in the long-term parking lot will be towed without prior notification.



# **Amendment, Reaffirmation, and Restatement of the Bylaws of Briardale Square Homeowners Association, Inc.**

## **Article I**

**NAME AND LOCATION.** The name of the corporation is Briardale Square Homeowners Association, Inc., hereafter referred to as the "Association." The principal office of the corporation is the residence of its **President**. The mailing address is P.O. Box 741, Ames, Iowa. Meetings of Members and the Board of Directors may be held at 1414 Truman Pl. or at such other places within Story County, Iowa, as the Board or its President may designate.

## **Article II**

**DEFINITIONS.** The definitions of Property, Development, Association, BSHA, Declarant, Owner, Member, Resident, Lot, Common Area, Documents, Declaration, Articles, Bylaws, Board, Officer, and Director are provided in Article I of the Declaration of Covenants, Conditions, and Restrictions, and they are incorporated and made a part hereof by this reference.

## **Article III**

### **MEETINGS OF MEMBERS**

Section 1. Annual Meetings. Meetings of members shall be held annually on a date and at a time to be set by the Board. Owners and tenants are entitled to attend. Owners are the voting Members of the Association unless the privilege of voting has been lost, as described in the Declaration.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President or by the Board. The President shall also call a special meeting any time she/he is presented a written request for such a meeting signed by Owners of one-fourth or more of the Lots.

Section 3. Notice of Meetings. Written notice of annual and special meetings shall be given to all Members at least 15 days in advance of the meeting, delivered by regular mail or by personal delivery. The notice shall specify the date, hour, and place of the meeting and in the case of special meetings, the principal purpose(s).

Section 4. Notice of Names of Owners and Tenants. It is the responsibility of each Owner to inform the Secretary of the residence address and the mailing address, if different, of the Owner of each Lot. If the Lot is a rental property, the Owner shall also notify the Secretary or Board Delegate of the names of all tenants authorized to live there. These notices are due within 30 days of any change from the previous notice.

Section 5. Quorum. The presence at the meeting of Members or proxies entitled to cast one-tenth of the eligible votes (now 11 of 106) shall constitute a quorum for any action except as otherwise provided in the Documents. If the required quorum is not present at any meeting, those voting Members present shall have the power to adjourn the meeting to another time and date until a quorum is present.

Section 6. Proxies. At all meetings of the Association, each Member is entitled to vote in person or by proxy. All proxies shall be indicated in writing to the Secretary. A person may be named a proxy to cast a vote on one issue or several issues or all issues to come before the meeting. The Secretary may be instructed to cast one or more votes according to a written proxy when sufficient information is provided as to how the proxy shall be voted. Every proxy shall be revocable, either by notice to the Secretary or by the Owner casting a vote in person at any meeting.

## **Article IV**

### **BOARD OF DIRECTORS**

Section 1. Number. The affairs of the Association shall be managed by a Board of nine Directors, elected for three years, one-third being elected each year at the annual meeting by the Members in attendance.

Section 2. Vacancy and Removal. Any Director may be removed from the Board, with or without cause, by a majority of the voting Members of the Association (now 54 votes). In the event of any vacancy, by removal, resignation, or any other cause, the Board shall choose a successor, who shall serve until the next annual meeting, when the Members shall then elect a successor for the remainder of the unexpired term, if any.

Section 3. Compensation. No Director shall receive compensation for service on the Board of the Association unless voted by a majority of Members in attendance at the annual meeting. Any compensation shall be limited to the fiscal year in which it is voted and to the amount of the regular annual assessment. Not all Directors need be voted compensation just because any one is. Notwithstanding this provision, any Director may be reimbursed for his/her actual expenses or unusual labor when incurred at the direction of the Board.

## **Article V**

### **NOMINATION AND ELECTION OF DIRECTORS AND OFFICERS**

Section 1. Nomination. The Board shall appoint a nominating committee of three members, at least one of whom shall be a resident and one a member of the board. After their nominations are presented to the assembled Members, additional nominations from the Members shall be permitted (no seconds needed). Members may nominate themselves or other eligible persons. Adult residents of Story County, Iowa, are eligible for membership on the Board. A majority of the Board must be Owners; a majority of the Board must be residents.

Section 2. Election. Election to the Board shall be by voice vote of those Members present, or by a show of hands, or if requested by any voting Member present at the meeting, by secret written ballot. Members are entitled to cast one vote for each Lot owned. Election shall be by a majority vote of those present and voting, including proxies, excepting those Members whose voting privileges have been suspended.

## **Article VI**

### **MEETINGS OF DIRECTORS**

Section 1. Regular Meetings. The Board shall meet monthly, without notice, at such place(s) and hour as may be set by them.

Section 2. Special Meetings. Special meetings may be called either by the President or by the Secretary or by any two Directors. At least three days shall occur before the meeting shall be convened. A quorum for a special meeting shall be a majority of the Directors, ignoring vacancies.

Section 3. Emergency Action by Board. In the event that Board action is beneficial between regular meetings of the Board and sooner than a special meeting could occur, the President may canvass the other Directors for their approval or disapproval of such actions, either by calling an emergency meeting or by speaking in person or by telephone to the other Directors. In all cases, the President shall attempt to inform all Directors of the pending action and seek the recommendation of each. The Secretary shall enter the circumstances and any actions taken, including the votes of each member participating, in the minutes. Any action so taken by a majority of Directors shall have the same effect as though taken at a regular meeting of Directors.

Section 4. Quorum. A majority of the Directors (excluding vacancies) shall constitute a quorum for the transaction of business at any meeting of the Board. Every act or decision done or made by a majority of the Directors present and voting at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5. Action Taken Without Meeting. The Directors shall have the right to take any action in the absence of a meeting of the Board, or in the absence of a quorum, which they could take at a meeting by obtaining the written approval of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board. Minutes of the action(s) shall be taken and shall be incorporated into the minutes of the next meeting of the Board.

## **Article VII**

### **POWERS & DUTIES OF BOARD OF DIRECTORS**

Section 1. Powers. The Board of Directors shall have the power:

- (a) to exercise on behalf of the Association all powers and authority vested in or delegated to the Association itself, except those reserved to the Membership by these Documents;
- (b) to adopt and publish rules and regulations governing the Association, the Common Area and its facilities, the personal conduct of residents and their guests, invitees, and visitors, and to establish penalties for infractions thereof;
- (c) to suspend the voting rights and the right to use the Common Area (except streets and driveways) and facilities of any Owners or Residents when they shall be in default in the payment of any assessment levied by the Association; such rights also may be suspended for a period not to exceed 60 days for an infraction of published rules and regulations of the Association when preceded by reasonable notice and a hearing before the Board;
- (d) to declare the position of a member of the Board to be vacant in the event that said member shall be absent from three consecutive regular meetings of the Board without reasonable cause, or absent from any six meetings in one calendar year;
- (e) to employ a manager, one or more independent contractors, or such other employees as they deem necessary, and to prescribe or negotiate their responsibilities, duties, compensation, and benefits;
- (f) to foreclose the lien against any property for which assessments, charges, or other amounts billed are not paid within thirty days after the date due, or to bring other appropriate action at law against the Owner personally obligated to pay same;
- (g) to cause all officers or employees having fiscal responsibilities to be bonded, when they deem this appropriate;
- (h) the Board should see to it that periodically an owner files a Verified Claim with the office of the recorder of Story County, Iowa as required by the Iowa Code to extend the term of the Restrictive Covenants. This document will be in effect for 21 years.

Section 2. Duties. It shall be the duty of the Board:

- (a) to cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting;
- (b) to supervise all officers, agents, and employees of the Association;
- (c) as may be provided elsewhere in these Documents:
  - 1. to fix the amount of the annual assessment on each lot.
  - 2. to send written notice of each assessment to every Owner subject thereto at least 15 days in advance of the first day of the month on which the assessment shall be different than it had been previously;
  - 3. to set the finance charge(s), interest rate(s) and other penalties and policies when any assessment is not paid in a timely fashion or to take steps to ensure that assessments are paid regularly and on time;
- (d) to have issued upon demand by any person a certificate setting forth the balance due of any assessment and the charges against any Owner and Lot(s); a reasonable fee may be charged for such a certificate, which shall be conclusive evidence of the presence or absence of any outstanding charges or delinquency against an Owner or Lot(s);
- (e) to procure and maintain adequate liability and hazard insurance on property owned by the Association and such other insurance as the Board may deem appropriate;
- (f) to cause the Common Area to be maintained in a manner they deem appropriate for the mutual benefit of all residents and Owners;
- (g) to maintain records of the property insurance of each lot and building and adopt policies ensuring that each property is adequately insured for fire and other damage.

## **Article VIII**

### **OFFICERS AND THEIR DUTIES**

Section 1. Enumeration of Offices. The officers of this Corporation shall be a President and Vice President, Secretary and Treasurer. Members of the Board of Directors, who at all times must be elected, are Chairman, Vice Chairman, and Secretary. The Secretary and Treasurer of the Corporation will also act as the Secretary and Treasurer for the Board of Directors. The officers of the Corporation and the members of the Board of Directors shall serve as one for each position. Other temporary offices may be established by the Board, and these offices shall automatically expire following the next annual meeting, but may then be reestablished by the next Board.

Section 2. Election of Officers. The Board shall elect its own officers at the first meeting of the Board following the annual meeting. In this case, the election may follow immediately after the annual meeting without the need for further notice.

Section 3. Terms. Each officer shall be elected for a one-year term, which term shall conclude at the end of the next annual meeting.

Section 4. Special Appointments. The Board may elect such other officers as may be beneficial to the Association, and each shall hold office for such period, have such authority, and perform such duties as the Board may determine from time to time.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by a majority of the members of the Board. Any officer may resign by giving written notice to the Board and stating a time of effect.

Section 6. Vacancies. Any vacancy of an officer named in Section 8 next shall be filled by the Board for the remainder of the term.

Section 7. Multiple Offices. Except for a temporary period, no officer shall hold more than one of the offices enumerated in section 8 next.

Section 8. Duties of Officers. The principal duties of each office shall be the following plus others to be set by the Board.

- (a) **PRESIDENT:** The PRESIDENT shall preside at meetings of the Association and meetings of the Board; see that orders and resolutions of the Board are carried out; sign all leases, mortgages, deeds, and other written instruments; and co-sign all checks and promissory notes; the President may instruct the Association's accountant to pay bills of the Association.
- (b) **VICE PRESIDENT:** The Vice President shall act in the place and stead of the President in the event of the latter's absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.
- (c) **SECRETARY:** The Secretary shall record the votes and keep the minutes of all meetings and other proceedings of the Association and the Board; co-sign all legal documents for the mortgage, conveyance, or transfer of real estate; serve notice of all meetings of the Association and the Board; keep a current record of all Owners and residents of the Association, together with their addresses; and shall perform such other duties as required by the Board.
- (d) **TREASURER:** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association that shall come to the Board; shall co-sign all checks and promissory notes of the Association, shall keep proper books of the Association's account or, if kept by a business hired by the Association, supervise and oversee the keeping of accounts on behalf of the Association; shall cause an annual financial review of the Association's accounts to be performed by a financial committee; shall prepare and present to the Board for its action and approval a proposed budget for the following fiscal year; and shall prepare a statement of income and expenditures to be delivered to the Owners at the annual meeting and to deliver a copy of same to all Owners who were not in attendance at that meeting; the Treasurer may instruct the Association's accountant to pay bills of the Association. The Board shall obtain an audit by an independent accounting firm annually when the Associations' books are not being kept by bookkeeping or accounting firm or upon the request of five Owners.

## **Article IX**

**COMMITTEES.** The Board may appoint such committees as it finds useful. Three committees shall be considered: an Architectural Control Committee (to review Owner requests for improvements) and a Nominating Committee (to submit names of possible Board members to the annual meeting) and a Financial Committee (to perform an annual review of the Association accounts).

## **Article X**

**BOOKS AND RECORDS.** The books and records of the Association shall be open to inspection by Members at all times during reasonable hours upon request to the President, the Secretary or the Treasurer, depending on the item to be inspected.

One copy of the Documents shall be provided each new Owner upon the purchasing of a Lot and compliance with other requirements of Owners at the same time (see Article III (4) above and the Declaration, Article III(3) and Article XI(5)). Additional copies may be purchased at their own cost.

## **Article XI**

### **ASSESSMENTS**

Section 1. Incorporation. The regular and special assessments, their modification, and related provisions are set forth in the Declaration and are incorporated by this reference and made a part hereof.

Section 2. Delinquencies. Any assessments which are not paid on time are delinquent and subject to penalties and interest. The Directors shall determine the finance charge(s), interest rate(s) not to exceed the maximum allowed by law, and other penalties and policies that shall ensue when any assessment is not paid in a timely fashion and may foreclose the lien against the property.

Section 3. Lien for Assessments. The Association may file a Notice of Lien on said Lot in the Story County Recorder's Office at any time an assessment becomes delinquent, and such Notice shall constitute a valid lien against the Lot. The lien may be enforced as a mechanics lien or suit may be brought against the Owner personally obligated to pay the assessment.

Section 4. Obligation. The property owner shall be personally obligated to pay all assessments, interest, finance charges, penalties, costs, and reasonable attorney fees, all of which shall become a proper lien against the property and shall run with and bind the land.

Section 5. Nonwaivable. No owner may waive or otherwise escape liability for the assessments provided for herein by the nonuse of the Common Area or by the abandonment of any Lot(s).

## **Article XII**

**SEAL.** The Association shall have no seal.

## **Article XIII**

### **MISCELLANEOUS**

Section 1. Procedure to Amend. The Bylaws may be amended at any regular or special meeting of the Association when at least seven days' notice is given to the Owners of the fact that there will be a motion made to amend them. The quorum shall be the quorum for a regular meeting and the motion to amend requires a majority vote of those present and voting, including proxies

Section 2. Superiority of Documents. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and either the Articles or these Bylaws, the Declaration shall control.

Section 3. Severability. Any provision in the Articles, the Bylaws, or the Declaration that is found to be defective or contrary to law may be voided and the other provisions shall remain in effect and force.

Section 4. Fiscal Year. The fiscal year shall be the calendar year.

Section 5. Repeal. Article XV of the current Bylaws, which imposes certain restrictions on the use of certain vehicles and restrictions on having pets, is hereby repealed. These restrictions on having pets are hereby repealed. These restrictions have been amended and made part of the Declaration of Covenants. See Article IX; Restrictions on the Use of Land, Section 2. Animals Prohibited (a).



**Amendment, Reaffirmation, and Restatement of the Articles of  
Incorporation Briardale Square Homeowners Association, Inc., f/k/a  
Briardale Square Homes Association, Inc.**

**Briardale Square Homes  
Association, Inc.**

**Articles of Incorporation**

**To**

**Dated:**

**Briardale Square Homeowners**

**Ack'd:**

We, the undersigned, the Directors of Briardale Square Homeowners Association, Inc., f/k/a Briardale Square Homes Association, Inc., effective date of incorporation being July 17, 1970, a nonprofit corporation under Chapter 504A of the 1991 Code of Iowa, do hereby reaffirm and restate the Articles of Incorporation of this Association, hereafter referred to as the "Articles," and do hereby adopt the following amendment to these Articles of Incorporation for this non-profit corporation. By this action the previous Articles of Incorporation of this non-profit corporation are amended. In any conflict between the original Articles and these Articles, these Articles shall control.

## **Article I**

**NAME AND DEFINITIONS.** The name of the corporation is Briardale Square Homeowners Association, Inc., hereafter called the "Association." Other definitions are set out in the Declaration of Covenants, Conditions, and Restrictions and are incorporated and made a part hereof by this reference.

## **Article II**

**OFFICE.** The principal office of the Association is the property of the current president of the Association; the mailing address of the Association is PO Box 741, Ames, Iowa 50010.

## **Article III**

**AGENT.** The President of Briardale Square Homeowners Association, Ames, Iowa 50010, is hereby appointed the registered agent of this Association.

## **Article IV**

### **PURPOSE AND POWERS OF THE ASSOCIATION**

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation, and architectural control of the residence Lots and Common Area within that certain tract of property known as Briardale Square, Ames, Iowa, and to promote the health, safety, welfare, and enjoyment of the Residents within the above described Property and any additions thereto as may hereafter be brought within the jurisdiction of the Association. To this end the Association is empowered:

- (a) to establish policies, guidelines, and needful rules for the Association in order to
  1. carry out the powers, duties, and responsibilities of the Association or its Board of Directors,
  2. implement the provisions of the Articles, the Bylaws, and the Declaration of Covenants, Conditions, and Restrictions (hereafter called the "Board," the "Bylaws," and the "Declaration," respectively), and to
  3. carry out the decisions, policies, guidelines, and needful rules adopted by the Board or by direct action of the Association Members when they are required to act by these same documents;
- (b) to exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Articles, Bylaws, and the

Declaration applicable to the Property and officially recorded or to be recorded in the Office of the Recorder, Story County, Iowa, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as is set forth and in length.

- (c) to fix, levy, collect, and enforce payment by any lawful means, all charges or assessments made pursuant to the terms of the Declaration, to pay all expenses in connection therewith, and all office and other expenses incident to the conduct of the business of the Association;
- (d) to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (e) to borrow money and, with the assent of two-thirds of the Members, mortgage property, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (f) to dedicate, sell, or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, sale or transfer shall be effective unless an instrument has been signed by two-thirds of the Members indicating their agreement to such dedication, sale, or transfer;
- (g) to participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional residential property and Common Area, provided that any such merger, consolidation, or annexation shall have the assent of two-thirds of the Members of the Association;
- (h) to have and to exercise any and all other powers, rights, and privileges which a corporation organized under the Non-Profit Corporation Law of the State of Iowa by law may now or hereafter have or exercise.
- (i) All deeds, mortgages, leases, conveyances, contracts, assignments, and any other legal documents pertaining to the transfer and conveyance of land shall be signed by the President and co-signed by the Secretary.
- (j) This Corporation shall have no seal.

## **Article V**

**MEMBERSHIP.** Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject to the covenants of record to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The privileges of membership may be suspended under policies and procedures set forth in the Declaration.

## **Article VI**

**VOTING RIGHTS.** The Association shall have one class of voting memberships: Class A. Class A members shall be all owners, with the exception of the Declarant and those whose membership shall have been suspended, and shall be entitled to one vote for each Lot owned. When there is more than one Owner of any Lot, the Owner of a majority interest shall be entitled to cast that Lot's vote. When there is no majority interest, any person who owns an interest in a Lot may cast that Lot's vote. In no case shall more than one vote be cast per Lot owned, nor shall more than any one Owner's consent, vote, or signature ever be required for any action called for by the Articles, Bylaws, Declaration, or policies of the Association.

## **Article VII**

**BOARD OF DIRECTORS.** The affairs of this Association shall be managed by a Board of Directors (the "Board"), some of whom need not be Members of the Association. The Directors shall be chosen by the Members of the Association at the annual meeting of the Association. The Board shall consist of nine Members unless changed by amendment of the Bylaws, but shall be at least five Members. The term of a Board Member shall be three years, with one-third of the terms expiring each year. The Directors shall choose the Officers of the Board annually.

## **Article VIII**

**DISSOLUTION.** The Association may be dissolved with the assent, given in writing, of two-thirds of the Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency whose purposes are similar to those for which this Association was created. In the event that such dedication is refused, such assets shall be granted, conveyed, and assigned to any non-profit corporation, trust, or other organization to be devoted to such similar purposes.

## **Article IX**

**DURATION.** This corporation shall exist perpetually.

## Article X

**AMENDMENT.** Amendment of these Articles shall require the assent of two-thirds of the Members present and voting, either in person or by proxy, at a meeting of the Association, duly called for this purpose and a quorum being present, as set forth in Article III of the Bylaws.

## Article XI

**PORTIONS REPEALED.** There shall be a single class of membership of the Association. That portion of the current Articles which refers to two classes of membership (see Article VI) is hereby repealed. Membership and voting rights are set forth in Articles V and VI above and in the Declaration (see Article III). That portion of the current Articles which refers to *FHA/VA* approval (see Article XI) is now obsolete, null, and void and is hereby repealed.

## Article XII

**LEGAL DESCRIPTION.** The legal description of the property of the Association, which property also is referred to as the Common Area, is:

A part of the South half of the Southeast Quarter (S 1/2 SE 1/4) of Section 27, Township 84 North, Range 24, West of the 5th p.m., in the City of Ames, Story County, Iowa, described as follows: Beginning at the Northwest corner of said South half of Southeast Quarter (S 1/2 SE 1/4); thence North 89 15' East along the Northerly line of the South half of Southeast Quarter (S 1/2 E 1/4) 999.55 feet; thence South 0 03' 30" West, along the East line of Lot A, North Park Subdivision, 667.09 feet; thence South 89 16'30" West along the centerline of 30th Street, 748.7 feet, to a point of beginning of a 246.86 foot radius curve concave to the Northeast, thence Northwesterly around said curve, 390.87 of the South half of the Southeast Quarter (S 1/2 S E 1/4), and along the centerline of Hoover Avenue a distance of 416.6 feet to the point of beginning.

**EXCEPTING THEREFROM THE FOLLOWING:**

1. Lots 1 through 106, inclusive, Briardale Square, a subdivision in Ames, Iowa.
2. 25 garage lots in Briardale Square, letters A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P,Q,S,T,U,V,W,X,Y, and Z, excepting therefrom the letter R.
3. 30<sup>th</sup> Street and Hoover Avenue and all of Truman Place.



**Amendment, Reaffirmation, and Restatement of the Declaration of  
Covenants, Conditions, and Restrictions of Auditor's Plat of Briardale Square  
Homeowners Association, Inc.**

This Declaration of Covenants, Conditions, and Restrictions (hereafter called the "Declaration") are made as of the date set forth herein and is recorded in the Office of the Recorder of Story County, Iowa, at the book and page set forth herein. This Declaration is made by Briardale Square Homeowners Association, Inc., f/k/a Briardale Square Homes Association, Inc., (hereafter referred to as "Declarant") and relates to certain real estate in Story County, legally described in Schedule A below and incorporated herein by this reference.

WITNESSETH WHEREAS, Declarant is the Owner of certain Property in Ames, Story County, Iowa, legally described in Schedule A, and whereas Declarant is the legal successor to the previous Owners and incorporators of this Property, and whereas the Articles, Bylaws, and Declaration of this Association permit amendment of these documents.

NOW, THEREFORE, Declarant hereby states that this Declaration is an amendment, reaffirmation, and restatement of the previous Declaration, and in any conflict between the original Declaration and this Declaration, this Declaration shall control; and that all of the properties described herein shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions (hereafter referred to as "Restrictions"), plus the Articles of Incorporation and Bylaws; and that these Restrictions are for the purpose of protecting the value and desirability of the real property; and that they are binding on all parties having any right, title, or interest in the described property or any part thereof, their heirs, successors, and assigns; and that these Restrictions are for the mutual benefit of, and shall inure to the benefit of each Owner thereof; and that these Restrictions shall run with and bind the land, whether or not these Restrictions are set forth in any deed or instrument of conveyance of any of said lands or any portion thereof.

Said Restrictions shall be enforceable by sale of the Property or an undivided interest therein as hereinafter provided, injunction, mandamus or other proceedings at law or in equity against any present or future party or parties infringing, violating, attempting to infringe or violate, or omitting to abide by said Restrictions. Any present or future Owners, or all of them acting as the Association, may recover damages for the breach, infringement, or violation of any such Restrictions.

## STATEMENT OF OWNERS

1. The original Plat, Dedication, Certificate of Clerk of District Court, Certificate of County Recorder, and Declaration of Covenants, Conditions & Restrictions were recorded in Book 142 at pages 335-361 on the 29th day of June, 1970.
2. The original Articles of Incorporation of Briardale Square Homes Association, Inc., n/k/a Briardale Square Homeowners Association, Inc., were originally recorded at the Story County Courthouse on August 3, 1970, in Book 12, pages 463-468.
3. The above mentioned Declaration of Covenants, Conditions, & Restrictions were previously amended and then recorded on January 17, 1972; May 19, 1972, and March 20, 1973.
4. I, the undersigned, am a current Lot Owner, and I am signing my name below next to the respective local address (es) and Lot number(s) that I own to indicate my assent to the amendment, reaffirmation, and restatement of the Articles of Incorporation, Bylaws, and Declaration of Covenants, Conditions, and Restrictions put forward by the Board of Directors of Briardale Square Homeowners Association, Inc., and dated May 10, 1992.
5. It is my specific request that my Lot(s), and use of said real estate thereof, be restricted pursuant to the original Declaration of Covenants, Conditions, and Restrictions; the Articles subsequent amendments to any of these documents, properly recorded. I further specifically agree that this Declaration is hereby backdated and held to be considered filed, recorded, and bound as to my real estate as of January 1, 1990.
6. It is my specific desire to reaffirm, re-elect, and redesignate as the Officers of said corporation and members of the Board of Directors of Briardale Square Homeowners Association, Inc.
7. I hereby authorize and direct the Board of Directors to record these Articles of Incorporation, Bylaws, and Declaration of Covenants, Conditions, and Restrictions at such time as they have been approved by the required number of Owners.
8. I acknowledge that I have been properly and fully notified of these actions, that I have had an opportunity to read all of these Documents, and that I have had another opportunity to meet with the Board of Directors and other Owners for the purpose of considering these Documents. I hereby waive any irregularity and further waive any prior notices of any required meetings or voting to accomplish the amendment, reaffirmation, and restatement of these documents.
9. All Owners who are unable to sign the following, or who because of temporary absence or any other reason may not sign the following, may submit a statement of



assent, and it shall be considered to be as valid and binding as if signed and submitted with the attached sheets of signatures.

10. As the Owner of one or more Lots, I affix my signature on the following pages opposite my Lot number(s) as my assent to the amendment, reaffirmation, and restatement and the recording of the Articles of Incorporation, Bylaws, and Declaration of Covenants, Conditions and Restrictions for this Association.

## **Article I**

### **DEFINITIONS**

Section 1. Property. The term "Property" and "Development" all refer to all land and improvements thereon of Briardale Square, both Lots and the Common Area, separately or together. See Schedule A for the legal description.

Section 2. Association. "Association," "BSHA", and "Declarant" shall each mean and refer to Briardale Square Homeowners Association, Inc., f/k/a Briardale Square Homes Association, Inc., its successors and assigns. The Association is the incorporator and governing body for the Property.

Section 3. Owner and Member. "Owner" and "Member" refer to any person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is a part of the Property and subject to the covenants of record to assessment by the Association, including contract sellers, but excluding those having such interest merely as a security for the performance of an obligation.

Section 4. Resident. "Resident" shall refer to any person who resides on a Lot within the Development, whether as a tenant or Owner.

Section 5. Lot. The term "Lot" shall mean any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. Common Area. The term "Common Area" is the portion of Briardale Square Property that has not been subdivided into lots. It is owned by all Owners through the Association, and includes improvements as parking areas, swimming pool, clubhouse, playground areas, sidewalks not on individual Lots, and open areas. Barkley Ct. and Breckinridge Ct. (f/k/a Breckinridge Ct.) also are part of the Common area.

Section 7. Documents. "Articles" refer to the Articles of Incorporation of this Association, as amended. "Bylaws" refer to the Bylaws of this Association as amended. "Declaration" refers to this Declaration of Covenants, Conditions, and Restrictions, as amended. "Documents" refers to the Articles, Bylaws, and Declaration, any or all of them, as recorded. Each of these Documents may from time to time be amended as provided as each.

Section 8. Board. "Board" shall mean the Board of Directors of the Association. The Board shall act on behalf of the Association except where the Documents call for action by the Owners directly. The Board shall consist of Officers and other Directors as called for in and elected according to the Articles and Bylaws.

## **Article II**

### **PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Owners have a right and easement of enjoyment in and to their own Lot(s) and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the Declarant may assess reasonable fees for the use of any recreational facility situated upon the Common Area;
- (b) the Declarant may suspend the voting rights and the right to the use of any recreational facility of any Owner or tenant for nonpayment of assessments or for violation of rules, for a period not to exceed 60 days for each and any infraction
- (c) of its published rules and regulations;
- (d) the Declarant may transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; no dedication or transfer shall be effective unless an instrument signed by two-thirds of the Members agreeing to such dedication or transfer has been recorded;
- (e) individual Residents have a right to the exclusive use of certain parking spaces as provided for elsewhere in this article.

Section 2. Parking Rights. Residents have parking rights to two parking spaces per Lot, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall assign two vehicle parking spaces per Lot, which may include whatever parking spaces are available beside or in the private driveway associated with each Lot. No boats, trailers, campers, or junk cars shall be allowed or may be parked more than 48 hours on any Lot, parking area, or Common Area in the Property.

Section 3. Delegation of Use. Owners may delegate, in accordance with the Bylaws, their right of enjoyment to the Common Area and facilities to the members of their immediate family, tenants, or contract purchasers who reside on the Property.

## Article III

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. The Association shall have one class of voting membership: Class A. Every Owner of a Lot which is subject to assessment is a voting Member of the Association. Members of the Association, unless suspended for cause, shall have the right to vote at Association meetings and to affix or refuse to affix their signatures in assent to amendments to the Documents, or to take other actions required by the Board of Directors, by these Documents, or by law.

Section 2. Voting Rights. Any time that the Association permits or requires Owners to act or to vote or to affix signatures, the Owner of one or more Lots is entitled to one vote (including affixing a signature) for each Lot owned. When there is more than one Owner of any Lot, the Owner of a majority interest in a Lot shall be entitled to cast that Lot's vote. When there is no majority interest, any person who owns an interest in a Lot may cast that Lot's vote. In no case shall more than one vote be cast per Lot owned, nor shall more than any one Owner's consent, vote, or signature ever be required for any action called for by the Articles, Bylaws, Declaration, or policies of the Association.

Section 2. Proxy Voting. Proxy voting shall be permitted. Owners may indicate in writing to the Board President either their vote (or permission to sign) on a single decision or may assign their general proxy to a person, who may then exercise the right to vote (or sign) on behalf of the Owner. Owners who live outside of Story County, Iowa, by acceptance of a deed therefore and whether or not it shall be so expressed in such deed, is deemed to covenant and agree that they are each required to notify the President of the Board of person living in Story County who is authorized to act as the proxy of the Owner in the event that the Owner's vote (or signature) is required or desired but not received in a timely fashion. If no proxy is assigned, the President of the Board shall be deemed to have been assigned the proxy of an Owner who does not live in Story County, Iowa. An Owner's proxy is canceled any time the Owner is present and does vote at a meeting or does sign a document needing an Owner's signature.

## **Article IV**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of Lien and Personal Obligation of Assessments. The Owner of each Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association as follows:

- (a) annual assessments or charges, which will be paid monthly, and
- (b) special assessments, such assessments to be established and collected as hereinafter provided. The annual and the special assessments, together with 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 such assessment is made, and shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment fell due. This personal obligation for delinquent assessments shall not pass to successors or assigns unless expressly provided for and assumed by them in writing.

Section 2. Purposes of Assessments. The assessments levied by the Declarant shall be exclusively used to promote the recreation, health, safety, and welfare of the residents and the improvement, maintenance, and payment of taxes on the properties. Owners are responsible for all taxes assessed on their individual Lots.

Section 3. Annual Assessment.

- (a) The annual assessment shall be \$132 as of January 1, 2014 per month per Lot upon adoption of this Declaration. The Board of Directors may increase or decrease the assessment to an amount appropriate to cover the current and anticipated future expenses of the Association by giving 30 days written notice to each Lot Owner, either by regular mail or by personal delivery.
- (b) When a proposed annual assessment shall be either an increase or a decrease of more than five percent of the annual assessment, then in effect a vote of the members shall be required, voting either by proxy or in person at a meeting of the Association called for this purpose and at which a quorum is present.
- (c) In calculating the five percent limitation, the current assessment shall be multiplied by .05. This amount shall be added to (or subtracted from) the current monthly assessment. It will also be acceptable to increase by as much as 50 cents the endpoints of the range thus calculated so as to set the dues at the whole dollar amount which falls within this extension without it violating the limitation set forth in this section. The dues may then be set by the Board within the range calculated.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of any improvement upon the Common Area, including fixtures and personal property related thereto,

or when required by any judgment against the Association, or for costs associated with the obligations of the Association, provided that any such assessment shall have the assent of two thirds (2/3) of the votes of each class of members, voting in person or by proxy at a meeting duly called for this purpose. The assessment may be for any period up to and including ten years in length. Assessments may be used to retire a debt entered into for any purpose for which the Association is entitled to borrow or spend money.

Section 5. Adequate Notice, Quorum, and Vote Requirements for Assessments.

- (a) Two-thirds of the votes cast, either in person or by proxy, at any meeting called for such a purpose and at which a quorum is present shall be sufficient to adopt a special assessment or to increase or decrease the annual assessment by an amount greater than that permitted the Board acting alone.
- (b) Written notice of such a meeting shall be given as provided in Article III, Section 3, of the Bylaws. Such notice shall occur at least 30 days and no more than 60 days in advance of the date of the meeting.
- (c) A quorum for a meeting to fix special assessments and annual assessments outside the range permitted the Board alone shall be the presence of members or proxies of members, including those assigned to the Secretary of BSHA, entitled to cast sixty percent of all votes (64 members out of 106 Lots), but both numbers shall be reduced by the number of Owners whose voting privileges have been suspended).
- (d) Should a quorum fail to appear, another meeting may be called for the same purpose, subject to the same notice requirement. The quorum for this and any subsequent meeting(s) for the same purpose(s) shall be one-half of the required quorum for the first meeting (now 32 votes). Any subsequent meeting(s) must be held within 60 days following the preceding meeting(s).

Section 6. Uniform Assessments. Both annual and special assessments must be uniform for all Lots and shall be paid monthly unless another method is approved by the Board.

Section 7. Certificate. The Association shall, upon demand of any Owner and for a reasonable charge, furnish a certificate indicating the balance due the Association on all accounts, signed by an officer of the Association or furnished by any firm hired by the Association for accounting purpose.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Assessments not paid in 30 days of the due date are delinquent and shall bear interest from the due date at an interest rate established by the Board for all delinquent amounts. The Board may require all Owners or just those who have been delinquent in paying assessments to take reasonable and appropriate measures to assure that assessments will be paid fully and on time. These measures may include, but are not limited to, establishing an escrow account or an assignment of wages. Any costs or expenses associated with such an action shall be the obligation of the Owner. The Board, on behalf of the Association, may bring any legal action against an Owner personally obligated to pay assessments, or escape liability for the assessments provided for herein by nonuse of the Common Area or by abandonment of a Lot.

Section 9. Subordination of the Lien to Mortgages. The lien for 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 mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer when that is required by law or judicial decision. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **Article V**

### **ARCHITECTURAL CONTROL**

Section 1. Permission Required. No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the written drawings, plans, and specifications showing the nature, kind, shape, dimensions, materials, and location of same shall have been submitted to and approved in writing as to harmony of external design, location in relation to surrounding structures, topography, and other matters the Board may consider relevant and appropriate. The Board may notify the Owner in writing of any changes or alterations it requires in order for it to approve of the construction that has been proposed.

Section 2. Violations. The Board shall reply to a written request within 60 days. If for any reason the Board does not reply, the effect is the same as had there been a rejection and disapproval of the proposed plan(s) or location(s) for any construction that is covered by this article. If any construction is commenced or completed without the written approval of the Board, the Board, within one year of the ending of any construction activity, may order any or all of it to be altered or removed at the expense of the Owner.

This one-year limitation on the Board shall be null and void if the Owner never notified the Board in writing of the proposed construction, or withdrew a proposal before it was acted on, or the Board rejected the proposal, or the construction failed to follow the plans approved by the Board. In such case, the Board shall notify the Owner in writing, either in person or by regular mail, of any alterations or removals that it requires, along with a reasonable deadline for its accomplishment. If the alteration or removal is not done within a time or in a manner satisfactory to the Board, the Board may contract to have the appropriate work done. All costs, interest expense, and legal fees associated with such actions shall become the responsibility of the Owner of the property and shall become a lien against the property.

Section 3. Committee. The Board may delegate approval of proposals for construction and other alterations to an architectural control committee, which shall consist of at least three members. At least two members of this committee shall be actual Residents and at least one other shall be a member of the Board. The Board shall appoint the chairperson of the committee. The Board may give the committee responsibility for

approval of architectural proposals or may reserve the final authority for that to itself and ask the committee for recommendations only. In all other matters related to this article, the Board shall have final responsibility and authority.

## **Article VI**

### **GENERAL PROVISIONS**

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges now or hereafter imposed by the provisions of these Documents, policies, rules, and guidelines of the Association. Failure by the Association or by any Owner to enforce any covenant or restriction or policy of the Association shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, restrictions, policies, or Documents by judgment or court order shall in no wise affect or invalidate any other property provision, and all others shall remain in full force and effect.

Section 3. Amendment.

- (a) This Declaration may be amended by vote of two-thirds (2/3) of the Membership. Whenever the Declaration is amended, the amending document shall state that any portion of the Declaration not altered shall be incorporated by reference and made a part thereof.
- (b) The Declaration, Articles, and Bylaws of the Association, and any amendments or revisions thereto, shall be recorded in the Office of the Recorder of Story County, Iowa.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds of the voting Members.

## **Article VII**

### **EXTERIOR MAINTENANCE**

Section 1. Normal Maintenance. The Association shall maintain the Common Area, buildings located thereon, and grounds and shall provide exterior (only) maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace, and care for roofs, gutters, downspouts, and exterior building surfaces, including windows and doors, and other exterior improvements. Excluded from exterior maintenance are the repair and replacement of glass surfaces, screens, storm doors, door hardware; trees, shrubs, or other plants; and any horizontal concrete, asphalt, or wooden surfaces not part of a wall, such as

patios, patio decks, driveways, and private sidewalks, whenever any of these are on the Owner's Lot.

Section 2. Owner at Fault. In the event that the need for maintenance or repair is caused by the Owner, family, guests, or invitees, the cost of such maintenance or repair shall be borne by the Owner, becomes a lien against the property, and becomes due within 30 days of billing. If unpaid at that time, the full cost plus an appropriate finance charge to be set by the Board shall be added to and become a part of the assessment to which the Lot is subject and shall be paid monthly and be paid fully within one year of the original date of billing.

Section 3. Shrubs, Trees. In the event an Owner of any Lot on the properties shall fail to maintain the shrubs, trees, and plantings upon the Owner's Lot(s) in a manner in accordance with policies set by and satisfactory to the Board, the Association, through its agents and employees and with the approval of two-thirds (2/3) vote of the Board, shall have the right to enter upon said Lot(s) and properties to maintain, trim, cut, or remove such materials as they deem appropriate. The Board is authorized to perform and carry out this section only after giving 5 days written notice to the Owner, setting out in such notice what is required to be done.

Section 4. Snow, Debris. The Association shall cut the grass and remove leaves, branches, and other naturally occurring debris (not trash or garbage from within the home) from all properties and the Common Area and shall also clear and remove snow from all walks, streets, driveways, and parking areas. The removal of grass, branches, debris, and snow shall be done in accordance with policies and guidelines to be established by the Board and negotiated with those who would perform these activities.

Section 5. Inspection. The Association shall maintain or cause to be maintained all utility lines, sewers, pipes, and poles outside of and up to the buildings proper. The Board (or its agents) may inspect the exteriors of all properties, Lots, and buildings and, after giving reasonable notice, may inspect the interiors of any building for conditions affecting the health, safety, need for repair, or proper and adequate use of walls, structures, electric lines, gas lines, water lines, and other building contents.

Section 6. Insurance. Nothing in the foregoing provisions of this article shall be construed to be in derogation of Article XI on Insurance herein, or shall relieve each Owner of the obligation to maintain policies of insurance designating themselves and the Association as coinsureds with the proceeds payable jointly to such Owners and the Association. It is the expressed intent of this article that the obligations imposed upon the Association by the foregoing shall be limited to fair wear and tear attributable to causes which are not among those within coverage included under the policies of insurance contemplated by Article XI of this Declaration.

Section 7. Exclusions. Specifically excluded from the obligations for maintenance by the Association are the following:

- (a) glass breakage, such as in windows and doors.
- (b) maintenance or repair of screens, screen doors, and storm doors.



- (c) any damage or deterioration to dwellings or garages that would ordinarily be the obligation of the Association that is the result of willful or negligent act(s) of a misuse by Owner, family, guests, and invitees care and maintenance of the trees, shrubbery, or plants on the properties of Owners except as may be provided by the Board.
- (d) repair or maintenance of the trees, shrubbery, or plants on the properties of Owners except as may be provided by the Board.
- (e) repair or maintenance of sidewalks, patios, garage floors, porches, and other hard surfaces on the individual Lots of Owners.

Section 8. Noncompliance. In the event of the failure or neglect of an Owner to maintain or repair property in accordance with such Owner's responsibilities and obligations as spelled out in these Documents, the Association may, upon the affirmative vote of two-thirds of the Directors present and voting, direct written notice to the Owner describing the particular repair or maintenance required and notifying such Owner that unless satisfactory showing of good faith compliance and commencement thereof is made within a reasonable period of time specified by the Board, the Board may engage the services of such persons or businesses as it deems appropriate to accomplish the required maintenance or repair. Plans for repairs, construction, or reconstruction shall be subject to the architectural control of the Board, as specified in Article V herein. Noncompliance, such as by failure to show the Board those satisfactory steps have been undertaken and will be completed, will constitute consent of the Owner to have the repairs or maintenance performed by the Board or its agents. The costs of repairs, maintenance, and licenses, plus any additional costs, such as those associated with legal fees or the cost of providing competent supervision, whether performed by a Board member or an agent on behalf of the Board, shall be assessed specifically against the Owner's property and shall constitute a lien thereon. Such costs shall also constitute a personal obligation of the Owner, enforceable by appropriate proceedings before a court of competent jurisdiction.

## **Article VIII**

### **PARTY WALLS**

Section 1. General Rules of Law Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to 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 equally by the affected Owners unless it can be shown that one of them is more responsible than the other for any damages. In that case, the cost of repair shall be apportioned according to the approximate level of responsibility of the affected Owners. The Board shall determine the level of responsibility and assessment of each Owner.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other cause, any Owner who has use of the wall may restore it, and if other Owners thereafter make use of the wall, they shall contribute to the cost of the restoration thereof in proportion to such use without prejudice. However, this shall not limit the right of any such Owners to call for a larger contribution from others under any rule of law regarding liability for negligent or willful acts or omissions.

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 cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribute Runs with Land. The right of any Owner to contribution 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. Arbitration. In the event of any dispute arising concerning a party wall, or under other provisions of this article, the Board shall act as arbitrator unless a Director is also a party to the dispute, in which case each party may choose one person as an arbitrator and the two of them shall choose a third. A majority vote of the arbitrators shall decide the issue(s) before it.

Section 7. Encroachment. Upon any party wall, there may be an encroachment of not more than six inches in laying the foundation upon an adjoining Owner's Lot so that the footing on which rests the party wall may extend not more than two feet in any roof overhang so that a roof overhang belonging to one Lot Owner may hang not more than two feet over the property of an adjoining property whenever there is a difference in the height of the two adjoining buildings.

## **Article IX**

### **RESTRICTIONS ON USE OF LAND**

Section 1. Use of Land. Each Lot within the Property is hereby restricted to residential use and uses related to the conveniences and enjoyment of residential use. No trailer, basement, tent, shack, garage, bam outbuilding, or structure of a temporary character shall be used on any portion of any Lot at any time as a residence, either temporarily or permanently. In no event shall more than two unrelated persons occupy, use, purchase, own, rent, or live in any townhouse on the Property, now or in the future. This shall not preclude the use of any recreational building or facility or Common Area by a guest or unrelated person so long as they do not occupy or live thereon for residential use. Any violation of this section shall be cause for a temporary or permanent injunction to be granted by a court against the person or persons violating its provisions, as well as a judgment against that person or persons for costs, interest, and reasonable attorney fee.

Section 2. Animals Prohibited.

- (a) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lots except for household pets as specified and limited in this section. No animals or birds may be kept, bred, or maintained for any commercial purpose. No more than one (1) dog (or litter less than one year old) or two (2) cats, caged birds, or caged animals, and no snake, ape, monkey, pit bull dog, or animal larger than 30 pounds, shall be allowed by any Owner or assign on any Lot, Common Area, or Property.
- (b) In no event shall such animals be kept on any Lot if they unreasonably disturb the Owners or residents of any other Lot. All animals shall be confined on the Owner's Lot and, for the mutual benefit of all the Owners and residents, no animal shall be allowed or permitted on the Common Area except when on a leash or otherwise under the strict control of a competent handler.
- (c) The Board may set, increase, or decrease the number or type of animals permitted and set or modify these and other policies for limiting, excluding, or regulating the number, care, and control of animals and birds, and for granting temporary or permanent waivers of these policies when they deem it appropriate.

Section 3. Nuisances, Advertising, and Business Restricted.

- (a) No advertising signs (except one per Lot of not more than two square feet saying "For Sale or "For Rent"), billboards, unsightly objects, or nuisances shall be erected, placed, or maintained on any Lot or Common Area, nor shall any Lot be used in any manner or for any purpose that may endanger the health or safety or unreasonably disturb the Owner of any Lot or any Resident.
- (b) No obnoxious or offensive trade shall be carried on upon any Lot. Each Lot shall principally be used as a residence of an Owner or tenant Residents are not prohibited from performing those professional or business activities that are normally performed at home and which do not include upon or interfere with other Residents or detract from the value of any or all Properties.
- (c) Some business activities may be acceptable with the prior approval of the board. The Board may rescind its approval any time it deems the activity to be unreasonably offensive or detrimental to one or more Owners or to the Association as a whole. No such permission or approval of any business activity by anyone shall constitute a right or condition for future business activity by Owner or Resident, and no sale or transfer of property may be made conditional upon any such business activity being permitted.
- (d) All business activities must be performed exclusively or almost exclusively inside of the Resident's residence.
- (e) The Association may decline to approve business activities proposed to it merely on the grounds that additional business activities, whether of the same type as already permitted or not, are inappropriate or undesirable, or that they wish to reduce the number of business activities operating in the Association, or that they

do not believe that the particular business proposed, or the particular person proposing it, or the manner in which the business apparently will be run (or previously has been run, here or elsewhere) is likely to be acceptable to the Board or to one or more Owners of Lots.

- (f) No illegal business activity of any kind shall be performed in any dwelling or on any Property or Lot.

Section 4. Screening Required. All clotheslines, equipment, trash and garbage cans, woodpiles, storage piles, or any other unsightly or obnoxious objects shall be kept screened by adequate plantings or fencing so as to conceal them from view of neighboring Owners and Residents. All rubbish, trash, and garbage shall be removed regularly from each Lot and shall not be allowed to accumulate thereon and shall not be burned on any Property. All clotheslines shall be confined to the patio area and away from the walkway to the street.

Section 5. Planting and Gardening Restricted. Except in the patio areas, no gardening shall be done. Flowers and ornamental plants are permitted on all portions of individual Lots, may be regulated, restricted, or prohibited by the Board when they deem it inappropriate. No fences, hedges, or walls shall be erected or maintained upon any Lot except as are planted or erected originally or with the consent of the Board.

Section 7. Automotive Repair Prohibited. No repair, rebuilding, manufacture, or painting of any automobile, truck, or other motor vehicle, whether for hire or not, shall occur on any Lot or Common Area.

## **Article X**

### **EASEMENTS**

Section 1. Easement for Minor Encroachments. Each Owner of any Lot covenants that if any portion of any improvement, whether the same be an improvement of an Owner or of the Association, encroaches upon a Lot, a valid easement for the encroachment and for the maintenance of same, so long as it now stands, shall and does exist. In the event an improvement is partially or totally destroyed and then reconstructed, each Owner of any Lot further covenants that, at that time, minor encroachments of any portion of an improvement, whether of an Owner or of the Association, upon a Lot due to construction, shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Association Easement. Each Owner of a Lot covenants that the Association or its designee shall have an easement in, on, across, over, and under such Lot to permit the Association to effect any desired or necessary maintenance or repairs, including but not limited to the maintenance and repairs listed in Article XI herein, or the installation or repair of such items are common to all Owners.

## **Article XI**

### **COVENANT FOR REPAIR, REBUILDING, AND INSURANCE**

Section 1. Repair Required. In the event of the damage or destruction of any improvement on any Lot, whether due to fire, natural disaster, accident, negligence, misuse, or any other cause, each Owner is required to rebuild, repair, and restore any damaged unit to a condition substantially the same and as good as it was prior to the damage or destruction and to do so within a reasonable period of time in order to preserve the values and amenities of the Properties.

Section 2. Architectural Control. Such repair, rebuilding, and restoration shall fall under the provisions of Article V (architectural control), Article VIII (party walls), and all other provisions of these Documents.

Section 3. Insurance. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall have been so expressed in any such deed or other conveyances, covenants and agrees to carry, maintain, and timely pay the premium(s) on a policy of insurance on the improvement located on the Owner's Lot(s), protecting such improvement against a financial loss from damage or destruction by fire, lightning, windstorm, hail, explosion, vandalism, miscellaneous mischief, and all other hazards as are insured against in standard extended coverage insurance policies, and for at least the full replacement cost of the total improvement to each Lot. The Association may from time to time set the minimum amount of insurance coverage for each Lot.

Section 4. Lien for Premiums. In order to insure the Association from financial loss resulting from extensive damage to or destruction of the improvements on a Lot where the Owner has failed to maintain adequate insurance in violation of this article, the Association may, but is not required to, pay the insurance premiums on behalf of any Owner who becomes delinquent. If the Board takes such a precaution, it shall add the cost of all premiums, finance charges, legal fees, interest, and other costs to the assessment on that Lot, and such charges shall be a lien on the property that runs with the land and a personal obligation of the Owner.

Section 5. Additional Insured. Each Owner covenants that the insurance policy provided for herein shall be issued in a face amount not less than the minimum set by the Association for that Lot, that Briardale Square Homeowners Association, Inc., shall be listed on the policy as an additional insured, that the proceeds from any benefits paid as a result of the damage or destruction of any improvements shall be made payable to the Association and to the Owner, and that the Owner or the insurance company shall provide the Association with a Declaration of the Insurance in force for each Lot owned. Whenever the proceeds from an insurance payment exceed the actual amount of the repair or rebuilding required by the Association, the amount of the excess shall be paid to the Owner.

Section 6. Repair and Restoration of Improvement. In the event an Owner fails or refuses to repair, rebuild, and restore such improvements in a reasonable time as called for herein, each Owner of any Lot, by acceptance of a deed or conveyance, hereby irrevocably constitutes and appoints the Association his/her true, lawful attorney in fact, in his/her name, place, and stead, and with full and complete authorization, right, and power to collect in the name of the Association alone the full proceeds of the insurance policy described herein, for the purpose of causing the repair, rebuilding, and restoration of the improvement in a manner it deems appropriate. An Owner shall have no claim against the Association in the event it collects the entire proceeds of such insurance policy and uses same to repair, rebuild and restore such improvement. Any excess insurance proceeds over the actual cost of the improvement shall remain with and inure to the Association whenever it shall have to take upon itself the duties associated with supervising such repair and rebuilding. The Association may designate one or more Board members to be principally responsible for supervision of such work and that person(s) shall be paid an hourly wage equal to ten times the legal minimum wage. When this cost, or any portion of it, shall exceed funds available from the proceeds of any insurance policy, the additional cost shall become a lien upon the land and a personal obligation of the Lot Owner and shall be added to the assessment on that Lot.

Section 7. Mutual Benefit. It is expressly agreed and acknowledged by the Owner of any lot that provisions of this and every article of these Documents are for the mutual benefit of all Owners of Lots and the Association and is necessary for the protection of all said Owners. Nothing herein shall preclude an Owner from obtaining whatever additional insurance may be desired. It is the expressed duty and individual responsibility of each Owner to provide adequate and appropriate additional insurance covering personal property, liability, theft, and other risks.

## **Article XII**

### **FURTHER INFORMATION**

Section 1. Buildings Described. All buildings located in the Development will be either one or two-story buildings. All individually owned units in each building shall be one-story or two-story, with or without basement, will be of a frame construction with fireproof and soundproof party walls, brick veneer, and approved asphalt composition roofs. There shall be 106 units in the Development. Each unit is a Townhouse. In each building there shall be at least three units and not more than eleven units. All units shall have access to the Common Area, and by virtue of having access to the Common Area, also have access to the streets and places that adjoin said Development.

Section 2. Drawing of Area. The Lot numbers, locations, street names and addresses, garage locations, the Common Area, and other information about the Properties appear in the drawing which is Schedule B, attached hereto and made a part of this Declaration by this reference. The Common Area consists of all land that is not one of the 106 Lots or is not a dedicated city street.

Section 3. Common Area. The Common Area is available to the Association for improvement for the mutual benefit of Residents of the Development. These improvements may include playground areas and equipment, a swimming pool, a clubhouse, a tennis court, Barkley Ct. and Breckinridge Ct. private driveways, parking areas, and the land itself. Each Owner owns his/her own units plus one-106th of the Common Area. The Association shall collect from each Owner through annual assessments adequate income to pay all taxes on the Association and its Property.

Section 4. No Limited Use Areas. There are no limited common elements and facilities and all Owners shall have and enjoy full right to use any and all of the Common Area and facilities, with such limitations as are set forth in these Documents and in policies and rules made by the Association to ensure the enjoyment, safety, and health of all Residents.

Section 5. Portions Repealed. In the current Declaration, portions referring to two classes of Members (Article III, Section 2, "Class B"), dates of commencement (the first two sentences of Article IV, Section 7), and *FHANA* Approval (Article VI, Section 5) are now obsolete, null, and void and are hereby repealed. The reference to *FHANA* approval in Article XI of the original Articles of Incorporation is similarly obsolete, null, void, and that Article is repealed by the amendment of the Articles dated May 10, 1992. The reference to *FHA/VA* approval in the Bylaws (see Article XIII, Section 1) is similarly obsolete, null, and void, and is repealed by the amendment of the Bylaws dated May 10, 1992.

## **Article XIII**

### **REMEDIES**

Section 1. Penalties. Owners who violate any provisions of the Documents, such as by failure to regularly pay assessments in a timely fashion, or by refusing to make repairs or restorations as required by the Board acting on behalf of the Association, or by acting in a manner that appears to or does endanger the health or safety or brings pain or discomfort to one or more Residents or Owners, or violates the policies or decisions of the Board, shall be subject to penalties and punishments as outlined in Article II, Sec. 1(b) herein, including the loss of voting rights, the loss of the use of recreational facilities, the imposition of finance charges, and the incurring of other costs and expenses as specified throughout this Declaration and the policies and rules adopted by the Association and its Board of Directors. There shall be no reduction in any assessment as a result of the loss of the privileges by Residents or Owners.

Section 2. Foreclosure. Should the problem activities or failures to act continue after a sixty day period, or should it appear that the Owner cannot or will not make regular payment of assessments, or that the Owner cannot or will not satisfactorily conform to the

policies, guidelines, rules, and provisions of the Documents, the Association may foreclose the lien on the property of said Owner.

Section 3. Acceptance. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall have been so expressed in any such deed or other conveyance, covenants and agrees to the provisions of this and every other article and section of the Documents.



## **Schedule A**

### **LEGAL DESCRIPTION**

The Legal Description of the property of the Association, which property also is referred to as the Common Area, is:

A part of the South half of the Southeast Quarter (S 1/2 SE 1/4) of Section 27, Township 84 North, Range 24, West of the 5th p.m., in the City of Ames, Story County, Iowa, described as follows:

Beginning at the Northwest corner of said South half of Southeast Quarter (S 1/2 SE 1/4);thence North 89 15' East along the Northerly line of the South half of Southeast Quarter (S 1/2 SE 1/4) 999.55 feet; thence South 0 03'30" West, along the East line of Lot 1, North Park Subdivision, 667.09 feet; thence South 89 16'30" West along the centerline of 30th Street, 748.7 feet, to a point of beginning of a 246.86 foot radius curve concave to the Northeast, thence Northwesterly around said curve, 390.87 of the South half of the Southeast Quarter (S 1/2 SE 1/4), and along the centerline of Hoover Avenue a distance of 416.6 feet to the point of beginning.

### **EXCEPTING THEREFROM THE FOLLOWING:**

- (a) Lots 1 through 106, inclusive, Briardale Square, a subdivision in Ames, Iowa.
- (b) 25 garage lots in Briardale Square, letters A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P,Q,S,T,U,V,W,X,Y, and Z, excepting therefrom the letter R.
- (c) 30th Street and Hoover Avenue and all of Truman Place.

## **Schedule B**

### **DRAWING OF THE PROPERTIES**

A drawing of the Properties is attached and is incorporated into this Declaration by this Reference.



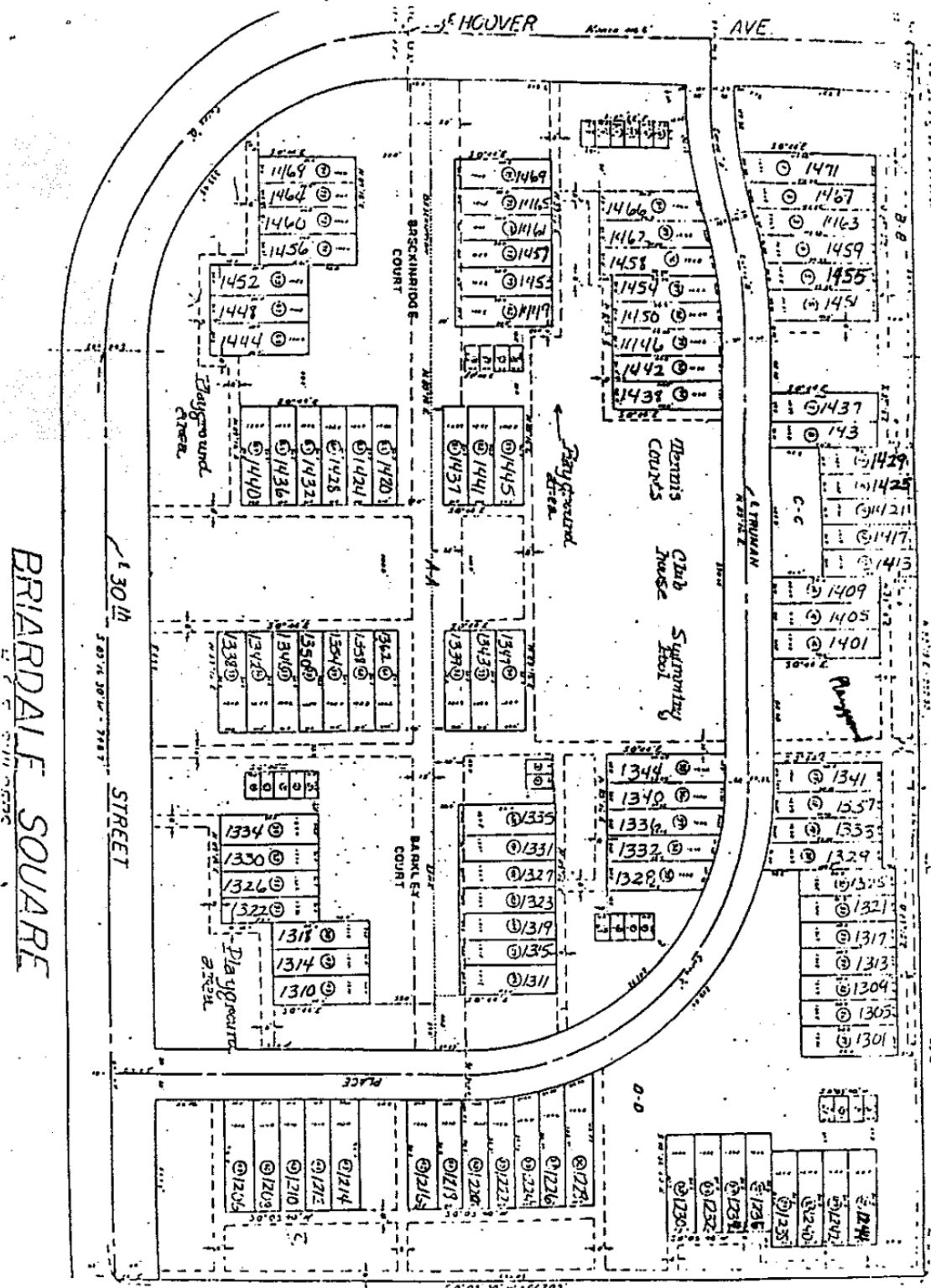
## **Schedule C**

**APPROVAL of the AMENDMENT, REAFFIRMATION, and RESTATEMENT of the ARTICLES of INCORPORATION, BYLAWS, and DECLARATION of COVENANTS, CONDITIONS, and RESTRICTIONS of BRIARDALE SQUARE HOMEOWNERS ASSOCIATION, Inc.**

ATTACHED HERETO are the notarized signatures of a sufficient number of Owners of Lots in the Briardale Square subdivision to effect the amendment, reaffirmation, and restatement of the Articles of Incorporation, the Bylaws, and the Declaration of said Association, as required by Article X of the Articles of Incorporation, Article XIII of the Bylaws, and Article VI of the Declaration of Covenants, Conditions, and Restrictions of Auditor's Plat of Briardale Square Homeowner's Association, Inc., f/k/a Briardale Square Homes Association, Inc. The signature of any Owner indicates that Owner's assent to the amendment, reaffirmation, and restatement of each and all of the Documents listed in this Schedule. Multiple signatures by a single Owner are permitted to the extent of the number of Lots owned.



## **Maps and Drawing of Briardale Square**



BRIARDALE SQUARE

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