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Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2016-00027832

BK **16195** PG **587-599**

Recorder's Cover Sheet
Declaration of Homeowners' Association for
Brinmore Estates, Ankeny, Polk County, Iowa.

Preparer Information: Matthew M. Hurn
Wasker, Dorr, Wimmer and Marcouiller, PC
4201 Westown Pkwy, Suite 250
West Des Moines, IA 50266
(515)283-1801 (1820RE)

Taxpayer Address: Classic Development, LLC.
1910 S.W. Plaza Shops Lane
Ankeny, IA 50023

Return Address: Matthew M. Hum
RETURN TO: Wasker, Dorr, Wimmer, and Marcouiller, PC
4201 Westown Parkway, Suite 250
West Des Moines, IA 50266
(515) 283-1801

Legal Description: See Exhibit "A"

**DECLARATION OF HOMEOWNERS' ASSOCIATION FOR BRINMORE ESTATES,
ANKENY, POLK COUNTY, IOWA**

This Declaration is made this ____ day of _____, 2016, by Classic Development, L.L.C. a Limited Liability Company organized and existing under the laws of Iowa, ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Ankeny, Polk County, Iowa, as described in Exhibit "A" attached hereto ("Property"); and

WHEREAS, Declarant desires to develop the Property as part of a planned community known as "Brinmore Estates"; and

WHEREAS, Declarant desires to establish a Homeowners' Association to provide for the control, as well as maintenance of common areas for the benefit of certain lot owners within the Property;

NOW, THEREFORE, Declarant by the execution and recording of this document, hereby declares that the Property described in the attached Exhibit "A" shall be held, occupied, sold, and conveyed subject to the Covenants and Restrictions set forth herein.

ARTICLE I.
Definitions

Section 1. "*Association*" shall mean the Brinmore Estates Homeowners' Association, a non-profit corporation organized pursuant to the Revised Iowa Nonprofit Corporation Act, as well as any of its successors or assigns. The Articles of Incorporation and the Bylaws of the Association are hereby incorporated by reference in this Declaration.

Section 2. "*Board of Directors*" shall mean the Board of Directors of the Association.

Section 3. "*City*" shall mean City of Ankeny, Iowa, a municipal corporation.

Section 4. "*Common Areas*" shall mean all property, real or personal, together with improvements thereon, which are owned, leased, held, or maintained by the Association for the common use and enjoyment of the Owners, including open spaces established by easement, landscaping buffer easement or conservation easement as identified on the Plat of the Property filed with the Recorder of Polk County, Iowa, as well as sprinkler systems within landscaping buffer easements and entrance feature signs, special street or decorative lighting, landscaping features, and other amenities for the common good of Lot Owners as determined by the Association.

Section 5. “*Declarant*” shall mean Classic Development, L.L.C. as well as any of its successors and assigns.

Section 6. “*Declaration*” shall mean this declaration of Covenants to which the Property is subject.

Section 7. “*Lot*” or “*Lots*” shall mean the platted Lots or other Lots within the Property except for dedicated public streets or other parcels owned by the City.

Section 8. “*Member*” shall mean those persons entitled to membership in the Association as provided in this declaration and the Articles of Incorporation and Bylaws of the Association.

Section 9. “*Owner*” shall mean the record titleholder, as disclosed by the records of the Polk County Recorder, whether one or more persons or entities, of a fee simple title to each of the above-described Lots and shall also include vendees pursuant to an Installment Real Estate Contract. This term shall not include those persons having an interest in any Lot as a vendor under an Installment Real Estate Contract or those persons having an interest solely for security purposes in the performance of an obligation or debt. The term also excludes those persons having a lien against any Lot by operation of law or otherwise.

Section 10. “*Property*” shall mean the real estate described in Exhibit “A” and any and all improvements thereon, but shall exclude any portion thereof which has been conveyed, dedicated or granted to the city now or in the future.

ARTICLE II. Common Areas

Section 1. Common Areas. The contemplated boundaries of the Common Areas or open spaces are described in the Plat documents. The location, boundaries and configuration of the Common Areas or open spaces may be modified by Declarant or the Association in their sole discretion to accommodate development of the Property and to comply with requirements of the City.

Section 2. Obligations of Association. The Association shall be responsible for all Common Areas and open spaces and shall be responsible for the management and control of the Common Areas and open spaces except for any bike and pedestrian trail extending through the Property which shall be maintained by the City of Ankeny for the benefit of the public. The Association’s obligations under this section are solely for the exclusive benefit of the Owners and these obligations are not indeed to and do not extend to any third party. Upon relinquishment of voting control by Declarant, the Association shall continue to keep and maintain the Common Areas and open spaces in as good a condition as when Declarant was the sole voting member.

Section 3. Owners’ Easements. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas and open spaces subject to the terms of this Declaration and

subject to any reasonable Rules and Regulations or Bylaws which may be enacted at any time by the Association. This right and easement of enjoyment shall be appurtenant to the title of every Lot and shall pass with the title and run with the land in any conveyance, subject to the following limitations and limitations set forth elsewhere in this Declaration.

- A. Subject to the requirements of the Revised Iowa Non-Profit Corporation Act regarding notice and due process, the Association shall have the right to suspend the voting rights of any Owner for the period during which any assessment under this Declaration against his or her Lot remains unpaid or for any period during which the Owner is in violation of any published Rules and Regulations of the Association or Bylaws;
- B. The Association shall have the right to dedicate and transfer any or all parts of the Common Areas to any municipality, county or governmental subdivision. The governmental entity must also approve of any dedication and transfer. In addition, the Association shall obtain the prior approval of two-thirds (2/3) of the Members who are present and qualified to vote at any regular or special meeting of the Association regardless of when the transfer or dedication takes place. If the transfer or conveyance is merely for the purpose of granting an easement to locate a utility, water line, sewer, pedestrian and bike trail or other similar public facility, the Board of Directors shall have a right to convey the easement without the approval of the Members;
- C. Declarant shall have the right at no cost to designate, establish, grant, dedicate, install, or maintain utility, sewer or drainage easements or lines under, across, over, and through the Common Areas or open space at any time;
- D. The Association shall have the right to promulgate reasonable Rules and Regulations concerning the Common Areas and open spaces; and,
- E. The Association shall not have the right to mortgage, grant a deed of trust or encumber any of the Common Areas or open spaces.

Section 4. Use of Common Areas. The Common Areas and open spaces shall be used strictly in accordance with the provisions of this Declaration, as well as the Bylaws, Rules and Regulations promulgated by the Association. No Owner or any other person shall obstruct or interfere with the rights and privileges of other Owners or the Association in the Common Areas or open spaces. Nothing shall be planted on, altered on, constructed on, or removed from the Common Areas or open spaces (and no fences shall be allowed) by any person except by prior written consent of the Board of Directors of the Association. If an Owner violates this section, the Association shall have the right to repair or restore the Common Areas or open spaces to their prior condition and assess the costs thereof against the Lot of the Owner who violates this Section. The cost shall become a special assessment and a lien upon the Lot of the Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of repair and restoration as it has for the collection of delinquent assessments under Article IV below. If an Owner interferes with the rights and privileges of

another Owner in the use of the Common Areas or open spaces, the Association or offended Owner may in addition commence a legal action to enjoin the interference or bring other legal action seeking damages. If the Association or offended Owner prevails, they shall also be entitled to recover reasonable attorney fees and costs associated with the action.

Section 5. Duration. Unless the Common Areas are conveyed to a municipality or other governmental authority, as described in Article II, Section 3, paragraph B, the ownership, or maintenance responsibility, as the case may be, of the Common Areas shall remain in the Association in perpetuity.

ARTICLE III.

Membership and Voting Rights in the Association

Section 1. Membership. Every Owner of a Lot shall automatically be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.

Section 2. Voting Rights. Each person who is a record owner of a fee or undivided fee interest or contract buyer of any lot which is subject to the above-described Homeowners' Association Declaration shall automatically be a Member of the Association in the classes set forth below. The acceptance of a deed or other conveyance or installment real estate contract for any such lot shall be deemed to be that lot owner's consent or affirmative action evidencing consent to become a Member of the Association. Classic Development, L.L.C., which is the owner of the Property, or its successor in interest or assignee, no longer owns any land Classic Development, L.L.C. or its successor in interest or assignee, no longer owns any land within the Property described in the Declaration of Homeowners' Association or Classic Development, L.L.C. or its successor in interest or assignee, waives its right in writing to be the sole voting Member of the Association and during the time that Classic Development, L.L.C. is the sole voting Member it shall have the right to elect all Directors of the Association. All other members shall be Class "B" members and shall not have any such voting rights. After Classic Development, L.L.C. or its successor in interest or assigns, no longer owns any Lot in the Property or waives its right to be the sole voting Member, all Members shall automatically convert to Class "A" Members and have full voting rights as established in the Declaration of Homeowners' Association, as amended from time to time, regarding the affairs of the Association, including election of Directors. 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.

Section 3. Board of Directors. The Owners entitled to vote shall elect a Board of Directors of the Association as prescribed in its Bylaws. The Board of Directors shall manage the affairs of the Association.

ARTICLE IV.
Covenant for Maintenance Assessments and Fines

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot by acceptance of a deed, contract or other conveyance therefore, whether or not it shall be so expressed in the conveying documents, shall be deemed to accept all the terms of this Declaration and shall also be deemed to covenant and agree to pay the Association:

- A. Periodic assessments or charges as determined by the Board of Directors of the Association;
- B. Special assessments for capital improvements, operating deficits or other extraordinary expenses; and,
- C. Any other assessment or fine provided in this Declaration.

All unpaid assessments or fines, together with interest, costs and reasonable attorney fees incurred in collecting the assessments or fines, shall be a charge and encumbrance on the defaulting Owner's Lot and shall be paramount to and prior to all other liens on the Lot, except only tax liens on the Lot in favor of any assessing governmental unit or district and except for a lien of any first mortgage of record against the Lot filed prior to the time the assessment became delinquent. The assessment, together with interest, costs and reasonable attorney fees, shall also be a personal obligation of the defaulting Owner of the Lot at the time when the assessment or fine becomes due. All assessments, fines, and charges under this declaration shall be due even though Declarant is the sole voting member of the Association as described above in Article III.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used to maintain the Common Areas. They shall also be used for the repair or improvement of the Common Areas or any improvements thereto and for other purposes specifically provided herein, as well as the Association Bylaws, including, but not limited to, payment of legal liabilities, taxes, fees, costs, debts, or obligations of the Association, payment of insurance premiums, and payment of all costs, fees payable to a professional management firm, expenses, fees, including accounting fees or attorney fees in connection with the operation of the Association, as well as the defense or prosecution of any legal action.

Section 3. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association shall have the authority to levy special assessments if deemed necessary by the Board of Directors of the Association to finance or perform any of the Association's obligations under this Declaration. Furthermore, the Association may levy a special assessment in addition to the monthly assessments for the purpose of paying, in whole or in part, the cost of any construction of a capital improvement not required of the Association under this declaration or other discretionary expenditure. No special assessment described in this paragraph shall levied unless a majority of the Members entitled to vote and present at a regular or special meeting approve the Special Assessment. So long as Declarant is the sole voting member of the Association, no

special assessment shall be levied for any capital improvement which would be considered the usual and customary responsibility of a developer.

Section 4. Fines and Penalties. In addition to the remedies described elsewhere in this Declaration, the Brinmore Estates Homeowners' Association is hereby authorized to levy against any Lot in violation of the Declaration of Covenants for Brinmore Estates or this Declaration an assessment penalty not to exceed \$100 for each day a violation of the Declaration of Covenants for Brinmore Estates or this Declaration continues beyond thirty (30) days after notice of a violation has been given by the Association to the Owner of said Lot by certified mail, return receipt requested, or delivered in writing in by personal service. If the Owner of the Lot cannot be located after a diligent search or inquiry, the Association shall publish notice of the violation for two (2) successive weeks in a newspaper of general circulation in Polk County, Iowa. If the Owner has not fully complied with the terms of this Declaration within thirty (30) days after receiving notice, or thirty (30) days after second publication of notice, the Association shall have the authority to levy an assessment penalty as described herein. This assessment shall be a lien on the Lot and shall have the same status as any other assessment levied by the Association. Any Lot Owner objecting to the notice of violation shall have the right within thirty (30) days of receiving notice to request a hearing before the Association Board of Directors. Assessment of the penalty shall be stayed pending a hearing and final decision by the Association Board of Directors.

Section 5. Monthly Assessment. From the date hereof until December 31, 2016 the maximum monthly assessment for each Lot shall not exceed \$100.00 plus applicable interest and penalty for a late payment, if any, plus any assessment for insurance as set forth in Section 3 of Article VII. After December 31, 2016, the monthly maximum assessment may be increased as follows:

- A. The maximum assessment may be increased effective January 1, 2017, and January 1 of each year thereafter by not more than ten percent (10%) of the actual monthly assessment of the previous year, or not more than ten percent (10%) of what the maximum monthly assessment could have been for each of the previous years (even if no increase was actually assessed), which increase may be imposed without any vote of the Membership. The Board of Directors shall have sole authority to make this permitted increase.
- B. The monthly maximum assessment may be increased in excess of that permitted in Paragraph A above by a majority vote of the Members who are present and entitled to vote at a regular meeting or special meeting of the Association called for that purpose.

Section 6. Due Dates of Monthly Assessments. The monthly assessment shall be due beginning sixty (60) days after closing on any Lot conveyed by the Declarant to an Owner regardless of whether or not a living unit or building has been constructed on the Lot. Thereafter, the assessment shall be paid monthly even if the Lot is vacant or even if there is a living unit or building on the Lot which is not occupied. Upon request, the Association shall furnish a Certificate in recordable form signed by an officer of the Association, setting forth whether or not the assessments on a specific Lot have been paid.

A properly executed Certificate from the Association shall be binding upon the Association as to the status of assessments as of the date of its issuance and may be relied upon by the public, including any prospective new buyer or lender institution. Although assessments are computed on a monthly basis, the Board of Directors of the Association may in its discretion invoice members at intervals other than monthly.

Section 7. Effect of Nonpayment of Assessments, Remedies of the Association. Any assessment not paid within thirty (30) days after the due date, shall bear interest from the due date at the highest rate allowed by Iowa law, but not more than eighteen percent (18%) unless the Board of Directors establishes a lower rate of interest and, in addition, the delinquent Owner shall pay a late payment penalty as determined by the Board of Directors pursuant to the Association Bylaws. The Association may bring an action for damages or injunctive relief, or both, against the Owner personally obligated to pay the same or may foreclose the lien against the Lot in the manner provided for foreclosure of a mortgage under Iowa law, or both. There shall be added to the amount of assessment the cost of the making title searches, lien searches and mortgage searches against the Lot, the cost of preparing the filing the Petition in such action, including reasonable attorney fees and costs. No Owner or other person may waive or otherwise escape liability for the assessments provided in this Declaration by virtue of non-use of the Common Areas or abandonment of his or her Lot or for any other reason.

Section 8. Subordination of Assessment Liens. If any Lot subject to a lien created by this Declaration shall be subject to the lien of a first mortgage of record, the following shall apply:

- A. The foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of any first mortgage; and
- B. The foreclosure of the first mortgage or any acceptance of a deed in lieu of foreclosure on any first mortgage shall operate to extinguish the lien of all assessments which came due after the first mortgage was filed to the date of a mortgage foreclosure decree or deed in lieu of foreclosure without the necessity of joining the Association as a defendant in the foreclosure action. Any unpaid assessments so extinguished by foreclosure or a deed in lieu of foreclosure shall be deemed to be an expense of the Association. This shall not extinguish the Association's right; however, to attempt collection of said sums from the defaulting Owner personally.

ARTICLE V.

Maintenance and Management

Section 1. Maintenance of Common Areas. The Association shall be solely responsible for the maintenance and repairs to all Common Areas.

Section 2. Access. In addition to any easements of record, including easements appearing on a recorded plat, the Association and its agents, employees or contractors shall have the right of

reasonable access, through and across land and lots adjacent to any Common Areas for the purpose of maintenance, repair, construction, or reconstruction within the Common Areas.

ARTICLE VI.

Insurance

Section 1. Casualty Insurance. The Association may purchase a comprehensive casualty insurance policy affording fire, property damage and extended coverage insurance for those properties and equipment which are the responsibility of the Association in an amount sufficient to replace the insured property or vehicle if such a replacement policy is reasonably available.

Section 2. Liability Insurance. The Association may also purchase a general comprehensive public liability insurance policy in such amount as the Board of Directors shall deem appropriate. The policy shall cover the Association, its Board of Directors, any committee of the Association, and all persons acting as agents or employees of the Association. The Association shall also be authorized at its discretion to maintain such other additional insurance as it deems necessary, including, but not limited to, directors' and officers' liability insurance and workers' compensation insurance.

Section 3. Assessment for Insurance. The premiums for any insurance maintained by the Association may become a separate monthly assessment over and above the assessments described above in Article IV of this Declaration, which assessments shall be made on a pro rata basis per lot and shall be included in the monthly assessment. The assessment for insurance shall not be subject to the limitation described above in Article IV, Section 4 regarding annual increases.

ARTICLE VII.

Easements and Covenants, Duration, Miscellaneous

Section 1. Drainage, Utility and Sewer Easements. Declarant shall have the right to reserve and dedicate certain areas within the Common Areas for drainage, overland water flowage, utility and sewer easements, now and in the future. No improvements or structures (excluding walkways, driveways and fences) shall be placed within these easements. Any fences, improvements or structures installed over easements shall be expressly subject to the rights of any public or private utility to construct, maintain or repair the utility, including the right to remove the fence, improvement or structure where reasonably necessary without the duty of replacement or reimbursement.

Section 2. Covenants. The Association shall have the non-exclusive authority to enforce all use restrictions, building specifications, covenants and conservation easements filed by Declarant regarding any land now and in the future which is made subject to this Declaration. Said use restrictions, building specifications and covenants shall automatically be incorporated herein as to the Lots to which they apply.

Section 3. Terms, Gender. Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Section 4. Duration. This Declaration shall remain in full force and effect as long as there are any Common Areas within the Property which have not been dedicated to the City or other governmental authority. If all Common Areas have been dedicated to the City or other governmental authority, this Declaration may be terminated by the Association filing a Notice of Termination with the Polk County Recorder. The Homeowners' Association is hereby designated and appointed as attorney in fact to file any extensions of this Declaration or notices thereof which may be required by the Code of Iowa.

Section 5. Delays in Enforcement. No delay on the part of the Association or any owner of land to which this Declaration applies in exercising any rights, power or remedy herein allowed shall be construed as a waiver or acquiescence therein. No right, claim or action shall accrue to and no action or claim shall be brought or maintained by anyone against Declarant, or any officer, employee or agent thereof on account of any action or inaction under this Declaration.

Section 6. Severability. In the event that any one or more of the terms or conditions of this Declaration shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall in no way affect, modify, change, abrogate, or nullify any of the remaining Covenants, Conditions, Restrictions, or terms not so expressly held to be void and the remaining parts of this Declaration shall remain in full force and effect.


Section 7. Reasonable Period for Enforcement. If any of the terms or conditions of this Declaration shall be held by a court of competent jurisdiction to be void or unenforceable by reason of the period of time herein stated for which the Declaration may be effective, such terms shall be reduced to a reasonable period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of Iowa or other applicable law, all as determined by the court.

Section 8. Assignment. Declarant shall have the absolute right to transfer, convey or assign any or all of its right, title and interest hereunder to any successor in interest or assignee without approval of any Member, Owner, Association, or any other person, provided; however, that such transfer, conveyance or assignment shall not be effective until it has been filed of record with the Office of the Recorder of Polk County, Iowa. Any such transfer, conveyance or assignment shall provide that the successor in interest or assignee shall assume all of the obligations, as well as rights of Declarant hereunder.

Section 9. Minor Amendments. So long as Declarant owns any Lots within the Property, it shall have the absolute right to make minor amendments to this Declaration in order to correct any deficiencies or errors; address any oversights; clarify any provisions thereof; or to carry out the intent of this Declaration or to address development issues not contemplated at the date hereof, or address issues

raised by the City of Ankeny, all without the necessity of obtaining any approval or consent of the Association, any Lot owner or any other person.

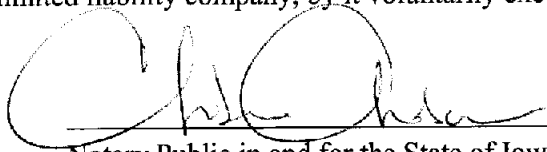
Classic Development, L.L.C.

By 
Joshua L. Moulton, Manager/Member

STATE OF IOWA)
) SS.
COUNTY OF POLK)

On this 19th day of September, 2016, before me, a Notary Public in and for the State of Iowa, personally appeared, Joshua L. Moulton to me personally known, who being by me duly sworn, did say he is the Manager of said limited liability corporation, that no seal has been procured by the said limited liability corporation that said instrument was signed on behalf of the said limited liability corporation by authority of its members and the said Managers acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it voluntarily executed.




Notary Public in and for the State of Iowa

CONSENT BY MORTGAGEE

COMES NOW the undersigned, Community State Bank, which is the mortgagee regarding the real estate described in the foregoing Covenants, Conditions and Restrictions, and hereby consents to said Covenants, Conditions and Restrictions. Any enforcement action by Community State Bank, as mortgagee, shall in no way extinguish said Covenants, Conditions and Restrictions. The mortgage held by Community State Bank, dated September 4, 2015, was filed September 8, 2015, in Book 15726, at Page 415, in the records of the Recorder of Polk County.

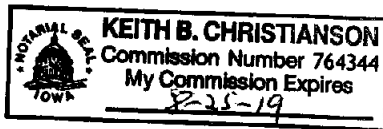
COMMUNITY STATE BANK

By *Paul Hayek*

By *Timothy Brad*

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 20th day of September 2016, before me, the undersigned a Notary Public in and for the State of Iowa, personally appeared, Paul Hayek and Timothy Brad to me personally known, who being by me duly sworn, did say that they are the VP/CRO and AVP/CLO of the corporation executing the within and foregoing instrument, that no seal has been procured by the corporation; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, and by them voluntarily executed.



Keith Christianson
Notary Public in and for the State of Iowa

EXHIBIT "A"

All Lots in Brinmore Estates Plat 1, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa.