

**AMENDED AND SUBSTITUTED  
AUGUST 22, 2005**

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**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR LAKE OHANA, Phase 1A  
A REAL ESTATE SUBDIVISION  
IN MILLS COUNTY, IOWA**

THIS AMENDED AND SUBSTITUTED DECLARATION, made on the date hereinafter set forth, is made by the undersigned property owner, hereinafter referred to as a "Developer".

PRELIMINARY STATEMENT

Developer owns certain real property located within Mills County, Iowa and described as follows:

**A PARCEL OF LAND LOCATED IN PART OF THE NW ¼ SW ¼ OF SECTION 13 AND PART OF THE NE ¼ SE ¼ OF SECTION 14, ALL LOCATED IN TOWNSHIP 73 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN, MILLS COUNTY, IOWA, SAID PARCEL BEING MORE FULLY DESCRIBED AS FOLLOWS:**

**COMMENCING AT THE SW CORNER OF THE NW ¼ SW ¼ OF SAID SECTION 13 THENCE SOUTH 87°55'09" WEST ALONG THE SOUTH LINE OF THE NE ¼ SE ¼ OF SAID SECTION 14, A DISTANCE OF 993.65 FEET; THENCE NORTH 00°00'00" EAST A DISTANCE OF 358.23 FEET; THENCE NORTH 90°00'00" EAST A DISTANCE OF 62.95 FEET; THENCE NORTH 01°44'05" WEST A DISTANCE OF 298.34 FEET; THENCE NORTH 90°00'00" EAST A DISTANCE OF 435.13 FEET TO A POINT ON A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 270°04'17" AND A RADIUS OF 55.00 FEET THENCE, ALONG THE ARC OF THE CURVE, 149.33 FEET, WITH A CHORD BEARING AND DISTANCE OF SOUTH 66°52'26" EAST, 107.51 FEET; THENCE SOUTH 79°14'01" EAST, A DISTANCE OF 33.08 FEET; THENCE SOUTH 84°20'45" EAST, A DISTANCE OF 159.37 FEET; THENCE SOUTH 77°43'26" EAST, A DISTANCE OF 160.39 FEET; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 584.76 FEET; THENCE NORTH 59°02'49" EAST, A DISTANCE OF 95.58 FEET; THENCE NORTH 50°30'56" EAST, A DISTANCE OF 65.23 FEET; THENCE NORTH 38°34'12" EAST, A DISTANCE OF 197.73 FEET THENCE NORTH 32°46'25" EAST, A DISTANCE OF 85.79 FEET; THENCE NORTH 40°40'44" EAST, A DISTANCE OF 111.09 FEET; THENCE NORTH 26°28'39" EAST, A DISTANCE OF 175.21 FEET; THENCE NORTH 21°35'00" EAST, A DISTANCE OF 124.86 FEET TO THE WEST LINE OF LOT 12, OHANA RIDGE SUBDIVISION AS PLATTED IN MILLS COUNTY, IOWA; THENCE SOUTH 00°38'07" EAST ALONG THE WEST LINE OF SAID OHANA RIDGE SUBDIVISION A DISTANCE OF 731.77 FEET; THENCE SOUTH 64°29'59" WEST, A DISTANCE OF 212.11 FEET; THENCE SOUTH 00°52'09" WEST, A DISTANCE OF 158.00 FEET; THENCE SOUTH 14°25'52" EAST, A DISTANCE OF 198.73 FEET TO A POINT ON A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 41°00'59" AND A RADIUS OF 339.90 FEET; THENCE ALONG THE ARC OF THE CURVE, 62.89 FEET, WITH A CHORD BEARING AND DISTANCE OF SOUTH 83°34'14" WEST, 62.80 FEET TO THE END OF SAID CURVE; THENCE SOUTH 88°52'10" WEST ALONG THE SOUTH LINE OF THE NW ¼ SW ¼ OF SAID SECTION 13 A DISTANCE OF 827.55 FEET TO THE POINT OF BEGINNING.**

**SAID PARCEL CONTAINS 27.08 ACRES, MORE OF LESS, INCLUDING PUBLIC ROAD RIGHT-OF-WAY (4.90 AC) AND OVERHEAD ELECTRIC LINE EASEMENT (2.43 AC) AND IS SUBJECT TO OTHER EASEMENTS OF RECORD.**

**NOTE: THE EAST LINE OF THE SE ¼ OF SECTION 14 IS ASSUMED TO BEAR SOUTH 00°41'52" EAST FOR THIS DESCRIPTION.**



Developer desires to provide for the preservation of the values and amenities of LAKE OHANA Subdivision in Mills County, Iowa (hereafter "LAKE OHANA"), for the maintenance of the character and residential integrity of LAKE OHANA, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of LAKE OHANA. When used herein the term, "Declaration" shall collectively mean and refer to this Declaration of Covenants, Conditions, Restrictions, and Easements for LAKE OHANA Subdivision, as such may be amended from time to time. For guidance on more specific details and issues please reference the Lake Ohana Design Guide.

NOW, THEREFORE, Developer hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. The Lots, and each Lot is and shall be subject to all and each of the following conditions and other terms:

#### DEFINITIONS

1. Association. "Association" shall mean and refer to the LAKE OHANA Homeowners Association, an Iowa nonprofit corporation.
2. Owner. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding the following parties:
  - a. Those having any interest in any such Lots merely as security for the performance of an obligation (such as a contract seller, a lender, or a mortgagee) and
  - b. Those acquiring title(s) to Lot(s) for Brokerage or resale (with or without real estate licenses). A purchaser of a Lot under a land contract, or similar instrument, shall be deemed an "Owner" of the Lot for purposes of this declaration.
3. Member. "Member" shall mean and refer to each included Owner of a Lot.
4. Declaration. "Declaration" shall collectively mean and refer to the Declaration of Covenants, Conditions, Restrictions, and Easements for LAKE OHANA Subdivision, as such may be amended from time to time.
5. Design Review Board. "Design Review Board or (Review Board)" shall mean the Developer, its Board, and the Association Board until the earlier of the following dates:

- a. Ten years from the date this Declaration is recorded with the Mills County, Iowa Recorder's office; or
- b. The date Developer records a "Termination of Design Review Board status" with the said Recorder's office, at which time the "Association" or a committee appointed by the Association, shall succeed to the status of the Design Review Board and shall have all rights and perform all duties associated therewith.

ARTICLE I.  
RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for single family residential purposes, except for any Lots or part thereof as may hereafter be conveyed or dedicated by Developer, or its successors or assigns for the use in connection with a Common Facility. Any Lot Owner desiring to erect an Improvement shall follow the procedures set forth in Article IV, Sections 1-2, both inclusive, of this Declaration.

2. Guidelines for setbacks, building design and landscape are included in the Lake Ohana Design Guide.

3. The Design Review Board shall have the exclusive right and discretion (with or without the advice of professional engineers or other experts retained by the Design Review Board in its sole discretion) to increase (or decrease) the Minimum square footage limits stated in this Article by a factor of  $\pm 5\%$ .

4. In support of the purposes previously noted Developer intends to set minimum size standards for homes to be constructed in the LAKE OHANA Subdivision, as follows:

- a. 1,500 square feet, ranch style, main floor living room;
- b. 1,600 square feet, split entry style, main floor living area;
- c. 1,800 square feet, tri-level style, main floor and upstairs living area;
- d. 1,800 square feet, one and one-half story style, main floor and upstairs living area;
- e. 2,000 square feet, two story style, main floor and upstairs living area; and
- f. 1,800 square feet, multi-level style, main floor and upstairs living area.

The maximum height of any detached single-family dwelling is two and one-half stories.

5. All Lots shall be subject to the Utilities and Access Easements set forth in Article V of this Declaration. All lots shall be subject to the soil erosion, storm water runoff, sedimentation and pollution control regulations of the State of Iowa and the Developer's engineering plans applicable thereto.

6. No obnoxious or offensive trade shall be carried on nor shall anything be done thereon which may be or become an annoyance or nuisance to the Subdivision. No advertising signs, billboards, political signs, or unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a Lot as "for sale;" nor shall a Lot be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or resident thereof. The foregoing restriction in this Article I, Section 6, shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, by Developer or its agents and designees during the development and sale of Lots. Signage for non-residential areas will be permitted and allowed by special review.

7. No exterior television or radio antenna or satellite receiving dish of any type shall be permitted on any Lot, provided however, an antenna or dish that is designed to receive over the air programming signals that does not exceed 1-meter in diameter and that is attached directly to the residence, may be permitted if the location and size of the proposed antenna or dish is approved in writing by the Design Review Board.

8. No repair of any vehicles, boats, snowmobiles, automobiles, motorcycles, trucks, campers, or similar equipment, requiring parking in excess of twenty-four (24) hours shall be permitted on any Lot; nor shall any such vehicles or equipment be visibly stored, parked, or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building construction operations and then in only as neat and inconspicuous a manner as possible.

9. No boat, snowmobile, motorcycle, four-wheeler, ATV, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, bus, truck, aircraft, camper truck, or similar equipment shall be stored on any part of a Lot (other than in an enclosed structure approved by the Design Review Board). No motor vehicle of any kind may be regularly parked or stored outside on any Lot visible to other Owners, except automobiles, SUV's, and passenger vans and trucks driven on a day-to-day basis by an Owner or members of an immediate household located on such Lot. No overnight on-street parking will be allowed.

No grading or excavating equipment, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Article I, Section 9, shall not apply to trucks, tractors, or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction.

All Lots shall provide an approved driveway and a reasonable number of off - street parking areas or spaces for private passenger vehicles. The location of each driveway must be coordinated with the Liquefied Petroleum Gas Code guidelines for "Installation of LP-Gas Systems".

10. No incinerator or trash burner shall be permitted on any Lot. No garbage

or trash can or container shall be permitted outside, except for pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility except when in actual use. Produce or vegetable gardens may be planted and maintained only in rear yards. No garbage, refuse, rubbish or cuttings shall be deposited on any street, road or Lot. Composting shall be limited to vegetative debris only, maintained for no odor, and screened from view.

11. To ensure the quiet enjoyment of all residents, each Owner shall control the following:

- a. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.
- b. No speaker, horn, whistle, siren, bell or other sound device, except those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Improvement on any Lot when the same can be heard by any other person located in a different Lot or elsewhere in the Subdivision.

12. All fences must be approved by the Design Review Board pursuant to Article IV, below; the Design Review Board is guided by the following fencing requirements:

- a. Fence building materials proposed must be approved; No fence shall extend beyond the front line of the main residential structure on the Lot;
- c. No fence shall be constructed closer than fifteen (15) feet of the Lot's lakefront boundary; and
- d. Perimeter fences or hedges or mass plantings shall not exceed four (4) feet in height.

13. Owners shall take all necessary precautions to insure that construction, landscaping and lawn maintenance activities do not result in erosion and do not contaminate any lake in the subdivision. All Owners are subject to the regulations of the State of Iowa and the Developer's engineering plans addressing soil erosion and storm water runoff issues. All Owners are required to accept and comply with Developer's existing grading, soil erosion, storm water and sedimentation plans. All such plans shall be coordinated with and subject to State regulations and the Developer's engineering plans supporting the same.

Accordingly, Owners shall install siltation fences and other erosion control devices during construction of improvements and until their Lots are sodded or until seeded yards are reasonably established and stabilized. Siltation fences and/or erosion control devices shall be installed in a manner that will eliminate or substantially reduce erosion and runoff of soil from the Lot to any of the lakes in the subdivision. The

Developer and the Design Review Board may require owners to install siltation fences or erosion control devices and measures in such locations, configurations and designs as they may determine appropriate in their sole and absolute discretion.

14. The Design Review Board must approve all swimming pools and the mandatory fencing required for swimming pools. Swimming pools will be allowed in the Secondary Building Zone as provided in the Lake Ohana Design Guide made a part hereof. No swimming pool may extend more than one foot above ground level unless it will be a deck-surround swimming pool.

15. Construction of any Improvement shall be commenced within 18 months of the date of the closing of the sale of any Lot to an Owner. The construction of the approved Improvements on any Lot shall be completed within one year from the date of commencement of excavation or construction of the Improvement. Unless otherwise approved in writing by the Design Review Board, no excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

Each Owner agrees that failure to complete construction in a timely manner will be a nuisance and eyesore to the LAKE OHANA Subdivision and will hinder the Developer's ability to maintain the desirability and attractiveness of LAKE OHANA Subdivision. Each Owner further agrees that the damages to the Developer and Owner's breach of this Article I, Section 15 shall be difficult to measure precisely in monetary damages, and, therefore, said Owner agrees to pay the Developer the sum of One Hundred (\$100.00) per day as liquidated damages for each day that said Owner violates this Article I, Section 15, which sum the Owner agrees is reasonable. The number of days for which damages shall be paid shall be measured from the date of first breach until the date on which the Owner secures a certificate of occupancy from the local governing body or secures such other certificate or documentation evidencing substantial completion of the improvements.

Developer may enforce any breach of this Article I, Section 15 in the Mills County District Court, Glenwood, Iowa, and shall be entitled to recover as additional damages its expenses, costs, and reasonable attorney fees to the extent permitted by law by reason of this agreement in the process of recovering such damages.

16. The final grade of the Lot must result in all surface water draining in a manner that is approved by Developer and the Design Review Board. As provided in Article IV, Owner's grading plans must be submitted to and approved by the Design Review Board prior to commencement of any soil-disturbing activities or the placement of any improvements on any Lot. Individual Lot Grading plans will be reviewed in light of Developer's master grading plan for LAKE OHANA Subdivision, requirements of this declaration, and commercially recognized development and engineering standards. Accordingly, it is understood and agreed that it is ultimately the responsibility of every Owner to complete Lot grading in a manner that complies with the Developer's

master grading plan for LAKE OHANA Subdivision.

17. No grass, weeds or other vegetation may be grown or otherwise permitted to commence or continue on any Lot so as to constitute an actual or potential public nuisance, create a hazard or create an undesirable proliferation or detract from the neat and trim appearance of the subdivision. All Lots must be fully sodded, seeded, or landscaped with ground cover and mulch or landscape rock following completion of construction of the residential structure on the Lot. Vacant Lots shall not be used for dumping of earth or any waste materials and no vegetation on vacant Lots shall be allowed to reach a height in excess of 6 inches.

18. No structure of a temporary character, carport, trailer, basement, outbuilding or shack shall be erected upon or used on any Lot at any time. An Owner may erect a swing set, playground equipment, pool house, gazebo or other non-prohibited structure on a Lot only after securing the prior written approval of the Design Review Board. No structure or dwelling shall be moved from outside LAKE OHANA Subdivision to any Lot without the written approval of the Design Review Board.

19. Clothesline poles will not be permitted. No Lot shall have a mailbox. Mailboxes will be provided in a common location. Required street-side address markers must comply with the Mills County 911 System.

20. The Design Review Board shall approve all utility services and service lines serving a Lot, a dwelling, or any other improvement in advance of construction as provided in Article IV, below. It is intended that all utilities shall be provided only via underground service. It is Developer's further intent that no water wells, septic systems, propane tanks, or other utility services shall be otherwise installed by any Owner. An Owner shall use the available common utilities and services provided in the Subdivision and approved by the Developer. Sources of renewable energy such as solar, wind, or geo-thermal systems, may be utilized but all such sources must be approved by the Design Review Board.

At the the original platting approved utility service providers included Mid-American Energy, Agiland FS and Glenwood Municipal Utilities. Future providers will be named as needed. Each such provider has legal authority to regulate Owners' uses of its services. Developer will maintain schedules of hook up charges and estimated costs, but Owners will be expected to negotiate the terms of individual utility service agreements freely with providers. The terms and regulatory conditions of any such agreements are not under the control of Developer or the Board. The property owner understands that the Glenwood Municipal Utility Board has the authority to impose water restriction policies, including, but not limited to, regulation and limitation of water for sprinkler systems.

21. No hunting shall be allowed, and no guns, firearms or other hunting weapons shall be discharged or used within the Subdivision. There are three (3) lakes within the Subdivision, LAKE

OHANA, a medium sized lake, and a small lake. No public fishing or public use of the lakes in the subdivision shall be permitted. The lakes shall be for the private use of the Owners and only the Owners shall be allowed to use approved motor boats on Lake Ohana and paddle boats, canoes, or electric trolling motors to power water-craft on the medium and small lakes. The medium and small lakes of the Subdivision shall be treated as "no wake"

zones. The lakes in the Subdivision are owned by and remain the exclusive property of the Developer or its designee.

22. A maximum of three (3) outdoor pets shall be allowed. Owners shall provide humane care for all pets and shall not permit any pet to become a nuisance. No holding area, stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted. Without prior approval of the Design Review Board no dog houses, runs or kennels shall be allowed. No livestock or agricultural-type animals shall be allowed.

## ARTICLE II. ENTRANCE MARKERS & SUBDIVISION BOUNDARY FENCES

1. In order to maintain, repair and replace the Entrance Monuments and/or Subdivision Boundary Fences the Board of Directors may declare all affected Lots subject to a permanent and exclusive right and easement in favor of the Board of Directors and the LAKE OHANA Homeowners Association (the "Association"). Without limitation of the rights and easements granted by this Declaration, the Board of Directors or Association may enter any of the affected Lots for the purpose of constructing, installing, repairing, maintaining, removing and replacing the Boundary Fences or Entrance Monuments.

## ARTICLE III. HOMEOWNERS ASSOCIATION

1. The Association. Developer has caused the incorporation of the LAKE OHANA Homeowners Association, an Iowa nonprofit corporation (hereinafter referred to as the "Association"). Each included Lot Owner shall be a Member (hereinafter referred to as "Member") of this Association.

The Purposes of the Association are the promotion of the health, safety, recreation, welfare and enjoyment of Members, which Purposes shall include, but not be limited to the following actions:

- a. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities

may include, but are not limited to the following; Beaches and marinas, recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks, dedicated and nondedicated roads, paths, ways and green areas; and signs and entrances for LAKE OHANA ("Common Facilities"). Common Facilities may be situated on property owned or leased by the Association, on public property, or on private property subject to an easement in favor of the Association.

- b. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always, that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict the use of the Common Facilities by Members, their families, their guests, and/or by non-Members, who may be required to pay a fee or other charge in connection with the use or enjoyment of any Common Facilities.
- c. The exercise, promotion, enhancement and protection of the privileges and interests of the Members of LAKE OHANA; and the protection and maintenance of the residential character of LAKE OHANA Subdivision.

2. Membership and Voting. In accordance with the Definitions set forth in this Declaration, each Owner shall be a Member of this Association.

For purposes of this Declaration:

A purchaser of a Lot under a land contract, or similar instrument, shall be deemed an "Owner" of the Lot for purposes of this declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

"Member" shall mean and refer to each Owner of a Lot.

Each Owner, whether one or more persons and entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association. An Owner holding title to more than one Lot shall be entitled to one vote for each Lot so owned.

Developer shall be entitled to one hundred (100) votes per Lot owned by a party excluded as above noted in this Section 2 of Article III.

3. Powers and Duties. The Association shall have the powers conferred upon non profit corporations by the Iowa Nonprofit Corporation Act (Chapter 504A, Iowa Code), and all powers and duties necessary and appropriate to accomplish the Association's Stated Purposes and to administer the affairs of the Association. The powers and duties shall be exercised by the Directors of the Association, and upon their authorization by the Association Officers.

The Powers and Duties, shall include but shall not be limited to the following:

- a. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.
- b. The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks or public property within or near LAKE OHANA.
- c. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.
- d. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment of purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Directors of the Association and the Members.
- e. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.
- f. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.
- g. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.
- h. The employment of professionals and consultants to advise and assist the Officers and Directors of the Association in the performance of their duties and responsibilities for the Association.
- i. General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.
- j. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or

appropriate to accomplish the purposes of the Association.

4. Mandatory Duties of Association. The Association shall maintain and repair any boundary fence, entrance monuments, and signs which have been installed. The Association shall also provide those services to Owners as set forth in the bylaws of the Association as it may be amended from time to time.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge each Lot Owner with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Directors of the Association and shall be payable at the times and in the manner prescribed by the Board. Additional dues in the form of special assessments may be charged Owners whose Lots have feature resulting in additional charges being incurred for mowing and trimming as a result thereof.

6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Association Directors may abate all or part of the dues or assessments due in respect of any Lot.

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Lot Owner at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorney fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Lot Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, to perform the Powers and Duties of the Association described in Sections 3 and 4 of this Article, and to provide the services set forth in the bylaws of the Association.

9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11, below, the aggregate dues, which may become due and payable in any year shall not exceed one hundred ten percent (110%) of the aggregate dues charged in the previous calendar year.

10. Assessments and Extraordinary Costs. In addition to the dues, the Association Directors may levy an assessment or assessments

for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities.

11. Excess Dues and Assessments. With the approval of seventy-five percent (75%) of the Members of the Association, the Association Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

12. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 6, above.

13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of the request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessments shall be and become a lien as of the date such amounts first become due and payable.

14. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessments which are not paid when due shall be delinquent. Delinquent dues or assessments shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as part of the action, and shall be indemnified against the interest, costs and reasonable attorney fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by non-use of the Common Facilities or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

15. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

ARTICLE IV.  
DESIGN CONTROL – TO PRESERVE  
THE BEAUTY, QUALITY AND VALUE OF THE SUBDIVISION

1. Necessity of Design Review and Approval. No construction of any improvement or structure of any kind, including without limitation, any residence or other building, in-ground water features, solar, wind, geothermal or other forms of non-utility or renewable energy heating/cooling systems, underground watering system, fence, wall, swimming pool, tennis court, screen enclosure, sewer, drain, disposal system, decorative building, grading plan, landscaping plan, landscape device or object, or other improvement shall be commenced, erected, placed or maintained upon any Lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same have been submitted to, and approved in writing by the Developer's Board of Directors and the Board of Directors of the Homeowners Association.

All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography and as to conformance with the covenants, conditions, restrictions and easements set forth in and throughout this Declaration, and any amendments thereto. For guidance please refer to the Lake Ohana Design Guide.

2. Design Review Procedure. Design review shall be performed by the Developer, its Board of Directors and the Board of Directors of the Homeowners Association (the "Boards"), which shall consist of all members of the said Boards and such additional professionals, architects, engineers or contractors as shall be deemed necessary by the Boards from time to time, which such professionals, architects, engineers or contractors need not be Members of the Homeowners Association.

From said group the Boards shall appoint, empower and establish the "Design Review Board".

The requirements for Design Review shall be as follows:

An Owner desiring to erect an improvement on any Lot (and using only the forms provided by the Design Review Board to be completed by Owner for such purpose) shall deliver two sets of construction plans, grading plans, landscaping plans, erosion control plans, and plot plans (herein collectively referred to as the "Plans") to the Developer or its Board of Directors to be then submitted to the Design Review Board.

- (i) Such submission and plans shall include a description of the type, quality, color of materials proposed for the exterior of such improvement(s), and shall include applicable proposed final grade elevations.
- (ii) The Design Review Board may also require submission of actual samples of building materials proposed for use on any Lot, and

may require such additional information as reasonably may be necessary for the Design Review Board to completely evaluate the proposed structure or improvement submissions.

- (iii) There shall be a Review Fee paid to the Design Review Board at the time of the submission in accordance with the following Fee Schedule:
  - (a) New Owner's First pre-construction Review with all Plans and requested variances to Covenants (must be included in single submission): \$250.00;
  - (b) "Stand-alone" Structures (e.g., Decks, Gazebos, Out Buildings, and exterior additions to the same or to existing Residence): \$100.00; and
  - (c) All other submissions: \$50.00.

- b. The Design Review Board (with or without the advice of professional engineers or other experts retained by the Design Board in its sole discretion) shall review such plans and in light of the covenants and restrictions in Article I of this Declaration and in relation to the type and exterior of improvements which have been constructed, or approved for construction, on the Lots. In this regard, it is intended that the Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed improvement shall be exercised by the Design Review Board in a reasonable manner to promote conformity and harmony with the external design of the improvements constructed within the LAKE OHANA Subdivision and to protect the value, character, and residential quality of all Lots in a manner consistent with this Declaration.

No Owner or combination of Owners or other person or persons shall have any right to supplant any action by the Design Review Board or to control, direct or influence the acts of the Design Review Board with respect to the approval or disapproval of any proposed improvement. No responsibility, liability or obligation shall be assumed by or imposed upon the Design Review Board by virtue of the authority granted to the Design Review Board in this Article I, Section 3 or as a result of any act or failure to act by the Design Review Board with respect to any proposed improvement.

- c. Provided there are applications to be considered or applications requested to be reconsidered, the Design Review Board shall meet at least once each calendar

month. The Design Review Board members may conduct their meetings and convey their proxy to another Design Review Board member by conference telephone or similar communication equipment, and participation by such means shall constitute presence in person at such meeting, including presence for purposes of determining the existence of a quorum. In the event the Design Review Board fails to act upon any application or application for reconsideration within 30 days of the date of its monthly meeting, it shall be deemed that the Design Review Board's decision was for denial.

- d. In making its decision, the Design Review Board may consider any and all factors that the Design Review Board determines to be appropriate. The Design Review Board's determination shall be based upon criteria and factors expressed within and throughout this Declaration of Covenants, as well as any supplemental, written documentation of standards and design criteria. All such factors and criteria shall nonetheless provide a standard for construction and appearance that is in conformity to the harmony of external design and location in relation to surrounding structures and the topography of each Lot. The establishment, the exercise and the enforcement of these standards are to assist the establishment and maintenance of the intended and expressed quality, character and of the community. These standards for review may include, without limitation, the plans, specifications, exterior colors, materials, size, location, elevation, landscaping and use of the proposed exterior structure.

In furtherance of providing a specific expression of the standards to be utilized, in consultation with the Lot Owner, the Design Review Board shall have authority to establish certain standards and guidelines that it intends to follow in making its decision for approval or denial. Such standards and guidelines shall generally be referred to as the "Lake Ohana Design Guide." The written Design Guide may be amended from time to time by the Design Review Board and shall at no time be deemed to be rules, but are merely guidelines to assist the Design Review Board. The Design Guide, and any amendments thereto, shall be provided to any prospective homeowner and Lot purchaser.

Any written Design Guideline issued by the Design Review Board as a result hereof shall not limit or impair the application of the standards and guidelines expressly included in this Declaration. The Design Guidelines utilized by the Design Review Board supplemental to this Declaration and the Covenants to be utilized by the Design Review Board in the appropriate application of the

Covenants.

- e. Neither the Lot Owner, the Homeowners Association, the Boards, the Design Review Board, any member of the Design Review Board, nor any Member of the Homeowners Association shall be personally liable to any person for any action or inaction taken with respect to any matter submitted for approval, for reconsideration, for the adoption of any rules, regulations or guidelines, or for the enforcement of or failure to enforce any restrictions or covenants contained in this Declaration. By accepting a Deed for a Lot, each Owner hereby knowingly and expressly waives any and all causes of action for any matters described herein.

ARTICLE V  
PROPERTY RIGHTS AND EASEMENTS

1. Owners Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive common right and easement of enjoyment in Ingress and Egress in and to the Common Areas which shall be appurtenant thereto and shall pass with title to such Lots subject to the following:
  - a. The right of the Homeowners Association to take such steps as reasonably necessary to protect the above-described properties against foreclosure.
  - b. All provisions of this Declaration, any plat of all or any part or parts of the property, and the Articles and Bylaws of the Homeowners Association.
  - c. Rules and regulations governing the use and enjoyment of the Common Areas adopted by the Homeowners Association from time to time.
  - d. Restrictions contained on any and all plats of all or any part of the Common Area or filed separate with respect to all or any part or parts of the property.
  - e. Utility Easements. A perpetual license and easement is hereby reserved and designated in favor of and granted to the utility companies which have been approved, contracted or otherwise designated by Developer, its Board of Directors, Mills County, Iowa, and/or their successors and assigns, to erect, operate, maintain, repair and renew buried or underground sewers, water, gas mains, pipes or lines (including liquid petroleum gas delivery service systems) or conduits, electric and telephone utility lines and cables for the carrying and transmission of such approved utilities for light, heat and power and for all telephone, telegraph, cable television, and message service over, through, under and

upon a 25 foot wide strip of land adjoining the front of the Lot Lines, a 10 foot wide strip of land adjoining the rear Lot lines and a 5 foot wide strip adjoining the side Lot lines; this license is being granted for the use, benefit and safety of all present and future Owners of the Subdivision Lots, said perpetual license and easement being graphically presented as Exhibit "A" attached hereto and made a part hereof.

No permanent improvements, buildings, trees, retaining walls or loose rock walls shall be placed in the easement ways but, subject to the Design Review Board, the same may be used for gardens, shrubs, landscaping and other purposes that do not then later interfere with the Utility uses or rights granted herein. Unless otherwise determined by the Design Review Board, all such Utility services extending from the property line to Owner's structures, improvements and dwelling shall be placed underground.

2. Protection and Utility Safety. To ensure that all Owners and their families, invitees, agents, pets and others lawfully using and occupying the Lots of the Development are provided a protected and safe environment, all Utility Services and Contractors engaged by Owners shall be subject to the "Iowa One Call" Law (Chapter 480 Iowa Code). Further, Owners (especially including New Owners of previously constructed homes) shall not install or make use of any Utility until proper permits, inspections and mandatory leak checks have been officially obtained and properly performed. Developer has entered into an Agreement with Agriland FS, Inc. (FS), and its assigns which designates FS to be the exclusive Utility providing fuels for heating to the Subdivisions for a period of 15 years. In the event an Owner elects to utilize this Utility for heating and cooking fuel, FS is required to complete a mandatory leak check of the propane system prior to the occupancy of any new owner. The cost of the leak check is the responsibility of the new owner. No Owner shall employ anyone who may violate any provision of the Iowa One Call Law, and in the event of questions, the Owner shall seek the advice of the Developer, the Association or any member of the Association Board of Directors.

3. Owners' Duties to Support Security Systems. No Owner shall disclose to any person (other than to another Owner or to authorities in the case of an emergency), any security code(s) assigned to any security gate, fence or facility serving the Subdivision. Owners shall have a common duty to maintain support for all security systems and facilities offered to the Subdivision and its residents.

## ARTICLE VI GENERAL PROVISIONS

1. Except for the authority and powers otherwise specifically granted, the Developer, its Board of Directors, and its Designee(s) shall have the right to enforce by a proceeding at law or in equity, all restrictions, covenants, requirements and conditions imposed by the provisions of this Declaration either to prevent or restrain the commission of any violation, or to require the specific performance of any action agreed upon, and to secure remedies to compensate for or recover

damages (including legal costs and fees) arising out of such violation(s). Failure by the Board of Directors or by any rightful Designee to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter. The provisions of this Declaration are for the benefit of and shall be enforceable in a like manner by the any Owner, and the Grantees, successors, and assigns thereof.

2. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then Owners of the Lots has been recorded agreeing to change said covenants in whole or in part.

3. Invalidation of any covenant by judgment or court order shall in no way affect any other provision hereof, which shall remain in full force and effect.

**SEE NEXT PAGE FOR EXECUTION  
AND ACKNOWLEDGMENT**

IN WITNESS WHEREOF, the Developer has caused these presents to be executed this 22 day of August, 2005.

N-T LANDS, L.L.C. – "Developer"

By \_\_\_\_\_  
Craig Nakamoto - Its Operating Manager

STATE OF IOWA                    )  
  )ss.  
COUNTY OF MILLS            )

On this 22 day of August, 2005, before me, a Notary Public in and for said county, personally appeared Craig Nakamoto, to me personally known, who being by me duly sworn did say that he is the Manager of said Limited Liability Company (L.L.C.) and that said instrument was signed on behalf of the said Limited Liability Company by authority of its managers and the said Craig Nakamoto acknowledged the execution of said instrument to be the voluntary act and deed of said Limited Liability Company by it voluntarily executed.

\_\_\_\_\_  
Notary Public - State of Iowa