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POLK COUNTY, IOWA

94 SEP 19 P 2:37.5

BYLAWS OF  
**BOULDER BROOK TOWNHOMES ASSOCIATION**  
TIMOTHY J. BRIEN  
RECORDER

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation is Boulder Brook Townhomes Association, hereinafter referred to as the "Association". The principal office of the corporation shall be located in Ankeny, Polk County, Iowa but meetings of Members and directors may be held at such places within the State of Iowa, as may be designated by the Board of Directors.

**ARTICLE II  
DEFINITIONS**

Section 1: "Association" shall mean and refer to Boulder Brook Townhomes Association, its successors and assigns.

Section 2: "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions for Boulder Brook Townhomes Association, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3: "Common Area" shall mean all real property owned by the Association for the Common use and enjoyment of the Owners.

Section 4: "Lot" shall mean and refer to any plot of land shown as a Lot upon any recorded plat of the Properties with the exception of any Outlot or Common Area.

Section 5: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6: "Declarant" shall mean and refer to Gratiis Construction, Inc., its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7: "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the Polk County Recorder.

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Section 8: "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

### ARTICLE III MEETINGS OF MEMBERS

Section 1: Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 6 o'clock, p.m. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2: Special Meeting. Special meetings of the Members may be called at any time by the president or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes.

Section 3: Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, no less than five (5) nor more than fifty (50) days before such meeting to each Member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member of the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4: Quorum. The presence at the meeting of the Members entitled to cast, or proxies entitled to cast, sixty percent (60%) of all the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or presented at any meeting, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting at which the sixty percent (60%) quorum was not achieved.

Section 5: Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of the Member's Lot.

Section 6: Suspension of Voting Rights. A Member's voting rights shall be suspended for any period during which any assessment against the Member's Lot(s) remains unpaid. The

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Board of Directors may suspend, for a period not to exceed sixty (60) days, a Member's voting rights for any infraction of the Association's published rules and regulations.

**ARTICLE IV  
BOARD OF DIRECTORS, SELECTION, TERM OF OFFICE**

**Section 1: Number.** The affairs of this Association shall be managed by a Board of one (1) director.

**Section 2: Term of Office.** Each Board member shall be elected by the Members until the next ensuing annual meeting of Members or until his or her successor has been duly elected and qualified.

**Section 3: Removal.** Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, the director's successor shall be selected by the remaining directors and shall serve for the unexpired term of the director who resigned or was removed.

**Section 4: Compensation.** No director shall receive compensation for any service the director may render to the Association in the director's capacity. However, any director may be reimbursed for actual expenses incurred in the performance of the director's duties.

**Section 5: Actions Taken Without a Meeting.** The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

**ARTICLE V  
NOMINATION AND ELECTION OF DIRECTORS**

**Section 1: Nomination.** Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of Members. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall, in its discretion, determine but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or nonmembers.

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**Section 2: Election.** Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### ARTICLE VI MEETINGS OF DIRECTORS

**Section 1: Regular Meetings.** Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

**Section 2: Special Meetings.** Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any director, upon twenty-four (24) hours' notice to each director.

**Section 3: Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board.

#### ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

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

- A. Adopt and publish rules and regulations governing the use of the Common Area, portions of the Lots, if any, not occupied by residential structures or other improvements, and all other facilities located on the Properties, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
- B. Suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- C. Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration.

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- D. Declare the office of a member of the Board of Directors to be vacant in the event such director shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- E. Employ a manager, an independent contractor, or such other employees as deemed necessary, and to prescribe their duties.

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

- A. Cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;
- B. Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- C. As more fully provided in the Declaration, to:
  - 1. Fix the amount of the monthly assessment against each Lot at least thirty (30) days in advance of each monthly assessment period;
  - 2. Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each monthly assessment period; and
  - 3. Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- D. Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- E. Procure and maintain adequate liability and hazard insurance on property owned by the Association and hazard insurance on the improvement located on the Lots and owned by the Owners;
- F. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- G. Cause the Common Area and portions of the Lots, if any, not occupied by residential structures or other improvements, to be maintained; and

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- H. Cause the exterior of all residential structures, including garages, to be maintained.

## ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1: Enumeration of Offices. The officers of this Association shall be a president and vice president, who shall, at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may, from time to time, by resolution create.

Section 2: Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3: Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless the officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4: Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, having such authority, and perform such duties as the Board may, from time to time, determine.

Section 5: Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6: Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer being replaced.

Section 7: Multiple Offices. One or more offices of the Association may be held by the same person.

Section 8: Duties. The duties of the officers are as follows:

### President

- A. The president shall preside at all meetings of the Board of Directors; shall see that orders and resolution of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall co-sign all checks and promissory notes.

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Vice President

- B. The vice president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

Secretary

- C. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as may be required by the Board.

Treasurer

- D. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep proper books of account; shall cause an annual audit of the Association's books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

**ARTICLE IX  
WRITTEN INSTRUMENTS, LOANS, CHECKS AND DEPOSITS, MERGERS**

Section 1: Written Instruments - Real Property. All transfers, conveyances, leases, mortgages or assignments of real estate or of any interest thereon shall be executed by the president or vice president and attested to by the secretary or treasurer.

Section 2: Written Instruments - Personal Property. All transfers, conveyances, leases or encumbrances of personal property or any interest therein shall be executed by any officer of the corporation or any agent authorized by the Board of Directors. All judgments or other liens shall be satisfied, discharged or released or assigned by any officer of the Association.

Section 3: Loans. No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 4: Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall

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be signed by the president and co-signed by the treasurer or by such other officers or agents of the Association as shall be determined and authorized by resolution of the Board of Directors.

**Section 5: Deposits.** All Association funds not otherwise employed shall be deposited to the credit of the Association at such banks, savings and loans, credit unions, trust companies or other depositories as the Board of Directors may select.

**Section 6: Mergers.** The Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Association or add additional Lots or Common Area only with the approval of a majority vote of the Members as provided in the Articles of Incorporation.

#### ARTICLE X COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

#### ARTICLE XI BOOKS AND RECORDS

The books, records and papers of the Association shall, at all times during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation, and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

#### ARTICLE XII ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 15 percent per annum, or the maximum rate allowed by Iowa law, whichever is lower, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Owner's Lot, and interest, costs, and reasonable

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attorney's fees shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Owner's Lot.

### ARTICLE XIII CORPORATE SEAL

The Association shall not have a corporate seal.

### ARTICLE XIV INDEMNIFICATION

**Section 1: Indemnification: Third-Party Actions.** Except for any prohibition against indemnification specifically set forth in these Bylaws or in chapter 504A, Code of Iowa, at the time indemnification is sought by any Member, director, officer, employee, volunteer or agent of the corporation, the corporation shall indemnify any person who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a Member, director, officer, employee, volunteer or agent of the corporation, or is or was serving at the request of the corporation as a Member, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (such serving as a director, officer, employee or agent of the corporation or at the request of the corporation referred to herein as "serving on behalf of or at the corporation's request"), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

**Section 2: Indemnification: Further Provisions.** If a Member, director, officer, employee, volunteer or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 1, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith. Any other indemnification (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that the indemnification of such person is

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proper because he or she has met the applicable standard of conduct set forth in Section 1; such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors not parties to such action, suit or proceedings, or (2) in a written opinion by special independent counsel selected by the Board of Directors by a majority vote of a quorum consisting of directors not parties to such action, suit or proceedings, or (3) if the requisite quorum of the full Board of Directors cannot be obtained through disinterested directors, in a written opinion by special independent legal counsel selected by a majority vote of the full Board of Directors in which directors who are parties may participate. Expenses incurred by defending a civil or criminal action, suit, or proceedings may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in this Section 2 upon receipt of an undertaking by or on behalf of such person that such person believes in good faith that he or she has met the applicable standard of conduct set forth in Section 1 and that such person will repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified as authorized herein. The indemnification and advancement of expenses provided herein shall not be exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any provision in the Articles of Incorporation or Bylaws, any agreement, any vote of Members or disinterested directors, or otherwise, both as to actions in the person's official capacity entitling the person to indemnification and advancement of expenses under these provisions and as to actions in other capacities concurrently held by those seeking indemnification or advancement of expenses. However, no person shall be provided indemnification by any provision of the Articles of Incorporation or Bylaws, by any agreement, or otherwise, for any breach of a duty of loyalty to the corporation or its Members, for any act or omission not in good faith or which involves intentional misconduct or knowing violation of the law, or for any transaction from which the person derives an improper personal benefit. The indemnification provided herein shall continue as to a person who has ceased to be a Member, director, officer, employee, volunteer or agent and shall inure to the benefit of the heirs, executors, personal representatives and administrators of such a person. The Board of Directors shall have power to purchase and maintain insurance on behalf of any person who is or was serving on behalf of or at the corporation's request against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions hereof.

#### ARTICLE XV AMENDMENTS

**Section 1: Method.** These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy.

**Section 2: Conflicts.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**ARTICLE XVI  
MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, I, as the initial sole director of Boulder Brook Townhomes Association, have hereunto set my hand this ~~15th~~ day of June, 1994.

Thomas J. Gratias  
Thomas J. Gratias

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