

WHEN RECORDED RETURN TO:
R. Michael Hayes
Hubbell Realty Company
904 Walnut Street, Suite 900
Des Moines, Iowa 50309-3574

FILED FOR RECORD
POLK COUNTY, IOWA

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TIMOTHY J. BRIEN
RECORDER

INST # 045599
RECORDING FEE 96.00
AUDITOR FEE _____

This document was prepared by R. Michael Hayes, Hubbell Realty Company, 904 Walnut Street, Suite 900, Des Moines, Iowa 50309-3574, (515) 280-2051

SPACE ABOVE THIS LINE FOR RECORDER

**DECLARATION OF
COVENANTS, CONDITIONS, EASEMENTS,
AND RESTRICTIONS FOR
LOTS 26-47, VENBURY PLAT 14,
ALTOONA, IOWA**

THIS DECLARATION, is made on the date hereinafter set forth by Metropolitan Residential Development Fund, L.C., an Iowa limited liability company with its principal place of business at Hubbell Realty Company, Managing Member, 904 Walnut Street, Suite 900, Des Moines, Iowa 50309-3574, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, the Declarant is the owner of certain property in Altoona, Polk County, Iowa, which is more particularly described as:

 Lots 26-47, in VENBURY PLAT 14, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa.

WHEREAS, Declarant desires that the real property described above be held, sold, and conveyed subject to the provisions hereof.

NOW, THEREFORE, Declarant hereby declares that all the Properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any rights, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to The Venbury II Townhome Owners' Association, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa, 1999, as amended.

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Section 2. "Association Responsibility Elements" shall mean the following:

- (a) The exterior surface of the buildings upon a Lot, excluding windows, doors, patios and decks.
- (b) The structural portion of the buildings upon a Lot.
- (c) The downspouts and foundations of the buildings upon a Lot.
- (d) Any common wall between residential structures within a Lot.
- (e) The yard surrounding the residential structure within a Lot.
- (f) Driveways and sidewalks.
- (g) Conduits, ducts, plumbing, pipes and other facilities within the attic or basement of a residential structure which are carrying any service to more than one Lot.
- (h) All private water mains, private storm sewer lines, private sanitary sewer lines, and storm water drainage and detention areas located within the Properties.
- (i) Any earth berm plus any fence or landscaping on top of the earth berm.

Section 3. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 4. "Building" shall mean and refer to any single-family attached or detached dwelling unit that may be constructed on a lot or a part of more than one lot and shall include any attached or detached garage building conveyed with the lot.

Section 5. "Declarant" shall mean and refer to Metropolitan Residential Development Fund, L.C., its successors and assigns.

Section 6. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions to which the Properties are subject.

Section 7. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Properties, or any portion thereof, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or successors to their interests.

Section 8. "Living Unit" shall mean and refer to any portion of a building situated upon a Lot and designed and intended for use and occupancy as a residence by a single family or individual.

Section 9. "Lot " shall mean and refer to each of the following twenty-two (22) Lots as shown upon the recorded plat in which the Properties are located: Lots 26 through 47 in VENBURY PLAT 14, an Official Plat, in the City of Altoona, Polk County, Iowa. In the event any part of the Properties is replatted and a subsequent plat is recorded then "Lot " shall refer to the numbered lots shown on such replatting and such subsequent recorded plat. With respect to any Living Unit of any building that may be constructed on parts of more than one such Lot, "Lot" shall mean and refer to the real estate conveyed in connection with such Living Unit. In the event Declarant subjects additional property to this Declaration, "Lot " shall also mean and refer to the additional lots shown upon the recorded plat of the additional property made subject to this Declaration.

Section 10. "Member" shall mean and refer to those persons entitled to membership as provided in this Declaration, the Articles of Incorporation of the Association (the "Articles of Incorporation"), and the Bylaws of the Association (the "Bylaws").

Section 11. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and vendees (deemed co-owners), but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon any such Lot by provision or operation of law.

Section 12. "Properties" shall mean and refer to that certain real property described above, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment. Ownership of a Lot shall be the sole qualification for membership.

Section 2. Member Voting Rights. Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Notwithstanding the above, Declarant and its successors and assigns shall be the sole voting Member of the Association until such time as Declarant or its successors or assigns, as Declarant, no longer own any portion of the Properties, or until Declarant and/or its successors or assigns, as Declarant, waives the right to be the sole voting Member, whichever first occurs.

Section 3. Board of Directors. The Members shall elect the Board of Directors of the Association as prescribed by the Association's Bylaws. The Board of Directors shall manage the affairs of the Association.

Section 4. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment against such Member's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

Section 5. Notice of Members' Meetings. Unless the Articles of Incorporation of the Association or the Bylaws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary, or the officers or persons, calling the meetings, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

ARTICLE III COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) monthly assessments or charges, and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made, senior to all liens except a first mortgage of record and any ad valorem taxes. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successor in title unless expressly assumed by such successor.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Living Units situated on the Lots and for other purposes specifically provided herein.

Section 3. Monthly Assessment. The Board of Directors shall fix the monthly assessment. A portion of such monthly assessment shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Association Responsibility Elements.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessment authorized above, the Association may levy a special

assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of all Members who are voting in person or by proxy at a meeting duly called for this purpose, with regard to class designation.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 of Article III of this Declaration shall be sent to all Members not less than five (5) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies entitled to cast sixty percent (60%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, 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.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments; Due Dates. The monthly assessment provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to any Owner of a Lot with a completed Living Unit constructed thereon and for which a certificate of occupancy has been issued. Lots owned by the Declarant which have not been conveyed or leased to a third party shall be exempt from the assessments described in this Article III. The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of the monthly assessment. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessment and such other assessment notice as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether assessments on a specific Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Assessments for Insurance. The premiums for all insurance policies carried by the Association shall be paid by the Association and the prorata cost thereof shall be incorporated in the monthly assessment to which each Lot conveyed by the Declarant shall be subject under the terms and provisions of this Article, provided, however, that the Association may require each Owner to pay to the Association at the time his Lot is conveyed to such Owner an additional assessment equal to thirteen (13) monthly insurance assessments. The Association may hold such additional insurance assessment funds in escrow for the purchase of insurance as herein provided or may use such funds to prepay the premiums of the required insurance.

Section 9. 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 rate of fifteen percent (15%) per annum or at the highest rate allowed by Iowa Law, whichever is lower. 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 in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the petition in such action, including reasonable attorney's fees, incurred by the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his or her Lot.

Section 10. Subordination of Assessment Liens. If any Lot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the liens created by this Declaration except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment for liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in a foreclosure proceeding or the acceptance of a deed in lieu of foreclosure that have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting Owner personally.

ARTICLE IV DECLARANT'S RIGHT

Section 1. Declarant reserves the right to use any of the Lots as models and to sell, assign or conduct other business in connection with the construction and development of the project from any Lots prior to their being sold. This reservation of a right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the location and manner of construction of buildings and other improvements.

Section 2. Declarant reserves the right and is hereby vested with the sole control over all landscaping, plantings and the like. Declarant shall have the right to change the plantings and other landscaping elements within the Properties from time to time in its sole discretion.

Section 3. Declarant reserves the right to assign all of its rights and obligations as Declarant thereunder to any other person or entity.

Section 4. Declarant reserves the right to subject additional property to this Declaration, including without limitation the right to expand the Properties to include additional land which is adjacent to the Properties.

Section 5. Notwithstanding any of the other provisions of this Declaration to the contrary, Declarant reserves all those rights necessary for it to complete the development of the Properties, for the sale of all Lots and Living Units to be erected thereon, and for the construction of all such buildings in accordance with the Declaration.

**ARTICLE V
MAINTENANCE**

Section 1. Maintenance by Owner. The Owner of each Lot shall furnish and be responsible for, at his or her own expense, all maintenance and repair of his or her Lot and all structures, improvements, and equipment located thereon, except for the Association Responsibility Elements, but including decorating and replacements within his or her residence, including the heating and air conditioning systems and any partitions and interior walls. He shall be responsible for the maintenance, repair and replacement of all windows in his or her Living Unit, the doors leading into the Living Unit, all decks and patios attached to or adjacent to his or her living unit, all windows, doors and interior surfaces of any garage building located on his or her Lot, and any and all other maintenance, repair, and replacement of the improvements on his or her Lot unless otherwise provided herein.

Section 2. Maintenance Obligations of Association. The Association shall provide all maintenance, repair and replacement of the Association Responsibility Elements, including without limitation exterior maintenance upon each Lot which is subject to assessments hereunder as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, lawns (including the mowing thereof), mowing grass on any earth berms and maintaining any fences or landscaping thereon, and snow removal from the paved portions of the driveways and walkways. Such exterior maintenance shall not include glass surfaces; doors and doorways; windows and window frames; the operability of any garage doors; any shrubs, trees, plants, flowers or gardens installed by any Owner in compliance with the terms of this Declaration; any patios or decks; any enclosed patios and decks; or any lawns within any permissibly fenced area.

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No person other than the Owner of a Lot and his invitee shall have the right to enter upon, use or affect an Association Responsibility Element located within a Lot, except that the

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Association and its designees any enter upon and within a Lot and the buildings located thereon at reasonable times for the following purposes:

- (a) installation, repair, removal, replacement or inspection of an Association Responsibility Element;
- (b) enforcement of any provision of this Declaration or the Articles of Incorporation or the Bylaws of the Association;
- (c) mowing and maintenance of grass and landscaped areas;
- (d) snow removal from driveways and walkways.

Section 3. Responsibility for Willful or Negligent Acts. In the event that the need for maintenance or repair of any Association Responsibility Element is caused through the willful or negligent act(s) of an Owner, his or her family, guests, and/or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessments to which the Owner is subject and shall be a lien upon the Lot and Living Unit of such Owner and shall become due and payable upon demand.

Section 4. Snow Removal. Unless and until otherwise determined by the Board of Directors of the Association, the Association shall be responsible for snow removal from the sidewalks on all Lots and from the driveways servicing each Lot.

**ARTICLE VI
INSURANCE**

Section 1. Insurance. The Association shall purchase a master property insurance policy or policies affording the Association extended coverage insurance insuring the Association Responsibility Elements against fire and other casualties in an amount consistent with the full replacement value of the Association Responsibility Elements. If the Association can obtain such coverage for reasonable amounts, it shall also obtain "all risk" coverage. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Association, it may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the monthly assessment for each Lot on a prorata basis. Such insurance coverage shall be for the benefit of the Association, each Owner, and if applicable, the first mortgagee of each Lot.

Such master property insurance policy, and "all risk" coverage, if obtained, shall contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, Owners, and their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and provided further, if the Board of Directors is able to obtain such insurance upon

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reasonable terms, that the insured shall not be entitled to contribution against property insurance which may be purchased by an individual Owner as hereinafter permitted.

Section 2. Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committees or officers of the Association or Board of Directors, any managing agent acting on behalf of the Association, all persons acting or who may come to act as volunteers, agents or employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy any Lot.

The Association shall also obtain any other insurance required by law to be maintained, including, but not limited to, worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also cover liability cross-claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association.

Section 3. Other Matters. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Association. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be furnished to each Owner or first mortgagee whose interest may be affected thereby.

Section 4. Distribution to Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his mortgagee jointly.

Section 5. Additional Insurance. Each Owner shall be solely responsible for and may obtain such additional liability and property insurance as he or she deems necessary or desirable, at his or her own expense, to provide coverage upon his or her personal property, the contents of his or her residence, his or her personal property stored elsewhere on the Properties, and for his or her personal liability.

Section 6. Property and Restoration. Damage to or destruction of any Association Responsibility Element due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of the fire insurance, if any, shall be applied for that purpose.

Section 7. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for

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restoring the damage and repairing or reconstructing the Association Responsibility Elements so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a special assessment against all Lots for such deficiency.

For the purpose of Section 6 of this Article VI, repair, reconstruction and restoration shall mean construction or rebuilding of any Association Responsibility Element to as near as possible the same condition as it existed immediately prior to the damage or destruction with the same or similar type of architecture.

Section 8. Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after reconstruction or repair of the damages has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Properties, or, in the discretion of the Board of Directors, may be distributed to the Owners of the building affected and their mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damages shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

ARTICLE VII EASEMENTS AND ENCROACHMENTS

Section 1. General Easements. Each Lot shall be subject to the following easements in favor of the Association and the other Owners:

- (a) Every portion of a building upon a Lot which contributes to the support of any structure not part of the same Living Unit is burdened with an easement of such support.
- (b) Each Lot is burdened with an easement through the Lot and through the attic and basement of any structure thereon for private water mains, private storm sewer, lines, private sanitary sewer lines, conduits, ducts, plumbing, wiring, pipes, and other facilities for the furnishing and maintenance of utilities and services to other Lots, including without limitation the location of utility meters on one Lot for the service to other Lots.
- (c) Each Lot is burdened with an easement of ingress and egress for maintenance, repair, and replacement of Association Responsibility Elements by the Association.
- (d) Each Lot is burdened with an easement for common driveway usage with other designated Lots if, and only if, a shared or common driveway is constructed serving more than one Lot.

- (e) Each Lot is burdened with an easement for surface drainage for the benefit of all other Lots.
- (f) Each Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.
- (g) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.
- (h) Each Lot is burdened with an easement through the Lot but outside of any structure thereon for purposes of reasonable ingress and egress by the other Lot Owners to the front and rear of the other Owner's Lot.
- (i) Each Lot is burdened with any and all recorded easements, including any easements reserved or dedicated on the recorded plat.

Section 2. Drainage, Utility and Sewer Easements. As noted on the plat, there are certain areas of the Lots reserved for drainage, public utility and sewer easements. In doing so, it is the intention of the Declarant to provide the needed flexibility to itself, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electrical, telephone, water, gas, sewer, and other utility services, (including all lines, pipes, wires, cables, ducts, etc.) to the Living Units constructed on the various Lots. No other improvements or permanent structures (excluding walkways, driveways, and fences) shall be placed within such utility easements, and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant and the Association to provide for and maintain appropriate drainage. Regardless of whether shown on the recorded plat, each Lot shall accept surface water drainage from adjacent properties whether or not located within the Properties and each Lot shall have the right to drain its surface water to the adjacent Lots located within the Properties.

Section 3. Additional Easement Rights. Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise move the location of any drainage, utility, sewer, private water main, private storm sewer line and/or private sanitary sewer line easement and to grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Polk County, Iowa, and any Owner of any Lot shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in this Section 3 shall not be exercised in a manner which unreasonably and adversely affects any building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements

reserved by Declarant in this Section 3 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Lot within the Properties.

Section 4. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc. and emergency personnel, public and private, over and upon any pedestrian walkways or sidewalks.

Section 5. Easement for Signs. Declarant reserves unto itself for so long as it owns any Lot, the right and easement to erect and maintain such entryway, identification and "For Sale" sign or signs within the Properties as Declarant deems reasonably necessary.

Section 6. Encroachment. If, by reason of the location, construction, settling or shifting of a building or any part of a building consisting of a Living Unit (hereinafter in this Article VII referred to as the "Encroaching Unit"), such building encroaches upon any minor portion of any other adjacent Lot, then an exclusive easement shall be deemed to exist on such adjacent Lot and run to Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all appurtenances thereto. Upon the written demand from the Owner of an Encroaching Unit, the Owner of the Lot upon which said unit encroaches shall deed to the Owner of the Encroaching Unit that portion of the Lot upon which the Encroaching Unit is located. The deed shall be by Quit Claim Deed free and clear of any mortgages and encumbrances. All costs of abstracting, releases of mortgages, recording fees, engineering fees and legal fees shall be paid by the Owner of the Encroaching Unit.

Section 7. Driveways and Access. An easement is hereby reserved and granted for the uses of all Lots served by one common driveway. This easement shall extend from the Lot to the improved public street. To the extent that a driveway or a portion of a driveway serving a Lot is located partially or wholly on another Lot or Lots, the Lot Owners served by such driveway shall have the benefit of an easement over that portion of the other Lot or Lots covered by the driveway. This driveway easement shall be for ingress and egress purposes, and no Lot Owner shall park or allow to park any vehicle or other obstruction within the driveway area so as to prevent access to the other Lot or Lots which such driveway serves. Further, there is hereby reserved and granted an easement for the benefit of each Lot served by a sidewalk and pedestrian walkway located partially or wholly on another lot or lots. This latter easement is for the purpose of allowing pedestrian access from the street to the Lot served by such sidewalk or pedestrian walkway. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walkway that would impair the use or access by the Lot Owner, which such sidewalk or pedestrian walkway serves.

**ARTICLE VIII
PARKING RIGHTS**

Subject to the provisions of Article VII, Section 7, above, the paved driveway in front of each Owner's garage shall be for the exclusive benefit of such Owner and his or her guests. No

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one shall use these parking spaces for parking or storing of boats, snowmobiles, trailers, camping vehicles, or other recreational vehicles, or for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of a pickup and deliveries to neighboring Lots. No bicycles, toys or other private property shall be allowed to obstruct any driveway, nor shall the same be stored in the open alongside building walls or other locations of public view. No vehicles shall be parked so as to impede access from or to any Lot or public street. No fence barrier or other obstruction of any kind shall ever be placed or constructed so as to impede access from or to any Lot or public street.

**ARTICLE IX
PARTY WALLS**

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Living Unit upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of the Declaration and the rights of the Association, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right of Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**ARTICLE X
ARCHITECTURAL CONTROL**

No building, wall or other structure, except as originally constructed by or on behalf of Declarant or original builder, shall be commenced, erected, altered or maintained upon the Properties, nor shall any exterior addition, change, or alteration thereto, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height,

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materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval thereof as above provided. This Article shall not apply to any construction, improvements or alterations made by the Declarant.

ARTICLE XI SIGNS AND HOME OCCUPATIONS

Section 1. Signs. So long as Declarant is a member of the Association, no advertising signs of any kind, including sale or "For Sale" signs or rental or "For Rent" signs (other than interior window signs), shall be displayed on any Lot without the prior written approval of Declarant. Further, no signs of any nature, kind or description shall be erected, placed or maintained on any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation. Nothing in this Article shall affect the rights of Declarant provided in Article VIII, Section 5.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot, provided the same is permitted under the ordinances of the City of Altoona, Iowa. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots or single-family dwellings as a part of the development of the Properties.

ARTICLE XII USE RESTRICTIONS

Section 1. Subjection of the Property to Certain Provisions. The ownership, use, occupation and enjoyment of each Lot shall be subject to the provisions of the Bylaws and Articles of Incorporation of the Association and this Declaration, all of which provisions, irrespective of where set forth, shall have equal status and shall be enforceable and binding as a covenant, condition, restriction or requirement running with the land and shall be binding on and enforceable against each and all Lots and the Owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

Section 2. No Lot shall be used for any purpose other than for single-family residential purposes, except for rights of Declarant as provided herein, including the right to construct the buildings and sell the same.

Section 3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot for any commercial purposes. The Association may, by rules and regulations, allow cats and dogs weighing less than 45 pounds at full growth to be kept on a Lot. Such rules and

regulations may limit the number of pets and may further limit the size of pets. Nothing in this paragraph shall be a requirement of the Association to allow pets. If a pet is allowed by rules or regulations of the Association, a subsequent rule change shall not affect such pet. Any person owning or keeping a pet dog or cat shall be responsible for and shall at all times clean up any waste or excrement from such pets on the Properties. Failure to do so in a prompt or responsible manner shall result in a fine or special assessment by the Association against such unit.

Section 4. No noxious or offensive activities not involving the maintenance of Lots shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood; nor shall any Lot be used for any unlawful purpose. No Owner shall cause, or suffer, or harbor the source of, any noise or activity which disturbs the peace, comfort, and quiet enjoyment of the other Owners or those claiming under or through other Owners.

Section 5. The Owner of each Lot shall keep the same free of weeds and debris.

Section 6. All trash receptacles and garbage cans shall be stored in the garages on each Lot. This restriction shall not preclude the placement of waste containers outside of such area on a temporary basis if so required by governmental regulation or terms of contract with a commercial waste collector.

Section 7. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 8. No tower, satellite dish or other television or radio antennae device shall be placed upon any Lot or shall be attached to any building or placed upon the roof of any Living Unit, unless the same are approved by the Board of Directors of the Association, which approval may be conditioned upon compliance with restrictions, which may include, but are not limited to restrictions on the size, location, manner of construction, or color thereof, or upon such other conditions as the Board of Directors deems appropriate in its sole discretion, but which restrictions, once adopted, shall be uniformly applied to all Lot Owners.

Section 9. No personal property shall be stored or left upon a Lot other than within the residential structure or garage located upon the Lot, except that outdoor cooking equipment and appropriate deck and patio furniture may be stored on the deck or patio of the Living Unit. Garage doors shall be kept closed except during times of access to the garage.

Section 10. No boat, snowmobile, recreational vehicle, trailer, or other vehicle other than automobiles shall be stored or parked in any driveway or street. The Association may, by regulation or rule, limit or prohibit the parking of automobiles on any driveway. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreational vehicle, trailer or other vehicle.

Section 11. No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the Owners nor shall any fire hazard or unsightly accumulation or refuse be allowed.

Section 12. The storage or collection of rubbish of any character whatsoever or of any material that emits foul or obnoxious odors and the growing of any noxious weed or other noxious substance is prohibited.

Section 13. Unit Owners shall be individually responsible for utility charges that they incur for electricity, natural gas, telephone, cable television, water and sewer services, in the same manner as persons occupying a single-family, detached house.

Section 14. No fence shall be allowed to be constructed on any lot unless prior written approval from the Board of Directors of the Association has been granted. Any such fence so approved by the Association shall be limited to privacy or decorative fences located around the decks or patios of the Living Units.

Section 15. Nothing shall be done or kept in any Lot that will increase the rate of insurance on the Association Responsibility Elements, without the proper written consent of the Board of Directors of the Association. No Owner shall be permitted anything to be done or kept on its Lot that will result in the cancellation of insurance on any Lot or the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.

Section 16. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of property shall be the same as the responsibility for the maintenance and repair of the portion of the property concerned.

Section 17. The Board of Directors of the Association shall have the authority to adopt rules and regulations that are uniformly applicable to all Lots governing the use of Lots and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns and licensees.

Section 18. Agents of or contractors hired by the Board of Directors of the Association may enter any Lot when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable.

Section 19. Neither the Owners nor the Association shall interfere with the completion of the contemplated improvements and the sale of the Lots by the Declarant. The Declarant may make such use of the unsold Lots as may facilitate such completion and sale, including, but not limited to, the maintenance of a sales office, model home, the showing of the property and the display of signs.

Section 20. No Waiver. Failure of the Association or any Owner to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

ARTICLE XIII GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots, and all parties claiming under them shall have the right to enforce the covenants, conditions, and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorney's fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed any time by an instrument recorded in the Office of the Recorder of Polk County, Iowa, signed or approved in writing by two-thirds (2/3) of the Owners with voting rights; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time within five (5) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies or to correct or modify any of the provisions of this Declaration. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the properties or any portion thereof which have requested notice of any proposed amendments.

Section 3. Supplemental Declaration. In the event Declarant exercises its right to subject additional property to this Declaration, Declarant shall do so by executing and recording in the Office of the Polk County Recorder a Supplemental Declaration.

Section 4. Duration. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-one (21) years from the date of recordation in the Office of the Recorder of Polk County, Iowa, and shall automatically extend for successive periods of ten (10) years each unless, prior to the expiration of the original term or any such ten (10) year extension period, it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of the Declaration by judgment or decree shall in no way affect any of the other provisions herein, and the same shall remain in full force and effect.

Section 5. Notice to Mortgagees. The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligation under this Declaration, the Articles of Incorporation, its Bylaws, and any other applicable documents which default has not been cured within sixty (60) days.


Section 6. Restriction on Rental. In order to protect the integrity of this development and to insure that those persons residing therein have similar proprietary interests in the Lots and Living Units, no Lot and the Living Unit located hereon shall be leased or rented to any person not having an ownership interest therein, unless and until the unit has been occupied for a period of one (1) year by the Owner or Owners thereof. Thereafter, no Lot and Living Unit located thereon shall be leased or rented for a period of time of less than one year, and no lease or rental agreement to any such tenants or lessees shall be extended or renewed for a shorter period of time. The restrictions contained herein shall not apply to the Declarant or Living Units owned by it. Notwithstanding the foregoing, the builder of the townhome unit upon any Lot may rent such unit prior to the sale of such unit to the first Owner of such unit who will occupy such unit; provided that said builder continues to market such unit for sale.

IN WITNESS WHEREOF, the titleholder has caused this Declaration to be executed as of the 14th day of December, 2000, in Des Moines, Iowa.

METROPOLITAN RESIDENTIAL DEVELOPMENT FUND, L.C.

By: **Hubbell Realty Company, Managing Member**

By: 
Rick J. Tollakson, Senior Vice President

By: 
R. Michael Hayes, Secretary

STATE OF IOWA)
) SS.
 COUNTY OF POLK)

On this 14th day of December, 2000, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Rick J. Tollakson and R. Michael Hayes, to me personally known who being by me duly sworn, did say that they are the Senior Vice President and Secretary, respectively, of Hubbell Realty Company, the Managing Member of Metropolitan Residential Development Fund, L.C., an Iowa limited liability company, executing the within and foregoing instrument; that the instrument was signed on behalf of said corporate Managing Member by authority of its Board of Directors and on behalf of the limited

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liability company by authority of its Operating Agreement and Members; and the said Rick J. Tollakson and R. Michael Hayes, as such officers, acknowledge the execution of the instrument to be the voluntary act and deed of the corporate Managing Member and the limited liability company, by each entity and by them voluntarily executed.

Danyelle A. Murphy

Notary Public in and for said State

venburyplat14declartn townhomes



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Recorded: 08/10/2002 at 02:08:28 PM
Fee Amt: \$81.00 Page 1 of 8
Polk County Iowa
TIMOTHY J. BAIEN RECORDER
File# 2002-00119617
BK 9176 PG 820-825

*Clg
Pavel*

RETURN TO:

Prepared by, and when recorded, return to: R. Michael Hayes, Hubbell Realty Company, 904 Walnut Street, Suite 900, Des Moines, Iowa 50309-3574, 515-280-2051

SPACE ABOVE THIS LINE FOR RECORDER

FIRST MODIFICATION OF THE
DECLARATION OF
COVENANTS, CONDITIONS, EASEMENTS,
AND RESTRICTIONS FOR
LOTS 26-47, VENBURY PLAT 14,
ALTOONA, IOWA

THIS FIRST MODIFICATION OF DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS FOR LOTS 26-47, VENBURY PLAT 14, ALTOONA, IOWA (the "First Modification of Town Home Declaration") is made this 28th day of May, 2002, by METROPOLITAN RESIDENTIAL DEVELOPMENT FUND, L. C., an Iowa limited liability company, ("Declarant").

WHEREAS, Declarant, as the owner of Lots 26 through 47, inclusive, in Venbury Plat 14, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa, (collectively the "Property"), subjected the Property to that certain Declaration of Covenants, Conditions, Easements, and Restrictions for Lots 26-47, Venbury Plat 14, Altoona, Iowa, dated December 14, 2000 and filed for record in the Office of the Recorder for Polk County, Iowa on December 26, 2000 in Book 8668 at Page 823, (the "Town Home Declaration"), which Town Home Declaration provided for development of detached single family homes on all of the Property; and

WHEREAS, Declarant has determined to develop Outlot X of said Venbury Plat 14, the property immediately south of and adjacent to the existing town home development on said Lots 26 through 47, Venbury Plat 14, into twelve (12) town home lots and an Outlot for future single family lots and it is desirable to include these twelve (12) town home lots in this Town Home Declaration and make their owners members of the same town home owners' association; and

WHEREAS, Section 2 of Article XIII of the Town Home Declaration provides in relevant part: "This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time within five (5) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies or to correct or modify any of the provisions of this Declaration. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the properties or any portion thereof which have requested notice of any proposed amendments."

WHEREAS, Declarant owns Lots 42 and 43, Venbury Plat 14; Declarant has entered into a Purchase Agreement with Stephen Kent Gulling and Carrie Gulling, husband and wife, to sell them all of the town home lots (Lots 26-47, Venbury Plat 14) and a second Purchase Agreement to sell them the town home lots that have been created on Lots 1 through 12, inclusive, in Venbury Plat 15, on which the Gullings are to develop town homes; Stephen Kent Gulling and Carrie Gulling have purchased all of Lots 26 through 41 and Lots 44 through 47, Venbury Plat 14, and still own Lots 37, 38, 39, 40, 41 and 44, Venbury Plat 14; and Stephen Kent Gulling and Carrie Gulling, as the successor in interest to the Declarant on the lots they have theretofore purchased and still own, and as the contract vendee of said Lots 1 through 12, Venbury Plat 15, also desire that the Town Home Declaration be amended to include said Lots 1 through 12, inclusive, of said Venbury Plat 15, as Properties subject to the Town Home Declaration and the owners of which Lots shall be Members of the same town home association that is governed by the Town Home Declaration; and

WHEREAS, the definition of the Properties that are subject to the Town Home Declaration, set forth in Section 12 of Article I of the Town Home Declaration, "shall mean and refer to that certain real property described above, and such additions thereto as may hereafter be brought within the jurisdiction of the Association."

NOW, THEREFORE, Declarant hereby amends the Town Home Declaration as follows:

1. The Town Home Declaration also shall be applicable to, and govern the development of, Lots 1 through 12, inclusive, Venbury Plat 15, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa, and said Lots 1 through 12, inclusive, in said Venbury Plat 15 are hereby declared to be Properties within the meaning of the Town Home Declaration and are hereby brought within the jurisdiction of the Association for all purposes. The Owners of said Lots 1 through 12, inclusive, in said Venbury Plat 15 shall be Members of the Association.
2. The first sentence of Section 9 of Article I of the Town Home Declaration, defining "Lot" is hereby amended to read: "'Lot' shall mean and refer to each of the following thirty-four (34) Lots as shown on the recorded plats in which the Properties are located: Lots 26 through 47, inclusive, Venbury Plat 14, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa, and Lots 1 through 12, inclusive, Venbury Plat 15, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa."
3. Except as expressly modified by this First Modification of the Declaration, all of the terms, conditions, easements, restrictions and provisions of the Declaration continue and remain in full force and effect.

Dated this 28 day of May, 2002

[Signatures appear on the next page.]

METROPOLITAN RESIDENTIAL DEVELOPMENT FUND, L. C.
By: Hubbell Realty Company, Managing Member

By: James W. Hubbell III
James W. Hubbell III, President

By: R. Michael Hayes
R. Michael Hayes, Secretary

STATE OF IOWA)
) SS.
COUNTY OF POLK)

On this 28 day of May, 2002, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared James W. Hubbell III and R. Michael Hayes, to me personally known, who, being by me duly sworn, did say that they are the President and Secretary, respectively, of Hubbell Realty Company, the Managing Member of Metropolitan Residential Development Fund, L.C., an Iowa limited liability company, executing the within and foregoing instrument; that the instrument was signed on behalf of said corporate Managing Member by authority of its Board of Directors and on behalf of the limited liability company by authority of the Members; and said James W. Hubbell III and R. Michael Hayes, as such officers, acknowledged the execution of the instrument to be the voluntary act and deed of the corporate Managing Member and the limited liability company, by each entity and by them voluntarily executed.



April Tufano
Notary Public in and for the State of Iowa

GULLING CONSENT

Stephen Kent Gulling and Carrie Gulling, husband and wife, the owners of said Lots 37, 38, 39, 40, 41 and 44, Venbury Plat 14 and as the contract vendee of said 42 and 43, Venbury Plat 14, and said Lots 1 through 12, Venbury Plat 15, hereby consent to the foregoing First Modification of Town Home Declaration.

Dated this 28 day of May, 2002.

Stephen Kent Gulling
Stephen Kent Gulling

Carrie Gulling
Carrie Gulling

STATE OF IOWA)
) SS.
COUNTY OF POLK)

On this 28 day of May, 2002, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Stephen Kent Gulling and Carrie Gulling, to me personally known, who, being by me duly sworn, did say that they are husband and wife and they acknowledged the execution of the foregoing instrument to be their voluntary act and deed.



April Tufano
Notary Public in and for the State of Iowa

CONSENT OF THE TOWN HOME OWNERS' ASSOCIATION

The Venbury II Townhome Owners' Association, described in the above-referenced Town Home Declaration, acting by and through the two members of its Board of Directors, hereby consents to the foregoing First Modification of Town Home Declaration.

Dated this 28 day of May, 2002

THE VENBURY II TOWNHOME OWNERS' ASSOCIATION

By: Stephen Kent Gulling
Stephen Kent Gulling, a Member of the Board of Directors

By: Carrie Gulling
Carrie Gulling, a Member of the Board of Directors