

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
WYNDMERE ESTATES, PLAT 1**

THIS DECLARATION is made on the date set forth below by Wayne E. Newkirk, Trustee for the Revocable Wayne E. Newkirk Trust hereinafter referred to as **Declarant**;

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate in Madison County, Iowa located in That part of the Southwest Quarter (1/4) of the Northeast Quarter (1/4), the Southeast Quarter (1/4) of the Northwest Quarter (1/4), and the Northeast Quarter (1/4) of the Southwest Quarter (1/4) of Section Twenty-one (21), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5th P.M., Madison County, Iowa, described as follows: Commencing at the Southeast corner of said Southwest Quarter (1/4) of the Northeast Quarter (1/4); thence on an assumed bearing of North 00° 08' 46" East 535.32 feet along the east line of said Southwest Quarter (1/4) of the Northeast Quarter (1/4) to the point of beginning; thence continuing North 00° 08' 46" East 611.43 feet along said east line; thence South 84° 46' 20" West 147.54 feet; thence South 71° 47' 20" West 140.40 feet; thence South 78° 42' 20" West 139.10 feet; thence South 73° 13' 20" West 170.00 feet; thence South 59° 19' 20" West 194.00 feet; thence South 76° 01' 20" West 335.50 feet; thence South 75° 01' 20" West 467.60 feet; thence South 31° 24' 20" West 366.60 feet; thence South 19° 42' 20" West 374.91 feet to the centerline of a Madison County Highway; thence North 88° 43' 16" West 174.40 feet along said centerline; thence 256.40 feet Northwesterly along said centerline and along a tangent curve, concave Northeasterly, having a radius of 250.00 feet, a central angel of 58° 45' 46" and a chord 245.31 feet in length bearing North 59° 20' 23" West; thence North 29° 57' 30" West 88.20 feet; thence 190.19 feet Northwesterly along said centerline and along a tangent curve, concave Southwesterly, having a radius of 250.00 feet, a central angle of 43° 35' 17" and a chord 185.64 feet in length bearing North 51° 45' 09" West; thence South 19° 19' 32" East 332.03 feet; thence South 37° 05' 58" East 386.85 feet; thence South 68° 51' 29" East 128.76 feet; thence North 51° 46' 36" East 140.82 feet; thence North 07° 53' 34" East 262.57 feet to said centerline; thence along said centerline South 88° 43' 16" East 181.17 feet; thence North 84° 47' 38" East 475.75 feet along said centerline; thence 204.91 feet Northeasterly along said centerline and along a tangent curve, concave Northwesterly, having a radius of 300.00 feet, a central angle of 39° 08' 04", and a chord 200.95 feet in length bearing North 65° 13' 36" East; thence North 45° 39' 34" East along said centerline 306.86 feet; thence 196.47 feet Northeasterly along said centerline and along a tangent curve, concave Southeasterly, having a radius of 300.00 feet, a central angle of 37° 31' 25", and a chord 192.98 feet in length bearing North 64° 25' 17" East; thence North 83° 10' 59" East 577.87 feet along said centerline and said centerline tangent extended to said east line of the Southwest Quarter (1/4) of

the Northeast Quarter (1/4) of said Section Twenty-one (21) and the point of beginning. Said tract contains 28.12 acres and is subject to a Madison County Highway easement over 2.64 acres thereof.

NOW THEREFORE, Declarant hereby declares that all properties within the above-described real estate shall be held, sold or conveyed subject to the following easements, conditions, covenants and restrictions 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 right, 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 1 – Definitions

Section 1.

“Association” shall refer to the Wyndmere Estates Plat 1 Homeowners Association, Inc., which shall be a Residential Real Estate Management Association, its successors and assigns.

Section 2.

“Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any parcel which is a part of the property, except that a vendee in possession under a recorded contract of sale of any parcel shall be considered the owner rather than the contract seller being the owner. Those having an interest merely as security for the performance of an obligation shall not be considered an owner.

Section 3.

“Properties” shall mean and refer to that certain real property hereinbefore described and such additional real property which includes lots or plats as may hereafter become subject by covenants of record to assessment by the Association or hereinafter become Common Area.

Section 4.

“Road Area” shall mean and refer to the roadway, including the improvements thereon, ownership of which shall be retained by the Owners, subject to easements for the common use and enjoyment of the owners. The Road Area shall also be all portions of paving, rock roads, sewers and utilities located in the Road Area and included in the property owned by municipality or municipal agency. The Road Area and any improvements thereon shall be granted by perpetual easement by the adjacent lot owner to all other lot owners for roadway and utility purposes.

Section 5.

“**Lots**” shall mean and refer to the numbered lots or plats as shown upon any Plats within the Property.

Section 6.

“**Association Responsibility Elements**” shall mean the following, whether located upon a “Parcel” or upon the “Common Area”:

- (a) The access roads constructed by the Declarant or the Association and maintained by the Association.
- (b) Conduits, ducts, plumbing, wiring, pipes and other facilities located on the above rock roads which are carrying any service to more than one “Parcel”
- (c) Street signs owned by the Association, including such signs located on property owned by Madison County, Iowa.

ARTICLE II – Property Rights and Maintenance

Section 1. Owners’ Easements and Enjoyment.

Every Owner shall have a right and easement and enjoyment in and to the Road Area which shall be appurtenant to and shall pass with the title to every Parcel, subject to the right of the Association to dedicate or transfer any part of the Road Area to any public agency, authority or utility for such purposes. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by a majority of the members entitled to vote, has been recorded.

Section 2. Association Responsibility Elements.

No person, other than the owner of a Parcel, and his invitees, shall have the right to enter upon, use or affect an Association Responsibility Element located adjacent to a Parcel except that the Association and its designees may enter the Road Area at reasonable times for the following purposes:

- (a) Enforcement of any provision of this Declaration of the Articles of Incorporation or the By-Laws of the Association.
- (b) Mowing and maintenance of grass areas.
- (c) Snow removal; and
- (d) Maintenance and repair of the road areas.

Section 3. Maintenance.

The Association shall be responsible for the maintenance of the Road Area and the improvements thereon.

Section 4. Residences.

There shall be located on each Parcel sold a single-family residence of at least eighteen hundred square feet (1800) living area and no other use shall be allowed except single-family residency. No structure shall be erected on any Parcel except a single-family residential dwelling structure, a one-to-three car garage, and certain accessory buildings provided that accessory buildings, other than garages, may not be erected in excess of one thousand (1000) square feet of area. No construction shall start on any such dwelling until plans have been approved by the Declarant. No mobile homes or double-wide homes shall be erected or placed on any of the lots, plats or Parcels included in the real estate described above. No trailer, basement, tent, shack, garage, barn or other accessory building on the Parcel shall at anytime be used as a residence, temporarily or permanently; nor, shall any residence of a temporary character be permitted. The titleholder of each lot, tract or Parcel shall keep his lot or lots free of weeds and debris and shall not engage in any activity which is a nuisance.

Section 5.

There shall be a 100-foot setback for the construction of any residence and other buildings permitted by these covenants.

Section 6.

All wiring shall be underground.

Section 7.

No lot shall be subdivided.

ARTICLE III – Membership And Voting Rights.

Section 1.

Every owner of a Parcel which is subject to assessment shall be a member of the Association. Membership is mandatory and shall be appurtenant to and may not be separated from ownership of any Parcel which is subject to assessment.

Section 2.

All owners shall be entitled to one vote in the Association for each Parcel. When more than one person holds an interest to any Parcel, all such persons shall be members. The vote for such Parcel shall be exercised as they determine; but, in no event, shall more than one vote be cast with respect to any Parcel. Such vote shall be one-sixteenth (1/16) of the total votes.

Section 3.

Notwithstanding any other provisions of the Declaration, the Declarant, their successors and assigns, shall be the sole voting membership of the Association until Declarant no longer owns any portion of the property, or until Declarant waives in writing this right to be the sole voting membership, whichever first occurs. While the sole voting member the Declarant, their successors and assign, shall have the right to elect Directors of the Association. Declarant shall waive in writing his right to be the sole voting membership when all lots have been sold,.

ARTICLE IV – Covenants For Maintenance Assessments

Section 1. Creation of Liens and Personal Obligations of Assessments.

The Declarant, for each Parcel owned within the properties, hereby covenants, and each Owner of any Parcel by acceptance of a Deed therefor, whether or not it shall be so expressed in such deed, is deemed to consent and agree to pay the Association: (1) Annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, together with interest, costs and reasonable attorney's fees, which shall be a charge upon each Parcel and shall be a continuing lien upon the Parcel against which such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such Parcel at the time the assessment came due. The personal obligation for delinquent assessments shall not pass to the owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments.

The assessments levied by and for the Association shall be used exclusively to promote the health, safety and welfare of the residents of the property and for the improvement and maintenance of the Road Area and the Association Responsibility Elements.

Section 3. Annual Assessment

- (a) For the period commencing January 1st of the year immediately following the conveyance of the first Parcel to an Owner, the annual assessment shall be fixed by the Board of Directors of the Association.
- (b) The Board of Directors shall fix the annual assessment each year thereafter.
- (c) A Parcel shall not be subject to assessment until the first day of the month following the date of possession of such Parcel.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Road Area, which shall include the surfacing or maintenance of any such roads, provided that any such assessment shall have the assent of a majority of the votes of members entitled to vote who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized under Sections 3 and 4 Above.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all Members entitled to vote not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members entitled to vote or of proxies entitled to vote shall constitute a quorum. At such time as the Declarant no longer controls the Board of Directors of the Association, a quorum shall consist of a majority of the then parcelholders.

Section 6. Uniform Rate of Assessment.

Annual assessments, special assessments for capital improvements, and insurance assessments shall be fixed at a uniform rate for all Parcels and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates

Annual assessments shall be adjusted accordingly to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Parcel at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Parcel have been paid. A properly executed Certificate of the Association as to the status of an assessment on a Parcel is binding upon the Association as of the date of its issuance.

Section 8. Insurance and Insurance Assessments.

In addition to the annual assessments and special assessment for capital improvements, the Association may levy assessments for insurance purchased by the Association. The Association shall obtain liability and casualty insurance for the Road Area and for the Association Responsibility Elements. This provision shall not alleviate

any Owner of any Parcel from obtaining homeowners' liability insurance and casualty insurance for the property of such owner. In the event of a casualty loss upon the Road Area, the Association shall be responsible for the repair and restoration of the Road Area and the Owner shall be responsible for the repair and restoration of any building or improvements on his Parcel.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association

Any assessment not paid within (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Parcel.

Section 10. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Parcel shall not affect the assessment lien. However, the sale or transfer of any Parcel pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Parcel from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Utilities.

Each Owner shall be responsible for payment of all utility services to his Parcel, including but not limited to, electricity, water, gas, telephone, sewer services, and cable television services.

Section 12. Assessments for County Related Improvements.

Notwithstanding any other provisions of this Article, the Board of Directors may establish an assessment for the maintenance, improvements or reconstruction of street signs, street lights, fences and sidewalks, if necessary, to comply with any directive of Madison County, Iowa.

ARTICLE V – Architectural Control

No alteration of surface drainage shall be made until the plans and specifications showing the nature, kind, shape, height, material and location of the same have been submitted to and approved in writing as to the topography by the Board of Directors of the Association. In the event said Board of Directors fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been

fully complied with. This Article shall not apply to construction, improvements or alterations made by the Declarant.

ARTICLE VI – Easements

- (a) Each Parcel is burdened with an easement for surface drainage for the benefit of all other Parcels and the Road Area.
- (b) Each Parcel is burdened with easements for public utilities and sidewalks, if the latter is required by Madison County.

ARTICLE VII – Use Restrictions

Section 1. Subjection of the Property to Certain Provisions.

The ownership, use, occupation and enjoyment of each Parcel and the Road Area shall be subject to the provisions of the By-Laws and Articles of Incorporation of the Association, and this Declaration, all of which provisions irrespective of where set forth or classified, 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 or enforceable against each and all Parcels and the Owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

Section 2. Use of Properties.

The use of the Properties shall be in accordance with and subject to the following provisions:

- (a) A Parcel shall be used or occupied for single-family dwelling purposes only.
- (b) A Parcel may be rented or leased by the Owner or his lessee provided the entire Parcel is rented, and the period of rental is at least one month unless some other period is established in the rules, regulations or By-Laws of the Association. No lease shall relieve the Owner as against the Association and other owners from any responsibility or liability.
- (c) Nothing shall be altered in, constructed in, or removed from the Road Area, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association.
- (d) No livestock or other animals of any kind shall be raised, bred, or kept in any Parcel or in any Road Areas, except an Owner shall be permitted to keep cats, dogs or other usual household pets and to walk them, upon the Common Area, subject to rules and regulations adopted by the Association. Two (2) horses shall be allowed in any one lot, but in the event horses are kept by the owner of a Parcel, the owner of such Parcel shall have the duty to build and maintain sufficient fence to restrain said horses from running at large.

- (e) No activity shall be allowed which unduly interferes with peaceful possession and use of the Parcels by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed. No person shall fire or discharge any firearms on any parcel or common area included in Wyndmere Estates, Plat 1.
- (f) Nothing shall be done or kept in any Parcel or in the Road Area which will increase the rate of insurance on the Road Area or the Association Responsibility Elements, without the prior written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Parcel or in the Road Area which will result in the cancellation of insurance on any Parcel or any part of the Road Area 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.
- (g) 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 property concerned.
- (h) The Board of Directors of the Association shall have the authority to adopt rules and regulations governing the use of Parcels, the Road Area and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, leesees, assigns and licensees.
- (i) Agents or contractors hired by the Board of Directors of the Association may enter any Parcel when necessary in connection with any installation, repair, removal, replacement or inspection of any Association responsibility element, or in connection with landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owner as practicable.
- (j) An Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement to the Road Area or the Association Responsibility Elements rendered necessary by his act, neglect, or carelessness, or by that of his family, guests, employees, agents, or lessee, which liability shall include any increase in insurance rates resulting therefrom.
- (k) Neither the Owners nor the Association nor the use of the Road Area shall interfere with the completion of the contemplated improvements and the sale of the Parcels by the Declarant. The Declarant may make such use of the unsold Parcels and the Road Area as may facilitate such completion and sale.
- (l) Police, firemen, emergency units, inspectors and any other public officials or law enforcement agencies shall have the same right of entry onto and the same enforcement powers as to the Road Area as they have with respect to public streets and publicly owned parks and areas.

Section 3. No Waiver.

Failure of the Association or any Owner to enforce any covenant, condition or restriction, the Declaration, this Articles of Incorporation or By-Laws 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 VIII – General Provisions

Section 1. Enforcement.

The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability.

Invalidation of any of these covenants or restrictions by judgment or Court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment.

The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed not less than seventy-five percent (75%) of the Parcel Owners, but no amendment shall alter any rights of the Declarant or impose any additional obligations upon the Declarant without the consent of the Declarant. Any amendment must be recorded. During such time as the Declarant is the sole voting member of the Association, this Declaration may be amended by Declarant.

ARTICLE IX – By-Laws

Attached hereto and incorporated herein by the reference are the By-Laws of Wynmere Estates Plat 1 Homeowners Association, Inc.

Dated this ____ day of _____, 2005

WYNDMERE ESTATES PLAT 1

By: _____
Wayne E. Newkirk, Trustee of the
Revocable Wayne E. Newkirk Trust,
Declarant

STATE OF IOWA :
: ss
COUNTY OF MADISON :

Subscribed, sworn and acknowledged before me by, Wayne Newkirk,
Trustee of the Revocable Wayne E. Newkirk Trust; this ____ day of
_____, 2005.

NOTARY PUBLIC FOR THE STATE OF IOWA