

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

ABEL ISLAND SUBDIVISION

THIS DECLARATION, is made by Abel Island Association, an Iowa Non-Profit Corporation, its successors and assigns (herein called "Association").

RECITALS

A. Association is the owner of the real property described in Roger R. Mohn's April 28th, 1997, Survey and Plat of Abel Island Subdivision, and is benefitted by the Easement filed July 26th, 1937, at Book 83, LM, Page 325, which real estate shall hereinafter be called "Abel Island Subdivision".

B. Association desires to subject the real estate to the conditions, covenants, restrictions, reservations and easements set forth in this Declaration, which are for the benefit of the Abel Island Subdivision and each owner of Abel Island Subdivision and which shall inure to the benefit of and pass with Abel Island Subdivision, and each and every parcel thereof.

NOW, THEREFORE, Association hereby declares that all the properties 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 properties 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 ABEL ISLAND ASSOCIATION, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa.

Section 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 3. "Commercial" shall mean and refer to engaging in the purchase, sale or exchange of goods or services.

Section 4. "Common Areas" shall mean and refer to all real property owned and maintained by the Association for the common use and enjoyment of the owners and shall include any common facilities.

Section 5. "Common Facilities" shall mean and refer to all personal property, fixtures and improvements now or hereafter owned by the Association.

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

Section 7. "Abel Island Subdivision" shall mean and refer to the real property described in Roger R. Mohn's April 28th, 1997, Survey and Plat of Abel Island Subdivision, the Easement filed July 26th, 1937, at Book 83, LM, Page 325, and the peninsula.

Section 8. "Lot" shall mean and refer to any and all lots contained in any plat or replats of Abel Island Subdivision, made and recorded in accordance with the statutes of the State of Iowa.

Section 9. "Improved Lot" shall mean any lot upon which is located a building or other structure.

Section 10. "Unimproved Lot" shall mean any lot not improved with a building or other structure.

Section 11. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration, the Articles of Incorporation and By-Laws of the Association.

Section 12. "Nuisance" shall mean any noise, odor, vibration, smoke, air pollution, liquid or solid waste, glare, heat, or dust condition which creates an irritation, annoyance or health hazard; and including any thing or activity defined as a nuisance in the Code of Iowa, as amended.

Section 13. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any part of Abel Island Subdivision, including contract vendees, but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the property by provision or operation by law.

Section 14. "Property" or "Properties" shall mean and refer to Abel Island Subdivision and to any and all Lots or any portion thereof.

ARTICLE II

COMMON AREAS

Section 1. Common Areas. The Common Areas shall consist of the following described portions of Abel Island Subdivision:

- A. Lot 97 (Road and Peninsula Access)
- B. Lot 96 (Airport/Field)
- C. Peninsula (Peninsular protrusion easterly adjacent to Lots 60 through 85,

together with such additional common areas conveyed to the Association from time to time. The Common Areas shall also include Common Facilities including those located on property not owned by the Association. As used in the Declaration, the term Common Areas shall include and refer to Common Facilities and the term Common Facilities shall include and refer to Common Areas.

Section 2. Obligations of the Association. The Association shall be the owner of the Common Areas, and, subject to the rights of the Owners as set forth in the Declaration, shall be responsible for the management and control of the Common Areas and shall keep the same in good, safe, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management. The Association's obligations shall include the maintenance, repair, reconstruction and replacement of all Common Facilities. The Association's obligations under this section are for the exclusive benefit of the Owners.

Section 3. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas subject to the terms of the Declaration which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. the Rules and Regulations promulgated and published by the Association's Board of Directors, from time to time, and the Articles of Incorporation and Bylaws; and

- B. the right of the Association to suspend such owner's right and easement of enjoyment for any period during which any assessment against such Owner's property(ies) remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations.

Section 4. Use of the Common Areas. Any owner may delegate, in accordance with the Association's Rules & Regulations, the right and easement of enjoyment to the Common Areas to guests. No owner shall obstruct or interfere whatever with the rights and privileges of other Owners or the Association in the Common Areas, and nothing shall be planted, altered, constructed upon, or removed from the Common Areas, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the Common Areas to the prior condition and charge and assess the cost thereof against the Owner who violates this section and such cost shall become a special assessment and a lien upon the property(ies) of such Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of such restoration as provided in Article IV for the collection of delinquent assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Areas, the Association or the offended Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorneys' fees as the Court may allow together with all necessary costs and disbursements incurred in connection therewith.

Section 5. Peninsula and Canal Maintenance. The general maintenance of the peninsula and adjacent canal shall be the common responsibility of the owners of Lots 60 through 85.

Section 6. Duration. The ownership of the Common Areas and the Common Areas shall not be changed and shall continue in perpetuity except by approval of 2/3 of the membership entitled to vote.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. The members of the Association shall be those persons described in the By-Laws of Abel Island Association, which by this reference are incorporated herein as though fully set forth.

Section 2. One Lot - One Vote. The total number of votes entitled to be cast is the number of lots of Abel Island Subdivision, except Common Areas. The Owner(s) of each lot shall be entitled to one vote for each lot.

Section 3. Suspension of Voting Rights. The Association shall suspend the voting rights of a member for any period during which any assessment against the owner's lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Association for Abel Island Subdivision, hereby covenants, and each Owner of any portion of Abel Island Subdivision by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments. Such assessments to be established and collected as hereinafter provided. The annual 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(s) against which each such assessment is made. The lien for the assessments shall be prior to all other liens on the property; except for the Mortgage filed as Instrument No. 1997-0020 (Zearley Mortgage), each Lot's purchase money Mortgage (Association Mortgage), and except for the record lien of a mortgage which would be a first mortgage but for the Zearley and Association Mortgages. Each such assessment, together with interest, costs, and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Lot(s) at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to such Owner's successors in title.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of Abel Island Subdivision and for the improvement and maintenance of the Common Areas and Common Facilities and for other purposes specifically provided herein, including but not limited to, payment of legal liabilities or obligations of the Association and all fees, costs, expenses, and attorney fees in connection therewith.

Section 3. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment if necessary to finance or perform any of its stated obligations and responsibilities under the Declaration or other discretionary purposes; provided that any such special assessment must have the assents of two-thirds of the votes of members entitled to vote, in person or by proxy, at a meeting called for that purpose.

Written notice of any meeting called for the purpose of taking any action on special assessments shall be sent to all members not less than forty-five (45) days nor more than ninety (90) days in advance of the meeting.

Section 4. Rate of Assessment. Annual and special assessments provided for in the Declaration shall be fixed in accordance with this Section. Each Lot and the Owner(s) of each Lot, shall be liable for a share of the total budget upon which any annual or special assessment is based. The assessment appurtenant to each Lot shall be calculated by multiplying the total budget of the annual or special assessment times a fraction, the numerator of which is one, and the denominator of which is the total number of all Lots, excluding Common Areas.

Section 5. Due Dates of Annual Assessments. The annual assessments provided for herein shall be due as to each Lot within sixty (60) days of the date of notice of assessment. Written notice of assessment (including special assessments) as the Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for special assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on property shall be binding upon the Association as of the date of its issuance.

Section 6. 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 One and One-Half Percent (1-1/2%) per month. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property 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. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of the Owner's Lot.

Section 7. Assessment Liens Shall Not Impair Mortgage Liens. If any property subject to a lien created by any provision in the Declaration shall be subject to the lien of a mortgage of record; the foreclosure of any lien created by anything set forth in the Declaration shall not operate to affect or impair the lien of such mortgage.

Section 8. Exempt Property. All Common Areas shall be exempted from the assessments, charges, and liens created herein.

ARTICLE V

USE RESTRICTIONS

Section 1. The Board of Directors of the Association shall, from time to time, adopt rules and regulations governing the common areas or common facilities, and such rules shall be observed and obeyed by the owners and their guests.

Section 2. Enforcement. In addition to all other rights granted to the Association herein or by operation of law, the Association shall have the right to maintain any action at law or in equity appropriate for the enforcement of the rules and regulations, the covenants, conditions and restrictions contained in the Declaration, the Articles of Incorporation and Bylaws. The Association is specifically granted a right to obtain affirmative or negative injunctions, restraining orders and similar equitable relief for violations by any person whatsoever.

Section 3. Use of Land. Each Lot within Abel Island Subdivision shall be used only for placement and/or construction of single-family residential dwellings. Each Lot is hereby restricted to residential use and uses related to the convenience and enjoyment of such residential use; except as provided at Section 4. No Lot shall be used for any unlawful purpose nor shall any use cause any unnecessary disturbances, noises, or annoyances to occupants on neighboring lots. No structure of a temporary character, trailer, basement, tent, garage, carport, or other outbuilding shall be used any time as a residence, either temporarily or permanently. Provided, however, nothing herein contained shall prohibit guests from placing a camper trailer on a Lot with the Owner's permission for a period not to exceed one (1) week. No lot may be used for commercial purposes.

Section 4. Airport/Field. Lot 96 may be used for airport purposes, as the Board from time to time shall determine. Subject to its rules and regulations, the Board shall grant Lot owners permission to use the exterior sixty (60) foot width of

Lot 96 (Airport/Field) adjacent to Lot 97 (Road) which lies between the extension of such lot's side lot lines, for:

- A. The construction and maintenance of private sewage system disposal system leach fields with access under the roadway on Lot 97 upon written application,
- B. The summertime temporary storage of boats, trailers, and similar recreation equipment, and
- C. vegetable and flower gardens.

Section 5. No Subletting. Owners shall not sublet their property or any improvements thereon; provided however dwellings may be rented for terms no less than month to month.

Section 6. No Sub-Division of Lots. There shall be no sub-division of any lot, unless approved by a Seventy-Five Percent (75%) majority of the Board at a meeting after twenty (20) days prior written notice to the membership.

Section 7. No building shall be constructed or placed on any lot closer than fifteen feet (15)' to the roadside lot line, nor closer than five feet (5') to any side lot line.

No structure, plant, tree, or thing shall be constructed or placed on a Lot as shall interfere with an adjoining Lot's river view. (The term 'river view' shall include Bussey Lake view.) No fence or hedge whatsoever shall be constructed or placed on a lot except on the roadway side.

Section 8. Building Restrictions. No structure on any lot shall exceed two stories or 35 feet in height.

Section 9. General Restriction. In addition to the foregoing, each Owner shall keep such Owner's Lot free of weeds, junked motor vehicles, snowmobiles, boats, trailers, debris, or that which may be or become a nuisance, provided, however, nothing herein contained shall prohibit an Owner from storing properly licensed and/or registered motor vehicles, snowmobiles, boats, and trailers on such Owner's Lot.

Section 10. Building Permit. No building, fence, wall or other structure shall be constructed or placed upon a Lot, nor shall any exterior improvements to any building or structure be made, including but not limited to changing the grade or landscaping, until plans and specifications showing the nature,

kind, shape, height, materials, and locations of the same have been approved in writing by the Board of Directors Quality of Life Committee; which approval shall be secured prior to any approval which may be required by a governmental agency having jurisdiction.

The Board of Directors shall appoint and designate a Quality of Life Committee consisting of three (3) members of the Association. The Quality of Life Committee shall adopt a building permit form, which shall be used to submit such plans and specifications. The committee shall, after review of the submitted building permit, review the proposed construction as to harmony of external design and location in relation to surrounding structures and topography, and either approve or reject the building permit within ten (10) days.

Section 11. Nonconformities. At the time of the adoption of the Declaration by the Association, there may exist structures or things which would be prohibited, regulated or restricted by virtue of the Declaration. Each such non-conformity may continue so long as it remains otherwise lawful, subject to the following:

- A. No such non-conformity shall be enlarged nor increased nor extended beyond the non-conformity as it existed on January 1st, 1997.
- B. If any such non-conformity ceases for any reason for a period of more than one year, any subsequent use of such property shall conform to the Declaration.
- C. The determination of a non-conforming use must be made by the Board of Directors within six (6) months of the effective date of the Declaration.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Association, 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 attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. The Declaration may be amended or changed only by a 2/3 majority of the then-outstanding votes. No such amendment shall be effective until certified by the President and Secretary of the Association and recorded in the office of the Recorder of Clayton County, Iowa.

Section 3. Binding Effect. The Declaration shall run with the land and shall be binding upon all parties claiming under them. Invalidation of any of the covenants, conditions and restrictions of the Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

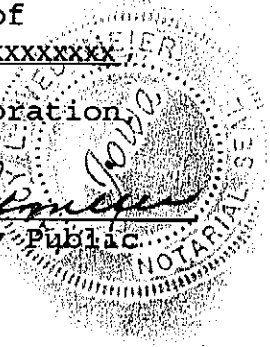
In witness whereof ABEL ISLAND ASSOCIATION has caused the Declaration to be executed this 21 day of April 1997, 1997.

ABEL ISLAND ASSOCIATION
BY: Roger L. Olsen, President
BY: Barton W. Moen, Secretary

Secretary

STATE OF IOWA, COUNTY OF CLAYTON, ss

On this 21st day of April, 1997, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Roger Olsen and ~~XXXXXXXXXXXXXXXXXXXX~~, to me personally known, who being by me duly sworn, did say that ~~they~~ he is are the President ~~and Secretary respectively~~ of the corporation executing the within and foregoing instrument; that no seal has been procured by the corporation; that said instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Roger Olsen and ~~XXXXXXXXXXXXXXXXXXXX~~ as officers acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation by it and by them voluntarily executed.

Nancy L. Wedemeyer
Notary Public


STATE OF IOWA, COUNTY OF CLAYTON, ss:

On this 15th day of May, 1997, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared BURTON MOEN, to me personally known, who being by me duly sworn, did say that he is the Secretary of the corporation executing the within and foregoing instrument, that (no seal has been procured by the) (the seal affixed hereto is the seal of the) corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of its Board of Directors; and that BURTON MOEN as officer acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Janice L. Patzner
Notary Public

