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Polk County Iowa
TIMOTHY J. BRIEN RECORDER
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RETURN TO:

Prepared by and after recording return to: Streetar Cameron, 317 Sixth Avenue, Suite 300, Des Moines, Iowa 50309 (515) 243-8157

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR
THE VILLAGE AT JOHNSTON STATION TOWN HOMES**

This Declaration is made on this 1st day of September, 2005, by Triton Homes, L.C., hereinafter referred to as "Declarant."

WITNESSETH:

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

Lots 1 through 71 and Outlot "Z" in The Village at Johnston Station, an Official Plat, now included in and forming a part of the City of Johnston, Polk County, Iowa (hereinafter referred to as the "real estate" or the "Properties").

NOW, THEREFORE, Declarant hereby declares that all of the Properties described above shall be held, sold, and conveyed subject to all prior easements recorded and 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 upon 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 I.
Definitions**

Section 1. "Association" shall mean and refer to "THE VILLAGE AT JOHNSTON STATION TOWN HOME OWNERS ASSOCIATION", its successors and assigns, a nonprofit corporation organized pursuant to Chapter 504 of the Code of Iowa, 2005, as amended.

Section 2. "Association Maintenance Obligation" shall mean and refer to the obligation of the Association to provide and pay for all Exterior Maintenance of the Living Units, the maintenance of Outlot "Z", The Village at Johnston Station, an Official Plat, City of Johnston, Polk County, Iowa, (hereinafter referred to as Outlot "Z") and all of the snow removal, irrigation system matters, lawn mowing and landscaping work for the Lots within the Properties.

Section 3. "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Properties" shall mean and refer to that certain real estate described in Article II of this Declaration of Covenants, including any plat, division, or subdivision or portion thereof as may hereafter be brought within the jurisdiction of the Association, as well as any Properties that are subsequently added thereto pursuant to the terms of this Declaration.

Section 5. "Common Area" shall mean:

Outlot "Z", The Village at Johnston Station, an Official Plat, City of Johnston, Polk County, Iowa.

It is understood that the ingress/egress area which allows access to the individual Lots is contained as a part of Outlot "Z". Outlot "Z" is to be owned by the Association at the time of the conveyance of the first lot to an owner. Outlot "Z" is to be maintained solely at the expense of the Association as a part of the Exterior Maintenance described below and in perpetuity. This maintenance shall include the replacement and maintenance of all sidewalks and walkways, maintenance of the open space and private park areas located in Outlot "Z", and the grading and maintenance of the rain gardens located in Outlot "Z". No changes to the ownership, maintenance or use of the open space, private park areas and walkways shall be made without the approval of the Johnston City Council.

Section 6. "Living Unit" shall mean and refer to any portion of a residence situated upon a Lot designated and intended for use and occupancy as a residence by a single family.

Section 7. "Lot" or "lots" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Outlot "Z", whether or not the same is a platted.

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

Section 9. "Declarant" shall mean and refer to Triton Homes, L.C., its successors and assigns, if they are designated as successor in any conveyance.

Section 10. "Exterior Maintenance" shall mean and refer to:

a. the residing, painting and staining of exterior surfaces as required from year to year, as well as all items of maintenance relating to the exterior of any of the Living Units including, but not limited to, roof replacement and repair, all replacement and repair relating to Outlot "Z", all driveway replacement and repair, and sidewalk and walkway repair and replacement as may be determined necessary by the Board of Directors and which must be coordinated through the Board of Directors to insure an ongoing continuity of construction and harmony of architectural design and color scheme. **The Lot Owners shall be responsible at their own expense for the repair and replacement of items peculiar to the particular lot including, but not limited to, heating, ventilation and air conditioning (HVAC), decks and stoops. Such items shall not be considered exterior**

maintenance and the cost thereof shall not be included as part of any maintenance assessments.

b. all snow removal, irrigation system matters, lawn mowing and landscaping work, including the maintenance and grading of the rain gardens and all maintenance of the private park areas, necessary on any of the lots shall be the responsibility of the Association and the expense therefore shall be part of the Association Maintenance Obligation. In addition, all costs of repair and maintenance for the ingress/egress area including all improvements constructed thereon shall be a part of the Association Maintenance Obligation.

c. all obligations relating to the Easement Agreement for Sanitary Sewer Right-of-Way dated on or about May 31, 2005, between Triton Homes, L.C. and ChildServe Homes, Inc.

In addition to the above-described items, any walls which are built upon the dividing line between lots (lot line walls) and which are not open to the elements shall not be altered by the Lot Owner. Any cost of maintenance of such lot line walls shall also be part of the Association Maintenance Obligation, except that any maintenance of such lot line walls caused by the negligent or intentional act or omission of any Lot Owner shall not be a Association Maintenance Obligation but shall be charged back to and be the expense of the Lot Owner causing such maintenance to be performed. Such lot line walls are intended to be constructed as walls in common pursuant to Chapter 563 Code of Iowa (2005). Any damage to such lot line walls that allows for their direct exposure to the outside elements shall be weatherproofed by the Association pending finalization of maintenance thereto. The Association shall be responsible for arranging for maintenance and/or replacement of all front doors and garage doors for each living unit, but the expenses relating thereto shall not be an Association Maintenance Obligation but shall, instead, be billed back directly to the particular living unit involved.

Section 11. "Capital Improvements" shall mean and refer to any construction of, reconstruction of, substantial alteration of, substantial repair of, or substantial addition to the physical amenities, utilities, and improvements upon the Properties.

Section 12. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions to which the Properties are subject.

ARTICLE II.

Property Subject to this Declaration

Section 1. The property which is subject to and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Polk County, State of Iowa, and is more particularly described as:

Lots 1 through 71 and Outlot "Z" in The Village at Johnston Station, an Official Plat, now included in and forming a part of the City of Johnston, Polk County, Iowa.

ARTICLE III.
Property Rights

Section 1. Reconstruction of Living Units. If a Living Unit is damaged or destroyed by any cause, the Lot owner shall be required to initiate repair, restoration or reconstruction of such Unit according to the plans and specifications for such Unit for which a Building Permit was issued for original construction within 30 days, with completion of such repair, restoration, or reconstruction to take no more than 180 days with the following exceptions:

a. If such repair, restoration or reconstruction is desired in a manner that differs from the plans and specification of original construction, such changes in plans must be approved by seventy-five percent (75%) of the Lot Owners and the City of Johnston, Iowa.

b. Failure by the Lot Owner to initiate and complete repairs, restoration, or reconstruction of the Living Unit as described previously in this section shall permit the Association to initiate such repairs, restoration or reconstruction or if deemed necessary by the Board of Directors, the removal of said Living Unit and subsequent Lot improvements subject to the consent requirements of subsection (a) hereof, all at the Lot Owner's cost.

c. The Lot Owner of a damaged living unit shall be responsible for making arrangements for protection of the remaining living units from rain, snow, or other weather conditions immediately after any damage or destruction has occurred and during the entire time of any repair restoration or reconstruction in order that no further damage occurs to other living units. Failure of the Lot Owner of a damaged living unit to immediately provide such protection shall allow for the Association to provide such protection, with the cost thereof being a special assessment relating solely to the damaged living unit.

d. The requirements of this Article shall not apply to any non-structural interior remodeling in any Living Unit.

Section 2. Declarant's Reserved Rights. The Declarant shall have the following reserved rights as a Lot Owner:

a. The right to create and dedicate easements for drainage or other utility purposes.

b. The right to maintain a general sales and construction office in a Living Unit.

c. The right to sell or transfer its rights and obligations to a successor or assign.

All reserved rights of the Declarant pursuant to this section, shall expire when the Declarant no longer has title interest in any Lot within the Properties. Exercise of the reserved rights shall not require the consent of The Village at Johnston Station Town Home Owners Association, its Board of Directors, or its membership.

Section 3. Easements.

a. **Ingress/Egress Easement.** The Declarant hereby grants a perpetual nonexclusive easement for ingress and egress over, across and through all portions of

Outlot "Z", as shown as the 50', 45' and 40' ingress/egress easement areas as shown on the Final Plat for The Village at Johnston Station, specifically including all of the interior streets, driveways and walkways, to all of the Lot Owners of the Association, as well as their invitees, tenants and guests for the purpose of obtaining vehicular and pedestrian access to the individual lots, as well as for parking purposes and to the City of Johnston, Iowa, for the purposes of allowing all rescue, fire, and emergency vehicles to have access to all Living Units located within the property. All such easement rights, however, are subject to and conditioned upon the remaining terms, conditions, and restrictions of this Declaration. Maintenance of the Outlot "Z" access easement area granted herein, including the interior streets, driveways and walkways described above, shall be performed by the Association as a part of the Association Maintenance Obligation.

b. Irrigation Easement. The Declarant hereby reserves a perpetual nonexclusive easement in favor of the Association for the purpose of installation and ongoing use and maintenance of an irrigation system. The location of this easement shall not interfere with any driveways, buildings or other structures constructed on the Properties. The easement described herein is intended to relate to Outlot "Z" and shall give the Association the right to come on to Outlot "Z" at reasonable times in order to repair and maintain the irrigation system, if one is installed, with all such repair and maintenance being an Association Maintenance Obligation as described previously herein.

c. Service Road Easement. The Declarant hereby grants a temporary nonexclusive easement for ingress and egress for service road purposes to allow for future construction activities over Outlot "Z" outside of the building footprint of any living unit, for the purpose of allowing the Declarant and its construction equipment and subcontractors to obtain access to the building sites within the property in order that the paved areas of Outlot "Z" are not damaged or destroyed thereby. At such time as construction has been completed on all living units in the development, Declarant agrees to grade the service road easement area in order that it blends with the surrounding landscaped portions of Outlot "Z", and Declarant shall landscape such area as has been done on the remainder of the Properties, at the sole expense of Declarant.

d. Utility Easement and Maintenance Agreement.

1. The Declarant hereby grants a perpetual non-exclusive easement and right-of-way under, over, on, through, across and within each of the lots within the Properties (known as "Easement Area"), for the purpose of the Association and/or the Lot Owners to reconstruct, repair, replace, enlarge, inspect and maintain any and all sanitary sewer and water services ("Utility Services"), along with all necessary structures and appurtenances thereto, which may be located within the Properties at any time. Declarant agrees to originally design and construct the Utility Services to be located within the Properties at Declarant's sole cost and expense. By acceptance of the Deed for any Lot within the Properties, the Lot Owners shall be deemed to have accepted the terms of this easement without any subsequent document or agreement being necessary, and such Lot Owner, by such acceptance, agrees to be obligated to perform all reconstruction, repair, replacement, enlargement, inspection and maintenance relating to the Utility Services that are located on each Lot Owner's lot, subject to the obligations of the Association set forth in sections (d)(3), and (4), hereinafter set forth.

2. **CHANGE OF GRADE PROHIBITED.** Declarant and its grantees, assigns and transferees shall not change the grade, elevation or contour of any area subject to the Utility Services contrary to the site plan relating to the Properties that has been approved by the City of Johnston without the prior written consent of the City of Johnston.

3. **RESPONSIBILITY.** Any work described herein that relates to any Utility Services shared in common between more than one Lot Owner shall be coordinated exclusively by the Association, and the Association is hereby appointed as attorney-in-fact for all Lot Owners of lots within the Properties, with such appointment being coupled with an interest, to accomplish such work.

4. **COSTS.** All costs associated with any work performed pursuant to this Easement shall be the obligation of the Association and shall be specially assessed by the Association in a prorata amount, equally against all lots within the Properties only.

5. **RIGHT OF ACCESS.** All Lot Owners and the Association shall have the right of access to the Utility Services wherever they may be located, whether inside or outside of any structure located on the Properties, and shall have all rights of ingress and egress reasonably necessary for the use and enjoyment of the easement granted herein from property adjacent thereto for an area reasonably necessary to allow for any work to be performed relating to the Utility Services.

6. **EASEMENT BENEFIT.** This Easement shall be for the benefit of all of the owners of lots within the Properties and their grantees, assigns, transferees and lessees.

7. **EASEMENT RUNS WITH LAND.** This Easement shall be deemed perpetual and shall run with the land and shall be binding on Declarant and Lot Owner's assigns and transferees.

8. **PROPERTY TO BE RESTORED.** Upon completion of any reconstruction, repair, enlargement or maintenance of any Utility Services or any appurtenance thereto, the party performing such work shall restore the disturbed area in good and workmanlike manner, including restoration of the irrigation system, and restoration of lawns by seeding (or by sodding if irrigation is readily available) to a condition comparable to its condition before the performance of such work.

e. Easement for Encroachments. An easement for encroachment purposes is hereby granted for any encroachment that may exist upon any Lot in the event that the improvements constructed upon that Lot encroach any other Lot as a result of construction, reconstruction, repair, shifting, settlement, or movement in any fashion. Such encroachments and the easements therefor shall not be considered or determined to be encumbrances for the purposes of marketability of title. In the event that any improvements are partially or totally destroyed and then rebuilt, every effort shall be made to correct any such encroachment.

ARTICLE IV.
Membership and Voting Rights in the Association

Section 1. Membership. Each owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. TRITON HOMES, L.C., WHICH IS THE OWNER OF THE PROPERTY, OR ITS SUCCESSOR IN INTEREST OR ASSIGNEE PURSUANT TO A DOCUMENT THAT SPECIFICALLY REFERS TO THIS CLASS "A" MEMBERSHIP TRANSFER, SHALL BE A CLASS "A" MEMBER OF THE ASSOCIATION AND SHALL BE THE SOLE VOTING MEMBER OF THE ASSOCIATION UNTIL SUCH TIME AS (i) TRITON HOMES, L.C., OR ITS SUCCESSOR IN INTEREST OR ASSIGNEE, NO LONGER OWNS ANY LAND WITHIN THE PROPERTY DESCRIBED IN THE DECLARATION; (ii) UNTIL TRITON HOMES, L.C., OR ITS SUCCESSOR IN INTEREST OR ASSIGNEE, WAIVES ITS RIGHT IN WRITING TO BE THE SOLE VOTING MEMBER OF THE ASSOCIATION; OR (iii) UNTIL 120 DAYS AFTER TRITON HOMES, L.C. HAS CONVEYED 75% OF THE TOTAL OF ALL LOTS WHICH ARE PRESENTLY A PART OF OR WHICH MAY HEREAFTER BE ADDED TO THE ASSOCIATION AS REFERENCED IN THE DECLARATION, WHICHEVER FIRST OCCURS. DURING THE TIME THAT TRITON HOMES, L.C. IS THE SOLE VOTING MEMBER IT SHALL HAVE THE RIGHT TO ELECT ALL DIRECTORS OF THE ASSOCIATION.

ARTICLE V.
Covenants for Association Maintenance Obligation Assessments

Section 1. Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot, hereby covenants, and each Owner of any Lot 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:

- a. Annual assessments or charges,
- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and
- c. Taxes or assessments levied by a government or quasi-governmental body on the Properties and spread by the Association or such body pursuant to the allocated percentage established for each Lot for the payment of expenses association Maintenance Obligations.
- d. The annual and special assessments, or governmental or quasi-governmental levies, together with interest, costs, and reasonable attorney's fees incurred in connection with the collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. 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 property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of the Properties, and for the improvement and maintenance of Outlot "Z" and the Living Units and buildings situated upon the Properties, including but not limited to the payment of taxes, special assessments for work performed by a governmental or quasi-governmental subdivision, insurance, water charges, utility charges, repair, replacement of, and additions to, the Properties, grading and maintenance of the rain gardens and for the cost of labor, equipment, materials, management and supervision.

Section 3. Initial Annual Assessment. Until the date that is one year after the recording of this document, the initial annual assessment shall be \$960.00.

a. From and after the anniversary of the filing of this document, the annual assessment may be increased each year not more than 25% above the maximum assessment for the previous year without a vote of the membership.

b. From and after the anniversary of the filing of this document, the annual assessment may be increased above 25% by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

c. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the amount described herein.

d. The Board of Directors of the Association shall, after consideration of future costs for Exterior Maintenance, establish a reserve fund for such purposes with the monies necessary for such reserve fund to be part of the annual assessment. The reserve fund shall be administered pursuant to the By-Laws of the Association.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments 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 in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Properties, including fixtures and personal property related thereto, provided that any such assessment shall only be effective after it has secured a vote of 2/3 of the Members of each class described herein who vote in person or by proxy, at a meeting duly called for that purpose.

Section 5. Special Assessments for Public Roads or Other Public Purposes. In addition to the annual and special assessments authorized herein, the Association shall levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any special assessment obligation for public roads, public utilities, or other public purposes which a public, quasi public, or governmental authority may assess on any project even though the assessment boundaries may only cover a portion of the Properties falling within this Declaration. Any such special assessment shall be levied against the entire development as a whole with each Lot Owner paying its proportionate share pursuant to its percentage of Association Maintenance Obligation allocation.

The Association may enter into a petition and waiver to contract with the public, quasi-public, or governmental authority concerning any project involving a special assessment. If petition and waiver is used and adopted, the Association, on behalf of all Lot Owners and Members of the Association, shall execute all documents required in connection with said petition

and waiver in the form generally required by the public, quasi-public, or governmental authority. The Association may execute such documents only after securing the affirmative vote of two-thirds (2/3) of the Members described herein who vote in person or by proxy, at a meeting duly called for that purpose.

Section 6. Rate of Assessment. All annual and special assessments shall be fixed for all Lots by the Board of Directors and shall be collected on a monthly basis and shall be uniform for each Lot.

Section 7. Date of Commencement of Annual Assessments.

The annual assessments provided for herein shall commence as to each of the Lots subject to this Declaration on the first day of the month following the conveyance of such Lot to an owner other than the Declarant. During the time that the Declarant is the owner of any such lots, no assessments shall be due, provided, however, that the Declarant shall be responsible for any expenses of any sort relating to such lot prior to conveyance. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot 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 specified Lot have been paid. A properly executed certificate of the Association as to the status of assessment on a Lot is binding upon the Association as of the date of its issuance. At the time of the initial closing of the conveyance of any Town Home from the Declarant, the purchaser thereof shall pay to the Association a working capital fund in an amount equal to two months estimated common area charges for the Town Home, which amount shall not be refundable.

Section 8. Date of Commencement of Special Assessments. The due date of any Special Assessment under Section 4 of this Article shall be fixed in the Resolution authorizing such assessment.

Section 9. Effect of Nonpayment of Assessment: 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 maximum rate allowed by Iowa law at the time of such delinquency. In addition, a charge of \$25 shall be made for any monthly assessment received after the 15th of the month for which the payment is due. In addition to the collection of such delinquent amounts plus interest, the Association shall be entitled to recover any reasonable attorney fees and other costs involved with the collection of such delinquent amounts, which fees and costs shall also accrue interest as described above from the date of their incurrence. 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 pursuant to the Iowa Code.

BY ACCEPTANCE OF A DEED FOR ANY LIVING UNIT DESCRIBED HEREIN, EACH LOT OWNER SHALL BE DEEMED TO HAVE AGREED TO THE FOLLOWING LANGUAGE:

I UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY ACCEPTING A DEED FOR A LIVING UNIT IN THIS DEVELOPMENT, I

**VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR
THIS LIVING UNIT WITH RESPECT TO CLAIMS BASED UPON
THIS DECLARATION.**

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 lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to the issuance of the Sheriff's Deed or deed in lieu of foreclosure. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**ARTICLE VI.
Architectural Control**

Section 1. No building, wall, room addition, deck, patio or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, 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. In the event said Board, or its designated committee, 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.

Section 2. No clothing, sheets, blankets, laundry or other articles shall be hung, displayed or stored outside the Living Unit (except within the garages located thereon) or which may be visible from the outside of the Living Unit (other than draperies, curtains or shades of a customary nature and appearance, and in any event, subject to the rules and regulations of the Board of Directors.) No Owner shall paint or decorate or adorn the outside of his Living Unit nor shall he install outside of his Living Unit any canopy, awning, hot tub, whirlpool bath, spa, permanent or temporary fencing around patios, outside radio or television antenna except that a satellite dish that is one meter or less in diameter may be installed pursuant to FCC guidelines. Any Lot Owner may, however, install flower planters and flower pots on any patio area owned by the Lot Owner so long as such planters and pots are no wider than 18 inches in diameter with plantings no taller than 5 feet from ground level. The use of the planters and pots described above shall be restricted to the planting and cultivating of flowers and ornamental bushes and shall not be used for the planting and cultivating of vegetables.

Section 3. No Lot Owner shall display, hang, store, or use any sign outside his Living Unit or which may be visible from the outside of his Living Unit without the prior written permission of the Board of Directors. The foregoing notwithstanding, any Lot Owner shall be permitted to display a sign of not more than three square feet in area advertising such Owner's lot for sale or lease with such sign being located in the area between said lot and the drive in front of such lot, all in accordance with the sign ordinance of the City of Johnston, Iowa.

ARTICLE VII.
Covenants for Insurance

Section 1. Maintenance of Insurance.

a. The Association, on behalf of each Lot Owner, shall obtain and continue in effect adequate casualty and fire insurance, as the Board of Directors of the Associate deems appropriate, in an amount equal to the full replacement value, without deduction for depreciation or coinsurance costs, of all of the Living Units, as well as all public liability insurance relating to each Lot and to Outlot "Z". Such insurance shall name the Association and the Owners of all applicable Lots as insureds and loss payees, as their interests may appear. All losses shall be adjusted by the Association, as Trustee for the benefit of each affected Lot Owner, and for the benefit of any applicable mortgagee, with the proceeds from such adjustment to be used as is described herein concerning reconstruction of living units in Article III. The Association is hereby designated as attorney-in-fact(coupled with an interest) for each Lot Owner for the purpose of adjusting any such losses. At the time of the initial closing of the conveyance of any Town Home from the Declarant, the purchaser thereof shall pay to the Association an amount equal to one year's insurance premium that is the obligation of the Association as set forth herein for such Town Home which amount shall not be refundable.

b. Each Lot Owner shall be allowed to obtain such additional insurance as they deem appropriate, including any insurance to cover appliances, carpet, furniture, and other personal belongings that may not be covered by the "Master Policy" obtained by the Association. **It shall be the responsibility of each Lot Owner to coordinate such insurance matters in order that each Lot Owner makes their own determination that their own personal possessions, furniture, and other interior items are adequately covered to their satisfaction.**

Section 2. Public Liability Insurance. The Association shall provide public liability insurance covering Outlot "Z", in such amounts as may be determined at the discretion of the Association from time to time, as well as any other insurance that the Association may deem appropriate.

Section 3. Fidelity Bonds. The Association may also provide fidelity bonds and worker compensation insurance for employees and fidelity bonds and errors and omissions insurance for officers and directors in such amounts as is determined by the Association to be necessary from time to time. The Association may, from time to time, provide other forms of insurance as deemed necessary.

ARTICLE VIII.
Exterior Maintenance

Section 1. Exterior Maintenance. In addition to providing all lawn mowing and landscaping duties relating to the Properties, the Association will provide exterior maintenance upon each Lot and Living Unit which is subject to assessment under Article V and as defined in Article I, Section 10, as well as the removal of all snow from sidewalks and driveways on each Lot and Outlot "Z", any matters relating to the irrigation system, and grading and maintenance of the rain gardens located on Outlot "Z". The following is a list of certain items that would be an example for

the types of maintenance, repair, and replacement to be performed by the Association as part of the Association Maintenance Obligation. This list is not intended, however, to be all-inclusive in any respect:

- a. Private driveways.
- b. Garage floors, but not including repairs due to painting or sealing such floor or any damage caused by the Lot Owner (all garage doors shall be maintained by the Association, but the expenses therefore shall be billed back directly to the owner of the particular living unit as is described in Article I. In addition, all garage door openers shall be the sole responsibility of the Lot Owner).
- c. Sidewalks and walkways.
- d. Landscaping, including trees and shrubbery.
- e. Irrigation system.
- f. Shingles
- g. Siding.
- h. Exterior lighting.
- i. Snow removal.
- j. Lawn mowing.
- k. All exterior doors and all windows shall be maintained by the Association, but the expenses therefore shall be billed back directly to the owner of the particular living unit.

No individual Lot Owner shall be allowed in any way to perform any maintenance, repair, or replacement that is to be performed by the Association. A Lot Owner may, however, tend to the potted flowers and potted bushes planted by the Lot Owner as previously described herein and the Association shall have no obligation for the maintenance thereof.

Section 2. Ingress/Egress Maintenance. The Association shall be responsible for performing all of the maintenance obligations relating to Outlot "Z" previously described herein which is subject to the ingress/egress access easement. The costs of such maintenance shall be an Association Maintenance Obligation.

Section 3. Assessment of Cost. The cost of all Association Maintenance Obligations shall be assessed against all of the Lot Owners and shall be added to and become a part of the annual maintenance assessment or charge to which all Lots are subject under Article V hereof. As part of such annual assessment or charge, it shall be a lien or obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof, provided that the Board of Directors of the Association, when establishing the annual assessment against each Lot for any assessment year as required under Article V hereof, may add thereto the estimated cost of the exterior maintenance for that year but shall thereafter make such adjustment with the Owner as is necessary to reflect the cost thereof.

Section 4. Negligence in Maintenance. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. Neglect of Lot or Living Unit repairs that did not rise to the level of exterior maintenance or capital improvements as those terms are defined herein and which repair is the responsibility of the Lot or Living Unit Owners relating to HVAC, decks, and stoops, shall permit the Association to cause such repairs to be made and assessed to the Lot Owner

responsible after ten (10) days notice to repair has been given to the Lot Owner by the Association in writing.

Section 5. Easement for Access. For the purpose solely of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours of any day; provided, however, in the event that there is breakage or leakage in the water system or sewer system upon a Lot, no notice need to be given to enter upon the Lot for the purpose of repairing the water system or sewer system. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Properties. The Owner or occupant of a Lot shall neither erect nor permit erection of any building or structure of any kind nor permit any growth of any kind within said easement areas which might interfere in any way with the use and patrolling of any of the utility service and drainage located in the easement areas. In addition, an easement for maintenance is hereby granted in favor of the Association over and across each Lot for the purposes of the Association performing its duties under the terms of this Declaration.

Section 6. Easement Agreement for Sanitary Sewer Right-of-Way. The Association shall be responsible for the obligations set out in the Easement Agreement for Sanitary Sewer Right-of-Way dated on or about May 31, 2005, between Triton Homes, L.C. and ChildServe Homes, Inc.

ARTICLE IX. Additional Restrictions

Section 1. Subject to the ability of the Declarant to own and/or occupy any of the living units for model home, sales purposes or management office, each of the living units is intended to be used for residential purposes only, provided, however, that the Declarant shall be allowed to place a construction trailer or other similar construction-related facility on the property. No business or commercial use shall be permitted in any of the living units if such use generates more than two vehicle visits per day to the living unit, provided, however, that no daycare or child care facility shall be allowed at any time, and no music lessons or tutoring shall be performed at any time. Any home office that complies with the above restrictions shall be allowed, subject, however, to any city ordinance that may apply.

Section 2. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. Each living unit shall be permitted to have no more than one (1) dog or one (1) cat, not to exceed 45 pounds in weight, or to have two (2) cats not to exceed 35 pounds in total weight, or to have one (1) cat and one (1) dog not to exceed 35 pounds in total weight, provided, however, that no pit bulls or Rottweilers shall be allowed in any case. In the event that any amendments are made to this Declaration which further restrict the keeping of pets, all pets that had existed at the time of such amendment shall be "grandfathered" and shall be allowed to remain in the living unit, provided, however, that no replacement pets acquired after the date of the amendment would be allowed if they violate any such amendment. All pets must be kept on a leash and each Owner shall be responsible for cleaning up all pet waste. Any damage done by any pets, including dragging chains, digging, scratching or chewing, shall be the responsibility of the owner of such pet, including, but not limited to, any such damage done to landscaping. No owner shall be allowed to chain or otherwise confine their pet in the common area at any time. The Association shall have the right to require removal of pets in the individual cases

where such pets are or become legal nuisances and unreasonably disturb the quiet enjoyment of the Properties by the Owners. The Association may levy a \$25.00 per incident fine for any pet waste that is not cleaned up by the owner of such pet.

Section 3. 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.

Section 4. Mailbox designs shall be only as approved by the Board of Directors, or the architectural control committee. No sign shall be placed upon any Lot except those customarily used to identify the name of the resident and the street address of the subject Lot, and real estate signs for the sale or rental of a Lot.

Section 5. No trash receptacles or garbage cans shall be permitted to be placed outside of a building or a structure on any Lot unless hidden by an attractive screen of suitable height and approved by the Board of Directors. This restriction shall not exclude the placement of waste containers outside of such area if required by governmental regulation or by terms of a contract with a commercial operator.

Section 6. 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, or storage facility, either temporarily or permanently except for a sales trailer temporarily used by the Declarant.

Section 7. No commercial vehicles or commercial equipment of any kind shall be located, stored, or parked on any Lot, provided, however, that the Declarant shall be allowed to place a construction trailer or other similar construction-related facility on the property. No recreational vehicles, including but not limited to, boats, snowmobiles, and trailers, shall be parked or stored on any Lot for more than 7 days out of the year unless stored in the garage, provided, however, that no such items shall be stored inside a garage unless the particular garage used for such storage is still used for the storage of the appropriate number of automobiles (i.e., one automobile in a one-car garage and two automobiles in a two-car garage). Garages shall also not be used for the storage of other items of personal property unless the particular garage used for such personal property storage is still used for the storage of the appropriate number of automobiles (i.e., one automobile in a one-car garage and two automobiles in a two-car garage). It is not intended that garages shall be used as storage areas, thus requiring automobiles that would otherwise be parked in the garage to be parked in the driveway or in other parking areas.

Section 8. No fence of any kind shall be allowed on any lot at any time, except for fences required/installed as part of the original site plan or as required at any time by the City of Johnston, and except for any silt/erosion control fences or other fences installed by the Declarant as part of the construction of the Living Units.

Section 9. Lot Owners shall not be allowed to place any personal property, including, but not limited to, play equipment, portable or permanent basketball hoops or similar recreational equipment, storage sheds, animal runs or shelters, hot tubs, whirlpool baths, or spas on their lot or in their living unit unless located inside such living unit, provided, however, that normal and customary lawn and patio furniture shall be allowed.

Section 10. Any lease arrangement of a Town Home shall be required to provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration, the By-Laws

and Articles of Incorporation of the Association and any rules and regulations established by the Board of Directors; shall contain the agreement of the lessee to be bound by the terms of such documents and shall provide that any failure of the lessee to comply with the terms of such documents or rules shall be a default under the Lease or Rental Agreement. All leases shall be required to be in writing and any Owners leasing or renting a Town Home, shall, prior to the commencement of the Lease or rental term, deliver to the Secretary of the Association and to any management company involved for the Association a complete copy of the Lease or Rental Agreement. No Lease shall be for a period of less than thirty (30) days. Any Owner who leases their Town Home shall remain liable for all the actions of the tenant relating to this Declaration and any rules of the Association. Other than the foregoing, the Owners of the respective Town Homes shall have the absolute right to lease the same.

Section 11. Except as permitted by the Board of Directors, in its sole discretion, and except as provided herein relating to flower boxes and planters, no gardens, shrubs, flowers or other plants shall be planted by any Owner on any Common Element or Limited Common Element.

Section 12. Except as permitted by the Board of Directors of the Association, in its sole discretion, and except as provided herein relating to flower boxes and planters, no gardens, shrubs, trees, flowers or other plants shall be planted by any Owner on any portion of the Properties, including the Lot owned by such Lot Owner.

Section 13. No one shall be allowed to block access to any garage or driveway unless the living unit affected is owned by the individual creating such blockage.

Section 14. All visitor/guest parking is intended to be temporary in nature. All visitors and guests staying for extended periods are to park their vehicles in the driveway of their host. Parking in the common area shall be permitted only in designated areas. Parking in the ingress/egress easement area is subject to control by the Board of Directors and shall adhere to the site plan for this development approved by the City of Johnston. All designated visitor/guest parking areas in the common area are reserved for visitors and guests and shall not be used by Lot Owners. Any and all fire lane requirements for the development shall be strictly adhered to.

ARTICLE X.

General Provisions

Section 1. Enforcement. The Association, and its Board of Directors, or any Lot Owner, or their successors and assigns, shall have the right to enforce, by any proceedings at law or equity any restrictions, conditions, covenants, reservations, liens, and charges and rules and regulations now or hereafter imposed by the provisions of this Declaration or by the Association as set forth in the By-laws. Any such enforcement shall allow for the reimbursement of reasonable attorney fees and costs to the successful enforcer.

Failure by the Association or any Lot 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. Condemnation. The Association shall have control over any eminent domain or condemnation proceedings, negotiations, settlements and agreements, relating to the common area or any part thereof. The Association is hereby appointed attorney-in-fact for each of the Lot Owners for the purpose of handling all such matters.

Section 3. Severability. Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way affect any other provisions of this Declaration which shall remain in full force and effect.

Section 4. Open Space. No change to the use of the open space and green space noted on the Site Plan approved by the City of Johnston for The Village at Johnston Station shall be made unless such change is agreed to, in writing, by the City of Johnston and the Association.

Section 5. Binding/Amendment. These Covenants shall inure to the benefit of the Lot Owners, the Association, and their successors and assigns, shall be deemed covenants running with the land and shall remain in full force and effect for a period of twenty-one (21) years after their original signing, prior to which time said Covenants may be extended for additional periods of twenty-one (21) years by filing a claim in accordance with Sections 614.24 and 614.25 of the Code of Iowa (2005) as amended, or any successor statute. **This Declaration may be amended** during the first twenty-one (21) year period described above by an instrument signed by not less than the Owners of ninety percent (90%) of the Lots and, thereafter, by an instrument signed by not less than the Owners of seventy-five percent (75%) of the Lots provided, however, that any such amendment to Article V must be consented to by the Declarant so long as the Declarant owns any lot that is a part of or may be added to the terms of this Declaration. Any amendment must be recorded. Notwithstanding anything to the contrary provided herein, however, the obligation of the Association to maintain Outlot "Z" and the ingress/egress access easement in a safe condition and in compliance with all applicable governmental regulations cannot be released by any amendment without the prior written consent of the City of Johnston. Any amendment may be prepared and filed by the Declarant if it relates to correction of technical or typographic errors or for clarification only with such amendment not requiring the percentage votes as described above. No amendment that adds additional property to the terms of this Declaration pursuant to Article II herein, shall require the consent of any Owner other than the Declarant, as described in Article II. No Amendment to this Declaration shall change the ability to extend the effectiveness of these Covenants as described above, however.

Section 6. Violation. If a Lot Owner or the Association or any of them or their successors and assigns, or tenants shall violate or attempt to violate any of the Covenants or Restrictions herein contained, it shall be lawful for any person or persons owning any other Lots, the Association, or Declarant, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such Covenant or Restriction and either to prevent him or them from so doing or to recover damages for such violation. In the event of any such suit or proceeding, the prevailing party shall be entitled to recover from the nonprevailing party, an amount equal to all costs, including reasonable attorney fees, incurred by such prevailing party in the preparation for and prosecution of such suit or proceeding.

Section 7. Annexation. Additional residential property not previously described herein in Article II Section 2 may be annexed and added to the Properties with the consent of two-thirds (2/3) of the Members.

Section 8. Rules and Regulations. The Association may adopt, amend and revoke rules and regulations not inconsistent with the Articles of Incorporation, By-Laws or this Declaration in order to regulate the use of the Living Units and Lots and the conduct of the occupants which may jeopardize the health, safety and welfare of other occupants involving noise or other disturbing activity or which may cause damage to any of the Properties or the improvements located thereon, regulating or prohibiting animals, regulating the exterior appearance of the Properties including,

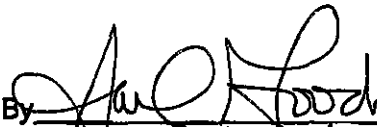
by way of illustration and not limitation, balconies and patios, window treatments and signs and other displays, regardless of whether inside or outside an apartment, implementing the Articles of Incorporation, the By-Laws or this Declaration. After notice and an opportunity to be heard, the Association may impose reasonable sanctions, including the levying of reasonable fines, for violations of the Declaration, By-Laws and Rules and Regulations of the Association. Such fines shall not exceed the sum of Ten Dollars (\$10.00) per day unless agreed to by a majority vote of the Members of the Association. Such fine(s) may only be levied after a meeting of the Board of Directors of the Association has been held following the giving of the 10-day written notice to the offending Lot Owner to allow such Lot Owner an opportunity to be heard.

Section 9. Construction. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context.

Section 10. Tree Agreements. Notice is hereby given that Declarant has certain obligations to three neighbors of the Properties for tree planting and irrigation pursuant to Agreements dated August 1, 2005 with Jim Hudson, July 28, 2005 with David Winter and Dorothy Winter and July 28, 2005 with Roselyn Harbart (collectively referred to herein as "Agreements") that, among other things, require irrigation of the trees that are to be planted according to the Agreements. Such irrigation is contemplated to be initially connected to the irrigation system for The Village at Johnston Station but it shall be Declarant's obligation to reimburse the Association for all water and maintenance expenses relating to the Agreements. At such time as the irrigation obligation of Declarant ceases pursuant to the Agreements, it shall be Declarant's obligation to disconnect the irrigation area relating to the Agreements from the irrigation system for The Village at Johnston Station. Declarant shall indemnify and hold the Association harmless from any cost, expense, damage or obligation that may arise at any time relating to the Agreements except for any action or inaction of the Association, its agents, contractors or members.

IN WITNESS WHEREOF, Triton Homes, L.C. has caused this instrument to be executed this 15th day of September, 2005.

TRITON HOMES, L.C.

By 
Name: Joel Goodman
Title: Manager

STATE OF IOWA :
: SS
COUNTY OF POLK :

On this 15th day of Sept, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Joel Goodman, to me personally known, who, being by me duly sworn, did say that he/she is the manager of Triton Homes, L.C., and that said instrument was signed and sealed on behalf of said Triton Homes, L.C. by authority of its Members and Managers; and the said Manager acknowledged the execution of the instrument to be the voluntary act and deed of said limited liability company, by it and by him voluntarily executed.



A handwritten signature in black ink, appearing to read "MBos", written over a horizontal line.

Notary Public in and for the State of Iowa

**CONSENT BY MORTGAGEE TO
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR
THE VILLAGE AT JOHNSTON STATION TOWN HOMES**

Community State Bank hereby consents to the terms of the foregoing Declaration of Covenants, Conditions, Easements and Restrictions for The Village at Johnston Station Town Homes, and hereby acknowledges that the lien of the mortgage held by Community State Bank, dated April 26, 2005, and filed April 26, 2005, in Book 11034, Page 688, of the records of the Recorder of Polk County, Iowa, shall be subordinate to the terms of the foregoing Declaration.

COMMUNITY STATE BANK

By Fred Scherle
Name: Fred Scherle
Title: V.P. - Commercial Banker

STATE OF IOWA :
 :
 :
COUNTY OF POLK :



On this 15th day of September, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Fred Scherle, to me personally known, who, being by me duly sworn, did say that he is the VP - Commercial Banker of the corporation executing the within and foregoing instrument; that said instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Fred Scherle, as such officer, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation; by it and by him voluntarily executed.

Mandy J. Peter
Notary Public in and for the State of Iowa

APPENDIX A
THE VILLAGE AT JOHNSTON STATION TOWN HOMES
RULES AND REGULATIONS

General Rules

1. All guests must be accompanied by a resident/owner.
2. Residents/owners are personally responsible and liable for any damage to the buildings, furniture, or equipment caused by any resident/owner or his guests.
3. Residents/owners are to leave all areas and facilities used in an orderly condition.
4. Residents/owners may use barbecue grills, provided the grills are placed five (5) feet or more from any buildings or any fences.
5. Personal property shall not be left unattended in any common areas other than the garage spaces.
6. For the safety of all residents/owners, please limit driving speeds through the complex to twenty-five (25) miles per hour.

Garages

1. Residents/owners shall use only the garage spaces which are allocated to their respective units.
2. Residents/owners are prohibited from using or storing any of the following items in the garages:
 - (1) Flammable materials and liquids;
 - (2) Combustible materials;
 - (3) Materials identified with hazardous labels; and
 - (4) Compressed gases.
3. Garage doors shall be kept closed when garages are not in use.

Outside Parking

1. Parking outside the buildings is permitted only in designated areas and, except for the driveway Limited Common Elements which are reserved for the Owners of the Units to which they are, respectively, allocated, are always on an unreserved basis unless otherwise prohibited.
2. Any abandoned vehicle will be towed at its owner's expense, without prior notice to the owner.
3. Any nonoperational vehicle parked outside of any garage for a period of more than seven (7) days will be towed at its owner's expense, without prior written notice to the owner.
4. Vehicles parked outside the buildings shall not obstruct the garages or driveways of others.

Pets

1. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. Each living unit shall be permitted to have no more than one (1) dog or one (1) cat, not to exceed 45 pounds in weight, or to have two (2) cats not to exceed 35 pounds in total weight, or to have one (1) cat and one (1) dog not to exceed 35 pounds in total weight, provided, however, that no pit bulls or Rottweilers shall be allowed in any case. In the event that any amendments are made to this Declaration which further restrict the keeping of pets, all pets that had existed at the time of such amendment shall be "grandfathered" and shall be allowed to remain in the living unit, provided, however, that no replacement pets acquired after the date of the amendment would be allowed if they violate any such amendment.
2. Those residents/owners with pets shall be responsible for caring for their pets in such a way as to keep them from becoming a nuisance to other residents/owners.
3. Pets shall be leashed at all times when they are outside their Owner's unit.
4. Pet owners shall be responsible for cleaning up after their pets whenever their pets are outside their owner's unit. Failure to promptly clean up after a pet will subject the pet's owner to an assessment from the Association for the cost of such clean-up of \$25.00 per incident.

Fines

As is described in the Declaration, breach of these Rules and Regulations may subject the violator to a \$10.00 per day fine.