

JANUARY 1, 1993,

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

ESMANN ISLAND

THIS DECLARATION, is made by Esmann Island Owners 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 June 1st, 1993, Survey and Plat of Esmann Island, which real estate shall hereinafter be called "Esmann Island".

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

C. Association will submit the preliminary Plat of Esmann Island to the County of Clayton (herein called "County") and the City of Guttenberg (herein called "City"), and in consideration of the approval of the preliminary Plat and final Plat by the County and City agrees to submit Esmann Island to the Declaration in order to provide for the ownership, preservation of values and amenities within Esmann Island and for the operation and maintenance of common areas within Esmann Island.

NOW, THEREFORE, Association, in consideration of the approval of the preliminary Plat and final Plat by the County and the City, and for other good and valuable consideration, 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 ESMANN ISLAND OWNERS ASSOCIATION, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa, and previously known as Esmann Island Tenants Association.

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

Section 3. "City" shall mean and refer to the City of Guttenberg, Iowa.

Section 4. "Commercial" shall mean and refer to engaging in the purchase, sale or exchange of goods or services.

Section 5. "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 6. "Common Facilities" shall mean and refer to all personal property, fixtures and improvements now or hereafter owned by the Association.

Section 7. "County" shall mean and refer to the County of Clayton, Iowa.

Section 8. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions, to which the properties are subject.

Section 9. "Esmann Island" shall mean and refer to the real property described in Roger R. Mohn's June 1st, 1993, Survey and Plat of Esmann Island.

Section 10. "Lot" shall mean and refer to any and all lots contained in any plat, replat, or subdivision of Esmann Island, made and recorded in accordance with the statutes of the State of Iowa.

Section 10A. "Improved Lot" shall mean any lot upon which is located a residential dwelling or commercial building.

Section 10B. "Unimproved Lot" shall mean any lot not improved with a residential dwelling or commercial building.

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 Esmann Island, 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 Esmann Island 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 portion of Esmann Island, together with any improvements and appurtenances thereto; but subject to any and all utilities located thereon, easements and restrictions:

- A. Lot 309 (Roads)
- B. Lot 308 (Field)
- C. Lot 103A (Ramp)
- D. Lot 310 (Sandpit)
- E. Lot 132 (River Access)

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 rights of the Association to suspend the voting rights of the Owner 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 its published rules and regulations; and
- B. the Rules and Regulations promulgated and published by the Association's Board of Directors, from time to time, the Articles of Incorporation and Bylaws.

Section 4. Use of the Common Areas. Any owner may delegate, in accordance with the Association's Rules and Regulations, the right and easement of enjoyment to the Common Areas to guests. No owner shall obstruct or interfere whatsoever 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. 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 January 1, 1993, Bylaws of Esmann Island Owners Association, which by this reference are incorporated herein as though fully set forth. Each member of the Association shall have a right to vote concerning the affairs of the Association.

Section 2. 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 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.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Association for Esmann Island, hereby covenants, and each Owner of any portion of Esmann Island 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 the lien of a first mortgage of record. 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 the 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 Esmann

Island 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 assent of two-thirds of the votes of members entitled to vote, in person or by proxy, at a meeting duly 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. An improved lot shall bear a two (2) share assessment and an unimproved lot shall bear a one (1) share assessment. 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 the share value of the Lot, and the denominator of which is the total shares 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 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 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. Subordination of Assessments Liens. If any property subject to a lien created by any provision in the Declaration shall be subject to the lien of a first 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; and the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting Owner personally.

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

ARTICLE V

MAINTENANCE AND MANAGEMENT

Section 1. Maintenance of Common Areas. The Association shall maintain, repair, reconstruct, and replace the Common Areas and all improvements thereon as shall from time to time be determined by the Board of Directors.

Section 2. Financial Responsibility. The Association, through its Board of Directors, shall use its best efforts to obtain general liability insurance covering the Common Areas and Common Facilities for the benefit of and on behalf of the Association and its members. Any such insurance obtained shall be in an amount and in form reasonably calculated to protect the named insureds from liability with respect to any and all claims, demands and the like arising out of or connected with the ownership, operation or existence of the Common Areas.

ARTICLE VI

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 the enforcement rights granted to the Association for the collection of assessments, 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 repeated violations by any person whatsoever.

Section 3. Use of Land. Each Lot within Esmann Island shall be used only for placement and/or construction of single-family residential dwellings (including residential mobile homes). 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 thirty (30) days.

Section 4. Commercial Lots. Lots 45, 58, 103B, and 102 may be used for commercial purposes. Lots adjacent to commercial lots may be used for commercial purposes to accommodate the expansion of such commercial use, but only with Board approval. The Owner of a commercial lot who has sought such Board approval and been denied may appeal such decision to the membership. The approval of such commercial use by fifty percent (50%) of the votes entitled to be cast shall override the Board denial and such commercial use shall be allowed.

Section 5. No Subletting. Owners shall not sublet their property or any improvement thereon; provided however:

- A. the Association may rent and manage common areas consistent with historical practices and as approved by the Board, and
- B. single family residential dwellings or residential mobile homes 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 the resulting lots are in conformity with current zoning, meet building set-back requirements, contain a minimum of 5,625 square feet, and have a minimum street abutting width of sixty feet (60').

Section 7. No building shall be constructed or placed on any lot closer than fifteen feet (15)' to the front lot line, nor closer than five feet (5') to any side or rear lot line. Additionally, notwithstanding the foregoing, no structure shall be constructed or placed closer than twenty feet (20') to the ordinary high-water mark of the Mississippi River on those lots adjacent to the Mississippi River.

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, mobile home 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 Building Permit Committee.

The Board of Directors shall appoint and designate a building permit committee consisting of three (3) members of the Association. The building permit 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 exist lots, structures, and uses of land and structures which would be prohibited, regulated or restricted by virtue of Article VI, Sections 3, 4, 5, 6, 7, and 8 thereof. 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 September 1st, 1992.
- 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 one (1) year of the effective date of the Declaration.

ARTICLE VII

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.

Section 4. No provision or restriction otherwise void by reason of application of the rule against perpetuities or Section 558.68 of the Code of Iowa shall continue for a period longer than the life of the last to survive of the owners of Lots, and their children in being at the time of the initial recording of Deeds to the owners of Lots and twenty-one (21) years thereafter.

In witness whereof ESMANN ISLAND OWNERS ASSOCIATION has caused the Declaration to be executed this 5th day of June, 1993.

ESMANN ISLAND OWNERS ASSOCIATION

BY: *Allyn Jensen Pres.*