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SPACE ABOVE THIS LINE FOR RECORDER

**DECLARATION OF
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
APPLICABLE TO
CLEAR CREEK COMMONS SUBDIVISION
BOONE COUNTY, IOWA**

This Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Clear Creek Commons Subdivision Plat 1, Boone County, Iowa, (the "**Declaration**"), is made this 9th day of June, 2004, by **Todd Rueter, Rueter Corp.**, an Iowa corporation, and **Rueter & Zenor Co. d/b/a Rueter's Red Power**, an Iowa Corporation, which are hereinafter referenced collectively as the "**Declarants**" or individually as the "**Declarant**".

WITNESSETH:

WHEREAS, between them, Declarants are the owners of parcels in the Northeast Quarter of Section Ten (10) Township 83 North, Range 25 West of the 5th P.M, now included in and forming a part of Boone County, Iowa, (the legal descriptions of which are attached hereto and marked as Exhibits 1, 2 and 3) together with all easements and servient estates appurtenant thereto, and subject to (1) all easements, covenants and restrictions of record, and (2) zoning and other applicable building ordinances, which Clear Creek Commons Subdivision, and any abutting property that may hereafter be subjected to this Declaration by an amendment hereto, (the "**Clear Creek Commons Subdivision Property**" or the "**Property**"), is being developed for commercial and light industrial business uses; and

WHEREAS, Declarants desire to establish the covenants, conditions, easements and restrictions governing the **Clear Creek Commons Subdivision Property** for the benefit of the owners of lots in the **Clear Creek Commons Subdivision Property** and to provide for operation and maintenance of certain common elements of the Clear Creek Commons Subdivision development; and

WHEREAS, between them, Declarants are all of the owners Clear Creek Commons Subdivision, now included in and forming a part of Boone County, Iowa, together with all easements and servient estates appurtenant thereto, and subject to (1) all easements, covenants and restrictions of record, and (2) zoning and other applicable building ordinances, which Clear Creek Commons Subdivision, and any abutting property that may hereafter be subjected to this Declaration by an amendment hereto, (the "**Clear Creek Commons Subdivision Property**" or the "**Property**"), is being developed for commercial and light industrial business uses; and

NOW, THEREFORE, Declarants hereby publish and declare that the Clear Creek Commons Subdivision, and any abutting property that may hereafter be subjected to this Declaration by an amendment hereto, and any replats of any portions of any said Property, shall be held, sold and conveyed subject to the following covenants, conditions, easements, restrictions, limitations and obligations, all of which are for the purpose of protecting the value and desirability of the property in Clear Creek Commons Subdivision, and all of which shall run with the land and shall be a burden upon and a benefit to, any and all parties acquiring or owning any right, title or interest in any part of the above-described property in Clear Creek Commons Subdivision, and their heirs, successors, assigns, grantees, executors, administrators, and devisees.

ARTICLE I.

INTENT & DEFINITIONS

1.01 Intent.

In order to establish a general plan for the improvement and development of the Property, Declarants have elected to impose upon the Property, and any additional property hereafter made subject to this Declaration, certain mutual covenants, conditions, easements, restrictions, limitations and obligations for the benefit of Declarants and all future owners, lessees and occupants of the Property, and any additional property hereafter made subject to this Declaration. This Declaration is intended to provide mutual covenants, conditions, easements, restrictions, limitations and obligations to ensure proper use and development of improvements to the Clear Creek Commons Subdivision project and to protect the value and desirability of property within the Clear Creek Commons Subdivision development. It is further the intent to provide a means to recover the costs for installation, operation, maintenance, and repair of project signage, entrance features, landscaping on the southwest corner of the intersection of "W" Avenue and US Highway 30, in Boone County, Iowa.

1.02 Definitions.

(a) "**Building**" shall mean any building, plant, facility, enclosed storage area, structure or other improvement affixed to the Property, except it shall not include non-elevated parking areas, drives, walks, signs, lighting and landscaping.

(b) "**City**" shall mean the City of Boone, Iowa or whatever other Iowa municipal corporation, if any, that hereafter annexes the Property, and its successors in interest.

(c) "**County**" shall mean Boone County, Iowa, and its successors in interest.

(d) "**Declarants**" shall mean Todd Rueter, and his successors and assigns, Rueter Corp, and its successors and assigns, and Rueter & Zenor Co., d/b/a Rueter's Red Power, and its successors and assigns, as to the entirety of their respective interest in the undeveloped portions of the Clear Creek Commons Subdivision Property that such Declarant has not theretofore been conveyed to builders or Occupants, unless the context indicates otherwise.

(e) "**Declarant Improvements**" shall mean those public streets and improvements Declarants are to construct as part of the platting of Clear Creek Commons Subdivision, and those public streets and improvements that any developer of any plat of any portion of adjacent property that is added to this Declaration by an amendment hereto, is to construct, all as shown on the Site Construction Plans, those improvements that Declarants are to construct pursuant to Section 4.06

of this Declaration, those improvements Declarants are required to construct pursuant to any other Section of this Declaration, and any additional improvements, whether similar or dissimilar to any of the foregoing that Declarants choose to construct and deliver for continued operation, maintenance, repair, replacement, alteration, improvement or modification on behalf of the Owners of the Property or any part thereof.

(f) "**Improvements**" shall mean and include a Building, outbuildings, driveways, parking areas, sidewalks, swimming pools, tennis courts, fences, walls, hedges, signs, lawns, landscaping, flag poles and any structure of any type or kind, and all additions to any of the foregoing.

(g) "**Lot**" shall mean any platted lot of record in Clear Creek Commons Subdivision, or in any adjacent property made subject to this Declaration by an amendment hereto, or in any re-plat thereof, as shown on the recorded plat thereof.

(h) "**Owner of a Lot**" or "**Owner**" shall mean the person or persons who from time to time collectively hold the entire fee title of a Lot in Clear Creek Commons Subdivision, including sellers under executory contracts of sale, (but shall not include any person who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such loan documents), and the use of the singular shall include the plural.

(i) "**Occupant**" shall mean an Owner of a Lot and any person from time to time entitled to the use and occupancy of any building, or any part of any building on such Lot, under any lease, deed, license or other instrument or arrangement by which such person has acquired rights with respect to the use and occupancy of any Lot in Clear Creek Commons Subdivision.

(j) "**Parcel**" shall mean any Lot, tract, or portion thereof, or two or more contiguous Lots, tracts, or portions thereof in the Clear Creek Commons Subdivision, including real estate subject to recorded easements, that is under contiguous ownership, upon which a Building and appurtenant structures may be erected, but shall not include any street lots.

(k) "**Site Construction Plans**" shall mean:

(A) the final Construction Drawings for Clear Creek Commons Subdivision, as approved by Boone County, Iowa;

(B) any other Construction Plans for the streets, sanitary sewers, water lines, storm sewers, surface water detention facilities, trails, and grading plans for any future plat, if any, that may be added to this Declaration by an amendment hereto, as the same are approved by Boone County or the then applicable City;

(C) the Final Plat of Clear Creek Commons Subdivision, prepared by FOX Engineering Associates, as filed of record in the Office of the Recorder for Boone County, Iowa; and

(D) the Final Plats for any future plat, if any, that may be added to this Declaration by an amendment hereto, as hereafter filed of record in the Office of the Recorder for Boone County, Iowa

(l) "**Zoning Ordinance**" shall mean the Zoning Ordinances of Boone County, Iowa, as the same may be amended from time to time, for so long as the Property remains in the unincorporated area of Boone County, Iowa, and shall mean the Zoning Ordinances of any City, if any, that hereafter annexes the Property, from and after the effective date of such annexation.

(m) "**Hereof and Herein**" shall refer to the entirety of this Declaration and not only to any

particular part of this Declaration, unless the context clearly provides otherwise.

(n) Words and phrases in this Declaration, including the acknowledgment, shall be construed as in the singular or plural number, unless the context permits only one such number.

(o) Words defined elsewhere in this Declaration shall have that meaning throughout the Declaration and not just in the Section in which such word is defined, unless the definition expressly states otherwise.

ARTICLE II.

LAND USE

2.01 Prohibited Uses.

The Property is currently located in an unincorporated area of Boone County, Iowa and is zoned for Agricultural uses under the Boone County Zoning Ordinance. A Petition has been filed to change the zoning to I-1 zoning district uses under the Boone County Zoning Ordinances.

Notwithstanding that any of the following land uses may be permitted under any Zoning Ordinance in effect from time to time, the following land uses shall not be permitted within the Clear Creek Commons Subdivision Property:

- (a) Residential dwellings, duplexes, town homes, apartments, group homes, institutional residential facilities, mobile homes, or any other residential facility of any kind, including hotels and motels ;
- (b) Farms, except that either Declarant may grow crops on any land that it owns and has not improved;
- (c) Refining, smelting or mining operations, including, but not limited to gravel extraction, or drilling for or extraction of subsurface substances;
- (d) Cemeteries;
- (e) Adult book stores, adult mini-motion picture theaters, adult motion picture theaters, escort services, massage parlors, strip clubs, any business offering services or products intended to give sexual gratification or any business involving the sale of pornographic materials (as such terms are defined in the Boone County Zoning Ordinance);
- (f) Arcades or game rooms as a substantial portion of a business;
- (g) Establishments primarily engaged in the retail sale of alcoholic beverages, such as beer, ale, wine and liquor, for consumption on premises, including, but not limited to bars, beer gardens, cocktail lounges, saloons, taverns; and cabarets, discotheques, night clubs or dance halls, whether or not such business involve the sale of alcoholic beverages. This use restriction does not prohibit a wholesale operation or warehouse facility;
- (h) Establishments primarily engaged in the service of food including restaurants;
- (i) Animal rendering or slaughter facility, except that a meat locker or similar size operation is permitted;

- (j) Off-premises advertising signage;
- (k) Sanitary sewer treatment facility (other than for waste material generated on the premises) or solid waste disposal facility;
- (l) Jail, prison, or any other correctional facility of any kind;
- (m) Any public or private nuisance or illegal activity;
- (n) Any use that presents an undue hazard of pollution, fire or explosion, including, but not limited to, the manufacture, storage, display or sale of explosives or fire works; or
- (o) Any use that creates hazardous or otherwise unreasonable levels of smoke, noise, vibrations, dust, pollutants, refuse, water borne waste, fumes, odors or other emissions; provided, that what level is "unreasonable" shall be determined with consideration given to the fact that the Property is dedicated for use as a retail, commercial and light industrial area and is intended to be zoned as a Light Business District.

2.02 Rezoning; Conditional Uses,

- (a) No Owner or Occupant of any portion of the Property shall apply for, or support, any proposed rezoning of any portion of the Property that will cause or result in any use of any portion of the Property that was lawful prior to such rezoning becoming illegal or a legally non-conforming use without the prior written consent of the Owner of the Property whose current use would become illegal or legally non-conforming if such rezoning were adopted.
- (b) No Owner or Occupant of any Parcel of the Property whose proposed use shall be allowed only if a conditional use permit is granted shall apply for, or seek modification of, nor shall any Owner permit any of its Occupants to apply for, or seek modification of, such conditional use permit, without first obtaining the prior written consent of the Owner of each portion of the Property that abuts the Parcel of the Property to which such conditional use permit shall apply to the granting or modification of such conditional use permit and the conditions to be applied thereto. For purposes of this Section, portions of the Property shall be considered to be abutting if the only separation between them is a public right-of-way.

ARTICLE III.

GENERAL USE RESTRICTIONS AND BUILDING SPECIFICATIONS

3.01 Building Standards.

All buildings located in the Clear Creek Commons Subdivision shall meet the Uniform Building Code (1994 or later version) and shall adhere to all standards of any applicable local building code. No pole building shall be allowed in the Clear Creek Commons Subdivision Property. A minimum of twenty percent (20%) of the facade on the exterior wall of any building facing a public street shall be composed of masonry materials, such as brick, pre-cast decorative concrete, cut stone, or similar materials, or windows and doors.

3.02 Overhead Doors and Loading Docks.

Overhead doors and loading docks that are part of any principal or accessory commercial or industrial building shall not be on the face of any Building fronting a street.

3.03 Landscaping.

At a minimum, all landscaping requirements for the Property shall meet the Zoning Ordinance and approved site plan requirements and any other applicable ordinances. In addition, the Owner of each improved Parcel shall provide at least the following landscaping:

- (a) All unpaved areas shall be landscaped with a combination of trees, ground cover and shrubbery; and
- (b) All undeveloped areas of a Parcel held for expansion shall be seeded or sodded.

All such landscaping to a Parcel shall be completed prior to the occupancy of a Building upon such Parcel, except if weather makes compliance not reasonably possible, then the landscaping shall be completed as soon thereafter as weather permits.

3.04 Fences and Hedges.

No fence shall extend into the front yard of any Parcel. Notwithstanding anything in this Declaration to the contrary, no Parcel Owner shall have the right to erect a fence within or across any easement area shown upon the Final Plat of any plats within Clear Creek Commons Subdivision without the prior consent of the County or City or utility company or companies for whose benefit such easement runs. Any fence erected within or across an easement area without such consent may be taken down by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Lot Owner to restore or repair such fence.

3.05 Exterior Lighting.

All parking lots of individual Parcels shall be well lighted with uniform parking and driveway light structures to provide for well-lighted and safe parking lots. All exterior and security lighting for driveways, parking and other external areas shall be designed, located and directed in a fashion that will avoid direct lighting onto adjoining Parcels and no wooden light poles are allowed for any such lighting. In addition, all exterior and security lighting shall be of the full horizontal cutoff fixture type to reduce perceived glare from surrounding properties.

3.06 Mailboxes.

All mailboxes located in any Boone County road right-of-way shall be of a breakaway design.

3.07 Sidewalks.

The Owners of any Parcel within the Property are hereby notified that Boone County, Iowa does not require or allow or issue permits for the construction of sidewalks within any public right-of-way belonging to Boone County.

3.08 Trash Containers; Outside Storage; Holiday Displays.

No trash receptacles, garbage cans or recycling bins shall be permitted to be located upon a Parcel unless hidden by an attractive screen of suitable height or unless sunken to ground level in a hole lined with permanent cribbing. No material of any kind whatsoever may be stored in the front yard of a Parcel. No exterior holiday decorations shall be erected more than six (6) weeks prior to the holiday and all exterior holiday decorations shall be removed within three (3) weeks following the holiday.

3.09 Temporary Structures.

With the exception of temporary construction trailers, there shall be no occupancy of temporary structures or partially completed structures at any time; provided, however, in a multi-tenant Building, a space may be occupied if the Building and the occupied tenant space have both received certificates of occupancy, even if other tenant spaces remain incomplete.

3.10 Utilities and Utility Meters.

All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground. Utility meters shall be hidden architecturally or through the use of remote reading devices. No private wells shall be permitted on any Parcel.

3.11 Signage.

Signage within the Clear Creek Commons Subdivision impacts the esthetics of the neighborhood and property values. All signage shall meet the following requirements and restrictions:

(a) In connection with the development of any plat within Clear Creek Commons Subdivision, Declarants, or any other developer of a particular plat, may erect project signage, real estate signage, financing signage, contractor, supplier or subcontractor signage related to construction and financing of such plat development and sale of the lots developed within such plat.

(b) In connection with the construction of any Building upon any Parcel in the Clear Creek Commons Subdivision, the Parcel Owner or person constructing such Building may erect project signage, financing signage, contractor, supplier or subcontractor signage, or real estate signage related to the construction and financing of such Building and the sale or lease of such Building.

(c) Once a Building upon a Parcel is occupied, signage on that Parcel shall be limited to (i) monument signage or building elevation signage or awning signage identifying the address, project, Building, or Occupants that conforms with any Zoning Ordinance, (ii) address, Occupant identification signage, hours and directional information professionally lettered on windows and doors, (iii) directional and parking signage, such as signs indicating entrances, exits, delivery doors, loading areas, fire lanes, handicapped parking, no parking, reserved parking, parking limitations, delivery parking only, or other directional or parking signage that conforms with any Zoning Ordinance or state law requirements, (iv) professionally prepared real estate signage advertising the property for sale or lease, (v) professionally prepared signage advertising sales or products for sale in an Occupant's space; provided, however, no paper signs, hand lettered or hand painted paper or

cardboard signs and no temporary signage painted, stenciled or made by magic marker or similar temporary markers directly on windows and doors shall be allowed, (vi) professionally prepared special event signs (hereafter "Event" signs), (vii) political signs, and (viii) other signs approved in writing by Declarants, or whichever one of them then owns an undeveloped Parcel within the Property, for so long as at least one of the Declarants owns an undeveloped Parcel within the Property, and thereafter, as approved by the Owners of over fifty percent (50%) of the other Parcels within the Property. "Sale" and "Event" signs shall only be displayed one week before the sale or event, during the sale or event and must be removed by the day following the end of the sale or event. Political signs shall only be displayed up to three weeks prior to an election, the day of the election, and must be removed by the day following the election. Political signs not related to an election shall only be displayed for a maximum of three weeks. All such political signs shall be limited to no more than a 30" wide by 24" high yard sign and shall be professionally constructed. Other signs permitted as provided in (viii) above in this paragraph shall only be displayed for such time as authorized by such consent. Except for vehicles with professionally made business signage on the vehicle, no signs shall be attached to vehicles parked within Clear Creek Commons Subdivision. No pole signs shall be permitted.

3.12 Storm Water Detention; Lot Grading.

The Owner of each Parcel shall provide an on-site storm water detention and management system to control storm water runoff from all improvements on such Parcel. Each Parcel shall be graded such that there is no material surface water runoff from that Parcel onto another Parcel.

3.13 Sanitary Sewer and Septic Systems.

There is no public sanitary sewer service available to any of the Lots at the time this Declaration is filed, there is no warranty or representation by either Declarant that there will ever be a public sanitary sewer service extended to any of the Lots. All Parcels must be served by private septic systems until such time, if ever, that a public sanitary sewer system is made available to these Parcels and the then Owner of each such Parcel connects its Parcel to said public sanitary sewer system. All such private septic systems shall be constructed in a good and workmanlike manner and in compliance with all applicable statutes, ordinances, rules and regulations.

3.14 Maintenance of a Parcel.

(a) The Owner or Occupant of each Parcel, whether vacant or improved, shall keep the Parcel free of debris and trash and shall keep the Parcel mowed so that the grass or weeds do not exceed six (6) inches in height. The Owner or Occupant of each Parcel shall provide for the periodic removal of trash and rubbish from such Parcel.

(b) The Owner or Occupant of each Parcel shall keep such Parcel, and any Buildings and improvements and appurtenances thereon, in a clean, safe, neat and sanitary condition, in good repair, and shall comply with all laws, ordinances and regulations pertaining to health, safety and environmental contamination.

(c) The Owner or Occupant of each Parcel shall keep the landscaping on such Parcel weeded and in a healthy and well-manicured condition and shall promptly replace any unhealthy, unsightly or dead plant materials with other landscaping materials.

(d) The Owner or Occupant of each Parcel shall keep the storm water detention and

drainage structures used for providing storm water detention for such Parcel in a state of good repair and function.

(e) The Owner or Occupant of each Parcel shall keep the septic systems serving such Parcel, including, but not limited to, the tanks and lateral fields, in a state of good repair and function. At such time as such Parcel is connected to a public sanitary sewer system, the Owner of such Parcel shall terminate the connections to such septic system, shall empty the septic system and shall either remove it or abandon it in place in accordance with the requirements of all laws, ordinances and regulations pertaining thereto.

(f) Each Owner of a Parcel shall perform any matter it has failed to perform under this Section within fifteen (15) days after such Owner receives written notice given by certified mail, return receipt requested, or delivered in person, from any Parcel Owner within five hundred (500) feet of such Parcel. If such default has not been corrected within fifteen (15) days of receiving notice, or if such default cannot be corrected within said fifteen (15) day period, if the defaulting Parcel Owner has not commenced such correction or thereafter does not diligently pursue such correction to completion, then any Parcel Owner within five hundred (500) feet of the offending Lot (A) shall have the right and easement to enter upon such Parcel and correct such defect at the expense of the Owner of the Parcel on which such default is located, and (B) shall have a right of action against the Owner of such Parcel for collection of the cost thereof, plus the reasonable costs, including, but not limited to, attorney's fees, for collecting such amount, plus interest on all of the foregoing at a rate equal to the greater of (I) twelve (12%) per annum or (II) four percent (4%) above the prime rate (as published in the Wall Street Journal) in effect on the date such cost is incurred, but in any event such interest rate shall not be greater than the maximum interest rate allowed by law, from the date such cost is incurred until such amount is paid in full, and (C) shall have a lien against such Parcel on which such corrective work was performed from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in Office of the Recorder for Boone County, Iowa until such amount, plus the reasonable costs, including attorney's fees, of collecting such amount and costs of filing of such lien, incurred by the lienholder, and interest thereon at the rate specified in (B) of this sentence, is paid.

3.15 Construction Clean Up and Maintenance.

Each Owner of a Parcel shall confine all of its construction activities solely to its Parcel, shall keep its construction site clean, shall prevent any damage to any of the Declarant Improvements constructed or to be constructed by Declarants or by anyone else, and shall prevent any dirt, construction debris or other material from its Parcel from being washed, blown, thrown, dumped, deposited or otherwise getting into the storm sewers, any storm water detention ponds, any overland flowage ways, the public streets, the sidewalks within public rights-of-way, or onto any other Parcel in the Clear Creek Commons Subdivision Property and shall promptly repair any such damage and restore all such facilities, other Parcels and public streets and improvements to their condition immediately prior to such damage, destruction or deposit of dirt, construction debris or other material. Weekly clean up of trash, dirt and debris is required. During construction, the Owner shall install and maintain silt fences or equivalent erosion control on the downhill property line(s) from construction on its Parcel. Owners are responsible for their contractors or subcontractors. If an Owner fails to adequately keep its construction site or the street clean or fails to repair any such damage and restore such facilities, other Parcels or public streets, and such failure continues for more than three (3) days after written notice from either Declarant or an adversely affected governmental body or Parcel Owner, then (A) such Declarant or adversely affected

governmental body or Parcel Owner shall have the right and easement to enter upon the premises and perform such clean up, repair or restoration at the expense of the Owner of the Parcel where such construction site is not adequately maintained or whose construction activity caused dirt and debris to be deposited upon the Parcels of others or in the public streets or improvements, and shall have a right of action against the Owner of such Parcel for collection of the costs of such work, plus the reasonable costs, including, but not limited to, attorney's fees, of collecting such amount, plus interest on all of the foregoing at a rate equal to the greater of (I) twelve (12%) per annum or (II) four percent (4%) above the prime rate (as published in the Wall Street Journal) in effect on the date such cost is incurred, but in any event such interest rate shall not be greater than the maximum interest rate allowed by law, from the date each such cost is incurred until such amount is paid in full, and (C) shall have a lien against such Parcel from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in Office of the Recorder for Boone County, Iowa until such amount, plus the reasonable costs, including attorney's fees, of collecting such amount and costs of filing of such lien, incurred by the lienholder, and interest thereon at the rate specified in (B) of this sentence, is paid.

3.16 Requirements and Limitations with Respect to Public Easements Located upon an Owner's Lot.

Easements for the installation and maintenance of sanitary sewers, public utilities, storm sewers, surface water flowage areas and related facilities, turn around areas, access driveways and entrance signage are reserved as shown on the recorded plat of Clear Creek Commons Subdivision or any other plat of any portion of the Clear Creek Commons Subdivision Property. The Owner or Occupant of any Parcel in the Clear Creek Commons Subdivision Property shall, at such Owner's or Occupant's expense, keep and preserve that portion of such easements with such Owner's or Occupant's property, at all times, in good condition, and shall neither erect nor permit erection of any Building or structure of any kind nor permit any growth of any kind within such easement area nor change the grade of any such easement area in any manner that might interfere in any way with the use, maintenance, repair, restoration or replacement of any of the utility services, drainage, or easement improvements or appurtenances thereto, located in said easement area, without the prior consent of the applicable governmental body or utility company or companies for whose benefit such easement runs. Any such Building or structure erected, growth permitted, or change in grade made within an easement area without such consent may be removed or regraded by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Lot Owner or Occupant to restore, repair or replace such Building, structure, growth or change in grade.

3.17 Driveways; Parking; Outside Storage and Displays.

- (a) All driveways connecting to public streets shall be paved and constructed to meet the design requirements for city streets in the City of Boone, Iowa.
- (b) All parking areas on the front half of any Lot in the Property abutting a public street shall be paved.
- (c) No outside storage areas shall be permitted on the front half of any Lot in the Property abutting a public street, but outdoor display areas shall be permitted.

3.18 Approval of Site Plans and Building Elevations.

For so long as either Declarant owns any Lots, or portions of a Lot, within the Clear Creek Commons Subdivision Property, no Owner of a Lot, or any portion of such Lot, shall make any

improvements, or modifications to improvements on such Lot without first obtaining the written approval from Declarants, or if only one Declarant owns any such Lot or portion of a Lot, from that Declarant, of the site plan and building elevation for such improvements or modifications. Provided, however, no such approval is required for any interior modifications of a building that does not alter the exterior of the building and that does not alter the exterior signage or any of the improvements on such Lot (or portion of a Lot) that are external to the building on such Lot (or portion of a Lot). The site plan and building elevations shall show, to a scale marked on such drawings, the location of the building or buildings, all building elevations and the building materials, the location of all driveways, parking areas and outside storage or display areas and the materials and specifications for their construction, the location, appearance and materials of all exterior signage, the location and direction of exterior lighting, the placement and location of overhead doors and loading docks, on-site storm water detention and storm water management, finished graded elevations, the landscaping, any fencing and any berming and screening of parking areas, outside storage areas, trash receptacles and utility meters..

A Certificate of Compliance, in recordable form, will be issued to the Owner upon completion of construction. The Certificate of Compliance provides assurance to the Declarants and the Owner that the requirements of the Declaration have been met and that the building and other improvements to the Owner's property have been built according to plans approved by the Declarants.

At the time the Owner desires to apply for a Certificate of Compliance inspection, the Owner shall submit a written request for such inspection to the Declarants, or if only one Declarant so owns any such Lot or portion of a Lot within the Clear Creek Commons Subdivision Property, to such Declarant. The inspection shall be requested at the same time that application is made for an Occupancy Permit from the applicable governmental authority. The written request will indicate compliance with the major items listed below, pursuant to plans approved by the Declarant or Declarants. Where items, usually related to landscaping cannot be installed before occupancy, the request must indicate a completion date, which in no event shall be longer than nine (9) months after occupancy. Violation of the deadlines for completion will be considered a violation of the Declaration.

The following items, and only the following items, will be covered by the Certificate of Compliance inspection:

1. That the Building(s) is located according to the approved site plan.
2. That the Building(s) is constructed substantially in conformance with the approved elevations and materials.
3. That grading, seeding, driveways, parking areas, storage areas, drainage, and sidewalks, where required, have been completed according to plans.
4. That approved lighting has been installed.
5. That any approved signs have been installed.
6. That the approved landscaping and berming, if any, has been installed or is scheduled to be completed within nine (9) months after the date of such Certificate of Completion.
7. That all trash receptacles, garbage cans or recycling bins or any other matters

shown on the approved site plan as being screened are appropriately screened and all utility meters appropriately hidden architecturally or through use of remote reading devices.

3.19 Variances Allowed by Declarants.

For so long as any Declarant owns any Lots, or portions of a Lot, within the Clear Creek Commons Subdivision Property, then the Declarants acting jointly, if more than one own any such any such Lots or portion of a Lots, or if only one Declarant so owns any such Lot or portion of a Lot, that Declarant acting alone, may, in their or its sole discretion, approve a variation from the requirements of the last sentence of Section 3.01, or of Sections 3.02, 3.05, 3.08, 3.11, 3.17 and 3.18, in writing, in a recordable form. No oral approvals or variances shall be valid and only written variations shall be valid."

ARTICLE IV.

PRIVATE EASEMENTS

4.01 Surface Water Flowage Easements.

The topography of the Clear Creek Commons Subdivision Property is such that surface water may flow from certain Parcels onto other Parcels. In regard to all matters concerning surface water, each Parcel shall be subject to such easements as may exist for the flowage of surface water under the laws of the State of Iowa, as may be in effect from time to time, and all Owners shall have such rights and obligations with respect thereto as may be provided by such law. Notwithstanding the foregoing, the Owner of each Parcel shall comply with the requirements of Section 3.12 of this Declaration and no Owner of a Parcel shall do anything that materially increases the surface water flowage onto another Parcel.

4.02 All of These Easements Are Subject to Certain Concurrent Easements.

All of the easements granted in this Article IV are subject to the following concurrent easements granted in part or all of these respective easement areas: (a) any public sanitary sewer, storm sewer or surface water flowage easement or other public easement granted to the County or City, and (b) any public utility easements granted to the electric company or companies providing electrical service to the Property, to the natural gas company or companies providing natural gas services to the Property, to the telephone company or companies providing telephone service to the Property, to the cable television company or companies providing cable television service to the Property, and to the data transmission company or companies providing data transmission services to the Property.

4.03 Construction of Certain Improvements and Amenities to Clear Creek Commons Subdivision by Declarant.

The Declarants with respect to Clear Creek Commons Subdivision shall promptly commence and diligently pursue to completion, at their respective expense, the construction of streets, the water main lines, the storm sewer lines and related appurtenances and the sanitary sewer lines and related appurtenances and the installation of signs, other entrance features and landscaping and associated electrical and water services in the sign easement areas, as may be required or appropriate, all substantially as shown on the Site Construction Plans, and such other

additional improvements, if any, in such areas as such Declarants desire. Any developer of any additional land made subject to this Declaration by amendment hereto, shall promptly commence and diligently pursue to completion at its expense the construction of all Declarant Improvements to such additional land. Upon completion of such work, each respective Declarant or other developer shall install any other silt structures or other erosion control facilities required by law by reason of such Declarant's or other developer's work. Each Declarant or other developer shall perform all such construction of its Declarant's Improvements in a good and workmanlike manner, with first class materials, and in accordance with all applicable laws, rules, ordinances, codes and regulations.

In the event any mechanic's or materialman's lien is filed against any Parcel not then owned by such Declarant (or other developer) as a result of this construction by such Declarant (or such other developer), such Declarant (or other developer), shall, within thirty (30) days after such lien is filed, either pay the same and have it discharged of record or post such bond or other security as shall be required by law to obtain the release and discharge of such lien as against such Parcel.

4.04 Conveyance of Lots Prior to Completion of Declarant's Work and Coordination of Construction of Improvements to Such Lots.

Each Declarant may convey any Parcel in the Clear Creek Commons Subdivision Property prior to completion of the improvements to be made to the Clear Creek Commons Subdivision Property pursuant to Section 4.03 of this Declaration. In such event, such Declarant shall have an easement to go on such Parcel to the extent necessary to complete construction of such improvements.

Such Declarant and the Owner of any such Parcel conveyed prior to substantial completion of such Declarant Improvements to the Clear Creek Commons Subdivision Property shall use all reasonable efforts to cooperate and coordinate their respective construction work to the extent reasonably practicable so that each may undertake construction at the same time; provided, however, the Owner of such Parcel may not undertake any construction work that materially interferes with the ability of such Declarant to complete its Declarant Improvements, that materially delays such Declarant in the completion of the Declarant Improvements, or that increases the cost to such Declarant of constructing its Declarant's Improvements.

ARTICLE V.

ENFORCEMENT

5.01 Specific Enforcement of Restrictions.

Either Declarant or the Owner of any of the Parcels within the Clear Creek Commons Subdivision Property shall have the right to enforce this Declaration and each and every covenant, condition, easement, provision, restriction and term contained in this Declaration, and there shall arise from the breach of any such covenant, condition, easement, provision, restriction or term contained in this Declaration, a cause of action for damages or for enforcement in a equity as a remedy for such breach. All Owners of Lots within the Clear Creek Commons Subdivision Property covenant and agree, by acceptance of a deed to such Lot, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the breach of the covenants, conditions, easements, provisions, restrictions and terms contained in this Declaration and that this Declaration may be specifically enforced by either Declarant or any Owner.

5.02 Breaches Deemed to be a Nuisance.

Every act or omission that violates, in whole or in part, any of covenants, conditions, easements, provisions, restrictions and terms contained in this Declaration is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity therefore shall be applicable against the party who so violates this Declaration and may be exercised by either Declarant or by any Owner of any Lot or Parcel for whose benefit these covenants, conditions, easements, provisions, restrictions and terms are made. All remedies provided in this Declaration or at law or in equity shall be cumulative.

5.03 Attorney's Fees.

In any legal or equitable proceeding for enforcement of, or to restrain a violation of, this Declaration or any of the covenants, conditions, easements, provisions, restrictions and terms contained in this Declaration, the losing party or parties shall pay the reasonable attorney's fees expenses and all other costs and expenses of in connection with such prosecution or defense of such enforcement action, (including, but not limited to, the costs of obtaining and/or continuing an abstract of title to the Lot or Parcel in question, the costs of any contemplated or actual legal proceedings, and the costs of preparation and presentation of any evidence in such proceeding), of the prevailing party or parties, in such amount as may be fixed by the Court (or by agreement of such parties) in such proceedings. Provided, however, such losing party or parties shall not be obligated for any such attorneys fees and costs incurred by such prevailing party or parties for the period after such losing party or parties offers to settle such matter for an amount equal to or greater than that finally approved by a court of competent jurisdiction and/or, except in the case of repeated or continuing violations, takes or forbears from the requested action, as appropriate.

5.04 Inspection.

Any Declarant may from time to time, at any reasonable hour or hours, enter and inspect any Lot or Parcel subject to this Declaration to ascertain compliance therewith.

5.05 Failure to Enforce Not a Waiver of Rights.

The failure of any Declarant or any Owner of any Lot or Parcel within the Clear Creek Commons Subdivision Property to enforce any condition, covenant, easement, provision, restriction, reservation or term of this Declaration in any one instance shall not be deemed to be a waiver of the right to do so thereafter nor shall it be deemed to waive the right to enforce any other condition, covenant, easement, provision, restriction, reservation or term of this Declaration.

5.06 Rights of Third Parties.

Nothing contained in this Declaration shall be construed so as to impose or create any duty or obligation on the any Declarant or any Owner of any Lot or Parcel within the Clear Creek Commons Subdivision Property to benefit the general public, third parties, or invitees, guests, employees, agents, principals, or licensees of any Owner or Occupant of any Lot or Parcel within the Clear Creek Commons Subdivision Property.

5.07 Liability.

No Declarant shall have any liability to, or be subject for damages of any sort to, any Owner or Occupant, or otherwise to any other person, for any exercise or failure to exercise any right

or duty or obligation, if any, of such Declarant hereunder, or in any manner arising here from, or for the granting of approval or withholding of approval required or permitted under the terms of this Declaration, except to the extent such Declarant owns an improved Lot or Parcel that is subject to this Declaration. Provided, however, any Owner may exercise any rights such Owner may have against such Declarant or otherwise to seek to enforce the conditions, covenants, easements, provisions, restrictions, reservations and terms of this Declaration against such Declarant, by an action in equity for specific performance or injunctive relief, to which the Declarants shall be subject. These remedies of specific performance and injunctive relief shall be the only remedies available against the Declarants (except to the extent any such Declarant owns an improved Lot or Parcel that is subject to this Declaration) for any exercise or failure to exercise any right or duty or obligation, if any, of such Declarant hereunder, or in any manner arising here from, or for the granting of approval or withholding of approval required or permitted under the terms of this Declaration, all other remedies being expressly waived by acceptance of a deed to any Lot or Parcel within the Clear Creek Commons Subdivision Property.

ARTICLE VI.

GENERAL PROVISIONS; DURATION OF DECLARATION

6.01 Covenants Binding and Running with the Land.

Each of the conditions, covenants, easements, indentures, provisions, restrictions, reservations and terms contained in this Declaration shall be binding upon and inure to the benefit of Declarants, and the Owners of each Parcel or Lot in the Clear Creek Commons Subdivision Property, their successors and assigns and all parties and persons claiming under any of them, and shall be deemed covenants that run with the land, and shall continue for the applicable periods specified in this Declaration.

It is the intent that, notwithstanding anything in the Code of Iowa to the contrary, all of the conditions, covenants, easements, indentures, provisions, restrictions, reservations and terms contained in this Declaration shall be covenants running with the land for the full period specified in this Declaration without further action by either Declarant, or the Owner of any Lot or Parcel benefited by the same. However, in the event that Section 614.24 of the Code of Iowa, as the same may be amended or replaced, may require that a verified claim be filed in the Office of the Recorder for Boone County, Iowa prior to the twenty-first anniversary of the date of this Declaration or the twenty-first anniversary of the last filing of such verified claim in order to continue all or some of the covenants of this Declaration, including, but not limited to, any covenant, term, provision or restriction that is or may be considered a use restriction, reversion or right of reverter, in effect throughout the applicable periods specified in this Declaration, then:

(a) The Owners of the Lots or Parcels, acting jointly or severally, shall file all verified claims necessary to keep all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration;

(b) A verified claim filed by the Owner of any Lot or Parcel in the Clear Creek Commons Subdivision Property shall be valid and binding upon all the then Owners of Lots or Parcels in Clear Creek Commons Subdivision Property, (the "Interested Parties"), and their successors and assigns, with the same effect as if executed by all such persons, and in order to facilitate filing of any verified claim required to so continue all or any of the

conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration in full force and effect, each such Owner is hereby irrevocably appointed the attorney-in-fact for all of the other Interested Parties for the purpose of filing any such verified claim;

(c) that in the event of any defect in the verified claim or its filing and recording in the Office of the Recorder for Boone County, Iowa, no Interested Party or anyone claiming, by, through or under an Interested Party shall be entitled to assert such defect as a basis to avoid its duties and obligations under this Declaration unless such defect is not corrected within thirty (30) days after notice of such defect to all Interested Parties;

(d) that in the event an Interested Party fails or refuses to cooperate to file any verified claim required to continue all or any of the conditions, covenants, easements, indentures, provisions, restrictions, reservations or terms contained in this Declaration throughout the applicable periods specified in this Declaration in full force and effect, such Interested Party hereby waives and shall be deemed to have waived the right to, and be estopped to, assert any failure to file such verified claim as a defense to its duties and obligations under this Declaration; and

(e) that each Interested Party by acquisition of its interest in Clear Creek Commons Subdivision Property or under this Declaration, whether or not expressly provided in any instrument creating such interest, hereby waives its right to assert the failure to file any verified claim required by the Code of Iowa as a legal basis to avoid any duty or obligation upon it and its respective portion of Clear Creek Commons Subdivision Property throughout the applicable period specified in this Declaration.

6.02 Duration.

The easements granted in or pursuant to Article IV of this Declaration or granted in any other Section of this Declaration, any other provisions of this Declaration expressly incorporated in Article IV or such other Section of this Declaration to the extent applicable to such easements, and any other conditions, covenants, indentures, provisions, restrictions, reservations or terms of this Declaration that are reasonably or necessarily incidental to the benefit or burden of such easement rights, including any rights of assessment or collection of, or for liens for the payment of, costs associated therewith, shall continue in perpetuity, unless sooner modified or terminated as provided in Section 6.03, or if applicable, in Sections 4.02 or 4.03, of this Declaration.

Except as provided in the preceding paragraph of this Section, the conditions, covenants, indentures, provisions, restrictions, reservations and terms contained in this Declaration shall be for an initial term of twenty (20) years, and shall automatically renew for successive terms often (10) years each, unless sooner modified or terminated as provided in Section 6.03 of this Declaration.

6.03 Amendment of This Declaration.

This Declaration may not be altered, amended, modified, supplemented or terminated, in whole or in part, except in writing and as provided in this Section or to the extent expressly provided in another Section of this Declaration. Each Declarant, for so long as such Declarant retains ownership of any Lot or Parcel within the Clear Creek Commons Subdivision Property that has no building located thereon, and after all Declarants have no

interest in Clear Creek Commons Subdivision Property (other than as an Owner of a developed Parcel or Lot), the Owners who own sixty percent (60%) or more of the then existing Parcels or Lots in Clear Creek Commons Subdivision Property may, by written declaration signed and acknowledged by them and recorded in the Office of the Recorder for Boone County, Iowa, alter, amend, supplement, add to, or terminate such conditions, covenants, indentures, provisions, restrictions, reservations or terms of this Declaration; provided, however, that such alteration, supplement, addition, amendment or termination shall insure provisions for the continued operation, maintenance, repair, restoration and replacement of improvements to the Clear Creek Commons Subdivision Property constructed by either Declarant, and except that no such alteration, amendment, supplement, addition, or termination may change the manner of assessment of any Owner except in a manner applied uniformly to all affected Owners. It is expressly understood that no such alteration, amendment, supplement, addition, or termination shall require the consent of any Occupant (other than an Owner, and then for such Owner-Occupant only to the extent provided elsewhere in this Section) or any mortgagee of any Lot or Parcel, or from the County or City.

6.04 No Public Dedication.

Nothing contained in the Declaration shall be deemed to be a gift or dedication of any portion of the Clear Creek Commons Subdivision Property to general public, or for the general public, or for any public purpose whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the benefit of the Owners of the Lots or Parcels in the Clear Creek Commons Subdivision Property and the purposes herein expressed.

6.05 Release Upon Sale.

Subject to the provisions of this Section, if an Owner of a Lot in the Clear Creek Commons Subdivision Property sells, transfers, or assigns its Lot or Parcel (other than as security for a loan), then it shall be released from its future obligations under this Declaration. It shall be a condition precedent to such release and discharge that any and all amounts that shall then be due and payable by such Owner under the terms of this Declaration shall have been paid.

Notwithstanding anything in this Declaration to the contrary, it is expressly understood and agreed that any first mortgagee who shall have acquired title to any Lot or Parcel or portion thereof, through foreclosure or deed in lieu of foreclosure, shall not be personally liable for any obligations under this Declaration that arose with respect to the obligations of the Owner of such Lot or Parcel prior to the date such mortgagee so acquired title thereto; provided, however, that any existing lien or right to a lien against such Lot or Parcel allowed by this Declaration or as a result of enforcement of this Declaration with respect to matters occurring before such mortgagee so acquired title thereto shall continue and remain in full force and effect.

6.06 Severability.

In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

6.07 Time of Essence.

Time is of the essence with respect to the performance of each of the conditions, covenants, terms and provisions of this Declaration

6.08 Governing Law.

This Declaration shall be construed in accordance with the laws of the State of Iowa.

6.09 Captions.

The captions of the Articles, Sections and Subsections of this Declaration are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

IN WITNESS WHEREOF, Declarants have duly executed this Declaration as of the date and year first above written.

Todd Rueter

Rueter Corp.

By: Todd Rueter, Its President

Rueter Corp.

By: Todd Rueter, Its Secretary

Rueter & Zenor Co. d/b/a Rueter's Red Power

By: Cecil Rueter, Its President

Rueter & Zenor Co d/b/a Rueter's Red Power

By: Kim Rueter, Its Secretary

STATE OF IOWA)
) ss:
COUNTY OF GREENE)

On this _____ day of June, 2004, before me, a notary public in and for said county, personally appeared Todd Rueter, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

Notary Public in the State of Iowa

STATE OF IOWA)
) ss:
COUNTY OF GREENE)

On this _____ day of June, 2004, before me, a notary public in and for said county, personally appeared Todd Rueter, to me personally known, who by me being duly (sworn or affirmed) did say that the person is the President and Secretary of said Rueter Corp. and that said instrument was signed on behalf of the said Rueter Corp. by authority of its board of directors and the said corporation acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed..

Notary Public in the State of Iowa

STATE OF IOWA)
) ss:
COUNTY OF GREENE)

On this _____ day of June, 2004, before me, a notary public in and for said county, personally appeared Cecil Rueter and Kim Rueter, to me personally known, who by me being duly (sworn or affirmed) did say that they are the President and Secretary, respectively, of said Rueter & Zenor Co. and that said instrument was signed on behalf of the said Rueter & Zenor Co. by authority of its board of directors and the said corporation acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed..

Notary Public in the State of Iowa