

COPY

Villa Court



Doc ID: 015936460024 Type: LAN  
Recorded: 07/25/2008 at 03:17:45 PM  
Fee Amt: \$122.00 Page 1 of 24  
Scott County Iowa  
Rita A. Vargas Recorder

File 2006-00023272

Prepared by and Return to: Joseph A. Polaschek 310 Main Street, Davenport, Iowa 52801

**RESTRICTIVE AND PROTECTIVE COVENANTS FOR  
DOLAN'S 53<sup>RD</sup> STREET FIFTH ADDITION TO THE CITY OF  
DAVENPORT, SCOTT COUNTY, IOWA**

*Whereas*, Dolan's 53rd Street, L.C., an Iowa Limited Liability Company, hereinafter referred to as "Declarant" is the Owner and Developer of certain real estate in the City of Davenport, Scott County, Iowa, which is particularly described as follows:

Lots 1 through and inclusive of Lot 10 of the Final Plat of Dolan's 53<sup>rd</sup> Street Fifth Addition to the City of Davenport, Scott County, Iowa.

*Whereas*, Declarant deems it wise and expedient to subject the several lots to a plan of mutual maintenance and provide subsequent Owners with certain privileges and rights.

**NOW, THEREFORE**, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each Owner thereof.

**Article I  
Definitions**

1. **Association.** "Association" shall mean and refer to the Dolan's 53<sup>rd</sup> Street Fifth Addition Owner's Association, an Iowa Non-Profit Corporation, its successors and assigns.
2. **Properties.** "Properties" shall mean and refer to that certain real property hereinbefore described, and such addition thereto as may hereafter be brought within the jurisdiction of the Association.

3. **Lot.** "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map or plat of the Properties with the exception of the Common Area.

4. **Member.** "Member" shall mean and refer to every person or entity that holds membership in the Association.

5. **Owner.** "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.

6. **Declarant.** "Declarant" shall mean and refer to Dolan's 53rd Street, L.C., its successors and assigns if such successor or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

7. **Developer.** "Developer" shall mean the same as "Declarant".

## Article II Membership and Voting Rights

1. **Association Membership and Voting.** Every person or entity that is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from Ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

2. **Voting Classes.** The Association shall have two (2) classes of voting membership, as follows:

(a) **Class A:** Class A Members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by this Article. When more than one person or entity holds such interest in any Lot, all such persons or entities shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot, and no fractional vote shall be cast with respect to any Lot.

(b) **Class B:** The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership required by this Article, provided that the Class B membership shall cease and be converted to Class A membership whenever the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

**Article III**  
**Property Rights and Easements**

1. **Sanitary Sewer Easement and Maintenance.** Subject to the Association's and the City of Davenport's easement rights and duties as hereinafter defined, each Owner shall have the right to use the common sewer laterals and or lines located in the same building cluster for sewage and waste water disposal purposes only. Both Owners shall have the equal right, responsibility, and duty to maintain, repair, replace or remove the sewer line located outside each Owner's structure. Each Owner's sewer lines within that Owner's structure shall be maintained, repaired and replaced by that Owner.

2. **Easement of Access for Maintenance.** The Association and such persons as may be engaged by the Association for maintenance purposes, shall have the right to enter upon the exteriors of any Lot for the performance of maintenance at any reasonable time. The Association and such persons as may be engaged by the Association for maintenance or repair purposes, including the respective utility companies servicing the properties, shall have the right to enter a residence unit only upon reasonable notice under the circumstances in order to repair, replace or maintain the electrical or telephonic cable communication service facilities serving adjacent residence units.

**Article IV**  
**Covenant for Maintenance Assessments**

1. **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each improved Lot within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefore, 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 payable to the funds administered by the Association, and
- (b) special assessments for capital improvements, such assessments to be established and collected from time to time as hereinafter provided.

The term "improved Lot" shall mean any Lot having a building erected thereon and ready for occupancy not owned by the Declaration. The Declarant shall not pay for any assessments for any Lot or structure built on any Lot, until sold to another owner other than the Declarant. The annual and special assessments, together with interest, costs, and reasonable attorney's fees for 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 assessment, together with interest, costs, and reasonable attorney's fees for collection, shall also be the personal obligation of the person or entity who was the Owner of such property at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. The Declarant shall maintain all unimproved Lots at its sole cost and expense.

2. **Assessment Funds.** The assessments levied by the Association shall be allocated to a separate fund, to be identified and used as follows:

(a) **Lawn Maintenance.** The Owners of each Lot shall be assessed in an amount necessary for the lawn mowing and the spring and fall feeding of the lawns. Lawn care is to include 24 cuttings per year and spring and fall weed and feed applications. An additional service charge of Twenty Dollars (\$20.00) per month for Owners who install fenced yards to cover additional work required for cutting and trimming around fencing. Said additional service charge may be adjusted by the Association as necessary.

(b) **Snow Removal.** The Owners of each Lot shall be assessed in an amount necessary for snow removal. The snow removal is provided for each Lot Owner's driveway, front service walk and city sidewalks. Rear patio is not included.

(c) **Rates.** The initial amount of Owner's Association dues shall be in the sum of Sixty-five Dollars (\$65.00) per month payable quarterly in advance.

3. **Rate and Assessments.** At closing on the Lot, each prospective Lot Owner shall pay a prorated portion for the remainder of that year's annual assessment. Thereafter assessment for the Lawn Maintenance and Snow Removal shall be equal and uniform for all improved Lots and shall be paid to the Association and collected on a semi-annual installment basis, except as hereinafter provided. No written notice or bill will be sent, notwithstanding, the Lot Owner's monthly obligation shall remain. The Board of Directors of the Association 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. Improved Lots are these which a completed building erected on them and is ready for occupancy.

4. **Date of Commencement of Annual Assessments: Due Dates.** The annual assessment provided for herein shall commence as to all improved Lots on the first day of the month following the conveyance of the Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The annual assessment shall be paid in two installments on January 1 and July 1 in each year, and delinquency dates shall be uniformly established by the Board of Directors of the Association. 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 are current or delinquent. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

5. **Effect of Non-payment of Assessments: Remedies of the Association.** Any monthly payments not paid within thirty (30) days after the due date shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum. Such a delinquency of any monthly payment shall give the Association the right to declare the remainder of the entire annual assessment for that year immediately due and payable. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property or any action in equity. In any such action interest, costs and reasonable attorney's fees shall be added to the amount of the

delinquent assessment and collected as part of said judgment. In the event of such a foreclosure, if the Association waives any and all rights to a deficiency judgment against the Owner, the period for redemption as provided by the Statutes of the State of Iowa shall be reduced to six (6) months from the date of foreclosure sale. Any Lot ultimately acquired by the Association through Sheriff's Deed after such a foreclosure shall be sold by the Association within a reasonable time either at public or private sale, and any surplus remaining after the payment of all assessments, interest, costs, and attorney's fees shall be paid over to the former Owner of said Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

6. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed upon any Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure of any proceeding in lieu thereof, shall extinguish the lien only of such assessments as to payments which become due prior to such sale or transfer, provided that, such sale or transfer shall not extinguish the personal obligation of the prior Owner or his heirs, successors or assigns, for payment of such assessment. No sale or transfer shall relieve such Lot Owner from liability for any assessments thereafter becoming due or from the lien thereof.

7. **Exemption from Assessments.** All property conveyed to and accepted by a local public authority shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

8. **Alternative Payment of Annual Assessments.** Any Owner may elect, in lieu of semi annual payments, to pay the entire annual assessment in one lump sum, on or before February 1 of any calendar year. The exercise of this right to make a single annual payment of the annual assessment shall not require said Owner to make payment of subsequent annual assessments in one lump sum.

#### Article V Architectural Control

1. **Scope of Architectural Control.** No building, fence, wall 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, elevation, materials, color and location of the same shall have been submitted to and approved in writing as to consistency of the external design, color and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural control committee composed of three (3) or more representatives approved by the Board (hereinafter "Architectural Control Committee"). The Board of Directors of the Association or the Architectural Control Committee has the authority to approve or disapprove the plans and specifications. In the event said Board or the Architectural Control Committee fails to either approve or disapprove such design, color, and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and the requirements of this Article will be deemed to have been met. Interior work is permissible at the Owner's discretion. The following are expressly prohibited:

(a) Fences. No fence shall be placed, erected, altered or maintained upon any Lot within said Addition until said plans and specifications showing the nature, kind, shape, height, materials, colors, location of same on said lot shall have been submitted to and approved in writing by the Developer, its successors and/or assigns, or by any Architectural Control Committee appointed by said Developer. Any and all approved fencing installed shall be of white vinyl construction, and shall be either a six foot (6') white vinyl privacy or a three foot (3') white vinyl picket. If an Owner shall have a hot tub, the Owner shall be permitted to erect a privacy fence surrounding the hot tub to a height no greater than six feet (6') around the hot tub. Materials and workmanship for such privacy fence shall conform to those used for decks, and in any event, the plans shall be approved by the Architectural Control Committee. Hot tubs shall be located no further than six feet (6') from the rear of a building or the outer edge of the deck, whichever is greater.

(b) External rooftop antennas for television or radio, "dish" antennae, or free-standing towers or antennae of any kind, except that satellite dishes eighteen inches (18") in diameter or smaller may be used subject to the approval of their location by either the Board of Directors of the Association or the Architectural Control Committee, if appointed.

(c) Clotheslines.

(d) Outbuildings.

(e) Dog-runs or any other physical structure used to contain pets. Invisible fences, however, may be used. Notwithstanding the foregoing, this paragraph shall not be construed to prohibit the use of "doggie doors" to allow pets free access under four-season rooms or decks, and it shall be permissible to fence under such deck or four-season room, provided that any such fencing shall be approved by the Architectural Control Committee.

(f) Swing sets or children's play-type equipment, including portable basketball hoops or associated equipment and portable soccer nets or associated equipment.

(g) Swimming pools, except that hot tubs, shall be permitted.

(h) Motion sensor lighting is not permitted on any lot in any fashion.

(i) Any additional outside lighting.

2 **Reasons for Architectural Control.** The primary purpose of Architectural Control properly exercised, is to protect the value of the Lots in the Development. This control is not to be viewed as a means for suppressing expressions of individuality. Secondary purposes of Architectural Control are:

(a) To protect the Developer's investment in unsold Lots.

- (b) To give the Owners essential information regarding the Development.
- (c) To offer advice to insure the best possible solution of the design problem for all concerned.
- (d) To insure to the neighborhood that nothing shall be done on any Lot which would impair the attractiveness of any other Lot.

#### **Article VI Building Restrictions**

1. **Building Restrictions.** No structure, including mailboxes, shall be erected upon any Lot in this subdivision unless the same has been approved by the Architectural Control Committee in writing and in no event shall any structure be erected on any Lot in said addition having a ground floor square foot are of less than nine hundred (900) square feet. Each unit shall have a minimum setback from the front line of twenty (20) feet.

#### **Article VII Specific Provisions and Use Restrictions**

- 1. **Type of Housing Structures.** No housing structures inconsistent with the concepts initially promulgated by Declarant or subsequently approved by the Architectural Control Committee or Board of Directors of the Association shall be permitted.
- 2. **Completion.** Construction of each building shall be substantially completed within one (1) year after start of construction.
- 3. **Storm Doors.** All storm doors must be of a full view, of a color that matches the siding color of the building.
- 4. **Gardens and Landscaping Areas.** All garden areas shall be located in the rear portion of the Lots. No garden area shall be larger than twelve feet by twelve feet (12' x 12'). No plants in any garden area may exceed thirty-six inches (36") in height. Any additional landscaping shall be the sole responsibility of the Lot Owner, and shall be surrounded by a mulch landscape bed.
- 5. **Adoption of Codes.** In order to maintain reasonable control of construction for the benefit and safety of the residents, and to fully comply with all legal requirements, all construction shall be done under the requirements of the latest edition of the Building Codes in effect in the City of Davenport, Scott County, Iowa.
- 6. **Exterior Maintenance.** The Association shall provide exterior maintenance upon each Lot which is subject to assessment as described herein in Article IV, Paragraph 2. Yard maintenance shall mean the mowing of the entire Lot, spring and fall fertilizer applications. Each

Owner of a Lot shall be responsible for care of all other plantings, including weeding, pruning, fertilizing.

In the event that the need for maintenance of any plantings located on a Lot, or damage to any exterior portion of any lawn or landscaped area on a Lot is caused through the willful or negligent act of the Owner, their family, guests, tenants or invitees, the cost of such maintenance shall be added to and become a part of the assessment to which such Lot is subject.

7. **Type of Use.** Each Lot shall only be used for one half (1/2) of a duplex dwelling. Any duplex shall be constructed on two (2) Lots, with one (1) residential unit of each Lot.

8. **Mailboxes.** Mailboxes shall be two (2) cluster mailboxes to be installed, maintained and replaced, when necessary, by the Association, and no Owner shall be permitted to replace or otherwise personalize the mailboxes.

9. **Use Restrictions.** The following are use restrictions that are not allowed on any part of a Lot:

(a) No trailer, basement, tent, shack, garage, barn or other outbuilding in said addition shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary nature be used as a residence.

(b) Motorcycles, three (3) wheel all terrain vehicles, trucks larger than three-quarter (3/4) ton, trailers, boats, boat trailers, mobile homes, motor homes, campers, camper trailers, and other motorized vehicles, except family automobiles, shall not be stored on any lot or street in said Addition except in the garage. Garage doors are to remain closed when not in use.

(c) Due to the unsightliness and possible annoyance to the other residents of said Addition, no extensive work such as dismantling or repairing of automobiles, boats or any machinery or any similar vehicles or machinery in the driveways, streets or outside of garages throughout the Addition shall be permitted.

(d) No signs of any kind shall be displayed to the public's view on any lot except one (1) professional sign of not more than five (5) square feet, advertising the property for sale or rent, or signs used by the Developer-Owner and any builder to advertise the property during the construction and sales period.

(e) No noxious or offensive trade shall be carried on any Lot in said Addition, nor shall anything be done thereon which may be or become an annoyance or nuisance to the other Lot Owners in said Addition.

(f) The following exterior lights are not permitted within the Addition:

(i) Mercury vapor lights.

- (ii) Insect control lights or devices.
  - (iii) Spot lights.
  - (iv) Any additional exterior lights.
- (g) Display of Christmas lights shall be permitted, but shall be installed no earlier than Thanksgiving and shall be removed no later than January 15<sup>th</sup> in each year.
- (h) No Owner shall have the right to lease their Unit for a period in excess of twelve (12) consecutive months without the prior written consent of the Association. In the event of any such renting by an Owner, the tenant shall observe all By Laws of the Association. In case of violation of any rules or By Laws, the Board may demand that such tenant surrender such possession immediately. The judgment of the Board shall be final in any such matter.

#### **Article VIII Insurance**

1. **Duties of Owners.** Each Owner shall have the duty to purchase, carry and at all times maintain in force insurance covering the Lot and dwelling unit owned by the Owner, the improvements thereon appurtenant thereto against loss or damage by fire and hazards covered by a standard home owner's extended coverage policy in an amount which shall be equal to the maximum insurable replacement value, as determined annually by the insurance carrier. The Association shall be named a co-insured on all such policies in order to enforce the replacement and reconstruction of any such insured dwelling pursuant to the provisions of Article VIII of the Declaration. Each Owner shall replace their dwelling upon damage or destruction by fire or other casualty, and if they do not commence replacement or reconstruction with sixty (60) days of said destruction or damage, the Association shall use the insurance proceeds to replace and repair said damage, and the Owner shall pay any excess costs of repair or replacement as herein specified.
2. **Quality of Insurance Policies.** All insurance policies required under this Article shall be written in a company approved by the Association and which is licensed to do business in Iowa and holding an A+/AAA or better, by Bests Insurance Reports.
3. **Authority to Adjust Losses.** Exclusive authority to adjust losses under policies obtained by the Association and Owners pursuant to this Article shall be vested in the Association or its authorized representatives.
4. **Provisions of Insurance Policies.** The Association and Owner shall make every effort to obtain insurance policies that will provide:

(a) A waiver of subrogation by the insurer as to any claims against the Association, its officers, board of directors and manager, the Owners and their respective servants, agents and guests.

(b) The policy with respect to the Properties cannot be canceled, invalidated, or suspended on account of the conduct of any one or more Owners, on account of the conduct of any officer or employee of the Association, or the manager, without prior demand in writing that the Association cure the defect.

(c) Owner's policies shall require thirty (30) days notification to Association before cancellation by the insurance company.

5. **Annual Review of Insurance.** At least annually the Association and Owners shall review all insurance and such review shall include appraisal of all structures and other improvements located on the Properties by a representative of the insurance carrier.

6. **Failure of Owners to Buy Insurance.** Should any Owner fail to pay the premiums for the insurance required under the Article, the Association, at its option, may pay such charges and make a special assessment against the nonpaying Owner for any sums so expended. Such special assessment may be collected from the Owner in the same manner as provided in Article V for the collection of other assessments.

#### **Article IX Repair and Restoration**

1. **General.** Notwithstanding that the placing, carrying and maintaining in force of insurance against all loss, damage and destruction is provided for in this Declaration, the Association and the Owners shall have the affirmative obligation for repair and restoration as set forth in this Article.

2. **Residence Units.** Should any duplex unit or any part of such a duplex unit or dwelling unit, including any part thereof, including but not limited to windows, doors, roof, siding and concrete surfaces be damaged or destroyed by fire or other casualty or by intentional mischief, the Owner of the Lot upon which the same is situated shall, at their own cost and expense repair and restore the same or cause the same to be repaired and restored substantially in accordance with the original plans. All such repair and restoration work and the plans and specifications therefore shall be approved, done and performed in accordance with all applicable laws, ordinances and regulations and building codes of the City of Davenport, Scott County, Iowa, subject to the approval by the Association.

3. **More than One Individual.** Should more than one (1) duplex unit or any parts thereof, including but not limited to windows, doors, roof, siding and concrete be damaged or destroyed by fire or other casualty or by intentional mischief, the Owners of each of the Lots upon which such damage or destruction has occurred shall bear the cost of the same proportionately based upon the nature and extent of such damage as it affects the individual residence of each such Owner. In the event of a dispute between the responsible parties as to the apportionment of such costs, the

Association shall fix and apportion them to and between the responsible parties and the determination of the Association shall be conclusive and binding.

4. **Timing and Completion.** The repair and restoration work referred shall be commenced within sixty (60) days after the happening of the destruction or damage, time being of the essence, and once commenced the same shall be pursued diligently to completion. If such repair and restoration work is not timely commenced, the Association may, by notice to the responsible party, elect to repair or restore the same or cause the same to be repaired or restored on behalf of and at the cost and expense of the responsible party or parties and in that event all insurance proceeds collected and any additional amount of costs and expenses in excess thereof shall be forthwith paid over to the Association to be used by or to reimburse it for such repair or restoration.

5. **Approval of Plans.** No work provided for in this Article or elsewhere in this Declaration shall be commenced and no structure shall be painted or repainted on the exterior thereof or constructed, altered or repaired until complete plans and specifications for the work, including color schemes, shall have been submitted to and approved by the Association or its Architectural Control Committee and by any governmental body having jurisdiction of such work.

6. **Mechanic's Liens.** All work of whatever nature on the Properties when commenced shall be done, performed, expeditiously pursued and completed in accordance with the approval given. Neither the Association nor any Owner who or which performs any work, or causes any materialmen's lien or other such or similar liens arising from any claims for damages or growing out of any work, or any other claim or demand, to be enforced against the properties or any part or portion thereof, but the Association or such Owner, as the case may be, shall pay or cause to be paid all such liens, claims and demands before any action is brought to enforce the same against any part or portion of the Properties; and the Association and each such Owner separately, but jointly and severally, covenants to indemnify all other Owners of contiguous Lots and hold them free and harmless from all liability for any and all such liens, claims or demands together with all costs and expenses in connection therewith. If the Association or any such Owner, as the case may be, shall in good faith contest the validity of any such lien, claim or demand, then the Association or such Owner, as the case may be, shall at its own expense defend itself and other Owners against the same and shall pay and satisfy any adverse judgment that may be rendered against any Owner of the subject property.

7. **Acceptable Completion.** No work on the Properties which requires the approval of the Association pursuant to this Declaration shall be deemed completed until the Association shall have issued its Certificate of Acceptable Completion. The Association shall issue such Certificate upon written request; therefore or shall set forth in writing its specific objections to work as not completed or complying. If the Association fails to issue a Certificate of Completion (or its written specific objections) within sixty (60) days after a request in writing for the same has been made to it, acceptable completion of the work shall be presumed.

