

BY-LAWS  
OF  
ARTHUR HEIGHTS OWNERS ASSOCIATION, INCORPORATED

These are the By-Laws of ARTHUR HEIGHTS OWNERS ASSOCIATION, INCORPORATED, (hereinafter referred to as "Association"), a corporation organized pursuant to Chapter 504A of the Code of Iowa for the purpose of providing an entity for and to act for the owners of the real property described in the attached Exhibit "A", in the enforcement of the provision of the Declaration of Covenants, Conditions and Restrictions to be filed in the office of the County Recorder of the County of Dickinson, State of Iowa.

I. MEMBERS AND VOTING RIGHTS

1. The owners shall constitute the members of the corporation and membership shall automatically cease upon termination of all interests which constitute a person as an owner. Declarants shall be and have the rights of members with respect to unsold lots.

2. An owner of record shall be recognized as a member without further action for so long as he holds an ownership interest. If ownership is acquired but not of record, or if acquired other than by way of conveyance or other formal instrument of transfer (such as by death, judicial act or dissolution), the person acquiring or succeeding to ownership shall present to the Board of Directors of the Association evidence satisfactory to it of facts evidencing lawful ownership status prior to exercise of any rights as a member of the Association. (Failure to provide such evidence shall not, however, relieve any owner of his membership obligations). A fiduciary or other official acting in a representative capacity shall exercise all membership rights and privileges of the owner which he represents.

3. If more than one person is an owner of the same vacant lot or of a dwelling unit, owners shall be members and remain jointly and severally liable for all membership obligations. In such cases, or if more than one fiduciary or other official is acting in the premises, the votes entitled to be cast by the owners of that vacant lot or that dwelling unit shall be cast by the person named for that purpose on a certificate signed by all such owners or fiduciaries or other officials and filed with the Board of Directors and such person shall be deemed owner for purposes of voting and determining the representation of such owner at any meeting or for purposes otherwise provided herein. If such certificate is not executed and filed with the Board of Directors, such membership shall not be in good standing and the votes for that vacant lot or that dwelling unit shall not be considered in determining a quorum or any vote or for any other purpose until this By-Law is complied with.

4. The owners of each vacant lot or each dwelling unit shall be entitled to one vote for each vacant lot or each dwelling unit.

5. The initial number of votes and pro rata share in common elements and assessments shall be one (1) per vacant lot, and the number of lots is 71 at the time of platting (Lot #4 is exempt). This number shall change as dwelling units are constructed, or as declarants bring additional land into the subdivision, but never to exceed 250 votes and pro rata shares in common elements and assessments.

II. MEMBERS' MEETINGS

1. The annual and any special meeting shall be held at a time and at a place within Dickinson County, Iowa, chosen by the Board of Directors, and all such meetings, annual or special, shall be held at such particular time and place as is set forth in the Notice thereof.

2. A special meeting shall be held whenever called by the President or, in his absence or disability, the Vice President, or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from members entitled to cast one-fourth of the votes of the entire membership.

3. The Secretary or his designate shall give written notice to each member of the annual meeting. The person or persons calling a special meeting pursuant to Paragraph 2 shall give like written notice of such special meeting. All notices shall set forth the time and place and purpose or purposes for which the meeting will be held. No action shall be taken at a special meeting which is not directly related to the purpose or purposes stated in the notice of meeting for which such meeting is held.

4. Notice of a members' meeting shall be given by mailing or delivering the same not less than ten (10) nor more than fifty (50) days prior to the date of the meeting. Notice shall be deemed duly given if mailed by first class mail to the member at the address he has given by written direction, delivered to an officer or member of the Board of Directors, specifying a mailing address to be carried on the rolls of the Association. If more than one person is an owner of the same vacant lot or of a dwelling unit, or if more than one fiduciary or other official is acting in the premises, notice shall be deemed duly given when given in accordance with this paragraph to the person named in the certificate filed with the Board of Directors in accordance with Paragraph 3 of Article I. Notice of any meeting may be waived in writing by the person entitled thereto.

5. A quorum at a members' meeting shall consist of the presence of members or other persons in person or by proxy, owning a majority of the vacant lots or of dwelling units. The acts carried or approved by a vote of a majority of the owners of vacant lots or of dwelling units represented at a meeting at which a quorum is present shall constitute the acts of the members unless a different rule is provided herein or by the Articles of Incorporation, the Declaration of Covenants, Conditions and Restrictions, or other agreement to which the Association is a party. The President, or in his absence or disability, the Vice President shall preside at each members' meeting. If neither the President nor the Vice President is available to preside, a chairman shall be selected by the members present at such meeting.

6. At any membership meeting, the presence of a person holding ownership and the exercise of the voting rights of an owner or person entitled to cast votes by proxy shall be permitted and recognized provided such proxy must be in writing and signed by the person holding ownership or entitled to cast votes and shall set forth the vacant lot or the dwelling unit with respect to which such rights are appurtenant, and the period for which the proxy is to be in force and effect. The decision of the Board of Directors as to the sufficiency of any proxy for recognition shall be final and not subject to appeal to the members.

7. At all meetings the order of business shall consist of the following:

- A. Election of Chairman, if required.
- B. Calling roll and certifying of proxies.
- C. Proof of notice of meeting or waiver of notice.
- D. Reading and disposal of any unapproved minutes.
- E. Reports of officers, if applicable.
- F. Reports of committees, if applicable.
- G. Election of Directors, if applicable.
- H. Unfinished business.
- I. New business.
- J. Adjournment.

### III. BOARD OF DIRECTORS

1. The affairs of the Association shall be managed by a Board of five (5) Directors. The initial Board shall consist of such persons as the Declarants may appoint and need not be members of the Association. The initial Board shall serve until the first annual members' meeting. From

and after the first annual meeting of the members, the Board of Directors shall be selected from the members of the Association. Until all lots are sold, the Declarants may appoint one representative to sit as the sixth (6th) member of the Board of Directors and such representative, as a member of the Board of Directors, shall have the same powers and duties as the elected members thereof.

2. The Directors shall be so elected that the terms of a bare majority, if there is an odd number of Directors, or one-half of the Directors, if there is an even number of Directors, will expire in the odd years and the remainder in the even years. Directors shall hold office until their successors have been elected and have qualified.

3. Each Director shall be elected by ballot (unless dispensed by unanimous consent) and by a plurality of the votes cast at the annual meeting of the members of the Association. Each person entitled to vote shall be entitled to vote for as many nominees as there are vacancies to be filled by the election and each member shall be elected by separate ballot (unless provided otherwise by unanimous consent of the members.)

4. Except as provided in Paragraph 5 of this Article, vacancies in the Board of Directors may be filled until the date of the next annual meeting by a vote of a majority of the Directors remaining in office regardless of whether those remaining constitute a quorum.

5. The initial Directors shall be subject to removal only by the Declarants, thereafter, a Director may be removed by concurrence of seventy-five per cent (75%) of the members of the Association at a special meeting called for that purpose. The vacancy in the Board of Directors so created shall be filled by the persons entitled to vote at the same meeting.

6. The initial Directors shall serve without compensation, thereafter, Directors shall receive such compensation and expenses as is approved by the persons entitled to vote at any annual or special meeting.

7. An organization meeting of a newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. No further notice of the organization meeting shall be necessary.

8. A majority of the Board may, by resolution, set the time and place for regular meeting of the Board and no notice thereof shall be required until such resolution is modified or rescinded. Special meeting of the Directors may be called by the President, Vice President, or any two Directors provided not less than two (2) days' notice shall be given, personally or by mail, telephone, or telegraph, which notice shall state the time, place and purpose of the meeting.

9. A quorum at a Directors' meeting shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting duly called at which a quorum is present shall constitute the acts of the Board of Directors, except where approval by a great number of Directors is required by the Declaration of Covenants, Conditions and Restrictions or these By-Laws.

10. The presiding officer of a Directors' meeting shall be the President or in his absence, the Vice President. In the absence of the President and Vice President, the Directors present shall designate one of their number to preside.

11. The Board of Directors, by resolution approved by all members thereof, may designate from among its members such committees as it deems advisable and by resolution provide the extent and manner to which the same may have and exercise the authority of the Board.

#### IV. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

All of the powers and duties of the Association shall be exercised by the Board of Directors including those existing under the common law and statutes, the Articles of Incorporation, and the documents establishing the covenants, conditions and restrictions. Such powers and duties of the Directors shall be exercised in accordance with the provisions of the Declaration of Covenants, Conditions and Restrictions which governs the use of the land, and shall include in addition to those elsewhere provided for but shall not be limited to the following:

1. To make and collect assessments against members for all common expenses.
2. To use the proceeds of assessments in the exercise of its powers and duties.
3. The maintenance, repair, replacement, and operation of the property including all common areas, elements, and facilities, and making or providing for payment for all such work and approving or delegating to the officers authority to approve vouchers therefor.
4. The reconstruction, repair, restoration, or rebuilding of the common property after casualty; the construction of new improvements or alterations if authorized; to make and amend regulations respecting the use and occupancy of the property and to permit or forbid an action or conduct within the discretion committed to them in the Declaration of Covenants, Conditions and Restrictions, By-Laws, and Resolutions of the members.
5. To enforce by legal means the provisions of the Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation, the By-Laws of the Association, and the regulations for the use of the property; and to take legal action in the name of the Association and on behalf of its members.
6. To delegate to contractors any or all powers and duties of the Association except such as are specifically required by the Declaration of Covenants, Conditions and Restrictions; By-Laws; or Resolution of the members to have approval of the Board of Directors or the membership of the Association.
7. To employ, designate, and remove personnel to perform services required for operation of the Property.
8. To conduct all votes or determinations by members other than at a membership meeting.
9. To borrow money from any bank, lending institution or agency for the use and benefit of the Association, and to secure the loan or loans by pledge of the assets of the Association, and from time to time to renew such loan and give additional security.
10. To do such other acts as are necessary and proper to effect the purposes as stated in the Declaration of Covenants, Conditions and Restrictions, and By-Laws provided such acts are not otherwise prohibited.

#### V. OFFICERS

1. The officers of the Association shall be the President, who shall be a Director, a Vice President, who shall be a Director, and a Secretary-Treasurer, all of whom shall be elected annually by the Board of Directors and may be preemptorily removed and replaced by vote of the Directors at any meeting. The initial officers and their successors

until the first annual meeting shall be chosen by the initial Board of Directors and shall serve until the first annual membership meeting. The Board of Directors may from time to time create and fill other offices and designate the powers and duties thereof. Each officer shall have the powers and duties usually vested in such office, and such authority as is committed to the office by the By-Laws or by specific grant from the Board, but subject at all times to the provisions of the By-Laws and to the control of the Board of Directors.

2. The President shall be the chief executive officer of the Association. He shall preside at all membership meetings and meetings of the Board of Directors and shall have power to appoint committees from among the members to assist in the conduct of the affairs of the Association.

3. The Vice President shall preside over membership meetings in the absence or disability of the President, and shall otherwise exercise the powers and duties of the President in the event of the absence or disability of the President, and shall generally assist the President and exercise such other powers and duties as are prescribed by the Directors.

4. The Secretary-Treasurer shall keep the minutes of all proceedings of membership meetings and Directors' meetings and shall have custody and control of the minute book of the Association, shall have control of the funds and other property of the Association and shall keep the financial books and records thereof, and shall keep or be in charge and control of the records of the Association.

5. The compensation of all officers and employees shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee, nor the contracting with a Director for management of the properties.

6. Any instrument affecting an interest in real estate may be executed by the President and Vice President and one other officer upon authorization of the Directors or in such manner as the Directors may otherwise direct.

## VI. FISCAL MANAGEMENT

1. The Board of Directors shall adopt a budget for each fiscal year (which shall be the same as the Association's fiscal year for income tax purposes) which shall include the estimated funds required to defray the common expenses and to provide and maintain funds for the following accounting categories according to good accounting practices:

- (a) Current expenses which shall include all funds and expenditures to be made within the year for which the funds are budgeted, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves or to additional improvements. The balance of this fund at the end of each year shall be applied to reduce the assessments for current expense for the succeeding year.
- (b) Reserve for deferred maintenance, which shall include funds for maintenance items which occur less frequently than annually.
- (c) Reserve for replacement which shall include funds for repair or replacement required because of damage, destruction, depreciation or obsolescence.

2. The Board of Directors shall assess against each vacant lot and each dwelling unit, and the owners thereof only shall be liable for, a share of the items in the budget adopted pursuant to Paragraph 1. Such share shall be assessed for the fiscal year for which the budget was prepared annually in advance and notice of such assessments shall be mailed or delivered not less than thirty (30) days prior to the first day of such fiscal year. Such assessment shall be due and payable from the respective owner or owners in 12 equal installments, each installment being due and payable the first day of each calendar month, which day falls within such fiscal year. In

the event notice of such assessment is not timely given, the amount of such assessment shall not change, but the due date for each installment which would otherwise be due and payable less than 30 days from the giving of such notice shall be due and payable on the due date of the first installment which is due not less than 30 days from the date such notice is mailed or delivered. In the event the annual assessment proves to be insufficient, the budget and assessments therefor, may be amended at any time by the Board of Directors if the total amount of the budget as amended does not exceed 115% of the total amount of the budget as originally adopted for said fiscal year. In the event the budget as amended exceeds the limitation of said previous sentence, such budget may be adopted at a special members' meeting upon an affirmative vote of a majority of the ownership represented at such meeting. The additional amount so budgeted shall be assessed to each vacant lot or each dwelling unit in the same manner as assessments for the annual budget and shall be prorated among the remaining installments due and payable in such year.

3. Assessments for common expenses for emergencies and extraordinary expenditures, which cannot be paid from the annual assessments for common expenses and the maintenance of funds shall be made only after notice of the need thereof to the lot owners concerned. After such notice and upon approval in writing by persons entitled to cast more than one-half of the votes concerned, the assessment shall become effective, and it shall be due in such manner as the Board of Directors may require after thirty (30) days' notice thereof. In the event any expenditure for repair or replacement of any common elements cannot be paid from annual assessments but can be at least 90% paid from insurance proceeds therefor, such expenditures may be made upon approval of the Board of Directors without approval of the members and an amended budget and assessment may be made therefor, if necessary.

4. If an owner shall be in default in the payment of an installment upon an assessment, the Board of Directors may accelerate the remaining installments of the assessment upon notice thereof to such owner, and thereupon the unpaid balance of the assessment shall come due upon the date stated in the notice, but not less than ten (10) days after delivery thereof to such owner either personally or by registered or certified mail. Interest shall be computed and due on balances due under this paragraph but unpaid on such due date at the maximum rate of interest allowable by law from the date such balance becomes due and payable in accordance with the preceding sentence; such interest shall be in addition to any other payments for which said owner is liable.

5. The holder of a mortgage on any lot, upon its filing written request with the Association, shall be given written notice from the Association of any default by the mortgagor in the performance of said mortgagor's obligations under these By-Laws, and the Declaration of Covenants, Conditions and Restrictions which is not cured within thirty (30) days.

6. All sums assessed but unpaid including, but not limited to, interest with respect to a vacant lot or a dwelling unit, or against a lot owner shall constitute a lien on such property prior to all other liens except (1) tax liens on the unit in favor of any assessing unit and special district, and (2) all sums unpaid on the first mortgage of record. Said lien may be foreclosed by the Association in the manner of mechanic's lien foreclosure in which event the owner shall be required to pay reasonable costs. In the event the Association forecloses on any lien, the owner or owners of said vacant lot or of a dwelling unit, by their membership in this Association, specifically waive any rights to delay or prevent foreclosure which he or they may have against the Association by reason of a homestead exemption. The association may sue for money judgment for unpaid assessments and interest or sums due without foreclosing or waiving any lien which it holds.

7. If a mortgagee or purchaser of a lot obtains title as a result of foreclosure of a first mortgage, such mortgagee or purchaser, his successors and assigns shall not be liable for the assessment chargeable to such vacant lot or dwelling unit due prior to the acquisition of title and such unpaid assessments shall thereafter be deemed to be common

expenses collectible from all vacant lot or dwelling owners including the mortgagee or purchaser, his successors and assigns. The owner of a vacant lot or of a dwelling unit pursuant to a voluntary conveyance or by inheritance or devise shall be jointly and severally liable with the grantor or prior owner for all unpaid assessments against the grantor or prior owner but without prejudice to the right of such grantee or devisee to recover from grantor the amounts paid therefor. The grantee or other successor in interest of an individual subject to a levy of assessment on account of default shall be liable for any such special assessment.

8. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the moneys of the Association shall be deposited. Withdrawal of moneys from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

9. An audit of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the report shall be furnished to each member not later than sixty (60) days after the close of the fiscal year for which the report is made.

#### VII. REFERENDUM

Any vote or determination required or permitted to be made by the members of the Association and not required by law or the Declaration of Covenants, Conditions and Restrictions to be made at a meeting of the members may be taken or made pursuant to a referendum ballot. Such a ballot may be initiated by a one-third of the Board of Directors, or upon the written petition of members owning collectively 25% of the total vacant lots or total dwelling units. If such referendum is initiated, the Secretary shall forthwith prepare and mail to each member a ballot returnable in not less than ten (10) nor more than thirty (30) days from the date of mailing. If prior or subsequent to such petition, a special membership meeting has been called to consider the same subject matter, the special meeting shall prevail and the referendum vote not be tallied.

#### VIII. AMENDMENT

1. These By-Laws may be amended, altered, repealed or new By-Laws adopted by the members at a regular or special meeting of or upon a referendum ballot by the members upon affirmative vote of 66 2/3%.

2. No amendment may be adopted at either a special or regular membership meeting or by referendum not included in the notice thereof, except if notice of the proposed amendment has been given, a different amendment relative to the same subject matter may be adopted by those present, in person or by proxy and possessing the requisite percentage of members, provided further no vote by proxy may be counted unless the proxy expressly provides for such contingency. Notice referred to herein shall be given in the manner prescribed in Article II., Section 3, of these By-Laws and shall be given to the persons described in Article II., Section 4, and the holder of any first mortgage of record which has notified the Association of his interest not more than fifty (50) nor less than thirty (30) days before the date such meeting of referendum will be held. More than one proposed amendment may be included in the notice of a meeting.

3. No modification or amendment of these By-Laws shall be effective unless set forth in an amendment to the Declaration of Covenants, Conditions, and Restrictions, executed and recorded in the manner set forth in the Declaration of Covenants, Conditions and Restrictions. Upon such recording said amendment shall be effective against all persons having an interest in a lot regardless of whether said person has such interest at the time said amendment was adopted.

4. Unless required by the specific provisions of the Declaration of Covenants, Conditions and Restrictions an amendment to the Declaration of Covenants, Conditions and Restrictions not overlapping or affecting the subject matter of these By-Laws shall not be considered an amendment of these By-Laws.

## IX. GENERAL PROVISIONS

The invalidity of any portion or provision of these By-Laws shall not affect the validity of the remaining provisions or portions hereof.

2. The association shall not have and employ a corporate seal.

3. The Board of Directors shall require fidelity bonds from all Directors, officers, or agents handling or responsible for Association funds and the expense of such bonds shall be a common expense of the Association.

4. The Association shall at all times maintain complete and accurate written records of each vacant lot and each dwelling unit and owner and the address of each, and setting forth the status of all assessments, accounts and funds pertinent to that that vacant lot or that dwelling unit, and owner. Any person other than an owner may rely on a certificate made from such records by an officer or agent of the Association as to the status of all assessments and accounts.

5. Each member shall have the obligations as such member as are imposed upon him by the Declaration of Covenants, Conditions and Restrictions, and no member shall have the power or authority to incur a mechanic's lien or other lien effective against the property except as the same may attach only against his vacant lot or dwelling unit.

6. The Board of Directors may in its discretion issue written evidence of membership but the same shall be evidence thereof only and shall in no manner be transferable or negotiable, and the share of the member in the assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to such assignment, hypothecation or transfer of the vacant lot or dwelling unit.

7. No provision or restriction otherwise void by reason of application of the rule against perpetuities or Section 558.68 of the Code of Iowa (1975) shall continue for a period longer than the life of the last to survive of the Declarants and their children in being at the time of the initial recording of the Declaration of Covenants, Conditions and Restrictions and twenty-one (21) years thereafter.

## X. DEFINITIONS

Unless the context otherwise requires, the terms used herein shall have the meanings stated in the Declaration of Covenants, Conditions and Restrictions, and as follows:

1. Person--The term "person" shall include an individual, a corporation, or other legal entity or its representative.
2. Owner--The term "owner" for purposes of these By-Laws shall mean any person who owns or holds for himself an interest in one or more vacant lots or one or more dwelling units subject to the Declaration of Covenants, Conditions and Restrictions provided that the holder of a leasehold interest in a vacant lot or dwelling unit shall not be an owner and further provided that the holder of an equitable interest shall be an owner.
3. Common expenses--Common expenses include:
  - (a) Expenses of administration, expenses of maintenance, operation, repair or replacement of the portions of vacant lots or of dwelling units to be maintained by the Association.
  - (b) Expenses declared common expenses by these By-Laws.
4. Singular, plural, gender--whenever the context so permits or requires the use of the singular it shall include the plural, the plural the singular, and the use of any gender shall include all genders.