

<b>INSTRUMENT PREPARED BY AND RETURN TO:</b>	Brian D. Torresi, 2605 Northridge Pkwy., Ames, IA 50010 (515) 288-2500
--------------------------------------------------	------------------------------------------------------------------------

**FIRST AMENDMENT TO  
DECLARATION OF RESTRICTIVE COVENANTS AND REGULATIONS FOR  
THE PRESERVE ON GRAND PLAT 2,  
WEST DES MOINES, POLK COUNTY, IOWA**

**THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS AND REGULATIONS FOR THE PRESERVE ON GRAND PLAT 2, WEST DES MOINES, POLK COUNTY, IOWA** (this "Amendment") is made and entered into by Diligent Grand Avenue 67, LLC (the "Declarant") as of the date set forth under the signature hereto.

**RECITALS:**

**WHEREAS**, the Declarant executed and recorded that certain Declaration of Restrictive Covenants and Regulations for The Preserve on Grand Plat 2, West Des Moines, Polk County, Iowa (the "Declaration") dated December 19, 2017, and filed in the office of the Recorder of Polk County, Iowa, on January 12, 2018, in Book 16790 at Page 585;

**WHEREAS**, the Declarant, as an Owner (as that term is defined in the Declaration), desires to amend the Declaration to reduce the requirement related to the percentage of certain materials on the front of each home; and

**WHEREAS**, in accordance with Article XXVI of the Declaration, the Declarant may amend the Declaration without the consent of any third party if the Declarant is an Owner.

**NOW, THEREFORE**, in consideration of the above Recitals, and reliance on the same, and for other good and valuable consideration, the Declarant agrees as follows:

1. INCORPORATION OF RECITALS. The foregoing Recitals are incorporated herein and made a part of this Amendment as if fully set forth verbatim. The Recitals and exhibits attached hereto, if any, are a substantive, contractual part of this Amendment.

2. AMENDMENT TO ARTICLE IV(J). Article IV(J) of the Declaration is hereby amended by replacing the second to last sentence thereof with the following language:

“At least thirty percent (30%) of the front of each home (net of doors and windows) shall be brick, stone veneer, or stucco.”

3. REMAINING PROVISIONS UNAFFECTED. All other provisions of the Declaration not amended by this Amendment shall remain in full force and effect and are in no way affected or limited by the execution of this Amendment or the amendments provided for herein.

IN WITNESS WHEREOF, the undersigned has executed this Amendment on this \_\_\_\_ day of \_\_\_\_\_, 2018.

**DILIGENT GRAND AVENUE 67, LLC**

By: DILIGENT DEVELOPMENT GROUP, L.L.C., Manager

By: \_\_\_\_\_  
David A. Brown, Manager

STATE OF IOWA, POLK COUNTY, SS:

This record was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2018, by David A. Brown, as a Manager of Diligent Development Group, L.L.C., the Manager of Diligent Grand Avenue 67, LLC.

\_\_\_\_\_  
Notary Public in and for the State of Iowa  
My commission expires \_\_\_\_\_

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Doc ID: 032644850011 Type: GEN  
Kind: RESTRICTIVE COVENANT  
Recorded: 01/12/2018 at 02:24:37 PM  
Fee Amt: \$57.00 Page 1 of 11  
Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2017-00056365

BK 16790 PG 585-595

<b>INSTRUMENT PREPARED BY:</b>	Brian D. Torresi, 2605 Northridge Pkwy., Ames, IA 50010 (515) 288-2500
<b>RETURN TO:</b>	Brian D. Torresi, 2605 Northridge Pkwy., Ames, IA 50010

**DECLARATION OF RESTRICTIVE COVENANTS AND REGULATIONS FOR  
THE PRESERVE ON GRAND PLAT 2,  
WEST DES MOINES, POLK COUNTY, IOWA**

**WHEREAS**, the undersigned are the owners of Lots One (1) through Forty-eight (48) ("Lot" or the "Lots") contained in The Preserve on Grand Plat 2, West Des Moines, Polk County, Iowa (the "Subdivision"); and

**WHEREAS**, for their own protection and for the benefit of subsequent owners of said Lots within said Subdivision, the said owner desires to restrict the use thereof in certain particulars and hereby declares that all Lots shall be held, sold, and conveyed and be subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Subdivision and shall run with the land and shall be binding on all parties having any right, title, or interest therein or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**NOW, THEREFORE**, the parties to this Declaration of Restrictive Covenants and Regulations for The Preserve on Grand Plat 2, West Des Moines, Polk County Iowa (this "Declaration"), in consideration of the covenants and agreements contained herein, by these presents, covenant, bargain and agree for themselves for their successors and assigns, as follows:

**ARTICLE I  
DEFINITIONS**

For the purpose of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided:

A. "Plat" and/or "Subdivision" shall mean and refer to the real property legally described as Lots One (1) through Forty-eight (48), The Preserve on Grand Plat 2, West Des Moines, Polk County, Iowa.

B. "Declarant" shall mean and refer to Diligent Grand Avenue 67, LLC, an Iowa limited liability company, its successors or assigns.

C. "Building Lot" shall mean and refer to one or more Lots, or one or more Lots and the portion or portions of adjacent platted Lots in the Plat, used for the construction of one (1) dwelling as herein permitted.

D. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the legal or equitable title to any Lot or Building Lot that is a part of the Plat.

E. "Outbuilding" shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed or garden house.

F. "City" shall mean the City of West Des Moines, Iowa.

G. "Association" shall mean and refer to The Preserve on Grand Owners Association, Inc., an Iowa nonprofit corporation.

## **ARTICLE II** **DESIGNATION OF USE**

All Lots shall be known and described as residential lots and shall not be improved, used or occupied for other than private residential purposes. No full-time or part-time business activity may be conducted on any Lot or in any dwelling or structure constructed or maintained on any Lot except those activities permitted under the terms of the applicable zoning ordinance of the City.

## **ARTICLE III** **BUILDING TYPES**

A. No building or structure shall be constructed, altered, or maintained on any Building Lot other than a detached single-family dwelling with an attached private garage or approved accessory structure.

B. No building or structure of any kind shall be moved onto any Lot.

C. The construction of any building or structure on any Building Lot shall be performed utilizing then acceptable construction methods and procedures, including (but not limited to) on-site "stick-built" construction and/or off-site modular or panelized construction.

## **ARTICLE IV** **BUILDING AREA DESIGN AND CONSTRUCTION**

No dwelling shall be constructed, altered, or maintained or permitted to remain upon any Lot other than a single-family home or any structure allowed by the zoning ordinance of the City (the "Ordinance"). All single-family homes shall contain the following minimum square footages of finished living space and meet the following requirements:

As to all Lots:

A. One (1) story/ranch dwellings must have a ground floor finished floor area of not less than one thousand six hundred fifty (1,650) square feet.

B. One and one-half (1½) story dwellings must have not less than two thousand (2,000) square feet finished area.

C. Two (2) story dwellings must have a total of not less than two thousand two hundred (2,200) square feet finished area.

D. No building shall be erected on any Lot unless the design and location is in harmony with existing structures within the Plat as determined in the building plans review process described in Article V below.

E. In computing total finished area, the same shall not include any finished area that has its floor below the exterior grade.

F. In the computation of floor area, the same shall not include any porches, breezeways, or attached or built-in garages.

G. All exterior painted portions of any dwelling, garage or outbuilding located on any Lot shall be finished with earth tone colors. All exterior painted portions of dwellings that are repainted shall be repainted in one of such colors.

H. All roof material shall be two (2) or three (3) tab architectural style in earth tone colors or shingle of equal color, quality and appearance thereto.

I. All dwellings must be constructed using hardboard siding by LP SmartSide or cement board siding by James Hardie or other brands approved in writing by Declarant as being acceptable exterior siding. No vinyl siding shall be permitted.

J. All structures shall blend in with the terrain rather than contrast with it. The use of natural materials is encouraged, i.e., stained wood, stone, brick and warm-toned shingles, as well as soft, earth-tone colors. All exposed concrete foundations on front elevations only must be covered with brick, stone, veneered or stucco textured; provided, however, that other foundation sided may be exposed but not to exceed twenty-four (24) inches above grade. Any exposed portion of a foundation as permitted herein shall be painted to match the remainder of the structure. At least fifty percent (50%) of the front of each home (net of doors and windows) shall be brick, stone veneer, or stucco. All structures shall be built in the Subdivision shall be shingled with materials and be in colors acceptable to the Declarant.

K. All buildings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.

L. If a minimum opening elevation requirement is shown on the recorded final plat for any Lot, the dwelling upon such Lot shall have all openings as shown on the recorded final plat.

M. Declarant shall have the option to require Declarant's soil engineer to approve and monitor all soil excavation during excavation of basements for dwellings constructed upon any Lot.

#### **ARTICLE V** **ARCHITECTURAL REVIEW**

No building or structure, nor any addition or alteration thereof, shall be constructed or substantially altered on any Building Lot unless and until a design plan and a site plan (collectively, the "Plans") have been submitted to and approved by Declarant. The Plans shall contain details of design, color scheme, elevation, site grade, landscaping, fencing, roofing, sidewalks, driveways and other similar matters. The Plans shall also state the type of construction, including external details and materials. Declarant shall, within thirty (30) days from the date of submittal of the Plans, deliver to the Owner written approval of, rejection of or required changes to the Plans. The intent of this provision is to ensure that buildings and structures are developed in reasonable harmony within the Plat and that the covenants, restrictions and conditions contained herein are met in connection with such development. Declarant may terminate the requirements of this provision at any time, in its sole and absolute discretion, by recording notice of such termination.

#### **ARTICLE VI** **GARAGES AND DRIVEWAYS**

All dwellings shall have a minimum of a three-car attached garage. All dwellings shall have a portland cement concrete driveway not less than eighteen (18) feet in width and running from the City street to the garage. No garage doors over ten (10) feet in height shall be permitted.

#### **ARTICLE VII** **TEMPORARY AND OTHER STRUCTURES; CERTAIN USES**

No temporary building or structure shall be built or maintained on any Lot. No camper, motor home, watercraft, trailer, unfinished dwelling basement, tent, shack, garage, or Outbuilding shall be used at any time as a dwelling. No vehicle with a gross vehicle weight greater than seven thousand (7,000) pounds, and no camper, recreational vehicle, motor home, watercraft, trailer, or mechanical equipment may be parked or maintained on any Lot (except inside a garage) or on the public street, other than on a temporary basis; provided that this restriction shall not apply to trucks, equipment or trailers used in connection with construction of or rebuilding of a dwelling on any Lot. Temporary shall mean no more than a total of thirty (30) days per year. At no time may any vehicle, trailer or camper be parked or maintained in the yard

of any Lot. At no time shall a vehicle or any mobile equipment be disassembled, repaired or serviced on any Lot, except inside a garage or dwelling.

### **ARTICLE VIII** **FENCES**

No fences or other structures may be built or maintained within the front building setback areas as shown on the Plat as recorded and no fences shall be built or maintained in front of the front line of the residential dwelling extended to the side Lot lines. The fence screening material shall be mounted on the exterior face of the fence posts or fence framing. No chain link fence, including chain link fence around a dog run, shall be permitted unless it is a black vinyl clad fence. All fences shall be kept in good repair and attractive appearance.

### **ARTICLE IX** **DECKS**

Decks attached to a dwelling must be constructed from cedar, redwood, treated lumber or other products approved by Declarant. All decks shall be kept in good repair and attractive appearance.

### **ARTICLE X** **SOD**

Within sixty (60) days of completion of a dwelling upon a Lot, the front yard, side yards and rear yard shall be fully sodded (except where the topography, conservancy districts, creek slopes or tree cover does not permit such sodding) and the remainder of the rear yard to the rear lot line shall be seeded or sodded. If weather conditions make this requirement impossible to meet, Declarant and/or the Association shall establish a reasonable period of time for compliance.

### **ARTICLE XI** **EASEMENTS**

Easements for installation and maintenance of utilities, bike trails (if any) and drainage facilities are reserved as shown on the Plat as recorded. The Owner and/or occupant of each Lot, jointly and severally, shall at the expense of such Owner and/or occupant, maintain, keep, and preserve that portion of the easement within the Lot at all times in good repair and condition and shall neither erect nor permit erection of any building, structure or other improvement of any kind within the easement areas (except customary ground cover) which might interfere in any way with the use, maintenance, replacement, inspection or patrolling of any of the utility services and drainage facilities within such easements areas. Any berm and/or swale constructed for drainage purposes shall be preserved and maintained to accomplish the purposes for which it was constructed.

**ARTICLE XII**  
**NUISANCES**

No noxious or offensive activity or odors shall be permitted on or to escape from any Lot, nor shall anything be done thereon which is or may become an annoyance or a nuisance, either temporarily or permanently.

**ARTICLE XIII**  
**EROSION CONTROL AND STORM WATER DISCHARGE PERMITTING  
REQUIREMENTS**

The Owner of each Lot, whether vacant or improved, their agents, assigns, heirs and/or building contractors shall take all necessary precautions to prevent, stabilize and/or control erosion on their Lot and the Plat, to prevent sediment migration and soil erosion from extending beyond the boundaries of their Lot and the Plat, and, in the event it occurs, to promptly clean up all eroded sediment and to restore all affected areas to their original condition. Each Owner shall be responsible for compliance with all terms and conditions of the storm water pollution prevention plan transfer agreement for its Lot.

Any construction or earth moving on any Lot shall be in compliance with all laws relating to storm water discharge permitting. The Owner shall be solely responsible for the Lot with respect to compliance with all terms, provisions and requirements of any NPDES Storm Water Discharge Permit No. 2 and any storm water pollution prevention plan which includes the Lot.

During the Owner's ownership of the Lot, Owner shall protect, defend, indemnify and hold the Declarant and other Owners harmless from any and all damages, claims, liabilities, fines, penalties, cleanup costs and/or attorneys and consultant fees caused by, or in any manner related to (i) any discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the Lot and/or (ii) any alleged violation of any NPDES or storm water discharge rule or regulation.

**ARTICLE XIV**  
**SIGNS**

No sign of any kind shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except (i) street markers, traffic signs, or any signs installed by the City by other governmental entities or by the Declarant, (ii) signs which have been approved by Declarant in writing not exceeding one hundred forty-four (144) square inches in area on which there shall only be exhibited the street number and/or the name of the resident, (iii) a customary sign (one (1) per Building Lot) advertising a Building Lot or dwelling for sale, not exceeding one thousand two hundred ninety-six (1,296) square inches, and (iv) signs which have been approved by Declarant in writing advertising the builder or for promotional or marketing purposes. In the event that any signs other than those described above shall be placed or exposed to view on any Lot, the agents of the Declarant are hereby given the right to enter upon such Lot and remove such signs. Declarant reserves the right to install entrance and directional signs with respect to the Plat, at locations and of design determined by the Declarant in a



manner consistent with the ordinances of the City. A monument sign for the development shall be allowed within any applicable signage easement area.

**ARTICLE XV**  
**TRASH RECEPTACLES**

No trash receptacles or garbage cans shall be permitted to be placed on a Lot outside a dwelling, garage or outbuilding. However, unscreened trash in proper containers and/or bags shall be allowed to be placed on a Lot outside a dwelling, garage or Outbuilding no earlier than twelve (12) hours prior to a scheduled pick up of such trash. Such unscreened trash containers must be returned inside a dwelling, garage or Outbuilding, within twelve (12) hours following the scheduled pick up of such trash.

**ARTICLE XVI**  
**UTILITIES**

All utility connection facilities and services shall be underground.

**ARTICLE XVII**  
**TOWERS AND ANTENNAS**

No exterior transmission tower, antenna or television transmission dish of any kind shall be constructed, installed, modified, or permitted on the ground, on dwellings, on garages or on Outbuildings. Notwithstanding the foregoing, an exterior tower, antenna or receiver dish which is twenty-four (24) inches or less in diameter shall be permitted. No more than one (1) such exterior tower, antenna or receiver dish shall be permitted on each Lot. No more than one (1) penetration in the dwelling shall be permitted for the cable from such exterior tower, antenna or receiver dish. No other exterior towers or antenna shall be constructed, installed, modified or permitted on the ground, on dwellings, on garages or on Outbuildings.

**ARTICLE XVIII**  
**MAINTENANCE**

The Owner and/or occupant of each Lot shall jointly and severally be responsible to keep the same free of trash, weeds and debris and to keep the lawn and landscaping well maintained and healthy, including (but not limited to) maintaining the lawn at a height not to exceed six (6) inches. The Owner and/or occupant of each Lot shall jointly and severally be responsible to maintain the exterior of any dwelling, the driveway, fence, screening and all other improvements.

**ARTICLE XIX**  
**CERTAIN ANIMALS PROHIBITED**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. In no event, however, shall more than a total of three (3)

dogs and/or cats be kept at any one Building Lot at any one time. Dogs must be either kept in the dwelling or in a shelter aesthetically compatible with the dwelling and surrounding areas, and dog runs, if any, must be completely screened or otherwise hidden from view from any other Lot and all streets within the Plat, shall be outside of all set back requirements, and shall be behind the rear line of the home. All pets must be leashed and under the control of its owner if not tied up or kept within a fenced yard.

#### **ARTICLE XX** **ACCESSORY STRUCTURES**

Each Building Lot may have no more than one (1) customary and traditional accessory structure such as a tool shed, garden house, and the like. Any trash receptacle, or tool shed, garden house or other outbuilding of like nature, shall be properly screened by a privacy fence and/or shrubbery. In addition, tennis courts, in ground pools and Pool Houses are permitted as additional accessory structures. No above-ground or non-permanent swimming pools shall be permitted on any Lot. Play sets erected shall be earth-tone in color, not exceed ten (10) feet in height, be properly maintained and shall be located only in the rear yard of a Lot. Swimming pools, Outbuildings and other accessory structures and improvements, including dog kennels and runs, shall not extend farther than the front line of the residential dwelling extended to the side lot lines and shall not be located within 20 feet of any side or rear Lot line, as the minimum distance established by the zoning ordinance of the City or the minimum distance as established in the Plat as recorded, whichever is the more restrictive. Any accessory structures must match the architecture of the home on the Lot.

#### **ARTICLE XXI** **SURFACE WATER**

The topography of the Subdivision is such that surface water may flow from certain Building Lots onto other Building Lots. In regard to all matters concerning surface water, each Building Lot shall be subject to and benefited by such easements as may exist from 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 laws.

#### **ARTICLE XXII** **MAILBOXES**

Neighborhood mailbox cluster units shall be installed by the Declarant according to United States Postal Service regulations. The Owner and/or occupant of the Lot(s) on which a mailbox cluster unit is located shall be responsible for removal of snow and ice which would obstruct access to the mailbox cluster units by the mail carrier and other Owners.

**ARTICLE XXIII**  
**LIGHT POLES**

No light poles shall be used or placed upon any Lot that extend more than ten (10) feet above grade. All light poles shall be of a residential design. All pole lights shall be positioned and directed so as not to directly shine onto any adjoining Lot or constitute a nuisance to any adjoining Lot Owner.

**ARTICLE XXIV**  
**ENFORCEMENT OF COVENANTS**

This Declaration shall be deemed to run with the land, and the Declarant or the Owner of any Lot may bring an action in any court of competent jurisdiction to enforce this Declaration to enjoin its violation or for damages for the breach thereof, or for any other remedy or combination of remedies recognized at law or in equity, including without limitation the right to specific performance, and shall further be entitled to recover reasonable legal fees and costs if the Declarant or Owner prevails in any such action.

**ARTICLE XXV**  
**ASSOCIATION**

All Owners of Lots shall be members of the Association. The Association shall be governed by Bylaws and other organizational documents that set forth the duties and obligations of such Owners with respect to the ownership of Lots within the Subdivision.

**ARTICLE XXVI**  
**AMENDMENTS OF COVENANTS**

This Declaration may be amended from time to time with the approval of the Owners, provided that no amendment impacting the Declarant's rights can be made without Declarant's consent while Declarant is still the Owner of a Lot. Such approval shall be given by the affirmative vote of not less than two-thirds (2/3) of the Owners. The Owner of each Lot (or the joint Owners of a single Lot in the aggregate) shall be entitled to cast one vote on account of each Lot owned. Notwithstanding the foregoing, until the Declarant has sold all of the Lots, it may make amendments or modifications to this Declaration without the consent of any other Owners or other party. Such amendments or modifications by the Declarant shall be effective the date the amendment or modification has been filed with the County Recorder. Notwithstanding anything herein to the contrary, Sections XIII and XXI shall not be amended or terminated without prior written approval of the City.

**ARTICLE XXVII**  
**PERIOD OF COVENANTS**

All easements, covenants, conditions, restrictions and reservations created by this Declaration shall run with the land and shall be binding upon all Lots and the Owners of any Lot, regardless of how title was acquired. All covenants, conditions, restrictions, and reservations shall be binding on the Lots for the maximum period allowed by law, subject to the right of Owners under Section 614.24 of the Iowa Code to file a verified claim in the office of the County Recorder to extend the effectiveness of these covenants for successive periods of twenty-one (21) years each on or before the twenty-first anniversary of the filing of this Declaration and prior to the twenty-first anniversary of the filing of the last verified claim. The easements and other provisions of this Declaration shall be perpetual in nature.

**ARTICLE XXVIII**  
**ENFORCEMENT AND WAIVER**

A. In the event that any one or more of the foregoing covenants, conditions or restrictions shall be declared for any reason by a court of competent jurisdiction to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions and restrictions not so expressly held to be void, which shall continue unimpaired and in full force and effect.

B. The Plat shall also be subject to any and all rights and privileges of the City, now held or hereafter acquired, by dedication or conveyance, or by reason of the platting and recording of the Plat, or by this Declaration or by law. Wherever there is a conflict between this Declaration and the zoning ordinance of the City, the more restrictive shall be binding.

C. This Declaration shall not be applicable to property dedicated to the City, and the City may allow appropriate public use on city-owned property within the Plat.

**IN WITNESS WHEREOF**, this Declaration of Restrictive Covenants and Regulations for The Preserve on Grand Plat 2, West Des Moines, Polk County Iowa were made the date set forth below by the Declarant.

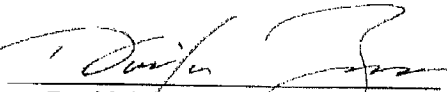
Dated at Ames, Iowa this 19<sup>th</sup> day of December, 2017.

**(SIGNATURE PAGE FOLLOWS)**

**SIGNATURE PAGE OF  
DECLARATION OF RESTRICTIVE COVENANTS AND REGULATIONS FOR  
THE PRESERVE ON GRAND PLAT 2,  
WEST DES MOINES, POLK COUNTY, IOWA**

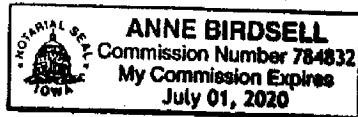
**DILIGENT GRAND AVENUE 67, LLC**

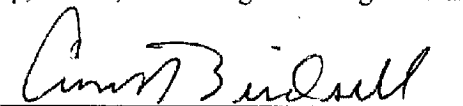
By: DILIGENT DEVELOPMENT GROUP, L.L.C., Manager

By:   
David A. Brown, Manager

STATE OF IOWA, POLK COUNTY, SS:

This record was acknowledged before me on this 19<sup>th</sup> day of December, 2017, by David A. Brown, as a Manager of Diligent Development Group, L.L.C., the Manager of Diligent Grand Avenue 67, LLC.



  
Notary Public in and for the State of Iowa  
My commission expires July 1, 2020