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Combined Fee: $25.00
Revenue Tax:
Jasper County, Iowa
Denise Allan RECORDER
Instr. Number: 202100004823

Prepared by & Return to: Timothy C. Hogan, Hogan Law Office, 3101 Ingersoll Ave, Suite 103, Des Moines, IA 50312 (515) 279-9059

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Amendment") is dated this 22nd day of June, 2021 and made by GROUND BREAKER HOMES, LLC, an Iowa limited liability company, Declarant of the Declaration of Covenants, Conditions and Restrictions recorded September 19, 2017 as **Instrument No. 2017-00005699** and amended by **Instrument No. 2020-00000502**, all in the office of the Recorder for Jasper County, Iowa (the "Declaration") and by the CITY OF NEWTON, an Iowa municipality (the "City").

WHEREAS, pursuant to the Declaration, Declarant and the City established and placed certain covenants, conditions, restrictions, reservations and easements on the following described real estate (the "Properties"):

> Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 in Cardinal Ridge Subdivision Amended Plat 1, an Official Replat in the City of Newton, Jasper County, Iowa.

WHEREAS, Article XIV, Section 7 of the Declaration grants to Declarant the right to amend the Declaration without approval by the other Owners so long as Declarant has any ownership interest in the Properties.

WHEREAS, until the City has sold all of its Lots, any amendment to the Declaration shall require the written consent of the City.

WHEREAS, William J. Talsma, Trustee of the William J. Talsma Trust No. 1 and GeorgAnne Talsma, Trustee of the GeorgAnne Talsma Trust No. 1 confirmed prior written approval of the Declaration by Affidavit recorded December 7, 2018 as **Instrument No. 2018-6949** in the office of the Recorder for Jasper County, Iowa.

WHEREAS, both Declarant and the City own Lots subject to the Declaration.

NOW, THEREFORE, pursuant to the authority described in the Declaration, Declarant and the City hereby amend the Declaration as follows:

1. All provisions relating to **fences** contained within the Declaration are hereby amended so that the following restrictions and obligations shall control in lieu thereof:

> No fence shall be constructed on any Lot without prior approval from the Architectural Review Committee.
>
> For Lots 1, 2, 4, 5, 6 and 7 of the Properties, fences shall be limited to privacy or decorative fences located around the decks or patios of the Living Units, which use thereof shall be subject to the rules and regulations of the Association. Any other fence constructed on the Lots by Declarant or by the Association shall be maintained by the Association. Each such Lot shall be burdened with an easement for the fence constructed by Declarant or the Association for maintenance by the Association.
>
> For Lots 8, 9, 10, 11, 12, 13, 14 and 15 of the Properties, all fences shall be either wood, black vinyl coated chain link, PVC vinyl or other material approved by the Architectural Review Committee as being acceptable fencing. Except for dog runs, no chain link fence shall be permitted unless it is black vinyl coated. All fence boards, fabric and screening material shall be mounted on the exterior face of the fence posts or fence framing. All components of the fence constructed on a Lot, including posts, framing and screening, shall be of matching material and color. No fences may be built or maintained within the front building setback areas as shown on the Plat and no fences shall be built or maintained in front of the front line of the dwelling extended to the side Lot lines. All fences shall be kept in good repair and attractive appearance.

2. Article XIII, Section 5(b) relating to **pets** as contained within the Declaration shall apply only to Lots 1, 2, 4, 5, 6 and 7 of the Properties, and the following shall apply only to Lots 8, 9, 10, 11, 12, 13, 14 and 15 of the Properties:

> No livestock, poultry or other animals of any kind shall be raised, bred or kept in any Lot except that dogs, cats and other usual household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. No exotic, dangerous or vicious animals shall be allowed. Dogs must be either kept in the dwelling or in a shelter aesthetically compatible with the dwelling, and dog runs must be located at the rear of the dwelling. Dog runs must be completely screened or otherwise hidden from view from any other Lot and from all streets. All pets must be leashed and under the control of its owner if not tied up or kept within a fenced yard or dog run. The Owner shall be responsible for prompt removal and disposal of all waste from their pets.

shall apply only to Lots 1, 2, 4, 5, 6 and 7 of the Properties, and the following shall apply only to Lots 8, 9, 10, 11, 12, 13, 14 and 15 of the Properties:

> Each Lot may have no more than one (1) customary and traditional accessory structure or outbuilding (other than a dwelling or the attached garage) such as a tool shed, storage shed, garden shed, greenhouse, or other similar improvement. The accessory structure shall not extend farther than the front line of the dwelling extended to the side Lot lines and shall not be located within twenty (20) feet of any side or rear Lot line, or as the minimum distance established by the zoning ordinance of the City, or as the minimum distance established in the Plat as recorded, whichever is the more restrictive.

4. Except as expressly amended hereby, all of the terms and conditions of the Declaration shall continue in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to be executed as of the date first hereinabove written.

DECLARANT:

GROUND BREAKER HOMES, LLC,
an Iowa limited liability company,

By: _____
Steve Bruere, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on September 17, 2020, by Steve Bruere as Manager of Ground Breaker Homes, LLC.

By: _____
Notary Public

NOTARIAL SEAL IOWA
KALEN LUDWIG
COMMISSION NO. 741723
MY COMMISSION EXPIRES
1/11/13, 2021

IN WITNESS WHEREOF, the City has caused this Amendment to be executed as of the date first hereinabove written.

CITY:

CITY OF NEWTON, IOWA,
a municipal corporation

By: _____
Michael L. Hansen, Mayor

Attest:

By: _____
Katrina Davis, Clerk

STATE OF IOWA, COUNTY OF JASPER:

This record was acknowledged before me on 6-22-21, ~~2020,~~ 2021 by Michael L. Hansen and Katrina Davis as Mayor and Clerk, respectively of the City of Newton Iowa.

By: _____
Notary Public

NOTARIAL SEAL IOWA
SHAWNDA NINE
Commission Number 815541
My Commission Expires
February 28, 2022

Doc ID: 003779750006 Type: GEN
Recorded: 01/28/2020 at 02:55:33 PM
Fee Amt: $32.00 Page 1 of 6
Jasper County, Iowa
Denise Allan County Recorder
File 2020-00000502

Prepared by & Return to: Timothy C. Hogan, Hogan Law Office, 3101 Ingersoll Ave, Suite 103, Des Moines, IA 50312 (515) 279-9059

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Amendment") is dated this 19th day of December, 2019 and made by GROUND BREAKER HOMES, LLC., an Iowa limited liability company, Declarant of the Declaration of Covenants, Conditions and Restrictions recorded September 19, 2017 as **Instrument No. 2017-00005699** in the office of the Recorder for Jasper County, Iowa (the "Declaration") and by the CITY OF NEWTON, an Iowa municipality (the "City").

WHEREAS, pursuant to the Declaration, Declarant and the City established and placed certain covenants, conditions, restrictions, reservations and easements on the following described real estate (the "Properties"):

Lots 1 – 15 and Outlot A in Cardinal Ridge Plat 1, an Official Plat in the City of Newton, Jasper County, Iowa.

WHEREAS, the Declaration was filed of record before configuration of the Properties was finalized and in advance of the Final Plat for Cardinal Ridge Subdivision Plat 1, an Official Plat recorded October 12, 2017 as **Instrument No. 2017-00006200,** and prior to the Amended Final Plat for Cardinal Ridge Subdivision Plat 1, an Official Replat recorded November 8, 2017 as **Instrument No. 2017-00006786** (the "Amended Final Plat").

WHEREAS, due to the reconfiguration of the lots there is no Lot 3 in the Amended Final Plat so that upon recording of the Amended Final Plat the Properties subject to the Declaration should now be known and described as follows:

Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 in Cardinal Ridge Subdivision Amended Plat 1, an Official Replat in the City of Newton, Jasper County, Iowa.

Hogan Law Office (a.a.)
cc $32.00

WHEREAS, the Declaration provides that the Properties shall be developed subject to the Cardinal Ridge Townhomes Association (the "Association") established pursuant to the Declaration, which would provide, among other things, all maintenance relating to the building exterior, the yard, the landscaping and other pertinent common amenities of each and every single detached dwelling and every bi-attached dwelling located on the Lots within the Properties.

WHEREAS, in addition to correcting the legal description of the Properties to match the revised lot configuration of the Amended Final Plat, it is the desire of Declarant and the City to amend the Declaration to remove Lots 8, 9, 10, 11, 12, 13, 14 and 15 of the Amended Final Plat from the Association to allow each lot owner to maintain its own lot, including all improvements appurtenant thereto, in the same manner as is typical for a separate detached dwelling for use by a single family.

WHEREAS, Article XIV, Section 7 of the Declaration grants to Declarant the right to amend the Declaration without approval by the other Owners so long as Declarant has any ownership interest in the Properties.

WHEREAS, until the City has sold all of its Lots, any amendment to the Declaration shall require the written consent of the City.

WHEREAS, William J. Talsma, Trustee of the William J. Talsma Trust No. 1 and GeorgAnne Talsma, Trustee of the GeorgAnne Talsma Trust No. 1 confirmed prior written approval of the Declaration by Affidavit recorded December 7, 2018 as Instrument No. 00006949 in the office of the Recorder for Jasper County, Iowa.

WHEREAS, Declarant is the owner of Lot 7 (a bi-attached dwelling) and Lot 15 (a single detached dwelling) of the Amended Final Plat.

WHEREAS, the City is the owner of Lots 8, 9, 10, 11, 12 and 13 of the Amended Final Plat (all single detached dwellings) and Lots 1, 2 and 5 of the Amended Final Plat (bi-attached dwellings).

WHEREAS, Jinhua Lin is the owner of Lot 14 of the Amended Final Plat (a single detached dwelling) and hereby joins this Amendment to acknowledge approval of the removal of Lot 14 from the Association.

NOW, THEREFORE, pursuant to the authority described in the Declaration, Declarant and the City hereby amend the Declaration as follows:

1. Lots 1 – 15 and Outlot A in Cardinal Ridge Plat 1, an Official Plat in the City of Newton, Jasper County, Iowa, as used in the Declaration is hereby deleted in its entirety and replaced with Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Amended Final Plat, so that the terms "Lot" and "Properties" shall mean and refer to Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,

14 and 15 in Cardinal Ridge Subdivision Amended Plat 1, an Official Replat in the City of Newton, Jasper County, Iowa.

2. Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Amended Final Plat, are and shall continue to be subject to the Declaration.

3. Lots 8, 9, 10, 11, 12, 13, 14 and 15 of the Amended Final Plat which contain the single detached dwellings are hereby removed from the operation of the Association and the owners of those Lots shall not become Members of the Association and are expressly released from all covenants, conditions, restrictions, rights, privileges, duties, obligations and assessments as applicable to those provisions relating to the Association under the Declaration.

4. For Lots 8, 9, 10, 11, 12, 13, 14 and 15 of the Amended Final Plat, the terms "Building" and "Living Unit" shall each mean and refer to the structure constructed upon the Lot intended for use and occupancy as a residence by a single family or individual and the garage appurtenant thereto.

5. For Lots 1, 2, 4, 5, 6 and 7 of the Amended Final Plat, the terms "Building" and "Living Unit" shall have the meaning ascribed to them in the Declaration.

6. Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Amended Final Plat **ARE** and continue to be subject to the Declaration, provided however that Lots 8, 9, 10, 11, 12, 13, 14 and 15 of the Amended Final Plat which contain single detached dwellings **ARE NOT** subject to the Association and assessment thereunder, and that Lots 1, 2, 4, 5, 6 and 7 of the Amended Final Plat which contain bi-attached dwellings **ARE** subject to the Association and assessment thereunder; and due to the reconfiguration of the lots there is no Lot 3 in the Amended Final Plat.

7. Except as expressly amended hereby, all of the terms and conditions of the Declaration shall continue in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to be executed as of the date first hereinabove written.

DECLARANT:

GROUND BREAKER HOMES, LLC,
an Iowa limited liability company,

By: _____
Steve Bruere, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on November 21, 2019, by Steve Bruere as Manager of Ground Breaker Homes, LLC.

REBECCA ROZENBOOM
Commission Number 778055
My Commission Expires
April 18, 2022

By: _____
Notary Public

IN WITNESS WHEREOF, the City has caused this Amendment to be executed as of the date first hereinabove written.

CITY:

CITY OF NEWTON, IOWA,
a municipal corporation

By: _____
Michael L. Hansen, Mayor

Attest:

By: _____
Katrina Davis, Clerk

STATE OF IOWA, COUNTY OF JASPER:

This record was acknowledged before me on November 19th, 2019, by Michael L. Hansen and Katrina Davis as Mayor and Clerk, respectively of the City of Newton Iowa.

By: _____
Notary Public

SHAWNDA NINE
Commission Number 815541
My Commission Expires
February 28, 2022

IN WITNESS WHEREOF, the undersigned joins in execution of this Amendment as of the date first hereinabove written.

Lin Jinhua

STATE OF IOWA, COUNTY OF JASPER:

This record was acknowledged before me on 1/26/2020, by Lin Jinhua, a single person.

NOTARIAL SEAL IOWA
KALEN LUDWIG
COMMISSION NO. 741723
MY COMMISSION EXPIRES
July 13, 2021

By: _____
Notary Public

Doc ID: 003583730026 Type: GEN
Recorded: 09/19/2017 at 01:18:23 PM
Fee Amt: $132.00 Page 1 of 26
Jasper County, Iowa
Denise Allan County Recorder
File2017-00005699

Prepared by: Timothy C. Hogan, Hogan Law Office, 3101 Ingersoll Ave., Suite 103, Des Moines, IA 50312 (515) 279-9059
Return to: Ground Breaker Homes, LLC, 12119 Stratford Dr, Ste B, Clive, IA 50325

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is dated this 24th day of August, 2017 and made by GROUND BREAKER HOMES, LLC, an Iowa limited liability company ("Declarant").

WHEREAS, Declarant and the City of Newton, an Iowa municipality (the "City") are parties to an option agreement pursuant to which Declarant is acquiring from the City the real property legally described as follows (the "Properties):

Lots 1 - 15 and Outlot A in Cardinal Ridge Plat 1, an Official Plat in the City of Newton, Jasper County, Iowa.

WHEREAS, pursuant to the option agreement, the City requires Declarant to establish residential covenants, conditions and restrictions governing the Properties for the benefit of the Properties and the future Owners thereof, to provide for reservation of certain easements and rights, and to provide for an association to own, govern and maintain common amenities with authority to levy assessments necessary to operate, manage, maintain and administer the association and common amenities of the Properties, all as hereinafter specifically set forth.

NOW, THEREFORE, Declarant and the City, by execution and recording of this Declaration, hereby declare that the Properties shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any rights, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

132.00
chg
For purposes of this Declaration and as used herein, the following terms shall have the following definitions, except as otherwise specifically provided:

FBC Craig Armstrong
Newton City
1700 N 4th Ave W
Newton IA 50208

Section 1. "Architectural Review Committee" shall mean and refer to those persons charged with authority to approve all plans for improvements within the Properties, which committee shall initially be composed of two (2) members appointed by Declarant having one (1) vote each, and William J. Talsma having one (1) vote.

Section 2. "Association" shall mean and refer to Cardinal Ridge Townhomes Association, a non-profit corporation organized pursuant to Chapter 504 Revised of the Code of Iowa, and its successors and assigns.

Section 3. "Association Responsibility Elements" shall mean and refer to the following, whether or not fully or partially located upon any Lot or the Common Area:

(a) The exterior surface of the Building upon a Lot, excluding all interior and exterior parts of the windows and doors (i.e. trim, head, sash frame, extension jamb, interior casing, exterior brickmold casing and sill), garage doors, storm doors, stoops, patios, decks, and any improvements made to the Living Units whether or not approved by the Association (for example, flags or barbeque grills for outdoor living).

(b) The structural portion of the Building upon a Lot.

(c) The roof, gutters, downspouts, and foundation of the Building upon a Lot.

(d) Any common wall between residential structures upon the Lots, except the interior surfaces thereof.

(e) The yard surrounding the residential structure upon the Lot, excluding any gardens, plants, flowers, trees, shrubbery and other landscaping.

(f) Driveways and sidewalks, excluding the sidewalk leading from the driveway to the front entrance of the Living Unit.

(g) Entrance monument.

(h) Any fence, retaining wall structure or stabilization plantings constructed or installed by Declarant or by the Association.

(i) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of any Building upon a Lot.

(j) Common Area, including but not limited to, any private storm and sanitary sewers, private water mains and storm water drainage and detention areas located thereon.

(k) All common water, sewer, gas and electric lines and other utility service facilities located within the Properties that provides service to the Lots.

(l) Lawn irrigation system, if any.

Section 4. "Board of Directors" shall mean and refer to the members of the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.

Section 5. "Building" shall mean and refer to any structure containing one or more single-family dwelling units that may be constructed on a Lot or a part of more than one Lot, and shall include any attached garage.

Section 6. "Bylaws" shall mean and refer to the Bylaws of the Association adopted by the Board of Directors, as the same may be amended from time to time.

Section 7. "City" shall mean and refer to the city of Newton located in Jasper County, Iowa.

Section 8. "Common Area" shall mean and refer to all real property within the Properties to which the Association holds title, together with any improvements thereon for the common use, enjoyment and benefit of the Owners, including Outlot A of the Properties.

Section 9. "County Recorder" shall mean and refer to the office of the Recorder for Jasper County, Iowa.

Section 10. "Declarant" shall mean and refer to Ground Breaker Homes, LLC and its successors-in-interest and assigns.

Section 11. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject, as the same may be amended from time to time.

Section 12. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Properties, or any portion thereof, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, or successors to their interests.

Section 13. "Living Unit" shall mean and refer to any portion of a Building situated upon a Lot designated and intended for use and occupancy as a residence by a single family or individual and the garage appurtenant thereto.

Section 14. "Lot" shall mean the Lots numbered 1 - 15, as shown upon the recorded subdivision plat for Cardinal Ridge Plat 1, together with any additional numbered lots as may hereinafter be brought within the jurisdiction of the Association. The rights and obligations under this Declaration relating to ownership of the Lots shall apply equally to each Lot regardless of the size or design of the Living Unit situated thereon.

Section 15. "Member" shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration.

Section 16. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equity title to any Lot, but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the property by provision or operation of law. A vendee in possession under a recorded contract of sale of any Lot shall be deemed the Owner instead of the contract seller. Declarant retains the right to be considered an Owner of the Properties in the place of the City.

Section 17. "Properties" shall have the meaning set forth on Page 1 hereof, and such additions thereto as may hereafter be brought within the jurisdiction of the Association when annexed and subjected to this Declaration pursuant to Article XIII hereof.

ARTICLE II
BUILDING AREA, DESIGN AND CONSTRUCTION

Section 1. Building Area, Design and Construction. No dwelling shall be constructed or permitted to remain upon any Lot unless the design and location is in reasonable harmony with existing structures and unless it meets the following requirements.

A. All one and one-half story, two-story, split-level, and split foyer dwellings must have a finished area of not less than 1,700 square feet; ranch or one-story dwellings must have a finished area of not less than 1,300 square feet.

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

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

D. No dwelling shall exceed two (2) stories in height above finished grade level.

E. No used, modular, manufactured, geodesic dome or earth homes will be permitted on any Lot.

F. No outbuildings shall be allowed such as an enclosed, covered structure (other than a dwelling or the attached garage) such as a tool shed or garden house.

G. All exterior painted portions of any dwelling or garage shall be finished with one of the neutral pallet colors designated in writing by the Architectural Review Committee as being acceptable exterior color. All exterior painted portions of dwellings that are repainted shall be repainted in one of such colors.

H. All roof material shall be CertainTeed brand in earth tone colors or shingle of equal color, quality and appearance thereto or other brands approved in writing by the Architectural Review Committee as being acceptable roofing material and color.

I. All dwellings shall have a roof pitch of not less than 5/12 with a roof overhang of a minimum of 18" on the front and rear and 12" on the gable ends.

J. 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 the Architectural Review Committee as being acceptable exterior siding. No steel, aluminum, vinyl or masonite board siding shall be permitted.

K. All dwellings must be constructed using a minimum of twenty-five percent (25%) brick or stone on the front elevation of the dwelling.

L. Not more than thirty (30) inches of concrete block or poured concrete foundation shall be exposed on any dwelling, excepting the rear of a walkout type residence, and any such exposed materials shall be painted or covered with brick or stone in accordance with the provisions of this Declaration regarding material and allowable paint colors.

M. All utility connection facilities and services shall be underground.

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

O. Within ninety (90) days of completion of a dwelling upon a Lot, all portions of the Lot shall be fully seeded or sodded. If weather conditions make this requirement impossible to meet, Declarant shall establish a reasonable period of time for compliance.

P. All dwellings shall have a minimum of a two-car attached garage. All dwellings shall have a hard-surfaced driveway of concrete of not less than sixteen (16) feet in width and running from city street to the garage. Detached garages are strictly prohibited.

Q. No fence shall be constructed on any Lot without prior approval from the Architectural Review Committee. Any fence shall be limited to privacy or decorative fences located around the decks or patios of the Living Units.

R. Decks attached to a Living Unit must be built from cedar, redwood, treated lumber or other products approved by the Architectural Review Committee. Unpainted natural wood decks are not acceptable.

S. Security lighting for driveways, parking and other areas shall be designed, located and directed in a manner that will avoid direct lighting onto adjoining Living Units or Lots. No light poles are permitted on any Lot.

T. 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 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 III
ARCHITECTURAL REVIEW COMMITTEE

No residential structure, fence, patio, deck or other improvement shall be commenced, erected, altered, maintained or permitted to remain upon the Properties, nor shall any exterior addition to or change or alteration thereof be made until the plans showing the design, specifications and location have been submitted to and approved in writing by the Architectural Review Committee (the "ARC"). Any change in the appearance or the color of any part of the exterior of a Building shall be deemed a change thereto and shall require the approval of the ARC. Refusal or approval of the plans shall be decided by a majority vote of the members of the ARC and may be based on any reason, including purely aesthetic grounds, which, in the sole discretion of the ARC, shall be deemed sufficient. The ARC shall ensure that the external design and location of the residential structures within the Properties is in harmony with the surrounding structures and topography of the land in the Properties. After Declarant no longer owns any Lot in the Properties, all privileges, powers, rights and authority of the ARC shall automatically transfer to the Board of Directors, which shall have the authority to determine compliance with the design criteria standards of this Declaration. The right of William J. Talsma to serve as a member of the ARC shall automatically terminate the earlier of (i) when Declarant no longer owns any Lot in the Properties; or (ii) on December 31, 2027, and no replacement member shall be required to be named in his stead.

ARTICLE IV
STORM WATER DISCHARGE PERMITTING REQUIREMENTS

Section 1. **Erosion Control.** The Owner and/or occupant of each Lot, jointly and severally, whether vacant or improved, their agents, assigns, heirs and/or building contractors, shall take all necessary precautions to prevent, stabilize and control erosion within its Lot to prevent sediment migration and soil erosion from extending beyond the boundaries of the Lot. In the event of any occurrence of soil erosion, the Owner and/or occupant of the Lot shall, jointly and severally, promptly clean up all eroded sediment and restore all affected areas to their original condition.

Section 2. **Storm Water Discharge Permit.** 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.

Section 3. **Indemnity.** During the ownership of the Lot, the Owner shall protect, defend, indemnify and hold the Declarant, the Association and the 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 V
ASSOCIATION AUTHORITY AND RIGHTS IN COMMON AREA

Section 1. **Association Authority and Obligations.** The Association, through its Board of Directors, shall have the right, power and authority to provide for the enforcement of this Declaration; to have sole control and jurisdiction over the Common Area and the Association Responsibility Elements; to be responsible to operate, maintain and keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management; to establish, levy, collect, and have jurisdiction, control and possession of assessments as hereinafter provided; to enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration; and to otherwise establish such rules and regulations governing use of the Common Area and Association Responsibility Elements which are in the best interests of the Association.

Section 2. **Ownership of Common Area.** The Association shall be the owner of the Common Area and shall timely pay all utility charges, real estate taxes and assessments levied against the Common Area. Declarant hereby covenants for itself, its successors and assigns that it shall convey to the Association the fee title to the Common Area free and clear of all mechanic's liens or any liens or encumbrances whatsoever, except covenants, easements, conditions and restrictions whether or not of record or created by this Declaration or granted to any public authority. The Common Area shall not be conveyed or transferred by the Association without the prior approval of the City.

Section 3. **Owners' Easement and Right of Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of Declarant or the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes. Upon transfer of fee title to the Common Area to the Association, no such dedication or transfer shall be effective unless an instrument filed of record by the Association with the County Recorder consenting to such dedication or transfer has been authorized by seventy-five percent (75%) of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. **Use of Common Area.** The Common Area shall be used strictly in accordance with the provisions of this Declaration. No Owner shall obstruct or interfere whatever with the rights and privileges of the other Owners, Declarant or the Association in the Common Area. Nothing shall be planted in, altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors.

ARTICLE VI
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. **Membership.** Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership.

Section 2. **Voting.** Subject to the provisions of Section 3 of this Article, the Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons 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 one Lot.

Section 3. **Declarant as Sole Voting Member.** Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Association until Declarant no longer owns any portion of the Properties or until Declarant waives, in writing, its right to be the sole voting Member. Declarant shall have the right to elect all Directors and to cast all votes as it deems appropriate. Each Owner by acceptance of a deed shall be deemed to have released Declarant from all claims with respect to actions taken or not taken while Declarant controls the Association.

Section 4. **Board of Directors.** Subject to the provisions of Section 3 of this Article, the Members entitled to vote shall elect a Board of Directors of the Association as prescribed by the Bylaws of the Association. The Board of Directors shall manage the affairs and business of the Association.

Section 5. **Suspension of Voting Rights.** The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against such Member's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

Section 6. **Duration.** No dissolution of the Association shall occur unless another association or equivalent entity has been created to succeed to the duties and responsibilities of the Association under this Declaration.

ARTICLE VII
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. **Creation of the Lien and Personal Obligation of Assessments.** The City and Declarant, for each Lot owned within the Properties, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) regular assessments or charges, payable in monthly installments (2) special assessments for capital improvements and operating deficits, and (3) other special assessments as provided herein, such assessments to be established and collected as

hereinafter provided. The assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. Each assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons or entity who was the Owner of the Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by such successor.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Lots; for carrying out the general duties and powers of the Association, including, but not limited to, decoration, operation, management, improvement, maintenance, repair, reconstruction, restoration, replacement, removal and preservation of the Common Area and Association Responsibility Elements; for payment of insurance and real estate taxes and assessments associated with the Association, the Common Area and the Association Responsibility Elements; and for other purposes specifically provided herein. In making such assessments, the amount to be levied shall be equal and limited to the actual cost to the Association of providing those functions and services set forth in this Declaration.

Section 3. Maximum Regular Assessment and Notice. The Board of Directors shall establish the maximum regular assessment to be assessed against each Lot. Until January 1 of the year immediately following the conveyance of the first Lot by Declarant to an Owner, the maximum regular assessment for Lots 4 - 7 containing two or more single-family attached dwelling units shall be $1,800.00 per Lot, payable at the monthly rate of $150.00 and for Lots 1 - 3 and 10 - 15 containing a detached single-family dwelling unit, the maximum regular assessment shall be $2,100.00 per Lot, payable at the monthly rate of $175.00, plus a pro rata portion of the amount of real estate taxes, special assessments and insurance premiums payable by the Association for all Lots. Thereafter, the Board of Directors shall establish the amount of the regular assessment against each Lot at least thirty (30) days prior to January 1 of each year. Any proposed increase of more than thirty percent (30%) greater than the regular assessment levied for the previous year shall require the consent of seventy-five percent (75%) of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of the regular assessment, special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto.

Section 4. Reserve Fund. A portion of the regular assessment shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area and Association Responsibility Elements and any capital improvements which the Association is required to maintain.

Section 5. Special Assessments for Capital Improvements and Operating Deficits. In addition to the regular assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, or for any Association Responsibility Element, including fixtures and personal property related thereto which the Association is required to maintain, or for operating

deficits that the Association may from time to time incur, provided that any such assessment shall have the assent of seventy-five percent (75%) of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Uniform Rate of Assessment. Both regular and special assessments must be fixed at a uniform rate for all Lots.

Section 7. Date of Commencement of Regular Assessments; Payment of Assessments; Due Dates. The regular assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to an Owner of a completed Living Unit constructed on the Lot. The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of monthly assessments. The regular and special assessments for each Lot conveyed by Declarant to a third party shall become the obligation of the new Owner upon transfer of the Lot. The new Owner shall then begin making payments of regular and special assessments when the next monthly installment is due for such Lot. Thereafter, the monthly installments of regular and special assessments paid to the Association shall be prorated and credited to the Owner in the closing upon the sale or transfer of the Lot by the Owner. The Board of Directors shall establish the due dates for all assessments. All payments shall be made on or before the due date.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of said assessment all costs and expenses incurred by the Association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Owner's Lot.

Section 9. Declarant Exempt from Assessments. Declarant and the City shall not be liable for regular or special assessments upon unimproved Lots owned by them. Declarant is not responsible for the establishment of a budget as long as Declarant is the sole voting Member of the Association. The Association and Declarant are not required to submit statements for assessments to any Owner.

Section 10. Subordination of Assessment Liens. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The assessment shall be paid prior to or at the closing of sale or transfer of any Lot. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale

or transfer. The failure of an Owner to pay assessments as provided under this Article shall not constitute a default under a mortgage insured by the Federal Mortgage Agencies.

Section 11. Assessment Certificate. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

ARTICLE VIII
DECLARANT'S RIGHTS

Declarant reserves the right to use any of the Lots as models and to sell, assign, or conduct other businesses in connection with the construction and development of the project from any of such Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the number, location, or manner of construction of Buildings and other improvements; provided, that in all cases, such changes shall be accomplished in a manner consistent with applicable laws and ordinances. Declarant further reserves the right to change the plantings and other landscaping elements within the Common Area from time to time in its sole discretion.

ARTICLE IX
MAINTENANCE

Section 1. Maintenance of Unimproved Lots. Declarant shall be responsible to keep each vacant unimproved Lot owned by it mowed and free of uncut weeds, rubbish, garbage and debris.

Section 2. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at the Owner's own expense, all decoration, maintenance, repair and replacement of the structures, improvements, fixtures and equipment (but excluding the Association Responsibility Elements) located upon and within the Owner's Lot and Living Unit. All Living Units and property appurtenant thereto shall be kept in a safe, clean, orderly and sanitary environment free of insects, rodents, vermin and other pests and maintained in a good condition and state of repair at all times. Any exterior structure, improvement, fixture or equipment shall match, as nearly as possible, the original item that it repairs or replaces and shall be constructed or installed in accordance with local ordinances and building codes. Such property shall include, but is not limited to, the following:

(a) Garage door and all other doors and windows, including trim and any exterior brickmold or siding damaged by replacement;

(b) Partition and interior walls;

(c) Fireplaces, heating, ventilation and air conditioning;

(d) Staircases, cabinetry, bookcases and counter tops;

(e) Interior and exterior electrical wiring and facilities and light fixtures, including light bulb replacement in exterior light fixtures, for the exclusive use of the Living Unit;

(f) Electrical lines for telecommunication and electrical facilities from the main box to a Living Unit, notwithstanding the fact that such wiring crosses the Common Area or is located off-premises from the Owner's Lot.

(g) Electronics, appliances, plumbing equipment and fixtures, garage door opener and security system;

(h) Interior wall coverings, floor coverings and window treatments;

(i) Sidewalks leading from the driveway to the entrances of any Living Unit, decks, patios and stoops (including removal of snow and ice therefrom);

(j) Flowers, plantings, gardens, trees, shrubbery and other landscaping planted by the Owner; and

(k) Tower, antenna, satellite dish or similar reception devices installed by the Owner, including roof shingles and any exterior surface of the Building damaged by replacement or removal.

Section 3. **Maintenance by Association.** The Association shall provide services on behalf of the Owners of each Lot for all decoration, operation, improvement, maintenance, repair, reconstruction, restoration, replacement, removal and preservation of the Common Area and the Association Responsibility Elements. The Association shall perform all such maintenance in a good and workmanlike manner in accordance with all applicable laws, rules, ordinances, codes and regulations. Any exterior structure, improvement, fixture or equipment shall match, as nearly as possible, the original item that it repairs or replaces and shall be constructed or installed in accordance with local ordinances and building codes. Such services may include, but are not limited to, the following:

(a) paint, repair, replace and care for roofs, gutters, downspouts, foundations and siding, brickwork and other similar exterior surfaces of the Building (excluding windows, doors, garage doors, decks, patios and stoops);

(b) striping, repair and resurfacing of paved surfaces, (excluding sidewalks, patios and stoops located at or leading to the entrances of any Living Unit) and other customary driveway and sidewalk maintenance to provide at all times ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street;

(c) removal of snow and ice from the driveways, sidewalks, and walkways, but not the sidewalks, decks, patios, and stoops located at or leading to the entrances of any Living Unit;

(d) lawn care, routine mowing, use of pesticides to control infestation of weeds and insects and maintenance of irrigation systems installed by Declarant or the Association;

(e) maintenance and replacement of landscape plantings, general trimming of trees, shrubs and hedges located within any Common Area;

(f) paint, repair, replace and care for entrance signs and features, outdoor furniture or decorative structures installed by Declarant or the Association;

(g) repair, replace and care for any fencing and retaining wall structures or other stabilization plantings installed by Declarant or the Association;

(h) grading and dredging of storm water drainage ways and detention facilities located within the Common Area;

(i) maintenance of private utilities for sanitary sewer, storm sewer, drainage, detention, and water main facilities, whether or not fully or partially located upon any Lot or the Common Area;

(j) general policing to keep the Properties in a clean and orderly condition free of trash, debris and other unnatural articles; and

(k) decorate for seasonal, civic or community events and holidays.

Section 4. **Common Area Landscaping.** The Association shall have sole control over all Common Area trees, shrubs and other stabilization plantings relating to any storm water detention basin. The Board of Directors shall have the right to change the plantings within the Common Area from time to time in its sole discretion.

Section 5. **Utilities.** Each Owner shall be responsible for payment of all charges incurred for electricity, water, trash removal, gas, sewer, telephone, telecommunications, cable, television and similar utility services to the Owner's Lot in the same manner as persons occupying single-family detached houses. All other charges for utilities and common services as needed in connection with maintenance or operation of the Common Area or Association Responsibility Elements shall be paid by the Association and the costs of the same shall be assessed against each Lot as part of the regular assessment.

Section 6. **Shared Facilities, Equipment and Fixtures.** To the extent that facilities, equipment and fixtures, including fences, within any Lot shall be connected to similar facilities, equipment or fixtures affecting or serving other Lots, then the use thereof shall be subject to the rules and regulations of the Association.

Section 7. **Management Contract.** Pursuant to authority granted in its Bylaws, the Association may enter into a contract for the professional management of its affairs, and the management fee thereof shall become a part of the regular assessment.

Section 8. **Responsibility for Willful or Negligent Acts.** No Owner shall obstruct or interfere whatever with the duties and responsibilities of the Association to perform its maintenance obligations relating to the Common Area and Association Responsibility Elements. An Owner shall be liable to the Association for the expense of any maintenance, repair or replacement to the Common Area or the Association Responsibility Elements rendered necessary by any intentional, willful, negligent or careless act of such Owner or by that of family, guests, tenants or licensees of such Owner. Any such expense for maintenance, repair or replacement shall be added to and become a part of the assessments to which such Lot is subject.

ARTICLE X
INSURANCE

Section 1. **Casualty Insurance.** The Association shall obtain a master casualty insurance policy or policies affording fire and extended coverage insurance for the Association Responsibility Elements in an amount equal to the full replacement value thereof. The Association may obtain "all risk" coverage for the Association Responsibility Elements. The Association may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the regular assessment for each Lot. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first mortgagee of each Lot. The master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provision that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, the Owners and their respective agents and guests, and (b) waives any defense based on invalidity based upon the acts of the insured; and providing further that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by any Owner as hereinafter permitted.

Section 2. **Liability Insurance.** The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organization of the Association or Board of Directors, its agents and employees, the Owners and all other persons entitled to occupy any Lot. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to, worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf to the Association. Each Owner shall be deemed to have delegated to the Board of Directors the Owner's right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 3. **Distribution to Mortgagee.** In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event, any remittances shall be to the Owner and the mortgagee jointly, or in accordance with the terms of any endorsement in favor of the mortgagee.

Section 4. **Annual Review of Policies.** The Board of Directors shall review at least annually all insurance policies acquired by the Association for the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above.

Section 5. **Assessment for Insurance.** The premiums for all such insurance hereinabove described shall be paid by the Association and the costs of the same shall be assessed against each Lot as part of the regular assessment. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes or termination shall be promptly furnished to each Owner, mortgagee, the City of whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Members of the Association.

Section 6. **Additional Insurance.** Unless otherwise determined by the Board of Directors, each Owner, at such Owner's expense, shall be responsible for obtaining homeowner's liability insurance and casualty insurance affording coverage for personal property and the contents and components of the Owner's Living Unit which is not part of the Association Responsibility Elements, such as floor, ceiling, and wall coverings and fixtures, betterments and improvements, clothing, furniture, electronics, collectibles and non-built-in appliances. Such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association as follows: the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, the Owners and their respective agents and guests, and (b) waives any defense based on invalidity based upon the acts of the insured; and providing further that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by any Owner as hereinafter permitted.

Each Owner shall further obtain comprehensive public casualty insurance, at the Owner's expense, affording coverage upon the Owner's Lot with a combined single limit of not less than $300,000 per occurrence. Such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance obtained by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

An Owner's policy of insurance should also include (i) coverage for loss of use should a Living Unit be uninhabitable due to a covered loss to insure against extra expenses incurred by

living elsewhere until the Living Unit can be restored; and (ii) dwelling coverage for the Living Unit in addition to what the Association provides.

Section 7. **Casualty and Restoration.** Damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of any Building to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

Section 8. **Insufficiency of Insurance Proceeds.** If the insurance proceeds received by the Association as a result of any fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the any Building so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association, which shall then have the right to levy a special assessment against all Lots for the amount of such deficiency.

Section 9. **Surplus of Insurance Proceeds.** If there is any surplus of insurance proceeds after reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Properties, or, in the discretion of the Board of Directors, may be distributed to the Owners of the Building affected and their mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damages shall not constitute a waiver of any rights against Owner for committing willful or malicious damage.

ARTICLE XI
EASEMENTS, RESERVATIONS AND ENCROACHMENTS

Section 1. **General Easements.** Each Lot shall be subject to the following easements in favor of the Association and the other Owners:

(a) Every portion of a structure upon a Lot which contributes to the support of any structure not on the same Lot is burdened with an easement of such support.

(b) Each Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.

(c) Each Lot is burdened with an easement through the Lot and through the attic and basement of any structure thereon for conduits, ducts, plumbing, wiring, pipes, and other facilities for the furnishing of utilities, heating and air conditioning systems and similar services to other Lots, foundation drains, sanitary sewer and water service facilities, including the location of utility meters and equipment on one Lot for service to other Lots.

(d) Each Lot is burdened with easements for drainage, detention, public utility and sewer as may be shown upon any recorded subdivision plat or any separately created easements recorded in favor of utility companies and the City.

(e) Each Lot is burdened with an easement of ingress and egress for reasonable access by Declarant or the Association for maintenance, repair and replacement of the Association Responsibility Elements and license to use hoses, bibs and water from all Lots to perform such maintenance obligations. Agents of or contractors hired by Declarant or the Board of Directors may enter any Lot when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable.

(f) Each Lot is burdened with an easement of ingress and egress over the land upon the Lot, but not the Building or improvements thereon, for reasonable access by another Owner to maintain or repair utility facilities located off-premises from such Owner's Lot.

(g) Each Lot is burdened with an easement for surface water drainage for the benefit of all other Lots and the Common Area.

(h) Each Lot is burdened with an easement for sidewalks for use by pedestrians and non-motorized vehicles to obtain access from the public or private street and from one property to another. No Owner shall obstruct or allow any obstructions on any sidewalk which would impair use and access to the Living Unit that such sidewalk exclusively serves.

(i) Those Lots that share a front entry stoop are burdened with an easement for a common front entry stoop with the adjacent Lot. No Owner shall obstruct or allow any obstructions on any front entry stoop which would impair use and access to the Living Units that such front entry stoop exclusively serves.

(j) Those Lots that share one common driveway are burdened with an easement for common driveway usage with the adjacent Lot. No Owner shall park or allow to be parked any vehicular or other obstruction within the driveway appurtenant to a Living Unit which would impair use and access to the Living Units that such driveway exclusively serves.

(k) Each Lot is burdened with an easement for a fence constructed by Declarant or the Association and maintained by the Association.

Section 2. **Additional Easement Rights**. There is hereby reserved and granted for the benefit of all Lots and Owners certain easements for drainage, detention, public utility and sewer easements as such easements may be shown upon any recorded subdivision plat or any separately created easement recorded in favor of utility companies and the City for the construction and maintenance of such drainage, detention, and all electrical, telephone, water, gas, sewer and other

utility services to the Living Units constructed on the Lots and Common Area, including all lines, pipes, wires, cables, ducts and such. Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement right, title and authority to relocate, alter or otherwise change the location of any drainage, detention, utility or sewer easement and to grant such further easements, licenses, and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within the Common Area. Each Owner shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section shall not be exercised in any manner which unreasonably and adversely affects any Building located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section shall run with the land and Declarant's right to further alter or grant easements shall automatically transfer to the Association when Declarant shall have conveyed the last Lot within the Properties.

Section 3. **Easement for Emergency Purposes.** An easement is hereby dedicated and granted for ingress, egress and parking in case of emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personal, public and private, over and upon the Properties. Officers, employees or contracted agents of any governmental agency shall have the right and authority to enter upon the Common Area and any Lot for the administration of public services including fire protection, law enforcement, water service and animal control. The rights encompassed within this grant shall include the right to use all entrances, exits, sidewalks, driveways and similar facilities that may now or hereinafter be established and constructed upon any portion of the Properties.

Section 4. **Sign Easement.** There is hereby reserved and granted to the Association, for the benefit of all Lots and Owners, the right and easement to erect and maintain entrance signs within the Properties. Declarant reserves unto itself for so long as it owns any Lot, the right and easement to erect and maintain such entryway, identification and "For Sale" sign or signs within the Properties as Declarant deems reasonably necessary.

Section 5. **Parking Rights.** Subject to the easement for common driveway usage granted above, the paved driveway in front of each Owner's garage shall be for the exclusive use of such Owner and any family, guest, tenant or licensee of such Owner. No one shall use the driveways within the Properties for parking or storage of any watercraft, snowmobiles, trailers, camping vehicles or other recreational vehicles, or for parking of trucks, trailers or other commercial vehicles except temporarily or incidentally for the making of pick-up and deliveries to neighboring Lots and those used during any maintenance, repair, replacement or construction of the structures or improvements within the Properties. In the event of a violation of this provision, the Association may, after reasonable notice, remove any such watercraft, snowmobile, trailer, camping, recreational, commercial or other vehicles, and assess the Owner of the Lot for the cost of removal. At no time shall a vehicle or any mobile equipment be disassembled, repaired or serviced on the Properties, except inside a garage or out of view from the street and abutting Lots. No vehicle, fence, barrier or other obstruction of any kind shall be parked, placed or constructed within the Properties which would impede or impair access from or to any Lot or public street.

Section 6. **Other Grants of Easements or Dedications.** The Owners shall not grant any easements on their respective Lots to or for the benefit of any person who is not an Owner or to or for the benefit of any real estate outside the Properties other than (i) for street widening purposes, or (ii) for public or private utility company making improvements within the Properties.

Section 7. **Encroachment of Buildings.** If, by reason of location, construction, settling or shifting of a Building containing a Living Unit appurtenant to a Lot (the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all appurtenances thereto, for the period during which the encroachment exists.

ARTICLE XII
PARTY WALLS

Section 1. **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Building upon the Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration and the rights of the Association, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. **Sharing of Repair and Maintenance.** The costs of repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, subject to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. **Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by the Owner's negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. **Right of Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title to the Lot.

ARTICLE XIII
USE RESTRICTIONS

Section 1. **Subjection of the Property to Certain Provisions.** The ownership, use, occupation and enjoyment of each Lot and the Common Area shall be subject to the provisions of the Articles of Incorporation and Bylaws of the Association, and this Declaration, all of which provisions irrespective of where set forth or classified shall have equal status and shall be

enforceable and binding as a covenant, condition, restriction or requirement running with the land and shall be binding on and enforceable against each and all Lots and the Owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

Section 2. **Designation of Use.** All Lots shall be known and described as residential lots and shall not be improved, used or occupied for other than single-family dwelling purposes. No full or part-time business activity may be conducted on any Lot or in any Living Unit except those activities permitted under the terms of the zoning ordinance of the City.

Section 3. **Model Homes and Offices.** Declarant reserves the right to use any of its Lots as models and to sell, assign, or conduct other business in connection with the construction and development of the Property from any of the Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain model homes, maintain an office, staff the office with employees, display signs, and show any of its Lots then unsold. Neither the Owners nor the Association nor the use of the Common Area shall interfere with the construction of improvements and sale of the Lots by Declarant.

Section 4. **Restriction on Rental.** In order to protect the integrity of the Properties and to ensure that those persons residing therein have similar proprietary interests in their Lots and Living Units, no Living Unit shall be leased or rented unless the lease (i) is in writing for a period of not less than one year (with no option to sublease); (ii) acknowledges the tenant's responsibilities under this Declaration and the rules and regulations adopted by the Association; and (iii) states that failure of the tenant to comply with this Declaration and such rules and regulations shall constitute a default under the lease. Prior to executing a lease, an Owner shall submit the lease agreement along with a completed Tenant Registration Form (available from the Board of Directors) to the Board of Directors for review and approval. No lease shall relieve the Owner of the Living Unit from liabilities and responsibilities to the Association and other Owners as set forth in this Declaration or imposed under the laws of the State of Iowa.

Section 5. **General Use Restrictions.** The use of the Properties shall be in accordance with and subject to the following provisions:

(a) No structure, trailer, camper, basement, tent, shack, garage, shed, or other building shall be used on any Lot or the Common Area at any time as a residence, either temporarily or permanently.

(b) No livestock, poultry, or other animals of any kind shall be raised, bred or kept in any Lot or in the Common Area, except an Owner shall be permitted to keep cats, dogs, or other usual household pets subject to rules and regulations adopted by the Association, based on the City Pet Ordinance. No exotic, dangerous or vicious animals shall be allowed. No dogs or cats shall be permitted outside of the Living Unit unless leashed and attended by the Owner. No dog runs, doghouses, dog kennels, cages, sleeping quarters, unattended chains, invisible fencing or any kind of outside housing for animals shall be permitted. The Owner shall be responsible for prompt removal and disposal of all waste from their pets. The Association may, by rules and

regulations, prohibit or further limit the keeping of any pet on any Lot, provide for assessments to Lots housing pets, or provide penalties for Owners found in violation of this Section or the rules and regulations regarding pets.

(c) No noxious or offensive activity shall be allowed which unduly interferes with the peaceful possession and use of the Lots by the Owners; nor shall any fire hazard or unsightly accumulation and refuse be allowed; nor shall any Lot be used for any unlawful purpose.

(d) Nothing shall be done or kept in any Lot or in the Common Area which will increase the rate of insurance on the Properties without prior consent of the Board of Directors. No Owner shall permit anything to be done or kept in the Owner's Lot or in the Common Area which will result in the cancellation of insurance on any Lot or any part of the Common Area or the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.

(e) All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned.

(f) No sign shall be placed upon any Lot except for a "for sale" or "garage sale" sign of a design approved by the Association. No signs of any nature, kind or description shall be erected, placed or maintained on any Lot or upon the Common Area which identify, advertise or in any way describe the existence or conduct of a home occupation.

(g) No home occupation shall be conducted or maintained on any Lot other than one which is incident to a trade, business, profession, employment or occupation of the Owner or occupant of any such Lot and which is regularly conducted in another location away from such Lot, nor shall any Lot be used for a multi-family dwelling, boarding house or rooming house. Nothing contained herein shall be construed or interpreted to affect the business activities of Declarant in the sale of its Lots or as part of the development of the Properties.

(h) Trash receptacles shall be kept by Owners within the garage of the Living Unit and shall be set outside only at the end of the driveway serving the Living Unit on designated garbage pick-up days.

(i) No tower, antennae, satellite dish or similar reception device shall be placed on any Building or Common Area except those which cannot be prohibited pursuant to the Federal Over-the-Air Reception Devises Rule, 47 C.F.R. §1.4000, or other similar governmental mandate in effect at the time of placement. All installations shall be completed so as not to materially harm or damage the Association Responsibility Elements; or to void any warranties held by the Association; or to jeopardize or impair

the integrity, safety or soundness of the Building upon a Lot. Upon receipt of reasonable notice, an Owner shall remove and reinstall, at such Owner's sole expense, the reception device to accommodate repairs and maintenance for which the Association is responsible. The Owner shall be responsible to the Association for any expense, liability, or damage of any kind resulting from the installation, maintenance, and use of the tower, antenna, satellite dish or similar reception device. The Declarant nor the Association will not be responsible to an Owner for any loss or damage to any tower, antenna, satellite dish or similar reception device.

(j) No basketball goal, whether attached to the Living Unit or affixed to a free-standing pole, soccer goal, baseball backstop or other similar sporting equipment shall be allowed to be constructed on any Lot without prior approval from the Board of Directors.

(k) No personal property shall be stored or left upon a Lot except within the Living Unit or garage located upon the Lot. However, unattached sporting equipment, toys, outdoor cooking equipment, and other equipment and supplies necessary or convenient to residential living may be stored on the patio or deck of the Living Unit.

(l) Garage doors shall be kept closed except during times of access to the garage or as permitted by the rules and regulations of the Association.

(m) Winter, seasonal or holiday decoration may be displayed by an Owner no earlier than six (6) weeks before the 1st day in January and shall be removed by the Owner on or before three (3) weeks after the 1st day of January.

ARTICLE XIV
GENERAL PROVISIONS

Section 1. **Rules and Regulations.** The Board of Directors shall have the authority to adopt rules and regulations governing the use the Common Area and the Association Responsibility Elements and other aspects of the Properties; and such rules shall be observed and obeyed by the Owners, their families, guests, tenants, assigns, and licensees. Such rules and regulations after being properly adopted at a meeting duly called for such purpose shall have the same force and effect as if contained in this Declaration.

Section 2. **Enforcement.** Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, assessments, fines, and charges now or hereafter imposed by the provisions of this Declaration, and shall be entitled to recover reasonable attorney's fees and costs and expenses incurred as a result thereof.

Section 3. **No Waiver.** Failure by the Association or by any Owner to enforce any covenant or restriction herein contained or the Articles of Incorporation and Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

Section 4. **Notice to Mortgagees.** The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation or Bylaws of the Association or any other applicable documents which default has not been cured within sixty (60) days.

Section 5. **Assignment by Declarant.** This Declaration may be assigned by Declarant to a successor-in-interest by written instrument executed by both parties and filed of record with the County Recorder.

Section 6. **Duration.** The easements granted herein shall be perpetual in nature. All covenants, conditions, restrictions and reservations created by this Declaration shall run with the land and shall be binding upon all parties claiming under them 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. Invalidation of any of the covenants, conditions, and restrictions of this Declaration by judgment or decree shall in no way effect any of the provisions hereof, but the same shall remain in full force and effect.

Section 7. **Amendment.** This Declaration may be amended or changed from time to time by an instrument filed in the office of the County Recorder, signed or approved in writing by the affirmative vote of not less than two-thirds (2/3) of the Owners, provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. 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, this Declaration may be amended by Declarant without approval by the other Owners so long as Declarant has any ownership interest in the Properties. Such amendments or modifications shall be effective the date the amendment or modification has been filed with the County Recorder. Notwithstanding anything contained herein to the contrary, until the City has sold all of its Lots, this Declaration shall not be amended or modified in any manner without the express written consent of the City.

ARTICLE XV
ADDITION AND REMOVAL OF PROPERTY

Section 1. **Additional Common Area.** Declarant shall have the right at any time to convey additional Common Area to the Association from time to time within the Properties. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to convey additional Common Area to the Association in the future. The Association shall be obligated to accept any additional Common Area so conveyed by Declarant and to hold and maintain the additional Common Area pursuant to the terms of this Declaration.

Section 2. **Subjecting Additional Land to Declaration**. Declarant shall have the irrevocable right to subject additional land to the terms of this Declaration at any time in the future without the consent of the Association. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration and Owners of Lots within the additional land shall automatically become Members of the Association in the same fashion as described in this Declaration and shall be subject to the same applicable terms, conditions, duties and assessments as described in this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the County Recorder. No approval of the Association, the Owners or any other person shall be necessary.

Section 3. **Removing Land from Operation of Declaration**. Declarant shall have the right now and in the future to remove any portion of the Properties from the operation of this Declaration provided that the portion so removed has not yet been platted into individual lots and a plat for that portion has not been filed of record with the County Auditor. Declarant shall signify this removal by filing an amendment to this Declaration with the County Recorder. No approval of the Association, the Owners or any other person shall be necessary.

ARTICLE XVI
LIMITATION OF LIABILITY

Section 1. Declarant shall not be liable to the Association or any Owner for damages or repairs to:

(a) Any private sidewalk, driveway, curb, stoop, patio or other concrete improvement located within the Properties, including (but not limited to) cracking or chipping that may occur due to weather conditions; or

(b) Any Living Unit beyond the express warranties set forth in the homeowner's warranty provided to the original owner; or

(c) Any appliances within any Living Unit, including, but not limited to, the furnace, air-conditioner, stove, oven, dishwasher and garbage disposal, beyond the express warranties set forth in the manufacturer's warranty provided to the original Owner.

IN WITNESS WHEREOF, the Declarant and the City have caused this Declaration to be executed as of the date first hereinabove written.

DECLARANT:

GROUND BREAKER HOMES, LLC,
an Iowa limited liability company,

By: _____
Steve Bruere, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on September 5, 2017, by Steve Bruere as Manager of Ground Breaker Homes, LLC.

By: _____
Notary Public

KALEN LUDWIG
COMMISSION NO. 741723
MY COMMISSION EXPIRES
July 13, 2018

CITY:

CITY OF NEWTON, IOWA,
a municipal corporation

By:_____
Michael L. Hansen, Mayor

Attest:

By:_____
Katrina Davis, Clerk

STATE OF IOWA, COUNTY OF JASPER:

This record was acknowledged before me on September 11, 2017, by Michael L. Hansen and Katrina Davis as Mayor and Clerk, respectively of the City of Newton Iowa.

By:_____
Notary Public

LISA A FRASIER
Commission Number 726854
My Commission Expires
February 10, 2019