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WCA

**Prepared by:** Timothy C. Hogan, Hogan Law Office, 1717 Ingersoll Ave, Ste 200, Des Moines, IA 50309  
(515) 279-9059

**Return to:** Blooming Heights Homeowners' Association, Inc., 12119 Stratford Dr, Ste B, Clive, IA 50325  
(515) 309-0705

**Legal Description:** See Pages 1 & 2 and Exhibit "A"

**Previously Recorded Documents:** Instrument Nos. 2017-07512 and 2021-01808

**AMENDED DECLARATION OF RESIDENTIAL  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLOOMING HEIGHTS**

**THIS AMENDED DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLOOMING HEIGHTS** (this "Amended Declaration") is dated July 15, 2022 and made by **DILIGENT BLOOMING HEIGHTS, LLC**, an Iowa limited liability company, "Declarant" of the Declaration of Residential Covenants, Conditions and Restrictions for Blooming Heights recorded November 1, 2017 as **Instrument No. 2017-07512** and amended as **Instrument No. 2021-01808**, all in the records of the Recorder for Warren County, Iowa (as amended collectively the "Declaration").

**WHEREAS**, pursuant to the Declaration, Declarant has established and placed certain covenants, conditions, restrictions and easements on the following described real estate (collectively the "Plat"):

Lots 1 – 41 and Outlot Y in BLOOMING HEIGHTS, an Official Plat in Norwalk, Warren County, Iowa.

AND

Lots 1 – 34 and Outlot Y in BLOOMING HEIGHTS PLAT 2, an Official Plat in Norwalk, Warren County, Iowa.

**WHEREAS**, the Declaration established the **Blooming Heights Homeowners' Association**, an Iowa non-profit corporation (the "Association"), to own, manage, operate and maintain certain improvements for the mutual and reciprocal benefit of the Owners of the Plat with authority to levy assessments necessary to operate, manage, maintain and administer the association and the improvements for the benefit of the Plat.

**WHEREAS**, the Declaration grants to Declarant during the Reservation Period the right to amend the Declaration without the approval or consent of the Association, the Owners or any other party.

**WHEREAS**, Declarant desires to amend the Declaration to subject the following described real estate (the "Additional Land") to the terms of the Declaration upon the filing of this Amended Declaration:

Lots 1 - 46 and Outlot Z in BLOOMING HEIGHTS PLAT 3, an Official Plat in Norwalk, Warren County, Iowa.

**NOW, THEREFORE**, pursuant to the authority described in the Declaration, Declarant hereby amends the Declaration as follows:

1. **Additional Land**. The Additional Land is hereby annexed and submitted to the Declaration, which real property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations and easements of the Declaration and the Owners of Lots within the Additional Land shall automatically become Members of the Association in the same manner as described in the Declaration and are hereby subjected to the same terms, conditions, duties and assessments as described in the Declaration.

2. **Outlots**. The term "Outlot" as defined and used in the Declaration is amended to include Outlot Y in Blooming Heights, Outlot Y in Blooming Heights Plat 2 and Outlot Z in Blooming Heights Plat 3, which Outlots shall be conveyed by Declarant to the Association and the Association shall hold and maintain the Outlots pursuant to the terms and conditions set forth in the Declaration.

3. **Ponds**. The existing Pond area as described in the Declaration is corrected and amended to be located upon and within the following land: Outlot Y in Blooming Heights, Lots 28-33 and Outlot Y in Blooming Heights Plat 2, and Lots 42-45 and Outlot Z in Blooming Heights Plat 3, all more particularly described and depicted in **Exhibit "A"**.

4. **Building Area Design and Construction**. Article IV of the Declaration relating to building area design and construction is amended to include the following:

S. For BLOOMING HEIGHTS PLAT 3, one story and ranch dwellings must have a ground floor finished area of not less than 1,650 square feet; one and one-half story, split-level and split foyer dwellings must have a finished area of not less than 2,000 square feet; and two-story dwellings must have a finished area of not less than 2,200 square feet. Outbuildings shall be constructed no larger than 20 x 20 square feet.

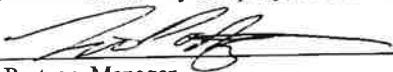
5. **Ratification**. Except as expressly amended hereby, all of the terms and conditions of the Declaration shall continue in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the undersigned has executed this Amended Declaration as of the date first written above.

**DECLARANT:**


**DILIGENT BLOOMING HEIGHTS, LLC,**  
an Iowa limited liability company

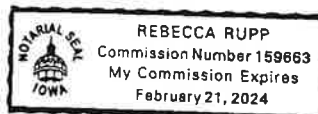
By: Diligent Development Group, LLC,  
an Iowa limited liability company, its Manager

By:   
Tim Portzen, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on July 21, 2022, by Tim Portzen,  
Manager of Diligent Development Group, LLC the Manager of Diligent Blooming Heights, LLC.

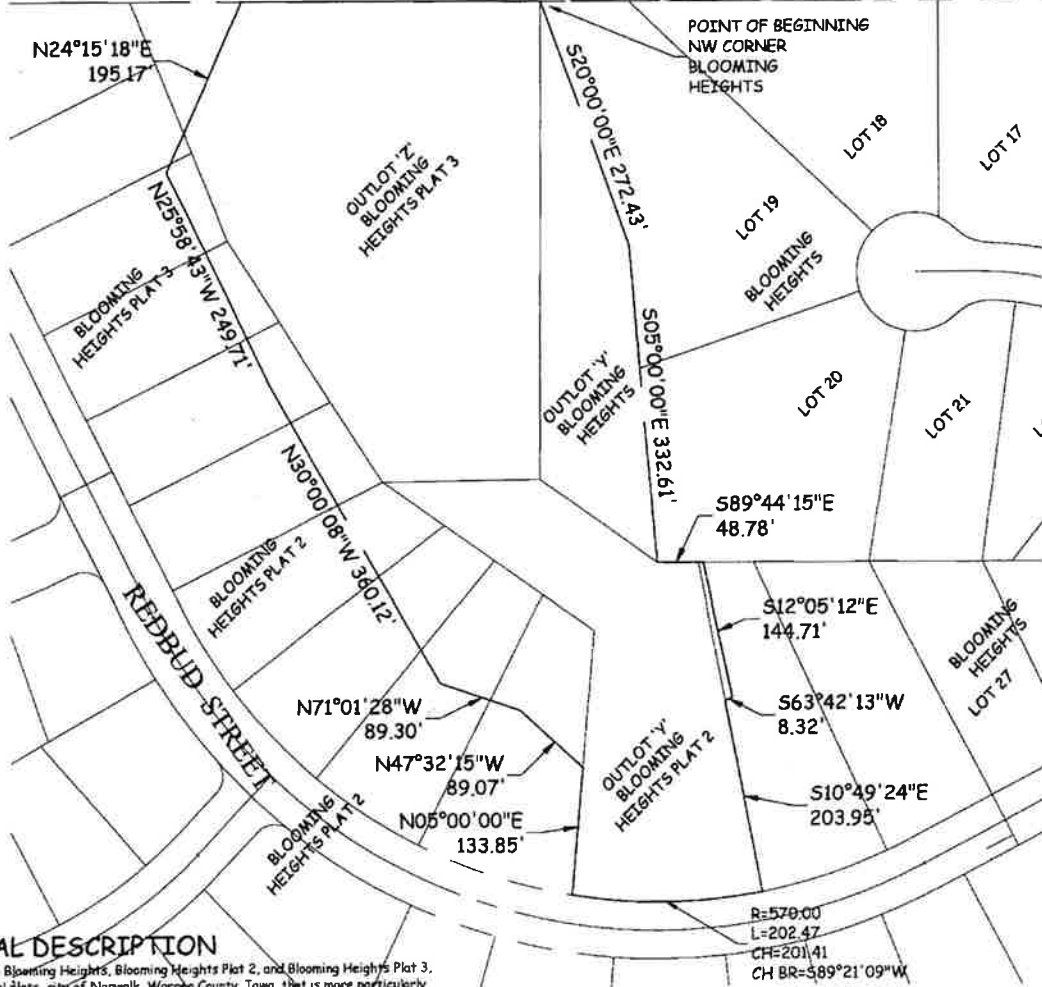
By:   
Notary Public



# EXHIBIT 'A'

## STORM WATER DETENTION & OVERLAND FLOWAGE EASEMENT

S89°44'17"E 317.08'



### LEGAL DESCRIPTION

A part of Blooming Heights, Blooming Heights Plat 2, and Blooming Heights Plat 3, all official plats, city of Norwalk, Warren County, Iowa, that is more particularly described as follows:

Beginning at the Northwest corner of Blooming Heights, an official plat, city of Norwalk, Warren County, Iowa; thence S20°00'00"E, 272.43 feet along the East line of Outlot 'Y', said Blooming Heights; thence S05°00'00"E, 332.61 feet along said East line to the Southeast corner of said Outlot 'Y', and to the Southwest corner of Lot 20, said Blooming Heights; thence S89°44'15"E, 48.78 feet along the South line of Lot 20 of said Blooming Heights; thence S12°05'12"E, 144.71 feet; thence S63°42'13"W, 8.32 feet, to the East line of Outlot 'Y', Blooming Heights Plat 2, an official plat, city of Norwalk, Warren County, Iowa; thence S10°49'24"E, 203.95 feet along said East line, to the North right-of-way line of Redbud Street, as it is presently established, and to a non-tangent 570.00 feet radius curve concave to the Northwest; thence Southwesterly 202.47 feet along said North right-of-way line, and along said curve, said curve having a chord length of 201.41 feet and a chord bearing of S89°21'09"W; thence N05°00'00"E, 133.85 feet; thence N47°32'15"W, 89.07 feet; thence N71°01'28"W, 89.30 feet; thence N30°00'08"W, 360.12 feet; thence N25°58'43"W, 249.71 feet; thence N24°15'18"E, 195.17 feet to the North line of Blooming Heights Plat 3, an official plat, city of Norwalk, Warren County, Iowa; thence S89°44'17"E, 317.08 feet along said North line to the Northwest corner of said Blooming Heights, and to Point of Beginning.



**COOPER CRAWFORD**  
& ASSOCIATES, L.L.C.  
CIVIL ENGINEERS

475 S. 50th Street, Suite 800, West Des Moines, IA 50265  
Phone: (515) 224-1344 Fax: (515) 224-1345

0	75	150
SCALE: 1"=150'		
DATE: 7-13-2022		
JOB NUMBER		
CC		
2093		

Instrument #: 2021-01808  
02/11/2021 01:25:46 PM Total Pages: 11  
XZCV COVENANTS  
Recording Fee: \$ 57.00  
Polly Wright, Recorder, Warren County Iowa



*MW*

*57cm  
WCO*

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

Property: See Pages 1 & 2 and Exhibit "A"

Previously Recorded Documents: **Instrument Nos. 2017-07512, 2017-07514, 2017-07515, 2018-03314, 2017-07622, 2017-08300, 2019-09216, and 2020-04926 and Book 97 at Page 518 and Book 97 at Page 650**

**AMENDED DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLOOMING HEIGHTS**

**THIS AMENDED DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLOOMING HEIGHTS** (this "Amended Declaration") is dated October 28, 2020 and made by **DILIGENT BLOOMING HEIGHTS, LLC**, an Iowa limited liability company, Declarant of the Declaration of Residential Covenants, Conditions and Restrictions for Blooming Heights recorded November 1, 2017 as **Instrument No. 2017-07512**, in the records of the Recorder for Warren County, Iowa (the "Declaration").

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

Lots 1 – 41 and Outlots Y and Z in BLOOMING HEIGHTS, an Official Plat in Norwalk, Warren County, Iowa.

**WHEREAS**, all of Outlot Z has been subsequently subdivided and replatted and is now known as street right-of-way for Redbud Street and Lots 1 and 34 all within BLOOMING HEIGHTS PLAT 2, an Official Plat in Norwalk, Warren County, Iowa.

**WHEREAS**, the Declaration established the **Blooming Heights Homeowners' Association**, an Iowa non-profit corporation (the "Association"), to own, manage, operate and maintain certain improvements for the mutual and reciprocal benefit of the Owners (defined below) with authority to levy assessments necessary to operate, manage, maintain and administer the association and the improvements for the benefit of the Plat.

**WHEREAS**, the Declaration grants to Declarant during the Reservation Period (defined below) the right to amend the Declaration without the approval or consent of the Association, the Owners or any other party.

**WHEREAS**, Declarant desires to amend the Declaration to subject the following described real estate (the "Additional Land") to the terms of the Declaration upon the filing of this Amended Declaration, and to impose additional covenants, conditions, restrictions and easements upon all real property which is subject to the Declaration:

Lots 1 - 34 and Outlot Y in BLOOMING HEIGHTS PLAT 2, an Official Plat in Norwalk, Warren County, Iowa.

**WHEREAS**, all of the land defined as the "easement area" encumbered by that certain Water Detention and Overland Flowage Easement between J.C.P., LC as Grantor and Declarant as Grantee recorded September 1, 2017 as **Instrument No. 2017-07514** (the "JCP Easement"), has been conveyed from Grantor to Declarant by deed recorded May 8, 2018 as **Instrument No. 2018-03314**, and therefore such easement has automatically expired, terminated and is of no further force and effect upon the recording of the deed transferring the easement area to Declarant.

**WHEREAS**, Declarant entered into that certain Facility Maintenance Covenant and Easement (defined below) wherein the Association is obligated to maintain and manage on behalf of the Owners certain storm water detention facilities to control storm water runoff originating from the Plat and other land.

**WHEREAS**, the expansion of the storm water detention facilities as a result of the subdivision and development of the Additional Land has created a need to enlarge the "easement area" of the storm water detention facilities identified in the Facility Maintenance Covenant and Easement to include additional pond area within the Additional Land and other land.

**NOW, THEREFORE**, pursuant to the authority described in the Declaration, Declarant hereby amends the Declaration as follows:

1. **Termination of Easement.** The JCP Easement is hereby terminated in its entirety and any and all rights, obligations and easements created or granted thereunder are of no further force or effect.

2. **Definitions.** Article I of the Declaration relating to the definitions of terms used in the Declaration is hereby deleted in its entirety and replaced with the following in lieu thereof:

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

- A. **"Additional Land"** shall mean and refer to any real property annexed and subjected to this Declaration.
- B. **"Accessory Structures"** shall mean and refer to other structures or improvements in addition to an Outbuilding such as dog kennels and runs, tennis courts, in ground pools and pool houses.

- C. **"Assessments"** shall mean and refer to the regular assessments, special assessments for capital improvements and operating deficits, and all other charges payable to the Association by the Owners.
- D. **"Association"** shall mean and refer to the Blooming Heights Homeowners' Association, an Iowa non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa, as amended.
- E. **"Association Responsibility Elements"** and shall mean and refer to any improvement, easement or feature whether or not fully or partially located upon any Lot, Outlot, or offsite of the Plats for which the Association is obligated to maintain for the common use and benefit of the Owners, including, but not limited to, the following:
- (i) All signs, monuments and monument signs, and similar entrance features and the landscape plantings and materials surrounding the entrance signs.
  - (ii) The landscaping berm along 50th Avenue created pursuant to Private Landscape Buffer Easements recorded November 7, 2019 as **Instrument No. 2019-09216** and May 28, 2020 as **Instrument No. 2020-04926**.
  - (iii) Outlots.
  - (iv) Private road/trail created pursuant to Easement Agreement recorded January 15, 1998 in **Book 97 at Page 518**; and Easement Agreement recorded February 16, 1998 in **Book 97 at Page 650**.
  - (v) Any sidewalk within the Outlots.
  - (vi) Ponds / Storm Water Detention Facilities, private storm sewer, drainage and overland flowage easements.
  - (vii) Any easement document filed in the records of the County Recorder requiring maintenance by the Association.
- F. **"Amended Declaration"** shall mean and refer to a separate instrument filed of record with the County Recorder that annexes and subjects Additional Land to this Declaration and may grant additional covenants, conditions, restrictions and easements as to such Additional Land, or otherwise makes amendments to this Declaration.
- G. **"Board of Directors"** shall mean the members of the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association and shall be referred to as the "Board" in this Declaration.

- H. **"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 used for the construction of one dwelling as herein permitted.
- I. **"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.
- J. **"City"** shall mean and refer to the city of Norwalk located in Warren County, Iowa.
- K. **"County Recorder"** shall mean and refer to the office of the County Recorder for Warren County, Iowa.
- L. **"Declarant"** shall mean and refer to **Diligent Blooming Heights, LLC**, and any successors and assigns acquiring all of Declarant's ownership interest in the Plats for purposes of development or improvement and who is specifically designated as the successor Declarant in an instrument executed by the immediately preceding Declarant filed of record with the County Recorder.
- M. **"Declaration"** shall mean and refer to the Declaration of Residential Covenants, Conditions and Restrictions for Blooming Heights recorded November 1, 2017 as **Instrument No. 2017-07512**, in the records of the County Recorder to which the Plats are subject, as the same may be amended from time to time.
- N. **"Facility Maintenance Covenant and Easement"** shall mean and refer to the Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement for Blooming Heights recorded November 6, 2017 as **Instrument No. 2017-07622** filed of record with the County Recorder, as the same may be amended from time to time.
- O. **"Lot"** shall mean and refer to any numbered parcel of land within the Plats which is platted for a single dwelling and such additional numbered Lots as may hereafter be annexed and subjected to this Declaration.
- P. **"Member"** shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration.
- Q. **"Outbuilding"** shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed or garden house.
- R. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot or Building Lot.
- S. **"Outlot"** shall mean and refer to any real property within the Plats to which the Association holds title, together with any improvements thereon, for the common use and benefit of the Owners. At the time of recording of this Amended Declaration, the term shall include Outlot Y in Blooming Heights and Outlot Y in Blooming Heights Plat 2. The term no longer applies to Outlot Z in Blooming Heights.



- T. **"Plans"** shall mean and refer to the site plans and building specifications containing the drawings, specifications and other documents from which the dwellings and other improvements and appurtenances thereto within a Lot are to be located, constructed, altered, demolished or removed which may include such details as workmanship, design, materials, products, type of construction, external details, color scheme, elevation, site grade, paving, landscaping, fencing, roofing, solar system, sidewalk, driveway and other similar matters.
- U. **"Plat" or "Plats"** shall mean all real property subject to this Declaration as set forth on Page 1 together with such Additional Land when annexed and subjected to this Declaration by an Amended Declaration, and shall refer to the official subdivision plats filed of record with the County Recorder, including any subsequent subdivision plats for the purpose of annexing Additional Land to this Declaration.
- V. **"Ponds"** shall mean and refer to the easement areas to be used for overland flowage and storm water detention basins together with all pipes, inlets and outlets appurtenant thereto located upon any Lot, Outlot, or offsite of the Plats for the common benefit of the Owners for which the Association is obligated to maintain under this Declaration, any recorded easement document and pursuant to the Facility Maintenance Covenant and Easement. At the time of recording of this Amended Declaration, the existing Pond area is located upon and within the following land: Outlot Y in Blooming Heights, Outlot Y in Blooming Heights Plat 2, Lots 29 – 34 in Blooming Heights Plat 2, and upon other land, all more particularly described and depicted in **Exhibit "A"**.
- W. **"Storm Water Detention Facilities"** shall mean and refer to the easement areas to be used for overland flowage, drainage and storm water detention basins together with all pipes, inlets and outlets appurtenant thereto located upon the Plats for the common benefit of the Owners for which the Association is obligated to maintain under this Declaration or any recorded easement document.
- X. **"Reservation Period"** shall mean and refer to the period of time until Declarant has sold all of the Lots and conveyed the Outlots within the Plats, during which period Declarant reserves the right to amend this Declaration, to have sole voting control and authority with respect to the Association and Board, to control architectural review, to install entrance and directional signs and monuments, to create, dedicate and repair easements, and to exercise any and all other rights and privileges under this Declaration, the Articles and the Bylaws.
- Y. Words and phrases in this Declaration, including the acknowledgement, shall be construed as in the singular or plural number, unless the context permits only one such number.
- Z. Words defined elsewhere in this Declaration shall have that meaning throughout the Declaration and not just in the Section in which such word is defined, unless

the definition expressly states otherwise. Declarant shall have the final decision as to the meaning of any defined word or undefined term used in this Declaration.

3. **Additional Land.** The Additional Land is hereby annexed and submitted to the Declaration, which real property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations and easements of the Declaration and the Owners of Lots within the Additional Land shall automatically become Members of the Association in the same manner as described in the Declaration and are hereby subjected to the same terms, conditions, duties and assessments as described in the Declaration.

4. **Outlots.** The Association shall be the owner of the Outlots and timely pay all real estate taxes and assessments levied against the Outlots. The Association shall have sole control and jurisdiction over the Outlots, and all improvements and easements located thereon. Outlot Y of BLOOMING HEIGHTS was conveyed to the Association under Warranty Deed recorded November 27, 2017 as **Instrument No. 2017-08300**. Outlot Y of BLOOMING HEIGHTS PLAT 2 shall be conveyed by Declarant to the Association and the Association shall hold and maintain such land as an Outlot pursuant to the terms and conditions described in the Declaration.

5. **Building Area Design and Construction.** Article IV of the Declaration relating to building area design and construction is amended to include the following:

Q. For BLOOMING HEIGHTS PLAT 2, one story and ranch dwellings must have a ground floor finished area of not less than 1,650 square feet; one and one-half story, split-level and split foyer dwellings must have a finished area of not less than 2,000 square feet; and two-story dwellings must have a finished area of not less than 2,200 square feet.

R. Outbuildings shall be constructed no larger than 20 x 20 square feet.

6. **Ponds and Storm Water Detention Facilities.** Article XVIII (B) and Article XXIV of the Declaration relating to the existing pond and maintenance of the same are hereby deleted in their entirety and combined and replaced with the following in lieu thereof:

**Ponds and Storm Water Detention Facilities.** The Ponds within the Plats are intended to be used to control surface water drainage and storm water detention needs of the Plats only and are not for recreational purposes. Any recreational or unauthorized use is strictly prohibited, except for fishing from the shoreline by the Owners of Lots bordering the Ponds. Nothing shall be altered in, constructed in, or removed from the Ponds or Storm Water Detention Facilities except upon consent of the Board. Except as expressly provided in this Declaration or any recorded easement document, no party (including Owners), other than Declarant or the Association, shall have the right to use or improve the Ponds or Storm Water Detention Facilities.

**Maintenance by Association.** The Association shall be responsible for maintenance of the storm water detention basin improvements relating to the Ponds and Storm Water Detention Facilities within the Plats. Such maintenance obligations shall include, but are not limited to, reconstruction, repair, replacement, inspection, grading, dredging, mowing, replacement of permitted vegetation and removal of trash, litter, debris

and obstructions to the flow of surface water. The shoreline shall be kept and maintained in a manner consistent with a natural pond edge. The dam and appurtenant structures shall be kept in good condition and state of repair through routine inspection for erosion, settlement, sinkholes, seepage, wet areas, runoff, vegetative cover, rodent damage and any other visible deficiencies. All maintenance shall be done in compliance with the plans and specifications approved by the City to meet any storm water management plan on file with the City, and as required under the Facility Maintenance Covenant and Easement.

The Association shall not be responsible for any maintenance or upkeep of the land of the Storm Water Detention Facilities or the land of the Pond area within a Lot to the shoreline (including all land within the Outlot between the Lot line to the shoreline), nor for the land between the shoreline and the Lot line of Lots abutting the Ponds (such as Lots 19 and 20 of Blooming Heights), and that responsibility shall remain with the Owner. The Association may, however, perform such maintenance should it determine in its sole discretion such maintenance is needed.

**Maintenance by Owners.** The Owner and/or occupant of each Lot encumbered with maintenance of the land of the Storm Water Detention Facilities or Ponds shall keep the land free and clear of bushes, brush, trash, litter, debris, weeds, undergrowth, objects, landscape elements, dirt fill, fences, buildings, structures, and other obstructions to the natural flow of surface water and well-maintained to promote the growth of any of ground-cover plantings, native vegetation, prairie grass or lawn grass to be mowed on a regular basis, at the Owner's sole discretion. Trees shall be trimmed or pruned regularly and treated as needed to minimize the effects of disease, pests or minor damage by wind, lightening or other natural forces. Damaged, diseased, decaying and dead trees shall be promptly removed. All plantings and maintenance shall be done in compliance with the plans and specifications approved by the City to meet any storm water management plan on file with the City.

**Responsibility for Willful or Negligent Acts.** No Owner or occupant shall obstruct or interfere whatever with the duties and responsibilities of the Association to perform its maintenance obligations relating to the Ponds or Storm Water Detention Facilities. An Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement rendered necessary by any intentional, negligent or careless act by such Owner, or by any family, guest, employee, agent, or lessee of such Owner. Any such expense shall become a special assessment and lien upon the Lot of such Owner and shall become due and payable upon demand.

**Restricted Access to Ponds.** The Pond area within the boundaries of the Lots are privately owned by the Owners of those Lots for the private use, enjoyment and benefit of the Owners of such Lots. An Owner has a right of access to the Ponds from the Owner's Lot only. No person, including the general public and other Lot Owners, shall be allowed to enter upon or access the Ponds from the Lots or from the Outlots. The general public and other Owners are not permitted access to the Ponds without being accompanied by and under the supervision of an Owner and/or occupant of a Lot that borders the Ponds.

**Use of Ponds.** The Ponds shall be used strictly in accordance with the provisions of this Declaration and shall be subject to the following restrictions:

- (a) No swimming by pets or persons shall be allowed.
- (b) No floating devices of any type or swimming platforms, trampolines, slides, or similar objects shall be permitted.
- (c) No ice houses or boathouses shall be permitted, and ice skating is prohibited.
- (d) No pier, dock or other permanent structure shall be permitted.
- (e) No electrical lines or systems shall be installed.
- (g) No lawn fertilizer shall be used or sprayed within twenty-five (25) feet of the shoreline.
- (h) No kayaks, canoes, boats, motorized or otherwise, shall be permitted.
- (i) Fishing is permitted from the shoreline by the Owners of Lots which border or contain the Pond land; however, there shall be no transporting or stocking of fish without the prior consent of the Association.
- (j) There shall be no dumping of any materials, including grass clippings, leaves or garden debris, branches, landscaping materials, ash, soil, garbage, tires, or other similar materials, into the water.
- (k) No hazardous substance, pollutant or contaminant, or hazardous waste, including, but not limited to, asbestos and/or urea formaldehyde, or any pollutants or toxic pollutants as defined by state, federal or local law shall be discharged into the water.

7. **Access Easement.** Declarant hereby covenants and agrees that all of its right, title and interest in and to that certain access easement across Lots 19 and 20 of Blooming Heights granted in favor of Declarant as Grantee for purposes of accessing Outlot Y of Blooming Heights (the Pond) under the Access Easement recorded November 1, 2017 as **Instrument No. 2017-07515** shall automatically transfer to the Association at the end of the Reservation Period.

8. **Access for Maintenance.** The Association and its agents, employees or contractors shall have the right of reasonable access for ingress and egress over, across or through each Lot for the purpose of performing its maintenance obligations of the Association Responsibility Elements and shall repair any damage to the Lot resulting from such access.

9. **Indemnification by Association.** The Association hereby indemnifies and saves the Owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage and occurring on or from the maintenance of the Association Responsibility Elements, except if caused by the act or negligence of the Owner, or by any family, guest, employee, agent, or lessee of such Owner.

10. **Indemnification by Owner.** The Owner of each Lot hereby agrees to indemnify, defend and hold harmless the Declarant, the other Owners, the Association and their heirs, administrators, successors and/or assigns, from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person, or damage to or destruction of any property caused by the condition of or in connection with accidents in the Outlots or out of the performance of any of the obligations set forth in this Declaration, except to the extent caused by the negligent or willful act or omission of the indemnified parties hereto.

11. **Covenant for Assessments.** Article XXV (D) (3) of the Declaration relating to the share of Assessments levied by the Association is amended as follows:

The Assessments levied upon and against the Lots and Owners thereof, shall be a share of the total amount of each Assessment prorated equally among all Lots in the Plats, which Assessments shall include the assessment levied for maintenance of Outlot "Y" in Blooming Heights, now allocated equally among all Lots in the Plats and no longer allocated 50% to Lots 19 and 20 and 50% to the other Lots in Blooming Heights.

12. **Conveyance of Outlots and Additional Responsibility Elements.** Declarant shall have the right at any time to convey additional Outlots to the Association or to add additional Association Responsibility Elements. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to convey additional Outlots to the Association in the future. The Association shall be obligated to accept any additional Outlot so conveyed by Declarant and to hold and maintain the additional Outlot pursuant to the terms of this Declaration.

13. **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 Owners, or any other party. 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 manner 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 Amended Declaration with the County Recorder.

14. **Assignment of Declaration by Declarant.** This Declaration may be assigned by Declarant to a successor-in-interest by an instrument executed by both parties and filed of record with the County Recorder. Upon such assignment, the initial or preceding Declarant shall have no further rights and obligations in connection with this Declaration, the Association and the Plats.

15. **Ratification.** 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 undersigned has executed this Amended Declaration as of the date first written above.

**DECLARANT:**

**DILIGENT BLOOMING HEIGHTS, LLC,**  
an Iowa limited liability company


By: Diligent Development Group, LLC,  
an Iowa limited liability company, its Manager

By:   
David A. Brown, Manager

STATE OF IOWA, COUNTY OF DALLAS:

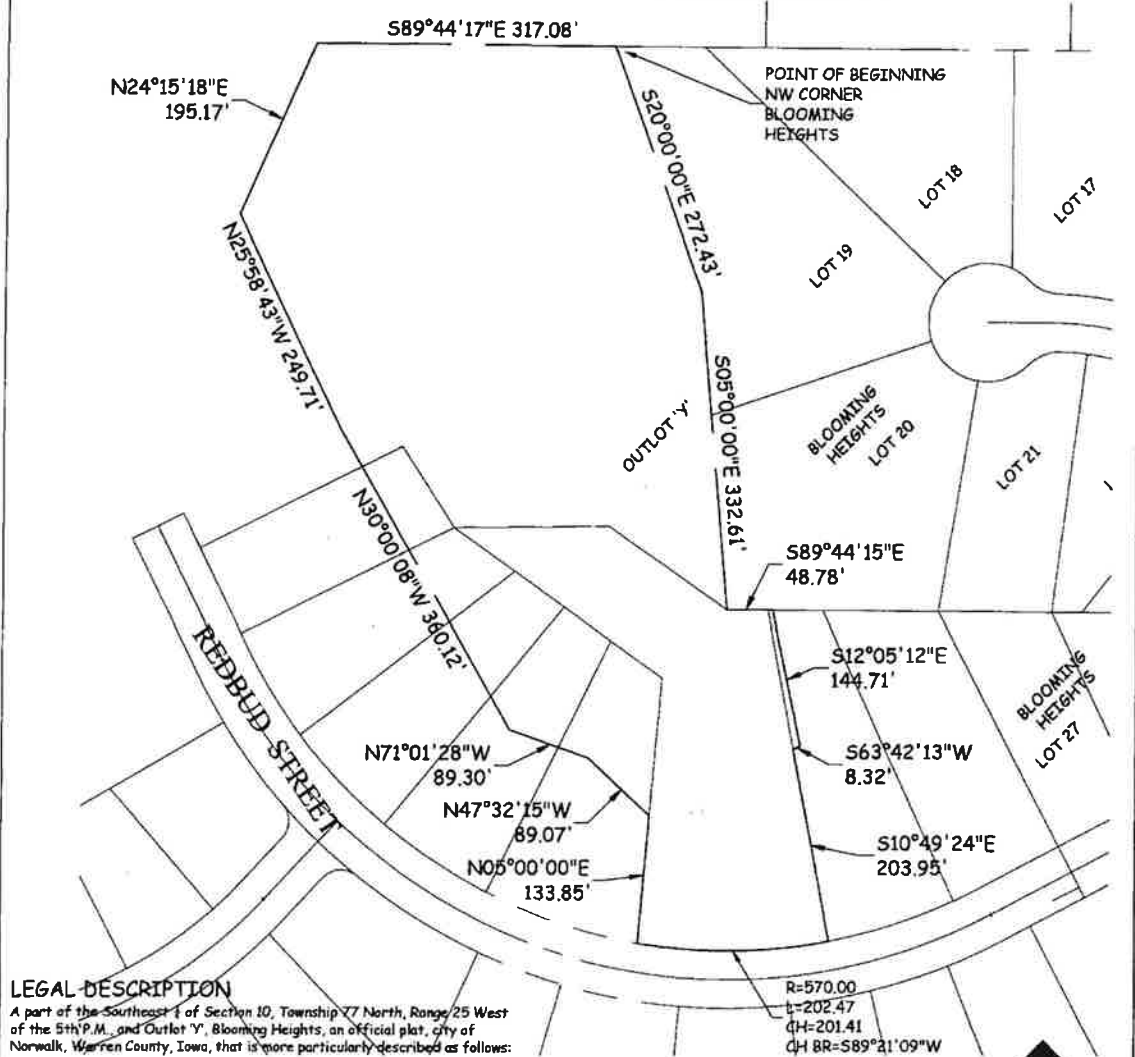
This record was acknowledged before me on January 18<sup>th</sup>, 2020, by David A. Brown,  
Manager of Diligent Development Group, LLC the Manager of Diligent Blooming Heights, LLC.



By:   
Notary Public

# EXHIBIT 'A'

## STORM WATER DETENTION & OVERLAND FLOWAGE EASEMENT



### LEGAL DESCRIPTION

A part of the Southeast ¼ of Section 10, Township 77 North, Range 25 West of the 5th P.M., and Outlet 'Y', Blooming Heights, an official plat, city of Norwalk, Warren County, Iowa, that is more particularly described as follows:

Beginning at the Northwest corner of Blooming Heights, an official plat, city of Norwalk, Warren County, Iowa; thence S20°00'00"E, 272.43 feet along the East line of Outlet 'Y', said Blooming Heights; thence S05°00'00"E, 332.61 feet along said East line to the Southeast corner of said Outlet 'Y', and to the Southwest corner of Lot 20, said Blooming Heights; thence S89°44'15"E, 48.78 feet along the South line of Lot 20 of said Blooming Heights; thence S12°05'12"E, 144.71 feet; thence S63°42'13"W, 8.32 feet; thence S10°49'24"E, 203.95 feet, to a non-tangent 570.00 feet radius curve concave to the Northwest; thence Southwesterly 202.47 feet along said curve, said curve having a chord length of 201.41 feet and a chord bearing of S89°21'09"W; thence N05°00'00"E, 133.85 feet; thence N47°32'15"W, 89.07 feet; thence N71°01'28"W, 89.30 feet; thence N30°00'08"W, 360.12 feet; thence N25°58'43"W, 249.71 feet; thence N24°15'18"E, 195.17 feet to the North line of the Southeast ¼ of Section 10, Township 77 North, Range 25 West of the 5th P.M.; thence S89°44'17"E, 317.08 feet along said North line to the Northwest corner of said Blooming Heights, and to Point of Beginning.

**COOPER CRAWFORD**  
& ASSOCIATES, L.L.C.  
CIVIL ENGINEERS

475 S. 50th Street, Suite 800, West Des Moines, IA 50265  
Phone: (515) 224-1344 Fax: (515) 224-1345

0 75 150  
SCALE: 1"=150'  
DATE: 1-27-2021  
JOB NUMBER  
CC  
2093

**Warren County, Iowa**  
**Recorded: 4/20/2018 at 3:34:13.0 PM**  
**BK: PG:**  
**Polly J. Glascock RECORDER**  
**Number: 2018-02839**  
**Fee Amount: \$22.00**  
**Revenue Tax:**

Prepared By/Return To: Katheryn J. Thorson, BrownWinick Law Firm, 666 Grand Avenue, Suite 2000, Des Moines, IA 50309.  
Ph. 515-242-2400  
Previously Recorded Documents: Book 2003, Page 11222

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**FIRST AMENDMENT OF  
DECLARATION OF RESIDENTIAL  
COVENANTS, CONDITIONS, AND RESTRICTIONS**

**THIS FIRST AMENDMENT OF DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS** (the "Amendment") is made and entered into the 20<sup>th</sup> day of April, 2018, by J.C.P., L.C., an Iowa limited liability company ("JCP") and Diligent Blooming Heights, LLC, an Iowa limited liability company ("DBH").

**WHEREAS**, JCP subjected certain property in Warren County to that certain Declaration of Residential Covenants, Conditions, and Restrictions filed in the Office of the Recorder of Warren County, Iowa on July 31, 2003, at Book 2003, Page 11222 (the "Declaration");

**WHEREAS**, DBH subjected the Blooming Heights Property (as defined below) to that certain Declaration of Residential Covenants, Conditions and Restrictions for Blooming Heights filed in the Office of the Recorder of Warren County, Iowa on September 1, 2017, as Instrument No. 2017-07512 (the "Blooming Heights Declaration");

**WHEREAS**, JCP and DBH wish to amend the Declaration by terminating the Declaration with respect to the Blooming Heights Property;

**WHEREAS**, Section X of the Declaration provides that the Declaration may be amended from time to time by the affirmative vote of not less than two-thirds of the owners of property to which the Declaration applies; and

**WHEREAS**, JCP and DBH own at least two-thirds of the property to which the Declaration applies.

**NOW THEREFORE**, JCP and DBH hereby amend the Declaration as follows:



1. JCP and DBH hereby amends the Declaration by terminating the Declaration with respect to the following described real estate:

The North 165 feet of the NE ¼ SE ¼ of Section 10, Township 77 North, Range 25 West of the 5<sup>th</sup> P.M., Warren County, Iowa, EXCEPT the West 17.00 feet of the East 50.00 fee thereof;

AND

Parcel "E" of the corrected plat of survey being a part of the N ½ of the SE ¼ of Section 10, Township 77 North, Range 25 West of the 5<sup>th</sup> P.M., Norwalk, Warren County, Iowa, as shown in Book 2014 at Page 9639.

(the "Blooming Heights Property").

2. Except as provided herein, the Declaration continues unmodified and in full force and effect.

***[Signature Pages Follow]***

IN WITNESS WHEREOF, this Amendment has been executed as of the day and year first above written.

**Diligent Blooming Heights, LLC**  
By: Diligent Development Group, L.L.C., Manager

By: [Signature]  
David A. Brown, Manager

STATE OF IOWA )  
 )ss:  
COUNTY OF Dallas )

On this 20<sup>th</sup> day of April, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared David A. Brown, a Manager of Diligent Development Group, L.L.C., Manager of Diligent Blooming Heights, LLC, an Iowa limited liability company.

[Signature]

Notary Public in and for the State of Iowa



J.C.P., L.C.

By:

David C. Kutscher, Sole Member/Manager

STATE OF IOWA )

COUNTY OF Dallas )

)ss:

On this 20<sup>th</sup> day of April, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared David C. Kutscher, the sole Member and Manager of J.C.P., L.C., an Iowa limited liability company.

Rebecca S. Eslinger

Notary Public in and for the State of Iowa



Instrument #: 2017-07512  
09/01/2017 02:07:45 PM Total Pages: 15  
XZCV COVENANTS  
Recording Fee: \$ 77.00  
Polly Glascock, Recorder, Warren County Iowa



# 77.00  
Sax  
Cng

**DECLARATION OF RESIDENTIAL COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
BLOOMING HEIGHTS**

**Recorder's Cover Sheet**

**Preparer Information:**

Karen L. Karr, 666 Grand Avenue, Suite 2000, Des Moines, Iowa 50309

**Taxpayer Information:**

Diligent Blooming Heights, LLC,  
c/o Diligent Development Group, LLC  
12119 Stratford Drive, Suite 3  
Clive, IA 50325

**Return Document to:**

Preparer

**Grantor:** Diligent Blooming Heights, LLC

**Grantee:** To Whom it May Concern

**Legal Description:** See Page 1

**DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**THIS DECLARATION** is made this 1st day of September, 2017 by **DILIGENT BLOOMING HEIGHTS, LLC**, an Iowa limited liability company (the "Declarant").

**WHEREAS**, Declarant is the owner of certain real property legally described as follows:

Lots 1-41 in BLOOMING HEIGHTS, an Official Plat, now included in and forming a part of City of Norwalk, Warren County, Iowa.

**WHEREAS**, Declarant is desirous of protecting the value and desirability of the Plat.

**NOW, THEREFORE**, Declarant hereby declares that all property within the Plat 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 Plat 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.

**I. DEFINITIONS.**

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

- A. "Plat" shall mean and refer to the real property being in Blooming Heights, an Official Plat, now included in and forming a part of Norwalk, Warren County, Iowa, as recorded.
- B. "Declarant" shall mean and refer to Diligent Blooming Heights, LLC, an Iowa limited liability company, its successors or assigns.
- C. "Lot" shall mean and refer to any of Lots 1-41.
- D. "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 dwelling as herein permitted.
- E. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot that is a part of the Plat.
- F. "Outbuilding" shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed or garden house.
- G. "City" shall mean the city of Norwalk, Iowa.
- H. "Outlot" shall mean Outlot "Y" and Outlot "Z", as shown on the Plat.
- I. "Association" shall mean Blooming Heights Homeowners' Association.
- J. "Member" shall mean and refer to those persons entitled to membership in the Association, as provided in this Declaration.

**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, single family 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 or Building Lot except those activities permitted under the terms of the applicable zoning ordinance of the City.

**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 detached Outbuilding or Accessory Structure approved in accordance with this Declaration.
- 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 as recognized and customary in the City, including (but not limited to) on-site "stick-built" construction and/or off-site modular or panelized construction.

**IV. BUILDING AREA DESIGN AND CONSTRUCTION.**

No dwelling shall be constructed, altered, or maintained or permitted to remain upon any Building Lot other than a single-family home or any Outbuilding or Accessory Structure allowed by City Zoning Ordinance. All single-family homes shall contain the following minimum square footages of finished living space and meet the following requirements:

As to Lots 1-4, 24-41:

- A. One story/ranch dwellings must have a ground floor finished floor area of not less than 1,650 square feet.
- B. One and one half story dwellings must have not less than 2,000 square feet finished area.
- C. Two-story dwellings must have a total of not less than 2,200 square feet finished area.

As to Lots 5-23:

- D. One story/ranch dwellings must have a ground floor finished floor area of not less than 1,800 square feet.
- E. One and one half story dwellings must have a total of not less than 2,200 square feet of finished area.
- F. Two-story dwellings must have a total of not less than 2,400 square feet finished area.

As to all Lots:

- G. 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 Plan review process described in Article V below.

- H. In computing total finished area, the same shall not include any finished area that has its floor below the exterior grade.
- I. In the computation of floor area and finished area, the same shall not include any porches, breezeways, or attached or built-in garages.
- J. All exterior painted portions of any dwelling, garage above-ground Accessory Structure or Outbuilding located on any Lot or Building Lot shall be finished with earth tone colors. All exterior painted portions of such improvements that are repainted shall be repainted in one of such colors, and, with respect to garages and Outbuilding, in a color that is in harmony with the dwelling located on the Lot or Building Lot, as applicable.
- K. 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.
- L. 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 or its assignee, during the Reservation Period (defined below), and thereafter by the Association, as being acceptable exterior siding. No vinyl siding shall be permitted.
- M. 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 sides (i.e. back and side elevations) may be exposed concrete, but not to exceed twenty-four (24) inches above grade and shall be painted to match the remainder of the structure. At least thirty-three percent (33%) of the front of each dwelling on a Building Lot (net of doors and windows) shall be brick, stone veneer, or stucco. All structures built in the Plat shall be shingled with materials and be in colors permitted by this Declaration and otherwise approved by the Declarant or its assignee, during the Reservation Period, and thereafter by the Association.
- N. All buildings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.
- O. If a minimum basement elevation requirement is shown on the Plat for any Building Lot, the dwelling upon such Building Lot shall have a finished basement floor elevation as shown on the Plat.
- P. Declarant or its assignee, during the Reservation Period, and thereafter, the Association, shall have the option to require, as applicable, Declarant's, assignee's or the Association's soil engineer to approve and monitor all soil excavation during excavation of basements for dwellings constructed upon any Building Lot.

**V. ARCHITECTURAL REVIEW.**

No building or structure, nor any addition or alteration thereof (including, without limitation, decks, Outbuildings and Accessory Structures), shall be constructed or substantially altered on any Building Lot,

nor shall any other act hereunder requiring the approval of the Declarant or its assignee, during the Reservation Period, or the Association, as applicable, unless and until a design plan and a site plan (collectively the "Plans") have been submitted to and approved by Declarant or its assignee, during the Reservation Period, and thereafter by the Association. 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, its assignee or the Association, as applicable, 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 insure 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 or the Association, as applicable, may terminate the requirements of this provision at any time, in its sole and absolute discretion, by recording notice of such termination.

#### **VI. GARAGES; DRIVEWAYS AND SIDEWALKS.**

- A. All dwellings shall have a minimum of a three-car attached garage. No garage doors over ten feet in height shall be permitted. Additional detached garages are permitted if they are approved in accordance with Article V, above.
- B. All dwellings shall have a portland cement concrete driveway not less than 18 feet in width and running from the City street to the garage.
- C. All Lots shall have one or more sidewalks and sidewalk ramps, as required by the City zoning ordinance or other applicable law, which will be installed by the Owner, at the Owner's cost. The Owner of a Lot shall install the sidewalks and ramps on or before, the earlier of (i) obtaining a certificate of occupancy from the City or (ii) two (2) years from the date the deed transferring title from the Declarant to the Owner is recorded. The Owner of a Lot shall be responsible for the repair and maintenance of any sidewalk or ramp abutting its Lot, including, without limitation, removal of ice and snow in accordance with applicable law. Any sidewalk or ramp required by applicable law to be installed on or abutting Outlot "Z", and not otherwise an Owner's responsibility hereunder, shall be installed by Declarant within two (2) years from the date the Plat is recorded.

#### **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 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 to the extent permitted by applicable law, including the City zoning ordinance, 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, for purposes of this Declaration, shall mean less than 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.

#### **VIII. FENCES.**

No fences or other structures 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 residential dwelling extended to the side Building Lot lines or to the extent the same would obstruct any drainage easement, landscape buffer easement or, with respect to Outlot "Y", access easement. Unless otherwise specified, or



approved in accordance with Article V, all fences shall be no more than six (6) feet in height. 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 by the Owner and, if different, any occupant of the Building Lot. No fences of any kind shall be permitted on Lots 19 and 20 if the same would restrict Declarant's or the Association's access to Outlot "Y" under the Access Easement recorded with this Declaration.

#### **IX. DECKS.**

Decks attached to a dwelling must be constructed from cedar, redwood, treated lumber or other products approved by Declarant or its assignee, during the Reservation Period, and thereafter by the Association. All decks shall be kept in good repair and attractive appearance by the Owner and, if different, any occupant of the Lot.

#### **X. SOD.**

Within sixty (60) days of completion of a dwelling upon a Building Lot, the front yard, side yards and twenty-five feet (25') of the rear yard measured from the rear of the dwelling foundation 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 by the Owner, subject to landscape approval in accordance with Article V. Prairie grass seeding may be allowed if a Plan is submitted to and approved in writing by the Declarant or its assignee, during the Reservation Period, and thereafter by the Association. If weather conditions make this requirement impossible to meet, Declarant, its assignee or the Association, as applicable, shall establish a reasonable period of time for compliance.

#### **XI. EASEMENTS.**

Easements for installation and maintenance of utilities, bike trails (if any), surface water and drainage facilities are reserved as shown on the Plat. 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 any such easement within such Owner's or its occupants' Lot(s) at all times in good repair and condition and shall neither erect nor permit erection of any building, structure or other improvement or vegetative growth of any kind within the easement areas which might interfere in any way with the use, maintenance, replacement, inspection or patrolling of any such easement or of the utility services and drainage facilities within such easements areas and related to such easements. Except as otherwise provided in this Declaration, any berm and/or swale constructed for drainage purposes shall be preserved and maintained by the Owner and, if different, the occupant of the Lot to accomplish the purposes for which it was constructed. For sake of clarity, vegetation in flowage easements, drainage ways and/or timbered areas shall not become overgrown with weeds, but may be planted in ground-cover species appropriate to the topography and land form and to the extent differing from the requirements imposed in Article X, as approved in accordance with Article V, above.

#### **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.

#### **XIII. EROSION CONTROL AND STORM WATER DISCHARGE PERMITTING REQUIREMENTS.**

The Owner of each Building Lot, whether vacant or improved, shall take, and shall cause its agents, assigns,

heirs and/or building contractors to take, all necessary precautions to prevent, stabilize and/or control erosion on their Building Lot, to prevent sediment migration and soil erosion from extending beyond the boundaries of their Building Lot, 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 Building Lot.

Any construction or earth moving on any Building Lot shall be in compliance with all statutes, laws, rules and ordinances relating to storm water discharge permitting. The Owner shall be solely responsible for its Building 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 (collectively, the "Permit") which includes such Owner's Building Lot.

During the Owner's ownership of the Lot, Owner is the sole responsible permittee for its Lot and, if different, its Building Lot, under the Permit, shall be solely responsible for compliance with the Permit and shall protect, defend, indemnify and hold the Declarant, the Association and the Owners of other Lots harmless from any and all damages, claims, liabilities, fines, penalties (administrative, civil or otherwise), cleanup costs and/or attorneys and consultant fees caused by, or in any manner related to (i) any alleged or actual discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the indemnifying Owner's Lot and/or (ii) any alleged or actual violation of the Permit or any NPDES or storm water discharge or similar rule or regulation.

#### **XIV. SIGNS.**

- A. 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 or its assignee, during the Reservation Period, and thereafter by the Association, (ii) signs which have been approved by Declarant or its assignee or the Association, as applicable, in writing not exceeding 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 per Building Lot) advertising a Building Lot or dwelling for sale, not exceeding 1,296 square inches, (iv) signs which have been approved by Declarant or its assignee, or the Association, as applicable, in writing advertising the builder or for promotional or marketing purposes, and (v) any sign installed by the Declarant or its assignee during the Reservation Period or thereafter the Association and contemplated in this Article or Declaration. In the event that any signs other than those described above shall be placed or exposed to view on any Lot, the Declarant or its assignees, and agents thereof, during the Reservation Period, and thereafter the Association and its agents are hereby given the right to enter upon such Lot and remove such signs.
- B. Declarant reserves, for itself and its assignees, during the Reservation Period, and thereafter the Association, the right to install entrance and directional signs with respect to the Plat, at locations and of design determined by the Declarant, its assignee or the Association, as applicable, in a manner consistent with the ordinances of the City. A monument sign for the development shall be allowed within the signage easement on Lot 1 (the "Sign Easement Area"). In furtherance thereof, the Declarant, for itself and its agents, and its successors and assigns, including, without limitation, the Association (the "Holder"), hereby reserves an easement, in and on the Sign Easement Area, for the placement of such monument sign, together with a right to run underground electrical conduit to said sign and a right of ingress and egress for the purposes of constructing, re-constructing, repairing, replacing, operating and maintaining a monument sign. The Owner of Lot 1 shall not construct or install any improvement within the Sign Easement Area, nor make any alteration to the same, to the extent the same would hinder the Holder's rights related thereto or the visibility of the sign, and the Holder shall have the right to remove any such

improvements and alterations, without claim of damages by, or liability to, the Owner of Lot 1. Except with respect to maintenance of the sign or restoration of the Sign Easement Area related to Holder's use of such Sign Easement Area, for which the Holder remains responsible, subject to reimbursement as contemplated under this Declaration, and notwithstanding anything in this Declaration to the contrary, the Owner of Lot 1 shall maintain the Sign Easement Area, including, without limitation, mowing and keeping landscaping free from debris and trash. Each of Holder and the Owner of Lot 1 shall remain liable for its and its agent's actions with respect to the Sign Easement Area.

**XV. TRASH RECEPTACLES.**

No trash receptacles or garbage cans shall be permitted to be placed on a Lot outside a dwelling, garage or Outbuilding, other than as necessary for regular trash collection. However, trash in proper containers and/or bags shall be allowed to be placed on a Lot outside a dwelling, garage or Outbuilding during a period commencing no earlier than twelve (12) hours prior to a scheduled pick up of such trash and ending no later than twelve (12) hours following the scheduled pick up of such trash.

**XVI. UTILITIES.**

All utility connection facilities and services shall be underground.

**XVII. TOWERS AND ANTENNAS.**

No more than one (1) exterior transmission tower, antenna or receiver dish, with a diameter of twenty-four (24) inches or less, shall be permitted on each Building Lot. No more than one (1) penetration in the dwelling on such Lot 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 any Lot, whether on the ground, on dwellings, on garages or on Outbuildings, or otherwise.

**XVIII. MAINTENANCE.**

- A. 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.
- B. The edges of the pond on Outlot "Y" shall be maintained in a manner consistent with a natural pond edge. The Owners and, if different, occupants of Lots 19 and 20 of the Plat, whether vacant or improved, shall maintain the area between their Lot line and the pond edge of Outlot "Y", including, without limitation, keeping such area well-maintained, groomed, mowed, and free of uncut weeds and debris, and shall have a right of ingress and egress on Outlot "Y" for such purposes.

**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 an Outbuilding or Accessory Structure aesthetically compatible with the dwelling on the Lot 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.

#### **XX. OUTBUILDINGS; ACCESSORY STRUCTURES.**

Each Building Lot may have no more than one (1) customary and traditional Outbuilding. Any trash receptacle, or tool shed, garden house or other Outbuilding of like nature, shall be properly screened by a privacy fence, complying with Article VIII, above, and/or shrubbery. In addition, dog kennels, dog runs, 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 to exceed ten (10) feet in height, be properly maintained and shall be located only in the rear yard of a Building Lot. Outbuildings and 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 Building Lot lines and shall not be located within 20 feet of any side or rear Building Lot line, as the minimum distance established by the zoning ordinance of the City or the minimum distance as established in the Plat, whichever is the more restrictive. Any Outbuilding and, to the extent an above-ground improvement, Accessory Structures must match the architecture and be the same or a complimentary color (which otherwise complies with this Declaration) of the home on the Building Lot; provided, that, any such Outbuilding or Accessory Structure is not required to be the same building material as the dwelling on such Building Lot as long as the building material is brick, stone veneer, or stucco or such other building material permitted under this Declaration with respect to such Building Lot (i.e. LP SmartSide or cement board siding by James Hardie).

#### **XXI. SURFACE WATER.**

The topography of the Plat 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 as otherwise referenced on the Plat; and all Owners shall have such rights and obligations with respect thereto as may be provided by such laws.

#### **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.

#### **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 Owner.

#### **XXIV. POND.**

Outlot "Y" contains a pond, the same, along with an adjacent area, to be used for storm water detention and overland flowage purposes in accordance with that certain Water Detention and Overland Flowage Easement with J.C.P., L.C. and that certain Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement for Blooming Heights Plat I, in favor of the City, as recorded with the Warren County Recorder (the "Facility Maintenance Covenant and Easement"). Except as expressly provided in this Declaration or said easements, no party (including Owners), other than Declarant or the Association, or agents of the same, shall have the right to use or improve Outlot "Y".

Further, in accordance with, and furtherance of the Association's obligations under the Facility Maintenance Covenant and Easement, no Owner shall obstruct or interfere with Declarant's or the Association's, as applicable, duties and responsibilities under the Facility Maintenance Covenant and Easement, and each Owner shall otherwise use its Lot(s) in accordance therewith. An Owner shall reimburse the Declarant or Association, as applicable, upon demand, as a special Assessment, for any maintenance, repair or replacement of the pond and related facilities rendered necessary by, or damages related to, any intentional or negligent act by Owner or any agent, representative, guest, invitee, contractor or lessee of Owner.

#### **XXV. HOMEOWNER'S ASSOCIATION.**

- A. The Association has been established to manage common requirements and association expenses, including, but not limited to, expenses for insurance, landscape maintenance, Outlot maintenance, management, common utilities, if any, snow removal, sidewalk maintenance, road and Plat entrance maintenance and legal services of the common ground in the Plat.
- B. Every person or entity who is an 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. Each Member shall be entitled to one vote for each Lot owned. If more than one person or entity holds an interest in any Lot, all such persons or entities shall be Members; however, the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast on any matter with respect to each Lot. A Member's voting rights shall be suspended for any period during which any Assessment (defined below) against such Member's Lot remains unpaid. Unless otherwise provided in the Association's Articles of Incorporation ("Articles"), Bylaws ("Bylaws") or this Declaration, the Association may suspend a Member's voting rights for any reasonable period if a Member violates the Association's rules and regulations.
- C. Subject to Declarant's rights under Article XVII and the Association's Bylaws, the Members shall elect a Board of Directors (the "Board"), as prescribed in said Bylaws (the "Board"). The Association, through its Board, shall have the rights, powers and authority to
1. enforce this Declaration;
  2. borrow money and own, mortgage, pledge and convey real property and personal property;
  3. operate, maintain, repair, reconstruct, restore, replace, or improve improvements of the Declarant or any improvements hereafter made by the Association;
  4. install, operate and maintain signage and entrance features;
  5. install, operate and maintain landscaping, landscaping features and other improvements within landscaping easements, if any;
  6. maintain and repair mailbox clusters and the related concrete pads, to the extent not maintained by an Owner or occupant of the Lot under this Declaration;
  7. install, operate, maintain and repair the Outlots and related easement areas, or any part thereof, including the pond on Outlot "Y", which maintenance obligations shall include, without limitation, those obligations set forth in the Facility Maintenance Covenant and Easement (which may include, without limitation, construction, reconstruction, repair, replacement, inspection, grading and re-grading, dredging activities necessary to comply with the Facility Maintenance Covenant and Easement and otherwise maintain the pond as a storm water detention area or such other use of the pond by the Association);

8. install, maintain and repair the berms along 50th Avenue, including, but not limited mowing and landscaping thereof;
9. make additional common improvements for the benefit of the Plat;
10. in its discretion, perform services on behalf of the Owners within the Plat;
11. hire accountants, architects, contractors, lawyers, managers, employees, and such other persons as necessary or desirable to carry out its duties;
12. purchase such insurance as may be reasonable, including, but not limited to, general liability insurance, property and casualty insurance and officers and directors coverages;
13. levy, collect, and have jurisdiction, control and possession of Assessments as hereinafter provided;
14. enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration;
15. establish rules and regulations for the use of Association property and easement areas that are established for the benefit of the Members and their guests and invitees, with such rules and regulations including remedies and the imposition of reasonable fines for the violation of such rules and regulations;
16. establish such procedures and policies as may be necessary or deemed desirable to provide for the general welfare of the Owners, including the power to make variances in this Declaration; and
17. do such other things as are reasonable or necessary to carry out its obligations hereunder or under any agreement with any Owner, or such other power, right and authority set forth in the Bylaws of the Association, as may be amended from time to time.

D. Covenant for Assessments.

1. Declarant hereby covenants, and each Owner of a 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 (i) regular assessments or charges and (ii) special assessments for capital improvements and operating deficits, and other special assessments, as provided in this Declaration (the "Assessments"). The Assessments and any other charges against the Owner set forth elsewhere in this Declaration, together with interest, costs and reasonable attorney's fees shall be a charge on the Lot(s) of such Owner and shall be a continuing lien upon such Lot(s) against which each such Assessment or charge is made senior to all liens except the first mortgage of record, any ad valorem taxes, and any special assessments levied by the City. Such Assessment or charge, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot(s) at the time when the Assessment or charge fell due. The personal obligation for delinquent Assessment or charge shall not pass to said Owner's successor in title unless expressly assumed by them.
2. The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Plat and for the purpose of carrying out the general duties and powers of the Association, including, but not limited to operation, maintenance, repair, reconstruction, restoration, replacement, or alteration of the Outlots and Declarant's improvements or the improvements hereafter constructed by the Association as provided in this Declaration, insurance coverage of the Association and its

property, any legal or other costs of enforcement of this Declaration, and for such reasonable reserves as the Board deems necessary. In addition to the regular Assessments, the Association may, at any time, levy a special Assessment to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, which the Association is required to maintain, or for operating deficits that the Association may from time to time incur. In making any such Assessment, 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.

3. Except as otherwise provided in this Declaration, the Assessments levied upon and against Lots and the Owners thereof, shall be a share of the total amount of each Assessment prorated equally among such Lots subject to assessment. Notwithstanding the foregoing, the Owners of Lots 19 and 20 shall each be responsible for 25% of any Assessments related to the Association's maintenance of Outlot "Y", with the remaining 50% of such Assessments prorated equally among the remaining Lots of the Plat. Regular Assessments shall be based on an annual budget of common and operating expenses and the Association's cash requirements for the fiscal year, including, without limitation, salaries, wages, payroll and other taxes, legal and accounting fees, working capital fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power and similar amounts, and any reserve for contingencies or replacements, in an amount determined by the Board, taking into account any surplus or deficit from the current or prior fiscal year. The annual budget shall be prepared by the Board and approved by the Association. If the Association disapproves a proposed annual budget, the annual budget for the current fiscal year shall remain in effect until the Association's adoption of a new annual budget. The initial regular Assessment, per Lot, shall be determined after the initial annual budget (or prorated annual budget) is adopted and effective, with any such amount being payable on or before December 31 of the year the first annual budget is adopted, for the then current calendar year (prorated for any partial calendar year an Owner other than the Declarant owns the respective Lot), and, with respect to any subsequent annual budget, on December 31 of each year thereafter, for the following calendar year subject to the following sentence. In no case shall the Declarant be required to pay any Assessment with respect to any Lot it owns. 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 on the Association as of the date of its issuance.
4. Notice of all Assessments may be given by mail, addressed to the last known or usual post office address of the holder of legal title of a Lot and deposited in the United States mail with postage prepaid, or may be given by posting a brief notice of the Assessment upon the dwelling located on any Lot.
5. Except as otherwise expressly provided in this Declaration, every Assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided, unless the Assessment by its own terms provides for payment in monthly, quarterly semi-annual, or annual installments, in which case each such payment shall be due as stated in such notice. From and after the date when said payment is due, it shall bear interest at lesser of (i) the rate of twelve percent (12%) per annum, or (ii) the maximum rate allowed by law, until paid and such payment and interest shall constitute a lien upon the applicable Lot(s) and said lien shall continue in full force and effect until the Assessment is fully paid. The Board may also impose a late charge in such amount as it shall establish from time to time and set forth in any notice of Assessment to defray the Association's administrative costs associated with and collecting delinquent assessment payments. Notwithstanding any other provision herein, the Association may bring an

action at law against the Owner personally obligated to pay such Assessment, 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 such Assessment, the cost of preparation, and filing the petition in such action including reasonable attorneys' fees. No Owner of a Lot may waive or otherwise be relieved of liability for the assessments provided for herein by non-use of the common areas or facilities or abandonment of its Lot.

6. At any time after the passage of the resolution levying an Assessment and its entry in its minutes, the Board may, in addition, execute and acknowledge with respect to any Lot and record with the Warren County Recorder, and the Board may, upon payment, cancel or release any Lot from the liability of Assessment (as shown by recorded instrument) by executing, acknowledging and recording (at expense of the Owner of the Lot affected), a release of such Assessment with respect to any Lot affected, and the Board shall cause to be noted from time to time in the minutes of their proceedings, the payment made on account of assessments.
7. If any Lot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien except that Assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of Assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to Assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All Assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

#### **XXVI. ENFORCEMENT OF COVENANTS.**

The Declarant, the Association 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, the Association or Owner prevails in any such action. No delay or omission of the Declarant, the Association or an Owner, as applicable, in exercising any rights, power or remedy herein shall be construed as a waiver thereof or acquiescence therein. No right or action shall accrue and no action shall be brought or maintained by anyone whomsoever against the Declarant or its successors or assigns, or their respective agents or representatives, for or on account of any action or inaction taken or not taken thereby in connection therewith.

The Plat shall also be subject to any and all rights and privileges of the City or Warren County, Iowa (the "County"), now held or hereafter acquired, by dedication or conveyance, or by reason of the platting and



recording of the Plat, or by law. Wherever there is a conflict between this Declaration and the zoning ordinance or law of the City, County, or State of Iowa, the more restrictive shall be binding.

#### **XXVII. 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 or Outlot. 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 and the Outlots, it may make amendments or modifications to this Declaration without the consent of any other Owners or other party (the "Reservation Period"). Such amendments or modifications by the Declarant shall be effective the date the amendment or modification has been filed with the County Recorder. Additionally, during the Reservation Period, Declarant, without the further consent of any Owner or any other party, shall have the absolute right to form the Association and adopt governing documents for the same; to appoint, remove and replace the officers and directors of the Board; and to create, dedicate and repair easements for drainage, drainage tiles or other utility purposes within any Lot. Notwithstanding anything herein to the contrary, this Article and Article XXI shall not be amended or terminated without prior written approval of the City.

#### **XXVIII. 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. If the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then such terms shall be reduced to a period of time which shall not violate the rule against perpetuities under Iowa law, and as shall be determined by the court as being reasonable

#### **XXIX. SEVERABILITY.**

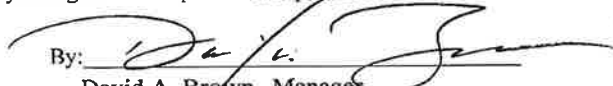
In the event that any one or more of the foregoing covenants, conditions or restrictions shall be declared for any reason by a court of competent jurisdiction to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants,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

[Signature Page Follows]

IN WITNESS WHEREOF, this Declaration of Residential Covenants, Conditions and Restrictions, was made the date first written above by the Declarant.


**DILIGENT BLOOMING HEIGHTS, LLC,**  
an Iowa limited liability company

By: Diligent Development Group, L.L.C.

By:   
David A. Brown, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on September 1, 2017, by David A. Brown, Manager of Diligent Development Group, L.L.C., manager of Diligent Blooming Heights, LLC, an Iowa limited liability company.

By:   
Notary Public  
My commission expires 10/21/17

