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JULIE M. HAGGERTY RECORDER  
File# 2019-00012776

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Prepared by/Return to: Kathleen Law, 700 Walnut, Suite 1600, Des Moines, Iowa 50309-3899; 515-283-3116

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR HARVEST RIDGE**

This Declaration of Covenants, Conditions, Easements and Restrictions for Harvest Ridge (the “Declaration”), is made this July 26, 2019, J DEV, LLC, an Iowa limited liability company (“JDEV”).

**WITNESSETH:**

**WHEREAS**, JDEV is the owner of Lots 1-51, inclusive, and Outlots W and X in Harvest Ridge Plat 1, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa (all Lots, including outlots, but excluding public street lots in Harvest Ridge Plat 1 are the “Addition”);

**WHEREAS**, Declarant desires to develop the Lots as a single-family home community; and

**WHEREAS**, Declarant desires to establish covenants, conditions, easements and restrictions governing the Lots for the benefit of the Owners and to provide for the Association to operate and maintain Common Elements of the Addition.

**NOW, THEREFORE**, Declarant hereby publishes and declares that all Lots shall be held, sold and conveyed subject to the following covenants, conditions, easements, restrictions, limitations and obligations, all of which are for the purpose of protecting the value and desirability of the Addition, and all of which shall run with the land and shall be a burden upon and a benefit to any and all parties acquiring or owning any right, title or interest in any part thereof, and their heirs, successors, assigns, grantees, executors, administrators, and devisees.

**ARTICLE I**

**INTENT; DEFINITIONS**

**1.01 Intent.** It is the intent of this Declaration to provide covenants, conditions and restrictions to ensure the proper use and appropriate development of Improvements to each Lot. It is further the intent to provide for the Association to perform the operation, maintenance, repair, replacement, alteration, improvement or modification of the Declarant Improvements.

**1.02 Definitions.**

- (a) **“Association”** shall mean Harvest Ridge Ankeny Homeowners Association, a nonprofit corporation organized pursuant to Chapter 504 of the Code of Iowa, and its successors and assigns.
- (b) **“Association Responsibility Elements”** shall mean the following: Outlot “Y” and Outlot “Z” in Harvest Ridge Plat 1, an Official Plat, now included in, and forming a part of the City of Ankeny, Polk County, Iowa.
- (c) **“Board”** shall mean the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.
- (d) **“City”** shall mean the City of Ankeny, Polk County, Iowa.
- (e) **“Common Elements”** shall mean those items installed and managed by the Declarant and the Association, including, but not limited to, the Declarant Improvements.
- (f) **“Declarant”** shall mean JDEV, and its successors and assigns pursuant to Section 6.19 of this Declaration. JDEV shall be the sole voting member so long as it is a Declarant pursuant to this section.
- (g) **“Declarant Improvements”** shall mean those Improvements Declarant is to construct within the Addition, including, but not limited to, the Association Responsibility Elements and any additional Improvements that Declarant chooses to construct and deliver to the Association for continued operation, maintenance, repair, replacement, alteration, improvement or modification.
- (h) **“Declarant/Owner Remedies”** shall be as defined in Section 6.01 hereof.
- (i) **“Improvements”** shall mean and include private street, parking areas, sidewalks, fences, signs, the private street, landscaping and any structure of any type or kind, and all additions to any of the foregoing.
- (j) **“Lot”** shall mean Lots 1-51, inclusive, in Harvest Ridge Plat 1, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa.
- (k) **“Occupant”** shall mean an Owner and any person from time to time entitled to use and occupy any building, or any part of any building on a Lot, under any lease, deed, license or other instrument or arrangement by which such person has acquired

rights with respect to the use and occupancy of any building or part of a building on a Lot.

- (l) **“Owner”** shall mean the person or persons who from time to time collectively hold the entire fee title to any Lot, including buyers under executory contracts of sale (but shall not include any person who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such loan documents).
- (m) **“Recorded Plat”** shall mean the subdivision plat of Harvest Ridge Plat 1 as recorded in the Office of the Polk County Recorder.
- (n) **“Unit”** shall mean the dwelling constructed on any Lot.
- (o) **“Zoning Ordinance”** shall mean the zoning ordinances of the City of Ankeny, Iowa.
- (p) Words and phrases in this Declaration, including the acknowledgment, shall be construed as in the singular or plural number, unless the context permits only one such number.
- (q) 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.

**ARTICLE II**

**GENERAL USE RESTRICTIONS AND BUILDING SPECIFICATIONS**

The Lots shall be held, occupied, sold and conveyed subject to the following use restrictions and building specifications, as well as those restrictions set forth elsewhere in this Declaration:

**2.01 Single-family Residence.** The use of all Lots shall be limited to single-family residential use and shall be developed with not more than one single-family dwelling each, and may be developed only with such other uses of land or structures customarily incidental and subordinate to the single-family residential use as permitted by the City of Ankeny Zoning Ordinance, unless such uses or structures are otherwise regulated or prohibited by this Declaration. No full-time or part-time business activity may be conducted on any Lot or in any building or structure constructed or maintained on any Lot, except to the extent of a home occupation permitted by the City of Ankeny Zoning Ordinance, and except that home builders may maintain model homes during construction. Construction must be completed within nine (9) months from the date of the issuance of the building permit.

**2.02 Architectural Standards.**

- (a) Development Approval of Declarant. Lot Owners or builders must provide Declarant, prior to commencement of construction, architectural plans showing

elevations from all compass directions and a comprehensive list of building materials for all exterior construction, including decking materials.

- (b) Exterior Foundations. Exposed foundations must be painted to blend with exterior wall finishes or be of stone, stone veneer, brick, or the equivalent.
- (c) Siding. Siding material variations on the elevation for accent purposes are encouraged, but the overall character and predominant siding must be consistent on all elevations of the structure. Siding shall not have a reveal of greater than eight inches (8"). Exterior colors shall be finished with an earth-tone conservative color design. No bright colors of any kind are permitted. A minimum of twenty-five percent (25%) of the front elevation of the dwelling on each Lot shall be covered with a brick, stone, stone veneer or stucco, unless otherwise approved in writing by Declarant. Dwellings located on the Recorded Plat must be constructed with a cement board siding or similar hardboard siding (commonly referred to as "Hardie Plank," "James Hardie Siding," or "LP Smartside"), unless otherwise approved in writing by Declarant.
- (d) Roof Materials. The pitch of the roof on all dwellings must be a minimum of 6/12, unless otherwise approved in writing by Declarant. Notwithstanding the foregoing, Contemporary/Transitional home styles and dwellings will be allowed to have a pitch of the roof of 4/12 or 5/12; provided, however, that such dwellings also include: (i) three-foot (3') overhangs, (ii) Hip roof and (iii) two (2) or more ceiling heights incorporated into the plan, with height variations of two feet (2') or more. All roof materials shall be slate, tile, cedar shakes, or asphalt composition shingles. Shingle colors shall be muted earth tones and shall be compatible with, and complimentary to, the exterior materials and colors of the building structures.
- (e) Garages and Driveways. All residences shall include an attached garage having space for not less than three (3) automobiles. All driveways must accommodate three (3) cars off-street and must be constructed of concrete. Notwithstanding anything herein to the contrary, Declarant may approve a larger garage size than indicated in this section upon the submission of plans for such garage. Any such approval shall be in writing by Declarant.
- (f) Minimum House Sizes. All Units shall contain a minimum square footage of living space exclusive of attached garages, breezeways, porches and finished basement areas as follows:

**For Lots 15-23, inclusive, in Harvest Ridge Plat 1:**

1. One-story dwellings must have a minimum of two thousand (2,000) square feet of finished area directly under the roof.
2. One and one-half story dwellings must have a finished floor area of at least two thousand two hundred fifty (2,250) square feet.

3. Two-story dwellings must have a finished floor area of at twenty-five hundred (2,500) square feet.

**FOR LOTS 1-14 and 24-51, inclusive in Harvest Ridge Plat 1**

1. One-story dwellings must have a minimum of one thousand five hundred (1,500) square feet of finished area directly under the roof.
  2. One and one-half story dwellings must have a finished floor area of at least one thousand seven hundred fifty (1,750) square feet.
  3. Two-story dwellings 2 must have a finished floor area of at least one thousand nine hundred (1,900) square feet.
- (g) Decks and Porches. Decks attached to each house should be built from materials similar to those used on the house. Unpainted and/or un-finished natural wood decks, though appropriate for rear yard spaces, are not acceptable as front entry porches. Entry porches should be designed as integral, yet dominant, features that invite entrance to the dwelling. Columns supporting porch roofs should be massive in scale. Built-up box columns or tapered round columns are encouraged. Handrails shall match the architectural style of the home. No wood steps to front entry porches are permitted.
- (h) Building Elevation and Drainage Standards. The finished grades for houses constructed on each Lot shall be established to permit positive drainage away from such house and shall match the final grades per the Recorded Plat and final engineered drawings.
- (i) Development Approval of Declarant. Owners, builders or developers of Lots must secure Declarant's written approval of items (a) through (h) of this section prior to start of construction on any Lot. It shall be the sole responsibility of Owners, builders, or developers to submit the plans to Declarant prior to construction.
- (j) Successor to Declarant. If at any time, Declarant no longer owns any Lots in Harvest Ridge Plat 1, the Owners of Lots in Harvest Ridge Plat 1 may elect an architectural standards committee comprised of Owners of Lots in Harvest Ridge Plat 1 to fulfill the obligations of Declarant stated in this section.

**2.03 Landscaping**. All Lots shall be sodded, including the front, side and rear yards. Initial landscaping must include a minimum of four (4) two inch (2") caliper trees, two in the front yard and two in the rear yard. All sodding and landscaping shall be completed upon issuance of a certificate of occupancy and thereafter maintained, but in no event shall this be more than twelve (12) months from the date of the issuance of the building permit.

**2.04 Fences**. No fences, walls, hedges or barriers shall be permitted upon Lots or adjoining property lines except as follows:

- (a) Walls, fences, or hedges along rear property lines and side property lines shall not exceed six feet (6') in height.
- (b) The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. No chain link fence, including a chain link fence around a dog run, shall be permitted unless it is black vinyl clad fence. All fences shall be kept in good repair and attractive appearance.
- (c) No fence shall be built forward of the centerline of the house built on a Lot. All fences shall be wood, wrought iron, vinyl, or vinyl clad chain link. All wood fences shall be natural in color, stained, or painted in soft, earth tone colors so as to blend in with the terrain. All vinyl fences shall be black, white or soft earth tone colors.
- (d) Notwithstanding anything in this Declaration to the contrary, no Lot Owner shall have the right to erect a fence within or across any easement area shown upon the Recorded Plat without the prior consent of the City of Ankeny or the utility company or companies for whose benefit such easement runs. Any fence erected within or across an easement area without such consent may be taken down by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Lot Owner to restore or repair such fence.

**2.05 Utility Meters.** Utility meters shall be hidden architecturally or through the use of remote reading devices.

**2.06 Mailboxes.** If required by the City of Ankeny, Iowa ordinances, Declarant shall install a "cluster-style" mailbox(es) to serve this block substantially in accordance with the requirements of such ordinances, which mailbox(es), upon installation, shall become the property of the United States Postal Service without any further deed or transaction. Thereafter, the United States Postal Service shall maintain, repair and replace said mailbox(es). If the United States Post Office fails to maintain, repair or replace said mailbox(es), then the owner(s) of each Lot may erect individual mailboxes in the public right-of-way adjacent to their property (or across the street from the Lot on the side of the street on which mail delivery is made) such that the front of the mailbox is at least six inches (6") back from the curb. The mailbox supports for such individual mailboxes shall be constructed of black decorative metal, brick or wood stained in colors similar to the home exterior and shall be installed in such a manner so as not to lean or tilt.

**2.07 Playhouse and Utility Buildings.** Playhouses, utility buildings, storage sheds or other similar structures shall be permitted, provided that the exterior and the roof of any such structure shall be constructed of the same material, have the same roof pitch, color and appearance as the residential dwelling on the same Lot and shall be located only in rear yards. No such structures shall be located within fifteen feet (15') of any rear or side lot line of such Lot. All such structures shall be in compliance with City of Ankeny codes and regulations.

**2.08 Utilities.** All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground. No private wells or septic systems shall be permitted on any Lot.

**2.09 Security Lighting.** Security lighting for driveways, parking and other areas shall be designed, located and directed in a fashion that will avoid direct lighting onto adjoining Lots.

**2.10 Sidewalks.** Per City of Ankeny code and regulations, sidewalks are required along public streets. The Lot owner shall be responsible for construction of the public sidewalk along each street frontage according to City specifications. Owners of corner Lots shall install sidewalks parallel to all street frontages. The Declarant has no obligation to any Lot Owner to install sidewalks. Sidewalks shall be constructed within one (1) year after the sale of any Lot or at the time of occupancy of any dwelling on the Lot, whichever occurs first. No exceptions to this rule shall be allowed unless granted by the Declarant in writing.

**2.11 Garbage Cans and Equipment.** No trash receptacles, garbage cans or recycling bins shall be located upon a Lot unless hidden by an attractive screen of suitable height, or unless sunken to ground level in a hole lined with permanent cribbing, except that garbage cans, trash sacks, recycling bins, yard refuse bags and other materials for collection by an authorized refuse collector may be placed at the pickup area designated by the City or its authorized refuse collection company on the day before collection and may remain until the evening of the day of the scheduled collection of the same. Items such as compost containers, clotheslines, lawn or garden equipment, building materials and other similar items shall be placed out of public view. Firewood shall not be stored on the front side of a house. Stacked firewood in excess of 4' long by 3' high shall be adequately screened from view and must be stacked in the rear yard and be at least twenty feet (20') from any rear or side yard Lot line. Only retractable or collapsible clotheslines are permitted. Such clotheslines shall be located in the rear yard area and shall not be visible from the street. All clotheslines shall be retracted or collapsed when not in use.

**2.12 Automotive Repair Prohibited.** No automotive repair or rebuilding or any other form of automotive manufacture, whether for hire or otherwise, shall occur on any lot. However, the owner of any Lot may work on any vehicle owned by said Owner inside the garage out of public view.

**2.13 Parking, Storage, Tents, Trailers and RV's.** No tent, trailer, boat, camper, snowmobiles, motorcycles, four or three wheelers (ATV), motor home, or truck rated larger than 3/4 ton or other movable or temporary structure or enclosure shall be maintained or parked on any Lot or street for more than a cumulative of seven (7) days in any calendar year.

**2.14 Temporary Structures/Mobile Homes.** No building or structure of temporary character and no trailer, basement, tent, shack, garage or outbuilding shall be used at any time as a residential dwelling on any Lot, either temporarily or permanently. No home or other building shall be moved onto any Lot from outside the development. All homes constructed in this development shall be constructed on-site, and no manufactured or modular housing or mobile homes shall be permitted at any time.

**2.15 Swimming Pools/Hot Tubs.** Below-ground swimming pools and hot tubs are allowed, subject to the area being fenced according to the fencing requirements in Section 2.04, and any hot tubs being skirted in wood. No above-ground swimming pools shall be permitted on any Lot.

**2.16 Satellite Dish.** Satellite dishes or parabolic devices in excess of twenty-four inches (24") in diameter used to receive television or other signals from satellites shall not be permitted. The satellite dishes or parabolic devices shall be mounted on the rear elevation or the rear half of the side elevations only. In no event shall a satellite dish or parabolic device be mounted on the front elevation or the front half of a side elevation, or located forward of the centerline of the house.

**2.17 Exterior Animal Houses/Invisible fences.** Animal runs shall not be permitted, unless they are located at the rear of the house or garage and extend toward the rear of the Lot from that portion of the house or garage which is closest to the rear Lot line. Any animal house shall have the same external appearance, color and roof materials as the home situated on the Lot. No animal house shall exceed twenty (20) square feet in area.

**2.18 Towers and Antennas.** No extension towers or antennas of any kind shall be constructed or maintained on any Lot or on the exterior of the residence.

**2.19 Noxious Activities/Livestock.** No noxious or offensive activity, noise or odors shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance or nuisance, either temporarily or permanently. No animal, livestock, pigs or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats and other small, commonly accepted domestic pets may be kept so long as they are not kept, bred or maintained for commercial purposes or sale to the public. All animals shall be tied, kept on a leash, fenced, confined by an underground electrical fence or kept in an animal run at all times.

**2.20 Maintenance of Lots & Improvements.** The owner or person in possession of any Lot, whether vacant or improved, shall keep or cause to be kept all buildings, fences and other structures and all landscaping located on their property in good repair and shall keep the Lot free of debris. The Lot shall be mowed so that the grass or weeds do not exceed six inches (6") in height.

**2.21 Construction Clean Up and Maintenance.** Lot owners and their contractors are reminded that construction sites are to be kept clean. Weekly cleanup of trash and debris is required. The street is also to be kept free of debris and mud. The installation by the Lot owner of silt fences or equivalent erosion control is required on the downhill property line(s). The Lot Owners are responsible for their contractors and subcontractors. If a site is found to be in an unacceptable condition, the Lot Owner will be notified by phone and/or letter of violations. Lot Owners will have three (3) days to respond before the work is performed by others and the cost thereof assessed to the Lot Owner. Such cost shall be immediately due upon demand, and shall bear interest at the rate of twelve percent (12%) per annum until paid in full. Such cost, and the accrued unpaid interest thereon, shall become a lien upon said Lot upon the filing of an affidavit in the office of the Recorder for Polk County, Iowa, setting forth the notice, the failure of the Lot Owner to cure such default, the work performed by or on behalf of the person other than the Lot Owner, and the cost thereof.

**2.23 Damage or Destruction of Improvements.** In the event any residence or other structure constructed on a Lot is damaged, either in whole or in part, by fire or other casualty,



said Residence or other structure shall be rebuilt or remodeled within ninety (90) days from date of damage or destruction to comply with this Declaration; or in the alternative, if the residence or other structure is not to be rebuilt, all remaining portions of the damaged structure, including the foundation and all debris, shall be removed from the Lot within thirty (30) days of damage or destruction, and the Lot shall be restored to its natural condition existing prior to the construction of the Residence or other structure.

**2.24 Sales Office.** Declarant reserves the right to maintain one or more Lots as a model or a sales and display office for itself, for its marketing firm, or for any of the home builders who purchase lots from Declarant; display or post signs of any type or size which are a part of the development and marketing of the Recorded Plat; and to have agents and employees equipment and material on any Lot used as a model or sales office.

### ARTICLE III

#### EASEMENTS AND ENCROACHMENTS

##### **3.01 Easements and Encroachments.**

(a) General Easements. Each Lot shall be subject to the following easements in favor of the Association and the other Owners:

- (1) Each Lot is burdened with an easement of ingress and egress for construction, maintenance, repair and replacement of Association Responsibility Elements by the Association and the Declarant.
- (2) Each Lot is burdened with an easement for surface drainage for the benefit of all other Lots.
- (3) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon the Recorded Plat.

(b) Drainage, Utility, Sewer and Other Easements.

As may be noted on the Recorded Plat, Declarant may reserve certain areas of the Lots for easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electric and other utility services, (including all lines, pipes, wires, cables, ducts, etc.) to the Units constructed on the various Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such utility easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant and the Association to provide for and maintain appropriate drainage.

In addition, Declarant has entered into an agreement with the City entitled "Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement" wherein Declarant, on behalf of the Owners of some or all of the Lots, has agreed to construct and maintain a storm water management facility consisting of the Association Responsibility Elements, and has agreed to appropriate easements required to install and maintain said storm water management facility. Pursuant to that agreement, the Association will be responsible for the ongoing repair, maintenance and replacement of the Association Responsibility Elements. The Association shall also be responsible for complying with all inspection and reporting requirements imposed by the City.

(c) Additional Easement Rights of the Declarant.

Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise leave the location of any drainage, utility, and sewer easement and to grant such further easements, licenses and rights of way, temporary or permanent, exclusive or nonexclusive, surface or otherwise, as Declarant may deem necessary or appropriate for ingress, egress, utility and similar purposes on or within any Lot or Lots. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement or other easement, license or right-of-way by written instrument or amended plat recorded in the Office of the Recorder of Polk County, Iowa and any Owner shall take title of its Lot subject to the right and easements reserved herein; provided, however, the rights reserved in this Section 3.01(c) shall not be exercised in a manner that unreasonably and adversely affects any building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or that unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section 3.01(c) shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Lot.

(d) Easement for Signs and Construction Job Trailer.

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, and park and use a construction job trailer within the Addition as Declarant deems reasonably necessary.

(e) Encroachment on Lots.

If, by reason of the location, construction, settling or shifting of a building or any part of a building containing a Unit upon 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. Upon written demand from the Owner of the

Encroaching Unit, the owner of the Lot upon which said Unit encroaches shall deed to the Owner of the Encroaching Unit that portion of the Lot upon which the Encroaching Unit is located. The deed shall be by quit claim deed free and clear of any mortgages and encumbrances. All costs of abstracting, releases of mortgages, recording fees, engineering fees and legal fees shall be paid by the owner of the Encroaching Unit.

(f) Driveways and Access for Lots.

All vehicular traffic on the streets and roads in the Addition shall be subject to the provisions of the applicable laws of the State of Iowa, Polk County and the City concerning operation of motor vehicles on public streets. Only drivers licensed to operate motor vehicles by the State of Iowa or by any other state in the United States may operate any type of motor vehicle in the Addition. All vehicles of any kind and nature that are operated on the streets in the Addition shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Addition.

(g) Sidewalks.

There is hereby reserved and granted an easement for the benefit of each Lot served by a sidewalk and pedestrian walkway located partially or wholly on the Lots. This easement is for the purpose of allowing pedestrian access from the public streets to the Lot served by such sidewalk or pedestrian walkway. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walkway that would impair the use or access by the Lot Owner that such sidewalk or pedestrian walkway serves.

(h) Association Easement. Declarant hereby grants to the Association an easement of ingress and egress onto all Lots for the purpose of enforcement of Declarant/Owner Remedies.

**3.02 Surface Water Rights.** Regarding all matters concerning surface water, each Lot shall be subject to such easements as may exist for the flowage of surface water under the laws of the State of Iowa, as may be in effect from time to time; and all Owners shall have such rights and obligations with respect thereto as may be provided by such law.

When construction of the Unit is complete, the Lot on which the Unit has been built, as well as all adjacent Lots on which the finish grades have been disturbed by the Owner's builder or contractors, must be restored to the finish grades consistent with the original engineering design on the applicable Recorded Plat.

In addition, the Owner's home builder and/or contractors must restore all Lots on which its building activities may have caused:

- (a) a disturbance of final soil stabilization;
- (b) a disturbance of newly seeded ground for soil stabilization; or

## (c) removal of silt fence

to their original condition prior to Owner's construction activities. This work must be done within seven (7) days after construction of the Unit has been completed. If restoration is not completed within seven (7) days, the Lot Owner will be notified by phone and/or letter. Lot Owners will have three (3) days to respond before the work is performed by others and the cost thereof assessed to the Lot Owner. Such cost shall be immediately due upon demand, and shall bear interest at the rate of twelve percent (12%) per annum until paid in full. Such cost, and the accrued unpaid interest thereon, shall become a lien upon said Lot upon the filing of an affidavit in the office of the Recorder for Polk County, Iowa, setting forth the notice, the failure of the Lot owner to cure such default, the work performed by or on behalf of the person other than the Lot owner and the cost thereof.

**3.03 Owner Responsibilities.** The Owner or Occupant of any Lot in the Addition shall, at such Owner's or Occupant's expense, keep and preserve that portion of such easements within such Owner's or Occupant's Lot, at all times, in good condition, and shall neither erect nor permit erection of any building or structure of any kind nor permit any growth of any kind within such easement area nor change the grade of any such easement area in any manner that might interfere in any way with the use, maintenance, repair, restoration or replacement of any of the utility services, drainage, bike paths, street trees or landscaping located in said easement area, without the prior consent of the City of Ankeny, Iowa or the utility company or companies for whose benefit such easement runs. Any such building or structure erected, growth permitted, or change in grade made within an easement area without such consent may be removed or regarded by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Lot Owner or Occupant to restore, repair or replace such building, structure, growth or change in grade.

## ARTICLE IV

### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

#### 4.01 Membership.

- (a) Every Owner shall be a member of the Association. A person who is not an Owner may not become a member in the Association and will not be allowed access or use of any Declarant Improvements, other than as a guest or invitee of a member (which shall be subject to the Articles of Incorporation of the Association, Bylaws of the Association, and rules and regulations established by the Association from time to time), unless and until such person becomes the Owner.
- (b) Membership shall be appurtenant to and may not be separated from ownership of any such Lot. Ownership of a Lot shall be the sole qualification for membership.

#### 4.02 Voting Rights.

- (a) The Association shall have one class of voting members. Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, but the vote attributable to 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.
- (b) The Board of the Association may suspend the voting rights of a member for any period during which any assessment against the Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its established rules and regulations.
- (c) Each Owner, by acceptance of a deed or other conveyance of a Lot, consents and agrees to the dilution of his/her voting interest in the Association by virtue of the submission from time to time of additional property to the terms of this Declaration as may be provided herein.
- (d) Notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Recorded Plat, so long as Declarant are the sole voting members as set forth in Section 1.02(f) of this Declaration, Declarant shall have the right to appoint or remove any member or members of the Board and any officer or officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to be the only voting members and to appoint and remove directors and officers of the Association as provided by this section.
- (e) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions hereof, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owner shall elect a new Board that shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.
- (f) The voting rights are further specified in the Bylaws of the Association.

**4.03 Authority and Obligations.** The Association through its Board, shall have the right, power and authority to:

- (a) provide for the enforcement of this Declaration;
- (b) borrow money and own, mortgage, pledge and convey real property and personal property;

- (c) provide for any operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of the Declarant Improvements or any Improvements hereafter made by the Association;
- (d) provide for the installation, operation and maintenance of project signage and entrance features;
- (e) make additional common Improvements for the benefit of the Addition;
- (f) in its discretion, perform services on behalf of the Owners of one or more of the Lots;
- (g) hire accountants, architects, contractors, lawyers, managers, employees, and such other persons as necessary or desirable to carry out its duties;
- (h) purchase such insurance as may be reasonable, including, but not limited to, general liability insurance, property and casualty insurance and officers and directors coverages;
- (i) levy, collect, and have jurisdiction, control and possession of assessments as hereinafter provided;
- (j) enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration;
- (k) establish rules and regulations for the use of Association property and easement areas which are established for the benefit of the members of the Association and their guests and invitees, which may include remedies and the imposition of reasonable fines for the violation of such rules and regulations;
- (l) otherwise establish such procedures and policies as may be necessary or deemed desirable to provide for the general welfare of the Owners and Occupants of the Addition, in accordance with the spirit and letter of this Declaration, including the power to make variances in this Declaration; and
- (o) do such other things as are reasonable or necessary to carry out its obligations hereunder or under any agreement with any Owner of any Lot.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

**5.01 Creation of Lien and Personal Obligation.** Declarant hereby covenants, and each Owner, 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 annual assessments or charges, special assessments for capital improvements and operating deficits, and special assessments as provided in this Declaration. The assessments levied by the Association 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 of such Owner and shall be a continuing lien upon such Lot senior to all liens except the first mortgage of record 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 the Lot 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.

**5.02 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively 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 Declarant Improvements to the Addition 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. See Section 4.03 supra. In making such assessments, the amount to be levied shall be equal to and limited to the actual cost to the Association of providing those functions and services set forth in this Declaration.

**5.03 Rate of Assessment.** The assessments levied on and against Lots within the Addition and the Owners thereof, shall be a share of the total amount of each assessment prorated equally among such Lots within the Addition and the Owners thereof as of the beginning of the period for which such assessment applies. Notwithstanding the foregoing, until such time as the Association votes to change the amount of the annual assessment, the annual assessment for each Lot within the Addition shall be \$75.00, payable in advance, to the Association no later than January 15 of each calendar year.

**5.04 Special Assessments for Capital Improvements and Operating Deficits.** In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement that the Association is required to maintain or for operating deficits that the Association may from time to time incur.

**5.05 Commencement of Assessments.** The monthly 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 Lot with a completed Unit constructed thereon and for which a certificate of occupancy has been issued. Lots owned by the Declarant that do not have completed Units constructed thereon and for which certificates of occupancy have not been issued, shall be exempt from assessments. The due dates for all assessments shall be established by the Board. 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.

**5.06 Procedures.** All assessments shall be made in the manner and subject to the following procedure:

- (a) 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 the Assessable Property and deposited in the United States mail with postage prepaid, or may be given by posting a notice of the assessment upon the Assessable Property itself.
- (b) 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 or semi-annual installments, in which case each payment shall be due as stated in the 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 Assessable Property which 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 collecting delinquent assessment payments.

Notwithstanding any other provision herein, the Association may bring an action at law against the Owner personally obligated to pay any assessment, or may foreclose the lien against the Assessable Property in the manner provided for foreclosure of a mortgage, or both, and all costs incurred by the Association, including attorney fees, shall be added to the amount of such assessment. No Owner of Assessable Property may waive or otherwise be relieved of liability for the assessments provided for herein by non-use of the Common Elements or abandonment of its Assessable Property.

- (c) The term "**Assessable Property**" shall mean all Lots that are subject to this Declaration whether or not such Lots have a dwelling constructed on it and whether such Lot is vacant or occupied.
- (d) Subordination of Assessment Liens.

If any Lot subject to a lien created by any provision of 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, shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree 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 or 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 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.

## ARTICLE VI

### GENERAL PROVISIONS; DURATION OF DECLARATION

**6.01 Specific Enforcement of Restrictions/Declarant/Owner Remedies.** Declarant and each Owner shall have the right to enforce this Declaration and each and every covenant, condition, easement, provision, restriction and term of this Declaration and in the event of the breach of any such covenant, condition, easement, provisions, restriction or term contained in this Declaration, Declarant and each Owner shall have the right to exercise all rights and remedies available at law or in equity and to Declarant/Owner Remedies as defined herein. All Owners covenant and agree, by acceptance of a deed to such Lot, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the breach of the restrictions and covenants contained in this Declaration and that this Declaration may be specifically enforced by Declarant or the Board. All remedies provided for in this Declaration or that are otherwise available at law or in equity shall be cumulative. Neither Declarant nor any Owner shall have any liability to any person or entity for any failure to enforce any provision of this Declaration.

Declarant/Association Remedies shall include, but not be limited to, the following:

If an Owner fails to comply with any provision in this Declaration and such failure continues for more than ten (10) days after written notice from the Declarant or the Association, then the Declarant or the Association shall have the right and easement to enter upon the Lot and perform such acts at the expense of the Owner of the Lot where such failure to act has occurred and shall have a right of action against the Owner of such Lot for collection of the costs thereof, plus reasonable costs, including attorney fees of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum, or (b) the maximum rate allowed by law for the date such cost is incurred and shall have a lien against such Lot from the date an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder of Polk County, Iowa, until such amount, plus the reasonable costs,

including attorney fees of collecting such amount and costs of filing such lien incurred by lienholder is paid.

**6.02 Breaches Deemed to be a Nuisance.** Every act or omission that violates, in whole or in part, any of the covenants, conditions, easements, provisions, restrictions and terms contained in this Declaration is hereby declared to be a nuisance, and every remedy allowed by law or equity therefor shall be applicable against the party who so violates this Declaration and may be exercised by Declarant or by any Owner.

**6.03 Attorneys' Fees.** In the event, in the reasonable opinion of the Board or Declarant, it shall be necessary to secure the services of an attorney to enforce the provisions of this Declaration, then the fees of such attorney, and all other costs in connection with the enforcement of this Declaration, including, but not limited to, the costs of obtaining and/or continuing an abstract of title to the Lot in question, the costs of any contemplated or actual legal proceedings, and the costs of preparation and presentation of any evidence, shall be the obligation of the Owner of the Lot that is the subject of such enforcement action, unless such Owner is found not to have violated any provision of this Declaration; however, such Owner shall not be obligated for any such attorneys' fees and costs incurred by such Declarant or the Association if the Owner offers to settle the matter for an amount equal to or greater than that finally approved by a court of competent jurisdiction and/or by taking or forbearing from the requested action, as appropriate. If such costs and attorneys' fees are not paid within ten (10) days from the date of written notice thereof by the Board or Declarant to the Owner of such Lot, said fee and costs shall thereupon constitute a lien against the property in question, the same as the lien for the general assessment pursuant to the provisions of Article V hereof, and all interest and remedies applicable to such lien shall apply thereto.

**6.04 Inspection.** Declarant or representatives of the Association who are authorized by the Board may, from time to time, at any reasonable hour or hours, enter and inspect any Lot to ascertain compliance therewith.

**6.05 Failure to Enforce Not a Waiver of Rights.** The failure of Declarant, the Association, or any Owner to enforce any condition, covenant, easement, provision, restriction, reservation or term of this Declaration in any one instance shall not be deemed a waiver of the right to do so thereafter nor shall it be deemed to constitute a waiver of the right to enforce any other condition, covenant, easement, provision, restriction, reservation or term of this Declaration.

**6.06 Rights of Third Parties.** Nothing in this Declaration shall be construed so as to impose or create any duty or obligation on any of Declarant, the Association or any Owner to the benefit of the general public, third parties, or invitees, guests, employees, agents, principals or licensees of any Owner or Occupant.

**6.07 Liability.** Neither the Declarant nor the Association, nor their respective members, shareholders, directors, managers, officers, employees, agents and representatives shall have any liability to or for damages of any sort to any Owner or Occupant or to any other person or entity for any exercise or failure to exercise any right or duty or obligation, if any, of Declarant or Association hereunder, or in any manner arising herefrom, or for the granting of

approval or withholding of approval, required or permitted under the terms of this Declaration, except as in Declarant's or the Association's capacity as the Owner of any Lot. Any Owner may, however, exercise any rights such Owner may have against the Declarant or Association or otherwise seek to enforce the conditions, covenants, easements, provisions, restrictions, reservations and terms of this Declaration against such Declarant or the Association, by an action in equity for specific performance or injunctive relief, to which Declarant shall be subject. These remedies of specific performance and injunctive relief shall be the only remedies available against Declarant or the Association (except as in Declarant's or the Association's capacity as the Owner of any Lot) for any exercise or failure to exercise any right, duty or obligation, if any, of Declarant or Association hereunder, or in any manner arising herefrom, or for the granting of approval or withholding of approval required or permitted under the terms of this Declaration, all other remedies being expressly waived by acceptance of a deed to any Lot.

**6.08 Condemnation.** In the event of any partial taking by a governmental body or other entity that has the power of eminent domain that involves a taking of all or part of Declarant Improvements, the Owners of each Lot agree, by acceptance of a deed to such Lot, whether or not it is so expressly stated in such deed, that the Association shall have and shall be deemed to have an interest in proceeds to be paid for such taking in the amount necessary to repair, restore or replace the portion of such Declarant Improvements so taken as near as practicable to a functional whole to serve the same purpose after such taking as the facility so taken served prior to such taking. To the extent that the Association does not receive its own award or payment from the condemning authority or the award or payment received is inadequate to cover the cost of repair, restoration or replacement of such Declarant Improvements, the Owners of each Lot receiving such award or payment shall pay to the Association pro rata from their awards or payments the amount necessary for the Association to complete such repair, restoration or replacement of such Declarant Improvements. In the event that the awards or payments received from such condemnation are inadequate to pay the entire cost to complete such repair, restoration or replacement of such Declarant Improvements, then the remaining cost shall be assessed against all Owners in proportion to their respective assessment shares. All amounts due to the Association from the Owners of any Lot shall constitute a lien against the Lot in question, the same as the lien for the general assessment pursuant to the provisions of Article V hereof, and all interest and remedies applicable to such lien shall apply thereto.

**6.09 Homeowners Liability Insurance.** Each Owner or Occupant shall carry homeowner's insurance covering the Improvements on its Lot for all replacement costs. Owners or Occupants shall provide proof of said insurance to the Association at least annually. If the Owner or Occupant fails to provide proof of insurance, the Declarant or Association shall be entitled to Declarant/Owner Remedies.

**6.10 Estoppel Certificates.** The Association shall issue to any Owner or to any mortgagee of, or purchaser from, any Owner, an Affidavit Explanatory of Title or Estoppel Certificate in such form as may reasonably be requested. The Association shall be entitled to establish a reasonable fee for the provision of a certificate in accordance with the foregoing provisions and may condition the delivery of such certificate upon the payment of the applicable fee.

**6.11 Covenants Binding and Running with the Land.** Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of Declarant, the Association, and the Owners of each Lot, and their successors and assigns and all parties and persons claiming under any of them, and shall be deemed covenants that run with the land, and shall continue for the applicable periods specified in this Declaration.

**6.12 Duration.** All easements provided in this Declaration shall continue in perpetuity, unless sooner modified or terminated as provided in this Declaration.

Except as provided in the preceding paragraph of this Section, the covenants, indentures, restrictions and reservations in this Declaration shall be for an initial term of twenty-one (21) years, and may be renewed for successive terms of twenty-one (21) years each by appropriate filing with the Recorder of Polk County, unless sooner modified or terminated.

**6.13 Amendment of This Declaration.** This Declaration may not be altered, amended, modified, supplemented or terminated, in whole or in part, except in writing and as provided in this Section, or as may be otherwise provided in this Declaration. Declarant or Declarant's designee may, by written declaration signed and acknowledged by it and recorded in the Office of the Recorder for Polk County, Iowa, alter, amend, supplement, add to, or terminate such conditions, covenants, indentures, restrictions and reservations of this Declaration, provided, however, that such alteration, supplement, addition, amendment or termination shall insure provisions for the continued operation, maintenance, repair, restoration and replacement of Improvements to the Addition, and except that no such alteration, amendment, supplement, addition, or termination may change the manner of assessment of any Owner except in a manner applied uniformly to all Owners. No such alteration, amendment, modification, or change shall reduce or modify the rights or obligations granted to, or imposed upon, the Association with respect to the continued operation, maintenance, repair, restoration and replacement of the Declarant Improvements to the Addition and the power to levy assessments therefor or to eliminate the requirement that there be an Association unless some other person or entity be substituted for the Association and succeed to all of its rights and duties under this Declaration. It is expressly understood that no such alteration, amendment, supplement, addition, or termination shall require the consent of any Occupant (other than an Owner, and then for such Owner/Occupant only to the extent provided elsewhere in this Section) or any mortgagee of any Lot or from the City, except that no amendment shall terminate restrictions on the Association Responsibility Elements or dissolve the Association without the approval of the City.

**6.14 Release Upon Sale.** Subject to the provisions of this Section, if an Owner sells, transfers, or assigns its Lot (other than as security for a loan), then such Owner shall be released from its future obligations under this Declaration. It shall be a condition precedent to such release and discharge that any and all amounts that shall then be due and payable by such Owner shall have been paid, and that such Owner shall give written notice to the Association of any such sale, transfer, conveyance, or assignment concurrently with the filing for record of the instrument effecting the same.

Notwithstanding anything in this Declaration to the contrary, it is expressly understood and agreed that any first mortgagee that shall have acquired title to any Lot, or portion thereof,

through foreclosure or deed in lieu of foreclosure, shall not be personally liable for any obligations under this Declaration that arose with respect to the obligations of the Owner of such Lot prior to the date such mortgagee acquired title thereto; provided, however, that any existing lien or right to a lien against such Lot allowed by this Declaration or as a result of the enforcement of this Declaration with respect to matters occurring before such mortgagee so acquired title thereto and shall continue and remain in full force and effect.

**6.15 Severability.** In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

**6.16 Time of Essence.** Time is of the essence with respect to the performance of each of the conditions, covenants, terms and provisions of this Declaration.

**6.17 Governing Law.** This Declaration shall be construed in accordance with the laws of the State of Iowa.

**6.18 Captions.** The captions of the Articles, Sections and Subsections of this Declaration are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

**6.19 Successors to Declarant.** Any entity acquiring all Lots then owned by a co-Declarant, if acquiring more than twenty (20) Lots, shall be deemed a successor and assign of said co-Declarant.

**6.20 THE DECLARANT AND EACH OWNER, BY ACCEPTANCE OF A DEED TO OR OTHER CONVEYANCE OF A LOT WAIVES ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY MATTER ARISING OUT OF THIS DECLARATION.**

**IN WITNESS WHEREOF,** Declarant has duly executed this Declaration as of the date and year first above written.

J DEV, LLC, an Iowa limited liability company

By: Duane E. Jensen

Printed Name: Duane E. Jensen

Title: Member

STATE OF IOWA, COUNTY OF Polk

This record was acknowledged before me on July 26, 2019 by Duane E. Jensen as member of J DEV, LLC, an Iowa limited liability company.

Katherine M Holck  
Notary Public in and for the State of Iowa

STAMP



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