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DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR STONE PRAIRIE PLAT 4

This Declaration of Covenants, Conditions, Easements and Restrictions for Stone Prairie Plat 4, (the “**Declaration**”), is made this 2-24, 2017 by M & J Realty, LLC, an Iowa limited liability company, as Owner of the Lots (all as herein defined).

WITNESSETH:

WHEREAS, Declarant is the current record titleholder of Lots 1 and 2 in Stone Prairie Plat 4, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa;

WHEREAS, The Lot Owners desire to establish covenants, conditions, easements and restrictions governing the Addition for the benefit of the Owners (as hereinafter defined) of Lots (as hereinafter defined) in the Addition and to provide for the Association (as hereinafter defined); and

NOW, THEREFORE, The Lot Owners hereby publish and declare that all Lots in the Addition 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 (as hereinafter defined) to each Lot in the Addition. It is further the intent to provide for the

Association to perform the operation, maintenance, repair, replacement, alterations, improvement or modification of the Declarant Improvements (as hereinafter defined).

1.02 Definitions.

- (a) **“Addition”** shall mean all Lots in Stone Prairie Plat 4, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa.
- (b) **“Association”** shall mean Stone Prairie Owners Association, a nonprofit corporation organized pursuant to Chapter 504 of the Code of Iowa, and its successors and assigns.
- (c) **“Association Responsibility Elements”** shall mean
 - (1) Driveways, designated parking areas, and sidewalks within the Addition.
 - (2) Landscape buffer area as depicted on the record plat for Stone Prairie Plat 4, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa.
- (d) **“Board”** shall mean the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.
- (e) **“City”** shall mean the City of Waukee, Dallas County, Iowa.
- (f) **“Declarant”** shall mean M & J Realty, LLC, an Iowa limited liability company, and its successors and assigns. Any person or entity acquiring all Lots then owned by the Declarant, shall be deemed a successor and assign of the Declarant.
- (g) **“Declarant Improvements”** shall mean those Improvements Declarant is to construct within the Addition, including, but not limited to, parking areas and driveways, and any additional Improvements, whether similar or dissimilar to any of the foregoing 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 Paragraph 8.01 hereof.
- (i) **“Improvements”** shall mean and include driveways, parking areas, signs, and any structure of any type or kind, and all additions to any of the foregoing.
- (j) **“Lot”** shall mean Lots 1 and 2 in the Addition.
- (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 in the Addition.

- (l) **“Owner”** shall mean the person or persons who from time to time collectively hold the entire fee title to any Lot in the Addition, 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 plat of Stone Prairie Plat 4, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa recorded with the Dallas County Recorder.
- (n) **“Unit”** shall mean the building(s) constructed on any Lot, whether it is an attached or unattached building.
- (o) **“Zoning Ordinance”** shall mean the zoning ordinances of the City of Waukee, 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

EASEMENTS AND ENCROACHMENTS

2.01 **Easements and Encroachments.**

- (a) General Easements. 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.
- (b) 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.
- (c) 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.
- (d) Driveways and Access for Lots.

- (1) Declarant does hereby grant to the Owners, their successors, assigns and invitees, a permanent easement for ingress and egress to each Lot over and across all drives and streets within the Addition, as shown on the Recorded Plat, or as they may exist from time to time.
 - (2) All Owners, by accepting title to a Lot conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress and egress to and from such Lot and acknowledge and agree that such access, ingress and egress shall be limited to driveways, sidewalks, and walkways located within the Addition from time to time, provided that pedestrian and vehicular access to and from all Lots shall be provided at all times. Notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the development, no sidewalks shall be required on any Lot unless required by the City.
 - (3) All vehicular traffic on the private driveways in the Addition shall be subject to the provisions of the laws of the State of Iowa and Dallas County concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer and enforce reasonable rules and regulations covering vehicular and pedestrian traffic, including reasonable safety measures and speed limits governing the private streets within the Addition, which safety measures and speed limits may be different from those generally applicable to similar public streets. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including leavening fines for the violation thereof. In the event of a conflict between such provision of the laws of the State of Iowa and Dallas County and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. 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 which 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.
- (d) Sidewalk Easement. 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 or private 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 Owner which such sidewalk or pedestrian walkway serves.
- (e) Parking Area Easement. There is hereby reserved and granted an easement for the benefit of each Lot and Owner for the designated parking areas in the Addition for the purpose of allowing vehicle parking for the Owners and their guests, invitees, and licensees. Notwithstanding anything in this Declaration to the contrary, at least twenty-six (26) parking spots in the designated parking area located on the southern part of Lot

1 in the Addition shall be designated solely for the use of the orthodontic practice of Dr. Michael Johnson, or his successors or assigns, whose office is to be located on Lot 1 in the Addition.

- (f) Utilities Easements. Each Lot is burdened with an easement for Declarant and the applicable utility provides to bring, install, and connect water, sanitary sewer and storm, gas, telephone, electric lines and other such utilities to the Addition.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

3.01 Membership

- (a) Every Owner of a Lot shall be a member of the Association. A person who is not an Owner of a Lot 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, Bylaws of the Association, and rules and regulations established by the Association from time to time), unless and until such person becomes the Owner of a Lot.
- (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.

3.02 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 (as hereinafter defined) to the terms of this Declaration as provided herein.
- (d) The voting rights are further specified in the Bylaws of the Association.

3.03 Authority and Obligations. The Association through its Board of Directors, 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) create an escrow account from assessments to cover maintenance of driveways, parking areas, and sidewalks within the Addition;
- (e) provide snow removal on drives, sidewalks, and parking areas within the Addition;
- (f) make additional common Improvements for the benefit of the Addition;
- (g) in its sole discretion, perform services on behalf of the Owners of one or more of the Lots;
- (h) hire accountants, architects, contractors, lawyers, managers, employees, and such other persons as necessary or desirable to carry out its duties;
- (i) purchase such insurance as may be reasonable, including, but not limited to, general liability insurance, property and casualty insurance and officers and directors coverages;
- (j) levy, collect, and have jurisdiction, control and possession of assessments as hereinafter provided; including but not limited to the authority to levy, collect, and have jurisdiction, control and possession of assessments on any (1) new owners' association organized for any Lot or any subdivision of a Lot, (2) any condominium unit, cooperative apartment unit on any Lot or any subdivision of a Lot, or (3) subdivision of any Lot.
- (k) enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration;
- (l) establish rules and regulations for the use of Association property and easement areas that are established for the benefit of the members of the Association and their guests and invitees that may include remedies and the imposition of reasonable fines for the violation of such rules and regulations;
- (m) 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
- (n) 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 IV

COVENANT FOR MAINTENANCE ASSESSMENTS

4.01 Creation of Lien and Personal Obligation. 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 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 of a Lot 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.

4.02 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 3.03 *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.

4.03 Rate of Assessment. The assessments levied on and against Lots within the Addition and the Owners thereof, shall be pro rata based on the number of square feet in each Lot as compared to the total square feet in the Addition.

4.04 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, which the Association is required to maintain or for operating deficits that the Association may from time to time incur.

4.05 Commencement of Assessments.

The annual assessments provided for herein shall commence as provided in the Bylaws of the Association. The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of annual assessments. The insurance assessment provided for in Section 4.07 shall commence as to each Lot on the first day of the

first year following the date of conveyance of said Lot by the Declarant to an Owner. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an office 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.

4.06 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 Association Responsibility Elements or abandonment of its assessable property.

- (c) The term "assessable property" shall mean all Lots within the Addition that are subject to this Declaration whether or not such Lots have a Unit 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 purchases 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.

4.07 Insurance and Insurance Assessment for Lots.

(a) Insurance and Insurance Assessment.

In addition to the annual assessments and the special assessments for capital improvements, the Association may levy assessments for insurance purchased by the Association. The Association shall obtain liability and casualty insurance for the Association Responsibility Elements. Unless otherwise determined by the Board of Directors of the Association, each Owner of a Lot shall be responsible for obtaining appropriate liability insurance and casualty insurance for property which is not party of the Association Responsibility Elements; the Board of Directors may require an Owner's casualty insurance to be obtained from the same insurer as the insurer under the Association's casualty insurance for the Association Responsibility Elements. In the event of casualty loss, the Association shall be responsible for repair and restoration of the Association Responsibility Elements, and the Owner shall be responsible for repair and restoration of all other portions of the buildings and improvements upon his Lot, except to the extent that the Board of Directors of the Association has determined to obtain insurance for such portions which are not part of the Association Responsibility Elements in which case the Association shall apply any insurance proceeds received for such portions to such repair and restoration of such portions.

(b) Distribution to Mortgagee.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his mortgagee jointly.

ARTICLE V

USE RESTRICTIONS

Except as provided in this Declaration, the permitted uses shall be consistent with the uses permitted as defined in the City's zoning ordinance. These uses must remain on the stated lots and must follow the restrictions set forth in the City's zoning ordinance on the date of passage of such ordinance. Notwithstanding anything in this Declaration to the contrary, no dental practice with more than twenty-five percent (25%) of its annual revenues attributable to orthodontics may be established on any of the Lots except for the orthodontic practice of Dr. Michael Johnson or his successors or assigns to be located on Lot 1 in the Addition.

ARTICLES VI

ARCHITECTURAL STANDARDS

No Owner shall construct any Unit or make any material modifications to the shape, height, or exterior appearance of any Unit on such Lot without the prior approval of Declarant; provided, nothing in this paragraph shall prevent any Owner from maintaining, repairing, restoring, or replacing any Unit substantially in conformance to previously approved plans therefore. Each Owner shall construct its Unit in a good and workmanlike manner, using first class materials, substantially in accordance with the plans therefore that have been approved by Declarant and in accordance with all applicable laws, rules, ordinances, codes, and regulations. Each Owner shall confine its construction activities to its Lot.

ARTICLE VII

SIGNS

No signs shall be permitted on any Lot except as permitted by the City's zoning ordinance. Signs visible from the exterior of any Unit may be lighted, but no signs or any other contrivance may be devised or constructed so as to rate, gyrate, blink, flash, or move in any fashion. All exterior signs and the manner in which such signs are mounted shall be subject to prior approval, in writing, by Declarant. Such approval shall not be unreasonably withheld or delayed.

ARTICLE VIII

GENERAL PROVISIONS; DURATION OF DECLARATION

8.01 Specific Enforcement of Restrictions/Declarant/Owner Remedies. Declarant and each Owner of a Lot in the Addition that is subject to the terms and conditions of this

Declaration 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 of Lots within the Addition 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 which are otherwise available at law or in equity shall be cumulative. Neither Declarant nor any Owner of a Lot which is subject to the terms of this Declaration 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 Owner shall have the right and easement to enter upon the premises 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 Dallas 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.

8.02 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 of a Lot which is subject to this Declaration.

8.03 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 fee 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 which 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 such 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.

8.04 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 subject to this Declaration to ascertain compliance therewith.

8.05 Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner of a Lot which is subject to this Declaration 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.

8.06 Rights of Third Parties. Nothing in this Declaration shall be construed so as to impose or create any duty or obligation on either Declarant, the Association or any Owner of any Lot which is subject to this Declaration to the benefit of the general public, third parties, or invitees, guests, employees, agents, principals or licenses of any Owner or Occupant of any Lot which is subject to this Declaration.

8.07 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 that is subject to this Declaration. Any Owner of a Lot that is subject to this Declaration 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 that is subject to this Declaration) 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 within the Addition.

8.08 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 Improvements to be constructed by Declarant, 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 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 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 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 Improvements, then the remaining cost shall be assessed against all Owners of Lots in the Addition 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 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.

8.09 Association as Additional Insured. All Owners or Occupants shall carry appropriate insurance covering the Improvements on their Lot for all replacement cost. The Association shall be named as an additional insured on the insurance policy. 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.

8.10 Estoppel Certificates. The Association shall, within two (2) weeks of the Association's receipt of a written request, issue to any Owner of a Lot or to any mortgagee of, or purchaser from, any Owner of a Lot, 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.

8.11 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 in the Addition, 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.

8.12 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 Dallas County, unless sooner modified or terminated.

8.13 Amendment of This Declaration. This Declaration may be amended, altered, modified, supplemented or terminated by an instrument signed by not less than both Lot 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 the City, except that no amendment shall dissolve the Association without the approval of the City.

8.14 Release Upon Sale. Subject to the provisions of this paragraph, if an Owner of a Lot sells, transfers, or assigns its Lot (other than as security for a loan), then it 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.

8.15 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.

8.16 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.

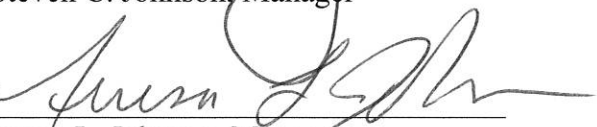
8.17 Governing Law. This Declaration shall be construed in accordance with the laws of the State of Iowa.

8.18 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.

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

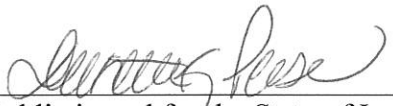
M & J Realty, LLC, an Iowa limited liability company

By: 
Steven C. Johnson, Manager

By: 
Teresa L. Johnson, Manager

STATE OF IOWA, COUNTY OF BOIK

This record was acknowledged before me on 2-24, 2017 by Steven C. Johnson and Teresa L. Johnson, as the Managers of M & J Realty, LLC, an Iowa limited liability company.


Notary Public in and for the State of Iowa

STAMP

5513151

