
Prepared by & Return to: Courtney I. Schultz, Hogan Law Office, 3101 Ingersoll Avenue, Des Moines, Iowa 50312 (515) 279-9059

DECLARATION OF RECIPROCAL EASEMENTS AND COVENANTS

THIS DECLARATION OF RECIPROCAL EASEMENTS AND COVENANTS (this "Declaration") is dated this 31st day of August, 2016 and made by **HURD WAUKEE, LLC**, an Iowa limited liability company ("Declarant"), owner and developer of Lots 1 - 7 in Waukee Market Place Plat 1, an Official Plat in Waukee, Dallas County, Iowa (collectively, the "Property").

WHEREAS, Declarant has entered into a Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement with the City of Waukee, Iowa (the "Storm Water Management Agreement"), wherein Declarant has agreed to control storm water runoff for the Property through design, construction and maintenance of a storm water detention basin (the "Storm Water Detention Facility") within Lots 1 – 6 of the Property.

WHEREAS, Declarant desires to impose certain easements and establish certain rights, obligations and responsibilities with respect to the operation and maintenance of the Storm Water Detention Facility and for access, ingress, egress, utilities and other similar services which function for the mutual and reciprocal benefit and complement of the Property and future owners and occupants thereof and their respective tenants, customers and other invitees.

NOW, THEREFORE, in consideration of the mutual easements, covenants and restrictions contained herein, the receipt and sufficiency of which is hereby acknowledged, Declarant does hereby declare that the Property and all present and future owners and occupants of the Property shall be and hereby are subject to the following easements, covenants and restrictions.

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

- (a) **"Declarant"** shall mean and refer to Hurd Waukee, LLC, an Iowa limited liability company or its assigns.
- (b) **"Lot"** shall mean any individual platted parcel of land within the Property existing now or in the future. The Property currently consists of Lots 1 - 7 in Waukee Market Place Plat 1, an Official Plat in Waukee, Dallas County, Iowa.

(b) "**Occupant**" shall mean and refer to an Owner and any person or entity from time to time entitled to the use and occupancy of a Lot, or any part of a Lot, under any lease, deed, license or other instrument or arrangement by which such person or entity has acquired rights with respect to the use and occupancy of a Lot.

(c) "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot.

(d) "**Property**" shall have the meaning set forth on Page 1 hereof.

(e) "**Permittees**" shall mean and refer to the Occupants of a Lot, and their respective partners, officers, directors, employees, agents, contractors, licensees, subtenants, employees, vendors, suppliers, customers, visitors and business invitees.

(f) "**Storm Water Detention Facility**" shall mean and refer to the storm water detention basin and all pipes, inlets and outlets appurtenant thereto located upon Lots 1 - 6 of the Property and subject to the Storm Water Management Agreement.

2. **CROSS ACCESS EASEMENT.** Declarant hereby grants, conveys and reserves for the mutual and reciprocal benefit of the Lots and their respective Owners and Permittees, a non-exclusive easement for the passage of vehicles over and across the driveway areas of the Property as the driveway areas may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveway and sidewalk areas of the Property, as the same may from time to time be constructed and maintained for such use. The Owner of a Lot may relocate the driveway areas located on its Lot, but by so relocating the driveway areas the Owner shall not reduce or alter the driveway areas so as to materially adversely impede ingress and egress through such Lot. The rights encompassed within this grant shall include the right to use and enjoy all entrances, exits, walks, service drives and similar facilities that may now or hereafter be established and constructed upon any portion of the Property.

3. **PARKING.** Declarant hereby covenants that the parking areas in each Lot are reserved for parking of the Permittees of the Owner of that Lot, and there shall be no general easement for "cross-parking" allowing the vehicles attending the business on one Lot to park on or within the parking areas of any other Lot. Each Owner shall have the right to post appropriate signs advising the public of these parking restrictions and may enforce these restrictions by towing or other legal means. No Owner shall be entitled to include spaces in any other Lot to meet governmental parking requirements for that Owner's Lot.

4. **UTILITY EASEMENTS.** In addition to any recorded or platted easements, Declarant hereby grants, conveys and reserves for the mutual and reciprocal benefit of the Lots and their respective Owners, a non-exclusive easement for the installation, operation, use, maintenance, connection, repair, relocation and replacement of utility services and distribution systems, including storm sewers, sanitary sewers, water mains, electric lines, gas lines, telecommunication lines and other similar utility facilities reasonably necessary for the orderly development and operation of the Property, now upon or hereafter installed on, across or under each Lot, to the extent reasonably necessary to service each Lot. The location of any utilities hereafter installed shall be reasonably determined by the Owner of the Lot upon which such utilities are to be installed. Any such installed utility services may be relocated by the Owner of the burdened Lot subject to compliance with applicable laws, at the expense of the Owner relocating such utility services, provided that such relocation shall not diminish, increase the cost of or otherwise materially interfere with utility services to any benefited Lot. The Owner performing any additional installation or relocation shall, at its cost and expense, immediately repair any damage to any improvements and shall indemnify and hold the burdened Owner, any Occupant of the burdened Owner's Lot and any other Owner

serviced by the utilities harmless from any claims, damage or loss which may result from making such additional installation or relocation.

5. **SURFACE WATER DRAINAGE.** Declarant hereby grants, conveys and reserves for the mutual and reciprocal benefit of the Property and their respective Owners, a non-exclusive easement under, over, on, through, across and within each Lot for the purpose of discharging surface water drainage or runoff. No Owner shall alter or permit to be altered the surface of the Owner's Lot if such alteration would materially increase the flow of surface water onto the other Lots, either in the aggregate or by directing the flow of surface water to a limited area within the Property.

6. **NO OBSTRUCTIONS.** No Owner shall cause, permit or otherwise allow any obstruction or plant or permit to grow any hedge or other vegetative growth in or on its Lot which may obstruct, impede or otherwise interfere with the use and enjoyment of the foregoing easements, provided, however, that the easements may be relocated by an Owner to the extent necessary to facilitate the development or operation of such Owner's Lot.

7. **STORM WATER DETENTION EASEMENT AND MAINTENANCE.** Pursuant to the Storm Water Management Agreement, Declarant has established for the mutual and reciprocal benefit of the Property and their respective Owners, a non-exclusive perpetual easement for the detention and removal of storm water under, over, across and within Lots 1 - 6 of the Property. Declarant hereby covenants and agrees on behalf of Declarant and the Owners that each Owner shall maintain and preserve at its sole cost and expense as necessary that portion of the Storm Water Detention Facility located within its Lot in good repair and condition in substantial compliance with the storm water management plan on file with the City and pursuant to Section 10 of the Storm Water Management Agreement. Such Owners shall not plant nor permit to grow any trees or other vegetative growth which might reasonably be expected to obstruct or impair usage of the Storm Water Detention Facility. Such maintenance obligations shall include, but are not limited to, inspection, routine mowing, landscaping, control of weeds and insects, replacement of permitted vegetation, removal of debris and obstructions and control of the flow of water and designed storage volume within the basins by keeping the basin outlets and intakes clear of sediment and debris. No Owner shall obstruct or interfere whatsoever with the duties and responsibilities of an Owner to perform its maintenance obligations relating to the Storm Water Detention Facility. If any Owner fails to maintain the Storm Water Detention Facility located upon its Lot, upon reasonable prior notice, an Owner may perform such maintenance and the defaulting Owner shall reimburse the non-defaulting Owner for all expenses incurred.

8. **MAINTENANCE.** Declarant shall perform all maintenance, repairs, and replacements (including snow and ice removal) of the main entrances and exits to the Property and any other portion of the drives or parking lots located on the Property as Declarant elects at its option. Each Lot Owner shall be responsible for paying its pro rata share of the costs incurred by Declarant. The pro rata paid by each Lot Owner shall be determined based on the total square footage of the Property divided by the square footage of the Owner's Lot. Each Owner shall pay its pro rata share to Declarant within thirty days after presentation of invoice. Declarant's obligations under this Section shall automatically terminate upon the earlier to occur of 1) Declarant's assignment of its obligations under this Section to the Lot Owners, or 2) the time when Declarant no longer owns any Lot within the Property.

Other than maintenance performed by Declarant in accordance with this Section 8 above, the Owner or Occupant of each Lot shall be responsible, at its sole cost and expense, to operate, maintain, repair, replace, protect, and manage all structures and related improvements located on its Lot, including, but not limited to, buildings, equipment, driveways, sidewalks, walkways, parking areas, lighting, landscaping, and utilities in a safe, clean and orderly manner and in good condition, function and state of repair at all times. Each Owner or Occupant shall perform, at its sole cost, all maintenance, repair,

reconstruction, and replacement of the parking, driveway, and sidewalk areas located within its Lot (including removal of snow, ice, and obstructions). It is anticipated that several landscaping islands will be located directly on the shared boundary Lot line of two adjacent Lots. The Lot Owner to the east of such landscaping island shall be responsible for maintain the landscaping contained within the island; curbing and all other improvements related to such landscaping islands shall be maintained by the Owner of the Lot on which the improvements are located.

If any Owner fails to maintain an entrance point to the Property or access drives within its Lot such that the entrances to the Property or cross access between the Lots is materially impaired, upon reasonable prior notice (or no notice at all in an emergency situation), an Owner may perform such maintenance and the defaulting Owner shall reimburse the non-defaulting Owner for all expenses incurred.

9. **INDEMNIFICATION.** The Owner of each Lot hereby agrees to indemnify, defend and hold harmless the other Owners of the other Lots from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property related to any incidents or accidents related to the obligations of the indemnifying Owner set forth in this Declaration, except to the extent caused by the negligent or willful act or omission of another Owner, its tenants, subtenants, agents, contractors or employees.

10. **INSURANCE.** Each Owner shall procure and maintain in full force and effect throughout the term of this Declaration general public liability insurance and property damage insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about its Lot with coverage limits of not less than \$2,000,000 combined single limit per occurrence. Each Owner shall provide the other Owners with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any blanket policy of insurance carried by the Owner which may cover other property in addition to the Owner's Lot.

11. **AMENDMENT.** This Declaration may be amended or modified at any time by a declaration in writing mutually agreed to, executed and acknowledged by all the Owners and thereafter duly recorded in the office of the County Recorder, provided this Declaration shall not be terminated during the term hereof or amended or modified without the prior written consent of all Owners whose interests would be adversely affected by such amendment or modification.

12. **NO PARTNERSHIP.** Nothing in this Declaration shall be construed to make the Owners partners or joint venturers or render any of the Owners liable for the debts or obligations of the other Owners.

13. **GOVERNING LAW.** This Declaration shall be construed in accordance with the laws of the State of Iowa.

14. **COVENANTS RUN WITH THE LAND.** Each of the conditions, covenants, easements, restrictions and reservations contained in this Declaration shall be deemed covenants that run with the land and shall be binding upon and inure to the benefit of Declarant and the Owners of each Lot, and their successors and assigns and all parties and persons claiming under any of them.

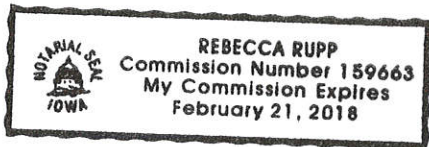
IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

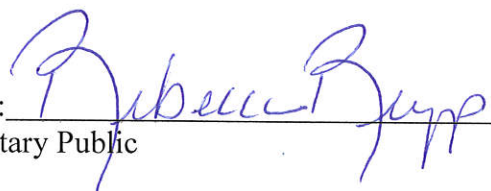
HURD WAUKEE, LLC,
an Iowa limited liability company

By: 
Richard W. Hurd, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on May 5, 2016, by Richard W. Hurd, Manager of Hurd Waukee, LLC.



By: 
Notary Public