

**DECLARATION OF OWNERS ASSOCIATION
FOR KETTLEVIEW**

THIS DECLARATION made on the date hereinafter set forth by Kettleview, LLC, an Iowa limited liability company ("Declarant") as developer of Shops of Kettlestone, North Plat 4 and, in support of this Declaration, states and provides as follows:

RECITALS

WHEREAS, Declarant is the owner of certain property in the City of Waukee, Dallas County, Iowa, which is more particularly described as:

Outlot W in The Shops of Kettlestone, North Plat 4, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa, (collectively the "Property" or "Properties").

WHEREAS, Declarant desires that the Property be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability thereof.

NOW, THEREFORE, Declarant hereby declares that the Property be held, sold and conveyed subject to the following easements, covenants and conditions which shall run with the real property and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

1. DEFINITIONS.

- A. "Association" shall mean and refer to **Kettleview Owners Association, Inc.** its successors and assigns, a non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa as amended.
- B. "Association Responsibility" shall mean the maintenance of all storm water detention areas located within the Property, including all materials or equipment contained therein, and compliance with the Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement for The Shops at Kettlestone North filed of record in the Dallas County Recorder's Office.
- C. "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- D. "City" shall mean the City of Waukee, Iowa.
- E. "Declarant" shall mean and refer to Kettleview, LLC, and its successors and assigns.
- F. "Declaration" shall mean and refer to this Declaration to which the Properties are subject, as the same may be amended from time to time.

- G. "Lot(s)" shall mean and refer to the lots shown on the recorded plat for **Outlot W in The Shops of Kettlestone North Plat 4**, and any additional lots within any replats of the Properties made and recorded in accordance with statutes of the State of Iowa which may later be brought within the jurisdiction of the Association and the Declaration.
- H. "Member" shall mean and refer to those persons entitled to membership as provided in this Declaration, the Articles of incorporation of the Association and the Bylaws of the Association. "Member" includes Lush Properties, LLC as shown by the 9/16/18 Purchase Agreement with Kettleview, LLC attached hereto as Ex. A.
- I. "Owner" shall refer to the record owner, whether one or more persons and entities, including the Declarant, or a fee simple title to any part of the Properties, but excluding those having such interest merely as security for the performance of any obligation, and excluding those having a lien upon the property by provision of operation of law. A vendee in possession under a recorded contract of sale of any part of the Properties shall be deemed the owner thereof.
- J. "Outlot(s)" shall mean and refer to the outlots shown on the recorded plat for **Outlot W The Shops of Kettlestone North Plat 4**, and any additional outlots within any replats of the Properties made and recorded in accordance with statutes of the State of Iowa which may later be brought within the jurisdiction of the Association and the Declaration
- K. "Property" or "Properties" shall mean and refer to that certain real property described above, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, but shall exclude and not refer to any portion thereof conveyed, dedicated or granted to the City now or in the future.

I. EASEMENTS AND ENCROACHMENTS.

Section 1. Easement for Maintenance. Declarant reserves unto the Association a nonexclusive easement over the Lots/Outlots for the sole benefit of the Association in performance of its maintenance obligation under this Declaration. This easement shall not be for the benefit of the members or the public at large.

Section 2. Additional Easement Rights of the Declarant. Declarant reserves unto itself, for the benefit of all Lots/Outlots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise leave the location of any drainage, utility, and easement and to grant such further easements, licenses and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any portion of the Property. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and easement, or other easement, license or right-of-way by written instrument, amended plat or amendment to the plat recorded in the Office of the Recorder of Dallas County, Iowa and the Association and any Owner of any Lot/Outlot shall be subject to the right and easements reserved herein; provided, however, the rights reserved in this Section 2 shall not be

exercised in a manner which unreasonably and adversely affects the any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any common area. The rights and easements reserved by Declarant in this Section 2 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall no longer own an interest in the Property.

2. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The owner or owners of the Properties or any subdivisions thereof shall be members of the Association. Membership shall be appurtenant to the ownership of the real property and shall be indivisible from such ownership.

Section 2. Voting. There shall be appurtenant to each Lot/Outlot one vote in the Association. When more than one person holds an interest in any such Lot/Outlot, the vote for such Lot/Outlot shall be exercised as they among themselves determine, but in no event shall the vote be split with respect to any such Lot/Outlot. In the event that the owners of a Lot/Outlot fail to determine how to cast any vote, no vote shall be cast for said Lot.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE DECLARANT SHALL BE THE SOLE VOTING MEMBER OF THE ASSOCIATION UNTIL SUCH TIME AS DECLARANT NO LONGER OWNS ANY LOT/OUTLOT OR UNTIL THE DECLARANT WAIVES THE RIGHT TO BE SOLE VOTING MEMBER, WHICHEVER FIRST OCCURS. SO LONG AS DECLARANT IS THE SOLE VOTING MEMBER OF THE ASSOCIATION, DECLARANT SHALL HAVE THE RIGHT TO ELECT ALL MEMBERS OF THE BOARD.

Section 3. Board of Directors. The Owners entitled to vote shall elect a Board of Directors of the Association as prescribed by the Association's Bylaws. The Board of Directors shall manage the affairs of the Association.

Section 4. Suspension of Voting Rights. The Association shall suspend the voting rights of a member for any period during which any assessments against his or her Lot/Outlot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

3. COVENANT FOR ASSESSMENTS.

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot/Outlot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements and operating deficits, and other special assessments as provided in this Declaration; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot/Outlot against which each such assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot/Outlot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly

assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the costs associated with obligations imposed on the Association under the Agreement, and for other purposes specifically provided herein, including, but not limited to, payment of legal liabilities or obligations of the Association and all fees, costs, expenses, management fees and attorney's fees in connection therewith.

Section 2. A. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the costs associated with obligations imposed on the Association under the Agreement, and for other purposes specifically provided herein, including, but not limited to, the maintenance of the private street and storm sewer, and all common areas, including but not limited to signage, shrubs, water features, etc.

Section 3. Annual Assessment

1. Until January 1 of the year following the conveyance of the first Lot/Outlot to an Owner, the maximum annual assessment shall be in the amount of \$25,000 per acre, prorated based on the size of the lot.
2. Assessments shall be made and paid into the association in direct proportion to the size of the Lot/Outlot. To ensure that appropriate measures are implemented for the maintenance of all common areas including the private street and storm sewer, an initial deposit of \$25,000 per acre, prorated based on the size of the Lot/Outlot, shall be assessed to each Lot/Outlot to be paid into the association within 60 days of conveyance of the Lot/Outlot.
3. From and after January 1 of the year immediately following the conveyance of the first Lot/Outlot to an Owner, the maximum annual assessment may be increased effective January 1 of each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.
4. From and after January 1 of the year immediately following the conveyance of the first Lot/Outlot to and Owner, the maximum monthly assessment may be increased above 10% by a vote of 51% of the members who are voting in person or by proxy, at a meeting duly called for this purpose.
5. The Board of Directors shall fix the monthly assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of performing any of its stated obligations and responsibilities under this Declaration, including, without limitation, the cost of the maintenance of the private street and storm sewer, and all common areas, including but not limited to signage, shrubs, water features, and any construction, reconstruction, repair or replacement of a capital improvement in any detention area or other common area, including fixtures and personal property related thereto, which the Association is required to maintain, or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the

members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for an Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than ten (10) days, no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of all the votes of membership subject to the assessment shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting; No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots/Outlots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments. The annual assessments provided for herein shall be due as to each Lot/Outlot on the first day January of each year. The Board of Directors shall fix the amount of the annual assessment against each Lot/Outlot at least thirty (30) days in advance of the effective date of such increase. 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 officer of the Association setting forth whether the assessments on a specified Lot/Outlot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12% per annum or at the highest rate allowed by Iowa law, whichever is higher. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot/Outlot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the cost of preparing and filing the petition in such action, including reasonable attorney's fees.

Section 9. Subordination of Assessments Liens. If any Lot/Outlot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the

appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

Section 10. Enforcement of Declaration.

- A. Legal Action. This Declaration shall be deemed to run with and be a burden upon the land to which they apply and all improvements thereon. The owner of any lot/outlot or portion thereof to which this Declaration apply may bring an action in any Court of competent jurisdiction to enforce this Declaration and enjoin their violation, mandate their compliance or to recover damages for the breach thereof or for any other remedy or combination of remedies recognized at law or in equity.
- B. Delays in Enforcement. No delay or omission on the part of any owner of land to which this Declaration applies in exercising any rights, power or remedy herein allowed shall be construed as a waiver of acquiescence therein. No right, claim or action shall accrue to and no action or claim shall be brought or maintained by anyone against Declarant on account of any action or inaction under this Declaration.
- C. Conflict with Governmental Regulations. All property subject to this Declaration shall be also subject to any and all regulations of the City and any other governmental entities having jurisdiction, including, but not limited to, zoning ordinances, subdivision ordinances, building codes or other such regulations. Whenever there is a conflict between the provisions of this Declaration and the ordinances, statutes or regulations of the City, Dallas County, State of Iowa or the United States Government, the provision which is most restrictive shall be binding.

Section 11. Term of Declaration/Severability/Amendment.

- A. Duration. This Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Declarant, its successors and assigns, or the owners or owners from time to time of any lots subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of twenty-one (21) years after recordation hereof.
- B. Severability. In the event that one or more of the terms or conditions of this Declaration shall be declared for any reason, by the court of competent jurisdiction, to be null and void, such judgment or decree shall in no way affect, modify, change, abrogate or nullify any of the remaining covenants, conditions, restrictions or terms not so expressly held to be void and the remaining parts of this Declaration shall remain in full force and effect.
- C. Amendment. This Declaration may be amended in writing by an instrument signed and filed of record in the Office of the Dallas County, Iowa Recorder, by at least fifty-one percent (51%) of the Lot/Outlot owners, if the Declarant does not own a Lot or Outlot. Notwithstanding the foregoing, the Declarant retains the sole right to amend this Declaration for any reason so long as Declarant has an ownership interest in any Lot/Outlot. Furthermore, none of the rights and duties of Declarant reserved or set out hereunder may be amended or changed

without Declarant's prior written approval.

Dated this 8 day of November, 2018.

DECLARANT

KETTLEVIEW, LLC

ss Daniel Pettit

Daniel Pettit, Manager

Rachael Pettit

Rachael Pettit, Authorized Representative

STATE OF IOWA, COUNTY OF DALLAS, ss

This instrument was acknowledged before me on November 8, 2018, by Daniel Pettit as Manager of Kettleview, LLC.

Brooke A. Trimble
Notary Public in and for the State of Iowa

