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Patrick F. Gill, Auditor/Recorder, Woodbury County Iowa



**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR THE RESIDENCE AT ELK CREEK  
THE IOWA STATE BAR ASSOCIATION  
Recorder's Cover Sheet**

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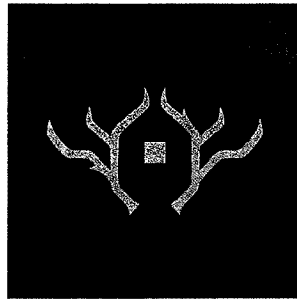
Elk Creek Development, LLC

**Grantees:**

See page 2.

**Legal Description:** See Exhibit "A".

**Document or instrument number of previously recorded documents:** None.



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE RESIDENCE AT ELK CREEK**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RESIDENCE AT ELK CREEK** (hereinafter "**Declaration**") is made this 23rd day of July, 2021, by **Elk Creek Development, LLC**, a South Dakota limited liability company, of Woodbury County, Iowa, hereinafter referred to as "**Declarant**." Declarant intends by this Declaration to impose upon the real estate legally described on **Exhibit "A"** attached hereto and incorporated herein by this reference, hereinafter be referred to as the "**Property**," mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Property. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use, occupation and enjoyment of such Property as is now or hereafter subjected to this Declaration.

**NOW, THEREFORE**, Declarant does hereby impose and charge the Property with the covenants, agreements, easements, restrictions, conditions, and charges hereinafter set forth, hereby specifying that all of said declarations shall constitute covenants to run with the land and shall be binding on all parties having any right, title, or interest in the Property or any portion of the Property, their heirs, successors, assigns, and all persons claiming by, through or under them, said declarations being intended to inure to the benefit of each owner of the Property or any portion thereof and, further, said restrictions and covenants being designed to keep said Property uniform and to insure the highest and best use of said Property.

**ARTICLE I  
DEFINITIONS**

1. **Definitions.** The following words when used in this Declaration shall have the meanings set forth below:

- a. "**Assessment**" shall mean a quarterly or a special assessment levied against any Parcel pursuant to the provisions of Article IV of this Declaration.

- b. "**Association**" shall mean the Elk Creek Homeowners Association, an Iowa non-profit corporation, as well as its successors and assigns.
- c. "**Board**" shall mean the Board of Directors of the Association.
- d. "**Bylaws**" shall refer to the Bylaws of the Association, as they may be amended from time to time.
- e. "**Clubhouse**" shall mean the platted lot(s) (whether by a subdivision plat or plat of survey) intended for improvement by a community clubhouse and related facilities and improvements located thereon.
- f. "**Control Period**" shall mean the period of time in which Declarant owns one or more Parcels and/or any part of the Property, including but not limited to the Clubhouse.
- g. "**Common Areas**" shall mean all property designated in writing as Common Areas by Declarant during the Control Period and the Association's interest in any property conveyed or leased to the Association by Declarant, including but not limited to any interest of the Association in the Clubhouse. "**Common Areas**" shall also mean any other property acquired by the Association, in the future, to benefit the Owners of Parcels within the Property and subsequently designated in writing as Common Areas by Declarant or the Association.
- h. "**Common Facilities**" shall mean any property, improvement or equipment that may be conveyed to, leased to or otherwise acquired by the Association, if any, which is intended to benefit the Owners of Parcels within the Property including, but not limited to any interest in the Association in the Clubhouse and related improvements and equipment and any interest of the Association in the Water Detention System and any ponds, trails and similar amenities on the Property.
- i. "**Design Guidelines**" shall mean the Residence at Elk Creek View Design Guidelines established by the Declarant for the Development in the Declarant's sole and absolute discretion. The Design Guidelines may be amended from time to time by the Declarant during the Control Period in the Declarant's sole and absolute discretion and thereafter by the Association by a majority vote of the Board.
- j. "**Design Review Committee**" shall mean the committee of the Association which administers the Design Guidelines and shall consist of the Declarant during the Control Period and after the Control Period shall consist of at least three (3) persons, but not more than five (5) persons, who shall be appointed by the Board (at least one of whom shall be a director on the Board).

- k. "**Development**" shall mean the Property and any additional property and any property hereafter added thereto by the Declarant or the Association.
- l. "**Member**" shall mean an Owner in his or her capacity as a member of the Association and the Declarant during the Control Period, all as provided in the Bylaws.
- m. "**Owner**" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Parcel except that, where a Parcel is being sold on a contract for deed and the contract vendee is in possession, then the vendee and not the vendor shall be deemed to be the "**Owner**". Under no circumstances shall Owner refer to any mortgagee or other lienholder unless and until the mortgagee or other lienholder has acquired title pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure.
- n. "**Parcel**" shall mean any platted lot (whether by a subdivision plat or plat of survey) intended for improvement by an individual Unit.
- o. "**Townhouse Complex**" shall mean any structure that is comprised of two or three Units, commonly referred to as duplex or triplex, that share one or more party walls with an adjacent Unit.
- p. "**Townhouse Unit Owner**" shall mean each Owner of a Unit within a Townhouse Complex.
- q. "**Unit**" shall mean each individual dwelling, including the Parcel upon which it is located, including each Unit within a Townhouse Complex which is sometimes referred to herein as a "Townhouse Unit". Each Unit shall be considered a separate Parcel for the purposes of this Declaration.

## ARTICLE II THE ASSOCIATION AND MAINTENANCE

1. **The Association.** The operation of the Association shall be governed by the Articles of Incorporation and Bylaws of the Association. The Association shall be responsible for the administration of this Declaration, as set forth herein, including but not limited to the maintenance and repair obligations as set forth herein and the fixing, levying, collection, and enforcement of payment of all charges and assessments therefor. The Association may contract with a manager or management company to execute and perform any and all duties of the Association under this Declaration, including but not limited to all Association Maintenance permitted or required by Section 2 below.

2. **Maintenance of Units.** The Association shall also be responsible for the following limited duties regarding the Units, Common Areas and Common Facilities constructed upon the Property (hereinafter referred to as the “**Association Maintenance**”):

- i. Operate, maintain, repair and, when reasonably required, replace the Common Facilities including but not limited to the Storm Water Systems (defined below) and any ponds located on the Property; provided, however any maintenance, repair or replacement of the Common Facilities caused by any act or omission of an Owner, whether intentional or unintentional, shall be the sole responsibility of such Owner.
- ii. Payment of any rent and other charges due for any property leased and operated by the Association, including but not limited to any lease or ownership of the Clubhouse, and performance of any and all duties under any such lease.
- iii. Snow and ice removal from the paved driveways and sidewalks, but excluding any patios, decks or similar areas associated with each Unit.
- iv. Mowing and fertilizing the turf grass, including applying weed control measures, for the lawn of each Unit.
- v. Maintaining the Approved Landscaping, including the shrubs, trees and planting beds of each Unit and within the Common Areas, but excluding any flowers or other seasonal plantings installed by the Owner.
- vi. Paying for all charges for operation, maintenance and repair of the Irrigation System (defined below) pursuant to the Association’s agreement with Elk Creek Waterworks or its successors and assigns, including but not limited to all customary maintenance of irrigation lines servicing individual Units, and winterizing and spring start up for each Unit.
- vii. Paying to Elk Creek Waterworks all water charges in connection with the irrigation of the lawn and landscaping for each Unit and the Common Areas.
- viii. Paying all management fees, expenses and other charges required by an management contract entered by the Association for the performance of Association duties under this Declaration and any related agreements entered by the Association.

3. **Association Maintenance Expenses.** All costs, expenses and charges incurred by the Association in connection with the Association Maintenance, including but not limited to any management fees and costs of any party hired to coordinate and accomplish any of the

Association's duties, shall hereinafter be referred to as the "**Association Maintenance Expenses.**" All other items of maintenance not specifically set forth above shall be the sole responsibility of the Unit Owners.

3. **Changes to Landscaping.** The initial landscaping for each Unit will be installed by the Unit Owner pursuant to the landscape guidelines required by the Design Guidelines following the approval procedures outlined therein (the "**Approved Landscaping**"). There shall be no material changes to the Approved Landscaping without the written consent of the Association. The Association shall have no obligation to maintain any landscaping which is not part of the Approved Landscaping.

4. **Rules and Regulations.** In the event the Board determines any provision relating to Association Maintenance or Association Maintenance Expenses is not clearly defined by this Declaration or otherwise needs further clarification, the Board shall have the sole authority to: (i) promulgate rules and regulations defining and/or clarifying such items; and (ii) determine whether the Unit Owners or the Association shall bear the responsibility for the Association Maintenance and/or Association Maintenance Expenses.

### **ARTICLE III COMMON AREAS**

1. **Property Rights in the Common Areas.** Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title of a Parcel, subject to:

- a. this Declaration as it may be amended from time to time, any additional covenants subsequently adopted pursuant to the terms of this Declaration and made applicable to such Parcel, any restrictions or limitations contained in any deed conveying such property to the Association, and to any restrictions or limitation set forth in any lease agreement for property leased by the Association;
- b. the right of the Association to limit the number of guests, and to adopt rules regulating the use and enjoyment of the Common Areas and Common Facilities;
- c. the right of the Association to suspend the right of an Owner to use any facilities within the Common Areas (i) for any period during which any charge against such Owner's Parcel remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation of this Declaration or the Bylaws, or rules of the Association or for such longer period as the Board may determine in the case of any continuing violation; and
- d. the right of the Association to dedicate or transfer all or any part of the Common Areas.

2. **Delegation of Use.** Any Owner may delegate, subject to the provisions hereof, the Owner's right of enjoyment to the Common Areas and any Association facilities to the Owner's tenants who occupy the Owner's Parcel.

3. **Storm Water Systems.** The Association shall be responsible for all maintenance of the storm water detention systems now or hereafter located on the Property, including but not limited to any ponds located on the Property (collectively, the "Storm Water Systems") and the Association shall hold harmless, defend and indemnify Declarant against all claims, expenses and costs arising out of, directly or indirectly, the Storm Water Systems except that Declarant shall be responsible for the repair of any damage to the Storm Water Systems caused by the negligence, recklessness or intentional acts of Declarant or Declarant's employees or contractors.

4. **Development in Phases.** The Declarant may, but shall not be required by this Declaration to, develop the Property in multiple phases. All persons, including all Owners of Parcels, are hereby advised that development plans may change according to the terms of this Declaration as development continues.

#### **ARTICLE IV COVENANT FOR QUARTERLY AND SPECIAL ASSESSMENTS**

1. **Creation of the Lien and Personal Obligation for Assessments.** The Owner of each Parcel hereby covenants and agrees, and each subsequent Owner of any Parcel by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) quarterly assessments or charges, and (ii) special assessments for such items as determined by the Association, to be established and collected as hereinafter provided. The quarterly and special assessments due with respect to each Parcel, together with interest, costs and reasonable attorneys' fees, shall be a charge on and a continuing lien against such Parcel. Quarterly assessments shall become a lien upon each Parcel as of the first day of each calendar quarter of the year in which such assessment is due and payable. Special assessments shall become a lien on the earliest date any part of the same is due and payable. Quarterly assessments and special assessments shall be due and payable as determined by the Association. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Parcel at the time when the assessment fell due.

2. **Purpose of Assessments.** The quarterly assessments levied by the Association shall be used for: (i) the payment of Association Maintenance Expenses, (ii) any insurance obtained by the Association, including but not limited to property insurance, liability insurance and directors and officers insurance in such amounts as the Board shall determine, (iii) the payment of taxes and assessments levied by any taxing authority on the Common Areas, the cost of utilities and insurance for and the operation, alteration, improvement, repair, and maintenance of the Common Areas and any personal property owned by the Association, (iv) the establishment of an adequate reserve fund which shall be maintained for maintenance, repair and

replacement of those elements of the Common Facilities that must be replaced on a periodic basis; (v) reasonable management fees; and (vi) any other purpose necessary to carry out the responsibilities of the Association, including those determined by the Board pursuant to Section 4 of Article II.

3. **Special Assessments.** In addition to the quarterly assessments authorized above, the Association may levy one or more installments of a special assessment for such purposes as may be reasonably determined by the Association, which include without limitation, defraying, in whole or in part: (i) the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, (ii) capital equipment to be owned by the Association, or (iii) such other expenses reasonably incurred, or expected to be incurred, to carry out the Association's responsibilities.

4. **Uniform Rate of Assessment.** Both quarterly and special assessments shall be fixed at a uniform rate per Parcel and no assessment may be made on a front foot, square footage or other basis. Notwithstanding anything herein to the contrary, during the Control Period Declarant shall not be subject to or otherwise be required to pay any portion of the quarterly or special assessments assessed against any Parcel or other property owned by Declarant.

5. **Date of Commencement of Quarterly Assessments; Due Dates.** The Association, acting through the Board, shall fix the amount of the quarterly assessments provided for herein against each Parcel subject to assessment at least thirty (30) days in advance of each quarterly assessment period. The initial quarterly assessment period shall commence on the first day of the month following the recording of this Declaration and run throughout and including the next succeeding calendar quarter (i.e. March 31, June 30, September 30, or December 31), provided, however, that assessments for individual Parcels shall begin at the start of the next calendar quarter after the earlier of the issuance of the certificate of occupancy for the Parcel or 12 months after the date of the transfer of the Parcel from the Declarant to the initial purchaser. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Parcel have been paid.

6. **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 fifteen percent (15%) per annum; provided, however, interest in excess of the maximum permitted by law shall not be collected and in such case the interest rate will be reduced to highest amount permitted by law. The Association may bring an action at law against the Owner obligated to pay the same, or foreclose the lien against the Parcel in the same manner as a real estate mortgage may be foreclosed. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Areas, abandonment of his or her Parcel or otherwise.

7. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Parcel shall not affect the assessment lien. However, the foreclosure of any such first mortgage shall extinguish the lien of such assessments as to payments which become payable prior to the completion of such foreclosure or which become payable during any period of redemption and, if, in the opinion of the Board, the assessments for which liens were extinguished cannot reasonably be collected in an action against the person personally obligated to pay them, the Association shall bear such assessments as a common cost. No sale or transfer shall relieve such Parcel from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE V DESIGN AND CONSTRUCTION OF UNITS

1. **Approval of Plans.** No house, building, wall, or other structure or improvement shall be commenced, erected, or maintained upon any Parcel within the Property, nor shall any addition thereto or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, and location shall have been submitted in writing to, and approved in writing by the Association's Design Review Committee ("**DRC**"). The DRC will evaluate each of the plans submitted by an Owner: (i) for adherence to standards set forth in the Design Guidelines and this Declaration; and (ii) to ensure the quality image of the Development is maintained based upon such additional criteria as the DRC may reasonably determine. Notwithstanding the foregoing, the DRC, in its discretion, has the right to grant variances from the Design Guidelines provided it uses its reasonable discretion and the variance is in writing. The DRC shall have the right, but not the obligation, to monitor and review the design and construction process in order to assure conformance with the approved documents and the standards set forth in the Design Guidelines and in this Declaration; provided, however, the Owner has the ultimate responsibility for the conformance with the approved documents and the standards set forth in the Design Guidelines and in this Declaration and for prompt correction of any deficiencies. All DRC approvals shall be given in writing and shall in no way relieve the Owner or its builder from responsibility and liability for adherence to any applicable ordinances and codes.

2. **Use of Approved Builder.** Any Owner desiring to build upon a Parcel shall use a builder approved by the Declarant in Declarant's sole and absolute discretion (hereinafter an "**Approved Builder**"). Declarant shall maintain a list of Approved Builders which shall contain at least three (3) Approved Builders. If any Owner violates this covenant, Declarant shall be entitled to utilize and seek any and all remedies or actions available to Declarant at law or in equity and shall be entitled to obtain a judgment for costs and expenses, including but not limited to reasonable attorneys fees.

3. **Use of Approved Irrigation Subcontractor.** Any Owner desiring to build upon a Parcel shall cause their Approved Builder to use an irrigation installation subcontractor approved by the Declarant in Declarant's sole and absolute discretion (hereinafter an "**Approved**

**Irrigation Subcontractor**”) for installation of the Elk Creek Waterworks components of the Irrigation System servicing the Owner’s Parcel. Declarant shall maintain a list of Approved Irrigation Subcontractors which shall contain at least one (1) Approved Irrigation Subcontractor. If any Owner violates this covenant, Declarant shall be entitled to utilize and seek any and all remedies or actions available to Declarant at law or in equity and shall be entitled to obtain a judgment for costs and expenses, including but not limited to reasonable attorneys fees.

**ARTICLE VI  
IRRIGATION OF THE PROPERTY AND IRRIGATION SYSTEM**

1. **Irrigation System.** Elk Creek Waterworks, LLC, an affiliate of Declarant (“**Elk Creek Waterworks**”), has established upon the Property or will establish at locations upon the Property to be determined by Declarant and Elk Creek Waterworks in their sole and absolute discretion, facilities for irrigation of the Development consisting of wells, pumps, main irrigation lines, irrigation control modules (also known as the irrigation control boxes), related equipment and structures for housing and protecting said facilities, as well as irrigation lines, valves, heads and related equipment installed on Parcels and connected into a main irrigation line for service of one or more Parcels (collectively, the “**Irrigation System**”). All components of the Irrigation System are property of the Elk Creek Waterworks and shall be owned by Elk Creek Waterworks and its successors and assigns.

2. **Easement for Irrigation System.** Declarant hereby reserves and grants unto to Elk Creek Waterworks and its successors and assigns a perpetual easement over, through and across any and all Parcels and all parts of the Property, at locations to be determined by Declarant and Elk Creek Waterworks, or its successors and assign, in their sole and absolute discretion, to construct, operate, maintain, replace or remove the Irrigation System and any and all related equipment and facilities for maintenance and operation of the Irrigation System, including the right of ingress and egress for purposes of maintenance, operation, and replacement of the Irrigation System and any components thereof. Said easement shall include the exclusive permanent right to withdraw and use water from any wells established on the Property and any ponds maintained upon the Property for any purposes and in any quantities deemed necessary by Elk Creek Waterworks including but not limited to supplying water for any ponds and supplying water for use in the Irrigation System.

3. **Connection of Parcels to Irrigation System.** To ensure proper connection and integration into the Irrigation System, all irrigation lines, valves, heads and related equipment connecting each Unit into the main irrigation lines will be installed through an Approved Irrigation Subcontractor (defined in Article V above) in conjunction with the Unit Owner’s improvement of the Parcel and shall use only materials and equipment approved by the Declarant and Elk Creek Waterworks. Each Unit Owner shall pay to Elk Creek Waterworks an installation and connection fee for installation of the irrigation lines, valves, heads and related equipment upon the Parcel in an amount to be determined by Elk Creek Waterworks in its sole and absolute discretion. Upon installation, such irrigation lines, valves, heads and related equipment shall become part of the Irrigation System and shall remain property of Elk Creek

Waterworks. All maintenance to the irrigation lines, valves, heads and related equipment shall be the responsibility of the Association pursuant to its agreement with Elk Creek Waterworks and shall be performed solely by an Approved Irrigation Subcontractor. Neither the Association nor the Unit Owner shall make any changes to the irrigation equipment for a Unit without the written consent of Declarant or Elk Creek Waterworks.

4. **Operation of Irrigation System.** The Association shall contract with the Elk Creek Waterworks for the provision of water for irrigation and irrigation services for the Development. Water for irrigation and operation of the Irrigation System shall be provided exclusively through the Association pursuant to its agreement with the Declarant or its successors and assigns. All charges for water for irrigation and for operation, maintenance and repair of the Irrigation System shall be paid by the Association as an Association Maintenance Expense pursuant to its agreement with Elk Creek Waterworks.

## **ARTICLE VII TOWNHOUSE UNITS**

1. **Development of Townhouse Complexes within the Development.** Declarant, or an Owner of one or more Parcels only upon written approval by Declarant (which approval may be granted or withheld by Declarant in Declarant's sole and absolute discretion) may develop one or more Parcels into one or more Townhouse Complexes comprised of multiple Townhouse Units. Upon recording of the plat of survey or subdivision plat for such Parcel(s) pursuant to Iowa Code Chapter 354 and Article VII, Section 5 below, each Townhouse Unit within the Townhouse Complex shall be deemed a separate Parcel for purposes of this Declaration and shall be subject to the terms of this Article VII.

2. **Townhouse Exterior and Party Walls.** Townhouse Unit Owners shall coordinate their efforts to maintain, replace and repair the exterior of their respective Unit within a Townhouse Complex in good condition and uniform in appearance and shall not paint, decorate, install landscaping, siding materials, roofing materials, doors, windows or otherwise change any aspect whatsoever of the exterior of any Unit within the Townhouse Complex unless written consent of the Board is first obtained. If there is dispute between the Townhouse Unit Owners, the Board shall attempt, but shall not be required, to mediate the dispute. Each Townhouse Unit Owner shall perform maintenance and repair in such a manner so as to not unreasonably disturb other persons residing in adjacent Units. The Townhouse Unit Owners shall jointly maintain their respective party walls in good condition and agree to not make any alteration to a party wall or undertake any action which would compromise or otherwise alter the structural integrity of the party wall. Each Townhouse Unit Owner shall have an easement upon or into the adjoining Unit, and a right-of-entry as is necessary, to perform such work and shall not be liable for trespass for such entry or work.

3. **Insurance.** By virtue of taking title to a Unit within a Townhouse Complex, each Townhouse Unit Owner shall carry insurance as required herein, including a casualty

insurance policy or policies affording fire and extended coverage in an amount that at least equals the full replacement value of the Unit and a liability insurance policy or policies in amounts not less than \$500,000 and in addition a \$1,000,000 umbrella policy or such additional amounts as the Board may deem advisable from time to time covering each Townhouse Unit Owner or other persons entitled to occupy each Townhouse Unit. Every Townhouse Unit Owner shall be obligated to obtain and maintain insurance covering consequential damages to any other Townhouse Unit with the Townhouse Complex due to occurrences originating within the Owner's Townhouse Unit caused by negligence of the Townhouse Unit Owner, Townhouse Unit Owner's family and guests or the failure of the Townhouse Unit Owner to maintain the Townhouse Unit, or any other casualty within the Townhouse Unit that causes damage to the Townhouse Units. Each Townhouse Unit Owner further covenants and agrees that in the event of partial loss or damage resulting in less than total destruction of his or her Townhouse Unit, the Townhouse Owner shall proceed to promptly repair or reconstruct the damaged structure in a manner consistent with the original construction plans and specifications and in accordance with any additional requirements imposed by the Board. The Townhouse Unit Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. If the Townhouse Unit is totally destroyed, the Townhouse Unit Owner may, if all Townhouse Unit Owners with the Townhouse Complex agree in writing, decide not to rebuild or reconstruct, in which case the Townhouse Unit Owner shall clear the Parcel of all debris and return the Parcel to level ground and thereafter such Townhouse Unit Owner shall continue to maintain the Parcel in a neat and attractive condition consistent with the Declaration and shall continue to pay Assessments as provided in Article IV herein. Each Owner shall provide the Board with a certificate of insurance with these property and liability insurance requirements.

## **ARTICLE VIII USE RESTRICTIONS**

1. **Land Use and Building Type.** No Parcel shall be used except for residential purposes. Only above-ground dwellings shall be permitted and no earth shelter houses or dwellings, houses surrounded by berms and underground houses shall be constructed on or placed on any Parcel. No modular home, mobile home or manufactured home shall be constructed on or placed on any Parcel. Except as set forth in Article VII above, not more than one single-family residential structure shall ever be erected on one Parcel.

2. **Code Compliance.** In addition to complying with the Design Guidelines and this Declaration, all building construction and improvements must comply with all ordinances and regulations of the City of Sioux City, Iowa and all other applicable laws.

3. **Construction Site Envelope; Building Locations.** Buildings and other improvements shall be located within the building site envelope set forth in the Design Guidelines.

4. **Removal of Soil and Grade Level.** No soil shall be removed from the Property resulting from any excavation without first obtaining the written approval of the DRC. There shall be no material change in grade levels without the written approval of the DRC.

5. **Replatting and Subdividing Not Permitted Except by Declarant.** No one Parcel or multiple adjacent Parcels shall be subdivided or replatted pursuant to Iowa Code Chapter 354 or otherwise split or divided except: (i) by Declarant during the Control Period; or (ii) by an Owner of one or more Parcels during the Control Period but only upon written approval by Declarant (which approval may be granted or withheld by Declarant in Declarant's sole and absolute discretion). No one, except Declarant (which shall be in the Declarant's sole discretion) or an Owner of one or more Parcels during the Control Period who has obtained written approval of the Declarant (which approval may be granted or withheld by Declarant in Declarant's sole and absolute discretion), shall at any time in any other manner change a subdivision plat of the Property, or dedicate any of the Property for a public thoroughfare, or permit any part of the Property to be used as a public thoroughfare.

6. **Time-Shares Prohibited.** No Parcel shall be made subject to any type of time-sharing, fraction-sharing, or similar program whereby the right to exclusive use of the Parcel or dwelling unit rotates among members of the program on a fixed or floating time schedule over a period of years.

7. **Livestock and Poultry.** No animals, livestock, horses, or poultry of any kind shall be raised, bred, or kept on any Parcel within the Property, except dogs, cats, or other usual and common household pets, provided that they are not kept for any reason other than as household pets. Any pets which endanger the health of any Owner or its occupants and guests, make objectionable noise, or constitute a nuisance or inconvenience to the Owner of any Parcel shall be removed upon request of the Board.

8. **Nuisances.** No noxious, offensive, or illegal activity, as defined by law or as defined by the Association, nor any trade or commercial activity of any kind, shall be carried on upon any Parcel nor shall anything be done which may be or become an annoyance or nuisance, as defined by law, to the neighborhood or individuals residing or owning Parcels therein, except that an Owner or occupant residing therein may conduct business activities within the Parcel so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Parcel, which includes for example in-home daycares, preschools or similar activities; (b) the business activity conforms to all zoning laws, ordinances, and requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. Business activities pursuant to which customers or the general public are invited onto the Parcel shall not be permitted. Without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause

disorderly, unsightly, or unkept conditions, shall not be pursued or undertaken on any part of the Property. No portion of any Parcel shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of a Parcel that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding Parcels.

9. **Vehicle Parking.** No vehicles shall be temporarily or permanently parked within the Property without being garaged unless such parking is by bona fide temporary guests of the Owner or unless approved by the DRC. Notwithstanding the foregoing, one vehicle shall be allowed to be parked on the driveway serving each Parcel (without being garaged) provided: (i) the vehicle is a passenger vehicle and not intended for commercial use, (ii) the vehicle is obviously operable and moves under its own power at least once every 72 hours and (iii) the vehicle has a current registration and license plates. No garbage or large commercial trucks may be permanently parked or housed within the Property even within garages. No recreational vehicles, trailers, campers, camper trailers, boats and other watercraft, and boat trailers shall be allowed upon any Parcel unless such recreational vehicle is parked within the garage serving said Parcel. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted upon the Parcels except within enclosed garages. Any vehicle or item parked in violation of this Section 9 or in violation of parking rules promulgated by the Association may be towed and stored by said Association, all at the expense of the Parcel Owner. By acceptance of deed for any Parcel, the Parcel Owner covenants and agrees, whether or not it shall be so expressed in such deed, that the Board and its agents are hereby appointed the Owner's duly authorized agent for enforcement of the vehicle parking restrictions set forth in this Section 9.

10. **Garbage Containers and Refuse Disposal.** No Parcel shall be used or maintained as a dumping ground for rubbish or storage area for any commercial equipment not contained within a dwelling. Trash, garbage or other waste shall be kept in sanitary containers, which containers shall be kept out of the front yard except on collection day. Storage of such containers while in use shall be within garages or within properly screened areas.

11. **Signs.** Except as expressly set forth in this Section 11, no sign of any kind shall be displayed to the public view on any Parcel, except name plates or address designations. Declarant or the Association may erect signage within the Development designating or identifying the Development. Declarant and Declarant's agents shall be allowed to erect and display such signs as shall be necessary to indicate to the public that Parcels within the Property are available for purchase. Further, Owners shall be allowed to erect and display such re-sale signs as shall be necessary to indicate to the public that their Parcel is available for purchase, said signs to be in keeping with the size and type of re-sale signs typically used by realtors.

12. **Vacant Parcels.** Any unimproved or vacant Parcels must be maintained, regularly mowed and sprayed for weeds. If the Owner of a Parcel fails to properly maintain the

Parcel the Association may give notice to the Owner at the Owner's last known address setting forth the maintenance that must be performed and providing that if the Owner fails to perform said maintenance with fourteen (14) days after the date of the notice, the Association may perform such maintenance and bill the Owner of the Parcel for all expenses incurred. The Association shall have a lien against the Parcel for all expenses incurred and may record an affidavit or other document giving notice of such lien in the records of the County Recorder.

13. **Landscaping.** The yard for each Parcel shall be completely sodded with fescue turf grass, with no seeding allowed, such that a lawn is established within six (6) months after the earlier of the substantial completion of construction or the date a Certificate of Occupancy for the home constructed on the Parcel is issued. All remaining landscaping for the Parcel, as required by the Design Guidelines, shall be completed within one (1) year after the earlier of the substantial completion of construction or the date a Certificate of Occupancy for the home constructed on the Parcel is issued. Notwithstanding the foregoing or anything herein to the contrary, all landscaping for each Parcel shall be completed within eighteen (18) months following the issuance of a building permit for the Parcel.

14. **Private Irrigation Water Source System Not Allowed.** Irrigation for the each Parcel shall be provided exclusively through the Irrigation System operated by Elk Creek Waterworks. Except for the Irrigation System operated by Elk Creek Waterworks, no sprinkler or irrigation systems of any type which connect to a municipal water source or draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Property shall be installed, constructed or operated within the Property. Private wells, except those used by Elk Creek Waterworks in operation of the Irrigation System, whether for potable use or irrigation or any other use, are prohibited on the Parcels within the Property.

15. **Pools.** Only in-ground pools may be installed and no above-ground swimming pools shall be erected, constructed, or installed upon any Parcel. Prior written approval of the DRC shall be required before installation of any pool upon a Parcel. All in-ground pools shall have appropriate covers and screening that must be reviewed and approved in writing by the DRC prior to installation. Jacuzzis, hot tubs, spas, or any similar apparatus may be permitted if approved by the DRC in accordance with the Guidelines established by the DRC. Equipment for pools, spas, and the like shall be completely screened from adjoining properties.

16. **Combining Parcels.** Except as otherwise provided by these terms of this Declaration, only one (1) dwelling unit will be approved for construction on each platted Parcel; provided, however if contiguous Parcels are owned by the same Owner, the DRC may consider approving plans for construction of a single dwelling which straddles the boundary between such Parcels.

17. **Sidewalks.** Each Owner of a Parcel shall construct, or cause to be constructed, a concrete sidewalk five (5) feet in width extending across the entire Parcel at the earliest of the following: (i) at the time of the construction of a dwelling, (ii) within 12 months after the purchase date of the Parcel, or (iii) at the time the City of Sioux City orders the installation of

sidewalks. In the event that any Owner of a Parcel fails to install a sidewalk, the Association, at its option, shall have the right to construct the sidewalk, or cause it to be constructed, and such Owner shall be liable to the Association for any and all costs in connection therewith. The Association is hereby empowered to claim and enforce a lien against the affected Parcel or Parcels for the cost of such construction and all costs of enforcement of the lien, including a reasonable attorney's fee. The Association may record an affidavit or other document giving notice of such lien in the records of the County Recorder.

18. **Outside Storage; Holiday Displays.** Items such as compost containers, lawn or garden equipment, building materials, and other similar items shall be placed out of public view. Firewood shall be adequately screened from view and must be stacked in the rear yard area at least twenty (20) feet from any rear or side yard lot line. Only retractable clotheslines are permitted and shall be located in the rear yard area and retracted when not in use. No clothing, rugs, or other items shall be hung on or from any railing, landscaping or window. No exterior holiday decorations shall be erected more than six (6) weeks prior to the holiday and all exterior holiday decorations shall be removed within five (5) weeks following the holiday.

19. **Fill Addendum.** There may be filed with the subdivision Plat of the Property an addendum showing the general location of the areas of original fill which are five (5) feet or more in depth. The absence of such an addendum shall not for any purpose be interpreted or construed that there is no filled ground.

20. **Soils.** The Declarant makes no warranty or representation whatsoever regarding the existence of filled ground, the quality of the soil condition, or the compaction or buildable quality of any particular Parcel. Each Parcel Owner, by acceptance of a deed for a Parcel, acknowledges that no oral or written representations, statements, warranties or promises as to the existence of filled ground, the quality of the soil condition, or the compaction or buildable quality of any particular Parcel have been made by the Declarant or its contractors, agents or employees or any person purporting to represent Declarant, unless the specific warranty or representation has been made in writing by the Declarant. It shall be the sole and exclusive responsibility of the Parcel Owner to perform all appropriate soil tests and sampling of soil conditions to determine the compaction and buildable quality of the soil, as well as the suitability of the Parcel for the Parcel Owner's proposed improvements and the location thereof before construction of any improvements. No Owner shall at any time deposit dirt or other materials on any other Parcel before, during, or after construction of improvements on any Parcel.

21. **Fences.** No fences shall be constructed upon any Parcel.

## ARTICLE IX EASEMENTS

1. **Reservation of Easements.** Easements and rights of way are hereby expressly reserved to Declarant and the Association, their successors and assigns, over, through, and across the Property and any and all Parcels within the Property for all purposes related to the location of electric and communication cables, storm drainage, sanitary sewers, pipelines for supplying gas, water, or heat, including mains, service pipes and equipment and drainage purposes, facilities for general utility functions, and all equipment necessary thereto. As part of this reservation, Declarant and the Association may further grant or assign any of its reserved easements and rights of way to any utilities or other persons to accomplish these purposes.

2. **Storm Water Easements.** In addition to the easements and rights of way established in Section 1 above, Declarant hereby reserves to Declarant and to the Association, a non-exclusive easement over, through, and across any and all Parcels within the Property on which there are located any storm water drainage ways or detention facilities to the extent reasonable or necessary for the operation, maintenance, repair, or restoration of any such storm water drainage ways or detention facilities and any related improvement.

3. **Pipeline and Electric Utility Line Easements.** The Property is subject to pipeline easements and electric utility easements shown of record and as may be shown on any subdivision plat of the Property. Except as specifically permitted by any recorded easement agreement related thereto, no improvements and/or landscaping shall be constructed, allowed or located on the property subject to the pipeline and utility easements, or such property otherwise disturbed by an Owner, without obtaining the written approval and consent of the owner of the respective easement and the DRC.

## ARTICLE X GENERAL PROVISIONS

1. **Binding and Running with the Land.** The covenants, agreements, conditions, restrictions, easements and charges in this Declaration shall run with the land and shall be binding on all parties having any right, title or interest in any Parcel, their heirs, successors, assigns and all persons claiming by, through, or under them.

2. **Term.** The easements created pursuant to this Declaration shall be perpetual. All covenants, conditions, restrictions and reservations created by this Declaration shall continue for a term of twenty-one (21) years from the date of this Declaration, after which time the same shall expire unless otherwise extended. Expiration and extension of all covenants shall be governed by Iowa Code Sections 614.24 - 614.28, as amended. The Association, or the Owners of the Parcels, acting jointly or severally, shall file all verified claims necessary to continue the conditions, covenants, restrictions, and reservations contained in this Declaration prior to the twenty-first (21<sup>st</sup>) anniversary of the date of this Declaration or the twenty-first (21<sup>st</sup>) anniversary of the last filing of such verified claim. In addition, a verified claim filed by any Owner of a Parcel shall be valid and effective for extension of the covenants, conditions, restrictions and reservations created by this Declaration and shall be binding upon the

Association and all Owners of the Parcels and shall have the same effect as if executed by all such Owners.

3. **Commencement of Construction and Declarant's Option to Repurchase.** The purchaser of each Parcel, by its acceptance of conveyance of the Parcel and in consideration of the Declarant completing the sale of said Parcel, agrees to commence construction of a residential home on the Parcel within twelve (12) months from the date of the deed from the Declarant to the initial purchaser of the Parcel is recorded. For purposes of this Section 3, commencement shall mean a building permit has been issued for the Parcel and excavation for the foundation of the structure has commenced. Declarant may, in Declarant's sole and absolute discretion, extend the period in which construction upon a Parcel must commence. Any such extension shall be given in writing. If a written extension is granted and construction has not commenced on the Parcel by the end of the extended period, the option to repurchase granted by this Section 3 below may be exercised at any time after the expiration of said extended period.

Because prompt commencement of construction on the Parcels after sale from the Declarant is critical to the orderly development of the Property, including but not limited to compliance with the Development Agreement pertaining to the Property, the Declarant is hereby given and granted the option to repurchase the Parcel at ninety percent (90%) of its original sales price if the Owner of a Parcel fails to commence construction of a residential home on the Parcel within twelve (12) months from the date of the initial purchase of the Parcel from Declarant. Each purchaser of a Parcel, when purchasing the Parcel, gives and grants this option of repurchase to Declarant, which may be evidenced in any deed from Declarant to the initial purchaser. Each purchaser shall further agree to execute and deliver any other documents reasonably requested by Declarant to effectuate the option. Declarant may assign its option to repurchase with respect to any Parcel.

Declarant, or its successors and assigns, may exercise its option to repurchase at any time following the expiration of the time period in which construction must commence by giving written notice to the purchaser. The notice of exercise of the option shall be deemed to have been properly sent when posted at, hand-delivered to, or mailed postage paid to the last known address of the person who appears as such Owner on the records of the Association at the time of such mailing. Closing on the repurchase shall occur within 30 days following the date of the notice of exercise. The Owner of the Parcel shall deliver marketable title to the Parcel to Declarant at closing free and clear of all liens and encumbrances, including any due and payable real estate taxes, and Declarant shall deliver the purchase price less the real estate transfer tax and other customary seller closing costs. If the Owner fails to timely deliver marketable title to the Parcel to the Declarant as required by this Section 3, Declarants shall be entitled to utilize any and all remedies or actions at law or in equity available to Declarant, including but not limited to specific performance, and shall be entitled to obtain judgment for costs and attorney fees as permitted by law.

4. **Enforcement.** Except where any different enforcement mechanism is specifically provided for herein, enforcement of this Declaration shall be by proceedings at law or in equity

instituted by Declarant, the Association or any Parcel Owner against any party other than Declarant having any right, title, or interest in the Property or any portion of the Property for violating or attempting to violate any covenant, either to enjoin or restrain the violation, or to recover damages, or both.

5. **Enforcement Against Homestead.** To the extent that a Parcel may be the homestead of an Owner, the Owner of said Parcel and each subsequent Owner of any such Parcel, by acceptance of a deed therefor, covenants and agrees that the homestead located on said Parcel shall be liable for any and all debts of the Owner to the Association arising under this Declaration, including but not limited to quarterly and special assessment due pursuant to Article IV and any charges, expenses or reimbursements due pursuant to this Declaration. Further, by acceptance of a deed for a Parcel, the Owner agrees that any liens arising hereunder may attach to and be enforced against said homestead.

6. **Liquidated Damages.** The damages for violation of any of the restrictions and covenants set forth in this instrument, being difficult to ascertain, shall be the liquidated damages as set forth in this paragraph as expressly agreed to by all purchasers of Parcels but which shall exclude the Declarant. Such damages for the violation of any restriction or covenant contained in this instrument are hereby expressly set at Five Hundred Dollars (\$500.00) per violation, which sum shall be paid by the violator to the Association. Said liquidated damages shall not be the sole remedy of the remaining Owners, but shall be cumulative with, and the remaining Owners shall retain, all other remedies, at law or in equity, and as set forth above, for purposes of enforcement of this Declaration.

7. **Notices.** Any notices required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when posted at, hand-delivered to, or mailed postage paid to the last known address of the person who appears as such Owner on the records of the Association at the time of such mailing.

8. **Severability.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

9. **Assignment of Declarant Rights.** Any or all rights and powers granted to or reserved by the Declarant in this Declaration, including without limitation the power to approve or disapprove any act, use or proposed action, may be assigned by the Declarant to any other entity or person, including the Association. Any such assignment or transfer shall be made by appropriate instrument in writing and shall be duly recorded in the Recorder's Office for Woodbury County.

10. **Amendments.** Notwithstanding anything herein to the contrary, the Declarant shall have the sole right, in its sole discretion, to amend this Declaration during the Control Period which said amendment shall be filed of record. Thereafter, this Declaration may only be amended by written consent of at least three-fourths (3/4ths) of the Parcel Owners which consent

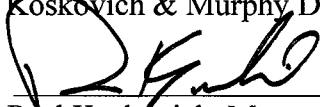
shall be filed of record provided, however, that such amendment shall insure provisions for the continued operation, maintenance, repair, restoration and replacement of improvements to the Property constructed by Declarant, and except that no such amendment may change the manner of assessment of any Owner except in a manner applied uniformly to all Owners. Consent of third parties such as mortgagees, tenants, or lienholders to such amendments shall not be required. The recorded affidavit of an abstracter stating the names of the Parcel Owners shall conclusively establish as to all persons and for all purposes the identity of Parcel Owners executing such written consent.

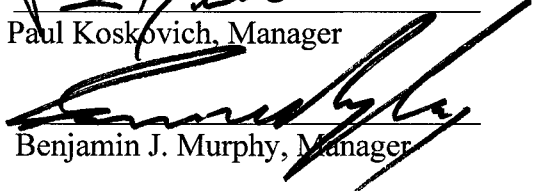
**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, we have hereunto set our hands on the day and year first above written.

**ELK CREEK DEVELOPMENT, LLC**


By: Koskovich & Murphy Developments, LLC, Its Manager

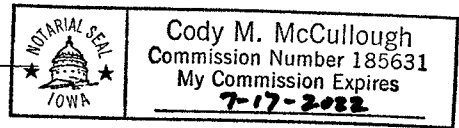
By:   
Paul Koskovich, Manager

By:   
Benjamin J. Murphy, Manager

STATE OF IOWA, COUNTY OF WOODBURY:

This record was acknowledged before me on August 3, 2021 by Paul Koskovich and Benjamin J. Murphy as Managers of Koskovich & Murphy Developments, LLC as Manager of Elk Creek Development, LLC.

  
Notary Public – State of Iowa



**Exhibit "A"**  
**(Legal Description of the Property)**

The East ½ of the Northwest ¼ of the Southeast ¼ of Section 17, Township 88 North, Range 47 West of the Fifth Principal Meridian, Woodbury County, Iowa, more particularly described as follows:

Beginning at the Northeast corner of said East ½ of the Northwest ¼ of the Southeast ¼ of said Section 17; thence South 0°13'18" East along the East line of said East ½ of the Northwest ¼ of the Southeast ¼ for 1310.31 feet to the Southeast corner of said East ½ of the Northwest ¼ of the Southeast ¼; thence South 88°18'02" West along the South line of said East ½ of the Northwest ¼ of the Southeast ¼ for 658.57 feet to the Southwest corner of said East ½ of the Northwest ¼ of the Southeast ¼; thence North 0°06'38" West along the West line of said East ½ of the Northwest ¼ of the Southeast ¼ for 1307.13 feet to the Northwest corner of said East ½ of the Northwest ¼ of the Southeast ¼; thence North 88°00'59" East along the North line of said East ½ of the Northwest ¼ of the Southeast ¼ for 656.12 feet to the point of beginning.

Said described parcel contains 19.741 acres, more or less.

and

All that part of the Northeast ¼ of the Southeast ¼ of Section 17, Township 88 North, Range 47 West of the Fifth Principal Meridian, Woodbury County, Iowa, described as follows:

Beginning at the Northwest corner of said Northeast ¼ of the Southeast ¼ of said Section 17; thence South 0°13'18" East along the West line of said Northeast ¼ of the Southeast ¼ for 1310.31 feet to the Southwest corner of said Northeast ¼ of the Southeast ¼; thence North 88°25'20" East along the South line of said Northeast ¼ of the Southeast ¼ for 1281.14 feet to the centerline of Elk Creek Road; thence North 0°20'43" West along said centerline for 80.69 feet; thence Northwesterly along said centerline for 291.81 feet on a 350.00 foot radius curve, concave Southwesterly, having a long chord of 283.43 feet, bearing North 24°13'48" West; thence North 48°06'53" West along said centerline for 1261.01 feet; thence Northwesterly along said centerline for 139.74 feet on a 1350.00 foot radius curve, concave Northeasterly, having a long chord of 139.68 feet, bearing North 45°08'58" West to the North line of said Northeast ¼ of the Southeast ¼; thence South 88°00'59" West along said North line for 131.17 feet to the point of beginning.

Said described parcel contains 24.157 acres, more or less, which includes 1.345 acres in roadway easement.