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PATRICK F GILL AUDITOR & RECORDER
Woodbury County, Iowa

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR THE RESIDENCE AT ELK CREEK
Recorder's Cover Sheet**

Preparer Information:

Jeremy B. Saint
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Taxpayer Information:

Elk Creek Development, LLC
2106 3rd Street
Sioux City, IA 51102

Return Document To:

Jeremy B. Saint
Attorney at Law
329 Pierce Street, Suite 200
Sioux City, IA 51101

Grantors:

Elk Creek Development, LLC

Grantees:

See page 2.

Legal Description: See Exhibit "A".

Document or instrument number of previously recorded documents: Instrument No. 2021-10801; Instrument No. 2022-07065

3. The following Subsection s. of Section 1 of Article I is hereby added to the Declaration immediately after Subparagraph r.:

s. **“Special Assessment”** shall mean those assessments levied against any Parcel for payment of the extraordinary expenses of the Association and for the purposes set forth in Section 3 of Article IV of this Declaration.

4. Article IV is hereby deleted in its entirety and replaced with the following:

**ARTICLE IV
COVENANT FOR REGULAR 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) periodic Regular Assessments or charges, and (ii) Special Assessments for such items as determined by the Association, to be established and collected as hereinafter provided. The Regular 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. Regular Assessments shall become a lien upon each Parcel as of the first day of each calendar month 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. Regular Assessments shall be due and payable on or before the first day of each month unless otherwise determined by the Association. 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 Regular Assessments.** The Regular 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 Regular 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.** Except as set forth below, both Regular 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, the following exceptions shall apply: (a) during the Control Period Declarant shall not be subject to or otherwise be required to pay any portion of the Regular or Special Assessments assessed against any Parcel or other property owned by Declarant; and (b) the Regular Assessments (whether billed on a monthly or other basis) assessed against Lots 3, 16, and 63 of the Residence at Elk Creek, Second Filing, an Addition to the City of Sioux City, Woodbury County, Iowa, shall not exceed three hundred Dollars (\$300.00) per month per lot regardless of the number of Parcels into which said lots may be divided.

5. **Date of Commencement of Regular Assessments; Due Dates.** The Association, acting through the Board, shall fix the amount of the Regular Assessments provided for herein against each Parcel subject to assessment at least thirty (30) days in advance of each Regular Assessment period. The initial Regular 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 year, provided, however, that Assessments for individual Parcels shall begin at the start of the next calendar month 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.

5. Section 5 of Article X is hereby deleted in its entirety and replaced with the following:

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 Regular 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. The Declaration is hereby ratified, confirmed and approved as amended by this First Amendment.

[SIGNATURE PAGE FOLLOWS]

Exhibit "A"
(Original Legal Description)

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.