

**DECLARATION OF COVENANTS, CONDITIONS,
REGULATIONS AND RESTRICTIONS FOR
THE ENCLAVE PLAT 3**

THE UNDERSIGNED, **THE ENCLAVE OF JOHNSTON, L.L.C.**, an Iowa limited liability company, owner of record of all lots in THE ENCLAVE PLAT 3 (hereinafter “Declarant”), hereby desires to establish and place residential covenants, conditions, regulations and restrictions and does hereby reserve certain easements, all as hereinafter specifically set forth, on the following described real property (hereinafter the “Properties”):

LOTS 1, 2 AND 3 IN THE ENCLAVE PLAT 3, AN OFFICIAL
PLAT, NOW INCLUDED IN AND FORMING A PART OF THE
CITY OF JOHNSTON, POLK COUNTY, IOWA.

NOW, THEREFORE, Declarant hereby declares that the Properties shall 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 of, and which shall run with the real property and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. “Building” shall mean and refer to any structure containing single-family dwelling units that may be constructed on a Lot or on several Lots.

Section 2. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions, Regulations and Restrictions to which the Properties are subject.

Section 3. “Living Unit” shall mean and refer to any portion of a building situated upon a Lot and designed and intended for use and occupancy as single-family residence.

Section 4. “Lot” shall mean and refer to any of the Lots of the Enclave Plat 3 as shown on the Official Plat thereof. The rights and obligations under this Declaration relating to Ownership of the Lots shall apply equally to each Lot regardless of the size or design of the Living Unit situated thereon.

Section 5. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and vendees (deemed Co-Owner), but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the property by provision or operation of law.

Section 6. “Properties” shall have the meaning set forth on Page 1 hereof.

ARTICLE II **EASEMENTS**

Section 1. **Conservation Zones.** The areas shown on the Final Plat and designated as Conservation Zones may not be disturbed or graded. These areas shall be visibly and permanently marked by the Owner prior to the issuance of any building permit for the Lot. No grading or removal of trees or other disturbance of existing vegetation shall occur within the Conservation Zones.

ARTICLE III **RESTRICTIONS**

Section 1. **Single Family Residence.** The use of Lots shall be limited to single family residential use. A family is defined as one or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage or adoption, no family shall contain more than six (6) persons. Uses of land or structures customarily incidental and subordinate to the single family residential use as permitted by the City of Johnston zoning ordinance are permitted unless prohibited or otherwise regulated by this Declaration.

Section 2. **Playhouses and Sheds.** No playhouse, utility building, storage shed, lean-to or other similar structure shall be permitted, provided, however, that a child's playhouse may be permitted if the floor area does not exceed sixty-four (64) square feet and if the exterior and the roof are constructed of the same material and have the same color and appearance as the residential dwelling on the same lot and located in the back yard of the property.

Section 3. **Detached Garages.** Detached garages shall be permitted on the Properties, provided that they are architecturally similar to the house on the Lot and the construction of detached garage has been approved by Declarant. The City of Johnston also has an approval process for detached garages as an accessory structure.

Section 4. **Fences and Hedges.** No fences, walls, hedges or barriers shall be permitted upon Lots or adjoining property lines except as follows:

- (a) Walls, fences, or hedges are permitted along the rear property lines and side property lines behind the front yard setback lines but they shall not exceed six (6) feet in height.
- (b) The fence fabric, or fence screening material, shall be mounted on the exterior face of the fence posts or fence framing. No chain link fence, including a chain link fence around a dog run, shall be permitted unless it is black or brown vinyl clad or painted fence. All fences shall be kept in good repair and attractive appearance.

Section 5. **Trees.** A minimum of one (1) tree is required per two thousand (2,000) square feet of space unoccupied by structures, parking, sidewalks or driveways. At least forty percent (40%) of the trees shall have a minimum of two-inch (2") trunk diameter measured two

(2) feet vertically from the ground level. Existing trees over four-inch (4") trunk diameter shall apply to this requirement. Special care should be taken when excavating around existing trees. Locating trees on each lot and incorporating the existing trees into the site plan is encouraged.

Section 6. Measurement of Setbacks. The minimum setbacks as hereinafter specified shall be measured from the lot line from which the setback is being measured to the nearest building or structure. No buildings or structures (except for permitted fences or mailboxes) shall be constructed or maintained within the required minimum setback area. The definition of the terms "front yard", "side yard", "rear yard" and "building", shall be the same as that definition contained in the City's zoning Ordinance.

Section 7. Utilities. All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground.

Section 8. Security Lighting. Security lighting for driveways, parking and other areas shall be designed, located and directed in a fashion that will avoid direct lighting onto adjoining lots.

Section 9. Paving of Driveways. All parking and driveway areas shall be hard surfaced, using a suitable thickness of Portland cement. No driveways shall be permitted where they conflict with storm sewer manholes or intakes.

Section 10. Sodding. All portions of a Lot not occupied by structures, walkways, driveways, parking or landscaping shall be sodded within ninety (90) days after completion of the residence upon the Lot unless weather conditions make this requirement impossible to meet, in which event a reasonable period of time for compliance shall be allowed. Heavily treed lots shall be sodded a minimum of thirty (30) feet behind home and side yard, and the balance of the rear yard can be left in its natural state unless topographical features make it impractical to sod – in which case owner shall secure said area to prevent erosion.

Section 11. Garbage Cans and Equipment. Items such as garbage cans, clotheslines, lawn or garden equipment, building materials and other similar items shall be placed out of public view. Firewood shall not be stored on the front side of a house. Furthermore, any repair of motorcycles, automobiles or other vehicles shall be done out of public view.

Section 12. Tents and Trailers. No tent or other movable or temporary structure or enclosure, trailer, boat, camper, motor home, or truck rated larger than three-quarter ton, or inoperative motor vehicle shall be maintained or parked on any lot or street within public view for more than a cumulative of seven (7) days in any calendar year.

Section 13. Temporary Structures; Mobile Homes. There shall be no occupancy of temporary structures or partially completed structures. No home or other building shall be moved onto any lot from outside the Properties. No mobile homes, modular or factory manufactured homes shall be permitted at any time.

Section 14. Architectural Character. The architectural character of any structure shall be in harmony with, and compatible with, those structures in the Properties and the neighboring environment. All plans require an architectural review by Declarant prior to any construction. Steep roof pitches of a minimum 8/12 pitch is required. Hip roofs are encouraged as the typical roof form.

Section 15. Exterior Foundations. Exterior foundations exposed above finish grade which are not faced with brick or stone shall be painted to match the rest of the structure, and shall not exceed twenty-four (24) inches above finish grade.

Section 16. Roof Material. Roof materials shall be slate, tile, medium to thick butt wood shingles or high quality asphalt shingles with a medium weight rating of 260 pounds.

Section 17. Swimming Pools. Above-ground swimming pools or non-permanent swimming pools are prohibited. Any pool shall not impose on conservation areas.

Section 18. Satellite Dish. A satellite dish or parabolic device used to receive television signals from satellites shall be permitted only if it meets the following requirements:

- (a) It shall not be mounted on a trailer or other temporary or portable device, but shall be permanently installed in an acceptable fashion as determined by the manufacturer;
- (b) It shall be located so that no part of the dish is more than ten (10) feet from the home it serves;
- (c) It shall not exceed two (2) feet in diameter;
- (d) It shall be appropriately landscaped and screened;
- (e) It shall be located at the rear of the home it serves (if possible) and below the peak of the roofline.

Section 19. Dog Runs and Houses. Dog runs shall not be permitted unless they are located at the rear of the house or garage and extend toward the rear of the Lot from that portion of the house or garage which is closest to the rear Lot line. Any doghouse shall have the same external appearance, color and roof material as the home situated on the Lot. No doghouse shall exceed twenty (20) square feet in area.

Section 20. Building Plan. When a building plan is filed with the City by an owner or builder of the Lot, a duplicate shall be filed with Declarant. Declarant shall approve architecture prior to completion of the permit process and the start of the home.

Section 21. Towers and Antennas. No extension tower or antennas of any kind shall be constructed or maintained on any Lot; provided, however, that usual and customary television antennas shall be permitted on homes or garages.

Section 22. Noxious Activities; Livestock. No noxious or offensive activity, noise or odors shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance or nuisance either temporarily or permanently. No animals, livestock, pigs, snakes or poultry of any kind shall be raised, bred or kept on any Lot or within any house or structure on a Lot except that dogs, cats, rabbits and other small commonly accepted domestic pets may be kept so long as they are not kept, bred or maintained for commercial purposes or sale to the public. In no event, however shall more than two (2) dogs be maintained on any one Lot. Dogs shall be tied, kept on a leash, fenced or kept in a dog run at all times.

Section 23. Maintenance of Lot. The owner or person in possession of any Lot, whether vacant or improved, shall keep the Lot free of debris and shall keep the Lot mowed so that the grass or weeds do not exceed six (6) inches in height.

ARTICLE IV **SPECIAL USE RESTRICTIONS**

In addition to the General Use Restrictions and Building Specifications set forth in Article III above, the following Specific Use Restrictions and Building Specifications shall apply to all lots:

- (a) The front yard setback on all Lots shall be forty (40) feet.
- (b) The side yard setbacks shall be a total of at least twenty-one (21) feet with a minimum of ten (10) feet on any one side.
- (c) Each single story or ranch-style Living Unit shall have a minimum of twenty-five hundred (2500) square feet of finished floor area excluding basements, garages, porches, decks, patios and breezeways. Living Units exceeding one story in height shall have a minimum of twenty-eight hundred (2,800) square feet for a one and a half story and three thousand (3,000) square feet for a two story. This excludes any square footage in basement finish.
- (d) Attached garage parking for a minimum of three (3) automobiles shall be provided for each Living Unit.
- (e) The rear yard setback shall be at least forty (40) feet.
- (f) All basement finished floor elevations shall be certified by a civil engineer to ensure that the structure meets the basement floor elevation as identified on the plat prior to issuance of a Building Permit and Certificate of Occupancy.

- (g) All Living Units constructed in the Enclave are required to have a grinder pump for sewage. The grinder pump serves the Living Unit by receiving and removing the sewage from the Living Unit and pumping it into the force main sewer line serving all homes along NW Beaver Drive. Each Lot within the Enclave has a forced main sewer stub that is tied to the Johnston forced main sewer. The Owner will pay the cost of the forced main pump at the time that their building permit is issued. The Owner is responsible to have licensed plumber install the grinder pump during construction of the Living Unit. A City inspection of the grinder pump is also required. Once installed and accepted by the City, future maintenance is at the City's expense.

ARTICLE V
REVIEW AND APPROVAL OF PLANS

Section 1. **Plats.** There shall be no division of platted lots for building sites.

Section 2. **Building Standards.** Good aesthetic design is a very important covenant for buildings within the Properties. The covenant does not intend to restrict or inhibit types of building design; however, effort shall be made to construct buildings, which compliment and harmonize with other architecture in the Properties, and with the natural environment in the area. The highest standards of architectural quality are encouraged. Some stone and brick will be minimally required on the front elevations.

Section 3. **Plans and Specifications to be Submitted for Approval.**

- (a) Final Site Plan Documents drawn to scale (1" = 20') on an 8½" x 11" sheet of paper outlining the following must be submitted to Declarant for review and approval prior to the commencement of any construction on a Lot:
- i. Property legal description, scale and arrow on plan showing north.
 - ii. Building locations including setback dimensions.
 - iii. Driveways and sidewalks.
 - iv. Special features, such as fencing, lighting, underground utilities, and mechanical equipment.
 - v. Contour lines or slope of draining to swale. Swale location generally is located on the side yard lot line.
 - vi. Landscaping plan, submitted prior to installation.
 - vii. Size, height, type, color of any sign.

- viii. Parking areas, points of access as well as any easements for access and means of screening.
 - ix. A storm water pollution prevention plan.
- (b) Final Building Plans and Specifications outlining the following must be submitted to Declarant for review and approval prior to the commencement of any construction on a Lot:
- i. Floor plans, exterior elevations and sections.
 - ii. Square footage of building.
 - iii. Exterior colors and material samples for exposed exterior materials.
 - iv. Perspective rendering or photo, if available.
- (c) Builder/Buyer shall strip non-structural fill (black dirt) in the driveway and sidewalk portion of each lot at the time of excavation. Builder/Buyer acknowledges the organic nature of black dirt as being not suitable for compaction for driveway and sidewalk areas.
- (d) Declarant does not warrant property bearing soils or expansive soils on any lot purchase. Buyers, at their expense, shall check suitability of soils for construction.
- (e) All Buyers and their builders will be responsible to use proper erosion methods on all perimeter areas of the building site. Additionally, each Buyer will be responsible to clean the mud out of the streets that originates from his/her/its site. The City of Johnston requires all builders to conform to the new DNR storm water pollution plan.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation or threatened violation of any of the covenants, conditions and restrictions herein enumerated, Declarant, any Owner and all parties claiming under them, and the City of Johnston (if it so elects by approval of its City Council) shall have the right to enforce the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Duration. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-one (21) years from the date of

recording in the office of the Recorder of Polk County, Iowa, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the provisions hereof and the same shall remain in full force and effect.