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Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2019-00013595  
BK 17447 PG 753-771

RETURN TO:

Prepared by & Return to: Timothy C. Hogan, Hogan Law Office, 3101 Ingersoll Ave., Suite 103, Des Moines, IA 50312 (515) 279-9059

**DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**THIS DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS** (this "Declaration") is dated this 6th day of May 2019 by **THE ENCLAVE OF JOHNSTON, LLC**, an Iowa limited liability company ("Declarant") as owner and developer of certain real property legally described as follows (the "Property"):

Lots 1 - 14 in The Enclave Plat 4, an Official Plat in Johnston, Polk County, Iowa.

**WHEREAS**, Declarant desires to establish and place residential covenants, conditions and restrictions governing the Property for the benefit of the Property and the future owners thereof, to provide for reservation of certain easements and rights, and to provide for an association to own, govern and maintain common amenities with authority to levy assessments necessary to operate, manage, maintain and administer activities relating thereto for the benefit of the Owners of the Property entitled to use the common amenities of the Property.

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

**ARTICLE I  
DEFINITIONS**

**Section 1.** "Association" shall mean and refer to The Enclave of Johnston Plat 4 Association, a non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa, and its successors and assigns.

**Section 2.** "Association Responsibility Elements" shall mean the following:

- (a) Entrance monument signs and entrance features utilized by the Property.

- (b) Conservation easements shown on the Plat containing the ravines, streams, slopes, buffers, swales, berms, rip-rap, check dams, timber and natural vegetation within such conservation easements.
- (c) Private storm and sanitary sewers, water mains, drainage and storm water detention basin easements shown on the Plat.
- (d) Mailbox cluster units.

**Section 3.** "Board of Directors" shall mean and refer to the members of the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.

**Section 4.** "Bylaws" shall mean and refer to the Bylaws of the Association adopted by the Board of Directors, as the same may be amended from time to time.

**Section 5.** "City" shall mean and refer to the city of Johnston, Polk County, Iowa.

**Section 6.** "County Recorder" shall mean and refer to the office of the Recorder for Polk County, Iowa.

**Section 7.** "Declarant" shall mean and refer to The Enclave of Johnston, LLC, an Iowa limited liability company, its successors or assigns.

**Section 8.** "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Property is subject, as the same may be amended from time to time.

**Section 9** "Lot" shall mean and refer to an individual parcel of land within the Property which is platted for a single-family residential dwelling.

**Section 10.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot.

**Section 11.** "Outbuilding" shall mean an enclosed, covered structure (other than a dwelling or garage), such as a tool shed or garden house.

**Section 12.** "Plat" shall mean and refer to the official plat of the Property filed in the records of the office of the County Recorder.

**Section 13.** "Property" shall have the meaning set forth on Page 1.

## **ARTICLE II**

### **DESIGNATION OF USE**

**Section 1. Designation of Use.** All Lots shall be known and described as residential lots and shall not be improved, used or occupied for other than private residential purposes. No full-time or part-time business activity may be conducted on any Lot or in any dwelling or structure constructed or maintained on any Lot except those activities permitted under the terms of the zoning ordinance of the City.

**Section 2. Marketing of Homes and Offices.** Declarant reserves the right to use any of its Lots as models and to sell, assign, or conduct other business in connection with the construction and development of the Property from any of such Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain model homes, erect signs, maintain an office, staff the office with employees, and to show any of its Lots then unsold. No Owner shall interfere with the construction of improvements and sale of the Lots by Declarant.

## **ARTICLE III**

### **BUILDING TYPES**

**Section 1. Building Types.** No building or structure shall be constructed, altered or maintained on any Lot other than the dwelling and one (1) detached garage. No building or structure of any kind shall be moved onto any Lot. The construction of any building or structure on any Lot shall be performed utilizing then acceptable construction methods and procedures, including (but not limited to) on-site "stick-built" construction and/or off-site modular or panelized construction.

**Section 2. Temporary Structures.** No temporary building or structure shall be built or maintained on any Lot. No Outbuilding, trailer, camper, motor home, watercraft, basement, tent, shack, shed, garage, barn, outhouse, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

**Section 3. Accessory Structures.** Each Lot may have no more than one (1) customary and traditional accessory structure such as a tool shed, garden house, , tennis court and the like. No in ground, above-ground or non-permanent swimming pools shall be permitted on any Lot, except Lot 14 shall be allowed an in ground swimming pool. Any trash receptacle, dog kennel or run, or Outbuilding shall be properly screened by a privacy fence or shrubbery. Any dog kennels or runs, invisible electric pet fence, swimming pools, tennis courts, Outbuildings and other accessory structures and improvements shall not extend farther than the back line of the residential dwelling extended to the side lot lines and shall not be located within twenty (20) feet of any side or rear Lot line, or as the minimum distance established by the zoning ordinance of the City or as the minimum distance established in the Plat as recorded, whichever is the more restrictive.

**ARTICLE IV**  
**BUILDING AREA, DESIGN AND CONSTRUCTION**

**Section 1. Building Area and Design.** No dwelling shall be constructed or permitted to remain upon any Lot unless the design and location is in reasonable harmony with existing structures and unless it meets the following requirements.

- A. Two-story dwellings must have a finished area of not less than 3,000 square feet; one and one-half story, split-level, and split foyer dwellings must have a finished area of not less than 2,500 square feet; ranch or one-story dwellings must have a finished area of not less than 2,250 square feet.
- B. In computing total finished area, the same shall not include any finished area that has its floor below the exterior grade and shall not include any finished area in a walk-out basement.
- C. In the computation of floor area, the same shall not include any porches, breezeways, or attached or built-in garages.
- D. All dwellings must be constructed using hardboard siding by LP SmartSide or cement board siding by James Hardie or other brands approved in writing by Declarant as being acceptable exterior siding. No vinyl or metal siding shall be permitted.
- E. All 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.
- F. All dwellings must be constructed using a minimum of twenty-five percent (25%) brick or stone on the front elevation of the dwelling.
- G. All roof material shall be slate, tile, metal, medium to thick butt wood shingles or high-quality asphalt shingle with a medium weight rating of 260 pounds, or a shingle of equal quality and appearance thereto approved in writing by Declarant as being acceptable roofing material and color. The only permitted colors for metal roofing are black, dark grey or dark brown.
- H. All dwellings must be constructed using a gutter system that utilizes a minimum of two (2) French drains to control and direct rainwater and snowmelt runoff from the dwelling's roof.
- I. All Outbuildings, detached garages and dog houses shall be consistent in external appearance, color and building material as the dwelling constructed upon the Lot.
- J. All utility connection facilities and services shall be underground.

- K. The conservation easement upon a Lot shall be visibly marked by the Owner prior to the issuance of a building permit for the Lot.
- L. The single family dwelling on each respective Lot shall be under construction within twenty-four (24) months from the date of conveyance of such Lot by Declarant.
- M. All dwellings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.

**Section 2. Grinder Pumps.** A grinder pump unit purchased from the City will be required for individual Lots for sanitary sewer service to receive and remove sewage from the dwelling by pumping it into the City's force main sewer line. The cost of any hook-up fee, installation and inspection shall be at the Owner's expense. Future maintenance shall be performed by the City at the City's expense pursuant to City policy. The Owner shall be responsible to promptly report to the City any problems that arise with the grinder pump to reduce any potential damage to property.

**Section 3. Sod.** Within ninety (90) days of completion of a dwelling upon a Lot, all portions of the Lot disturbed during construction shall be fully sodded, except where the topography, conservancy area, creek slopes or tree cover does not permit. In such event, the balance of the Lot shall be left in its timbered and natural vegetation. If weather conditions make this requirement impossible to meet, Declarant shall establish a reasonable period of time for compliance.

**Section 4. Trees.** The cutting down and removal of existing trees or saplings shall be strictly limited to the absolute minimum needed for construction of any improvement upon a Lot. Special care should be taken during any construction, excavation or grading activities to protect the trees remaining upon the Lot. A minimum of one (1) tree is required per two thousand (2,000) square feet of space unoccupied by structures, driveways, parking or sidewalks for each Lot. 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.

**Section 5. Garages, Driveway and Parking Areas.** All dwellings shall have a minimum of a three-car attached garage. An additional one or two-car detached garage shall be permitted providing it meets the City's building requirements. All dwellings shall have a driveway running from city or private street to the attached garage. All driveway and parking areas shall be hard surfaced, using a suitable thickness of Portland cement. No driveway or parking area shall be permitted where they conflict with storm sewer manholes or intakes. Additional French drains shall be installed as necessary along driveway and parking areas to direct and control storm water runoff.

**Section 6. Fences.** All fences shall be either wood, black vinyl coated chain link, PVC vinyl or other material approved by Declarant as being acceptable fencing. Any fence constructed on a Lot shall be constructed using only one of the foregoing material types so that the posts,

framing and screening are of matching material and color. There shall be no mixing or combination of different fencing materials allowed. 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 chain link fence around a dog run, shall be permitted unless it is a black or brown vinyl coated fence. No fences may be built or maintained within the front building setback areas as shown on the Plat as recorded and no fences shall be built or maintained in front of the back line of the residential dwelling extended to the side Lot lines. No fence shall exceed six (6) feet in height. All fences shall be kept in good repair and attractive appearance. No fences may be built or maintained on any Lot prior to commencement of construction of the single-family dwelling and issuance of an occupancy permit. No fence shall be constructed within the conservation easement areas.

**Section 7. Mailboxes.** Neighborhood mailbox cluster units shall be installed according to United States Postal Service regulations. The Owner and/or occupant of the Lot on which such mailbox is located shall be responsible for removal of snow and ice which would obstruct access to the mailbox by the mail carrier and other Owners. Individual mailboxes installed by an Owner and/or occupant of a Lot are strictly prohibited.

## **ARTICLE V**

### **STORM WATER DISCHARGE PERMITTING REQUIREMENTS**

**Section 1. Erosion Control.** The Owner and/or occupant of each Lot, jointly and severally, whether vacant or improved, their agents, assigns, heirs and/or building contractors, shall take all necessary precautions to prevent, stabilize and control erosion within its Lot to prevent sediment migration and soil erosion from extending beyond the boundaries of the Lot. In the event of any occurrence of soil erosion, the Owner and/or occupant of the Lot shall, jointly and severally, promptly clean up all eroded sediment and restore all affected areas to their original condition.

**Section 2. Storm Water Discharge Permit.** Any construction or earth moving on any Lot shall be in compliance with all laws relating to storm water discharge permitting. The Owner shall be solely responsible for the Lot with respect to compliance with all terms, provisions and requirements of any NPDES Storm Water Discharge Permit No. 2 and any storm water pollution prevention plan which includes the Lot.

**Section 3. Indemnity.** During the ownership of the Lot, the Owner shall protect, defend, indemnify and hold the Declarant and the other Owners harmless from any and all damages, claims, liabilities, fines, penalties, cleanup costs and/or attorneys and consultant fees caused by, or in any manner related to (i) any discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the Lot and/or (ii) any alleged violation of any NPDES or storm water discharge rule or regulation.

## **ARTICLE VI**

### **ARCHITECTURAL REVIEW**

**Section 1. Architectural Review.** No building or structure, nor any addition or alteration thereof, shall be constructed or substantially altered on any Lot unless and until a design plan and a site plan (collectively the "Plans") have been submitted to and approved by Declarant. The Plans shall contain details of design, color scheme, elevation, site grade, landscaping, fencing, roofing, sidewalks, driveways, and other similar matters. The Plans shall also state the type of construction, including external details and materials. Submitted with the Plans shall be a plan for slope stability, site grading and erosion control measures developed by a professional Landscape Architect or Engineer. Declarant shall, within thirty (30) days from the date of submittal of the Plans, deliver to the Owner written approval of, rejection of or required changes to the Plans. The intent of this provision is to ensure that buildings and structures are developed in reasonable harmony within the Property and that the covenants, restrictions and conditions contained herein are met in connection with such development.

**Section 2. Slope Stability.** EACH OWNER IS HEREBY NOTIFIED THAT THE PROPERTY CONTAINS STEEP SLOPES. EACH OWNER SHOULD UNDERTAKE HIS/HER OWN INQUIRIES AS TO THE SLOPE CONDITIONS OF THE OWNER'S LOT. INFORMATION ABOUT THE SLOPE CONDITIONS IS AVAILABLE FOR INSPECTION AT THE CITY OF JOHNSTON AND AT SNYDER & ASSOCIATES, INC. DECLARANT AND/OR SNYDER & ASSOCIATES, INC. SHALL NOT BE HELD LIABLE FOR AND ASSUME NO RESPONSIBILITY FOR DAMAGES RELATING TO THE SLOPE CONDITIONS OF THE OWNER'S LOT.

## **ARTICLE VII**

### **SIGNS**

**Section 1. Signs.** No sign of any kind shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except (i) street markers, traffic signs, or any signs installed by the City by other governmental entities or by the Declarant, (ii) signs which have been approved by Declarant in writing not exceeding 144 square inches in area on which there shall only be exhibited the street number and/or the name of the resident, (iii) a customary sign (one per Lot) advertising a home for sale, not exceeding 1,296 square inches, and (iv) signs which have been approved by the Declarant in writing advertising the builder or for promotional or marketing purposes. In the event that any signs other than those described above shall be placed or exposed to view on any Lot, the Declarant is hereby given the right to enter upon such Lot and remove such signs. Declarant reserves the right to install entrance and directional signs with respect to the Property, at locations and of design determined by the Declarant in a manner consistent with the ordinances of the City.

## **ARTICLE VIII ASSOCIATION AUTHORITY**

**Section 1. Association Authority and Obligations.** The Association, through its Board of Directors, shall have the right, power and authority to provide for the enforcement of this Declaration; to have sole control and jurisdiction over the Association Responsibility Elements; to be responsible to operate, maintain and keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management; to establish, levy, collect, and have jurisdiction, control and possession of assessments as hereinafter provided; to enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration; and to otherwise establish such rules and regulations governing use of the Lots and Association Responsibility Elements which are in the best interests of the Association.

## **ARTICLE IX MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1. Membership.** Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership. When more than one person holds an interest in any Lot, all such persons shall be Members.

**Section 2. Voting.** Subject to provisions of Section 3 of this Article, there shall be appurtenant to each Lot one vote in the Association. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

**Section 3. Declarant as Sole Voting Member.** Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Association until Declarant no longer owns any portion of any Lot or until Declarant waives, in writing, its right to be the sole voting member. Declarant shall have the right to elect all Directors and to cast all votes as it deems appropriate. Each Owner by acceptance of a deed shall be deemed to have released Declarant from all claims with respect to actions taken or not taken while Declarant controls the Association.

**Section 4. Board of Directors.** Subject to the provisions of Section 3 of this Article, the Members entitled to vote shall elect a Board of Directors of the Association as prescribed by the Bylaws of the Association. The Board of Directors shall manage the affairs and business of the Association.

**Section 5. Suspension of Voting Rights.** The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against such Member's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.



**Section 6. Duration.** No dissolution of the Association shall occur unless another association or equivalent entity has been created to succeed to the duties and responsibilities of the Association under this Declaration.

## **ARTICLE X COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned within the Property, and each Owner of any Lot 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: (1) regular assessments or charges (2) special assessments for capital improvements and operating deficits, and (3) other special assessments as provided herein, such assessments to be established and collected as hereinafter provided. The 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 against which each assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. Each assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons or entity who was the Owner of the Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by such successor.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Lots; for carrying out the general duties and powers of the Association, including, but not limited to, decoration, operation, management, improvement, maintenance, repair, reconstruction, restoration, replacement, removal and preservation of the Association Responsibility Elements; for payment of insurance associated with the Association and the Association Responsibility Elements; and for other purposes specifically provided herein. In making such assessments, the amount to be levied shall be equal and limited to the actual cost to the Association of providing those functions and services set forth in this Declaration.

**Section 3. Maximum Regular Assessment and Notice.** The Board of Directors shall establish the maximum regular assessment to be assessed against each Lot, which assessment shall include a pro rata portion of the amount of any insurance premiums payable by the Association. Any proposed increase of more than thirty percent (30%) greater than the regular assessment levied for the previous year shall require the consent of sixty percent (60%) of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of the regular assessment, special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto.

**Section 4. Reserve Fund.** A portion of the regular assessment shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Association Responsibility Elements and any capital improvements which the Association is required to maintain.

**Section 5. Special Assessments for Capital Improvements and Operating Deficits.** In addition to the regular assessment 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 any construction, reconstruction, repair or replacement of a capital improvement for any Association Responsibility Element, including fixtures and personal property related thereto which the Association is required to maintain, or for operating deficits that the Association may from time to time incur, provided that any such assessment shall have the assent of sixty percent (60%) of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 6. Uniform Rate of Assessment.** Both regular and special assessments must be fixed at a uniform rate for all Lots.

**Section 7. Date of Commencement of Regular Assessments; Payment of Assessments; Due Dates.** The regular assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance of a Lot by Declarant. The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of assessments. The regular and special assessments for each Lot conveyed by Declarant to a third party shall become the obligation of the new Owner upon transfer of the Lot. The new Owner shall then begin making payments of regular and special assessments when the next regular installment is due for such Lot. Thereafter, the installments of regular and special assessments paid to the Association shall be prorated and credited to the Owner in the closing upon the sale or transfer of the Lot by the Owner. The Board of Directors shall establish the due dates for all assessments. All payments shall be made on or before the due date.

**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 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of said assessment all costs and expenses incurred by the Association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of the Owner's Lot.

**Section 9. Declarant Exempt from Assessments.** Declarant shall not be liable for regular or special assessments upon Lots owned by it. Declarant is not responsible for the establishment of a budget as long as Declarant is the sole voting Member of the Association. The Association and Declarant are not required to submit statements for assessments to any Owner.

**Section 10. Subordination of Assessment Liens.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The assessment shall be paid prior to or at the closing of sale or transfer of any Lot. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in sale or transfer shall relieve such Lot from liability

for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

**Section 11. Assessment Certificate.** 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 have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

## **ARTICLE XI** **EASEMENTS**

**Section 1. Utility and Other Easements.** Easements for installation and maintenance of public storm and sanitary sewers, water mains, utilities, trail and sidewalks are reserved as shown on the Plat. The Owner and/or occupant of each Lot, jointly and severally, shall at the expense of such Owner and/or occupant, maintain, keep, and preserve that portion of the easement area within the Lot at all times in good repair and condition and shall neither erect nor permit erection of any building, fence, structure or other improvement of any kind within the easement areas, nor permit any growth of any kind (except customary ground cover) which might interfere in any way with the use, maintenance, replacement, inspection or patrolling of any of the facilities within such easement areas.

**Section 2. Drainage Easements.** The Owner of each Lot burdened by a drainage easement granted to the Association by recorded instrument and depicted on the Plat shall keep that portion of the land of the easement area within the Lot at all times in good condition to promote ecological restoration of natural vegetation and shall neither erect nor permit erection of any building, fence, structure or other improvement of any kind within the easement area, nor permit any growth of any kind which might interfere in any way with the intended use of the easements, or interfere in any way with the performance by the Association of any of its obligations to maintain, inspect and patrol the easements. Nothing shall be planted in, altered in, constructed in, or removed from the easements, except upon written consent of the Declarant or Board of Directors. Any berm, rock check dam or swale constructed for drainage purposes shall be preserved and maintained to accomplish the purposes for which it was constructed. No drainage easement running through any Lot shall be dammed or altered in any way by any person or entity other than Declarant or the Board of Directors.

**Section 3. Conservation Easement.** The Owner of each Lot burdened by the conservation easement granted to the Association by recorded instrument and depicted on the Plat shall keep and preserve that portion of the land of the easement area within the Lot at all times in good condition and shall neither erect nor permit erection of any building, fence, structure or other improvement of any kind within the easement area, nor permit any growth of any kind which might interfere in any way with the use and care of the easement as a conservancy zone with existing

natural vegetation and timber, or interfere in any way with the performance by the Association of any of its obligations to maintain, replace, inspect and patrol the conservation easement. Nothing shall be altered in, constructed in, or removed from the conservation easement, except upon written consent of the Declarant or the Board of Directors. No grading, excavation or removal of trees or other disturbance of existing vegetation shall be allowed within the easement area, except those performed by Declarant or the Board of Directors.

**Section 4. Ingress, Egress, Access and Parking for Lots 2 - 7.** An exclusive easement is hereby reserved and granted by recorded instrument and as depicted on the Plat for use by Lots 2, 3, 4, 5, 6 and 7 which are served by one common driveway from the Lots to the improved public street. To the extent that the driveway is located partially on another Lot or Lots, the Lot Owners served by such driveway shall have the benefit of an easement over that portion of the other Lot or Lots covered by the driveway. The Owners of Lots 2 -7 shall have the exclusive right to park on either side of the common driveway provided that no vehicle may be parked for longer than a maximum of six (6) hours. No vehicle shall be parked so as to impede the free and uninterrupted flow of vehicular traffic over and across the common driveway or block access to an Owner's driveway. A vehicle that impedes or blocks access is subject to being towed away at the vehicle owner's expense without notice.

**Section 5. Ingress, Egress and Access and Parking for Lots 12 - 14.** An exclusive easement is hereby reserved and granted by recorded instrument and as depicted on the Plat for use by Lots 12, 13 and 14 which are served by one common driveway from the Lots to the improved public street. To the extent that the driveway is located partially on another Lot or Lots, the Lot Owners served by such driveway shall have the benefit of an easement over that portion of the other Lot or Lots covered by the driveway. The Owners of Lots 12 -14 shall have the exclusive right to park on either side of the common driveway provided that no vehicle may be parked for longer than a maximum of six (6) hours. No vehicle shall be parked so as to impede the free and uninterrupted flow of vehicular traffic over and across the common driveway or block access to an Owner's driveway. A vehicle that impedes or blocks access is subject to being towed away at the vehicle owner's expense without notice.

**Section 6. Surface Water.** The topography of the Property is such that surface water may flow from certain Lots onto other Lots. In regard to all matters concerning surface water, each Lot shall be subject to and benefited by such easements as may exist from the flowage of surface water under the laws of the State of Iowa, as may be in effect from time to time; and all Owners shall have such rights and obligations with respect thereto as may be provided by such laws.

**Section 7. Easement for Emergency Purposes.** An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances and emergency personnel, public and private, over and upon all Lots and any sidewalk within the Property.

**Section 8. Additional Easement Rights.** Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement right, title, and authority to relocate, alter or otherwise change the location of any drainage, utility or sewer 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 Lot or Lots or 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 sewer easement, or other easement, license or right-of-way by written instrument, or amendment to the Plat. Each Owner shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section shall not be exercised in a manner which unreasonably and adversely affects any dwelling or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section shall run with the land and Declarant's right to further alter or grant easements shall automatically transfer to the Association when Declarant shall have conveyed the last Lot within the Property.

## **ARTICLE XII**

### **CONSERVANCY AREAS**

**Section 1. Natural Resource Protection.** Declarant and the Owner of each Lot shall be responsible for establishing, maintaining, protecting, and preserving certain natural features of the Property to minimize any disturbance to the existing trees and to promote the growth of existing natural vegetation within the drainage ways and timberlands.

**Section 2. Natural Vegetation.** Vegetation in conservation easements, drainage ways creek channels, ravines, and timbered areas shall be maintained to permit the natural survival of trees and/or ground-cover plantings of species appropriate to the topography and soils for the vicinity of the Property. No Owner or other person shall sod, seed or plant gardens or landscaping on or within the conservancy areas. The growing of any noxious weed or plant material of a nuisance species or other noxious substances within any Lot is prohibited.

**Section 3. Timberland.** Every effort shall be made to keep the aesthetic appearance and environmental significance of the timber within the Property in its original state and in good condition. The felling or cutting down of existing trees shall be limited to the absolute minimum needed for the construction site on a Lot. Trees shall be trimmed or pruned regularly and treated as needed to minimize the effects of disease, pests or minor damage by wind, lightning or other natural forces. Damaged, diseased, decaying and dead trees shall be promptly removed from the Lot under an acceptable tree removal plan, which may include a plan for tree replacement, slope stability, grading and erosion control measures developed by a professional Landscape Architect or Engineer. The Owner of each Lot shall be responsible to report for removal by the Board of Directors the location of any damaged, diseased, decaying or dead tree within the conservation easement that may become a hazard by falling or potentially causing any other harmful or dangerous event.

**Section 4. Restricted Access to the Timberland.** The timbered areas within the boundaries of the Lots are privately owned for the restricted use, enjoyment and benefit of the Owner of such Lot. No person, including the general public and other Owners, shall be allowed to enter upon or access the timberland of one Lot from the other Lots without first obtaining

permission from the Lot Owner.

### **ARTICLE XIII MAINTENANCE**

**Section 1. Maintenance by Owner.** The Owner and/or occupant of each Lot shall jointly and severally be responsible to keep the same free of trash, rubbish, weeds and debris and to keep the lawn and landscaping well maintained and healthy, including (but not limited to) maintaining the lawn at a height not to exceed six (6) inches. The Owner and/or occupant of each Lot shall jointly and severally be responsible to maintain the dwelling and all other accessory structures and improvements upon the Owner's Lot.

**Section 2. General Maintenance by Association.** The Association shall perform all preservation, maintenance, repair, replacement, restoration, removal and demolition of the Association Responsibility Elements. No Owner shall obstruct or interfere whatever with the duties and responsibilities of the Association to perform its maintenance obligations relating to the Association Responsibility Elements. An Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement rendered necessary by any intentional, negligent or careless act by such Owner, or by any family, guest, employee, agent, or lessee of such Owner. Any such expense shall become a special assessment and lien upon the Lot of such Owner and shall become due and payable upon demand.

**Section 3. Contracts and Agreements.** The Board of Directors, in its sole discretion, shall enter into any contract, agreement, lease, management contract, employment contract or lease, engage the services of and discharge any manager, activities director, managing agent, independent contractor or other employee as it deems necessary. The Board of Directors, in its sole discretion, shall determine the duties and compensation of such persons so employed.

**Section 4. Casualty Insurance.** The Association shall obtain a master casualty insurance policy or policies affording fire and extended coverage insurance for the Association Responsibility Elements in an amount equal to the full replacement value thereof. The Association may obtain "all risk" coverage for the Association Responsibility Elements. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. The Association may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the maintenance assessment for each Lot on a pro rata basis. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first Mortgagee of each Lot.

The master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provision that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, the Owners and their respective agents and guests, and (b) waives any defense based on invalidity based upon the acts of the insured; and providing further that the insurer shall not be entitled to contribution against casualty insurance which may be purchased separately by any Owner.

**Section 5. Liability Insurance.** The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organization of the Association or Board of Directors, its agents and employees, the Owners and all other persons entitled to occupy any Lot. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to, worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf to the Association. Each Owner shall be deemed to have delegated to the Board of Directors the Owner's right to adjust with the insurance companies all losses under policies purchased by the Association.

**Section 6. Access for Maintenance.** The Association and its agents, employees or contractors shall have the right of reasonable access for ingress and egress over, across or through each Lot for the purpose of performing its maintenance obligations of the Association Responsibility Elements.

**Section 7. Indemnification by Association.** The Association hereby indemnifies and saves the Owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage and occurring on or from the maintenance of the Association Responsibility Elements, except if caused by the act or negligence of the Owner, or by any family, guest, employee, agent, or lessee of such Owner.

**Section 8. Indemnification by Owner.** The Owner of each Lot hereby agrees to indemnify, defend and hold harmless the Declarant, the other Owners, the Association and their heirs, administrators, successors and/or assigns, from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person, or damage to or destruction of any property caused by the condition of or in connection with the performance of any of the obligations set forth in this Declaration, except to the extent caused by the negligent or willful act or omission of the indemnified parties hereto.

#### **ARTICLE XIV** **ADDITIONAL RESTRICTIONS**

**Section 1. Certain Animals Prohibited.** No animals, livestock, pigs, horses, snakes or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats, rabbits and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. In no event, however, shall more than a total of two (2) dogs and be kept at any Lot at any one time. Dogs must be either kept in the dwelling or in a shelter aesthetically compatible with the dwelling, and dog runs, if any, must be 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. Dog runs must be completely screened or otherwise hidden from view from any other Lot and all streets within the Property. All pets must be leashed and under the control of its owner if not tied up or kept within a fenced yard or dog run. The Owner shall be responsible for prompt removal and disposal of all waste from their pets.

**Section 2. Nuisances.** No noxious or offensive activity or odors shall be permitted on or to escape from any Lot, nor shall anything be done thereon which is or may become an annoyance or a nuisance, either temporarily or permanently.

**Section 3. Trash Receptacles.** No trash receptacles or garbage cans shall be permitted to be placed on a Lot outside a dwelling unless hidden by an attractive screen or shrubbery of suitable height, or unless sunken to ground level in a hole lined with permanent cribbing. However, unscreened trash in proper containers and/or bags shall be allowed to be placed on a Lot outside a dwelling no earlier than twelve (12) hours prior to a scheduled pick up of such trash. Such unscreened trash containers must be returned to the screened area or underground location, or inside a dwelling within twelve (12) hours following the scheduled pick up of such trash.

**Section 4. Antennas and Receiver Dishes.** No exterior transmission tower, antenna or television transmission dish of any kind shall be constructed, installed, modified, or permitted on the ground, on dwellings or on garages. Notwithstanding the foregoing, an antenna or receiver dish which is twenty-four (24) inches or less in diameter shall be permitted. No more than one (1) such antenna or receiver dish shall be permitted on each Lot. No more than one (1) penetration in the dwelling on a Lot shall be permitted for the cable from such antenna or receiver dish. No other antenna shall be constructed, installed, modified or permitted on the ground, on dwellings or on garages.

**Section 5. Trailers and Parking.** No vehicle with a gross vehicle weight greater than 7,000 pounds, and no trailer, camper, motor home, watercraft, recreational vehicle, commercial vehicle, unlicensed or inoperable vehicle or any other motorized vehicle or mechanical equipment may be parked or maintained on any Lot (except inside a garage or other vehicle enclosure out of view from the street and abutting Lots), or on any driveway in the Property, or on the public street, other than on a temporary basis; provided that this restriction shall not apply to trucks, equipment or trailers used in connection with construction of or rebuilding of a dwelling on any Lot. Temporary shall mean no more than a total of thirty (30) days per year. At no time shall a vehicle or any mobile equipment be disassembled, repaired or serviced on any Lot, except inside a garage or other vehicle enclosure out of view from the street and abutting Lots.

**Section 6. Storage of Personal Property.** No personal property shall be stored or left upon a Lot except within the residential structure or garage located upon the Lot. Garage doors shall be kept closed except during times of access to the garage. Firewood shall not be stored on the front or side of the dwelling but shall be neatly stacked behind the dwelling out of sight from public view.

**Section 7. Lighting.** Security or decorative lighting for driveways, parking and other areas shall be designed, located and directed in a manner which will avoid direct lighting onto



adjoining Lots. Lighting shall not exceed one foot-candle at the property line of the Lot. Low pressure sodium lighting fixtures are prohibited.

**Section 8. Peaceful Possession.** No activity shall be allowed that unduly interferes with the peaceful possession and use of the Property by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

**Section 9. Lots Owned by Declarant.** The Owners shall not interfere with the completion of the contemplated improvements and the sale of the Lots by the Declarant. Declarant may make such use of the unsold Lots as may facilitate such completion and sale, including, but not limited to, the maintenance of a sales office, model home, the showing of the property and the display of signs.

**Section 10. Snowmobiles.** The operation of snowmobiles, motorized trail bikes and dirt bikes, all-terrain vehicles and any other off-road vehicles by the Owners or their guests or invitees within the Property is prohibited.

## **ARTICLE XV** **GENERAL PROVISIONS**

**Section 1. No Waiver.** Failure of the Declarant or any Owner to enforce any covenant, condition or restriction of this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

**Section 2. Right of Enforcement.** In the event of a violation, or threatened violation, of any of the covenants, conditions, and restrictions herein enumerated, Declarant, the Owners and all parties claiming under them, and the City (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 3. Assignment of Declarant's Rights.** Declarant shall have the right to assign all of its rights and obligations as Declarant under this Declaration to any person, corporation or other entity. The assignee of any such assignment shall be responsible for Declarant's duties and obligations under this Declaration. Declarant shall make such assignment by written instrument recorded in the Office of the County Recorder.

**Section 4. Amendment.** This Declaration may be amended or changed from time to time by an instrument filed in the office of the County Recorder, signed or approved in writing by the affirmative vote of not less than two-thirds (2/3) of the Owners, provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Notwithstanding the foregoing, this Declaration may be amended by Declarant without approval by the other Owners so long as Declarant has any ownership interest in the Lots. Such amendments or modifications shall be effective the date the amendment or modification has been filed with the County Recorder.

**Section 5. Duration.** The easements granted herein shall be perpetual in nature. All covenants, conditions, restrictions and reservations created by this Declaration shall run with the land and shall be binding upon all parties claiming under them for the maximum period allowed by law, subject to the right of Owners under Section 614.24 of the Iowa Code to file a verified claim in the office of the County Recorder to extend the effectiveness of these covenants for successive periods of twenty-one (21) years each on or before the twenty-first anniversary of the filing of this Declaration and prior to the twenty-first anniversary of the filing of the last verified claim. 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, but the same shall remain in full force and effect.

## **ARTICLE XVI**

### **ENFORCEMENT AND WAIVER**

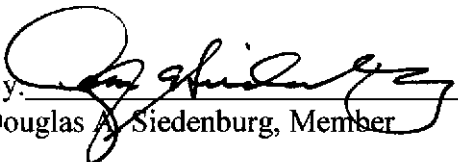
**Section 1.** In the event that any one or more of the foregoing covenants, conditions or restrictions shall be declared for any reason by a court of competent jurisdiction to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions and restrictions not so expressly held to be void, which shall continue unimpaired and in full force and effect.

**Section 2.** The Property shall also be subject to any and all rights and privileges of the City, now held or hereafter acquired, by dedication or conveyance, or by reason of the platting and recording of the Plat for the Property, or by this Declaration or by law. Wherever there is a conflict between this Declaration and the zoning ordinance of the City, the more restrictive shall be binding.

**Section 3.** This Declaration shall not be applicable to property dedicated to the City, and the City may allow appropriate public use on city-owned property within the Property.

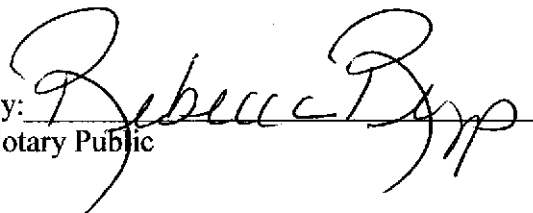
**THE ENCLAVE OF JOHNSTON, LLC,**  
an Iowa limited liability company

By:   
Kevin P. Kohles, Member

By:   
Douglas A. Siedenburg, Member

STATE OF IOWA, COUNTY OF POLK, ss:

This record was acknowledged before me on March 28, 2019 by Kevin Kohles and Douglas A. Siedenburg, as Members of The Enclave of Johnston, LLC.

By:   
Notary Public

