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CITY OF ANKENY

**RETURN TO:**

Prepared by and after recording return to: Kathleen Law, 700 Walnut, Suite 1600, Des Moines, Iowa 50309; 515-382-3116

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS  
FOR  
LOTS 1-50 IN VILLAGE AT DEER CREEK CROSSING

This Declaration of Covenants, Conditions, Easements, and Restrictions for Lots 1-50 in Village at Deer Creek Crossing (the "Declaration") is made on this 25<sup>th</sup> day of June, 2018, by Rock Equity Holdings, L.L.C. who is the developer of the townhome project referenced herein and the fee titleholder to the property described herein.

WITNESSETH:

WHEREAS, Declarant is the developer of certain property in Polk County, Iowa, which is more particularly described as:

Lots 1-50, inclusive, and Outlot "X" in Village at Deer Creek Crossing, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa

NOW, THEREFORE, Declarant hereby declares that all of the Properties described above shall be held, sold, and conveyed subject to all prior easements recorded and 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 upon all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I.**  
**Definitions**

Section 1. "Association" shall mean and refer to "Village at Deer Creek Crossing Townhome Owners Association", its successors and assigns, a nonprofit corporation organized pursuant to Chapter 504 of the Code of Iowa, 2017, as amended.

Section 2. "Association Maintenance Obligation" shall mean and refer to the obligation of the Association to provide and pay for all Exterior Maintenance of the Townhomes, the maintenance of Outlot X also known as the Common Area, both as hereinafter defined and all of the snow removal, irrigation system matters (if applicable), lawn mowing and landscaping work for the Lots within the Properties.

Section 3. "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Properties" shall mean and refer to that certain real estate described in Article II of this Declaration, including any plat, division, or subdivision or portion thereof as may hereafter be brought within the jurisdiction of the Association, as well as any Properties that are subsequently added thereto pursuant to the terms of this Declaration.

Section 5. "Common Area" and "Outlot X" shall mean and refer to:

Outlot "X" in Village at Deer Creek Crossing, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa

It is understood that the ingress/egress area that allows access to the individual Lots is a part of Outlot X. Outlot X is to be owned by the Association at the time of the conveyance of the first Lot to a Lot Owner. Outlot X is to be maintained solely at the expense of the Association as a part of the Exterior Maintenance described below and in perpetuity. This maintenance shall include the replacement and maintenance of all driveways, sidewalks and walkways as well as maintenance of the open space and green space areas located in Outlot X.

Section 6. "Townhome" shall mean and refer to any portion of a residence situated upon a Lot designated and intended for use and occupancy as a residence.

Section 7. "Lot" or "lots" shall mean and refer to one or more of Lots 1-50 in Village at Deer Creek Crossing, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 9. "Declarant" shall mean and refer to Rock Equity Holdings, L.L.C., and its successors and assigns, if they are designated as successor in any conveyance.

Section 10. "Exterior Maintenance" shall mean and refer to:

- a. the residing, painting and staining of exterior surfaces as required from year to year, as well as all items of maintenance relating to the exterior of any of the Townhomes including, but not limited to, roof replacement and repair, all replacement and repair relating to Outlot X, all driveway replacement and repair, and sidewalk and walkway repair and replacement as may be determined necessary by the Board of Directors of the Association and which must be coordinated through the Board of Directors to insure an ongoing continuity of construction and harmony of architectural design and color scheme. **The Lot Owners shall be responsible at their own expense for the repair and replacement of items peculiar to the particular Lot including, but not limited to, heating, ventilation and air conditioning (HVAC), decks and stoops. Such items shall not be considered Exterior Maintenance and the cost thereof shall not be included as part of any Association Maintenance Obligation assessments.**
- b. all snow removal, irrigation system matters, lawn mowing and landscaping work and all maintenance of the private park areas, necessary on any of the lots shall be the responsibility of the Association and the expense therefore shall be part of the Association Maintenance Obligation. In addition, all costs of repair and maintenance for the ingress/egress area including all improvements constructed thereon shall be a part of the Association Maintenance Obligation. In addition to the above-described items, any walls which are built upon the dividing line between lots (lot line walls) and which are not open to the elements shall not be altered by the Lot Owner. Any cost of maintenance of such lot line walls shall also be part of the Association Maintenance Obligation, except that any maintenance of such lot line walls caused by the negligent or intentional act or omission of any Lot Owner shall not be an Association Maintenance Obligation but shall be charged back to and be the expense of the Lot Owner causing such maintenance to be performed. Such lot line walls are intended to be constructed as walls in common pursuant to Chapter 563 Code of Iowa (2017). Any damage to such lot line walls that allows for their direct exposure to the outside elements shall be weatherproofed by the Association pending finalization of maintenance thereto. The Association shall be responsible for arranging for maintenance and/or replacement of all front doors and garage doors for each Townhome, but the expenses relating thereto shall not be an Association Maintenance Obligation but shall, instead, be billed back directly to the particular Townhome involved.

Section 11. "Capital Improvements" shall mean and refer to any construction of, reconstruction of, substantial alteration of, substantial repair of, or substantial addition to the physical amenities, utilities, and improvements upon the Properties.

## **ARTICLE II.**

### **Property Subject to this Declaration**

Section 1. The property which is subject to and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Polk County, State of Iowa, and is more particularly described as:

Lots 1-50, inclusive, and Outlot "X" in Village at Deer Creek Crossing, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa (hereinafter referred to as the "real estate" or the "Properties").

## **ARTICLE III. Property Rights**

Section 1. Reconstruction of Townhomes. If a Townhome is damaged or destroyed by any cause, the Lot Owner shall be required to initiate repair, restoration or reconstruction of such Townhome according to the plans and specifications for such Townhome for which a building permit was issued for original construction within 30 days, with completion of such repair, restoration, or reconstruction to take no more than 180 days with the following exceptions:

- a. If such repair, restoration or reconstruction is desired in a manner that differs from the plans and specification of original construction, such changes in plans must be approved by seventy-five percent (75%) of the Lot Owners.

- b. Failure by the Lot Owner to initiate and complete repairs, restoration, or reconstruction of the Townhome as described previously in this section shall permit the Association to initiate such repairs, restoration or reconstruction or if deemed necessary by the Board of Directors, the removal of said Townhome and subsequent Lot improvements subject to the consent requirements of subsection (a) hereof, all at the Lot Owner's cost.
- c. The Lot Owner of a damaged Townhome shall be responsible for making arrangements for protection of the remaining Townhomes from rain, snow, or other weather conditions immediately after any damage or destruction has occurred and during the entire time of any repair restoration or reconstruction in order that no further damage occurs to other Townhomes. Failure of the Lot Owner of a damaged Townhome to immediately provide such protection shall allow for the Association to provide such protection, with the cost thereof being a special assessment relating solely to the damaged Townhome.
- d. The requirements of this Article shall not apply to any non-structural interior remodeling in any Townhome.

Section 2. Declarant's Reserved Rights. The Declarant shall have the following reserved rights as a Lot Owner:

- a. The right to create and dedicate easements for drainage or other utility purposes.
- b. The right to maintain a general sales, rental and construction office in a Townhome.
- c. The right to sell or transfer its rights and obligations to a successor or assign.

All reserved rights of the Declarant pursuant to this section, shall expire when the Declarant no longer has title interest in any Lot. Exercise of the reserved rights shall not require the consent of the Association, its Board of Directors, or its Members.

Section 3. Easements.

- a. Ingress/Egress Easement. Declarant hereby grants a perpetual nonexclusive easement for ingress and egress over, across and through all portions of Outlot X, as shown as the interior street areas as well as the driveway connections there from to the Townhomes, all as shown on the Final Plat of Village at Deer Creek Crossing, specifically including all of the interior streets, driveways and walkways, to all of the Lot Owners of the Association, as well as their invitees, tenants and guests for the purpose of obtaining vehicular and pedestrian access to the individual Lots as well as for parking purposes and to the City of Ankeny, Iowa for the purposes of allowing all rescue, fire, and emergency vehicles to have access to all Townhomes located within the Properties. All such easement rights, however, are subject to and conditioned upon the remaining terms, conditions, and restrictions of this Declaration. Maintenance of the Outlot X access easement area granted herein, including the interior streets, driveways and walkways described above, shall be performed by the Association as a part of the Association Maintenance Obligation.
- b. Irrigation Easement. Declarant hereby reserves a perpetual nonexclusive easement in favor of the Association for the purpose of installation and ongoing use and maintenance of an irrigation system. The location of this easement shall not interfere with any driveways, buildings or other structures constructed on the Properties. The easement described herein is intended to relate to Outlot X and shall give the Association the right to come on to Outlot X at reasonable times in order to repair and maintain the irrigation system, if one is installed, with all such repair and maintenance being an Association Maintenance Obligation as described previously herein.
- c. Service Road Easement. Declarant hereby grants a temporary nonexclusive easement for ingress and egress for service road purposes to allow for future construction activities over Outlot X outside of the building footprint of any Townhome, for the purpose of allowing Declarant and its construction equipment and subcontractors to obtain access to the building sites within the Properties in order that the paved areas of Outlot X are not damaged or destroyed thereby. At such time as construction has been completed on all Townhomes in the development, Declarant agrees to grade the service road easement area in order that it blends with the surrounding landscaped portions of Outlot X, and Declarant shall landscape such area as has been done on the remainder of the Properties, at the sole expense of Declarant.
- d. Utility Easement and Maintenance Agreement.
  - 1. Declarant hereby grants a perpetual non-exclusive easement and right-of-way under, over, on, through, across and within each of the Lots within the Properties (known as "Easement Area"), for the purpose of the Association and/or the Lot Owners to reconstruct, repair, replace, enlarge, inspect and maintain any and all sanitary sewer and water services ("Utility Services"), along with all necessary structures and appurtenances thereto, which may be located within the Properties at any time. Declarant agrees to originally design and construct the Utility Services to be located within the Properties at Declarant's sole cost and expense. By acceptance of the deed for any Lot within the Properties, the Lot Owners shall be deemed to have accepted the terms of this easement without any subsequent document or agreement being necessary, and such Lot Owner, by such

acceptance, agrees to be obligated to perform all reconstruction, repair, replacement, enlargement, inspection and maintenance relating to the Utility Services that are located on each Lot Owner's Lot, subject to the obligations of the Association set forth in sections (d)(3), and (4), hereinafter set forth.

2. **Change of Grade Prohibited.** Declarant and its grantees, assigns and transferees shall not change the grade, elevation or contour of any area subject to the Utility Services contrary to the site plan relating to the Properties that has been approved by the City of Ankeny without the prior written consent of the City of Ankeny.

3. **Responsibility.** Any work described herein that relates to any Utility Services shared in common between more than one Lot Owner shall be coordinated exclusively by the Association, and the Association is hereby appointed as attorney-in-fact for all Lot Owners of Lots within the Properties, with such appointment being coupled with an interest, to accomplish such work.

4. **Costs.** All costs associated with any work performed pursuant to this Easement shall be the obligation of the Association and shall be specially assessed by the Association in a prorata amount, equally against all Lots within the Properties.

5. **Right of Access.** All Lot Owners and the Association shall have the right of access to the Utility Services wherever they may be located, whether inside or outside of any structure located on the Properties, and shall have all rights of ingress and egress reasonably necessary for the use and enjoyment of the easement granted herein from property adjacent thereto for an area reasonably necessary to allow for any work to be performed relating to the Utility Services.

6. **Easement Benefit.** This easement shall be for the benefit of all of the Lot Owners of Lots within the Properties and their grantees, assigns, transferees and lessees.

7. **Easement Runs with Land.** This easement shall be deemed perpetual and shall run with the land and shall be binding on Declarant and Lot Owner's assigns and transferees.

8. **Property to be Restored.** Upon completion of any reconstruction, repair, enlargement or maintenance of any Utility Services or any appurtenance thereto, the party performing such work shall restore the disturbed area in good and workmanlike manner, including restoration of the irrigation system (if applicable), and restoration of lawns by seeding (or by sodding if irrigation is readily available) to a condition comparable to its condition before the performance of such work.

e. **Easement for Encroachments.** An easement for encroachment purposes is hereby granted for any encroachment that may exist upon any Lot in the event that the improvements constructed upon that Lot encroach any other Lot as a result of construction, reconstruction, repair, shifting, settlement, or movement in any fashion. Such encroachments and the easements therefor shall not be considered or determined to be encumbrances for the purposes of marketability of title. In the event that any improvements are partially or totally destroyed and then rebuilt, every effort shall be made to correct any such encroachment.

#### **ARTICLE IV.**

##### **Membership and Voting Rights in the Association**

**Section 1. Membership.** Each Lot Owner of a Lot that is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2.** DECLARANT, WHICH IS THE OWNER OF THE PROPERTIES OR ITS SUCCESSOR IN INTEREST OR ASSIGNEE PURSUANT TO A DOCUMENT THAT SPECIFICALLY REFERS TO THE MEMBERSHIP TRANSFER, SHALL BE THE SOLE MEMBER OF THE ASSOCIATION UNTIL SUCH TIME AS (i) DECLARANT, OR ITS SUCCESSOR IN INTEREST OR ASSIGNEE, NO LONGER OWNS ANY LOT WITHIN THE PROPERTIES DESCRIBED IN THE DECLARATION; or (ii) UNTIL DECLARANT, OR ITS SUCCESSOR IN INTEREST OR ASSIGNEE, WAIVES ITS RIGHT IN WRITING TO BE THE SOLE MEMBER OF THE ASSOCIATION; WHICHEVER FIRST OCCURS. DURING THE TIME THAT DECLARANT IS THE SOLE MEMBER IT SHALL HAVE THE RIGHT TO ELECT ALL DIRECTORS OF THE ASSOCIATION.

#### **ARTICLE V.**

##### **Covenants for Association Maintenance Obligation Assessments**

**Section 1. Creation of Lien and Personal Obligation of Assessments.** The Declarant, for each Lot, hereby covenants, 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:

- a. Annual assessments or charges (payable monthly),
- b. Special assessments for Capital Improvements, such assessments to be established and collected as hereinafter provided, and
- c. Taxes or assessments levied by a government or quasi-governmental body on the Properties and spread by the Association or such body pursuant to the allocated percentage established for each Lot for the payment of the Association Maintenance Obligations.

- d. The annual and special assessments, or governmental or quasi-governmental levies, together with interest, costs, and reasonable attorney's fees incurred in connection with the collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of the Properties, and for the improvement and maintenance of Outlot X and the Townhomes and buildings situated upon the Properties, including but not limited to the payment of taxes, special assessments for work performed by a governmental or quasi-governmental subdivision, insurance, water charges, utility charges, repair, replacement of, and additions to, the Properties, grading and maintenance of the lawns/landscaping and for the cost of labor, equipment, materials, management and supervision.

Section 3. Initial Annual Assessment. Until the date that is one year after the filing of this Declaration, the initial annual assessment shall be \$1,200.00/Townhome.

- a. From and after the first anniversary of the filing of this Declaration, the annual assessment may be increased each year not more than 25% above the maximum assessment for the previous year without a vote of the membership.
- b. From and after the first anniversary of the filing of this Declaration, the annual assessment may be increased above 25% by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- c. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the amount described herein.
- d. The Board of Directors of the Association shall, after consideration of future costs for Exterior Maintenance, establish a reserve fund for such purposes with the monies necessary for such reserve fund to be part of the annual assessment. The reserve fund shall be administered pursuant to the Bylaws of the Association.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Properties, including fixtures and personal property related thereto, provided that any such assessment shall only be effective after it has secured a vote of 2/3 of the Members of each class described herein who vote in person or by proxy, at a meeting duly called for that purpose.

Section 5. Special Assessments for Public Roads or Other Public Purposes. In addition to the annual and special assessments authorized herein, the Association shall levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any special assessment obligation for public roads, public utilities, or other public purposes which a public, quasi-public, or governmental authority may assess on any project even though the assessment boundaries may only cover a portion of the Properties falling within this Declaration. Any such special assessment shall be levied against the entire development as a whole with each Lot Owner paying its proportionate share pursuant to its percentage of Association Maintenance Obligation allocation.

The Association may enter into a petition and waiver to contract with the public, quasi-public, or governmental authority concerning any project involving a special assessment. If petition and waiver is used and adopted, the Association, on behalf of all Lot Owners and Members of the Association, shall execute all documents required in connection with said petition and waiver in the form generally required by the public, quasi-public, or governmental authority. The Association may execute such documents only after securing the affirmative vote of two-thirds (2/3) of the Members described herein who vote in person or by proxy, at a meeting duly called for that purpose.

Section 6. Rate of Assessment. All annual and special assessments shall be fixed for all Lots by the Board of Directors and shall be collected on a monthly basis and shall be uniform for each Lot.

Section 7. Date of Commencement of Annual Assessments.

The annual assessments provided for herein shall commence as to each of the Lots subject to this Declaration on the first day of the month following the conveyance of such Lot to an owner other than the Declarant. During the time that Declarant is the Lot Owner of any such Lots, no assessments shall be due, provided, however, that Declarant shall be responsible for any expenses of any sort relating to such Lot prior to conveyance. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

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 Lot have been paid. A properly executed certificate of the Association as to the status of assessment on a Lot is binding upon the Association as of the date of its issuance. At the time of the initial closing of the conveyance of any Townhome from the Declarant, the purchaser thereof shall pay to the Association a working capital fund in an amount equal to two months' estimated Common Area charges for the Townhome, which amount shall not be refundable.

Section 8. Date of Commencement of Special Assessments. The due date of any Special Assessment under Section 4 of this Article shall be fixed in the Resolution authorizing such assessment.

Section 9. Effect of Nonpayment of Assessment: 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 maximum rate allowed by Iowa law at the time of such delinquency. In addition, a charge of \$25 shall be made for any monthly assessment received after the 15th of the month for which the payment is due. In addition to the collection of such delinquent amounts plus interest, the Association shall be entitled to recover any reasonable attorney fees and other costs involved with the collection of such delinquent amounts, which fees and costs shall also accrue interest as described above from the date of their incurrence. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage pursuant to the Iowa Code.

BY ACCEPTANCE OF A DEED FOR ANY TOWNHOME DESCRIBED HEREIN, EACH LOT OWNER SHALL BE DEEMED TO HAVE AGREED TO THE FOLLOWING LANGUAGE:

I UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY ACCEPTING A DEED FOR A TOWNHOME IN THIS DEVELOPMENT, I VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THIS TOWNHOME WITH RESPECT TO CLAIMS BASED UPON THIS DECLARATION.

Section 10. 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 Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to the issuance of the Sheriff's Deed or deed in lieu of foreclosure. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### **ARTICLE VI. Architectural Control**

Section 1. No building, wall, room addition, deck, patio or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2.

- a. No clothing, sheets, blankets, laundry or other articles shall be hung, displayed or stored outside the Townhome (except within the garages located thereon) or which may be visible from the outside of the Townhome (other than draperies, curtains or shades of a customary nature and appearance, and in any event, subject to the rules and regulations of the Board of Directors.) No Lot Owner shall paint or decorate or adorn the outside of his Townhome nor shall he install outside of his Townhome any canopy, awning, hot tub, whirlpool bath, spa, permanent or temporary fencing around patios without the prior written consent of the Board of Directors of the Association.
- b. Subject to the FCC regulations in effect at the time of installation, no aerial, radio tower (HAM, CB or other type) or antenna shall be allowed at any time nor shall a satellite dish that is (i) more than 24 inches in diameter; (ii) not attached to a Townhome; or (iii) of a color not approved by the Association so long as reception is not adversely affected, be permitted on any Lot. Any such installation shall first require a written agreement of approval of the Association in order to coordinate compliance with these requirements. Any additional maintenance, damage or expense caused by the installation and/or continued usage of any satellite dish shall be the direct expense of each Lot Owner and shall not be any Association Maintenance Obligation. Each Lot Owner shall immediately perform any additional maintenance required. If such additional maintenance is not immediately performed by the Lot Owner, the Association may proceed to perform such maintenance after seven days prior written notice is given to the Lot Owner by the Association. Any expenses incurred by the Association in performing such maintenance shall be billed to the Lot Owner and shall be paid immediately thereafter pursuant to the same terms that apply to Association Maintenance Obligations herein. Any issues created with any warranty matters relating to such items shall be the responsibility of the Lot Owner.

- c. Any Lot Owner may install flower planters and flower pots on any porch or patio area owned by the Lot Owner so long as such planters and pots are no wider than 18 inches in diameter with plantings no taller than 5 feet from ground level. Each Lot Owner shall be responsible for maintaining such planters and pots and shall weed them appropriately. If the Lot Owner does not provide adequate maintenance for such planters and pots, the Association shall have the ability, after seven days prior written notice is given to the Lot Owner by the Association, of requiring the planters and pots to be removed, in the sole discretion of the Association. The use of the planters and pots described above shall be restricted to the planting and cultivating of flowers and ornamental bushes and shall not be used for the planting and cultivating of vegetables.

Section 3. No Lot Owner shall display, hang, store, or use any sign outside his Townhome or which may be visible from the outside of his Townhome without the prior written permission of the Board of Directors. The foregoing notwithstanding, any Lot Owner shall be permitted to display a sign of not more than three square feet in area advertising such Owner's Lot for sale or lease with such sign being located in the area between said Lot and the drive in front of such Lot, all in accordance with the sign ordinance of the City of Ankeny, Iowa.

## ARTICLE VII.

### Covenants for Insurance

#### Section 1. Maintenance of Insurance.

- a. The Association, on behalf of each Lot Owner, shall obtain and continue in effect adequate casualty and fire insurance, as the Board of Directors of the Association deems appropriate, in an amount equal to the full replacement value, without deduction for depreciation or coinsurance costs, of all of the Townhomes, as well as all public liability insurance relating to each Lot and to Outlot X. In the event of casualty loss, the Association shall be responsible for repair and restoration of the items subject to the Association Maintenance Obligation, and the Owner shall be responsible for repair and restoration of all other portions of the buildings and improvements upon his Lot, except to the extent that the Board has determined to obtain insurance for such portions that are not part of the items subject to the Association Maintenance Obligation in which case the Association shall apply any insurance proceeds received for such portions to such repair and restoration of such portions. At the time of the initial closing of the conveyance of any Townhome from Declarant, the purchaser thereof shall pay to the Association an amount equal to one year's insurance premium that is the obligation of the Association as set forth herein for such Townhome which amount shall not be refundable.
- b. Unless otherwise determined by the Board, each Owner of a Lot shall be responsible for obtaining homeowner's liability insurance and casualty insurance for property that is not part of the items subject to the Association Maintenance Obligation; Such insurance shall name the Association and the Owners of all applicable Lots as insureds and loss payees, as their interests may appear. It shall be the responsibility of each Lot Owner to coordinate such insurance matters in order that each Lot Owner makes its own determination that its own personal possessions, furniture, and other interior items are adequately covered to its satisfaction.

Section 2. Public Liability Insurance. The Association shall provide public liability insurance covering Outlot X, in such amounts as may be determined at the discretion of the Association from time to time, as well as any other insurance that the Association may deem appropriate.

Section 3. Fidelity Bonds. The Association shall also provide fidelity bonds and worker compensation insurance for employees and fidelity bonds and errors and omissions insurance for officers and directors in such amounts as is determined by the Association to be necessary from time to time. The Association may, from time to time, provide other forms of insurance as deemed necessary.

## ARTICLE VIII.

### Exterior Maintenance

Section 1. Exterior Maintenance. In addition to providing all lawn mowing and landscaping duties relating to the Properties, the Association will provide Exterior Maintenance upon each Lot and Townhome which is subject to assessment under Article V and as defined in Article I, Section 10 as well as the removal of all snow from sidewalks and driveways on each Lot and Outlot X and any matters relating to the irrigation system (if applicable). Removal of snow on private driveways and sidewalks in Outlot X and on individual Townhome Lots shall be the responsibility of the applicable Lot Owner unless amended by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose, to become the responsibility of the Association. The following is a list of certain items that would be an example for the types of maintenance, repair, and replacement to be performed by the Association as part of the Association Maintenance Obligation. This list is not intended, however, to be all-inclusive in any respect:

- a. Private driveways
- b. Sidewalks and walkways.
- c. Landscaping, including trees and shrubbery.

- d. Irrigation system. (If applicable)
- e. Shingles
- f. Siding
- g. Exterior lighting
- h. Snow removal
- i. Lawn mowing
- j. All exterior doors, garage doors and all windows shall be maintained by the Association, but the expenses therefore shall be billed back directly to the owner of the particular Townhome. In addition, all garage door openers shall be the sole responsibility of the Lot Owner.

No individual Lot Owner shall be allowed in any way to perform any maintenance, repair, or replacement that is to be performed by the Association. A Lot Owner may, however, tend to the potted flowers and potted bushes planted by the Lot Owner as previously described herein and the Association shall have no obligation for the maintenance thereof.

Section 2. Ingress/Egress Maintenance. The Association shall be responsible for performing all of the maintenance obligations relating to Outlot X previously described herein which is subject to the ingress/egress access easement. The costs of such maintenance shall be an Association Maintenance Obligation.

Section 3. Assessment of Cost. The cost of all Association Maintenance Obligations shall be assessed against all of the Lot Owners and shall be added to and become a part of the annual maintenance assessment or charge to which all Lots are subject under Article V hereof. As part of such annual assessment or charge, it shall be a lien or obligation of the Lot Owner and shall become due and payable in all respects as provided in Article V hereof, provided that the Board of Directors of the Association, when establishing the annual assessment against each Lot for any assessment year as required under Article V hereof, may add thereto the estimated cost of the Exterior Maintenance for that year but shall thereafter make such adjustment with the Lot Owner as is necessary to reflect the cost thereof.

Section 4. Negligence in Maintenance. In the event that the need for maintenance or repair is caused through the willful or negligent act of the owner of a Lot or Townhome, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. Neglect of Lot or Townhome repairs that did not rise to the level of exterior maintenance or capital improvements as those terms are defined herein and which repair is the responsibility of the Lot or Townhome owners relating to HVAC, decks, and stoops, shall permit the Association to cause such repairs to be made and assessed to the Lot Owner responsible after ten (10) days notice to repair has been given to the Lot Owner by the Association in writing.

Section 5. Easement for Access. For the purpose solely of performing the Exterior Maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Lot Owner, to enter upon any Lot at reasonable hours of any day; provided, however, in the event that there is breakage or leakage in the water system or sewer system upon a Lot, no notice need to be given to enter upon the Lot for the purpose of repairing the water system or sewer system. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Properties. The Owner or occupant of a Lot shall neither erect nor permit erection of any building or structure of any kind nor permit any growth of any kind within said easement areas which might interfere in any way with the use and patrolling of any of the utility service and drainage located in the easement areas. In addition, an easement for maintenance is hereby granted in favor of the Association over and across each Lot for the purposes of the Association performing its duties under the terms of this Declaration.

## **ARTICLE IX.**

### **Additional Restrictions**

Section 1. Subject to the ability of Declarant to own and/or occupy any of the Townhomes for model home, sales purposes or management office, each of the Townhomes is intended to be used for residential purposes only, provided, however, that Declarant shall be allowed to place a construction trailer or other similar construction-related facility on the Properties. No business or commercial use shall be permitted in any of the Townhomes if such use generates more than two vehicle visits per day to the Townhome, provided, however, that no daycare or child care facility shall be allowed at any time, and no music lessons or tutoring shall be performed at any time. Any home office that complies with the above restrictions shall be allowed, subject, however, to any City of Ankeny ordinance that may apply.

Section 2. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. Each Townhome shall be permitted to have no more than two (2) cats or dogs (for example, either one (1) cat or a one (1) dog, one (1) cat and one (1) dog, two (2) cats or two (2) dogs), with a weight not to exceed 70 pounds in total weight, provided, however, that no pit bulls or Rottweilers shall be allowed in any case. In the event that any amendments are made to this Declaration which further restrict the keeping of pets, all pets that had existed at the time of such amendment shall be "grandfathered" and shall be allowed to remain in the Townhome, provided, however, that no replacement pets acquired after the date of



the amendment would be allowed if they violate any such amendment. All pets must be kept on a leash and each Lot Owner shall be responsible for cleaning up all pet waste. Any damage done by any pets, including dragging chains, digging, scratching or chewing, shall be the responsibility of the owner of such pet, including, but not limited to, any such damage done to landscaping. No Lot Owner shall be allowed to chain or otherwise confine their pet in the Common Area at any time. The Association shall have the right to require removal of pets in the individual cases where such pets are or become legal nuisances and unreasonably disturb the quiet enjoyment of the Properties by the Lot Owners. The Association may levy a \$25.00 per incident fine for any pet waste that is not cleaned up by the owner of such pet.

Section 3. No noxious or offensive activities not involving the maintenance of Lots shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood.

Section 4. Mailbox designs shall be only as approved by the Board of Directors, or the architectural control committee. No sign shall be placed upon any Lot except those customarily used to identify the name of the resident and the street address of the subject Lot, and real estate signs for the sale or rental of a Lot.

Section 5. No trash receptacles or garbage cans shall be permitted to be placed outside of a building or a structure on any Lot unless hidden by an attractive screen of suitable height and approved by the Board of Directors. This restriction shall not exclude the placement of waste containers outside of such area if required by governmental regulation or by terms of a contract with a commercial operator.

Section 6. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other building shall be used on any Lot at any time as a residence, or storage facility, either temporarily or permanently except for a sales trailer temporarily used by the Declarant.

Section 7. No commercial vehicles or commercial equipment of any kind shall be located, stored, or parked on any Lot, provided, however, that Declarant shall be allowed to place a construction trailer or other similar construction-related facility on the Properties. No recreational vehicles, including but not limited to, boats, snowmobiles, and trailers, shall be parked or stored on any Lot for more than 7 days out of the year unless stored in the garage, provided, however, that no such items shall be stored inside a garage unless the garage is still used for the storage of the intended one car. Garages shall also not be used for the storage of other items of personal property unless the garage is still able to store the intended one car. It is not intended that garages shall be used as storage areas, thus requiring automobiles that would otherwise be parked in the garage to be parked in the driveway or in other parking areas. It is acknowledged that all Townhomes in the Properties have a minimum one car garage.

Section 8. No fence of any kind shall be allowed on any lot at any time, except for fences required/installed as part of the original site plan or as required at any time by the City of West Des Moines, and except for any silt/erosion control fences or other fences installed by the Declarant as part of the construction of the Townhomes.

Section 9. Lot Owners shall not be allowed to place any personal property, including, but not limited to, play equipment, portable or permanent basketball hoops or similar recreational equipment, storage sheds, animal runs or shelters, hot tubs, whirlpool baths, or spas on their lot or in their Townhome unless located inside such Townhome, provided, however, that normal and customary lawn and patio furniture shall be allowed.

Section 10. Any lease arrangement of a Townhome shall be required to provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration, the Bylaws and Articles of Incorporation of the Association and any rules and regulations established by the Board of Directors; shall contain the agreement of the lessee to be bound by the terms of such documents and shall provide that any failure of the lessee to comply with the terms of such documents or rules shall be a default under the lease or rental agreement. All leases shall be required to be in writing and any Lot Owners leasing or renting a Townhome, shall, prior to the commencement of the lease or rental term, deliver to the Secretary of the Association and to any management company involved for the Association a complete copy of the lease or rental agreement. No Lease shall be for a period of less than thirty (30) days. Any Owner who leases their Townhome shall remain liable for all the actions of the tenant relating to this Declaration and any rules of the Association. Other than the foregoing, the Lot Owners of the respective Townhomes shall have the absolute right to lease the same.

Section 11. Except as permitted by the Board of Directors, in its sole discretion, and except as provided herein relating to flower boxes and planters, no gardens, shrubs, flowers or other plants shall be planted by any Lot Owner on the Common Area.

Section 12. Except as permitted by the Board of Directors of the Association, in its sole discretion, and except as provided herein relating to flower boxes and planters, no gardens, shrubs, trees, flowers or other plants shall be planted by any Lot Owner on any portion of the Properties, including the Lot owned by such Lot Owner.

Section 13. No one shall be allowed to block access to any garage or driveway unless the Townhome affected is owned by the individual creating such blockage.

Section 14. All visitor/guest parking is intended to be temporary in nature. All visitors and guests staying for extended periods are to park their vehicles in the driveway of their host. Parking in the Common Area shall be permitted only in designated areas. Parking in the ingress/egress easement area is subject to control by the Board of Directors and shall adhere to the site plan for this development approved by the City of Ankeny. All designated visitor/guest parking areas in the Common Area are reserved for visitors and guests and shall not be used by Lot Owners. Any and all fire lane requirements for the Properties shall be strictly adhered to.

**ARTICLE X.**  
**General Provisions**

Section 1. Enforcement. The Association, and its Board of Directors, or any Lot Owner, or their successors and assigns, shall have the right to enforce, by any proceedings at law or equity any restrictions, conditions, covenants, reservations, liens, and charges and rules and regulations now or hereafter imposed by the provisions of this Declaration or by the Association as set forth in the Bylaws. Any such enforcement shall allow for the reimbursement of reasonable attorney fees and costs to the successful enforcer. Failure by the Association or any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Condemnation. The Association shall have control over any eminent domain or condemnation proceedings, negotiations, settlements and agreements, relating to the common area or any part thereof. The Association is hereby appointed attorney-in-fact for each of the Lot Owners for the purpose of handling all such matters.

Section 3. Severability. Invalidation of any part of this Declaration by judgment or court order shall in no way affect any other provisions of this Declaration which shall remain in full force and effect.

Section 4. INTENTIONALLY OMITTED.

Section 5. Binding/Amendment. This Declaration shall inure to the benefit of the Lot Owners, the Association, and their successors and assigns, shall be deemed covenants running with the land and shall remain in full force and effect for a period of twenty-one (21) years after their original signing, prior to which time said Declaration may be extended for additional periods of twenty-one (21) years by filing a claim in accordance with Sections 614.24 and 614.25 of the Code of Iowa (2017) as amended, or any successor statute. This Declaration may be amended by an instrument signed by not less than the Lot Owners of sixty-seven percent (67%) of the Lots provided, however, that any such amendment to Article V must be consented to by the Declarant so long as the Declarant owns any Lot that is a part of or may be added to the terms of this Declaration. Any amendment must be recorded with the Dallas County Recorder. Notwithstanding anything to the contrary provided herein, however, the obligation of the Association to maintain Outlot X and the ingress/egress access easement in a safe condition and in compliance with all applicable governmental regulations cannot be released by any amendment without the prior written consent of the City of West Des Moines. Any amendment may be prepared and filed by Declarant if it relates to correction of technical or typographic errors or for clarification only with such amendment not requiring the percentage votes as described above. No amendment that adds additional property to the terms of this Declaration pursuant to Article II herein, shall require the consent of any Lot Owner other than the Declarant, as described in Article II. No Amendment to this Declaration shall change the ability to extend the effectiveness of this Declaration as described above, however.

Section 6. Violation. If a Lot Owner or the Association or any of them or their successors and assigns, or tenants shall violate or attempt to violate any of the covenants or restrictions herein contained, it shall be lawful for any person or persons owning any other Lots, the Association, or Declarant, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction and either to prevent him or them from so doing or to recover damages for such violation. In the event of any such suit or proceeding, the prevailing party shall be entitled to recover from the non-prevailing party, an amount equal to all costs, including reasonable attorney fees, incurred by such prevailing party in the preparation for and prosecution of such suit or proceeding.

Section 7. Rules and Regulations. The Association may adopt, amend and revoke rules and regulations not inconsistent with the Articles of Incorporation, Bylaws or this Declaration in order to regulate the use of the Townhomes and Lots and the conduct of the occupants which may jeopardize the health, safety and welfare of other occupants involving noise or other disturbing activity or which may cause damage to any of the Properties or the improvements located thereon, regulating or prohibiting animals, regulating the exterior appearance of the Properties including, by way of illustration and not limitation, balconies and patios, window treatments and signs and other displays, regardless of whether inside or outside an apartment, implementing the Articles of Incorporation, the Bylaws or this Declaration. After notice and an opportunity to be heard, the Association may impose reasonable sanctions, including the levying of reasonable fines, for violations of the Declaration, Bylaws and rules and regulations of the Association. Such fines shall not exceed the sum of Twenty-Five Dollars (\$25.00) per day unless agreed to by a majority vote of the Members of the Association. Such fine(s) may only be levied after a meeting of the Board of Directors of the Association has been held following the giving of the 10-day written notice to the offending Lot Owner to allow such Lot Owner an opportunity to be heard.

Section 8. Construction. Words and phrases herein shall be construed as in the singular or plural

**APPENDIX A  
OF  
VILLAGE AT DEER CREEK CROSSING TOWNHOME OWNERS ASSOCIATION  
RULES AND REGULATIONS**

General Rules.

1. All guests must be accompanied by a resident/Lot Owner.
2. Residents/Lot Owners are personally responsible and liable for any damage to the buildings, furniture, or equipment caused by any resident/owner or his guests.
3. Residents/Lot Owners are to leave all areas and facilities used in an orderly condition.
4. Residents/Lot Owners may use barbecue grills, provided the grills are placed five (5) feet or more from any buildings or any fences.
5. Personal property shall not be left unattended in any common areas other than the garage spaces.
6. For the safety of all residents/owners, please limit driving speeds through the complex to twenty-five (25) miles per hour.

Garages

1. Residents/Lot Owners shall use only the garage spaces which are allocated to their respective Townhome.
2. Residents/Lot Owners are prohibited from using or storing any of the following items in the garages: (1) (1)  
Flammable materials and liquids;  
(2) Combustible materials;  
(3) Materials identified with hazardous labels; and  
(4) Compressed gases.
3. Garage doors shall be kept closed when garages are not in use.

Outside Parking

1. Parking outside the buildings is permitted only in designated areas and, except for the driveways that are reserved for the Lot Owners of the Townhomes to which they are, respectively, allocated, are always on an unreserved basis unless otherwise prohibited.
2. Any abandoned vehicle will be towed at its owner's expense, without prior notice to the owner.
3. Any nonoperational vehicle parked outside of any garage for a period of more than seven (7) days will be towed at its owner's expense, without prior written notice to the owner.
4. Vehicles parked outside the buildings shall not obstruct the garages or driveways of others.

Pets

1. Those residents/Lot Owners with pets shall be responsible for caring for their pets in such a way as to keep them from becoming a nuisance to other residents/owners.
2. Pets shall be leashed at all times when they are outside their Lot Owner's Townhome.
3. Pet owners shall be responsible for cleaning up after their pets whenever their pets are outside their owner's unit. Failure to promptly clean up after a pet will subject the pet's owner to an assessment from the Association for the cost of such clean-up of \$25.00 per incident.

Section 8. Construction. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on June 25<sup>th</sup>, 2018.

ROCK EQUITY HOLDINGS, L.L.C.

By: [Signature]

Printed Name: James Lindgren

Title: President

STATE OF IOWA, COUNTY OF Polk

This record was acknowledged before me on June 25, 2018 by James Lindgren as President of Rock Equity Holdings, L.L.C.

[Signature]

Notary Public in and for the State of Iowa

STAMP



**LENDER'S CONSENT**

**South Story Bank & Trust**, holder of a mortgage recorded in **Book 16969, Page 847** of the Polk County Records (the "Mortgage") on the property legally described as:

Lot 1 in DEER CREEK SOUTH PLAT 2, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa

hereby consents to the filing of DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS FOR LOTS 1-50 IN THE ~~VILLAGE~~ VILLAGE AT DEER CREEK CROSSING (the "Declaration"). This consent shall not impair the lien of the Mortgage which shall after the Declaration is recorded remain a lien on the real property described in the Mortgage.

**South Story Bank & Trust**

By: *Eric Hockenberry*

Printed Name: Eric Hockenberry

Title: Vice President – Business Banker

STATE OF IOWA, COUNTY OF STORY

This record was acknowledged before me this 22<sup>nd</sup> day of June, 2018 by Eric Hockenberry as Vice President – Business Banker of **South Story Bank & Trust**.

STAMP

*Katie Mooney*  
Notary Public in and for said State

