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Polk County Iowa
JULIE M. HAGGERTY RECORDER
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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR WINDSOR VILLAGE PLAT 3

This Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Windsor Village Plat 3 (the "Declaration"), is made this May 1, 2017, by Orton Homes, L.L.C., an Iowa limited liability company and its successors and assigns.

WITNESSETH:

WHEREAS, Declarant is the owner of Lots 1 through 32, inclusive, and Outlot "Z" in Windsor Village Plat 3, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa (the "Addition"); and

WHEREAS, Declarant desires to develop the Lots as a residential housing community; and

WHEREAS, Declarant desires to amend, substitute and/or add covenants, conditions, easements and restrictions governing the Lots for the benefit of the Owners and to provide for the Association to operate and maintain Common Elements of the Addition.

NOW, THEREFORE, Declarant hereby publishes and declares that all Lots shall be held, sold and conveyed subject to the following covenants, conditions, easements, restrictions, limitations and obligations, all of which are for the purpose of protecting the value and desirability of the Addition, and all of which shall run with the land and shall be a burden upon and a benefit to any and all parties acquiring or owning any right, title or interest in any part thereof, and their heirs, successors, assigns, grantees, executors, administrators, and devisees.

**ARTICLE I
INTENT; DEFINITIONS**

1.01 Intent. It is the intent of this Declaration to provide covenants, conditions and restrictions to ensure the proper use and appropriate development of Improvements to each Lot.

It is further the intent to provide for the Association to perform the operation, maintenance, repair, replacement, alterations, improvement or modification of the Declarant Improvements.

1.02 Definitions.

- (a) **"Association"** shall mean Windsor Village Plat 3 Owners Association, a nonprofit corporation organized pursuant to Chapter 504 of the Code of Iowa, and its successors and assigns.
- (b) **"Association Responsibility Elements"** shall mean construction, reconstruction, repair, and maintenance of Outlot "Z" of the Recorded Plat, including the private street located in Outlot "Z".
- (c) **"Board"** shall mean the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.
- (d) **"City"** shall mean the City of Ankeny, Polk County, Iowa.
- (e) **"Common Elements"** shall mean those items installed and managed by the Declarant and the Association, including, but not limited to, the Declarant Improvements.
- (f) **"Declarant"** shall mean Orton Homes, L.L.C., an Iowa limited liability company, and its successors and assigns.
- (g) **"Declarant Improvements"** shall mean those Improvements Declarant is to construct within the Addition, including, but not limited to, signage, the Association Responsibility Elements and any additional Improvements that Declarant chooses to construct and deliver to the Association for continued operation, maintenance, repair, replacement, alteration, improvement or modification.
- (h) **"Declarant/Owner Remedies"** shall be as defined in Section 6.01 hereof.
- (i) **"Improvements"** shall mean and include a building, driveways, parking areas, sidewalks, fences, signs, lawns, landscaping, flag poles and any structure of any type or kind, and all additions to any of the foregoing.
- (j) **"Lot"** shall mean Lots 1 through 32, inclusive, in the Addition.
- (k) **"Occupant"** shall mean an Owner and any person from time to time entitled to use and occupy any building, or any part of any building on a Lot, under any lease, deed, license or other instrument or arrangement by which such person has acquired rights with respect to the use and occupancy of any building or part of a building on a Lot.
- (l) **"Owner"** shall mean the person or persons who from time to time collectively hold the entire fee title to any Lot, including buyers under executory contracts of sale

(but shall not include any person who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such loan documents).

- (m) **“Recorded Plat”** shall mean the subdivision plat of Windsor Village Plat 3 as recorded in the Office of the Polk County Recorder.
- (n) **“Unit”** shall mean the dwelling constructed on any Lot.
- (o) **“Zoning Ordinance”** shall mean the zoning ordinances of the City.
- (p) Words and phrases in this Declaration, including the acknowledgment, shall be construed as in the singular or plural number, unless the context permits only one such number.
- (q) Words defined elsewhere in this Declaration shall have that meaning throughout the Declaration and not just in the Section in which such word is defined, unless the definition expressly states otherwise.

ARTICLE II GENERAL USE RESTRICTIONS AND BUILDING SPECIFICATIONS

The Lots shall be held, occupied, sold and conveyed subject to the following use restrictions and building specifications, as well as those restrictions set forth elsewhere in this Declaration:

2.01 Uses.

- (a) **Residential Units.** In addition to the covenants, conditions and restrictions set forth in this Declaration, the Addition shall be subject to additional declarations of covenants, conditions, restrictions and easements, including, but not limited to, architectural standards, easements, common areas, assessments and other matters necessary and proper for the development of the Addition. The initial Declaration and any amendments thereto made prior to the sale of ninety percent (90%) of the Lots shall be subject to the approval of Declarant. Furthermore, in addition to Lots being subject to the provisions of this Declaration, including, but not limited to, assessments made pursuant to this Declaration, the Lots shall be governed by the Association created to operate and maintain the Common Elements, subject to the rights of the Declarant to control the Association as herein provided or as provided in the Association Articles or Bylaws. In no event shall anything in an Association document be deemed to amend this Declaration.
- (b) **Construction and Lot Maintenance.** Construction of Units shall be performed by a builder selected by Declarant. Construction must commence on all Lots within twelve (12) months of closing on purchase from Declarant. In the event construction does not commence within said twelve (12) month period, Declarant may, at its option, repurchase the applicable Lot at 90% of the sales price when

conveyed by Declarant. Owner shall seed the Lot with grass or mow weeds at least once every two (2) weeks for any period prior to commencement of construction. If this maintenance is not performed, the curing party is entitled to Declarant/Owner Remedies.

- (c) **Business Activity.** No full-time or part-time business activity may be conducted on any Lot or in any building constructed or maintained on any Lot, except to the extent of a home occupation permitted by the Zoning Ordinance and except that home builders may maintain model homes during construction and Declarant may maintain a sales office and model during its development and sale of Lots.

2.02 Architectural Standards. The following architectural standards shall apply to the development of all Lots in the Addition:

- (a) **Character.** No building or structure shall be constructed, altered or maintained upon any Lot other than for residential purposes with an attached garage. In order to preserve the general design for development of the Lots as a fine residential subdivision of the City, no Unit of any kind, or addition thereto, shall be erected upon any Lot unless the plan, design, building materials, exterior colors, landscaping and location thereof shall have been first approved by Declarant, or such person or persons or entity designated by it for this purpose.

2.03 Landscaping and Yard.

- (a) **Sodding and Seeding Requirements.** Each Lot shall be completely sodded following the completion of the home construction within thirty (30) days following the completion of construction. If weather conditions make it impossible to comply with the foregoing requirement, Declarant or Declarant's agent shall establish a reasonable time within which the sodding shall be completed.

2.04 Fences And Hedges. No fences, walls, hedges or barriers shall be permitted upon Lots or adjoining property lines except as follows:

- (a) All fences must be approved in advance by Declarant or Declarant's agent in writing. No fence shall exceed six (6) feet in height.
- (b) All fences shall be kept in good repair and attractive appearance by Owner. All wood fences shall be natural in color, stained, or painted in soft, earth tone colors so as to blend in with the terrain.
- (c) Notwithstanding anything in this Declaration to the contrary, no Owner shall have the right to erect a fence within or across any easement area shown upon the final plat of any plats within the Addition or within the Recorded Plat without the prior consent of the City or utility company or other person or entity for whose benefit such easement runs, as applicable. Any fence erected within or across an easement area without such consent may be taken down by the person for whose

benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Owner to restore or repair such fence.

2.05 Mailboxes. All mailboxes for delivery of mail by the United States Postal Service shall be placed as required by the United States Postal Service.

2.06 Playhouses, Utility Buildings and Other Accessory Structures. Playhouses, playground equipment, sandboxes, swimming pools, utility buildings, storage sheds or other similar structures must be approved in advance by Declarant or Declarant's agent.

2.07 Garbage Cans and Equipment; Outside Storage; Holiday Displays. No trash receptacles, garbage cans or recycling bins shall be permitted to be located outdoors upon a Lot except on pickup day. Firewood shall not be stored on any Lot.

No exterior holiday decorations shall be erected more than six (6) weeks prior to the holiday and all exterior holiday decorations shall be removed within three (3) weeks following the holiday.

2.08 Movable Enclosures. No tent, trailer, boat, camper, motor home, or truck rated larger than ¾-ton or other movable enclosure shall be maintained or parked on any Lot or street within public view for more than twenty-four (24) hours in any week.

2.09 Temporary Structures; Mobile Homes. There shall be no occupancy of temporary structures or partially completed structures. No manufactured or prebuilt home or other building shall be moved onto any Lot. No mobile homes shall be permitted at any time.

2.10 Satellite Dishes. Satellite dishes or parabolic devices in excess of 30" in diameter used to receive television or other signals from satellites shall not be permitted. Declarant or Declarant's agent may increase or decrease the permitted size of satellite dishes or parabolic devices by a written notice that shall be kept on file with the Association and shall be uniformly applied, except that any previously lawfully existing satellite dish or parabolic device that is in excess of the newly established maximum diameter for such devices may be maintained and repaired, but not replaced. The satellite dishes or parabolic devices shall be mounted on the rear elevation or the rear half of the side elevation only. In no event shall a satellite dish or parabolic device be mounted on the front elevation or the front half of a side elevation.

2.11 Towers and Antennas. No extension tower, projection tower, receiver or antennas of any kind shall be constructed or maintained on any Lot or on the exterior of any building on a Lot.

2.12 Pets/Animals. No animal, livestock, poultry, snakes or exotic animals of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other small commonly accepted domestic pets may be kept so long as they are not kept, bred or maintained for commercial purposes or sale to the public. In no event, however, shall more than two pets, collectively, be maintained on any one Lot at any one time. Animals, when outdoors, shall be kept on a leash. No animal shall be kept outside. Pets shall not be allowed if they interfere with the peaceful enjoyment of the Addition by any residents within the Recorded Plat as determined

by the Association. The pet Owner shall remove all animal excrement from any Lot or Common Element within the Addition.

2.13 Sales Office. Declarant reserves the right to maintain one or more Lots as a model or a sales and display office for itself, for its marketing firm, and/or for the builder of homes within the Addition; display or post signs of any type or size that are a part of the development and marketing and to have agents' and employees' equipment and material on any Lot used as a model or sales office. Any sales office must comply with all ordinances of the City.

2.14 Utilities and Utility Meters. All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground. Utility meters shall be hidden architecturally or through the use of remote reading devices. No private wells or septic systems shall be permitted on any Lot. No window mounted heating or air-conditioning units are permitted.

2.15 Noxious Activities/Nuisance. No noxious or offensive activity, noise or odors shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance or nuisance, either temporarily or permanently.

2.16 Maintenance of Lot. The Owner of any Lot, whether vacant or improved, shall keep the Lot free of debris.

2.17 Construction Clean Up and Maintenance. Each Owner shall confine all its construction activities solely to its Lot, shall keep its construction site clean, shall prevent any damage to any of the Declarant Improvements constructed or to be constructed by Declarant or by anyone else, and shall prevent any dirt, construction debris or other material from its Lot from being washed, blown, thrown, dumped, deposited or otherwise getting into the storm sewers, any overland flowage ways, the public streets, the public sidewalks or trails or onto any other Lot. Weekly clean up of trash and debris is required.

2.18 Signage. Signage within the Addition impacts the aesthetics of the neighborhood and property values. All signage shall meet the following requirements and restrictions:

- (a) Declarant or the Association shall erect the Addition project identification signage, if any, within the signage easements at the entrances into the Addition, if any.
- (b) Once a Lot is sold and occupied as a residential dwelling unit, signage on that Lot shall be limited to (i) address signage, (ii) owner identification signs, (iii) signs advertising real estate for sale ("**For Sale Signs**"), (iv) signs for garage sales ("**Garage Sale Signs**"), (v) signs for special events (such as birthdays, graduations, or anniversaries, hereafter "**Event Signs**"), (vi) signs for political campaigns and public voting matters ("**Political Signs**"), and (vii) other signs approved in writing by Declarant or, after Declarant delegates such function to the Association or no longer owns a Lot in the Addition, approved by the Board. For

Sale Signs shall be displayed only while the applicable Unit is for sale and must be removed the day following the closing of the sale. Garage Sale Signs and Event Signs shall be displayed only one day before the sale or event, during the sale or event and must be removed by the day following the sale or event. Political Signs shall be displayed only two weeks prior to date of the vote or election until the day of the vote or election, the day of the vote or election, and must be removed by the day following the vote or election. Political Signs not related to an election may be displayed only for a maximum of two weeks. Other signs permitted by Declarant or the Board may be displayed for such time as authorized by Declarant or the Board, as applicable. All signs shall be limited to no more than 30" wide by 24" high and shall be professionally constructed. No hand-painted signs shall be allowed, except for Event Signs and Garage Sale Signs. Except for address and owner identification signs, no signs shall be erected on any building elevation, erected so that it is visible through windows or glass openings or, except for vehicles with professionally made business signage on the vehicle, attached to vehicles parked within the Addition.

ARTICLE III EASEMENTS AND ENCROACHMENTS

3.01 Easements and Encroachments.

(a) General Easements. Each Lot shall be subject to the following easements in favor of the Association and the other Owners:

- (1) Each Lot is burdened with an easement of ingress and egress for construction, maintenance, repair and replacement of Association Responsibility Elements by the Association and the Declarant.
- (2) Each Lot is burdened with an easement for surface drainage for the benefit of all other Lots.
- (3) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon the Recorded Plat.

(b) Drainage, Utility and Sewer Easements.

As may be noted on the Recorded Plat, Declarant may reserve certain areas of the Lots for easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electric and other utility services, (including all lines, pipes, wires, cables, ducts, etc.,) to the Units constructed on the various Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such utility easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or

remove any necessary facilities and the right of Declarant and the Association to provide for and maintain appropriate drainage.

(c) Additional Easement Rights of the Declarant.

Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise leave the location of any drainage, utility, and sewer easement and to grant such further easements, licenses and rights of way, temporary or permanent, exclusive or nonexclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots. 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 amended plat recorded in the Office of the Recorder of Polk County, Iowa and any Owner shall take title of its Lot subject to the right and easements reserved herein; provided, however, the rights reserved in this Section 3.01(c) shall not be exercised in a manner that unreasonably and adversely affects any building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or that unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section 3.01(c) shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Lot.

(d) Easement for Signs and Construction Job Trailer.

Declarant reserves unto itself for so long as it owns any Lot, the right and easement to erect and maintain such entryway, identification and "For Sale" sign or signs, and park and use a construction job trailer within the Addition as Declarant deems reasonably necessary.

(e) Encroachment on Lots.

If, by reason of the location, construction, settling or shifting of a building or any part of a building containing a Unit upon a Lot (the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all appurtenances thereto. Upon the written demand from the Owner of the Encroaching Unit, the owner of the Lot upon which said Unit encroaches shall deed to the Owner of the Encroaching Unit that portion of the Lot upon which the Encroaching Unit is located. The deed shall be by quit claim deed free and clear of any mortgages and encumbrances. All costs of abstracting, releases of mortgages, recording fees, engineering fees and legal fees shall be paid by the owner of the Encroaching Unit.

(f) Driveways and Access for Lots.

All vehicular traffic on the streets and roads in the Addition shall be subject to the provisions of the applicable laws of the State of Iowa, Polk County and the City concerning operation of motor vehicles on public streets. Only drivers licensed to operate motor vehicles by the State of Iowa or by any other state in the United States may operate any type of motor vehicle in the Addition. All vehicles of any kind and nature that are operated on the streets in the Addition shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Addition.

(g) Sidewalks.

There is hereby reserved and granted an easement for the benefit of each Lot served by a sidewalk and pedestrian walkway located partially or wholly on the Lots. This easement is for the purpose of allowing pedestrian access from the public streets to the Lot served by such sidewalk or pedestrian walkway. No Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walkway that would impair the use or access by the Lot Owner that such sidewalk or pedestrian walkway serves.

(h) Association Easement. Declarant hereby grants to the Association an easement of ingress and egress onto all Lots for the purpose of enforcement of Declarant/Owner Remedies.

**ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

4.01 Membership.

- (a) Every Owner shall be a member of the Association. A person who is not an Owner may not become a member in the Association and will not be allowed access or use of any Declarant Improvements, other than as a guest or invitee of a member (which shall be subject to the Articles of Incorporation of the Association, Bylaws of the Association, and rules and regulations established by the Association from time to time), unless and until such person becomes the Owner.
- (b) Membership shall be appurtenant to and may not be separated from ownership of any such Lot. Ownership of a Lot shall be the sole qualification for membership.

4.02 Voting Rights.

- (a) The Association shall have one class of voting members. Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, but the vote attributable to 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 one Lot.

- (b) The Board of the Association may suspend the voting rights of a member for any period during which any assessment against the Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its established rules and regulations.
- (c) Each Owner, by acceptance of a deed or other conveyance of a Lot, consents and agrees to the dilution of his/her voting interest in the Association by virtue of the submission from time to time of additional property to the terms of this Declaration as may be provided herein.
- (d) Notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Recorded Plat, Declarant shall be the only member with voting rights as to the Association until such time as Declarant no longer owns any Lot primarily for the purpose of sale or until Declarant waives this right to be the Association's sole voting member, whichever first occurs. So long as Declarant is the sole voting member, Declarant shall have the right to appoint or remove any member or members of the Board and any officer or officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to be the sole voting member and to appoint and remove directors and officers of the Association as provided by this section.
- (e) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions hereof, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owner shall elect a new Board that shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.
- (f) The voting rights are further specified in the Bylaws of the Association.

4.03 Authority and Obligations. The Association through its Board, shall have the right, power and authority to:

- (a) provide for the enforcement of this Declaration;
- (b) borrow money and own, mortgage, pledge and convey real property and personal property;
- (c) provide for any operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of the Declarant Improvements or any Improvements hereafter made by the Association;

- (d) provide for the installation, operation and maintenance of project signage and entrance features;
- (e) make additional common Improvements for the benefit of the Addition;
- (f) in its discretion, perform services on behalf of the Owners of one or more of the Lots;
- (g) hire accountants, architects, contractors, lawyers, managers, employees, and such other persons as necessary or desirable to carry out its duties;
- (h) purchase such insurance as may be reasonable, including, but not limited to, general liability insurance, property and casualty insurance and officers and directors coverages;
- (i) levy, collect, and have jurisdiction, control and possession of assessments as hereinafter provided;
- (j) enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration;
- (k) establish rules and regulations for the use of Association property and easement areas which are established for the benefit of the members of the Association and their guests and invitees which may include remedies and the imposition of reasonable fines for the violation of such rules and regulations;
- (l) otherwise establish such procedures and policies as may be necessary or deemed desirable to provide for the general welfare of the Owners and Occupants of the Addition, in accordance with the spirit and letter of this Declaration, including the power to make variances in this Declaration; and
- (o) do such other things as are reasonable or necessary to carry out its obligations hereunder or under any agreement with any Owner of any Lot.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

5.01 Creation of Lien and Personal Obligation. Declarant hereby covenants, and each Owner 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 monthly assessments or charges, special assessments for capital improvements and operating deficits, and special assessments as provided in this Declaration. The assessments levied by the Association and any other charges against the Owner set forth elsewhere in this Declaration, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot of such Owner and shall be a continuing lien upon such Lot senior to all liens except the first mortgage of record and any special assessments levied by the City. Such assessment or charge, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner

of the Lot at the time when the assessment or charge fell due. The personal obligation for delinquent assessment or charge shall not pass to said Owner's successor in title unless expressly assumed by them.

5.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of carrying out the general duties and powers of the Association, including, but not limited to operation, maintenance, repair, reconstruction, restoration, replacement, or alteration of the Declarant Improvements to the Addition or the Improvements hereafter constructed by the Association as provided in this Declaration, insurance coverage of the Association and its property, any legal or other costs of enforcement of this Declaration, and for such reasonable reserves as the Board deems necessary. See Section 4.03 supra. In making such assessments, the amount to be levied shall be equal to and limited to the actual cost to the Association of providing those functions and services set forth in this Declaration.

5.03 Rate of Assessment. The assessments levied on and against Lots within the Addition and the Owners thereof, shall be a share of the total amount of each assessment prorated equally among such Lots within the Addition and the Owners thereof as of the beginning of the period for which such assessment applies.

5.04 Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement that the Association is required to maintain or for operating deficits that the Association may from time to time incur.

5.05 Commencement of Assessments.

The monthly assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to an Owner of a Lot with a completed Unit constructed thereon and for which a certificate of occupancy has been issued. Lots owned by the Declarant that do not have completed Units constructed thereon and for which certificates of occupancy have not been issued, shall be exempt from assessments. The due dates for all assessments shall be established by the Board. 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.

5.06 Procedures. All assessments shall be made in the manner and subject to the following procedure:

- (a) Notice of all assessments may be given by mail addressed to the last known or usual post office address of the holder of legal title of the Assessable Property and deposited in the United States mail with postage prepaid, or may be given by posting a notice of the assessment upon the Assessable Property itself.

- (b) Every assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided, unless the assessment by its own terms provides for payment in monthly, quarterly or semi-annual installments, in which case each payment shall be due as stated in the notice. From and after the date when said payment is due, it shall bear interest at lesser of (i) the rate of twelve percent (12%) per annum, or (ii) the maximum rate allowed by law, until paid and such payment and interest shall constitute a lien upon the Assessable Property which lien shall continue in full force and effect until the assessment is fully paid. The Board may also impose a late charge in such amount as it shall establish from time to time and set forth in any notice of assessment to defray the Association's administrative costs associated with collecting delinquent assessment payments.

Notwithstanding any other provision herein, the Association may bring an action at law against the Owner personally obligated to pay any assessment, or may foreclose the lien against the Assessable Property in the manner provided for foreclosure of a mortgage, or both, and all costs incurred by the Association, including attorney fees, shall be added to the amount of such assessment. No Owner of Assessable Property may waive or otherwise be relieved of liability for the assessments provided for herein by non-use of the Common Elements or abandonment of its Assessable Property.

- (c) The term "**Assessable Property**" shall mean all Lots that are subject to this Declaration whether or not such Lots have a dwelling constructed on it and whether such Lot is vacant or occupied.
- (d) Subordination of Assessment Liens.

If any Lot subject to a lien created by any provision of this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment or a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a

decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

ARTICLE VI MAINTENANCE

6.01 Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at the Owner's own expense, all maintenance and repairs of the Owner's Lot and all structures, improvements, and equipment located thereon including decorating and replacements within the Owner's Living Unit, the heating and air conditioning systems and any partitions and interior walls appurtenant to the Living Unit, but excluding the Association Responsibility Elements. The Owner shall be responsible for the maintenance, repair and replacement of all windows in the Owner's Living Unit, the doors leading into the Living Unit, all electrical fixtures located on the exterior of the Living Unit, and any and all other maintenance, repair, and replacements of the improvements, including decks, patios and stoops, including snow removal therefrom, shrubs, flowers, trees, plantings, gardens, and other landscaping on the Owner's Lot unless otherwise provided herein. The Owner shall also be responsible for the maintenance, repair, and replacement of all electrical wiring from the main electrical box to the Owner's Living Unit, notwithstanding the fact that such wiring crosses a Common Element or is located off-premises from the Owner's Lot. The Owner shall be responsible for maintaining exterior light fixtures of the Living Unit, including replacement of the light bulbs, and the Owner shall keep such light fixtures illuminated from dusk to dawn daily.

To the extent that equipment, facilities, and fixtures (including fences) within any Lot shall be connected to similar equipment, facilities, or fixtures affecting or serving other Lots, the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors shall be entitled to reasonable access to any Lot as may be required in connection with the maintenance, repairs or replacements of or to any equipment, facilities or fixtures affecting or serving other Lots. Any repair or replacement of an exterior structure, improvement, or equipment (including without limitation, decks and fences) shall be constructed in accordance with local ordinances and building codes.

6.02 Maintenance of Private Streets and Driveways. The Association shall be responsible for the Maintenance, including snow removal, repair and repaving of all private streets and driveways and for the maintenance and repair of any pedestrian walkways or sidewalks, excluding the stoops located at entrances of any Living Unit, constructed or to be constructed within the Properties by the Association for the benefit of all Owners of Lots. Private streets and driveways shall be maintained at all times in such manner as to provide ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street or highway. The

specification for replacement of any private streets, driveways, walkways or sidewalks shall be determined by the Board of Directors, or by an architectural committee composed of three (3) or more representatives appointed by the Directors.

6.03. Maintenance Obligations of Association. In addition to maintenance upon the private streets, driveways, and sidewalks, the Association shall provide all maintenance, repair, and replacement, removal and demolition of the Association Responsibility Elements and Common Elements, including but not limited to, maintenance upon each Lot that is subject to assessment hereunder as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces and other exterior Improvements, lawns, shrubs and excluding any lawns, shrubs, etc within any fenced area, trees, trash removal and snow removal (but excluding the stoops located at the entrances of any Living Unit). In the case of lawns, shrubs, trees, and other elements of landscaping, the Association shall perform all necessary repairs, replacement, and maintenance thereof in a manner similar to and in accordance with the appearance of the existing landscape, taking into account determining factors such as availability, age, and reasonableness as regard to the level of maturity and development of the landscaping at the time of the repair, replacement, of maintenance activity.

ARTICLE VII INSURANCE

7.01 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 monthly 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 by any Owner as hereinafter permitted.

7.02 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. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, officers, 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 officers 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.

7.03 Monthly Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the Association and the pro rata cost thereof shall become a part of the monthly assessment (over and above the assessments described in Article V, herein) to which each Lot conveyed by Declarant shall *be* subject under the terms and provisions of Article V. Each Owner shall prepay to the Association at the time a Lot is first conveyed to such Owner an amount equal to twelve (12) monthly assessments and shall maintain such prepayment account at all times. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner, mortgagee, the city of whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

7.04 Distribution to Mortgage. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a **mortgagee** endorsement on the certificate of insurance. In such event, any remittances shall be to the Owner and the mortgagee jointly, or in accordance with the terms of any endorsement in favor of the mortgagee.

7.05 Additional Insurance. Each Owner shall obtain additional insurance at the Owner's expense, affording coverage upon the Owner's personal property, the contents of the Owner's Living Unit, and all components of the Owner's Living Unit not included in the Association Responsibility Elements (including, but not limited to, all floor, ceiling, and wall coverings and fixtures, betterments and improvements) in an amount equal to the full replacement value thereof. Such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by

ARTICLE VIII GENERAL PROVISIONS; DURATION OF DECLARATION

8.01 Specific Enforcement of Restrictions/Declarant/Owner Remedies. Declarant and each Owner shall have the right to enforce this Declaration and each and every covenant, condition, easement, provision, restriction and term of this Declaration and in the event of the breach of any such covenant, condition, easement, provisions, restriction or term contained in this Declaration, Declarant and each Owner shall have the right to exercise all rights and remedies available at law or in equity and to Declarant/Owner Remedies as defined herein. All Owners covenant and agree, by acceptance of a deed to such Lot, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the

breach of the restrictions and covenants contained in this Declaration and that this Declaration may be specifically enforced by Declarant or the Board. All remedies provided for in this Declaration or that are otherwise available at law or in equity shall be cumulative. Neither Declarant nor any Owner shall have any liability to any person or entity for any failure to enforce any provision of this Declaration.

Declarant/Association remedies shall include, but not be limited to, the following:

If an Owner fails to comply with any provision in this Declaration and such failure continues for more than ten (10) days after written notice from the Declarant or the Association, then the Declarant or the Association shall have the right and easement to enter upon the Lot and perform such acts at the expense of the Owner of the Lot where such failure to act has occurred and shall have a right of action against the Owner of such Lot for collection of the costs thereof, plus reasonable costs, including attorney fees of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law for the date such cost is incurred and shall have a lien against such Lot from the date an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder of Polk County, Iowa, until such amount, plus the reasonable costs, including attorney fees of collecting such amount and costs of filing such lien incurred by lienholder is paid.

8.02 Breaches Deemed to be a Nuisance. Every act or omission that violates, in whole or in part, any of the covenants, conditions, easements, provisions, restrictions and terms contained in this Declaration is hereby declared to be a nuisance, and every remedy allowed by law or equity therefor shall be applicable against the party who so violates this Declaration and may be exercised by Declarant or by any Owner.

8.03 Attorneys' Fees. In the event, in the reasonable opinion of the Board or Declarant, it shall be necessary to secure the services of an attorney to enforce the provisions of this Declaration, then the fee of such attorney, and all other costs in connection with the enforcement of this Declaration, including, but not limited to, the costs of obtaining and/or continuing an abstract of title to the Lot in question, the costs of any contemplated or actual legal proceedings, and the costs of preparation and presentation of any evidence shall be the obligation of the Owner of the Lot that is the subject of such enforcement action, unless such Owner is found not to have violated any provision of this Declaration; however, such Owner shall not be obligated for any such attorneys fees and costs incurred by such Declarant or the Association if the Owner offers to settle the matter for an amount equal to or greater than that finally approved by a court of competent jurisdiction and/or by taking or forbearing from the requested action, as appropriate. If such costs and attorneys' fees are not paid within ten (10) days from the date of written notice thereof by the Board or Declarant to the Owner of such Lot, said fee and costs shall thereupon constitute a lien against the property in question, the same as the lien for the general assessment pursuant to the provisions of Article V hereof, and all interest and remedies applicable to such lien shall apply thereto.

8.04 Inspection. Declarant or representatives of the Association who are authorized by the Board may, from time to time, at any reasonable hour or hours, enter and inspect any Lot to ascertain compliance therewith.

8.05 Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any condition, covenant, easement, provision, restriction, reservation or term of this Declaration in any one instance shall not be deemed a waiver of the right to do so thereafter nor shall it be deemed to constitute a waiver of the right to enforce any other condition, covenant, easement, provision, restriction, reservation or term of this Declaration.

8.06 Rights of Third Parties. Nothing in this Declaration shall be construed so as to impose or create any duty or obligation on any of Declarant, the Association or any Owner to the benefit of the general public, third parties, or invitees, guests, employees, agents, principals or licensees of any Owner or Occupant.

8.07 Liability. Neither the Declarant nor the Association, nor their respective members, shareholders, directors, managers, officers, employees, agents and representatives shall have any liability to or for damages of any sort to any Owner or Occupant or to any other person or entity for any exercise or failure to exercise any right or duty or obligation, if any, of Declarant or Association hereunder, or in any manner arising herefrom, or for the granting of approval or withholding of approval, required or permitted under the terms of this Declaration, except as in Declarant's or the Association's capacity as the Owner of any Lot. Any Owner may, however, exercise any rights such Owner may have against the Declarant or Association or otherwise seek to enforce the conditions, covenants, easements, provisions, restrictions, reservations and terms of this Declaration against such Declarant or the Association, by an action in equity for specific performance or injunctive relief, to which Declarant shall be subject. These remedies of specific performance and injunctive relief shall be the only remedies available against Declarant or the Association (except as in Declarant's or the Association's capacity as the Owner of any Lot) for any exercise or failure to exercise any right, duty or obligation, if any, of Declarant or Association hereunder, or in any manner arising herefrom, or for the granting of approval or withholding of approval required or permitted under the terms of this Declaration, all other remedies being expressly waived by acceptance of a deed to any Lot.

8.08 Condemnation. In the event of any partial taking by a governmental body or other entity that has the power of eminent domain that involves a taking of all or part of Declarant Improvements, the Owners of each Lot agree, by acceptance of a deed to such Lot, whether or not it is so expressly stated in such deed, that the Association shall have and shall be deemed to have an interest in proceeds to be paid for such taking in the amount necessary to repair, restore or replace the portion of such Declarant Improvements so taken as near as practicable to a functional whole to serve the same purpose after such taking as the facility so taken served prior to such taking. To the extent that the Association does not receive its own award or payment from the condemning authority or the award or payment received is inadequate to cover the cost of repair, restoration or replacement of such Declarant Improvements, the Owners of each Lot receiving such award or payment shall pay to the Association pro rata from their awards or payments the amount necessary for the Association to complete such repair, restoration or replacement of such Declarant Improvements. In the event that the awards or payments received from such condemnation are inadequate to pay the entire cost to complete such repair, restoration or replacement of such Declarant Improvements, then the remaining cost shall be assessed against all Owners in proportion to their respective

assessment shares. All amounts due to the Association from the Owners of any Lot shall constitute a lien against the Lot in question, the same as the lien for the general assessment pursuant to the provisions of Article V hereof, and all interest and remedies applicable to such lien shall apply thereto.

8.09 Homeowners Liability Insurance. Each Owner or Occupant shall carry homeowner's insurance covering the Improvements on its Lot for all replacement costs. Owners or Occupants shall provide proof of said insurance to the Association at least annually. If the Owner or Occupant fails to provide proof of insurance, the Declarant or Association shall be entitled to Declarant/Owner Remedies.

8.10 Estoppel Certificates. The Association shall issue to any Owner or to any mortgagee of, or purchaser from, any Owner, an Affidavit Explanatory of Title or Estoppel Certificate in such form as may reasonably be requested. The Association shall be entitled to establish a reasonable fee for the provision of a certificate in accordance with the foregoing provisions and may condition the delivery of such certificate upon the payment of the applicable fee.

8.11 Covenants Binding and Running with the Land. Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of Declarant, the Association, and the Owners of each Lot, and their successors and assigns and all parties and persons claiming under any of them, and shall be deemed covenants that run with the land, and shall continue for the applicable periods specified in this Declaration.

8.12 Duration. All easements provided in this Declaration shall continue in perpetuity, unless sooner modified or terminated as provided in this Declaration.

Except as provided in the preceding paragraph of this Section, the covenants, indentures, restrictions and reservations in this Declaration shall be for an initial term of twenty-one (21) years, and may be renewed for successive terms of twenty-one (21) years each by appropriate filing with the Recorder of Polk County, unless sooner modified or terminated.

8.13 Amendment of This Declaration. This Declaration may not be altered, amended, modified, supplemented or terminated, in whole or in part, except in writing and as provided in this Section, subject to the limitations at Section 2.01(a) supra. Declarant or Declarant's designee may, by written declaration signed and acknowledged by it and recorded in the Office of the Recorder for Polk County, Iowa, alter, amend, supplement, add to, or terminate such conditions, covenants, indentures, restrictions and reservations of this Declaration, provided, however, that such alteration, supplement, addition, amendment or termination shall insure provisions for the continued operation, maintenance, repair, restoration and replacement of Improvements to the Addition, and except that no such alteration, amendment, supplement, addition, or termination may change the manner of assessment of any Owner except in a manner applied uniformly to all Owners. No such alteration, amendment, modification, or change shall reduce or modify the rights or obligations granted to, or imposed upon, the Association with respect to the continued operation, maintenance, repair, restoration and replacement of the Declarant Improvements to the Addition and the power to levy assessments therefor or to

eliminate the requirement that there be an Association unless some other person or entity be substituted for the Association and succeed to all of its rights and duties under this Declaration. It is expressly understood that no such alteration, amendment, supplement, addition, or termination shall require the consent of any Occupant (other than an Owner, and then for such Owner/Occupant only to the extent provided elsewhere in this Section) or any mortgagee of any Lot or from the City, except that no amendment shall terminate restrictions on the Association Responsibility Elements or dissolve the Association without the approval of the City.

8.14 Release Upon Sale. Subject to the provisions of this Section, if an Owner sells, transfers, or assigns its Lot (other than as security for a loan), then such Owner shall be released from its future obligations under this Declaration. It shall be a condition precedent to such release and discharge that any and all amounts that shall then be due and payable by such Owner shall have been paid, and that such Owner shall give written notice to the Association of any such sale, transfer, conveyance, or assignment concurrently with the filing for record of the instrument effecting the same.

Notwithstanding anything in this Declaration to the contrary, it is expressly understood and agreed that any first mortgagee that shall have acquired title to any Lot, or portion thereof, through foreclosure or deed in lieu of foreclosure, shall not be personally liable for any obligations under this Declaration that arose with respect to the obligations of the Owner of such Lot prior to the date such mortgagee acquired title thereto; provided, however, that any existing lien or right to a lien against such Lot allowed by this Declaration or as a result of the enforcement of this Declaration with respect to matters occurring before such mortgagee so acquired title thereto and shall continue and remain in full force and effect.

8.15 Severability. In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

8.16 Time of Essence. Time is of the essence with respect to the performance of each of the conditions, covenants, terms and provisions of this Declaration.

8.17 Governing Law. This Declaration shall be construed in accordance with the laws of the State of Iowa.

8.18 Captions. The captions of the Articles, Sections and Subsections of this Declaration are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

8.19 THE DECLARANT AND EACH OWNER, BY ACCEPTANCE OF A DEED TO OR OTHER CONVEYANCE OF A LOT WAIVES ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY MATTER ARISING OUT OF THIS DECLARATION.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration as of the date and year first above written.

ORTON HOMES, L.L.C.

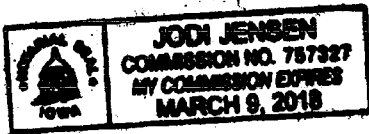
By: [Signature]

Printed Name: Robert Orton

Title: Manager

STATE OF IOWA)
COUNTY OF Polk) ss:

This record was acknowledged before me on May 1, 2017 by Robert Orton as Manager of Orton Homes, L.L.C., an Iowa limited liability company.



[Signature]
Signature of Notary Public

Jodi Jensen
Printed Name of Notary Public

STAMP

4945734

CONSENT BY MORTGAGEE

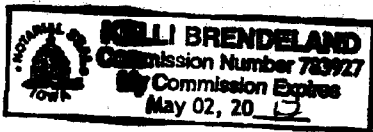
COMES NOW, the undersigned, South Story Bank & Trust, which is a Mortgagee regarding the real estate described in the foregoing Declaration of Covenants, Conditions, Easements and Restrictions for Windsor Village Plat 3, and hereby consents to said Declaration of Covenants, Conditions, Easements and Restrictions for Windsor Village Plat 3. Any enforcement action by South Story Bank & Trust, as Mortgagee, shall in no way extinguish the Declaration of Covenants, Conditions, Easements and Restrictions for Windsor Village Plat 3.

South Story Bank & Trust

By: *Eric Hockenberry*
V.P. _____

STATE OF IOWA)
)ss:
COUNTY OF STORY)

This record was acknowledged before me on April 21, 2017 by Eric Hockenberry as V.P. of South Story Bank & Trust.



Kelli Brendeland
Signature of Notary Public

Kelli Brendeland
Printed Name of Notary Public

STAMP