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Polly Glascock, Recorder, Warren County Iowa



Plan

4204

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

AMENDED DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR GREAT WESTERN CROSSING PLAT 1

THIS AMENDED DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR GREAT WESTERN CROSSING PLAT 1 (this "Amended Declaration") is dated this 19th day of May, 2020 and made by **DILIGENT GWC, LLC**, an Iowa limited liability company, owner and developer of the Additional Land hereinafter described, and "Declarant" of the Declaration of Residential Covenants, Conditions and Restrictions for Great Western Crossing Plat 1 recorded October 25, 2018 as **Instrument No. 2018-08512**, in the records of the Recorder for Warren County, Iowa (the "Declaration").

WHEREAS, pursuant to the Declaration, Declarant has established and placed certain covenants, conditions, restrictions, reservations and easements upon the following described real property (the "Plat"):

Lots 1 - 7 in **GREAT WESTERN CROSSING PLAT 1**, an Official Plat in Cumming, Warren County, Iowa.

WHEREAS, the Declaration established the **Great Western Crossing Homeowners Association, Inc.**, an Iowa non-profit corporation (the "Association"), to own and maintain common area and common amenities with authority to levy assessments necessary for the maintenance of such common area and common amenities for the benefit of the Plat.

WHEREAS, as an owner of a Lot subject to the Declaration, Declarant has the right to amend the Declaration and to subject additional land to the terms of the Declaration without the approval or consent of the Association, the Owners or any other party.

WHEREAS, Declarant desires to amend the Declaration and to subject the following described real property to the terms of the Declaration upon the filing of this Amended Declaration (the "Additional Land"):

Lots 1 - 19 in **GREAT WESTERN CROSSING PLAT 2**, an Official Plat in Cumming, Warren County, Iowa.

NOW, THEREFORE, pursuant to the authority described in the Declaration, Declarant hereby amends the Declaration as follows:

1. **Definitions.** Article I and Article XXVIII(A) of the Declaration relating to the definitions of terms used in the Declaration are hereby deleted in their entirety and combined and replaced with the following in lieu thereof:

For purposes of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided:

- A. **"Additional Land"** shall mean and refer to any real property annexed and subjected to this Declaration.
- B. **"Association"** shall mean and refer to the Great Western Crossing Homeowners Association, Inc., an Iowa non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa, as amended.
- C. **"Association Responsibility Elements"** and shall mean and refer to any improvement, easement or feature whether or not fully or partially located upon any Lot, Common Area, or offsite of the Plats for which the Association is obligated to maintain for the common use and benefit of the Owners, including, but not limited to, the following:
 - (i) All signs, monuments and monument signs, and similar entrance features and the landscape plantings and materials surrounding the entrance sign.
 - (ii) The fencing and landscape plantings and materials installed for buffering along Cumming Avenue (Highway G-14).
 - (iii) Any easement document filed in the records of the County Recorder requiring maintenance by the Association.
 - (iv) Any ponds, water detention or drainage areas, overland flowage areas and private storm sewers.
 - (v) Street trees.
 - (vi) Common Area and Storm Water Detention Facilities.
- D. **"Amended Declaration"** shall mean and refer to a separate instrument filed of record with the County Recorder that annexes and subjects Additional Land to this Declaration and may grant additional covenants, conditions, restrictions and easements as to such Additional Land, or otherwise makes amendments to this Declaration.
- E. **"Architectural Review Board"** shall mean the members of the architectural review committee established under this Declaration and referred to in this Declaration as the **"Review Board"** which is responsible for regulating

development of the Plats pursuant to the Great Western Crossing PUD and the Design Guidelines, as applicable. The Review Board shall initially be composed of representatives appointed by Declarant and may include other members such as City officials, the Board of Directors, Owners, architects, landscape architects, engineers or similar professionals.

- F. **"Board of Directors"** shall mean and refer to the members of the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.
- G. **"Building Lot"** shall mean and refer to one or more Lots, or one or more Lots and the portion or portions of adjacent platted Lots used for the construction of one dwelling as herein permitted.
- H. **"Bylaws"** shall mean and refer to the Bylaws of the Association adopted by the Board of Directors, as the same may be amended from time to time.
- I. **"City"** shall mean and refer to the city of Cumming located in Warren County, Iowa.
- J. **"Common Area"** shall mean and refer to any real property to which the Association holds title (if any), together with any improvements thereon, for the common use and benefit of the Owners.
- K. **"County Recorder"** shall mean and refer to the office of the County Recorder for Warren County, Iowa.
- L. **"Declarant"** shall mean and refer to **Diligent GWC, LLC**, and any successors and assigns acquiring all of Declarant's ownership interest in the Plats for purposes of development or improvement and who is specifically designated as the successor Declarant in an instrument executed by the immediately preceding Declarant filed of record with the County Recorder.
- M. **"Declaration"** shall mean and refer to the Declaration of Residential Covenants, Conditions and Restrictions for Great Western Crossing Plat 1 recorded October 25, 2018 as Instrument No. 2018-08512, in the records of the County Recorder to which the Plats are subject, as the same may be amended from time to time.
- N. **"Great Western Crossing Design Guidelines and Pattern Book"** shall mean and refer to the design guidelines, architectural patterns and procedures, as the same may be amended from time to time, which provide guidance and reference for regulation of the development and architectural standards for ALL LOTS IN GREAT WESTERN CROSSING PLAT 2 and all future Additional Land, and is referred to in this Declaration as the **"Design Guidelines"**, a copy of which is on file in the office of the Association. Declarant reserves the right in its discretion to change, amend or otherwise revise the Design Guidelines and to permit variances to the Design Guidelines by the Review Board as provided in this Declaration.

Where discrepancies exist between the Design Guidelines and the Great Western Crossing PUD, the PUD shall take precedence.

- O. **"Great Western Crossing PUD"** shall mean and refer to the Great Western Crossing Planned Unit Development established by City Ordinance 2016-4, as the same may be amended from time to time, which provides for regulation of the development of the Plats. Declarant reserves the right, in its discretion from time to time, to change, amend or otherwise revise any conceptual master plan for the Great Western Crossing PUD, and to develop or not to develop any unimproved real or personal property as may be shown on any such plan for the Great Western Crossing PUD.
- P. **"Lot"** shall mean and refer to any numbered parcel of land within the Plats which is platted for a single dwelling and such additional numbered Lots as may hereafter be annexed and subjected to this Declaration.
- Q. **"Member"** shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration.
- R. **"Outbuilding"** shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed or garden house.
- S. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot or Building Lot.
- T. **"Plans"** shall mean and refer to the site plans and building specifications containing the drawings, specifications and other documents from which the dwellings and other improvements and appurtenances thereto within a Lot are to be located, constructed, altered, demolished or removed which may include such details as workmanship, design, materials, products, type of construction, external details, color scheme, elevation, site grade, paving, landscaping, fencing, roofing, solar system, sidewalk, driveway and other similar matters.
- U. **"Plat" or "Plats"** shall mean all real property subject to this Declaration as set forth on Page 1 together with such Additional Land when annexed and subjected to this Declaration by an Amended Declaration, and shall refer to the official subdivision plats filed of record with the County Recorder, including any subsequent subdivision plats for the purpose of annexing Additional Land to this Declaration.
- V. **"Storm Water Detention Facilities"** shall mean and refer to the common storm water detention basins and all pipes, inlets and outlets appurtenant thereto located on or off-site of the Plats for the common use and benefit of the Owners for which the Association is obligated to maintain.
- W. Words and phrases in this Declaration, including the acknowledgement, shall be construed as in the singular or plural number, unless the context permits only one such number.

X. 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. Declarant shall have the final decision as to the meaning of any defined word or undefined term used in this Declaration.

2. **Additional Land.** The Additional Land is hereby annexed and submitted to the Declaration, which real property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations and easements of the Declaration and this Amended Declaration, as applicable, and the Owners of Lots within the Additional Land shall automatically become Members of the Association in the same manner as described in the Declaration and are hereby subjected to the terms, conditions, duties and assessments as described in the Declaration and this Amended Declaration, as applicable.

3. **Building Area Design and Construction.** Article IV of the Declaration relating to building area design and construction is amended as follows:

K. Sections A, B, E, F and G of Article IV shall apply to ALL LOTS IN GREAT WESTERN CROSSING PLAT 1 only. All references to Declarant therein shall be replaced with the Review Board.

L. For ALL LOTS IN GREAT WESTERN CROSSING PLAT 2, two-story dwellings must have a finished area of not less than 2,000 square feet; one and one-half story, split-level, and split foyer dwellings must have a finished area of not less than 1,800 square feet; ranch dwellings must have a finished area of not less than 1,500 square feet.

M. For ALL LOTS IN GREAT WESTERN CROSSING PLAT 2 and all future Additional Land, no dwelling shall be constructed or permitted to remain upon any Lot unless the design and location is in reasonable harmony with existing structures to provide an organized and visually diverse streetscape, and unless the design, materials, colors, brands and all other construction items are approved by the Review Board as being acceptable under the Design Guidelines. Dwellings of adjacent Lots shall be visually distinctive from one another by using a variety of architectural styles, character elements, materials and color approved by the Review Board as being distinct and diverse. Where discrepancies exist between this Declaration and the Design Guidelines, the Design Guidelines shall be followed as they apply to Great Western Crossing Plat 2 and all future Additional Land.

4. **Architectural Review.** Article V of the Declaration relating to architectural review standards and procedures is hereby deleted in its entirety and replaced with the following in lieu thereof:

Architectural Review Board. No improvement or appurtenances thereto, except as originally approved by or installed or constructed by or on behalf of Declarant, shall be commenced, erected, altered, maintained or permitted to remain upon any Lot, nor shall any addition to or change, renovation or alteration thereof be made until Plans have been submitted to and approved in writing by the Review Board. Any deviation in construction

from the approved Plans or the surrounding area shall be corrected at the expense of the Lot Owner. The Review Board shall have sole discretion and final authority to determine compliance with the design criteria standards and procedures established under this Declaration, or in conformity with the applicable provisions of the Design Guidelines. The intent of this provision is to ensure that structures and landscaping are developed in reasonable harmony within the Plats and that the covenants, restrictions, conditions and easements contained in this Declaration and the Design Guidelines, as applicable, are met in connection with such development.

Builder Approval and Architect. All dwellings must be constructed by a recognized builder approved by the Review Board prior to commencement of any construction. Declarant reserves the right not to approve builders. Approval of builders may not be construed as a recommendation of a specific builder, nor a guarantee or endorsement of the work of such builder. All dwellings shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer acceptable to the Review Board in its sole discretion.

Approval of Plans. The Review Board has sole discretion and final authority to approve or disapprove all Plans submitted. In reviewing each Plan, the Review Board may consider such things as quality of workmanship and design, harmony of design with existing dwellings, location and topography. In the event the Review Board fails to approve any Plans within fifteen (15) days after their submission in complete form, the Plans shall be deemed to have been disapproved and rejected. No approval of Plans shall ever be construed as representing or implying that such Plans, if followed, will result in a properly designed dwelling. Approval of Plans shall not be interpreted or construed as an acceptance of Plans that violate any applicable municipal, state or federal regulation, code, ordinance and statute applicable to standards of building.

Variance. The Review Board may authorize variances from compliance of any of the Design Guidelines or its procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental conditions require. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permits or the terms of any financing may not be considered a hardship warranting a variance.

Indemnification. The Owners shall indemnify every member of the Review Board against all damages, liabilities and expenses, included reasonable attorney fees incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Association) to which the member may be a party by reason of being or having been a member of the Review Board. Neither the Review Board, the Association nor Declarant shall be liable in damages to any builder, Owner or other person submitting Plans to them for approval, or to any Owner by reason of mistake in judgment, negligence or nonfeasance of Review Board, the Association and Declarant, their agents or employees arising out of or in connection with the approval, disapproval or failure to approve any such Plans. Every builder, Owner or other person who submits Plans for approval agrees, by submission of such Plans, and every Owner agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Review Board, the Association or Declarant to recover any such damages.

5. **Fences.** Article VIII of the Declaration relating to fences is hereby amended to add the following:

For ALL LOTS IN GREAT WESTERN CROSSING PLAT 2 and all future Additional Land, fences shall be either painted or stained wood, black wrought iron, metal with a powder coated factory finish, ornamental aluminum, or combinations of masonry and wood or metal. No PVC vinyl or other fencing material shall be permitted. Except for animal runs, no chain link fence shall be permitted. All fences must be approved by the Review Board prior to commencement of construction to meet the installation requirements of the Review Board. No fences may be built or maintained on any Lot prior to commencement of construction of the dwelling and issuance of an occupancy permit.

6. **Sod.** Article X of the Declaration relating to sodding is hereby amended to add the following:

For ALL LOTS IN GREAT WESTERN CROSSING PLAT 2 and all future Additional Land, all bare ground portions of the front, side and rear yard of the Lot shall be fully sodded within sixty (60) days of completion of a dwelling upon a Lot.

7. **Special Assessment for Community Programing.** Article XXVIII, Section A (4) of the Declaration relating to special assessments levied by the Association is hereby amended to add the following:

In addition to the annual assessments authorized in this Declaration, the Association shall levy and collect from ALL LOTS IN GREAT WESTERN CROSSING PLAT 2 and all future Additional Land an annual special assessment for community programing, including (but not limited to) marketing, staffing and coordinating farmers markets, social activities, festivals, cultural events, community activities, holiday and seasonal decoration, and other similar community programing. The Association is authorized to use any part of this special assessment to acquire, lease, own, hold and dispose of tangible and intangible personal property and to purchase or sell produce, goods, supplies, equipment, materials, appliances, furnishings, accessories and other similar things relating to the community programming. The Board of Directors is further authorized to use any part of this special assessment to contribute funds, personal property or services towards any shared or joint community amenities or activities for the common use, enjoyment and benefit of all Owners of Lots within the Plats and the owners of lots within the mixed-use planned development to be known as "Middlebrook" in Cumming, Warren County, Iowa, under any sharing agreements as may be entered into from time to time between Declarant, or the Board of Directors of the Association, and the Middlebrook Community Association, Inc. The initial amount of the annual special assessment for community programing payable by all Lots in Great Western Crossing Plat 2 and all future Additional Land to the Association shall be \$150 per Lot. The Board of Directors shall fix any increase in the amount of such special assessment at least thirty (30) days in advance of the effective date of such increase.

8. **General Amenities Fee.** Declarant has deemed it desirable for the value, desirability and attractiveness of the Plats to create a unique living environment designed to enhance the purpose of the community and that captures a genuine sense of place by featuring a

variety of welcoming and interesting features, elements, buildings, structures, kiosks, play equipment, materials, landscape plantings, street trees and other amenities. To assist the Association with the initial funding, Declarant hereby covenants and agrees that upon the first conveyance of each LOT IN GREAT WESTERN CROSSING PLAT 2 and all future Lots of Additional Land by Declarant, the Owner agrees to pay the initial sum of \$2,000 and Declarant agrees to pay the initial sum of \$2,000 to the Association. Each payment by the first Owner of a Lot and Declarant shall be collected and paid to the Association at the closing of the first conveyance of the Lot by Declarant. All payments shall be payable in the amount specified herein and no offsets against such amount shall be permitted for any reason. Declarant at any time may revoke or make amendments or modifications to this general amenities fee provision without the consent of any other Owners, the Association or any other party. Such revocation, amendment or modification by the Declarant shall be effective the date the revocation, amendment or modification has been filed of record with the County Recorder.

9. **Ratification.** Except as expressly amended hereby, all of the terms and conditions of the Declaration shall continue in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the undersigned has executed this Amended Declaration as of the date first written above.

DECLARANT:

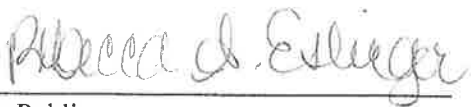
DILIGENT GWC, LLC,
an Iowa limited liability company

By: Diligent Development Group, LLC,
an Iowa limited liability company, its Manager

By: 
David A. Brown, Manager

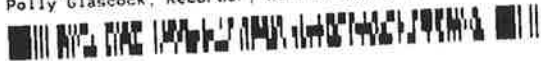
STATE OF IOWA, COUNTY OF DALLAS:

This record was acknowledged before me on May 19, 2020, by David A. Brown, Manager of Diligent Development Group, LLC the Manager of Diligent GWC, LLC.

By: 
Notary Public



Instrument #: 2018-08512
10/25/2018 01:47:06 PM Total Pages: 15
XZCV COVENANTS
Recording Fee: \$ 77.00
Polly Glascock, Recorder, Warren County Iowa



7/2/18

**DECLARATION OF RESIDENTIAL COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
GREAT WESTERN CROSSING PLAT 1**

Recorder's Cover Sheet

Preparer Information:

Alecia A. Meuleners, 699 Walnut Street, Suite 2000, Des Moines, IA 50309
Phone: (515) 288-6041

Taxpayer Information:

Diligent GWC, LLC, c/o 12119 Stratford Dr. Ste. B, Clive IA 50325

M

Return Document To:

Alecia A. Meuleners, 699 Walnut Street, Suite 2000, Des Moines, IA 50309

Grantor:

Diligent GWC, LLC

Legal Description:

See page 2.

**DECLARATION OF RESIDENTIAL COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
GREAT WESTERN CROSSING PLAT 1**

THIS DECLARATION is made this 17th day of October, 2018
by **DILIGENT GWC, LLC**, an Iowa limited liability company (the "Declarant").

WHEREAS, Declarant is the owner of certain real property legally described as follows:

Lots 1-7 in GREAT WESTERN CROSSING PLAT 1, an Official Plat, now included in and forming a part of the City of Cumming, Warren County, Iowa.

WHEREAS, Declarant is desirous of protecting the value and desirability of the Plat.

NOW, THEREFORE, Declarant hereby declares that all property within the Plat shall be held, sold and conveyed and be subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Plat and shall run with the land and shall be binding on all parties having any right, title or interest therein or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

I. DEFINITIONS.

For the purpose of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided:

- A. "Association" shall mean and refer to Great Western Crossing Homeowners Association, Inc. its successors and assigns, a non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa, as amended.
- B. "Building Lot" shall mean and refer to one or more Lots, or one or more Lots and the portion or portions of adjacent platted Lots in the Plat, used for the construction of one dwelling as herein permitted.
- C. "City" shall mean the city of Cumming, Iowa.
- D. "Declarant" shall mean and refer to Diligent GWC, LLC, an Iowa limited liability company, its successors or assigns.
- E. "Lot" shall mean and refer to an individual parcel of land within the Plat.
- F. "Outbuilding" shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed or garden house.

- G. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot or Building Lot that is a part of the Plat.
- H. "Plat" shall mean and refer to the real property described as Lots 1-7 in Great Western Crossing Plat 1, an Official Plat, now included in and forming a part of the City of Cumming, Warren County, Iowa, and any plats that may be added to the terms of this Declaration.

II. DESIGNATION OF USE.

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

III. BUILDING TYPES.

- A. No building or structure shall be constructed, altered, or maintained on any Building Lot other than a detached single family dwelling with an attached private garage.
- B. No building or structure of any kind shall be moved onto any Lot.
- C. The construction of any building or structure on any Building Lot shall be performed utilizing then acceptable construction methods and procedures, including (but not limited to) on-site "stick-built" construction and/or off-site modular or panelized construction.

IV. BUILDING AREA DESIGN AND CONSTRUCTION.

No dwelling shall be constructed or permitted to remain upon any Lot unless the design and location is in reasonable harmony with existing structures and unless it meets the following requirements:

- A. One and one-half story, two story, split-level, and split foyer dwellings must have a finished area of not less than 1,750 square feet.
- B. One story or ranch dwellings must have a finished area of not less than 1,500 square feet.
- C. In computing total finished area, the same shall not include any finished area that has its floor below the exterior grade.
- D. In the computation of floor area, the same shall not include any porches,

breezeways, or attached or built-in garages.

- E. All exterior painted portions of any dwelling, garage or Outbuilding located on any Lot shall be finished with one of the colors designated in writing by Declarant as being acceptable exterior color. All exterior painted portions of dwellings that are repainted shall be repainted in one of such colors.
- F. All roof material shall be CertainTeed brand in earth tone colors or shingle of equal color, quality and appearance thereto.
- G. All dwellings must be constructed using hardboard siding by LP SmartSide or cement board siding by James Hardie or other brands approved in writing by Declarant as being acceptable exterior siding. No vinyl siding shall be permitted. A minimum of three (3) different material types shall be used on the front façade of any dwelling. Glass windows are considered a material type.
- H. All buildings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.
- I. If a minimum basement elevation requirement is shown on the recorded final plat for any Lot, the dwelling upon such Lot shall have a finished basement floor elevation as shown on the recorded final plat.
- J. Declarant shall have the option to require Declarant's soil engineer to approve and monitor all soil excavation during exaction of basements for dwellings constructed upon any Lot.

V. **ARCHITECTURAL REVIEW.**

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

VI. **GARAGES, DRIVEWAYS, AND SIDEWALKS.**

All dwellings shall have a minimum of a two-car attached garage. All dwellings shall have a portland cement concrete driveway running from the city street to the garage of not less than five (5) inches in thickness, and not less than eighteen (18) feet in width. Portland cement concrete sidewalks not less than 4 feet in width shall be required along the frontage of all city

streets.

VII. TEMPORARY AND OTHER STRUCTURES; CERTAIN USES.

No Temporary building or structure shall be built or maintained on any Lot. No camper, motor home, watercraft, trailer, unfinished dwelling basement, tent, shack, garage, or Outbuilding shall be used at any time as a dwelling. No vehicle with a gross vehicle weight greater than 7,000 pounds, and no camper, motor home, watercraft, trailer, or mechanical equipment may be parked or maintained on any Lot (except inside a garage) or on the public street, other than on a temporary basis; provided that this restriction shall not apply to trucks, equipment or trailers used in connection with construction of or rebuilding of a dwelling on any Lot. Temporary shall mean no more than a total of thirty (30) days per year. At no time may any vehicle, trailer or camper be parked or maintained in the yard of any Lot. At no time shall a vehicle or any mobile equipment be disassembled, repaired or serviced on any Lot, except inside a garage or dwelling.

VIII. FENCES.

No fences or other structures may be built or maintained within the front building setback areas as shown on the Plats as recorded and no fences shall be built or maintained in front of the front line of the residential dwelling extended to the side Lot lines. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. Wrought iron and black chain link fencing shall be the only fence material permitted. Fences shall be no taller than six (6) feet and shall be kept in good repair and attractive appearance.

IX. DECKS

Decks attached to a dwelling must be constructed from cedar, redwood, treated lumber or other products approved by Declarant. All decks shall be kept in good repair and attractive appearance.

X. SOD.

Within sixty (60) days of completion of a dwelling upon a Lot, the front yard, side yards and twenty-five feet (25') of the rear yard measured from the rear of the dwelling foundation shall be fully sodded (except where the topography, conservancy districts, creek slopes or tree cover does not permit such sodding) and the remainder of the rear yard to the rear lot line shall be seeded or sodded. If weather conditions make this requirement impossible to meet, Declarant shall establish a reasonable period of time for compliance.

Notwithstanding the foregoing, the sodding requirements of this provision shall not be effective until such time as Des Moines Water Works shall complete the pump station and any other necessary improvements to allow for irrigation and watering of yards.

XI. EASEMENTS.

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plats as recorded. The Owner and/or occupant of each Lot, jointly and severally, shall at the expense of such Owner and/or occupant, maintain, keep, and preserve that portion of the easement within the Lot at all times in good repair and condition and shall neither erect nor permit erection of any building, structure or other improvement of any kind within the easement areas (except customary ground cover) which might interfere in any way with the use, maintenance, replacement, inspection or patrolling of any of the utility services and drainage facilities within such easements areas. Any berm and/or swale constructed for drainage purposes shall be preserved and maintained to accomplish the purposes for which it was constructed.

XII. NUISANCES.

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

XIII. EROSION CONTROL AND STORM WATER DISCHARGE PERMITTING REQUIREMENTS.

The Owner of each Lot, whether vacant or improved, their agents, assigns, heirs and/or building contractors shall take all necessary precautions to prevent, stabilize and/or control erosion on their Lot and the Plat, to prevent sediment migration and soil erosion from extending beyond the boundaries of their Lot and the Plat, and, in the event it occurs, to promptly clean up all eroded sediment and to restore all affected areas to their original condition.

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

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

XIV. SIGNS.

No sign of any kind shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except (i) street markers, traffic signs, or any signs installed by the City by other governmental entities or by the Declarant, (ii) signs which have been approved by Declarant in writing not exceeding 144 square inches in area on which there shall only

be exhibited the street number and/or the name of the resident, (iii) a customary sign (one per Building Lot) advertising a Building Lot or dwelling for sale, not exceeding 1,296 square inches, and (iv) signs which have been approved by Declarant in writing advertising the builder or for promotional or marketing purposes. In the event that any signs other than those described above shall be placed or exposed to view on any Lot, the agents of the Declarant are hereby given the right to enter upon such Lot and remove such signs. Declarant reserves the right to install entrance and directional signs with respect to the Plats, at locations and of design determined by the Declarant in a manner consistent with the ordinances of the City.

XV. TRASH RECEPTACLES.

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

XVI. UTILITIES.

All utility connection facilities and services shall be underground.

XVII. TOWERS AND ANTENNAS.

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

XVIII. MAINTENANCE.

The Owner and/or occupant of each Lot shall jointly and severally be responsible to keep the same free of trash, weeds and debris and to keep the lawn and landscaping well maintained and healthy, including (but not limited to) maintaining the lawn at a height not to exceed six (6) inches. The Owner and/or occupant of each Lot shall jointly and severally be responsible to maintain the exterior of any dwelling, the driveway, fence, screening and all other improvements.

XIX. CERTAIN ANIMALS PROHIBITED.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. In no event, however, shall more than a total of three (3) dogs and/or cats be kept at any one Building Lot at any one time. Dogs must be either kept in the dwelling or in a shelter aesthetically compatible with the dwelling and surrounding areas, and dog runs, if any, must be completely screened or otherwise hidden from view from any other Lot, and all streets within the Plat. All pets must be leashed and under the control of its owner if not tied up or kept within a fenced yard.

XX. ACCESSORY STRUCTURES.

Each Building Lot may have no more than one (1) customary and traditional accessory structure such as a tool shed, garden house, in-ground swimming pool, tennis court and the like. Any trash receptacle, or tool shed, garden house or other Outbuilding of like nature, shall be constructed of materials similar to the main dwelling and properly screened by a privacy fence and/or shrubbery. No above-ground or non-permanent swimming pools shall be permitted on any Lot. Swimming pools, tennis courts, Outbuildings and other accessory structures and improvements, including dog kennels and runs, shall not extend farther than the front line of the residential dwelling extended to the side lot lines and shall not be located within five (5) feet of any side or rear Lot line, as the minimum distance established by the zoning ordinance of the City or the minimum distance as established in the Plats as recorded, whichever is the more restrictive.

XXI. SURFACE WATER.

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

XXII. MAILBOXES.

Neighborhood mailbox cluster units shall be installed by the Declarant according to United States Postal Service regulations. The Owner and/or occupant of the Lot(s) on which a mailbox cluster unit is located shall be responsible for removal of snow and ice which would obstruct access to the mailbox cluster units by the mail carrier and other Owners.

XXIII. PAVING ASSESSMENT.

Each Owner is hereby provided notice of their obligation for their share of costs relating to any street widening improvements for paving, construction of curb, gutter, turn lanes, storm sewer, grading and other such improvements as set forth in any agreement between Declarant and the City, and the levy of a special assessment lien against their property pursuant to

any Petition Contract and Waiver with the City. THIS MEANS THAT AN OWNER OF RECORD OF A LOT AT THE TIME THE PAVING IMPROVEMENTS ARE CONSTRUCTED MAY BE ASSESSED A PORTION OF THE COSTS OF THE PAVING IMPROVEMENTS.

XXIV. ENFORCEMENT OF COVENANTS.

This Declaration shall be deemed to run with the land, and the Declarant or the Owner of any Lot may bring an action in any court of competent jurisdiction to enforce this Declaration to enjoin its violation or for damages for the breach thereof, or for any other remedy or combination of remedies recognized at law or in equity, and shall further be entitled to recover reasonable legal fees and costs if the Declarant or Owner prevails in any such action.

XXV. AMENDMENTS OF COVENANTS.

This Declaration may be amended from time to time with the approval of the Owners. Such approval shall be given by the affirmative vote of not less than two-thirds (2/3) of the Owners. The Owner of each Lot (or the joint Owners of a single Lot in the aggregate) shall be entitled to cast one vote on account of each Lot owned. Notwithstanding the foregoing, until the Declarant has sold all of the Lots, it may make amendments or modifications to this Declaration without the consent of any other Owners, the Association, or any other party. This Declaration may also be amended or modified without the consent of any Owners or the Association in accordance with Section XXIX. Upon addition of additional land to this Declaration, Declarant shall be deemed, without further action or need for consent from any party, to be able to make amendments or modifications to this Declaration due to its ownership or additional Lots, even if all Lots included in the original Plat have been sold. Such amendments or modifications by the Declarant shall be effective the date the amendment or modification has been filed with the County Recorder. Notwithstanding anything herein to the contrary, Sections XIII and XXI shall not be amended or terminated without prior written approval of the City.

XXVI. PERIOD OF COVENANTS.

All easement, covenants, conditions, restrictions and reservations created by this Declaration shall run with the land and shall be binding upon all Lots and the Owners of any Lot, regardless of how title was acquired. All covenants, conditions, restrictions, and reservations shall be binding on the Lots for the maximum period allowed by law, subject to the right of Owners under Section 614.24 of the Iowa Code to file a verified claim in the office of the County Recorder to extend the effectiveness of these covenants for successive periods of twenty-one (21) years each on or before the twenty-first anniversary of the filing of this Declaration and prior to the twenty-first anniversary of the filing of the last verified claim. All easements and other provisions of this Declaration shall be perpetual in nature.

XXVII. ENFORCEMENT AND WAIVER.

- A. In the event that any one or more of the foregoing covenants, conditions or restrictions shall be declared for any reason by a court of competent jurisdiction to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions and restrictions not so expressly held to be void, which shall continue unimpaired and in full-force and effect.
- B. The Plat shall also be subject to any and all rights and privileges of the City, now held or hereafter acquired, by dedication or conveyance, or by reason of the platting and recording of the Plat, or by this Declaration or by law. Wherever there is a conflict between this Declaration and the zoning ordinance of the City, the more restrictive shall be binding.
- C. This Declaration shall not be applicable to property dedicated to the City, and the City may allow appropriate public use on City-owned property within the Plats.

XXVIII. HOMEOWNER'S ASSOCIATION.

A. DEFINITIONS.

In addition to the Definitions set forth above, the following terms shall have the following definitions, except as otherwise specifically provided:

- 1. "Association Responsibility Elements" shall mean the following:
 - (i) All signs, monuments and monument signs, and similar entrance features and the landscape plantings and materials surrounding the entrance sign utilized by the Plat and any plats added to the Association in the future;
 - (ii) All Common Areas located within the Plat and any plats added to the Association in the future;
 - (iii) All ponds, water detention basins, overland flowage areas, and private storm sewers located within the Plat and any plats added to the Association in the future; and
 - (iv) All Easements for the benefit of the Association, as shown on the Plat and as may be granted to the Association.
- 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- 3. "Common Area" shall mean and refer to any real property within the Plat and any plats added to the Association in the future to which the Association holds title, together with any improvements thereon, for the common use, enjoyment and benefit of the Owners.

4. "Member" shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration.

B. MEMBERSHIP AND VOTING.

1. **Membership.** Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership.

2. **Voting.** Subject to provisions hereof, the Owners of a Lot shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

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

4. **Board of Directors.** The Members entitled to vote shall elect a Board of Directors of the Association as prescribed by the Bylaws of the Association. The Board of Directors shall manage the affairs of the Association.

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

C. COVENANT FOR MAINTENANCE ASSESSMENTS.

1. **Creation of the Lien and Personal Obligation of Assessments.** Declarant hereby covenants for each Lot and the Owner of each Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) a prorated annual assessment and (2) special assessments to be established and collected as hereinafter provided. The annual assessment and special assessments, together with late fees, interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the property against which each such assessments are made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall further be the joint and several personal obligation of each person who was the Owner of such property at the time when the assessment became due.

2. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners within the Plat; for improvement, maintenance, repair, replacement, removal, and demolition of the Association Responsibility Elements; for payment of insurance; payment of real estate taxes and assessments associated with the Common Area; payment of fees, costs, debts or obligations of the Association; payment of fees to a professional management firm; payment of fees to an accounting firm and attorney in connection with the operation of the Association as well as the defense or prosecution of any legal action; and for other purposes specifically provided herein.

3. **Maximum Annual Assessment.** The Board of Directors shall establish the maximum annual assessment to be assessed against each Lot, which assessment shall include a prorate portion of the amount of real estate taxes and special assessments payable by the Association. Rates for both annual assessments and special assessments must be fixed at a uniform rate for all Lots. The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of the increase in the annual assessment, special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto.

4. **Special Assessments for Capital Improvements and Operating Deficits.** In addition to the annual 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, replacement, removal or demolition of a capital improvement that the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

5. **Date of Commencement of Annual Assessments: Due Dates.** The annual assessment provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance of a Lot by Declarant. Upon such conveyance, the annual and special assessments prorated to December 31 must be paid to the Association. The Board of Directors shall establish the due dates for all assessments. All payments shall be made on or before the due date. Both annual assessments and special assessments shall be collected by the Association, in advance, in annual installments due on January 1.

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

7. **Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of said assessment all cost and expenses incurred by the Association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may

waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Owner's Lot.

8. **Subordination of Assessments Liens.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The assessment shall be paid prior to or at the closing of sale or transfer of any Lot. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. The failure of an Owner to pay assessments as provided herein shall not constitute a default under a mortgage insured by the Federal Mortgage Agencies.

9. **Assessment Certificate.** The Association shall, upon demand, and of 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.

D. MAINTENANCE BY ASSOCIATION, COMMON AREA AND INSURANCE.

1. **Maintenance of Association Responsibility Elements.** The Association shall provide all maintenance, repair, replacement, restoration, removal and demolition of the Association Responsibility Elements, including (but not limited to) all necessary painting, repairs, replacements and care of signs, monuments and other entrance structures. In the case of lawns, shrubs, trees, and other elements of landscaping, the Association shall perform all routine maintenance, including (but not limited to) all necessary mowing, trimming, and replacement of landscaping, and use of pesticides to control infestation of weeds and insects. In the event that the need for maintenance or repair is caused through the willful or negligent act of any Owner, or the Owner's family, guests, invitees, agents or contractors, the cost of such maintenance or repairs shall be assessed to such Owner.

2. **Maintenance of Common Areas.** The Association shall be the owner of the Common Area and shall timely pay all real estate taxes and assessments levied against the Common Area (if any). Declarant hereby covenants for itself, its successors and assigns that it shall convey to the Association the fee title to the Common Area free and clear of all mechanic's liens or any liens or encumbrances whatsoever, except covenants, easements, conditions and restrictions whether or not of record or created by this Declaration or granted to any public authority.

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

4. **Insurance.** The Association shall purchase and maintain a comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall insure the Association and the Owners against claims relating to the Association Responsibility Elements. The Association shall pay the premiums for all such insurance hereinabove described and the cost thereof shall become a part of the annual assessment.

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

XXIX. ADDITION OF PROPERTY.

1. **Conveyance of Additional Common Area and Additional Responsibility Elements.** Declarant shall have the right at any time to convey additional Common Area to the Association or to add additional Association Responsibility Elements. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to convey additional Common Area to the Association in the future. The Association shall be obligated to accept any additional Common Area so conveyed by Declarant and to hold and maintain the additional Common Area pursuant to the terms of this Declaration.

2. **Subjecting Additional Land to Declaration.** Declarant shall have the irrevocable right to subject additional land to the terms of this Declaration at any time in the future without the consent of the Association or any Owner. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration and Owners of Lots within the additional land shall automatically become Members of the Association in the same fashion as described in this Declaration and shall be subject to the same applicable terms, conditions, duties and assessments as described in this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the Recorder of Warren County, Iowa. No approval of the Association, Owner, or any other person shall be necessary.

IN WITNESS WHEREOF, this Declaration of Residential Covenants, Conditions and Restrictions, was made the date first written above by the Declarant.

DECLARANT:

DILIGENT GWC, LLC, an Iowa limited liability company
By: Diligent Development Group, LLC, its Manager

By: 

David A. Brown, Manager

STATE OF IOWA, COUNTY OF Dallas, ss:

This record was acknowledged before me on October 17, 2018, by David A. Brown, Manager of Diligent Development Group, LLC, the Manager of Diligent GWC, LLC.

Rebecca S. Eslinger
Notary Public





John

TCG

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

AMENDED DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR GREAT WESTERN CROSSING PLAT 1

THIS AMENDED DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR GREAT WESTERN CROSSING PLAT 1 (this "Amended Declaration") is dated this 19th day of May, 2020 and made by **DILIGENT GWC, LLC**, an Iowa limited liability company, owner and developer of the Additional Land hereinafter described, and "Declarant" of the Declaration of Residential Covenants, Conditions and Restrictions for Great Western Crossing Plat 1 recorded October 25, 2018 as **Instrument No. 2018-08512**, in the records of the Recorder for Warren County, Iowa (as amended, the "Declaration").

WHEREAS, pursuant to the Declaration, Declarant has established and placed certain covenants, conditions, restrictions, reservations and easements upon the following described real property (the "Plats"):

Lots 1 - 7 in **GREAT WESTERN CROSSING PLAT 1**, an Official Plat in Cumming, Warren County, Iowa.

AND

Lots 1 - 19 in **GREAT WESTERN CROSSING PLAT 2**, an Official Plat in Cumming, Warren County, Iowa.

WHEREAS, the Declaration established the **Great Western Crossing Homeowners Association, Inc.**, an Iowa non-profit corporation (the "Association"), to own and maintain common area and common amenities with authority to levy assessments necessary for the maintenance of such common area and common amenities for the benefit of the Plat.

WHEREAS, as an owner of a Lot subject to the Declaration, Declarant has the right to amend the Declaration and to subject additional land to the terms of the Declaration without the approval or consent of the Association, the Owners or any other party.

WHEREAS, Declarant desires to amend the Declaration and to subject the following described real property to the terms of the Declaration upon the filing of this Amended Declaration (the "Additional Land"):

Lots 1 - 11 and Outlot Z in GREAT WESTERN CROSSING PLAT 3, an Official Plat in Cumming, Warren County, Iowa.

NOW, THEREFORE, pursuant to the authority described in the Declaration, Declarant hereby amends the Declaration as follows:

1. **Additional Land.** The Additional Land is hereby annexed and submitted to the Declaration, which real property shall be held, sold and conveyed subject to the same covenants, conditions, restrictions, reservations and easements of the Declaration, and the Owners of Lots within the Additional Land shall automatically become Members of the Association in the same manner as described in the Declaration and are hereby subjected to the terms, conditions, duties and assessments as described in the Declaration.

2. **Common Area.** OUTLOT Z IN GREAT WESTERN CROSSING PLAT 3 shall be conveyed by Declarant to the Association as Common Area and the Common Area and the Storm Water Detention Facilities located thereon shall be owned, managed and maintained by the Association under the terms and conditions set forth in the Declaration.

3. **Building Area Design and Construction.** Article IV of the Declaration relating to building area design and construction is amended as follows:

N. For ALL LOTS IN GREAT WESTERN CROSSING PLAT 3, two-story dwellings must have a finished area of not less than 2,000 square feet; one and one-half story, split-level, and split foyer dwellings must have a finished area of not less than 1,800 square feet; ranch dwellings must have a finished area of not less than 1,500 square feet.

4. **Ratification.** Except as expressly amended hereby, all of the terms and conditions of the Declaration shall continue in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the undersigned has executed this Amended Declaration as of the date first written above.

DECLARANT:

DILIGENT GWC, LLC,
an Iowa limited liability company

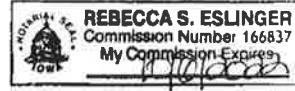
By: Diligent Development Group, LLC,
an Iowa limited liability company, its Manager

By: 
David A. Brown, Manager

STATE OF IOWA, COUNTY OF DALLAS:

This record was acknowledged before me on May 19, 2020, by David A. Brown, Manager of Diligent Development Group, LLC the Manager of Diligent GWC, LLC.

By: Rebecca S. Eslinger
Notary Public





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

Return to: Great Western Crossing Homeowners Association, Inc., 12119 Stratford Dr, Clive, IA 50325
(515) 309-0705

Legal Description: Lots 1-7 in Great Western Crossing Plat 1; Lots 1-19 in Great Western Crossing Plat 2; Lots 1-11 and Outlot Z in Great Western Crossing Plat 3; and Lots 1-39 and Outlot Z in Great Western Crossing Plat 4

Previously Recorded Documents: Inst. Nos. 2018-08512, 2020-07583 and 2020-07593

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**AMENDED DECLARATION OF RESIDENTIAL
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
GREAT WESTERN CROSSING PLAT 1**

THIS AMENDED DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR GREAT WESTERN CROSSING PLAT 1 (this "Amended Declaration") is dated June 21, 2021 and made by **DILIGENT GWC, LLC**, an Iowa limited liability company, owner and developer of the Additional Land hereinafter described, and "Declarant" of the Declaration of Residential Covenants, Conditions and Restrictions for Great Western Crossing Plat 1 recorded October 25, 2018 as **Instrument No. 2018-08512** in the records of the Recorder for Warren County, Iowa (as amended, collectively the "Declaration").

WHEREAS, pursuant to the Declaration, Declarant has established and placed certain covenants, conditions, restrictions, reservations and easements upon the following described real property (the "Plats"):

Lots 1 - 7 in GREAT WESTERN CROSSING PLAT 1, an Official Plat in Cumming, Warren County, Iowa.

Lots 1 - 19 in GREAT WESTERN CROSSING PLAT 2, an Official Plat in Cumming, Warren County, Iowa.

Lots 1 - 11 and Outlot Z in GREAT WESTERN CROSSING PLAT 3, an Official Plat in Cumming, Warren County, Iowa.

WHEREAS, the Declaration established the **Great Western Crossing Homeowners Association, Inc.**, an Iowa non-profit corporation (the "Association"), to own and maintain common area and common amenities with authority to levy assessments necessary for the maintenance of such common area and common amenities for the benefit of the Plats.

WHEREAS, as an owner of a Lot subject to the Declaration, Declarant has the right to amend the Declaration and to subject additional land to the terms of the Declaration without the approval or consent of the Association, the Owners or any other party.

WHEREAS, Declarant desires to amend the Declaration and to subject the following described real property (the "Additional Land") to the terms of the Declaration upon the filing of this Amended Declaration:

Lots 1 - 39 and Outlot Z in GREAT WESTERN CROSSING PLAT 4, an Official Plat in Cumming, Warren County, Iowa.

NOW, THEREFORE, pursuant to the authority described in the Declaration, Declarant hereby amends the Declaration as follows:

1. **Additional Land.** The Additional Land is hereby annexed and submitted to the Declaration, which real property shall be held, sold and conveyed subject to the same covenants, conditions, restrictions, reservations and easements of the Declaration, and the Owners of Lots within the Additional Land shall automatically become Members of the Association in the same manner as described in the Declaration and are hereby subjected to the terms, conditions, duties and assessments as described in the Declaration.

2. **Common Area.** OUTLOT Z IN GREAT WESTERN CROSSING PLAT 4 shall be conveyed by Declarant to the Association as Common Area and the Common Area and the Storm Water Detention Facilities located thereon shall be owned, managed and maintained by the Association under the terms and conditions set forth in the Declaration.

3. **Street Trees.** Maintenance of street trees are removed as an Association Responsibility Element. The Owner and/or occupant of each Lot shall jointly and severally be responsible to perform all routine maintenance and replacement of street trees within the Owner's Lot. Street trees shall be trimmed or pruned regularly and treated as needed to minimize the effects of disease, pests or minor damage by wind, lightening or other natural forces. Damaged, diseased, decaying and dead street trees shall be promptly removed by the Owner after first obtaining prior permission from the Review Board and submitting an acceptable plan for tree replacement. Should the Lot Owner fail in its obligations hereunder, the Association shall have the right, but not the obligation, to perform such maintenance and the costs associated therewith shall be assessed against the Lot Owner as a special assessment, which shall become due and payable upon demand.

4. **Building Area Design and Construction.** Article IV of the Declaration relating to building area design and construction is amended to delete and replace Section H and add Sections O and P as follows:

H. All dwellings shall be under construction within one (1) year from the date of conveyance of the Lot by Declarant and completed within twelve (12) months of the commencement date of construction, unless an extended construction schedule for the work to be completed is otherwise approved by Declarant for a home builder which acquires fee title to multiple Lots with the intent of erecting dwellings thereon for the strict purpose of offering such Lots as improved property for sale to

the general public. Within sixty (60) days of completion of the dwelling, all paving, Outbuildings, landscaping and sod shall be completely constructed, installed, planted and finished. If weather conditions make this requirement impossible to meet within the sixty (60) days, Declarant shall establish a reasonable period of time for compliance.

- O. For LOTS 1 – 9 IN GREAT WESTERN CROSSING PLAT 4, two-story dwellings, one and one-half story, split-level, and split foyer dwellings must have a finished area of not less than 1,600 square feet; ranch dwellings must have a finished area of not less than 1,300 square feet.
- P. For LOTS 10 – 39 IN GREAT WESTERN CROSSING PLAT 4, two-story dwellings must have a finished area of not less than 2,000 square feet; one and one-half story, split-level, and split foyer dwellings must have a finished area of not less than 1,800 square feet; ranch dwellings must have a finished area of not less than 1,500 square feet.

5. **Fences.** Article VIII of the Declaration relating to fences is hereby deleted in its entirety and replaced with the following:

No fences or other structures may be built or maintained within the front building setback areas as shown on the Plats as recorded and no fences shall be built or maintained in the front of the front line of the residential dwelling extended to the side Lot lines. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. Fences shall be no taller than six (6) feet and shall be kept in good repair and attractive appearance. Chain link fencing around dog runs is not allowed. Only the following fencing materials shall be permitted on the Lots as follows:

- PLAT 1: ALL LOTS: Wrought iron and black chain link.
- PLAT 2: LOTS 11, 12 AND 13: Black wrought iron or metal with a black powder coated factory finish.

ALL OTHER LOTS: Painted or stained wood, black wrought iron, metal with a powder coated factory finish, ornamental aluminum, or combinations of masonry and wood or metal.
- PLAT 3: LOTS 4, 5 AND 6: Black wrought iron or metal with a black powder coated factory finish.

ALL OTHER LOTS: Painted or stained wood, black wrought iron, metal with a powder coated factory finish, ornamental aluminum, or combinations of masonry and wood or metal.
- PLAT 4: LOTS 1 - 9 AND 29 – 39: Black wrought iron or metal with a black powder coated factory finish.

ALL OTHER LOTS: Painted or stained wood, black wrought iron, metal with a powder coated factory finish, ornamental aluminum, or combinations of masonry and wood or metal.

6. **Sod and Irrigation System.** Article X of the Declaration is amended to add that there shall be installed on every Lot an irrigation system for the watering of yards. All irrigation systems shall be designed to avoid runoff, low head drainage, and overspray conditions where water flows onto adjacent property, non-irrigated areas, sidewalks, driveways or structures.

7. **Assignment of Maintenance Obligations by Association.** The Association shall have the right from time to time to assign or delegate all or any part of its maintenance obligations under this Declaration to an Owner, or otherwise to be assumed by or dedicated to any local, state, federal, or non-profit entity, provided that in connection with any such assignment, delegation, assumption or dedication, the Association reserves the right to perform any maintenance obligation if the other party fails or ceases to perform its obligations so assigned, delegated, assumed or dedicated. In the event the Association shall assign, delegate or dedicate any or all of its maintenance obligations neither the Declarant, the Association, nor the Owners shall be liable for any omission or improper exercise by the party charged with performance of any such obligation so assigned, delegated or dedicated. In the case of assignment to a Lot Owner, the Association, may, at its option, require such Lot Owner to assume and pay all costs associated with such maintenance obligation so assigned or delegated.

8. **Ratification.** Except as expressly amended hereby, all of the terms and conditions of the Declaration shall continue in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the undersigned has executed this Amended Declaration as of the date first written above.

DECLARANT:

DILIGENT GWC, LLC,

an Iowa limited liability company

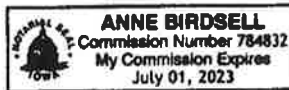
By: Diligent Development Group, LLC,

an Iowa limited liability company, its Manager

By: 
David A. Brown, Manager

STATE OF IOWA, COUNTY OF DALLAS:

This record was acknowledged before me on July 21, 2021, by David A. Brown, Manager of Diligent Development Group, LLC the Manager of Diligent GWC, LLC.



By: 
Notary Public

Warren County, Iowa
Recorded: 11/12/2021 at 2:01:33.0 PM
Polly J. Wright RECORDER
Number: 2021-13738
County Recording Fee: \$17.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$20.00
Revenue Tax:

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

Return to: Great Western Crossing Homeowners Association, Inc., 12119 Stratford Dr, Clive, IA 50325
(515) 309-0705

Legal Description: Lots 1-7 in Great Western Crossing Plat 1; Lots 1-19 in Great Western Crossing Plat 2; Lots 1-11 and Outlot Z in Great Western Crossing Plat 3; and Lots 1-39 and Outlot Z in Great Western Crossing Plat 4

Previously Recorded Documents: Inst. Nos. 2018-08512, 2020-07583, 2020-07593 and 2021-09094

**AMENDMENT TO AMENDED DECLARATION OF RESIDENTIAL
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
GREAT WESTERN CROSSING PLAT 1**

DILIGENT GWC, LLC, an Iowa limited liability company, as “Declarant” under the Declaration of Residential Covenants, Conditions and Restrictions for Great Western Crossing Plat 1 recorded October 25, 2018 as **Instrument No. 2018-08512** in the records of the Recorder for Warren County, Iowa (as amended, collectively the “Declaration”), establishing certain covenants, conditions, restrictions, reservations and easements on the following described real property:

Lots 1 - 7 in GREAT WESTERN CROSSING PLAT 1, an Official Plat in Cumming, Warren County, Iowa.

Lots 1 - 19 in GREAT WESTERN CROSSING PLAT 2, an Official Plat in Cumming, Warren County, Iowa.

Lots 1 - 11 and Outlot Z in GREAT WESTERN CROSSING PLAT 3, an Official Plat in Cumming, Warren County, Iowa.

Lots 1 - 39 and Outlot Z in GREAT WESTERN CROSSING PLAT 4, an Official Plat in Cumming, Warren County, Iowa.

pursuant to the authority described in Article XXV of the Declaration, hereby amends the Amended Declaration of Residential Covenants, Conditions and Restrictions for Great Western

Crossing Plat 1 recorded July 28, 2021 as **Instrument No. 2021-09094** to delete Section 5 relating to fencing in its entirety and replace with the following:

Fences. Article VIII of the Declaration relating to fences is hereby deleted in its entirety and replaced with the following:

No fences or other structures may be built or maintained within the front building setback areas as shown on the Plats as recorded and no fences shall be built or maintained in the front of the front line of the residential dwelling extended to the side Lot lines. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. Fences shall be no taller than six (6) feet and shall be kept in good repair and attractive appearance. Chain link fencing around dog runs is not allowed. Only the following fencing materials shall be permitted on the Lots as follows:

PLAT 1: ALL LOTS: Wrought iron and black chain link.

PLAT 2: LOTS 11, 12 AND 13: Black wrought iron or metal with a black powder coated factory finish.

ALL OTHER LOTS: Painted or stained wood, black wrought iron, metal with a powder coated factory finish, ornamental aluminum, or combinations of masonry and wood or metal.

PLAT 3: LOTS 4, 5 AND 6: Black wrought iron or metal with a black powder coated factory finish.

ALL OTHER LOTS: Painted or stained wood, black wrought iron, metal with a powder coated factory finish, ornamental aluminum, or combinations of masonry and wood or metal.

PLAT 4: LOTS 1 – 9: Except for invisible pet fencing, no fencing is allowed.

LOTS 29 – 39: Black wrought iron or metal with a black powder coated factory finish.

ALL OTHER LOTS: Painted or stained wood, black wrought iron, metal with a powder coated factory finish, ornamental aluminum, or combinations of masonry and wood or metal.

Ratification. Except as expressly amended hereby, all of the terms and conditions of the Declaration shall continue in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the date first written above.

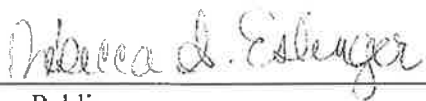
DECLARANT:

DILIGENT GWC, LLC,
an Iowa limited liability company
By: Diligent Development Group, I.L.C.,
an Iowa limited liability company, its Manager

By: 
David A. Brown, Manager

STATE OF IOWA, COUNTY OF DALLAS:

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By: 
Notary Public

