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Legal Description: See Page 1

Previously Recorded Documents: Inst. No. 2021-15169 amended/supplemented in 2022-06171; 2022-09328 and 2022-10015

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GREAT WESTERN CROSSING TOWNHOMES

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR GREAT WESTERN CROSSING TOWNHOMES** (this "Declaration") is dated May 24, 2023 and made by **DILIGENT GWC, LLC**, an Iowa limited liability company ("Declarant"), owner and developer of the real property described as follows (collectively, the "Property"):

Lots 1-28 and Outlot "Z" in Great Western Crossing Townhomes, an Official Plat in Cumming, Warren County, Iowa.

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

WHEREAS, the Property is subject to the Declaration of Covenants, Conditions, Restrictions and Easements for Middlebrook recorded December 17, 2021 as **Instrument No. 2021-15169** (the "Community Declaration") for the purpose of establishing a mixed-use planned agrihood development known as "Middlebrook" in Cumming, Warren County, Iowa, with certain common amenities and community programing for the benefit of the owners of real property subject to the Community Declaration.

WHEREAS, the Community Declaration grants to **Middlebrook Development, LLC**, an Iowa limited liability company (the "Community Declarant"), the right to approve this Declaration, to designate the Property with residential uses, and to impose additional covenants, conditions,

restrictions, reservations and easements against the Property.

WHEREAS, pursuant to the authority described in the Community Declaration, the Community Declarant hereby joins in execution of this Declaration to acknowledge its approval of the recording of the same.

NOW, THEREFORE, Declarant, by execution and recording of this Declaration, hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, reservations and easements which are for the purpose of protecting the value and desirability of, and which shall run with the land and be binding on all parties having any rights, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I **DEFINITIONS**

Section 1. Definitions. For the purpose of this Declaration and as used in this Declaration, the following capitalized 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, in one or more additional phases, by an Amended Declaration.

(b) **"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.

(c) **"Architectural Review Board"** shall mean and refer to the members of the architectural review committee established under the Community Declaration which is responsible for regulating development of the Property pursuant to the Great Western Crossing PUD and the Design Guidelines, as applicable, and referred to in this Declaration and the Community Declaration as the **"Review Board"**.

(d) **"Articles"** shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

(e) **"Association"** shall mean and refer to **Great Western Crossing Townhomes Association, Inc.**, its successors and assigns, a nonprofit corporation organized pursuant to Chapter 504A of the Code of Iowa. The term shall mean and be referred to as a **"Neighborhood Association"** under the Community Declaration.

(f) **"Association Responsibility Elements"** 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 Property for which the Association is obligated to maintain or manage for the common use and benefit of the Owners of the Lots, including, but not limited to, the following:

- (i) The exterior surface of the Building, excluding all interior and exterior parts of the windows and doors (i.e. trim, head, sash frame, extension jamb, interior casing, exterior brickmold casing and sill and window glass), and excluding laundry vents, garage doors, doors, stoops, patios, decks and any improvements made to the Living Units whether or not approved by the Review Board (for example, flags, barbecue grills, hot tubs, spas and pergolas for outdoor living).
- (ii) The structural portion of the Building.
- (iii) The roof, gutters, downspouts, and foundation of the Building.
- (iv) Any common wall between Living Units, except the interior surfaces thereof.
- (v) The yard surrounding the Building, including the lawn and landscape plantings and materials and any irrigation system installed by Declarant or the Association, and excluding any gardens, plants, flowers, trees, shrubbery and other landscaping planted by any Owner subject to the approval of the Board of Directors.
- (vi) Common street right-of-way, driveways, parking areas, sidewalks, walkways, street lighting, excluding any light posts of the Living Unit and front entrance stoops and the sidewalk leading from the driveway to the front entrance of the Living Unit.
- (vii) Entrance monument sign, landscaping and features and any directional signs abutting street rights-of-way.
- (viii) Any fencing, railing, retaining wall structure or stabilization plantings, constructed or installed by Declarant or the Association.
- (ix) The fencing and landscape plantings and materials installed for buffering along Cumming Avenue (Highway G-14).
- (x) Common Area, the Storm Water Detention Facilities and any other improvements located thereon.
- (xi) Common Elements.
- (xii) Security systems, including, but not limited to, recording devices, lighting, and associated cabling and wiring used to secure any Building or any other feature within the Property as the Association deems necessary.

(xiii) Any easement document filed in the records of the County Recorder requiring maintenance by the Association, including private storm sewers, sanitary sewers, water mains, overland flowage areas and storm water drainage and detention basins located upon the Property.

(g) **"Board of Directors"** shall mean and refer to the members of the Board of Directors of the Association duly appointed by Declarant or elected by the Members in accordance with this Declaration, the Articles or the Bylaws.

(h) **"Builder"** shall mean and refer to an Owner (other than Declarant) which acquires fee title to one or more Lots with the intent of erecting a Building thereon for the strict purpose of offering such Lots as improved property for sale to the general public. The Builder by virtue of its ownership of a Lot shall be considered the Owner of its respective Lots and shall be subject to the same terms, conditions, duties and assessments otherwise imposed upon an Owner under this Declaration and the Bylaws.

(i) **"Building"** shall mean and refer to any structure containing one or more Living Units that may be constructed on a Lot or a part of more than one Lot, and shall include any attached garage.

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

(k) **"City"** shall mean and refer to the city of Cumming located in Warren County, Iowa.

(l) **"Common Area"** shall mean and refer to any real property within the Property to which the Association shall hold title, together with any improvements thereon, for the common use, enjoyment and benefit of the Owners of the Lots. Maintenance of the Common Area and the improvements located thereon shall be solely at the expense of the Association as a part of the Association Responsibility Elements. The term shall include Outlot "Z" of Great Western Crossing Townhomes. Such Common Area shall be considered and designated a **"Limited Common Amenity"** as defined under the Community Declaration.

(m) **"Common Elements"** shall mean and refer to (i) conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of any Building; (ii) all common water, sanitary and storm sewer lines (except sewer laterals and water lines serving a single Living Unit); and (iii) all common gas and electric lines and other utility service facilities located within the Property that serve more than one Living Unit.

(n) **"Community Association"** shall mean and refer to **Middlebrook Community Association, Inc.**, its successors and assigns, a nonprofit corporation organized pursuant to Chapter 504 of the Code of Iowa.

(o) **"Community Declarant"** shall mean and refer to **Middlebrook Development, LLC**, and any successors and assigns as provided in the Community Declaration.

(p) **"Community Declaration"** shall mean and refer to the Declaration of Covenants, Conditions, Restrictions and Easements for Middlebrook recorded as **Instrument No. 2021-15169** to which the Lots are subject, as the same may be amended and supplemented from time to time.

(q) **"Control Period"** shall mean and refer to the period commencing on the date this Declaration is filed of record with the County Recorder and terminating upon expiration of the Control Period as defined under the Community Declaration. For so long as Declarant has an ownership interest in the Property, Declarant reserves unto itself the right to amend this Declaration, to have sole voting control and authority with respect to the Association and Board of Directors, and to exercise any and all other reservations, rights and privileges under this Declaration and the Bylaws. When Declarant no longer has any ownership interest in the Property, this reservation of right together with any and all protections of liability running in favor of Declarant under this Declaration shall automatically transfer to the Community Declarant for the remaining term of the Control Period.

(r) **"Cost Sharing Agreement"** shall mean and refer to any written contract, lease or agreement entered into between the Association and the City or the Community Association for the allocation of obligations and expenses relating to any shared amenities, events, services, facilities, features, furnishings or easements for the common use, enjoyment and benefit of the Association, the City or the Community Association.

(s) **"County Recorder"** shall mean and refer to the office of the County Recorder for Warren County, Iowa.

(t) **"Declarant"** shall mean and refer to **Diligent GWC, LLC**, and any successors and assigns acquiring all of Declarant's ownership interest in the Property 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. The term shall mean and be referred to as a **"Declarant Owner"** under the Community Declaration.

(u) **"Declaration"** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Great Western Crossing Townhomes to which the Property is subject, as the same may be amended and supplemented from time to time. The term shall mean and be referred to as a **"Neighborhood Declaration"** under the Community Declaration.

(v) **"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 the Lots, and is referred to in this Declaration as the **"Design Guidelines"**, a copy of which is on file in the office of the Community 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 the Community Declaration. Where discrepancies exist between the Design Guidelines and the Great Western Crossing PUD, the PUD shall take precedence.

(w) **"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 Lots, a copy of which is on file with the City and in the office of the Community Association. 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.

(x) **"Living Unit"** shall mean and refer to any portion of a Building situated upon a Lot designated and intended for use and occupancy as a residence by a single family or individual and the garage appurtenant thereto.

(y) **"Lot"** shall mean and refer to Lots 1-63 in Great Western Crossing Townhomes together with any additional numbered Lots shown upon a Subdivision Plat as may hereafter be annexed and subjected to this Declaration. The term shall mean and be referred to as a **"Lot"** under the Community Declaration. The term shall not include Outlots. The rights and obligations under this Declaration relating to ownership of Lots shall apply equally to each Lot regardless of the size or design of the Living Unit situated thereon.

(z) **"Managing Agent"** shall mean and refer to a manager or managing agent retained or employed by Declarant or the Association for the purposes provided in this Declaration.

(aa) **"Member"** shall mean and refer to those Persons entitled to membership in the Association as provided in this Declaration.

(bb) **"Owner"** shall mean and refer to the record owner, whether one or more Persons of the legal or equitable title to any Lot, but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the Lot by provision or operation of law. A vendee in possession under a recorded contract of sale of any Lot shall be deemed the Owner of the Lot instead of the contract seller.

(cc) **"Permittee"** shall mean and refer to any occupant, family member, guest, agent, contractor, licensee, lessee, subtenant, and invitee of an Owner of a Lot.

(dd) **"Person"** shall mean and refer to an individual, corporation, partnership, limited liability company, association, estate, trust, or other legally recognized form of entity, or fiduciary acting on behalf of another individual or any other legal entity.

(ee) **"Plans"** shall mean and refer to the site plans and building specifications containing the drawings, specifications and other documents from which the Buildings and other improvements and appurtenances thereto within a Lot or Lots are to be located, constructed, altered, demolished or removed which may include such details as workmanship, design, materials, type of construction, external details, color scheme, elevation, site grade, paving, landscaping, retaining wall, fencing, roofing, solar system, geothermal system, sidewalk, driveway and other similar matters.

(ff) **"Property"** shall mean and refer to all real property subject to this Declaration set forth on Page 1, together with such Additional Land thereto as may hereinafter be brought within the jurisdiction of the Association when annexed and subjected to this Declaration. The term shall mean and be referred to as a **"Neighborhood"** under the Community Declaration.

(gg) **"Storm Water Detention Facilities"** shall mean and refer to the common storm water detention basins and all pipes, inlets and outlets appurtenant thereto located upon the Common Area for which the Association is obligated to maintain for the common use and benefit of the Owners of the Lots.

(hh) **"Subdivision Plat"** shall mean and refer to the official subdivision plat of the Property filed of record with the County Recorder, including any subsequent subdivision plats for the purpose of annexing Additional Land to this Declaration.

(ii) **"Voting Agent"** shall mean and refer to the President of the Association who is authorized to represent the Lots and cast all votes on behalf of the Lots entitled to vote at any election or meeting of the Community Association.

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.

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.

ARTICLE II **INTENT AND NOTICE**

Section 1. Intent. It is the intent of this Declaration to provide easements, covenants, and restrictions to ensure that the Property shall be developed, improved, operated and maintained in an attractive setting reflecting the unique character, style, special features and uses prescribed in the Great Western Crossing PUD and Design Guidelines as well as providing for interconnection between a residential district and the community amenities and programming offered at Middlebrook.

Section 2. Paving Assessment. Each Lot 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 Lot 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.

Section 3. Community Association and Assessments. In addition to this Declaration, every Owner of a Lot is subject to the Community Declaration and shall be a member of the Community Association established thereunder subject to regular and special assessments, fines, penalties and fees levied by the Community Association as described in the Community Declaration, including the General Common Amenities Fee. The ownership, use, occupation and enjoyment of each Lot, and the Common Amenities offered at Middlebrook as defined in the Community Declaration, shall be subject to the provisions of the Community Declaration all of which provisions shall be enforceable and binding as a covenant, condition, restriction or requirement running with the land and shall be binding on and enforceable against each and all Lots and the Owners and their respective Permittees and successors in interest.

Section 4. Conflicts. In the event of any conflicts, differing interpretations or where discrepancies exist between this Declaration and the Community Declaration, then this Declaration shall take precedence and control, but in such a manner that the inconsistencies do not adversely alternate the purpose and intent of each such Declaration or in any way impedes or stifles the growth, enjoyment or enhancement of the use and value of the Lots.

ARTICLE III DESIGN STANDARDS, ARCHITECTURAL REVIEW AND CONSTRUCTION

Section 1. Design Standards. The criteria and design standards prescribing the quality and character specifications for the improvements to be constructed on the Lots shall conform to the minimum standards provided in this Declaration, the Design Guidelines, or otherwise permitted by variance authorized in writing by the Review Board as set forth in the Community Declaration. The Review Board shall have sole discretion and final authority to determine compliance with the design criteria standards, construction and procedures established under the Community Declaration, this Declaration, the Design Guidelines, or in conformity with the applicable provisions of the Great Western Crossing PUD.

Section 2. Architectural Review. 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 by the Review Board in compliance with the policies and procedures set forth in the Community Declaration. Any change in the appearance or the color of any part of the exterior of a Building shall be deemed a change thereto and shall require approval 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 intent of this provision is to ensure that structures and landscaping are developed as prescribed in the Design Guidelines and that the covenants, restrictions, conditions and easements contained in this Declaration are met in connection with such development.

Section 3. Indemnification. The Association 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, Declarant nor the Community Declarant shall be liable in damages to any Owner of a Lot or other Person submitting Plans to them for approval, or to any Owner of a Lot by reason of mistake in judgment, negligence or nonfeasance of the Review Board, the Association, Declarant and the Community Declarant, their agents or employees arising out of or in connection with the approval, disapproval or failure to approve any such Plans. Every Owner of a Lot or other Person who submits Plans for approval agrees, by submission of such Plans, and every Owner of a Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Review Board, the Association, Declarant, or the Community Declarant to recover any such damages.

Section 4. Construction. All construction, alteration or repair work undertaken by a Builder or Owner shall be accomplished substantially in conformance with the terms and conditions set forth in the Community Declaration. Buildings shall be under construction within one (1) year from the date of conveyance of the Lot(s) 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. Within sixty (60) days of completion of the Building, all paving and landscaping shall be finished, planted and sodded. If weather conditions make this requirement impossible to meet, Declarant shall establish a reasonable period of time for compliance.

Section 5. Utilities. All utility connection facilities and services shall be underground.

Section 6. Garages, Driveways and Sidewalks. All Living Units shall have a minimum of a two-car attached garage. All Living Units shall have a driveway running from city street to the garage constructed in accordance with the Design Guidelines, or otherwise permitted by variance authorized in writing by the Review Board to accommodate use of impervious material other than cement or use of permeable paving to help increase water infiltration and soften the appearance of concrete on the landscaping. Sidewalks not less than 4 feet in width shall be required along the frontage of all public streets.

Section 7. Sod and Irrigation System. All bare ground portions of the front, side and rear yard of the Lot or Lots upon which a Building is constructed shall be fully sodded within sixty (60) days of completion the Building. 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 the water flows onto adjacent property, non-irrigated areas, sidewalks, driveways or structures.

Section 8. Fences. Fences shall be limited to decorative fences or railing located around the decks or patios of the Living Units.

Section 9. Towers and Antennas. No transmission tower, antenna, satellite dish or any other similar reception device shall be constructed, installed or permitted on the ground of any Lot. No tower, antennae, satellite dish or similar reception device shall be placed on any Building except those which cannot be prohibited pursuant to the Federal Over-the-Air Reception Devices Rule, 47 C.F.R. §1.4000, or other similar governmental mandate in effect at the time of placement. All installations shall be completed so as not to materially harm or damage the Association

Responsibility Elements; or to void any warranties held by the Association; or to jeopardize or impair the integrity, safety or soundness of the Building. Upon receipt of reasonable notice, an Owner shall remove and reinstall, at such Owner's sole expense, the reception device to accommodate repairs and maintenance for which the Association is responsible. The Owner shall be responsible to the Association for any expense, liability, or damage of any kind resulting from the installation, maintenance, and use of the tower, antenna, satellite dish or similar reception device. The Association will not be responsible to an Owner for any loss or damage to any tower, antenna, satellite dish or similar reception device.

ARTICLE IV STORM WATER DISCHARGE PERMITTING REQUIREMENTS

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

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

Section 3. Indemnity. During the ownership of the Lot, the Owner shall protect, defend, indemnify and hold Declarant, the Community Declarant, the Association and the other Lot Owners harmless from any and all damages, claims, liabilities, fines, penalties, cleanup costs and 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 (ii) any alleged violation of any NPDES or storm water discharge rule or regulation.

ARTICLE V EASEMENTS, RESERVATIONS AND ENCROACHMENTS

Section 1. General Easements. Each Lot shall be subject to the following easements in favor of the Association and the other Lot Owners:

- (a) Every portion of a structure upon a Lot which contributes to the support of any structure not on the same Lot is burdened with an easement of such support.
- (b) Each Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting or inexact location during construction.
- (c) Each Lot is burdened with an easement through the Lot and through the attic and basement of any Building thereon for conduits, ducts, plumbing, wiring, pipes, and

other facilities for the furnishing of utilities, heating and air conditioning systems and similar services to other Lots, foundation drains, sanitary sewer and water service facilities, including the location of utility meters and equipment on one Lot for service to other Lots.

- (d) Each Lot is burdened with easements for drainage, detention, public utility and sewer as may be shown upon the Subdivision Plat or any separately created easement recorded in favor of utility companies and the City.
- (e) Each Lot is burdened with an easement of ingress and egress for reasonable access by the Association for maintenance, repair and replacement of the Association Responsibility Elements and license to use hoses, bibs and water from all Lots to perform such maintenance obligations. Agents of or contractors hired by the Board of Directors may enter any Lot when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable.
- (f) Each Lot is burdened with an easement of ingress and egress over the land upon the Lot, but not the Building or improvements thereon, for reasonable access by another Owner to maintain or repair utility facilities located off-premises from such Owner's Lot.
- (g) Each Lot is burdened with an easement for sidewalks for use by pedestrians and non-motorized vehicles to obtain access from the public or private street and from one property to another. No Owner shall obstruct or allow any obstructions on any sidewalk which would impair use and access to the Living Unit that such sidewalk exclusively serves.
- (h) Those Lots that share a front entry stoop are burdened with an easement for a common front entry stoop with the adjacent Lot. No Owner shall obstruct or allow any obstructions on any front entry stoop which would impair use and access to the Living Units that such front entry stoop exclusively serves.
- (i) Those Lots that share one common driveway are burdened with an easement for common driveway usage with the adjacent Lot. No Owner shall park or allow to be parked any vehicular or other obstruction within the driveway appurtenant to a Living Unit which would impair use and access to the Living Units that such driveway exclusively serves.
- (j) Each Lot is burdened with an easement for any fence constructed by Declarant or the Association and maintained by the Association.

Section 2. Easement for Signs. There is hereby reserved and granted to the Association, for the benefit of all Lots and Owners, an easement right and authority to erect and maintain permanent entrance and directional signs with respect to the Property at locations and of design consistent with the ordinances of the City, and the right and authority to erect "No Parking",

“No Swimming”, or other pertinent signs within the Property as the Board of Directors deems reasonably necessary in its sole discretion from time to time. Declarant reserves unto itself for so long as it has an ownership interest in the Property, the right and easement to erect any such entryway, identification and “For Sale” signs within the Property as Declarant deems reasonably necessary in its sole discretion from time to time.

Section 3. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances and emergency personnel, public and private, over and upon all Lots and any sidewalk within the Property.

Section 4. Parking Rights. Subject to the easement for common driveway usage granted above, the paved driveway in front of each Lot Owner’s garage shall be for the exclusive use of such Owner and any Permittees of such Owner. The Association may by regulation or rule limit or prohibit guest parking or the parking of vehicles on the parking areas and private streets. At no time shall a vehicle or any mobile equipment be disassembled, repaired or serviced on the Property, except inside a garage or out of view from the street and abutting Lots. No vehicle, fence, barrier or other obstruction of any kind shall be parked, placed or constructed within the Property which would impede or impair access from or to any Living Unit or public street.

(a) **Recreational Vehicles.** No Person shall use the private streets, parking areas or driveways within the Property for parking or storage of any watercraft, snowmobiles, trailers, camping vehicles or other recreational vehicles, except for temporary parking of no more than twenty-four (24) hours in the driveway of a Living Unit for loading and unloading of goods to and from the recreational vehicle. In the event of a violation of this provision, the Board of Directors may, after reasonable notice, remove any such watercraft, snowmobile, trailer, camping, or other recreational vehicles, and assess the Owner of the Lot for the cost of removal.

(b) **Commercial Vehicles.** No Person shall use the private streets, parking areas or driveways within the Property for the parking of trailers or other commercial vehicles except temporarily or incidentally during times of pick-up and deliveries to the Living Units and during times of any service activity, maintenance, repair, replacement, remodeling, installation or construction of the structures, improvements or landscaping within the Property. For purposes of this section, commercial vehicles shall not include company branded trucks or vans which are used in order to conduct work by the Owner or Occupant of a Living Unit employed or owing a business providing services or deliveries to customers (i.e.: contractors, electricians, plumbers, florists, or other home services and deliveries), which vehicles shall conform to limits of vehicle weight, height, length, passenger capacity, fixed hardware, etc. to be regulated by the Association. In the event of a violation of this provision, the Board of Directors may, after reasonable notice, remove any such trailer or other commercial vehicle, and assess the Owner of the Lot for the cost of removal.

Section 5. Easement for Surface Water Drainage. The topography of the Property is such that surface water may flow from certain Lots onto other Lots. In regard to all matters concerning surface water, each Lot shall be subject to and benefited by such easements as may exist from the flowage of surface water under the laws of the State of Iowa, as may be in effect

from time to time; and all Lot Owners shall have such rights and obligations with respect thereto as may be provided by such laws.

Section 6. Reservation of Easement Rights. Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement right, title, and authority to relocate, alter or otherwise change the location of any drainage, detention, utility or sewer easement and to grant such further easements, licenses, and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of the Property. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, detention, utility and sewer easement, or other easement, license or right-of-way by any Subdivision Plat or instrument filed of record with the County Recorder. Each Lot Owner shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section shall not be exercised in a manner which unreasonably and adversely affects any dwelling or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section shall run with the land and Declarant's right to further alter or grant easements shall automatically transfer to the Association at the end of the Control Period.

Section 7. Easement to Complete Improvements. Declarant reserves unto itself an easement over the Property for the purpose of completing the improvements thereof contemplated by this Declaration. Provided, however, Declarant shall restore any portion of the Property disturbed by Declarant's use of such easement to the condition existing prior to the disturbance as soon as practically feasible after Declarant's use of the easement rights granted herein are concluded.

ARTICLE VI PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Building upon the Property and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration and the rights of the Association, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The costs of repair and maintenance of a party wall shall be shared by the Owners of the Lots who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner of a Lot who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, subject to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, a Lot Owner who by the Owner's negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right of Contribution Runs With Land. The right of any Owner of a Lot to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title to the Lot.

ARTICLE VII GENERAL RESTRICTIONS AND PROTECTIVE COVENANTS

Section 1. Subjection of the Property to Certain Provisions. The ownership, use, occupation and enjoyment of each Lot and the Association Responsibility Elements shall be subject to the provisions of this Declaration, all of which provisions irrespective of where set forth or classified shall have equal status and shall be enforceable and binding as a covenant, condition, restriction or requirement running with the land and shall be binding on and enforceable against each and all Lots and the Owners, and their respective Permittees and successors in interest.

Section 2. Rules and Regulations. The Association shall have the authority to amend and adopt rules and regulations governing the use of the Lots and the Association Responsibility Elements and such rules, if any, shall be observed and obeyed by the Owners of the Lots and their Permittees. Such rules after being properly adopted at a meeting duly called for such purpose shall have the same force and effect as if contained in this Declaration.

Section 3. Permitted Uses. All Lots shall be known and designated as residential lots and shall not be improved, used or occupied for other than those purposes permitted by the zoning ordinance applicable to the Great Western Crossing PUD, including accessory uses permitted by such applicable zoning ordinances of the City. No full-time or part-time business activity may be conducted on any Lot or in any Living Unit except those activities permitted under the terms of the applicable zoning ordinance of the City. All uses of the Property shall comply with federal, state and local laws, ordinances and regulations.

Section 4. Restriction on Leasing. In order to protect the integrity of the Property and to ensure that those Persons residing therein have similar proprietary interests in their Lots and Living Units, no Living Unit shall be leased unless the lease (i) is in writing; (ii) requires the tenant to comply with this Declaration, the Community Declaration and the rules and regulations adopted by the Associations; and (iii) states that failure of the tenant to comply with such rules and regulations shall constitute a default under the lease. No lease shall relieve the Owner of the Living Unit from liabilities and responsibilities to the Associations and other Owners as set forth in this Declaration and the Community Declaration or imposed under the laws of the State of Iowa. Short-term rental property, as defined and regulated by Iowa Code § 414.1, shall be permitted provided that such use complies with all federal, state and local laws, ordinances and regulations applicable to short-term rental property.

Section 5. Protective Covenants and Restrictions. The use of the Lots shall be in accordance with and subject to the following provisions:

- (a) No temporary building or structure shall be built or maintained on any Lot. No structure, trailer, camper, basement, tent, shack, garage, shed, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.
- (b) No animals, livestock or poultry of any kind shall be raised, bred or kept, except dogs, cats, birds and other usual 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 three (3) dogs and/or cats be kept at any one Living Unit at any one time. Pets shall be registered, licensed and inoculated as required by law. No dog runs, doghouses, unattended chains or invisible fencing shall be permitted. The Owner shall be responsible for prompt removal and disposal of all waste from their pets. The Association may, by rules and regulations, prohibit or further limit the keeping of any pet on any Lot or Living Unit, provide for assessments to Lots housing pets, or provide penalties for Owners found in violation of this Section or the rules and regulations regarding pets.
- (c) No noxious or offensive activity shall be allowed which unduly interferes with the peaceful possession and use of the Lots by the Owners; nor shall any fire hazard or unsightly accumulation and refuse be allowed; nor shall any Lot be used for any unlawful purpose.
- (d) Nothing shall be done or kept in any Lot which will increase the rate of insurance on the Property without prior consent of the Board of Directors. No Owner shall permit anything to be done or kept in the Owner's Lot which will result in the cancellation of insurance on any Lot or any part of the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.
- (e) All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned.
- (f) No sign shall be placed upon any Lot except for a "For Sale" or "Garage Sale" sign of a design approved by the Board of Directors. No signs of any nature, kind or description shall be erected, placed or maintained on any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation.
- (g) No home occupation shall be conducted or maintained on any Lot or in any Living Unit other than one which is incident to a trade, business, profession, employment or occupation of the Owner or occupant of any such Lot and permitted under the terms of the applicable zoning ordinance of the City, nor shall any Lot or Living Unit be used for a multi-family dwelling, boarding house or rooming house. Nothing

contained herein shall be construed or interpreted to affect the business activities of Declarant in the sale of its Lots or as part of the development of the Property.

- (h) Trash receptacles shall be kept by Owners within the garage of the Living Unit and shall be set outside only at the end of the driveway serving the Living Unit on designated garbage pick-up days no earlier than twelve (12) hours prior to a scheduled pick up and must be returned within (12) hours following the scheduled pick up.
- (i) No basketball goal, whether attached to the Living Unit or affixed to a free-standing pole, soccer goal, baseball backstop or other similar sporting equipment shall be allowed to be constructed on any Lot without prior approval from the Board of Directors.
- (j) No personal property shall be stored or left upon a Lot except within the Living Unit or garage located upon the Lot. However, unattached sporting equipment, toys, outdoor cooking equipment, and other equipment and supplies necessary or convenient to residential living may be stored on the patio or deck of the Living Unit. Barbeque grills, outdoor kitchens and fire pit tables shall be placed away from the Building so as not to materially harm or damage the siding of the Building.
- (k) Garage doors shall be kept closed except during times of access to the garage or as permitted by the rules and regulations of the Association.
- (l) Holiday decoration during the winter season may be displayed by a Lot Owner no earlier than six (6) weeks before the 1st day in January and shall be removed by the Owner on or before three (3) weeks after the 1st day of January.

ARTICLE VIII **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 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. When more than one Person holds an interest in any Lot, all such Persons shall be Members. Ownership of a Lot shall be the sole qualification for membership.

Section 2. Voting. There shall be appurtenant to each Lot one vote in the Association. When more than one Person holds an interest in any Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 3. Declarant or Community Declarant as Sole Voting Member. Notwithstanding any other provision of this Declaration, during the Control Period, Declarant or the Community Declarant, as applicable, shall be the sole voting Member of the Association. Declarant and the Community Declarant shall have the right to cast all votes they deem appropriate. Declarant may waive its right to be the sole voting Member of the Association in favor of the Community Declarant at any time during the Control Period.

Section 4. Voting Agent. The Voting Agent shall represent all Members of the Association with respect to the Community Association and is authorized to attend meetings of the Community Association and cast votes "en block" on behalf of the Members of the Association entitled to vote at any election or meeting of the Community Association. By way of example, if the Members of the Association vote 10 for and 5 against a resolution, the Voting Agent would cast the votes 10 for and 5 against the resolution at any meeting of the Community Association. The Voting Agent shall be responsible to report back to the Association the results of any vote taken and to provide the meeting minutes of each meeting attended.

Section 5. Suspension of Voting Rights. The Board of Directors shall suspend the voting rights of a Member for any period during which any assessment hereunder against such Member's Lot remains unpaid.

Section 6. Designation of Board of Directors. During the Control Period, Declarant or the Community Declarant, as applicable, shall have the right to name all members of the Board of Directors, or they may elect to act as the Board of Directors in the place of the Directors. Thereafter, the Members entitled to vote shall elect a Board of Directors of the Association as prescribed by the Bylaws. In addition to any right, power or privilege authorized hereinafter, the Board of Directors shall manage the affairs and business of the Association.

Section 7. Duration. No dissolution of the Association shall occur unless another association or equivalent entity has been created to succeed to the duties and obligations of the Association under this Declaration.

ARTICLE IX ASSOCIATION AUTHORITY, COMMON AREA AND MAINTENANCE

Section 1. Association Authority. The Association has been established to own the Common Area, to operate and maintain the Association Responsibility Elements and to manage necessary services relating thereto subject to the terms of this Declaration on behalf of the Owners of the Lots. The Association, through its Board of Directors, shall have the right, power and authority to provide for the enforcement of this Declaration; to have sole control and jurisdiction over the Common Area; to be responsible to operate, maintain and keep the Association Responsibility Elements in good repair and condition in compliance with the standards of sound property management; to establish, levy, collect and have jurisdiction, control and possession of assessments as hereinafter provided; to enter into any contract, easement, lease, license or other agreement as may be necessary or desirable to carry out the provisions of this Declaration; to establish such procedures and policies necessary or deemed desirable to carry out the obligations of the Association under this Declaration; and to otherwise establish such rules and regulations governing use of the Lots and Association Responsibility Elements which are in the best interests of the Association.

Section 2. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this

Declaration, the Bylaws or by applicable law, all rights and powers of the Association may be exercised by the Board of Directors at its discretion without a vote of the Members.

Section 3. Control of Association. Notwithstanding anything to the contrary provided in this Declaration, during the Control Period, Declarant or the Community Declarant, as applicable, shall have sole voting control and authority to exercise any right or privilege granted or delegated to the Association or its Board of Directors under this Declaration or the Bylaws. Thereafter, all such voting control and authority shall automatically transfer to the Members and the Association, as applicable. Each Owner of a Lot by acceptance of a deed shall be deemed to have released Declarant and the Community Declarant from all claims with respect to actions taken or not taken while Declarant or the Community Declarant controls the Association.

Section 4. Personal Liability. No member of the Board of Directors, no officer, manager, agent or other employee of the Association shall be personally liable to any Member or any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board of Directors, Voting Agent, and any officer, manager or other employee of the Association; provided, however, the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Section 5. Managing Agent. The Association shall have the right and authority to enter into a contract for the professional management and operation of the Association, and the management fee thereof shall become a part of the regular assessment. During the Control Period, Declarant or the Community Declarant, as applicable, may at its option be responsible for the professional management and operation of the Association's affairs with a direct pass through of expenses and management fees thereof assessed as a part of the regular assessment. In the event Declarant, the Community Declarant or the Association shall delegate any or all of its duties, obligations or responsibilities to a Managing Agent, neither Declarant, the Community Declarant, the Association, nor the Owners of Lots shall be liable for any omission or improper exercise by the Managing Agent of any such duty, obligation or responsibility so delegated.

Section 6. Contracts and Agreements. The Board of Directors may enter into any Cost Sharing Agreement, contract, easement, lease, license or other agreement, and engage the services of and discharge any Managing Agent, manager, independent contractor, accounting, legal or engineering professionals or other employee as may be necessary or desirable to carry out the provisions of this Declaration. The Board of Directors, in its sole discretion, shall determine the duties and compensation of all such Persons so employed.

Section 7. Ownership of Common Area. The Association shall be the owner of the Common Area and shall timely pay all utility charges, real estate taxes and assessments levied against the Common Area. 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. The Common Area shall not be conveyed or transferred by the Association without the prior approval of the City.

Section 8. Owners' Easement and Right of Enjoyment. Every Owner of a Lot shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of Declarant or the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes. Upon transfer of fee title to the Common Area to the Association, no such dedication or transfer shall be effective unless an instrument filed of record by the Association with the County Recorder consenting to such dedication or transfer has been authorized by sixty-six percent (66%) of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 9. Use of Common Area. The Common Area shall be used strictly in accordance with the provisions of this Declaration. No Owner of a Lot shall obstruct or interfere whatever with the rights and privileges of the other Lot Owners, Declarant, the Community Declarant, or the Association in the Common Area. Nothing shall be planted in, altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors.

Section 10. Restricted Access to Storm Water Detention Facilities. The Storm Water Detention Facilities are intended to be part of an integrated sustainable stormwater collection system to control surface water drainage and storm water detention needs of the Property and are not intended as ponds for recreational purposes. Any recreational or unauthorized use is strictly prohibited. The general public is not permitted access to the Storm Water Detention Facilities.

Section 11. Maintenance by Owners. To the extent that maintenance is not provided for in this Declaration by the Association, the Owner of each Lot shall furnish and be responsible for, at the Owner's own expense, all decoration, maintenance, repair and replacement of the structures, improvements, fixtures and equipment (but excluding the Association Responsibility Elements) located upon and within the Owner's Lot and Living Unit. All Living Units and property appurtenant thereto shall be kept in a safe, clean, orderly and sanitary environment free of insects, rodents, vermin and other pests and maintained in a good condition and state of repair at all times. Any exterior structure, improvement, fixture or equipment shall match, as nearly as possible, the original item that it repairs or replaces and shall be constructed or installed in accordance with local ordinances and building codes. Such property shall include, but is not limited to, the following:

- (a) Garage door, and all other doors and windows, including trim and any exterior brickmold or siding damaged by replacement;
- (b) Partition and interior walls;
- (c) Fireplaces, heating, ventilation and air conditioning;
- (d) Staircases, cabinetry, bookcases and counter tops;

- (e) Interior and exterior electrical wiring and facilities and light fixtures and light posts, including bulb replacement, for the exclusive use of the Living Unit;
- (f) Electrical lines for telecommunication and electrical facilities from the main box to a Living Unit, notwithstanding the fact that such wiring crosses other Lots or is located off-premises from the Owner's Lot.
- (g) Electronics, appliances, plumbing equipment, fixtures and vents, garage door opener and security system;
- (h) Interior wall coverings, floor coverings and window treatments;
- (i) Decks, patios, stoops and the walkway from the driveway to the front entrance of the Living Unit (including removal of snow and ice therefrom);
- (j) Flowers, plantings, gardens, trees, shrubbery and other landscaping planted by the Owner subject to the approval of the Board of Directors; and
- (k) Tower, antenna, satellite dish or similar reception devices installed by the Owner, including roof shingles and any exterior surface of the Building damaged by replacement or removal.

Section 13. Maintenance by Association. The Association shall provide or contract for services on behalf of the Owners of each Lot for all decoration, operation, improvement, maintenance, repair, reconstruction, restoration, replacement, preservation, and removal of the Association Responsibility Elements. The Association shall perform all such maintenance in a good and workmanlike manner in accordance with all applicable laws, rules, ordinances, codes and regulations. Any exterior structure, improvement, fixture or equipment shall match, as nearly as possible, the original item that it repairs or replaces and shall be constructed or installed in accordance with local ordinances and building codes. Such services may include, but are not limited to, the following:

- (a) paint, repair, replace and care for roofs, gutters, downspouts, foundations and siding, brickwork and other similar exterior surfaces of the Building (excluding laundry vents, windows, doors, garage doors, decks, patios, and stoops);
- (b) striping, repair and resurfacing of paved surfaces, excluding patios and stoops located at the entrances of any Living Unit, and other customary parking lot, street, driveway and sidewalk maintenance to provide at all times ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street, excluding the walkway from the driveway to the front entrance of the Living Unit;
- (c) removal of snow and ice from the streets, driveways, parking areas, sidewalks, and walkways, but not the decks, patios, and stoops located at the entrances of any Living Unit and excluding the walkway from the driveway to the front entrance of the Living Unit;

- (d) lawn care, routine mowing, use of pesticides to control infestation of weeds and insects and maintenance of irrigation systems installed by Declarant or the Association;
- (e) maintenance and replacement of landscape plantings, general trimming of trees, shrubs and hedges, except those installed by the Owner on such Owner's Lot subject to the approval of the Board of Directors;
- (f) paint, repair, replace and care for entrance signs and features, directional signs, streetscape, bicycle racks, planters, benches, outdoor furniture, recreational equipment or decorative structures installed by Declarant or the Association;
- (g) repair, replace and care for any fencing, railing and retaining wall structures or other stabilization plantings installed by Declarant or the Association;
- (h) maintenance, repair and replacement of the Common Elements, including any private storm and sanitary sewers, water mains and storm water drainage or detention areas installed by Declarant;
- (i) general policing to keep the Property in a clean and orderly condition free of trash, debris and other unnatural articles; and
- (j) decorate for seasonal, civic or community events and holidays.

Section 14. Maintenance of Storm Water Detention Facilities. Declarant shall be responsible only for the initial installation and construction of the Storm Water Detention Facilities. Upon completion of the initial construction, the Association, at its expense, shall perform all services on behalf of the Owners of the Lots for maintenance of the Storm Water Detention Facilities. Such maintenance obligations shall include, but are not limited to, reconstruction, repair, replacement, improvement, inspection, grading, dredging, mowing, replacement of permitted vegetation, removal of trash, litter and debris and any other duties required to be performed for maintenance under any stormwater management plan on file with the City or in connection with any integrated sustainable stormwater collection system implemented by Declarant.

Section 15. Access for Maintenance. The Association and its agents, employees or contractors shall have the right of reasonable access for ingress and egress over, across or through each Lot for the purpose of performing its maintenance obligations of the Association Responsibility Elements.

Section 16. Assessment for Maintenance Services. All charges incurred for maintenance services provided or contracted for on behalf of the Owners of the Lots by the Association as needed in connection with the operation, maintenance and repair of the Association Responsibility Elements shall be paid by the Association and the costs of the same shall become a part of the regular assessment.

Section 17. Landscaping. The Association shall have sole control over all trees, shrubs, landscape plantings, retaining wall structures or other stabilization plantings, fences and decorative features within the Property. The Board of Directors shall have the right to change such plantings and other landscaping elements from time to time in its sole discretion.

Section 18. Utilities. Each Owner of a Lot shall be responsible for payment of all charges incurred for electricity, water, trash removal, gas, sewer, telephone, telecommunications, cable, television and similar utility services to the Owner's Lot in the same manner as persons occupying single-family detached houses. All other charges for utilities and common services as needed in connection with maintenance or operation of the Association Responsibility Elements shall be paid by the Association and the costs of the same shall be assessed against each Lot as part of the regular assessment.

Section 19. Shared Facilities, Equipment and Fixtures. To the extent that facilities, equipment and fixtures, including fences, within any Lot shall be connected to similar facilities, equipment or fixtures affecting or serving other Lots, then the use thereof shall be subject to the rules and regulations of the Association.

Section 20. Responsibility for Willful or Negligent Acts. No Owner or occupant of a Lot shall obstruct or interfere whatever with the duties and responsibilities of the Association to perform its maintenance obligations relating to the Association Responsibility Elements. An Owner of a Lot shall be liable to the Association for the expense of any maintenance, repair or replacement to the Association Responsibility Elements rendered necessary by any intentional, willful, negligent or careless act of such Owner or its respective Permittees. Any such expense shall be a special assessment upon the Lot of such Owner and shall become due and payable upon demand. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in the performance of its obligations pursuant to this Declaration.

Section 21. Indemnification by Association. The Association hereby indemnifies and saves the Owners of the Lots harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage and occurring from use of or services provided for or relating to the operation, management and maintenance of the Association Responsibility Elements, except if caused by the act or negligence of the Owner, or its respective Permittees.

Section 22. Indemnification by Owner. Each Owner of a Lot hereby agrees to indemnify, defend and hold harmless the Declarant, the Community Declarant, the other Owners, the Association and their agents, employees, contractors, heirs, administrators, successors and assigns, from and against any and all liability, claims, damages, expenses (including reasonable attorney fees and reasonable attorney fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any individual, or damage to or destruction of any property caused by the condition of or in connection with accidents relating to the Association Responsibility Elements out of the performance of any of the services or obligations set forth in this Declaration, except to the extent caused by the negligent or willful act or omission of the indemnified parties hereto.

ARTICLE X **INSURANCE**

Section 1. 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 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 regular assessment for each Lot. 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.

Section 2. Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Association Responsibility Elements in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organization of the Association or Board of Directors, its agents and employees, the Owners and all other Persons entitled to occupy any Lot. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to, worker's compensation insurance, and such other insurance as the Association 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 of a Lot, the Association, its Board of Directors and any Managing Agent acting on behalf to the Association. Each Owner of a Lot 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. The policy shall provide that it may not be cancelled or substantially modified without prior written notice to any and all insureds named thereon, including the Association.

Section 3. Distribution to Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner of a Lot 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.

Section 4. Annual Review of Policies. The Board of Directors shall review at least annually all insurance policies acquired by the Association for the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance

required above.

Section 5. Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the Association and the costs of the same shall be assessed against each Lot as part of the regular assessment.

Section 6. Additional Insurance. Unless otherwise determined by the Board of Directors, each Lot Owner, at such Owner's expense, shall be responsible for obtaining homeowner's liability insurance and casualty insurance affording coverage for personal property and the contents and components of the Owner's Living Unit which is not part of the Association Responsibility Elements, such as floor, ceiling, and wall coverings and fixtures, betterments and improvements, clothing, furniture, electronics, collectibles and non-built-in appliances. 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 the Association as follows: 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.

Each Owner shall further obtain comprehensive public casualty insurance, at the Owner's expense, affording coverage upon the Owner's Lot with a combined single limit of not less than \$300,000 per occurrence. Such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance obtained by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

An Owner's policy of insurance should also include (i) coverage for loss of use should a Living Unit be uninhabitable due to a covered loss to insure against extra expenses incurred by living elsewhere until the Living Unit can be restored; and (ii) dwelling coverage for the Living Unit in addition to what the Association provides.

Section 7. Casualty and Restoration. Damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of any Building to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

Section 8. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the any Building so damaged or destroyed

(or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association, which shall then have the right to levy a special assessment against all Lots for the amount of such deficiency.

Section 9. Surplus of Insurance Proceeds. If there is any surplus of insurance proceeds after reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property, or, in the discretion of the Board of Directors, may be distributed to the Lot Owners of the Building affected and their mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damages shall not constitute a waiver of any rights against a Lot Owner for committing willful or malicious damage.

ARTICLE XI COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) regular assessments and (2) special assessments and charges as provided in this Declaration, such assessments and charges to be established and collected as hereinafter provided. The assessments levied by the Association and any other charges, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. Each assessment 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 became due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Lots; for carrying out the general duties and obligations of the Association, including, but not limited to, decoration, operation, management, maintenance, repair, reconstruction, restoration, replacement, removal, preservation and improvement of the Association Responsibility Elements; for payment of insurance, real estate taxes and special assessments, and any utility expenses, salaries, accounting, legal or other costs of enforcement of this Declaration, charges associated with management and administration of the Association, for reasonable reserves as the Board of Directors deems necessary, and for other purposes specifically provided pursuant to this Declaration, the Articles and the Bylaws. Except as otherwise specifically provided herein, all costs and expenses associated with the foregoing shall be allocated among all Lots as part of the regular assessment.

Section 3. Rate of Assessment and Notice. The Board of Directors shall establish the maximum regular assessment to be assessed against each Lot, which assessment shall include a pro rata portion of the amount of real estate taxes, special assessments and insurance premiums payable by the Association. The Board of Directors shall fix any increase in the amount of the regular assessment at least thirty (30) days prior to January 1 of each year. Any proposed increase

of more than thirty percent (30%) greater than the regular assessment levied for the previous year shall require the consent of sixty-six percent (66%) of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of the increase in the regular assessment, special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner of a Lot subject thereto.

Section 4. Reserve Fund. A portion of the regular assessment shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Association Responsibility Elements and any capital improvements which the Association is required to maintain. Notwithstanding the foregoing, the Board of Directors may use reserve funds, if established, to defray operating costs as it deems appropriate.

Section 5. Special Assessments for Capital Improvements and Operating Deficits. The Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, replacement, removal or demolition of a capital improvement for any Association Responsibility Element, or for operating deficits that the Association may from time to time incur, provided that any such special assessment shall require the consent of sixty-six percent (66%) of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

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

Section 7. Commencement of Regular Assessments, Due Dates. The regular assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to an Owner of a completed Living Unit constructed on the Lot. The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of regular assessments. The regular and special assessments for each Lot conveyed by Declarant shall become the obligation of the new Owner upon transfer of the Lot. The new Owner of the Lot shall then begin making payments of regular and special assessments when the next regular installment is due for such Lot. The Board of Directors shall establish the due dates for all assessments. All payments shall be made on or before the due date.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within ten (10) 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 of a Lot personally obligated to pay the same, or foreclose the lien against the Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of said assessment all 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 of a Lot may waive or otherwise escape liability for the assessments provided for herein by non-use of the Association Responsibility Elements or abandonment of the Owner's Lot.

Section 9. Exemption from Assessments. Declarant shall not be liable for

assessments upon Lots owned by it. During the Control Period, Declarant and the Community Declarant are not responsible for the establishment of a budget. Declarant, the Community Declarant and the Association are not required to submit statements for assessments to any Owner of a Lot.

Section 10. Assessments by Community Association. The regular assessments levied by the Community Association as set forth in the Community Declaration shall be allocated among the Owners of the Lots as a part of the regular assessment levied by the Association and paid by the Association to the Community Association.

Section 11. Subordination of Assessment Liens. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The assessment shall be paid prior to or at the closing of sale or transfer of any Lot. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

Section 12. Assessment Certificate. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form 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. The Declarant is exempt from all assessments levied by the Association. The Association shall not be obligated to provide an assessment certificate for any Lot owned by Declarant.

ARTICLE XII **GENERAL PROVISIONS**

Section 1. Enforcement. Declarant, the Community Declarant, the Association, or any Owner of a Lot shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, restrictions, easements, reservations and assessments now or hereafter imposed by the provisions of this Declaration, and shall be entitled to recover reasonable attorney fees and costs incurred as a result thereof. In the event that any one or more of the foregoing 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, restrictions, easements, reservations or assessments not so expressly held to be void, which shall continue unimpaired and in full force and effect.

Section 2. No Waiver. Failure by Declarant, the Community Declarant, the Association or any Owner of a Lot to enforce any covenant or restriction herein contained in this Declaration, or the Articles or the Bylaws, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

Section 3. Rights of Governing Entity. The Property shall also be subject to any and all rights and privileges of the governing entity now held or hereafter acquired, by dedication or conveyance, or by reason of the platting and recording of a Subdivision Plat, or by this Declaration or by law. Wherever there is a conflict between this Declaration and the local zoning ordinances, the more restrictive shall be binding. 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 Subdivision Plat.

Section 4. Notice to Mortgagees. The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Bylaws or any other applicable documents which default has not been cured within sixty (60) days.

Section 5. Limitation of Liability. Declarant shall not be liable to any Owner of a Lot for losses, damages or repairs relating to:

- (a) Any private street, sidewalk, driveway, curb, stoop, patio or other concrete improvement located within the Property, including (but not limited to) cracking or chipping that may occur due to weather conditions; or
- (b) Any Living Unit beyond the express warranties set forth in the homeowner's warranty provided to the original Owner; or
- (c) Any appliances and electronics within any Living Unit, including, but not limited to, the furnace, air-conditioner, stove, oven, dishwasher, garbage disposal and garage door opener beyond the express warranties set forth in the manufacturer's warranty provided to the original Owner; or
- (d) Any security system failure or ineffectiveness of any security measures undertaken or not undertaken in the Property.

Section 6. Duration. The easements granted herein, and all Association rights, duties, obligations and responsibilities shall be perpetual in nature. All covenants, conditions, restrictions, easements and reservations created by this Declaration shall run with the land and shall be binding upon all parties claiming under them for the maximum period allowed by law, subject to the right of the Lot Owners under Section 614.24 of the Iowa Code to file a verified claim in the office of the County Recorder to extend the effectiveness of these covenants for successive periods of twenty-one (21) years each on or before the twenty-first anniversary of the filing of this Declaration and prior to the twenty-first anniversary of the filing of the last verified claim. Invalidation of any of the covenants, conditions, restrictions, easements or reservations of this Declaration by judgment or decree shall in no way effect any of the provisions hereof, but the same shall remain in full force and effect.

Section 7. Amendment to this Declaration. This Declaration may be amended or changed from time to time by an Amended Declaration signed or approved in writing by the

affirmative vote of not less than two-thirds (2/3) of the Owners of the Lots, provided, however, that the Owners may not take any action to remove the Lots from the terms and conditions of the Community Declaration or lessen or abate the rights of the Declarant or Community Declarant hereunder. 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, during the Control Period, this Declaration may be amended by Declarant or the Community Declarant, as applicable, without approval by the other Lot Owners, the Association or any other Person. Such amendments or modifications shall be effective the date the Amended Declaration has been filed of record with the County Recorder.

Section 8. Amendment to Community Declaration. After the Control Period, the

Community Declaration shall not be amended or modified in any manner that specifically affects the Lots subject to this Declaration in the aggregate without approval of not less than two-thirds (2/3) of the Owners of the Lots prior to recording, which approval shall not be unreasonably withheld or delayed. Further, the Community Declaration shall not be substantially amended or modified in any manner that may prohibit, restrict, lessen, block or terminate the right of the Lot Owners to use or access the Common Amenities offered at Middlebrook, including (but not limited to) the greenway corridors, open space preserves, trails and other supportive services and community programming involving social, cultural, educational, entertainment, sporting and agricultural activities, festivals, farmer's markets and events. Any such amendment or modification in violation hereof shall be of no force or effect.

ARTICLE XIII DECLARANT'S RESERVATION OF RIGHTS

Section 1. Additional Land. Declarant reserves the irrevocable right in its discretion

to create and record any replat or subsequent plat as Declarant deems appropriate and to annex and subject Additional Land to the terms of this Declaration at any time in the future without the consent of the Owners of the Lots, the Association, or any other Person, except the Community Declarant during the Control Period. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to annex and subject Additional Land to the terms of the Declaration in the future. The Additional Land shall be automatically subject to the applicable terms and conditions of this Declaration and the Owners of Lots within the Additional Land shall automatically become Members of the Association in the same manner 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 the Additional Land by filing an Amended Declaration with the County Recorder with such terms and conditions as Declarant deems appropriate.

Section 2. Removing Land from Operation of Declaration. Declarant reserves the

irrevocable right now and in the future to remove any portion of the Property from the operation of this Declaration without the consent of the Owners of the Lots, the Association, or any other Person, except the Community Declarant during the Control Period. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to remove any portion of the Property from the terms of this Declaration in the future. Declarant shall signify this removal of land by filing an Amended Declaration with the County Recorder with such terms and

conditions as Declarant deems appropriate.

Section 3. Additional Association Responsibility Elements. Declarant reserves the irrevocable right at any time to convey additional Association Responsibility Elements to the Association without the consent of the Owners of the Lots, the Association, or any other Person, except the Community Declarant during the Control Period. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to convey additional Association Responsibility Elements to the Association in the future. The Association shall be obligated to accept any additional Association Responsibility Elements, including Common Area, so conveyed by Declarant and to hold and maintain the additional Association Responsibility Elements and Common Area pursuant to the terms of this Declaration.

Section 4. Marketing of Living Units and Offices. Declarant reserves the right to use any of its Living Units as models and to sell, assign, or conduct other business in connection with the construction and development of the Property from any of its Living Units prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain an office, staff the office with employees, display signs, and show any of its Living Units then unsold. Neither the Owners of the Lots, the Association, nor the use of the Common Area shall interfere with the construction of improvements and sale of the Lots or Living Units by Declarant. Declarant retains the right to be considered an Owner of any Lot that remains unsold.

Section 5. Construction of Buildings and Landscaping. Declarant reserves the right to make changes in the number, location, or manner of construction of Buildings, arrangement of Lots and other improvements during initial construction and development of the Property; provided, that in all cases, such changes shall be accomplished in a manner consistent with applicable laws and ordinances. During the initial development of the Property, Declarant further reserves the right to change the plantings and other landscaping elements within the Property from time to time in its discretion.

Section 6. Variation and Adjustments. Declarant reserves the right to substitute for any of the materials, equipment and appliances, such materials, equipment and appliances of equal or better quality.

Section 7. Assignment of Declarant's Rights. Declarant shall have the right to assign all of its rights and obligations as Declarant under this Declaration to any Person acquiring all of Declarant's ownership interest in the Property 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. Upon such assignment, the initial or preceding Declarant shall have no further rights and obligations in connection with this Declaration, the Association, the Community Declarant, the Owners of the Lots and the Property.

Section 8. Transfer of Declarant's Rights. At such time as when the Declarant no longer has any ownership interest in the Property, all rights, privileges, duties, obligations, responsibilities, reservations and authority granted or reserved to Declarant together with all

protections of liabilities running in favor of the Declarant under this Declaration, the Articles and the Bylaws shall automatically transfer to the Community Declarant for the remaining duration of the Control Period. Upon such transfer, Declarant shall have no further rights and obligations in connection with this Declaration, the Association, the Community Declarant, the Owners of the Lots and the Property.

Section 9. Termination of Community Declarant's Rights. At the end of the Control Period, all rights, privileges, duties, obligations, responsibilities, reservations and authority granted or reserved to the Community Declarant under this Declaration, the Articles and the Bylaws shall automatically transfer to the Members, Association or Board of Directors, as applicable. Upon such termination, the Community Declarant shall have no further rights and obligations in connection with this Declaration, the Association, the Owners of the Lots and the Property.

IN WITNESS WHEREOF, the Declarant and the Community Declarant have executed this Declaration as of the day and year first above written.

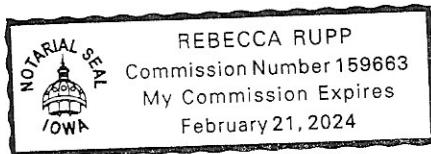
DECLARANT:

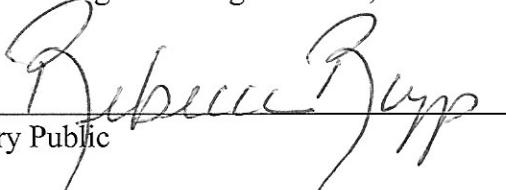
DILIGENT GWC, LLC,
an Iowa limited liability company
By: Diligent Development Group, LLC,
an Iowa limited liability company, its Manager

By: 
Tim Portzen, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on May 25th, 2023, by Tim Portzen,
Manager of Diligent Development Group, LLC the Manager of Diligent GWC, LLC.



By: 
Notary Public

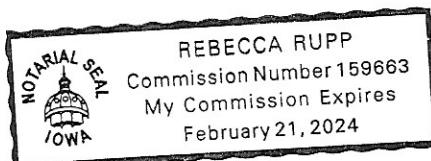
COMMUNITY DECLARANT:

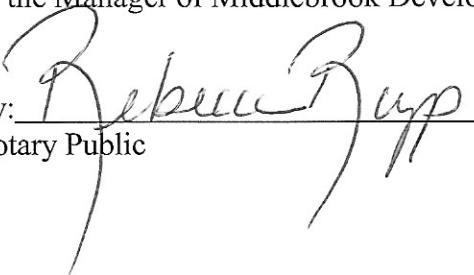
MIDDLEBROOK DEVELOPMENT, LLC,
an Iowa limited liability company
By: Diligent Development Group, LLC,
an Iowa limited liability company, its Manager

By: 
Tim Portzen, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on May 25th, 2023, by Tim Portzen,
Manager of Diligent Development Group, LLC the Manager of Middlebrook Development, LLC.



By: 
Notary Public