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ReNae Arnold, Recorder
Dallas County, Iowa

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**FIRST AMENDED AND SUBSTITUTED SOUTHBRIDGE, PLAT 2
DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND
RESTRICTIONS**

THIS FIRST AMENDED AND SUBSTITUTED DECLARATION is made this 14th day of April, 2023 by **Cramer and Associates, Inc.**, an Iowa corporation (the "Declarant").

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

Lots 1 through 74 in Southbridge Plat 2, an Official Plat now included and Forming a part of the City of Adel, Dallas County, Iowa.

(the "Plat").

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

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

I. DEFINITIONS

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

- A. "Association" shall mean the Southbridge Plat 2 Owners' Association, Inc.
- B. "Building Lot" shall mean and refer to one or more Lots, or one or more Lots and the portion or portions of adjacent platted Lots in the Plat, used for the construction of one dwelling as herein permitted.
- C. "City" shall mean the City of Adel, Iowa.
- D. "Common Areas" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners.
- E. "Declarant" shall mean and refer to Cramer and Associates, Inc., an Iowa corporation, its successors or assigns.
- F. "Lot" shall mean and refer to an individual parcel of land, which is described above as shown upon the recorded plat of Southbridge Plat 2. In the event that any of the Lots on such plat are subsequently re-platted, references to a Lot(s) in this Declaration shall be deemed to refer to the areas of the original Lot(s) on such plat as those Lot(s) may be re-platted.

- G. "Member" shall mean and refer to those persons entitled to membership in the Association, as provided in this Declaration.
- H. "Outbuilding" shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed or garden house.
- I. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot or Building Lot that is a part of the Plat.
- J. "Plat 2" shall mean and refer to the real property described as the real property being in Southbridge, Plat 2, an Official Plat, now included in and forming a part of the City of Adel, Dallas County, Iowa.

II. DESIGNATION OF USE

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

III. BUILDING TYPES

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

IV. BUILDING AREA DESIGN AND CONSTRUCTION

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

- A. One and one-half story, two story, split-level, and split foyer dwellings must have a finished area of not less than 1800 square feet. On Lots 1 through 40 and Lots 59 through 74, ranch or one-story dwellings must have a finished area of not less than 1600 square feet. On Lots 41 through 58, ranch or one-story dwellings must have a finished area of not less than 1400 square feet.
- B. In computing total finished area, the same shall not include any finished area that has its floor below the exterior grade.
- C. In the computation of floor area, the same shall not include any porches, breezeways, or attached or built-in garages.
- D. No steel, aluminum or masonite board shall be used for siding. Vinyl siding of a minimum thickness of .042" or hardboard siding by LP SmartSide or cement board siding by James Hardie or other brands of comparable siding approved in writing

by Declarant shall be acceptable exterior siding. In addition to the foregoing, all areas of exposed concrete or concrete block foundations shall either be painted to blend with the exterior wall finishes or covered with brick or stone veneer or the equivalent. In addition to the foregoing, a minimum of twenty-five percent (25%) of the front elevation of the dwelling (excluding the roof, windows, garage door(s), and door(s)) shall be covered with brick, stone, or a brick/stone veneer on Lots 1 through 40 and Lots 59 through 74. On Lots 41 through 58, there is a minimum fifteen percent (15%) brick/stone requirement.

- E. All exterior portions of any dwelling, garage or Outbuilding located on any Lot shall be finished with earth tone colors approved in writing by Declarant. Prior to commencement of painting of the exterior of any dwelling, a sampling of the approved exterior color(s) chosen by the owner shall be applied to the dwelling to be viewed by Declarant for final color approval, in writing. All exterior painted portions of dwellings that are repainted shall be repainted in one of such earth tone colors approved in writing by Declarant.
- F. All roof material shall be 30 year, architectural style in earth tone colors or shingle of equal color, quality and appearance thereto. Three tab shingles are not allowed.
- G. The single family dwelling on each respective Lot shall be under construction within twenty-four (24) months from the date of conveyance of such Lot by Declarant.
- H. All buildings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.

No building or structure, nor any addition or alteration thereof, shall be constructed or substantially altered on any Building Lot unless and until a design plan and a site plan (collectively the "Plans") have been submitted to and approved by Declarant (or by the Association if the Declarant does not hold legal or equitable title to any Lot or Building Lot). The Plans shall contain details of design, color scheme, elevation, site grade, landscaping, fencing, roofing, sidewalks, driveways and other similar matters. The Plans shall also state the type of construction, including external details and materials. Declarant shall, within thirty (30) days from the date of submittal of the Plans, deliver to the Owner written approval of, rejection of or required changes to the Plans. The intent of this provision is to insure that buildings and structures are developed in reasonable harmony within the Plat and that the covenants, restrictions and conditions contained herein are met in connection with such development. Declarant may terminate the requirements of this provision at any time, in its sole and absolute discretion, by recording notice of such termination.

V. GARAGES AND DRIVEWAYS

All dwellings shall have a minimum of a three-car attached garage. All dwellings shall have a PCC (concrete) driveway not less than 16 feet in width and from the City street to the garage.

VI. TEMPORARY AND OTHER STRUCTURES-RESTRICTED USES

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

VII. FENCES

Only black vinyl clad chain-link fences or black wrought iron fences will be allowed. No fences or other structures may be built or maintained within the front building setback areas as shown on the Plat as recorded and no fences shall be built or maintained in front of the front line of the residential dwelling extended to the side Lot lines. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. All fences shall be kept in good repair and attractive appearance. No fences may be built or maintained on any Lot prior to commencement of construction of the single family dwelling and issuance of an occupancy permit.

VIII. SODDING OR SEEDING

Within ninety (90) days of completion of a dwelling upon a Lot, all portions of the Lot shall be fully sodded, except Declarant may permit seeding to the rear lot line for those Lots with longer rear yards, or where the topography or a steep slope does not permit, or under special circumstances. If weather conditions make this requirement impossible to meet, Declarant shall establish a reasonable period of time for compliance.

IX. EASEMENTS

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

X. NUISANCES

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

XI. EROSION CONTROL AND STORM WATER DISCHARGE PERMITTING REQUIREMENTS

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

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

During the ownership of the Lot, Owner shall protect, defend, indemnify and hold the Declarant and other Owners harmless from any and all damages, claims, liabilities, fines, penalties, cleanup costs and/or attorneys and consultant fees caused by, or in any manner

related to (i) any discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the Lot and/or (ii) any alleged violation of any NPDES or storm water discharge rule or regulation.

XII. SIGNS

No sign of any kind shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except (i) street markers, traffic signs, or any signs installed by the City by other governmental entities or by the Declarant, (ii) signs which have been approved by Declarant, in writing, not exceeding 144 square inches in area on which there shall only be exhibited the street number and/or the name of the resident, (iii) a customary sign (one per Building Lot) advertising a Building Lot or dwelling for sale, not exceeding 1,296 square inches, and (iv) signs which have been approved by Declarant in writing advertising the builder or for promotional or marketing purposes. In the event that any signs other than those described above shall be placed or exposed to view on any Lot, the agents of the Declarant are hereby given the right to enter upon such Lot and remove such signs. Temporary signs (for political campaigns, garage sales, etc.) may be placed for up to 30 days if in accordance with City ordinances.

Declarant reserves the right to install entrance and directional signs with respect to the Plat, at locations and of design determined by the Declarant in a manner consistent with the ordinances of the City.

XIII. TRASH RECEPTACLES

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

XIV. UTILITIES

All utility connection facilities and services shall be underground.

XV. TOWERS AND ANTENNAS

No exterior transmission tower, antenna or television transmission dish of any kind shall be constructed, installed, modified, or permitted on the ground, on dwellings, on garages or on Outbuildings. Notwithstanding the foregoing, an exterior tower, antenna or receiver dish which is twenty-four (24) inches or less in diameter shall be permitted. No more than one (1) such exterior tower, antenna or receiver dish shall be permitted on each Lot. No more than one (1) penetration in the dwelling shall be permitted for the cable from such exterior tower, antenna or receiver dish. No such device shall be mounted on the front elevation or front half of the side elevation of the dwelling or garage. No other exterior towers or antenna shall be constructed, installed, modified or permitted on the ground, on dwellings, on garages or on Outbuildings without specific approval from the Declarant.

XVI. MAINTENANCE

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

exterior of any dwelling, the driveway, fence, screening and all other improvements.

XVII. CERTAIN ANIMALS PROHIBITED

No animals, livestock, pigs, or snakes of any kind shall be raised, bred or kept on any Lot except that dogs, cats, birds and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. Birds may be kept in accordance with the City of Adel ordinances. In no event, shall more than a total of two (2) dogs and/or cats be kept at any one Building Lot at any one time. Dogs must be either kept in the dwelling or in a shelter aesthetically compatible with the dwelling and surrounding areas, and dog runs, if any, must be located at the rear of the house or garage and extend toward the rear of the Lot from that portion of the house or garage which is closest to the rear Lot line. All pets must be leashed and under the control of its owner if not tied up or kept within a fenced yard or dog run.

XVIII. ACCESSORY STRUCTURES

Playhouses, utility buildings, dog houses, storage sheds or other similar structures shall be permitted provided that the exterior and the roof of any such structure shall be constructed of the same material, have the same color and appearance as the residential dwelling on the same Lot and are only located in rear yards. No such structure shall be located closer than ten feet (10') from any Lot line unless the Declarant has specifically approved the structure and location.

A dog run shall not be permitted on any Lot unless: (i) it is located at the rear of the house or garage and extends toward the rear of the Lot; (ii) it is entirely enclosed with a fence in compliance with Article VII of this Declaration; and (iii) it is screened from public view with landscape plantings or hedges.

XIX. SURFACE WATER

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

XX. MAILBOXES

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

XXI. 5 FOOT SIDEWALKS & 8 FOOT SHARED USE PATHS

The purchaser of a Lot shall, at the purchaser's expense, install public sidewalks in accordance with specifications of the City concurrently with construction of the dwelling upon the Lot.

NOTE: In addition to the foregoing, the typical sidewalk in the development is five feet (5') wide. Some Lots are designated to have an eight foot (8') wide shared use path located upon the Lot(s). The purchaser shall, at the purchaser's expense, install whichever sidewalk or shared use path is designated in the final plat.

XXII. SECURITY LIGHTING

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

XXIII. ENFORCEMENT OF COVENANTS

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

XXIV. AMENDMENTS OF COVENANTS

This Declaration may be amended from time to time with the approval of the Owners. Such approval shall be given by the affirmative vote of not less than two-thirds (2/3) of the Owners. The Owner of each Lot (or the joint Owners of a single Lot in the aggregate) shall be entitled to cast one vote on account of each Lot owned. Provided, however, until the Declarant, or its assignee, has sold all of the Lots, it may make amendments or modifications to this Declaration without the consent of any other Owners or other party. Such amendments or modifications by the Declarant shall be effective the date the amendment or modification has been filed with the Recorder.

XXV. PERIOD OF COVENANTS

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

XXVI. ENFORCEMENT AND WAIVER

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

XXVII. OWNER'S ASSOCIATION

- A. Southbridge Plat 2 Owner's Association (the "Association") has been established to manage common requirements and associated expenses, including but not limited to, real estate taxes, carrying insurance for the Common Areas and outlot, carrying insurance for the Association management, landscape maintenance, pond maintenance, outlot maintenance, management, common utilities if any, snow removal, sidewalk maintenance, road maintenance, and legal services of the common ground and outlot in the Plat.
- B. Every Owner of a Lot shall be a member of the Association (each, a "Member").

Membership shall not be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership. The Owner of a Lot shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be Members; provided, that, the vote for such Lot shall be exercised as the Owners thereof, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE DECLARANT, ITS HEIRS, SUCCESSORS AND ASSIGNS, SHALL BE THE SOLE VOTING MEMBER OF THE ASSOCIATION FROM THE DATE OF FILING OF THIS DECLARATION UNTIL THE SALE OF ALL LOTS TO THIRD PARTY PURCHASERS. DURING THIS TIME PERIOD, DECLARANT, AND ITS SUCCESSORS AND ASSIGNS, SHALL HAVE THE RIGHT TO ELECT ALL DIRECTORS.

- C. Subject to Article IV of the Bylaws, the voting Members shall elect a Board of Directors of the Association, as prescribed in the Bylaws of the Association. The Board of Directors shall manage the affairs of the Association.
- D. The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against his/her/its Lot remains unpaid.
- E. Unless the Articles of Incorporation or the Bylaws, or similar governing documents, of the Association otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose(s) for which the meeting is called, shall be delivered no less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the officer(s) or person(s) calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed delivered when deposited in the United States mail, addressed to the Member at his/her/its address as it appears on the Association's records, with postage prepaid thereon.
- F. Declarant has conveyed Outlots "V", "W", "X", "Y" and "Z" to the Association.

XXVIII. Assessments.

- A. The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) monthly assessments or charges, and (2) special assessments for the capital improvements and operating deficits; and (3) special assessments as provided below. Such assessments to be established and collected as hereinafter provided. The monthly and special assessment, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. The lien for the assessments shall be prior to all other liens on the property, except only tax liens on the Lot in favor of any assessing unit and special district, and all sums unpaid on a first mortgage of record. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to his successors in title.
- B. The assessments levied by the Association shall be used exclusively to promote the safety and welfare of the owners and users of the Lots and Common Areas and for the improvement and maintenance of the Common Areas and for other purposes specifically provided herein, including but not limited to, drainage facilities, payment of insurance, administrative and management fees, legal liabilities or obligations of the Association and all fees, costs, expenses, and attorney fees in connection therewith.

- C. In addition to the monthly assessments authorized above, the Association shall levy a special assessment if necessary to finance or perform any of its stated obligations and responsibilities under this Declaration. Further, the Association may levy a special assessment in addition to the monthly assessments for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement not required of the Association under this Declaration or other discretionary expenditure, provided that any such assessment shall have the assent of a majority of the votes of Members entitled to vote, in person or by proxy, at a meeting duly called for this purpose.

Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all Members not less than ten (10) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

- D. Monthly and special assessments provided for in this Declaration shall be fixed in accordance with this section. Each Lot or portion thereof and the Owner(s) of each Lot or portion thereof, shall be liable for a share of the total budget upon which any monthly or special assessment is based. The share appurtenant to each Lot or a portion thereof shall be calculated by multiplying the total budget of the monthly or special assessment times a fraction, the numerator of which is the number of votes appurtenant to such Lot or portion thereof and the denominator of which is the total votes outstanding in the Association.
- E. The monthly assessments provided for herein shall be due as to each property on the first day of each month or as otherwise set by the Board of Directors. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified property have been paid. A properly executed certificate from the Association regarding the status of assessments on property shall be binding upon the Association as of the date of its issuance.
- F. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is higher. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both and there shall be added to the amount of such assessment the costs of preparing and filing the petition in such action, plus costs and reasonable attorney fees.
- G. If any property subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of

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

H. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (i) All property which is dedicated to and accepted by a public authority; and
- (ii) All property owned by the Association.

No other land or improvements located within Plat 2 shall be exempt from said assessments, charges or liens.

XXIX. Declarant's Rights

- A. Declarant reserves the right to use any of the Lots, to conduct activities in connection with the construction and development of the project from any such Lot prior to it being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to erect signs, conduct general marketing, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot or portion of any Lot that remain unsold. Declarant's rights are subject to all applicable ordinances of the City.
- B. Declarant, its successors and assigns, reserve the right to add additional common areas by conveying the same to the Association from time to time. Nothing in this section shall be deemed an obligation on the part of the Declarant to convey additional properties to the Association.
- C. Declarant is and shall be responsible for all duties and obligations of the Association hereunder and shall have all rights of the Association until the Association is established and the initial Common Areas are conveyed thereto. The Association shall be established prior to the recording of the final plat of Southbridge Plat 2.

XXX. Easements

- A. Declarant reserves unto the Association an easement over the various Lots for a distance of 10 feet parallel to the boundary lines of the Common Areas. This easement shall be a non-exclusive easement for the sole benefit of the Association in performance of its maintenance obligation on the Common Areas and adjacent landscape areas. This easement shall not be for the benefit of the members or the public at large.
- B. Declarant reserves unto itself, its successors and assigns, for so long as it owns any portion of the Properties, the right and easement to erect and maintain identification and "For Sale" sign or signs on Lots that it owns, provided the same are consistent with the ordinances of the City.

XXXI. Covenants With The City

- A. Officers, employees or contracted agents of the City shall have the right and authority to enter upon the Common Areas and easements reserved or granted for the benefit of the Association for the administration of general public services including emergency

fire protection, law enforcement and administration of the water works rules and regulations and any applicable agreements for providing water service.

- B. The Association, its' successors or assigns, agree to defend, indemnify, protect and save harmless the City and its political subdivisions, including any of its elected officials, officers, employees or agents, from and against any judgments, awards, claims or expenses or other things whatsoever, including attorneys fees, costs or disbursements, arising out of or in connection with any act or act of negligence, causes omissions, fault, misconduct, claims, damages, suits or other actions developed, brought or asserted by any person, firm, corporation, entity or estate, against the said City by reason of, in connection with, related to or growing out of, directly or indirectly, the duties and responsibilities which are imposed upon the Association, its successors and assigns, with respect to its duties or obligations under this Declaration including any rules or regulations in existence pursuant to this Declaration, or related to or growing out of, directly or indirectly, the ownership, maintaining, cleaning out, grading, repairing, construction, or reconstruction of the Common Areas or any part thereof, or related to or growing out of, directly or indirectly, the existence of this Declaration and the purposes for which this Declaration is executed or the approval of this Declaration.

Declarant, its successors and assigns, including all subsequent owners in the Properties, hereby covenant not to sue, demand or claim any damages or other remedies against the City, its political subdivisions and its elected officials, officers, employees or agents by reason of, in connection with, related to or growing out of, directly or indirectly, the failure of the City to exercise any rights afforded to it under this Declaration, the approval of this Declaration, the approval of the improvements on Common Areas, the issuance of a building permit for such purpose, any inspections performed relating to said permit or permits or any certification issued indicating compliance with any City ordinance regulating the issuance of said building permit or approvals.

- C. Neither the Declarant, Owners, Association nor any other person or other entity shall place any reliance upon the approval of this Declaration by the City, the approval of the improvements on the Common Areas, the issuance of a building permit for such purposes, any inspections performed relating to said permit or any certification issued indicating compliance with any City ordinance regulating the issuance of said building permit or approvals, as indicating the safety or quality of construction of any improvements located on the Common Areas, or within Plat 2. Neither the issuance of, nor any inspections or certifications made relating to the building permit or relating to any City ordinance or approval, including the approval of this Declaration, shall constitute an assumption by the City, or any elected officials, officers, agents or employees thereof, of any duty or responsibility of any person or entity to adequately construct, reconstruct, repair and maintain the Common Areas, and improvements located thereon or to, in any way, indicate a decrease in the risk associated with the use or existence of the improvements located in the Common Areas. A certification that the Common Areas or have been inspected, pursuant to any City ordinance regulating the same shall not, in any way, constitute a representation, covenant, warranty or guaranty of the safety or quality of said improvements by the City, or any elected officials, officers, agents or employees thereof.
- D. The City, upon 30 days' written notice (except in case of an emergency), shall have the right to require the Association to perform any and all of its maintenance, repair, reconstruction and replacement and management responsibilities with respect to the Common Areas in accordance with this Declaration, and any conditions and covenants in connection with the preliminary and final plat of Plat 2 and its ordinances; and the City shall have the right to require the Association to enforce any and all rules and regulations adopted by the Association concerning the use, maintenance and operation of the Common Areas.
- E. This Article shall not be amended without the prior written approval of the City.

XXXII. General Provisions

- A. The Board of Directors of the Association shall have the right to adopt rules and regulations governing the Common Areas, and such rules shall be observed and obeyed by the Owners, their guests, invitees, lessees, contractors, assigns and licensees. Provided, no such rules or regulations adopted by the Board of Directors shall, in any way, modify, amend, repeal or alter any provision of this Declaration, or the Articles or Bylaws of the Association.
- B. No Owner shall change the elevations or grades on its Lot in areas which constitute Common Areas.
- C. Failure of the Association to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of this right to enforce the same thereafter.
- D. In addition to the enforcement rights granted to the Association for the collection of assessments, the Association shall have the right to maintain any action at law or in equity appropriate for the enforcement of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration, the Articles of Incorporation and Bylaws. The Association is specifically granted a right to obtain affirmative or negative injunctions, restraining orders and similar equitable relief for repeated violations by any person whatsoever. The Association shall have the right to adopt a schedule of fines and/or liquidated damages to be imposed upon members, their tenants, invitees and guests for violations of the rules and regulations, the covenants, conditions and restrictions contained in this Declaration and the Articles of Incorporation and Bylaws of the Association.
- E. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the City, the Association, the persons in ownership from time to time of the Lots and all parties claiming under them, shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without providing any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.
- F. City is hereby declared to be a third party beneficiary of the provisions of this Declaration. As such, City has no duty or obligation to exercise its rights to enforce or perform any obligations reserved to it under the provisions of this Declaration. The rights of the City provided for in this Declaration shall be exercised by the City at its sole option and discretion. Whenever the approval of the City is required under this Declaration, the same shall not be unreasonably withheld or delayed.
- G. This Declaration shall run with the land and shall be binding upon all parties claiming under them. Invalidation of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

