

Warren County, Iowa  
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Jordyn M. Hill, RECORDER  
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County Recording Fee: \$152.00  
Iowa E-Filing Fee: \$3.00  
Combined Fee: \$155.00  
Revenue Tax:

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**Prepared by:** Timothy C. Hogan, Hogan Law Office, 1717 Ingersoll Ave, Ste 200, Des Moines, IA 50309 (515) 279-9059

**Return to:** Great Western Crossing Homeowners Association, Inc., 6150 Village View Dr, Ste 110, West Des Moines, IA 50266 (515) 222-1347

**Legal Description:** See Page 2 and Exhibit "A"

**Previously Recorded Documents:** Covenants in Inst. No. 2018-08512 amended in 2020-07583, 2020-07593, 2021-09094 and 2021-13738 / Covenants in Inst. No. 2021-15169 amended/supplemented in 2022-06171; 2022-09328 and 2022-10015

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

**THIS AMENDED AND RESTATED DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR GREAT WESTERN CROSSING** (this "Declaration") is dated May 24, 2023 and made by **DILIGENT GWC, LLC**, an Iowa limited liability company, as "Declarant" under the Declaration of Residential Covenants, Conditions and Restrictions for Great Western Crossing Plat 1 recorded October 25, 2018 as **Instrument No. 2018-08512** in the records of the Recorder for Warren County, Iowa, which instrument has been amended as follows:

- A. Amended Declaration of Residential Covenants, Conditions and Restrictions for Great Western Crossing Plat 1 recorded July 24, 2020 as **Instrument No. 2020-07583**;
- B. Amended Declaration of Residential Covenants, Conditions and Restrictions for Great Western Crossing Plat 1 recorded July 24, 2020 as **Instrument No. 2020-07593**;
- C. Amended Declaration of Residential Covenants, Conditions and Restrictions for Great Western Crossing Plat 1 recorded July 28, 2021 as **Instrument No. 2021-09094**; and
- D. Amendment to Amended Declaration of Residential Covenants, Conditions and Restrictions for Great Western Crossing Plat 1 recorded November 12, 2021 as **Instrument No. 2021-13738**

(collectively the "Original Declaration").

**WHEREAS**, pursuant to the Original Declaration, Declarant established and placed certain covenants, conditions, restrictions, reservations and easements upon the real estate described in **Exhibit “A”** (collectively, the “Property”) for the benefit of the Property and the Owners thereof.

**WHEREAS**, the Original Declaration established the **Great Western Crossing Homeowners Association, Inc.**, an Iowa non-profit corporation (the “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 for the benefit of the Property and each Owner thereof.

**WHEREAS**, pursuant to the authority granted in the Original Declaration, Declarant now desires to adopt amended and restated residential covenants, conditions, restrictions, reservations and easements with respect to the Property for the mutual and reciprocal benefit of the Lots (defined below) and the present and future owners of the Lots consistent with the terms and provisions set forth in this Declaration.

**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.

**WHEREAS**, it is intended that this Declaration shall entirely amend and restate the Original Declaration, including all terms, provisions, covenants, conditions, rights and obligations set forth therein, and shall supersede and take the place of the Original Declaration in its entirety.

**WHEREAS**, this Declaration shall be in force and take effect from and after the date that it is recorded with the County Recorder, subject to further amendment as herein provided, and that from and after that effective date the previously existing Original Declaration shall be of no further force or effect.

**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 easements, restrictions, covenants, reservations and conditions, 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 Homeowners 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) All signs, monuments and monument signs, and similar entrance features and the landscape plantings and materials surrounding the entrance sign.
- (ii) The fencing and landscape plantings and materials installed for buffering along Cumming Avenue (Highway G-14).
- (iii) Common Area and the Storm Water Detention Facilities and all other improvements located thereon.

- (iv) Snow removal and lawn care for the Villa Lots.
- (v) 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) **"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.

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

(k) **"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 Storm Water Detention Facilities 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 Plat 3 and Outlot "Z" of Great Western Crossing Plat 4. Such Common Area shall be considered and designated a **"Limited Common Amenity"** as defined under the Community Declaration.

(l) **"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.

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

(n) **"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 Middlebrook GWC Lots are subject, as the same may be amended and supplemented from time to time.

(o) **"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.

(p) **"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.

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

(r) **"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.

(s) **"Declaration"** shall mean and refer to this Amended and Restated Declaration of Residential Covenants, Conditions and Restrictions 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.

(t) **"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.

(u) **"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.

(v) **"Lot"** shall mean and refer to any numbered parcel of land within the Property which is platted for a single residential dwelling together with any additional numbered Lots shown upon a Subdivision Plat as may hereafter be annexed and subjected to this Declaration. The term shall not include Outlots.

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

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

(y) **"Middlebrook GWC Lots"** shall mean and refer to ALL LOTS IN GREAT WESTERN CROSSING PLATS 2, 3 AND 4 AND ALL FUTURE ADDITIONAL NUMBERED LOTS SUBJECTED TO THIS DECLARATION. The term shall mean and be referred to as a **"Lot"** or **"Neighborhood"** under the Community Declaration.

(z) **"Outbuilding"** shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed, storage shed or garden house.

(aa) **"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.

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

(cc) **"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.

(dd) **"Plans"** shall mean and refer to the site plans and building specifications containing the drawings, specifications and other documents from which the dwellings and other improvements and appurtenances thereto within a Lot are to be located, constructed, altered, demolished or removed which may include such details as workmanship, design, materials, 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.

(ee) **"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.

(ff) **"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.

(gg) **"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.

(hh) **"Villa Lots"** shall mean and refer to LOTS 1-9 IN GREAT WESTERN CROSSING PLAT 4.

(ii) **"Voting Agent"** shall mean and refer to the President of the Association who is authorized to represent the Middlebrook GWC Lots and cast all votes on behalf of the Middlebrook GWC 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 Middlebrook GWC 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 Middlebrook GWC 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 Middlebrook GWC 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 Middlebrook GWC 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 dwelling 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, including 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 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. Building Types.** No building or structure shall be constructed, altered or maintained on any Lot other than the dwelling or replacement thereof. No building or structure of any kind shall be moved onto any Lot. The construction of any building or structure on any 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.

**Section 5. Temporary Structures.** No temporary building or structure shall be built or maintained on any Lot. No Outbuilding, trailer, camper, motor home, watercraft, basement, tent, shack, shed, garage, barn, outhouse, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

**Section 6. Accessory Structures.** Each Lot may have no more than one (1) customary and traditional accessory structure or Outbuilding such as a tool shed, garden house, in-ground swimming pool with pool house, tennis court and the like. No above-ground or non-permanent swimming pools shall be permitted on any Lot. Any trash receptacle and dog kennel or run shall be properly screened by a privacy fence or shrubbery. Any dog kennels or runs, swimming pools, tennis courts, Outbuildings and such improvements shall not extend farther than the front line of the residential dwelling extended to the side lot lines and shall not be located within five (5) feet of any side or rear Lot line, as the minimum distance established by the zoning ordinance of the City or the minimum distance as established in the Subdivision Plat as recorded, whichever is the more restrictive.

**Section 7. Building Area.** No dwelling shall be constructed or permitted to remain upon any Lot unless the building area contains the following minimum square footages and unless it meets the following requirements:

- A. For ALL LOTS IN GREAT WESTERN CROSSING PLAT 1, one and one-half story, two story, split-level, and split foyer dwellings must have a finished area of not less than 1,750 square feet; one story or ranch dwellings must have a finished area of not less than 1,500 square feet.
- B. For ALL LOTS IN GREAT WESTERN CROSSING PLAT 2, two-story dwellings must have a finished area of not less than 2,000 square feet; one and one-half story, split-level, and split foyer dwellings must have a finished area of not less than 1,800 square feet; ranch dwellings must have a finished area of not less than 1,500 square feet.

- C. For ALL LOTS IN GREAT WESTERN CROSSING PLAT 3, two-story dwellings must have a finished area of not less than 2,000 square feet; one and one-half story, split-level, and split foyer dwellings must have a finished area of not less than 1,800 square feet; ranch dwellings must have a finished area of not less than 1,500 square feet.
- D. For LOTS 1 – 9 IN GREAT WESTERN CROSSING PLAT 4, two-story dwellings, one and one-half story, split-level, and split foyer dwellings must have a finished area of not less than 1,600 square feet; ranch dwellings must have a finished area of not less than 1,300 square feet.
- E. For LOTS 10–39 IN GREAT WESTERN CROSSING PLAT 4, two-story dwellings must have a finished area of not less than 2,000 square feet; one and one-half story, split-level, and split foyer dwellings must have a finished area of not less than 1,800 square feet; ranch dwellings must have a finished area of not less than 1,500 square feet.
- F. In computing total finished area, the same shall not include any finished area that has its floor below the exterior grade.
- G. In the computation of floor area, the same shall not include any porches, breezeways, or attached or built-in garages.

**Section 8. Building Design.** The minimum criteria and design standards prescribing the quality and character specifications for the dwelling to be constructed on each Lot shall conform to the following requirements as approved by the Review Board:

- A. All exterior painted portions of any dwelling or garage located on any Lot shall be finished with one of the colors approved as being acceptable exterior color. All exterior painted portions of dwellings and garages that are repainted shall be repainted in one of such color.
- B. All roof material shall be of an architectural shingle brand, metal roof style or other roofing product approved as being acceptable in color, quality and appearance.
- C. All dwellings must be constructed using hardboard siding by LP SmartSide or cement board siding by James Hardie or other brands approved as being acceptable exterior siding. No vinyl siding shall be permitted. A minimum of three (3) different material types shall be used on the front façade of any dwelling. Glass windows are considered a material type.
- D. Decks attached to a dwelling must be constructed from cedar, redwood, treated lumber, Trex composite material or other products approved as being acceptable material.
- E. All Outbuildings and dog houses shall be consistent in external appearance, color

and building material as the dwelling constructed upon the Lot.

- F. For the Middlebrook GWC Lots, no dwelling shall be constructed or permitted to remain upon any Lot unless the design and location is in reasonable harmony with existing structures to provide an organized and visually diverse streetscape. Dwellings of adjacent Lots shall be visually distinctive from one another by using a variety of architectural styles, character elements, materials and color approved as being distinct and diverse.

**Section 9. 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. All dwellings shall be under construction within one (1) year from the date of conveyance of the Lot by Declarant and completed within twelve (12) months of the commencement date of construction, unless an extended construction schedule for the work to be completed is otherwise approved by Declarant for a Builder which acquires fee title to multiple Lots with the intent of erecting dwellings thereon for the strict purpose of offering such Lots as improved property for sale to the general public. Within sixty (60) days of completion of the dwelling, all paving, Outbuildings, landscaping and sod shall be completely constructed, installed, planted and finished. If weather conditions make this requirement impossible to meet within the sixty (60) days, Declarant shall establish a reasonable period of time for compliance.

**Section 10. Utilities.** All utility connection facilities and services shall be underground.

**Section 11. Solar Panels.** Solar panels may be installed for the purpose of generating power by converting energy collected from the sun into electricity only on the rooftop of a dwelling. All mechanisms and components of the solar collector must be approved by the Review Board prior to installation. Solar panels shall be placed so as to cause minimum visual impact on neighboring dwellings. Under no circumstances shall a neighbor be required to remove or prune established plantings on its Lot. All installations must be safely secured and comply with applicable building codes and other governmental regulations. The surfaces of the solar collector and equipment, whether painted or colored materials, shall be properly and timely maintained to prevent peeling and cracking of paint or loss of coloration or other deterioration to the point where it becomes unsightly.

**Section 12. Garages, Driveways and Sidewalks.** All dwellings shall have a minimum of a two-car attached garage. All dwellings 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 13. Sod and Irrigation System.** All bare ground portions of the front, side and rear yard of the Lot shall be fully sodded within sixty (60) days of completion of a dwelling upon a Lot. 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 14. Fences.** No fences or other structures may be built or maintained within the front building setback areas as shown on the Subdivision Plats as recorded and no fences shall be built or maintained in the front of the front line of the residential dwelling extended to the side Lot lines. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. Fences shall be no taller than six (6) feet and shall be kept in good repair and attractive appearance. Chain link fencing around dog runs is not allowed. Only the following fencing materials shall be permitted on the Lots as follows:

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

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

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

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

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

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

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

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

**Section 15. 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 or on structures. Notwithstanding the foregoing, an exterior tower, antenna or receiver dish which is twenty-seven (27) 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 and cannot be located on the front of the dwelling. No more than one (1) penetration in the dwelling on a Lot shall be permitted for the cable from such exterior tower, antenna or receiver dish. No other exterior towers or antenna shall be constructed, installed, modified or permitted on the ground or on structures.

**Section 16. Mailboxes.** Neighborhood mailbox cluster units shall be installed according to United States Postal Service regulations. The Lot Owner on which such mailbox is located shall be responsible for removal of snow and ice which would obstruct access to the mailbox by the mail carrier and other Owners of the Lots.

#### **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 AND RESERVATIONS**

**Section 1. General Easements.** Easements for installation and maintenance of public and private utilities, sewers, drainage and detention facilities are reserved as shown on the Subdivision Plat or in any separately created easement instrument filed of record with the County Recorder in favor of the City, the Association or other Persons. 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, fence, structure or other improvement of any kind within the easement areas, nor permit any growth of any kind (except customary ground cover) which might interfere in any way with the use, maintenance, replacement, inspection or patrolling of any of the utility services, drainage and detention facilities within such easement areas. Any berm or swale constructed for drainage purposes shall be preserved and maintained to accomplish the purposes for which it was constructed.

**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. 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 5. 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.

**Section 6. 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**  
**GENERAL USE 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 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 dwelling or structure constructed or maintained on any Lot 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, no dwelling 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 Lot 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. Certain Animals Prohibited.** No animals, livestock or poultry of any kind shall be raised, bred or kept, except dogs, cats, birds and other usual common household or yard 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 Lot at any one time. Pets shall be registered, licensed and inoculated as required by law. All pets must be either kept in the dwelling or in a shelter aesthetically compatible with the dwelling and surrounding areas or completely screened or otherwise hidden from public view. 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 and must be completely screened or otherwise hidden from view from any other Lot, and all streets. 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. The Owner shall be responsible for prompt removal and disposal of all waste from their pets.

**Section 6. Signs.** No sign of any kind shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, or the Common Area except (i) street markers, traffic signs, or any signs installed by the City by other governmental entities, (ii) signs installed or erected by the Declarant or the Board of Directors, (iii) signs which have been approved by Declarant or the Board of Directors exhibiting the street number and/or the name of the resident Lot Owner, (iv) a customary sign (one per Lot) advertising a home “For Sale” or a “Garage Sale”, and (v) signs advertising the Builder or for promotional or marketing purposes. 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. In the event that any signs other than those described above shall be placed or exposed to view on any Lot, Declarant or the Board of Directors is hereby given the right to enter upon such Lot and remove such signs.

**Section 7. 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.

**Section 8. Trash Receptacles.** Trash receptacles shall be kept by the Owners of the Lots within a garage or Outbuilding or hidden from public view by an attractive screen or shrubbery of suitable height and shall be set outside only for scheduled 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.

**Section 9. Trailers and Parking.** No vehicle with a gross vehicle weight greater than 7,000 pounds, and no trailer, camper, motor home, watercraft, recreational vehicle, commercial vehicle, unlicensed or inoperable vehicle or any other motorized vehicle or mechanical equipment may be parked, stored or maintained on any Lot, except inside a garage or other enclosure out of view from the street and abutting Lots, or on any driveway in the Property, other than temporarily or incidentally for the making of pick-up and deliveries and those used during construction, repair, remodeling or maintenance of a dwelling on any Lot. Temporary shall mean no more than a total of thirty (30) days per year. At no time shall a vehicle or any mobile equipment be disassembled, repaired or serviced on any Lot, except inside a garage or other enclosure out of view from the street and abutting Lots.

## ARTICLE VII 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 for Middlebrook GWC Lots.** The Voting Agent is authorized to attend meetings of the Community Association as the representative of the Middlebrook GWC Lot Members and cast votes "en block" on behalf of such Middlebrook GWC Lot Members entitled to vote at any election or meeting of the Community Association. By way of example, if the Middlebrook GWC Lot Members 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 VIII 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; and to otherwise establish such procedures and policies necessary or deemed desirable to carry out the obligations of the Association under this Declaration.

**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 and/or occupant of each Lot, at its sole cost and expense, shall jointly and severally be responsible to keep the same free of trash, rubbish, 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, at its sole cost and expense, shall jointly and severally be responsible to repair, restore, protect and maintain the dwelling, appurtenances and personal property of whatever nature located upon the Owner's Lot in good repair and condition.

**Section 12. Maintenance of Street Trees.** The Owner and/or occupant of each Lot, at its sole cost and expense, shall jointly and severally be responsible to perform all routine maintenance and replacement of street trees within the Owner's Lot. Street trees shall be trimmed or pruned regularly and treated as needed to minimize the effects of disease, pests or minor damage by wind, lightning or other natural forces. Damaged, diseased, decaying and dead street trees

shall be promptly removed by the Owner of the Lot after first obtaining prior permission from the Board of Directors and submitting an acceptable plan for tree replacement. Should the Lot Owner fail in its obligations hereunder, the Association shall have the right, but not the obligation, to perform such maintenance, removal and replacement and the costs associated therewith shall be assessed against the Lot Owner as a special assessment, which shall become due and payable upon demand.

**Section 13. Maintenance by Association.** The Association shall provide or contract for services on behalf of the Owners of each Lot for the operation, improvement, maintenance, repair, reconstruction, restoration, replacement and removal of the Association Responsibility Elements, including (but not limited to) all necessary painting, mowing, trimming, and replacement of landscaping and use of pesticides to control infestation of weeds and insects. For all Villa Lots the Association is further charged with providing snow removal and lawn care services. The Association shall perform all such maintenance in a good and workmanlike manner in accordance with all applicable laws, rules, ordinances, codes and regulations.

**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 agreement on file with the City or in connection with any integrated sustainable stormwater collection system implemented by Declarant.

**Section 15. Assignment of Maintenance Obligations by Association.** The Association shall have the right from time to time to assign or delegate all or any part of its maintenance obligations under this Declaration to an Owner of any Lot or to the Community Association, or otherwise to be assumed by or dedicated to any local, state, federal, or non-profit entity, provided that in connection with any such assignment, delegation, assumption or dedication, the Association reserves the right to perform any maintenance obligation if the other party fails or ceases to perform its obligations so assigned, delegated, assumed or dedicated. In the event the Association shall assign, delegate or dedicate any or all of its maintenance obligations neither the Declarant, Community Declarant, the Association nor the Owners of the Lots shall be liable for any omission or improper exercise by the party charged with performance of any such obligation so assigned, delegated or dedicated. In the case of assignment to a Lot Owner, the Association, may, at its option, require such Lot Owner to assume and pay all costs associated with such maintenance obligation so assigned or delegated.

**Section 16. 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 17. 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 18. Landscaping.** The Association shall have sole control over all trees, shrubs, landscape plantings, retaining wall structures or other stabilization plantings, fences and decorative features with respect to the Association Responsibility Elements. 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 19. 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. 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 20. Shared Facilities, Equipment and Fixtures.** To the extent that facilities, equipment and fixtures, including the 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 21. 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 22. 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 23. 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 IX INSURANCE**

**Section 1. Insurance by Association.** The Association shall 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. 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 Association 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 2. 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 3. 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.

## **ARTICLE X 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 for the purpose of carrying out the general duties and obligations of the Association, including, but not limited to, operation, management, maintenance, repair, reconstruction, restoration, replacement 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. Additional Assessment for Villa Lots.** There shall be included with the regular assessment levied against the Villa Lots only, an additional assessment for the costs and expenses associated with snow removal and lawn care services provided to the Villa Lots by the Association.

**Section 5. Middlebrook Assessments by Community Association.** The regular assessments levied by the Community Association intended for the Middlebrook GWC Lots as set forth in the Community Declaration shall be allocated among the Owners of the Middlebrook GWC Lots as a part of the regular assessment levied by the Association and paid by the Association to the Community Association.

**Section 6. 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 7. 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 8. Uniform Rate of Assessment.** Both regular and special assessments must be fixed at a uniform rate for all Lots.

**Section 9. 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 of a Lot by Declarant. 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 10. 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 11. 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 12. 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 13. 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 XI 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 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.

**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 of the Lots may not take any action to remove the Middlebrook GWC Lots from the terms and conditions of the Community Declaration or lessen or abate the rights of the Declarant or Community Declarant hereunder. 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 GWC Middlebrook Lots subject to this Declaration in the aggregate without approval of not less than two-thirds (2/3) of the Owners of the Middlebrook GWC 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 Owners of the Middlebrook GWC Lots 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 XII 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 Lots and Offices.** Declarant reserves the right to use any of its Lots as models and to sell, assign, or conduct other business in connection with the construction and development of the Property from any of such Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain model homes, maintain an office, staff the office with employees, display signs, and show any of its Lots 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 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 dwellings, 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. 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 7. 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 8. 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.

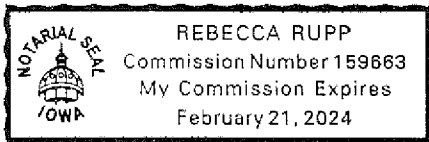
**DECLARANT:**

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

By: [Signature]  
Tim Portzen, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on May 24, 2023, by Tim Portzen, Manager of Diligent Development Group, LLC the Manager of Diligent GWC, LLC.



By: [Signature]  
Notary Public

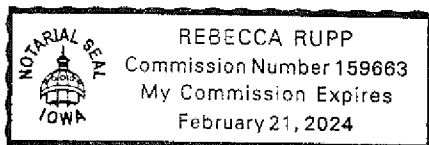
**COMMUNITY DECLARANT:**

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

By: [Signature]  
Tim Portzen, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on May 26, 2023, by Tim Portzen, Manager of Diligent Development Group, LLC the Manager of Middlebrook Development, LLC.



By: [Signature]  
Notary Public

**EXHIBIT "A"**  
**THE PROPERTY**

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

AND

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

AND

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

AND

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