
Prepared by & Return to: Lawrence I. James, Jr., Hogan Law Office, 3101 Ingersoll Ave., Des Moines, IA 50312 (515) 279-9059

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR FOX CREEK ESTATES**

THIS DECLARATION (the "Declaration") is made this 21st day of February, 2013 by **PERFECT ACRES, LLC**, an Iowa limited liability company ("Declarant").

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

Lots 1 - 25 in FOX CREEK ESTATES PLAT 3, an Official Plat, now included in and forming a part of Waukee, Dallas County, Iowa (the "Property").

AND

SEE EXHIBIT "A" ATTACHED HERETO (the "Common Area").

WHEREAS, Declarant is owner of that portion of the following described real estate generally located south of future Douglas Parkway (the "Benefited Property"):

The Southwest Quarter of the Northwest Quarter (SW 1/4 NW 1/4) and the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) and the Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4) of Section 27, Township 79 North, Range 26 West of the 5th P.M., City of Waukee, Dallas County, Iowa, EXCEPT Fox Creek Estates Plat 1, Fox Creek Estates Plat 2, and Fox Creek Estates Plat 3, being Official Plats in Waukee, Dallas County, Iowa.

WHEREAS, Declarant has entered into a Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement for Fox Creek Estates dated February 21, 2013 with the City of Waukee, Iowa (the "Management Facility Agreement"), wherein Declarant has agreed to control storm water runoff for the Property and the Benefited Property through design, construction and maintenance of a storm water detention basin (the "Storm Water Management Facility") within the Common Area.

WHEREAS, Declarant desires to provide for an Association to own, operate and maintain the Common Area and Storm Water Management Facility located thereon and to establish covenants and conditions for the benefit of the owners of the Property entitled to use the Storm Water Management Facility.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the real property 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. "Additional Land" shall mean and refer to any portion of the Benefited Property annexed and subjected to this Declaration pursuant to Article XVI hereof.

Section 2. "Association" shall mean and refer to the Fox Creek Estates Storm Water Maintenance Association, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa, 2013.

Section 3. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 4. "City" shall mean and refer to the city of Waukee, Iowa.

Section 5. "Common Area" shall have the meaning set forth on Page 1 and refer to any real property to which the Association holds title, together with any improvements thereon, for the common use and benefit of the Owners.

Section 6. "Declarant" shall mean and refer to Perfect Acres, LLC, an Iowa limited liability company, its successors or assigns.

Section 7. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Fox Creek Estates to which the Property is subject.

Section 8. "Lot" shall mean and refer to an individual parcel of land within the Property or within a Plat of Survey.

Section 9. "Member" shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration.

Section 10. "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 that is a part of the Property.

Section 11. "Property" shall have the meaning set forth on Page 1 and shall include any Additional Land when annexed and subjected to this Declaration pursuant to Article XVI hereof.

Section 12. "Storm Water Management Facility" shall have the meaning set forth on Page 1 and refer to the common storm water detention pond and all pipes, inlets and outlets appurtenant thereto.

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

Section 1. Membership. Every Owner shall be a Member of the Association. Membership shall be

appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership. When more than one person holds an interest in any Lot, all such persons shall be Members.

Section 2. Voting. Subject to provisions of Section 3 of this Article, the Owners shall be entitled to one vote for each Lot owned. 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 as Sole Voting Member. Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Association until Declarant no longer owns any portion of any Lot or until Declarant waives, in writing, its right to be the sole voting member. Declarant shall have the right to elect all Directors and to cast all votes as it deems appropriate. Each Owner by acceptance of a deed shall be deemed to have released Declarant from all claims with respect to actions taken or not taken while Declarant controls the Association.

Section 4. Board of Directors. The voting Members shall elect a Board of Directors of the Association as prescribed by the Bylaws of the Association. The Board of Directors shall manage the affairs and business of the Association.

Section 5. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against such Owner's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

Section 6. Notice of Meetings of Members. Unless the Articles of Incorporation or the Bylaws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the President or Secretary, or the officer or persons calling the meetings, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at such Member's address as it appears on the records of the Association, with postage thereon prepaid.

Section 7. Duration. No dissolution of the Association shall occur without the prior approval and consent of the City.

ARTICLE III

ASSOCIATION MAINTENANCE OBLIGATIONS

Section 1. Entrance Signs. Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to the Owners by and through the Association, the right and easement to erect and maintain a permanent entrance sign or signs on the Common Area or other areas established by permanent easements. In the event that such permanent entrance signs are installed, the Association shall perform all routine maintenance, repair, replacement, restoration, removal and demolition of the signs and elements relating thereto. Notwithstanding the foregoing, it shall be the responsibility of the Owner of any institutional or commercial Lot to maintain and repair, at its sole cost and expense, any entrance or identifying sign constructed on an institutional or commercial Lot.

Section 2. Common Area. The Association shall be the owner of the Common Area and shall timely pay all real estate taxes and assessments levied against the Common Area. Declarant hereby covenants for itself, and 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 transfer of title of the Common Area to the Association shall not be accomplished until the City provides written notification that construction of the Storm Water Management Facility has been completed and Declarant has been released from its duties, obligations and responsibilities under the Storm Water Management Agreement.

Section 3. Maintenance of Common Area and Storm Water Management Facility. The Association shall be responsible for maintenance of the Common Area and the Storm Water Management Facility located thereon. Such maintenance obligations shall include, but are not limited to, reconstruction, repair, replacement, inspection, grading, dredging, mowing, replacement of permitted vegetation, and removal of trash, litter and debris. No Owner shall obstruct or interfere whatever with the duties and responsibilities of the Association to perform its maintenance obligations relating to the Common Area and Storm Water Management Facility. Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors. An Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement rendered necessary by any intentional, negligent or careless act by such Owner, or by any family, guest, employee, agent, contractor or lessee of such Owner. Any such expense shall become a special assessment and lien upon the Lot of such Owner and shall become due and payable upon demand.

Section 4. Taxes Assessed Against Common Area. The Association shall be responsible for any taxes and special assessments assessed against the Common Area and the pro rata cost thereof shall become a part of the annual assessment.

Section 5. Liability Insurance. The Association shall purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organization of the Association or Board of Directors, its agents and employees, the Owners and all other persons entitled to use the Common Area. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to, worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf to the Association. Each Owner shall be deemed to have delegated to the Board of Directors the Owner's right to adjust with the insurance companies all losses under policies purchased by the Association. 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 6. Assessment for Insurance. The premiums for the insurance hereinabove described shall be paid by the Association and the pro rata cost thereof shall become a part of the annual assessment.

Section 7. Contracts and Agreements. The Board of Directors, in its sole discretion, may or may not enter into any contract, agreement, management contract or employment contract, engage the services of and discharge any manager, managing agent, independent contractor or other employee as it deems necessary. The Board of Directors, in its sole discretion, shall determine the duties and compensation of such persons so

employed.

Section 6. Access. The Association and its agents, employees or contractors shall have the right of reasonable access for ingress and egress over, across or through the Property and Common Area for the purpose of performing its inspection, maintenance, repair, replacement, restoration, removal, demolition, grading and dredging obligations as set forth herein.

ARTICLE IV **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant for the entire Property, hereby covenants, and each Owner of any portion of the Property 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) an annual assessment and (2) special assessments to be established and collected as hereinafter provided. The annual and special assessments, together with late fees, 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 such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the joint and several personal obligation of each person who was the Owner of such 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 powers of the Association, including, but not limited to, maintenance obligations of the Association as provided in Article III; payment of insurance premiums, real estate taxes and special assessments associated with the Common Area, fees and costs payable to a professional management firm, an accounting firm and an attorney in connection with the operation of the Association as well as the defense or prosecution of any legal action, and for other purposes specifically provided herein.

Section 3. Maximum Annual Assessment. The Board of Directors shall establish the maximum annual assessment to be assessed against each Lot, which assessment shall include a pro rata portion of the amount of real estate taxes, special assessments and insurance premiums payable by the Association. Rates for both annual and special assessments shall be determined by Lot type. The rate of assessment levied for residential Lots must be fixed at a uniform rate among all residential Lots. The rate of assessment levied for institutional and commercial Lots must be fixed at a higher rate than residential Lots. Until January 1 of the year immediately following the conveyance of the first Lot by Declarant to an Owner, the maximum annual assessment shall be \$100.00 per residential Lot; \$200.00 per institutional Lot; and \$200.00 per commercial Lot. The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of the increase in the annual assessment, special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto.

Section 4. Reserve Fund. A portion of such annual assessment shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair, replacement, removal and demolition of the maintenance obligations required of the Association as provided in Article III. Notwithstanding the foregoing, Declarant may use any reserve funds, if established, to defray operating costs as it deems appropriate.

Section 5. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, replacement, removal or

demolition of maintenance obligations required of the Association as provided in Article III or for operating deficits that the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance of a Lot by Declarant. Upon such conveyance, the annual assessment and special assessments prorated to December 31 must be paid to the Association prior to or at the closing of sale or transfer of any Lot. The Board of Directors shall establish the due dates for all assessments. All payments shall be made on or before the due date. Both annual assessments and special assessments shall be collected by the Association, in advance, in annual installments due on January 1.

Section 7. Declarant Exempt from Assessments. Declarant shall not be liable for annual or special assessments upon Lots owned by it. Declarant is not responsible for the establishment of a budget as long as Declarant is the sole voting member of the Association. The Association and Declarant are not required to submit statements for assessments to any Owner.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of said assessment all cost and expenses incurred by the Association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of the Owner's Lot.

Section 10. Subordination of Assessments Liens. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. The failure of an Owner to pay assessments as provided in this Article III shall not constitute a default under a mortgage insured by the Federal Mortgage Agencies.

Section 11. Assessment Certificate. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

ARTICLE V **GENERAL PROVISIONS**

Section 1. Rules and Regulations. The Association shall have the authority to amend and adopt rules and regulations governing the Common Area and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns, and licensees. 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 2. No Waiver. Failure of the Association or any Owner to enforce any covenant, condition or restriction of 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 the right to enforce the same thereafter.

Section 3. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions, and restrictions herein enumerated, Declarant, the Owners and all parties claiming under them, and the City (if it so elects by approval of its City Council) shall have the right to enforce 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.

Section 4. 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, corporation or other entity. The assignee of any such assignment shall be responsible for Declarant's duties and obligations under this Declaration. Declarant shall make such assignment by written instrument recorded in the Office of the Recorder of Dallas County, Iowa.

Section 5. Amendment. This Declaration may be amended or changed by an instrument recorded in the Office of the Recorder of Dallas County, Iowa, signed or approved by at least two-thirds of the then Owners; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Notwithstanding the foregoing, this Declaration may be amended by Declarant without approval by the other Owners so long as Declarant has any ownership interest in any Lot.

Section 6. Duration. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-one (21) years from the date of recordation in the Office of the Recorder of Dallas County, Iowa, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidity 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.

ARTICLE VI **ANNEXATION AND REMOVAL OF LAND**

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

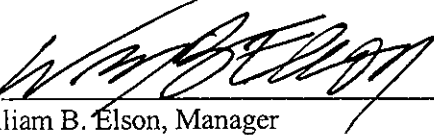
Section 2. Subjecting Additional Land to Declaration. Declarant shall have the irrevocable right to subject the Benefited Property identified in the Storm Water Management Agreement (the "Additional Land") to the terms of this Declaration at any time in the future without the consent of the Association. The Additional Land shall be automatically subject to the applicable terms and conditions of this Declaration and owners of lots within the Additional Land shall automatically become Members of the Association in the same 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 land by filing an amendment to this Declaration with the Recorder of Dallas County, Iowa. No approval of the Association or any other person shall be necessary.

Section 3. Removing Land from Operation of Declaration. Declarant shall have the right now and in the future to remove any portion of the Property from the operation of this Declaration. Declarant shall signify this removal by filing an amendment to this Declaration with the Recorder of Dallas County, Iowa. No approval of the Association or any other person shall be necessary.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the date first hereinabove written.

PERFECT ACRES, LLC

By: 
William B. Elson, Manager

STATE OF IOWA, COUNTY OF POLK:

This instrument was acknowledged before me on March 26, 20, 2013, by William B. Elson, Manager of Perfect Acres, LLC.




By: 
Notary Public

EXHIBIT "A"
COMMON AREA FOR STORM WATER MANAGEMENT FACILITY

A PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 79 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, IN THE CITY OF WAUKEE, DALLAS COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 27; THENCE SOUTH 00°03'22" EAST ALONG THE EAST LINE OF THE NORTHWEST QUARTER, 1315.75 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 89°33'12" WEST ALONG THE NORTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER, 1768.96 FEET; THENCE SOUTH 00°26'48" EAST, 64.09 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°21'53" EAST, 186.88 FEET; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY WHOSE RADIUS IS 3060.00 FEET, WHOSE ARC LENGTH IS 507.48 FEET AND WHOSE CHORD BEARS NORTH 84°36'49" EAST, 506.90 FEET; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY WHOSE RADIUS IS 25.00 FEET, WHOSE ARC LENGTH IS 40.85 FEET AND WHOSE CHORD BEARS SOUTH 53°19'47" EAST, 36.45 FEET; THENCE SOUTH 6°31'18" EAST, 144.53 FEET; THENCE SOUTHERLY ALONG A CURVE CONCAVE EASTERLY WHOSE RADIUS IS 835.00 FEET, WHOSE ARC LENGTH IS 162.02 FEET AND WHOSE CHORD BEARS SOUTH 12°04'49" EAST, 161.76 FEET; THENCE SOUTH 89°31'25" WEST, 771.13 FEET; THENCE NORTH 00°00'55" EAST, 280.30 FEET TO THE POINT OF BEGINNING AND CONTAINING 4.98 ACRES (216,942 SQUARE FEET).