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**DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**THIS DECLARATION** is made this 10 day of December, 2020 by **ATI DAYBREAK, LLC**, an Iowa limited liability company (the "Declarant").

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

**Lots 1-46 in Daybreak Plat 3, an Official Plat, now included in and forming a part of Waukee, Dallas County, Iowa; and**

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

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

**I. DEFINITIONS.**

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

- A. "Plat" means the real property described as Lots 1-46 in Daybreak Plat 3, an Official Plat, now included in and forming a part of Waukee, Dallas County, Iowa.
- B. "Declarant" means ATI Daybreak, LLC, an Iowa limited liability company, its successors or assigns.
- C. "Lot" means an individual parcel of land within the Plat.
- D. "Building Lot" means one or more Lots, or one or more Lots and the portion or portions of adjacent platted Lots in the Plat, used for the construction of one dwelling as herein permitted.

- E. "Owner" means the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot or Building Lot that is a part of the Plat.
- F. "Outbuilding" means an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed or garden house.
- G. "City" means the city of Waukeke, Iowa.

## **II. DESIGNATION OF USE.**

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

## **III. BUILDING TYPES.**

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

## **IV. BUILDING AREA DESIGN AND CONSTRUCTION.**

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

- A. One story/ranch dwellings must have a ground floor finished floor area of not less than 1,500 square feet.
- B. One and one-half story or two-story dwellings must have not less than 1,800 square feet.
- C. No building shall be erected on any Lot unless the design and location is in harmony with existing structures within the Plat as determined in the building plans review process described in Article V below.
- D. In computing total finished area, the same shall not include any finished area that has its floor below the exterior grade.
- E. In the computation of floor area, the same shall not include any porches, breezeways, or attached or built-in garages.
- F. All exterior painted portions of any dwelling, garage or outbuilding located on any Lot shall be finished with one of the colors designated in writing by Declarant as an

Acceptable exterior color. All exterior painted portions of dwellings that are repainted shall be repainted in one of such colors.

- G. All roof material shall be architectural shingles or higher quality with a minimum 30-year warranty. Shingle colors shall be muted earth tones and be compatible with and complimentary to the exterior materials and colors of the building structures.
- H. Dwellings constructed on lots 4-15 must be constructed using hardboard siding by LP SmartSide or cement board siding by James Hardie or other brands approved in writing by Declarant as being acceptable exterior siding. Vinyl siding is allowed on dwellings on the remaining lots.
- I. All structures shall blend in with the terrain rather than contrast with it. The use of natural materials is encouraged, i.e., stained wood, stone, brick and warm-toned shingles, as well as soft, earth-tone colors. All exposed concrete foundations on front elevations only must be covered with brick, veneered or stucco textured, as approved by the Developer; provided, however, that other foundation sides may be exposed but not to exceed twenty-four (24) inches above grade. All structures shall be built in Daybreak Plat 3 shall be shingled with materials and be in colors acceptable to the Declarant.
- J. All buildings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.
- K. If a minimum basement elevation requirement is shown on the recorded final plat for any Lot, the dwelling upon such Lot shall have a finished basement floor elevation as shown on the recorded final plat.
- L. Declarant shall have the option to require Declarant's soil engineer to approve and monitor all soil excavation during excavation of basements for dwellings constructed upon any Lot.
- M. The only acceptable colors for exterior painted portions of any dwelling unit, garage or Outbuilding located on any Lot are earth tone colors. Notwithstanding this written designation, the Declarant reserves the right to accept colors which are not earth tone colors in Declarant's sole and subjective discretion and only upon Declarant's written approval.
- N. The purchaser of a Lot shall, at the purchaser's expense, install public sidewalks in accordance with specifications of the City upon the earlier of the date the dwelling is built upon the Lot, or within one year of purchase of the Lot from the Declarant.

**V. ARCHITECTURAL REVIEW.**

No building or structure, nor any addition or alteration thereof, shall be constructed or substantially altered on any Building Lot unless and until a design plan and a site plan (collectively the "Plans") have been submitted to and approved by Declarant. The Plans shall contain details of design, color scheme, elevation, site grade, landscaping, fencing, roofing, sidewalks, driveways and other similar matters. The Plans shall also state the type of construction, including external details and materials. Declarant shall,

within thirty (30) days from the date of submittal of the Plans, deliver to the Owner written approval of, rejection of or required changes to the Plans. The intent of this provision is to insure that buildings and structures are developed in reasonable harmony within the Plat and that the covenants, restrictions and conditions contained herein are met in connection with such development. Declarant may terminate the requirements of this provision at any time, in its sole and absolute discretion, by recording notice of such termination.

#### **VI. GARAGES AND DRIVEWAYS.**

All dwellings shall have a minimum of a **two-car attached garage**. All dwellings shall have a portland cement concrete driveway not less than 16 feet in width and running from the city street to the garage. No garage doors over ten feet in height are permitted.

#### **VII. TEMPORARY AND OTHER STRUCTURES; CERTAIN USES.**

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

#### **VIII. FENCES.**

No fences or other structures may be built or maintained within the front building setback areas as shown on the Plat as recorded and no fences shall be built or maintained in front of the front line of the residential dwelling extended to the side Lot lines. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. No chain link fence, including chain link fence around a dog run, is permitted unless it is a black vinyl clad fence. All fences shall be kept in good repair and attractive appearance. No fence shall exceed six (6) feet in height. Pool fences shall be landscaped and screened with shrubs or bushes.

#### **IX. DECKS.**

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

#### **X. SOD AND TREES.**

Within thirty (30) days of completion of a dwelling upon a Lot, the Lot shall be fully sodded (except where the topography, conservancy districts, creek slopes or tree cover does not permit such sodding). If weather conditions make this requirement impossible to meet, Declarant shall establish a reasonable period of time for compliance.

Within thirty (30) days of completion of a dwelling upon a Lot, a minimum of one (1) trees shall be planted on the Lot having a diameter measuring at least two inches (2") measured two (2) feet vertically

from the ground level. The party purchasing the Lot from the Declarant shall satisfy this requirement and shall not transfer the responsibility to the party who first occupies the dwelling as a residence.

**XI. EROSION CONTROL AND STORM WATER DISCHARGE PERMITTING REQUIREMENTS.**

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

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

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

The Owner and/or person in possession of each Lot whether vacant or improved, shall, at closing of any sale or conveyance of a Lot, execute an agreement complying with all applicable Federal, State and local erosion control regulations, laws and ordinances and permits which pertain to the Plat, including, but not limited to, becoming a transferee of the Iowa Department of Natural Resources NPDES General Permit No. 2 (the "Permit").

If Declarant, or any Lot or Lot Owner is cited for an alleged violation of any erosion control regulations, laws or ordinance provision which occurs after closing of any sale of conveyance of a Lot by any jurisdictional authority for a condition on or from the Plat, the Owner shall indemnify and hold Declarant harmless from any and all claims, damages, fines, attorney fees, assessments, levies, and/or costs incurred by Declarant related to the citation.

**XII. EASEMENTS.**

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

**XIII. 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.

#### **XIV. SIGNS.**

No sign of any kind shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except (i) street markers, traffic signs, or any signs installed by the City by other governmental entities or by the Declarant, (ii) signs which have been approved by Declarant in writing not exceeding 144 square inches in area on which there shall only be exhibited the street number and/or the name of the resident, (iii) a customary sign (one per Building Lot) advertising a Building Lot or dwelling for sale, not exceeding 1,296 square inches, and (iv) signs which have been approved by Declarant in writing advertising the builder or for promotional or marketing purposes. In the event that any signs other than those described above shall be placed or exposed to view on any Lot, the agents of the Declarant are hereby given the right to enter upon such Lot and remove such signs. Declarant reserves the right to install entrance and directional signs with respect to the Plat, at locations and of design determined by the Declarant in a manner consistent with the ordinances of the City.

#### **XV. TRASH RECEPTACLES.**

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

#### **XVI. UTILITIES.**

All utility connection facilities and services shall be underground.

#### **XVII. TOWERS AND ANTENNAS.**

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

#### **XVIII. MAINTENANCE.**

The Owner and/or occupant of each Lot shall jointly and severally be responsible to keep the same free of trash, weeds and debris and to keep the lawn and landscaping well maintained and healthy, including (but not limited to) maintaining the lawn at a height not to exceed six (6) inches (except in "No Mow Zones" if applicable). The Owner and/or occupant of each Lot shall jointly and severally be responsible to maintain the exterior of any dwelling, the driveway, fence, screening and all other improvements.

#### **XIX. CERTAIN ANIMALS PROHIBITED.**

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

**XX. ACCESSORY STRUCTURES.**

Each Building Lot may have no more than one (1) customary and traditional accessory structure such as a tool shed, garden house, in-ground swimming pool, tennis court and the like. Any trash receptacle, or tool shed, garden house or other Outbuilding of like nature, shall be properly screened by a privacy fence and/or shrubbery. No above-ground or non-permanent swimming pools shall be permitted on any Lot. Swimming pools, tennis courts, Outbuildings and other accessory structures and improvements, including dog kennels and runs, shall not extend farther than the front line of the residential dwelling extended to the side lot lines and shall not be located within 20 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 Plat as recorded, whichever is the more restrictive.

**XXI. SURFACE WATER.**

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

**XXII. MAILBOXES.**

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

**XXIII. LIGHT POLES.**

No light poles shall be used or placed upon any Lot that extend more than ten (10) feet above grade. All light poles shall be of a residential design. All pole lights shall be positioned and directed so as not to directly shine onto and adjoining Lot or constitute a nuisance to any adjoining Lot Owner.

**XXIV. HOMEOWNERS ASSOCIATION.**

**A. DEFINITIONS.**

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

1. "Association" means **Daybreak Plat 3 Owners Association**, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa, 2015.

2. "Association Responsibility Elements" means the following:
- (i) All signs, monuments, landscape buffer zones, fountains and similar entrance features and the landscape plantings and materials surrounding the entrance sign utilized by the Plat and any plats added to the Association in the future; and
  - (ii) All landscape plantings and materials located in Outlots Z of the Plat.  
  
All landscape plantings and/or lawn areas located in the boulevard island within the street right-of-ways within the Plat (if any) and any plats added to the Association in the future; and
  - (iii) All Common Areas located within the Plat and any plats added to the Association in the future; and
  - (iv) All bio-retention, rain garden and wildflower plantings located in the drainage retention easements located within the Plat and any plats added to the Association in the future; and
  - (v) All ponds and water detention basins and any fowl that habitat thereon located within the Plat and any plats added to the Association in the future, if any; and
  - (vi) Those "No Mow Zones" located within the Plat (if any) and any plats added to the Association in the future, whether or not fully or partially located upon any Lot or Common Area; and
  - (vii) Mailbox cluster units, if any.
3. "Board of Directors" means the Board of Directors of the Association.
4. "Common Area" means any real property within the Plat and any plats added to the Association in the future, to which the Association holds title, together with any improvements thereon, for the common use, enjoyment and benefit of the Owners.
5. "Member" means those persons entitled to membership in the Association as provided in the Declaration.
6. "Articles of Incorporation" means the Articles of Incorporation for the Association, which are attached as Exhibit "A" to this Declaration.
7. "Bylaws" means the governing Bylaws for the Association, which are attached to this Declaration as Exhibit "B".

**B. MEMBERSHIP AND VOTING.**

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

2. **Voting.** Subject to provisions hereof, the Owners of a Lot shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be

Members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

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

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

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

C. **COVENANT FOR MAINTENANCE ASSESSMENTS.**

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

2. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners within the Plat; for improvement, maintenance, repair, replacement, removal, and demolition of the Association Responsibility Elements; for payment of insurance, utility expenses, salaries, and real estate taxes and assessments associated with the Association, the Association Responsibility Elements and the Common Area; and for other purposes specifically provided herein.

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

4. **Reserve Fund.** A portion of such annual assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair, replacement, removal and demolition of the Association Responsibility Elements and any capital improvement that the Association is required to maintain. Notwithstanding the foregoing, Declarant may use any reserve funds, if established, to defray operating costs as it deems appropriate.

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 a capital improvement that the Association is required to maintain 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.

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. 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.

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.

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

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

10. **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.

D. **MAINTENANCE BY ASSOCIATION, COMMON AREA AND INSURANCE.**

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

2. **Maintenance of Common 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, its successors and assigns that it shall convey to the Association the fee title to the Common Area free and clear of all mechanic's liens or any liens or encumbrances whatsoever, except covenants, easements, conditions and restrictions whether or not of record or created by this Declaration or granted to any public authority.

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

4. **Maintenance of No Mow Zones.** The Association shall maintain the "No Mow Zones" (if any) in a manner consistent with the zones being planned and used for drainage ways, wetlands and other uses consistent with providing the proper drainage for the Plat and surrounding areas.

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

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

## **XXV. ADDITION OF PROPERTY.**

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

2. **Subjecting Additional Land to Declaration.** Declarant shall have the irrevocable right to subject additional land to the terms of this Declaration at any time in the future without the consent of the Association. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration and Owners of Lots within the additional land shall automatically become Members of the Association in the same fashion as described in this Declaration and shall be subject to the same

applicable terms, conditions, duties and assessments as described in this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the Recorder of **Dallas** County, Iowa. No approval of the Association or any other person shall be necessary.

**XXVI. ENFORCEMENT OF COVENANTS.**

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

**XXVII. AMENDMENTS OF COVENANTS.**

This Declaration may be amended from time to time with the approval of the Owners. Such approval shall be given by the affirmative vote of not less than two-thirds (2/3) of the Owners. The Owner of each Lot (or the joint Owners of a single Lot in the aggregate) shall be entitled to cast one vote on account of each Lot owned. Notwithstanding the foregoing, so long as the Declarant still owns at least a Lot or a portion of a Lot, it may make amendments or modifications to this Declaration without the consent of any other Owners or other party. Such amendments or modifications by the Declarant shall be effective the date the amendment or modification has been filed with the County Recorder.

**XXVIII. PERIOD OF COVENANTS.**

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

**XXIX. ENFORCEMENT AND WAIVER.**

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

- D. This Declaration may be assigned by the Declarant to a successor in interest by written instrument executed by both parties and filed with the County Recorder.

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

**ATI DAYBREAK, LLC,**  
an Iowa limited liability company

By: \_\_\_\_\_

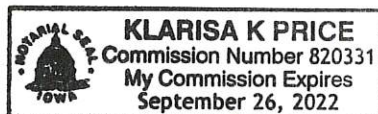
Bradly Stokesbary, Manager

STATE OF IOWA, COUNTY OF POLK:

This instrument was acknowledged before me on December 10, 2020, by Bradly Stokesbary, as Manager of ATI Daybreak, LLC.

By: \_\_\_\_\_

Notary Public



**Exhibit "A"**

**Articles of Incorporation  
for  
Daybreak Plat 3 Owners Association**

**Exhibit "B"**

**Bylaws  
for  
Daybreak Plat 3 Owners Association**