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Prepared by & Return to: Courtney I. Schultz, Hogan Law Office, 3101 Ingersoll Ave., Suite 102, Des Moines, IA 50312 (515) 279-9059

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

**THIS DECLARATION** is dated and made this 5th day of August, 2016 by **TCB INVESTMENTS, LLC**, an Iowa limited liability company (the "Declarant").

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

Lots 1 - 65 in FOX CREEK ESTATES PLAT 7, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa.

**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" shall mean and refer to the real property described as Lots 1 - 65 in FOX CREEK ESTATES PLAT 7, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa.
- B. "Declarant" shall mean and refer to TCB Investments, LLC, an Iowa limited liability company, its successors or assigns.
- C. "Lot" shall mean and refer to an individual parcel of land within the Plat upon which a dwelling may be constructed.
- D. "Building Lot" shall mean and refer to one or more Lots, or one or more Lots and the portion or portions of adjacent platted Lots in the Plat, used for the construction of one dwelling as herein permitted.

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

**II. DESIGNATION OF USE.**

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

**III. BUILDING TYPES.**

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

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

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

- A. One and one-half story, two story, split-level, and split foyer dwellings must have a finished area of not less than 1,800 square feet; ranch or one story dwellings must have a finished area of not less than 1,600 square feet.
- B. In computing total finished area, the same shall not include any finished area that has its floor below the exterior grade.
- C. In the computation of floor area, the same shall not include any porches, breezeways, or attached or built-in garages.
- D. All dwellings 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. No vinyl siding shall be permitted.
- E. All exterior painted portions of any dwelling, garage or Outbuilding located on any Lot shall be finished with earth tone colors approved in writing by Declarant. Prior to commencement of painting of the exterior of any dwelling, a sampling of the approved exterior color(s) chosen by the owner shall be applied to the dwelling to be viewed by Declarant for final color approval. All exterior painted portions of dwellings that are

repainted shall be repainted in one of such earth tone colors approved in writing by Declarant.

- F. All dwellings must be constructed using a minimum of twenty-five percent (25%) brick or stone on the front elevation of the dwelling.
- G. All roof material shall be CertainTeed brand in earth tone colors or shingle of equal color, quality and appearance thereto.
- H. All buildings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.

No building or structure, nor any addition or alteration thereof, shall be constructed or substantially altered on any Building Lot unless and until a design plan and a site plan (collectively the "Plans") have been submitted to and approved by Declarant. The Plans shall contain details of design, color scheme, elevation, site grade, landscaping, fencing, roofing, sidewalks, driveways and other similar matters. The Plans shall also state the type of construction, including external details and materials. Declarant shall, within thirty (30) days from the date of submittal of the Plans, deliver to the Owner written approval of, rejection of or required changes to the Plans. The intent of this provision is to insure that buildings and structures are developed in reasonable harmony within the Plat and that the covenants, restrictions and conditions contained herein are met in connection with such development. Declarant may terminate the requirements of this provision at any time, in its sole and absolute discretion, by recording notice of such termination.

**V. GARAGES AND DRIVEWAYS.**

All dwellings shall have a minimum of a 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.

**VI. 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.

**VII. 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. All fences shall be either wood, decorative black wrought iron, black vinyl coated chain link, or PVC vinyl. Any fence constructed on a Building Lot shall be constructed using only one of the foregoing material types so that the posts, framing and screening are of matching material and color. There shall be no mixing or combination of different fencing materials allowed. 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, shall be permitted unless it is a black vinyl coated fence. All fences shall be kept in good repair and attractive appearance. No fences

may be built or maintained on any Lot prior to commencement of construction of the single family dwelling and issuance of an occupancy permit.

**VIII. SODDING OR SEEDING.**

Within ninety (90) days of completion of a dwelling upon a Lot, all portions of the Lot shall be fully seeded or sodded. If weather conditions make this requirement impossible to meet, Declarant shall establish a reasonable period of time for compliance.

**IX. EASEMENTS.**

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

**X. NUISANCES.**

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

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

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

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

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

**XII. SIGNS.**

No sign of any kind shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except (i) street markers, traffic signs, or any signs installed by the City by other governmental entities or by the Declarant, (ii) signs which have been approved by Declarant in writing not exceeding 144 square inches in area on which there shall only be exhibited the street number and/or the name of the

resident, (iii) a customary sign (one per Building Lot) advertising a Building Lot or dwelling for sale, not exceeding 1,296 square inches, and (iv) signs which have been approved by Declarant in writing advertising the builder or for promotional or marketing purposes. In the event that any signs other than those described above shall be placed or exposed to view on any Lot, the agents of the Declarant are hereby given the right to enter upon such Lot and remove such signs.

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

**XIII. TRASH RECEPTACLES.**

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

**XIV. UTILITIES.**

All utility connection facilities and services shall be underground.

**XV. TOWERS AND ANTENNAS.**

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

**XVI. MAINTENANCE.**

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

**XVII. CERTAIN ANIMALS PROHIBITED.**

No animals, livestock, pigs, snakes 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 two (2) dogs and/or cats be kept at any one Building Lot at any one time. Dogs must be either kept in the dwelling or in a shelter aesthetically compatible with the dwelling and surrounding areas, and dog runs, if any, must be located at the rear of the house or garage and extend toward the rear of the Lot from that portion of the house or garage which is closest to the rear Lot line. All pets must be leashed and under the control of its owner if not tied up or kept within a fenced yard or dog run.

**XVIII. ACCESSORY STRUCTURES.**

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.

**XIX. SURFACE WATER.**

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

**XX. MAILBOXES.**

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

**XXI. SECURITY LIGHTING.**

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

**XXII. ENFORCEMENT OF COVENANTS.**

This Declaration shall be deemed to run with the land, and the Declarant 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 or Owner prevails in any such action.

**XXIII. AMENDMENTS OF COVENANTS.**

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

**XXIV. PERIOD OF COVENANTS.**

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

**XXV. ENFORCEMENT AND WAIVER.**

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

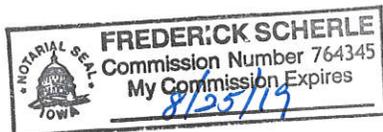
**IN WITNESS WHEREOF**, this Declaration of Residential Covenants, Conditions and Restrictions, was made the date first written above by the Declarant.

**TCB INVESTMENTS, LLC,**  
an Iowa limited liability company

By:   
William B. Spencer, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on August 5<sup>th</sup>, 2016, by William B. Spencer, Manager of TCB Investments, LLC.



By:   
Notary Public

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Prepared by & Return to: Timothy C. Hogan, Hogan Law Office, 3101 Ingersoll Ave, Suite 103, Des Moines IA 50312 (515) 279-9059

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

**THIS AMENDMENT** is made this 5th day of August, 2016, by FOX CREEK WAUKEE, LLC, an Iowa limited liability company, successor Declarant pursuant to that certain Disclaimer of Interest and Assignment of Rights recorded November 23, 2015 in Book 2015 at Page 18885 in the Office of the Recorder of Dallas County, Iowa, of the Declaration of Covenants, Conditions and Restrictions for Fox Creek Estates dated February 21, 2013, and recorded April 9, 2013, in Book 2013 at Page 6500, as amended from time to time (collectively the "Declaration") and by TCB INVESTMENTS, LLC, an Iowa limited liability company ("TCB"), owner and developer of the Additional Land hereinafter described.

**WHEREAS**, the following portions of the Benefited Property have been submitted to the terms of the Declaration:

Lots 1 – 25 in FOX CREEK ESTATES PLAT 3, an Official Plat in Waukee, Dallas County, Iowa; and

Lots 1 – 24 in FOX CREEK ESTATES PLAT 4, an Official Plat in Waukee, Dallas County, Iowa; and

Lots 1 – 74 in FOX CREEK ESTATES PLAT 5, an Official Plat in Waukee, Dallas County, Iowa; and

Lots 1 - 50 in CORRECTED FOX CREEK ESTATES PLAT 6, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa; and

Lot 1 in WAUKEE ELEMENTARY NO. 8 PLAT 1, an Official Plat in Waukee, Dallas County, Iowa.

**WHEREAS**, the following Common Area has been submitted to the terms of the Declaration for storm water management detention and facilities now managed by the Fox Creek Estates Storm Water Maintenance Association (the "Association") in compliance with the Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement for Fox Creek Estates entered into with the City of Waukee, Iowa (the "City"), on February 21, 2013 and recorded April 9, 2013 in Book 2013 at Page 6514, and the Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement for Fox Creek Estates entered into with the City on November 4, 2015 and recorded November 23, 2015 in Book 2015 at Page 18894:

Outlot Z in CORRECTED FOX CREEK ESTATES PLAT 6, an Official Plat in Waukee, Dallas County, Iowa; and

Outlot Y in CORRECTED FOX CREEK ESTATES PLAT 6, an Official Plat in Waukee, Dallas County, Iowa.

**WHEREAS**, TCB is now the owner of that portion of the Benefited Property described as follows (the "Additional Land"):

Lots 1 - 65 and Outlot Z in FOX CREEK ESTATES PLAT 7, an Official Plat in Waukee, Dallas County, Iowa.

**WHEREAS**, the Declaration grants to Declarant the right to subject additional portions of the Benefited Property to the terms of the Declaration as Additional Land and the right to convey additional Common Area to the Association without approval or consent of the Association or any other party.

**WHEREAS**, Declarant and TCB now wish to add the Additional Land to the Declaration with Common Area for storm water detention and facilities to be managed by the Association in compliance with the Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement for Fox Creek Estates entered into between TCB and the City on August 5, 2016 (the "Management Facility Agreement").

**NOW, THEREFORE**, pursuant to the authority described in the Declaration, Declarant hereby declares that by the filing of this Amendment the Additional Land is annexed and submitted to the Declaration, which real estate shall be subject to all of the terms and conditions of the Declaration, and the Owners of Lots within the Additional Land shall automatically become members of the Association in the same manner as described in the Declaration and are hereby subjected to the same terms, conditions, duties and assessments as described in the Declaration.

Further, that portion of the Additional Land legally described as follows:

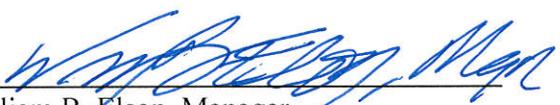
Outlot Z in FOX CREEK ESTATES PLAT 7, an Official Plat in Waukee, Dallas County, Iowa,

shall be conveyed by TCB to the Association as Common Area. The Association shall hold and maintain all Common Area and the storm water detention and facilities located thereon pursuant to the Declaration and in compliance with the Management Facility Agreement.

Except as expressly amended hereby, all of the terms and conditions of the Declaration shall continue in full force and effect and are hereby ratified and confirmed.

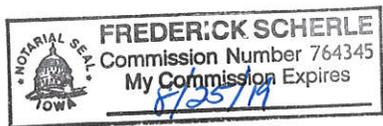
**IN WITNESS WHEREOF**, the undersigned have executed this Amendment as of the date and year first above written.

**FOX CREEK WAUKEE, LLC,**  
an Iowa limited liability company

By:   
William B. Elson, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on August 5<sup>th</sup>, 2016, by William B. Elson, Manager of Fox Creek Waukee, LLC.



By:   
Notary Public

**TCB INVESTMENTS, LLC,**  
an Iowa limited liability company

By:   
William B. Spencer, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on August 5<sup>th</sup>, 2016, by William B. Spencer, Manager of TCB Investments, LLC.



By:   
Notary Public