

DECLARATION OF RESIDENTIAL  
COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made this 4<sup>th</sup> day of October, 2010, by the Declarant, JNB FAMILY WAUKEE, L.P., an Iowa limited partnership.

WHEREAS, Declarant is the Owner of certain real property located in the City of Waukee, the County of Dallas, in the State of Iowa, which is legally described as:

Lot 2 in Williams Pointe Plat 12, an Official Plat, located in Waukee, Iowa.

WHEREAS, said property is referred to herein as the "Waukee Family Townhomes Property"; and

WHEREAS, Declarant is desirous of protecting the value and desirability of the Waukee Family Townhomes Property.

NOW, THEREFORE, Declarant hereby declares that the Waukee Family Townhomes Property shall be held, sold and conveyed subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Waukee Family Townhomes Property and which 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. "Waukee Family Townhomes Property" shall mean and refer to Lots 1 through 91, inclusive, in Waukee Family Townhomes, 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 JNB Family Waukee, L.P..
- C. "Lot" shall mean and refer to each and any individual parcel of land within the Waukee Family Townhomes Property.
- D. "Owner" shall mean and refer to the owner of record (whether one or more persons or entities) of the legal or equitable title to any Lot.
- E. "Outbuilding" shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed or garden house.

II        RESIDENTIAL USE

All Lots in the Waukee Family Townhomes Property shall be 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 (i) for the leasing of residential dwellings on the Units by

Declarant or (ii) those activities permitted under the terms of the provisions of the zoning ordinance of the City of Waukee applicable to Waukee Family Townhomes Property.

### III BUILDING TYPES

Except as specified herein, no building or other structure shall be constructed, altered, or maintained on any Lot, other than duplex dwellings. Notwithstanding the foregoing, the Declarant shall be permitted to construct a community clubhouse on one Lot.

### IV BUILDING AREA

No dwelling shall be constructed on any Lot unless the design and location is in reasonable harmony with existing structures and unless it meets the following minimum square feet of living area requirements.

- A. All dwellings shall have a finished floor area of not less than 1400 square feet.
- B. In computing total finished area, zero percent (0%) of a finished area which has its floor below the exterior grade shall be included in the total finished area requirements.
- C. In the computation of floor area, the same shall not include any porches, breezeways, or attached or built-in garages.

No dwelling structure of any kind may be moved onto any Lot. All exterior painted portions of new dwellings constructed on any Lot shall be painted with one of the colors designated in writing by Declarant as being an acceptable exterior color. All exterior painted portions of dwellings which are re-painted shall be re-painted in one of said colors.

### V GARAGES AND DRIVEWAYS

All dwellings shall have a minimum of a two car attached garage. All dwellings shall have a concrete driveway not less than 10 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, boat, trailer, tent, shack, garage, unfinished dwelling basement or Outbuilding shall be used at any time as a dwelling. No truck with a gross vehicle weight greater than forty-five hundred pounds and no camper, motor home, boat, jet ski, snowmobile, trailer, mechanical equipment or similar property may be parked or maintained on any Lot (except inside a garage) or on the public street adjacent to any Lot, other than on a temporary basis; provided that this restriction shall not apply to what are customarily considered sport utility vehicles, passenger vans or "conversion vans" or 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 twenty-one (21) days per year. At no time shall an automobile, motorcycle, truck, camper, motor home, other vehicle, boat, jet ski, snowmobile, trailer, mechanical equipment or similar property be disassembled repaired or serviced on any Lot, except inside a garage or

dwelling. No automobile, motorcycle, truck, camper, motor home, other vehicle, boat, jet ski, snowmobile, trailer, mechanical equipment or similar property may be at any time parked or maintained on the yard of any Lot.

#### VIII EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Official Plat of Waukee Family Townhomes Property. 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 area 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 said easement areas (except customary and traditional 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 easement areas. The Owner and/or occupant of each Lot, jointly and severally, shall at the expense of such Owner and/or occupant preserve and maintain any berm and/or swale constructed for drainage purposes to accomplish the purposes for which it was created.

#### IX 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 what a reasonable person would consider to be a genuine annoyance or a genuine nuisance, either temporarily or permanently.

#### X SIGNS

From and after the sale of a Lot by the Declarant, 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 of Waukee, by other government 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, and (iii) a customary and traditional sign (one per Lot) advertising a Lot or dwelling for sale, not exceeding 1,296 square inches. 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 said signs.

#### XI TRASH RECEPTACLES

No trash receptacles, recyclable containers or garbage cans shall be permitted to be placed on a Lot outside a dwelling or garage other than on the evening before or day of a scheduled garbage pickup. Such unscreened trash or recyclable containers must be returned to the screened area or inside a dwelling, garage or Outbuilding within twelve (12) hours following said scheduled pick up of such trash.

#### XII UTILITIES

All utility connection facilities and services shall be underground.

### XIII ANTENNAS

No exterior towers or antennas of any kind shall be constructed, modified, or permitted on any Lot, except as herein specifically permitted. Customary television or radio antennas not exceeding five (5) feet in height shall be permitted if attached directly to either the dwelling or the garage. A satellite dish (or similar structure) with a diameter of less than nineteen inches (19") shall be permitted to be placed elsewhere on a Lot, but only if it is totally hidden from view by a customary and traditional screen of suitable height (or otherwise totally hidden from view) from all other areas within the Waukee Family Townhomes Property and streets adjoining the Waukee Family Townhomes Property.

### XIV MAINTENANCE

The Owner and/or occupant of each Lot shall jointly and severally be responsible to keep the Lot free of trash, weeds and debris and to keep the lawn and landscaping well maintained and healthy. The Owner and/or occupant of each Lot shall jointly and severally be responsible to maintain the exterior of any dwelling, driveway, fence, screening and all other improvements.

### XV 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 dogs and/or cats be kept at any one Lot at any one time. Dogs must be either kept in the dwelling or kept in a shelter aesthetically compatible with the dwelling and surrounding areas, and dog runs, if any, shall be totally hidden from view by a customary and traditional screen of suitable height (or otherwise totally hidden from view) from all other areas within Waukee Family Townhomes Property and street adjoining the Waukee Family Townhomes Property. No dog may be kept outside the dwelling for more than one (1) hour per day, if it barks in such a manner (or barks to the extent) that a reasonable person would consider it to be a genuine annoyance or genuine nuisance.

### XVI ACCESSORY STRUCTURES

Each Lot may have customary and traditional accessory structures such as Outbuildings (tool shed, garden house, etc.), swimming pool, tennis court and the like. Any trash receptacle or Outbuilding shall be properly screened by a private fence and/or shrubbery. Swimming pools, tennis courts, Outbuildings and other accessory structures and improvements shall not extend farther than the front line of the residential dwelling extended to the side lot lines and shall not be located within twenty (20) feet of any side or rear lot line, as established by the zoning ordinance of the City of Waukee (or the recorded Official Plat of Waukee Family Townhomes, whichever is the more restrictive).

### XVII SURFACE WATER

The topography of Waukee Family Townhomes Property is such that surface water may flow from certain Lots onto other Lots. In regard to all matters concerning surface water, each Lot shall be subject to and benefited by such easements as may exist for the flowage of surface water under the law 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 law.

#### XVIII ENFORCEMENT OF COVENANTS

This Declaration of Residential Covenants, Conditions and Restrictions shall be deemed to run with the land, and the Declarant and/or the Owner of any Lot may bring an action in any court of competent jurisdiction to enforce this Declaration of Residential Covenants, Conditions and Restrictions and enjoin its violation or for damages for the breach thereof, or for any remedy or combination of remedies recognized at law or in equity.

#### XIX OBLIGATIONS OF OWNERS AND PROVISION FOR LIEN TO COMPEL ENFORCEMENT

Owners shall be responsible for assuring compliance with these covenants by the occupants of the Waukee Family Townhomes Property. Owners shall require, as a written term and condition in its lease(s), that tenants comply with the requirements of this Declaration. Within 7 days of notification by the City of Waukee in writing, by ordinary mail to the address of the Owner as identified on the most recent Property Tax Statement on a property which the City deems to be noncompliant with a requirement hereunder, Owner shall correct said violation. If the Owner or the occupant cannot correct said violation within 7 days, Owner shall provide a notice to cure to the occupant of such property in accordance with the Uniform Residential Landlord and Tenant law of this state, as amended from time to time, notifying any such tenant that they are violating the lease by failing to comply with the lease for violating this Declaration, and the particulars and other information required by law, and terminating said lease in the event the violation is not remedied within the time prescribed by law for such notices. If the occupant fails to cure said violation, Owner shall within a reasonable time proceed to complete the termination of the tenancy and commence a forcible entry and detainer action and secure the removal of the tenant and their property, and upon securing possession of the property to correct the violation.

Owner shall communicate with the City its efforts in complying with the foregoing paragraph. In the event that Owner fails to correct the violation of these covenants after notification by the City as prescribed herein, Owner shall be responsible to pay unto the City the sum of \$100.00 per day that the violation is allowed to exist commencing 60 days following the date of the initial notice sent to Owner by the City in accordance with the preceding paragraph. If the violation cannot be cured within said 60 days, Owner shall have such further time as may be reasonably necessary to cure the violation provided the Owner is diligently proceeding to cure the same, during which time Owner shall not be subject to any fine or fee by the City. Said obligation shall constitute a lien on the property upon the recording by the City of a notice of lien filed by the City with the Dallas County Recorder with such notice being of intention to file a lien given to the Owner prior to filing the same.

## XX MAINTENANCE

The Owner of each Lot shall furnish and be responsible for, at the Owner's own expense, all maintenance and repairs of the Owner's Lot and all structures, improvements, and equipment located thereon including decorating and replacements within the unit on each Lot, the heating and air conditioning systems and any partitions and interior walls appurtenant thereto. The Owner shall be responsible for the maintenance, repair and replacement of all windows in the Owner's unit, the doors leading into the unit, all electrical fixtures located on the exterior of the unit, and any and all other maintenance, repair, and replacements of the improvements, including, decks, patios and stoops, including snow removal therefrom, shrubs, flowers, trees, plantings, gardens, and other landscaping, on the Owner's Lot unless otherwise provided for herein. The Owner shall also be responsible for the maintenance, repair and replacement of all electrical wiring from the main electrical box to the Owner's unit. The Owner shall be responsible for maintaining electrical light fixtures of the unit, including replacement of light bulbs.

The Owner of each Lot shall be responsible for the maintenance, including snow removal, repair and repaving of all driveways and for the maintenance and repair of any pedestrian walkways, sidewalks or stoops located at the entrance of any unit, constructed or to be constructed within the Waukee Family Townhomes Property by the Declarant. Driveways shall be maintained at all times in such manner as to provide ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street or highway.

Any repair or replacement of an exterior structure, improvement or equipment (including, without limitation, electrical fixtures) shall match the original item that it repairs or replaces. All exterior structures, improvements and equipment (including, without limitation, decks and fences) shall be constructed in accordance with local ordinances and building codes.

## XXI AMENDMENTS OF COVENANTS

This Declaration of Residential Covenants, Conditions and Restrictions may be amended from time to time with the approval by the affirmative vote of not less than two-thirds (2/3) of the Owners, subject to however to review and approval, in writing, of any such action by the City of Waukee, which approval shall not be unreasonably withheld. The Owners 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 twelve (12) months following the date on which the Declarant has sold all of the Lots, it may make amendments or modifications to this Declaration of Residential Covenants, Conditions and Restrictions without the consent of any other Owners, subject to the review and approval, in writing, by the City of Waukee, which approval shall not be unreasonably withheld. Such amendments or modifications by the Declarant shall be effective only after all other Owners are provided with a copy of the amendment or modification and the amendment or modification has been filed with the Dallas County Recorder.

## XXII PERIOD OF COVENANTS

This Declaration of Covenants, Conditions and Restrictions shall continue and remain in full

force and effect at all times as to the Waukee Family Townhomes Property and as to the Owners of any Lot, regardless of how title was acquired, until the 31<sup>st</sup> day of December, 2035, on which date this Declaration of Covenants, Conditions and Restrictions shall automatically be extended for one additional period of twenty (20) years, unless on or before the end of the initial period, the Owners of not less the fifty (50%) percent of the Lots, with the consent of the City by written instrument duly recorded, declare a termination of same.

XXIII 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. Wherever there is a conflict between this Declaration and the zoning ordinance of the City of Waukee, the more restrictive provision shall be binding.

*(the signature of the Declarant appears on the following page)*

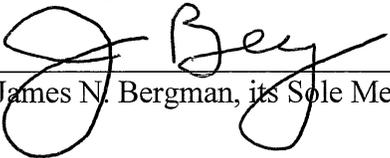
THIS DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS, was made the date first written above by the Declarant.

DECLARANT:

JNB FAMILY WAUKEE, L.P., an Iowa limited partnership

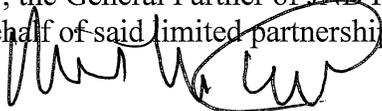
By Family Waukee, LLC, an Iowa limited liability company, its general partner

By Iceberg Development Group, LLC, an Illinois limited liability company, its sole member

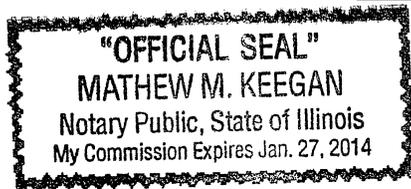
By   
James N. Bergman, its Sole Member

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF LEE         )

This Declaration of Residential Covenants, Conditions and Restrictions was acknowledged before me this 4<sup>th</sup> day of October, 2010, by James N. Bergman as Sole Member of Iceberg Development Group, LLC, an Illinois limited liability company, the Sole Member of Family Waukee, LLC, an Iowa limited liability company, the General Partner of JNB Family Waukee, L.P., an Iowa limited partnership, for and on behalf of said limited partnership.



Notary Public



**CONSENT BY LENDER**

Valley Bank, which is the holder of (i) a first mortgage dated as September 29, 2010, and recorded in the Office of the Recorder of Deeds of Dallas County, Iowa on September 30, 2010, in Book 2010, Page 13000, encumbering the Waukee Family Townhomes Proeprty, hereby consents to the execution and recording of this Declaration and agrees that its lien shall be subject to the provisions of such this Declaration.

IN WITNESS WHEREOF, the undersigned has caused this Consent to be executed on October 4<sup>th</sup>, 2010.

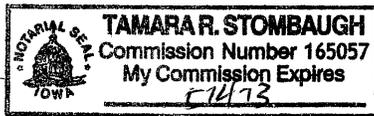
VALLEY BANK

By: [Signature]  
Its: VP Credit Admin

STATE OF IOWA     )  
                                  ) SS  
COUNTY OF Scott )

I, the undersigned, a Notary Public in and for said County, and State, do hereby certify that Susan E. McLaughlin the VP Credit Admin of Valley Bank (the "Mortgagee"), appeared before me this day in person and acknowledged that they signed, sealed and delivered the within instrument as their free and voluntary act, and as the free and voluntary act of the Mortgagee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4<sup>th</sup> day of October, 2010.



[Signature]  
Notary Public