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Return to: Happe Homes, L.L.P., Ankeny, IA

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR MICHAEL'S LANDING PLAT 3**

COMES NOW, **KH Development LLC**, an Iowa Limited Partnership (“Declarant”) as developer of MICHAEL'S LANDING PLAT 3 and, in support of this DECLARATION, states and provides as follows:

RECITALS

WHEREAS, Declarant desires to establish and place certain covenants, conditions and restrictions and to reserve certain easements, on all lots within the following described real property (the “Property”):

Lots 1 through 49, MICHAEL'S LANDING PLAT 3, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa.

WHEREAS, Declarant intends for Lots to be developed to accommodate single-family residences thereon.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, uses, limitation, easements and obligations, all of which are declared to be for the purpose of protecting the value and desirability of the Property and which shall run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person (or their grantees, successors, heirs, executors, administrators, devisees and assigns) owning an interest in the Property, or the improvements and appurtenances thereto.

ARTICLE I DEFINITIONS

Section 1. “Declarant” shall mean and refer to **KH Development LLC.**, an Iowa Limited Partnership, its successors and assigns.

Section 2. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Property is subject.

Section 3. “Lot” shall mean and refer to Lots 1 through 49 shown upon the recorded Plat of the Property.

Section 4. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of an undivided fee simple interest to any Lot which is a part of Lots 1 through 49, MICHAEL’S LANDING PLAT 3, including contract sellers and vendees (deemed Co-owners), but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the Property by provision or operation of law.

Section 5. “Plural and Gender”. Whenever the context so permits or requires, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

Section 6. “Property” shall mean and refer to that certain real property described in the Recitals above, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 7. Declarant shall have full control of covenants for purposes of amendments and changes until 100% of the lots are conveyed.

ARTICLE II COVENANTS FOR LOTS 1 THROUGH 49, MICHAEL’S LANDING PLAT 3 (SINGLE FAMILY RESIDENCES)

The following Covenants shall pertain only to Lots 1 through 14 of MICHAEL’S LANDING PLAT 3, an Official Plat, now included in and forming a part of the City of West Des Moines, Iowa.

Section 1. Single Family Residences. Lots 1 through 49 of MICHAEL’S LANDING PLAT 3, shall be known, described and used solely as single family residential lots as permitted by the City of West Des Moines (“City”).

Section 2. No Temporary Structures. No trailer, basement, tent, shack, mobile home, motor home, garage, barn or other outbuilding shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted at any time.

Section 3. Parking or Storing. No boat, trailer, camper, motor home, mobile home, truck, or bus shall be parked or stored for more than one (1) week on any lot unless completely enclosed by a permanent structure permitted under the existing City code at the time of erection. No automotive vehicle not bearing current registration shall be parked at or on any lot.

Section 4. Fences and Hedges. No fences, walls, hedges or barriers shall be permitted on any lot or property line within the Plat except as follows:

- a. Walls, fences, or hedges shall be permitted only along the rear property lines and side property lines behind the front yard setback lines but they shall not exceed six (6) feet in height.
- b. 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 a chain link fence around a dog run, shall be permitted unless it is a **black vinyl clad fence or simulated black wrought iron**. All fences shall be kept in good repair and attractive appearance.

Section 5. Screening. Any dog run, trash receptacle, tool shed or other out structure of like nature, shall be property screened by **the owners home and out of the view of the neighbors and** shall meet the requirements of Section 4, above.

Section 6. Trees. A minimum of two (2) trees shall be required to be installed on each lot. The trees shall have a minimum of two-inch (2") trunk diameter measured two feet (2') vertically from the ground level and have a minimum spread of four feet (4'). This tree requirement shall be the responsibility of the homeowner/builder on lots and shall not be the responsibility of any Developer or the Declarant.

Section 7. Measurement of Setbacks. The minimum setbacks as specified in this Declaration shall be measured from the lot line from which the setback is being measured to the nearest building or structure. No buildings or structures (except for permitted fences or mailboxes) shall be constructed or maintained within the required minimum setback area. The definition of the terms "front yard," "side yard," "rear yard," "building," "structure," or other similar term relating to setbacks shall be the same as that definition contained in the City's zoning ordinance now or in the future.

Section 8. No Noxious Activities. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 9. Animals and Livestock. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other small commonly accepted household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes and are kept in strict accord with applicable leash laws.

Section 10. Mechanical Repair Work. No automotive, boat or other mechanical repair work may be performed at or on any lot and all hobby type activity of a similar nature shall be confined to the interior of buildings on the lot. No bulky or unsightly piece of machinery shall be kept on any lot at any time.

Section 11. Maintenance of Improvements. All improvements erected on said lots shall be maintained in good repair and appearance. The lots shall be kept in good appearance, free from weeds and rubbish.

Section 12. Business or Commercial Activity. No occupation, business or commercial activity shall be conducted on any lot, except as may be provided by the City's zoning ordinances. No commercial vehicles may be regularly parked at or on any lot. No sign of any kind shall be displayed on any lot except a sign advertising the specific property for sale or rent, except for signs used by the developer or builder to advertise the property during construction and sales period as specified by the City's sign permit ordinances.

Section 13. Easements. Easements for installation and maintenance of sanitary sewers, storm sewers, utilities and flowage or drainage channels, if any, are reserved as shown and/or noted on the recorded plat. Within these easements, no structure, improvements, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, operation or maintenance of said sanitary sewers, storm sewers or utilities, or which may change or alter the direction of flowage or drainage channels in the easements, or which may obstruct the easement area of each lot. All authorized improvements located within these easements shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 14. Sidewalks. Public sidewalks shall be installed on all lots prior to the issuance of a Certificate of Occupancy by the City for each dwelling unit.

Section 15. Garages and Approval of Floor Plans. All single-family residences constructed shall have at minimum an attached **THREE** car garage and shall have Declarant's approval of garage and floor plans prior to construction. No modular, manufactured or prefabricated homes shall be brought on to any lot.

Section 16. Satellite Dish. No satellite dish or parabolic device used to receive television signals from satellites shall be located upon any lot unless it meets the following requirements:

- A. It shall not be mounted on a trailer or other temporary or portable device, but shall be permanently installed in a fashion acceptable to Declarant;
- B. It shall be located so that no part of the dish is in front of the home it services;
- C. It shall not exceed two (2) feet in diameter.

Section 17. Utilities. All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground.

Section 18. Garbage Cans and Equipment. Items such as garbage cans, clotheslines, lawn or garden equipment, building materials and other similar items shall be placed out of public view. Firewood shall not be stored on the front side of a house. Furthermore, any repair of motorcycles, automobiles, vehicles upon any lot shall be conducted out of public view.

Section 19. Roof Material. Roof materials shall be slate, tile, with medium to thick butt wood shingles or high quality asphalt architectural shingles with a weight rating of at least 230 pounds. All Roof material shall be CertainTeed brand in earth tone colors or shingle or equal color, quality and appearance thereto.

Section 20. Siding. The exterior of any dwelling, garage or outbuilding located on any Lot shall be finished in an earth tone conservative color design. A minimum of twenty-five percent (25%) of the front elevation of the dwelling on each Lot shall be covered with a brick, stone, stone veneer or stucco, unless otherwise approved in writing by Declarant, which brick, stone, stone veneer or stucco shall wrap around the corners of the front elevation of the dwelling. All dwellings must be constructed with a cement board siding or similar siding (commonly referred to as “Hardie Plank”, “James Hardie Siding” or “LP Smartside”), unless otherwise approved in writing by Declarant.

Section 21. Swimming Pools. Above ground swimming pools or non-permanent swimming pools are prohibited, with the exception of temporary summertime wading pools for the use of children under age 5 years, which shall be permitted.

Section 22. Sodding or Seeding. All portions of a lot not occupied by structures, walkways, driveways, parking or landscaping shall be sodded or seeded with grass within ninety (90) days after completion of the residence thereon unless weather conditions make this requirement impossible to satisfy, in which event, they shall be sodden or seeded within sixty (60) days after weather conditions reasonably permit compliance with this requirement.

Section 23. 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 or other governmental entities or by the Declarant, (ii) signs which have been approved by the Declarant in writing which in any case do not exceed 144 square inches in area on which there shall only be exhibited the street number and/or the name of the resident of the Lot, (iii) a customary sign (one per Lot) advertising a 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 granted and given the right to enter upon such Lot and remove such signs at the Lot Owner’s expense. Notwithstanding the foregoing, Declarant reserves the right to install entrance and determined by Declarant in a manner consistent with the ordinances of the City.

Section 24. Roof Pitch The pitch of the roof of all dwellings must be a minimum of 6/12, unless otherwise approved in writing by the Declarant. Notwithstanding the foregoing, Contemporary/Transitional home styles and dwellings will be allowed to have a pitch of the roof of 4/12 or 5/12, provided, however, that such dwellings also include: (i) Three foot (3') overhangs, (ii) Hip roof and (iii) two (2) or more ceiling heights incorporated into the plan with height variations of two feet (2') or more. All roof material shall be slate, tile, cedar shakes, or composition shingles. Composition shingles shall be architectural grade. Shingle colors shall be muted earth tones and be compatible with and complimentary to the exterior materials and colors of the building structures.

ARTICLE III

SPECIAL USE RESTRICTIONS

In addition to the general use restrictions and building specifications set forth in Article II above, the following specific use restrictions and building specifications shall apply to all lots:

One story dwellings must not have less than 1600 square feet of main floor finished area in the floor above the basement.

One and one-half story dwellings must not have less than 1800 square feet finished area in the floors above the basement.

Two Story dwellings on all lots must not have less than 2000 square feet of finished area in the floors above the basement.

Split Level dwellings on all lots must not have less than 1600 square feet of finished area in the floors above the basement

Computation of Square Footage Area shall not include any porches, breezeways, attached or built-in garages, however, a maximum of twenty five (25%) of the basement finished area may be included in the total square footage requirement.

Exterior Paint. 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 being acceptable exterior color. All exterior painted portions of dwellings that are repainted shall be repainted in one of such colors.

Completion. All buildings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.

Basement Elevation Requirement. 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.

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, light poles, fencing, roofing, sidewalks, driveways, pet enclosures 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.

Erosion Control.

- (a) The owner and/or person in possession 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 property, to prevent sediment migration and soil erosion from extending beyond the boundaries of their lot and the property, and, in the event it occurs, to promptly clean up all eroded sediment and to restore all affected areas to their original condition.
- (b) 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 property, including, but not limited to, becoming a transferee of the Iowa Department of Natural Resources NPDES General Permit No. 2 ("the Permit").
- (c) If Declarant or any lot or lot owner is cited for an alleged violation of any erosion control regulation, law or ordinance provision by any jurisdictional authority, which occurs after closing of any sale or conveyance of a lot for a condition on or from the lot, 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 any such citation.

ARTICLE IV

TERM OF COVENANTS; SEVERABILITY

Enforcement of Covenants.

A. Legal Action. These Covenants shall be deemed to run with and be a burden upon the land to which they apply and all improvements thereon. The owner of any lot or portion thereof to which these Covenants apply may bring an action in any court of competent jurisdiction to enforce these Covenants and enjoin their violation, mandate their compliance or to recover damages for the breach thereof or for any other remedy or combination of remedies recognized at law or in equity.

B. Delays in Enforcement. No delay or omission on the part of any owner of land to which these Covenants apply in exercising any rights, power or remedy herein allowed shall be construed as a waiver or acquiescence therein. No right, claim or action shall accrue to and no action or claim shall be brought or maintained by anyone against Declarant or any officer, employee or agent of Declarant on account of any action or inaction under these Covenants.

C. Conflict with Governmental Regulations. All property subject to these Covenants shall be also subject to any and all regulations of the City and any other governmental entities having jurisdiction, including, but not limited to, zoning ordinances, subdivision ordinances, building codes or other such regulations. Whenever there is a conflict between the provisions of these Covenants and the ordinances, statutes or regulations of the City, Dallas County, State of Iowa or the United States Government, the provision which is most restrictive shall be binding.

Term of Covenants: Severability.

A. Duration. These Covenants shall run with and bind the land, and shall inure to the benefit of and be enforceable by Declarant, its successors and assigns, or the owner or owners from time to time of any lots subject to these Covenants, their respective legal representatives, heirs, successors, and assigns, until June 1, 2035, provided, however, within such time period, these Covenants may be amended or abrogated at any time by a written document signed and acknowledged by the owners of 51% of the lots (including lots owned by Declarant), and recorded with the Dallas County Recorder. After June 1, 2035, said Covenants shall be automatically extended for successive periods of ten years on each tenth anniversary thereof, unless a written instrument, signed and acknowledged by not less than the owners of two-thirds (2/3rds) of the lots shall, prior to such anniversary date, be recorded with the Dallas County Recorder abrogating or modifying the same in whole or in part. Notwithstanding the foregoing, none of the rights and duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval.

B. Severability. In the event that any one or more of the terms or conditions of these Covenants shall be declared for any reason, by the court of competent jurisdiction, to be null and void, such judgment or decree shall in no way affect, modify, change, abrogate or nullify any of the remaining covenants, conditions, restrictions or terms not so expressly held to be void and the remaining parts of these Covenants shall remain in full force and effect.

Dated this _____ day of May, 2015.

KH Development LLC, Declarant

By _____
Jake Happe, Its Manager

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on _____ day of July, 2015, by Jake Happe, as **Manager KH Development LLC.**

Notary Public in and for said State