

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

THIS DECLARATION is made this 19 day of October, 2005, by the Declarant, KD Partners, LLC, an Iowa limited liability company.

WHEREAS, Declarant is the owner of certain real property located in the City of Indianola, Warren County, Iowa which is legally described as follows:

Lots 1 through 21 in Cavitt Creek Estates Plat 2, an
Official Plat, now included in and forming a part of
the City of Indianola, Warren County, Iowa.

WHEREAS, Declarant is desirous of establishing covenants, restrictions, easements, conditions, uses, limitations and obligations on the above-referenced property.

NOW, THEREFORE, Declarant hereby publishes and declares that the above-referenced property shall be held, sold, and conveyed subject to the following terms and conditions, all of which are for the purpose of protecting the value and desirability of the property and all of 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.

1. DEFINITIONS.

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

- A. "Cavitt Creek Estates" shall mean and refer to the real property located in the residential subdivision described above.
- B. "Declarant" shall mean KD Partners, LLC, an Iowa limited liability company and its successors and assigns.
- C. "Lot" shall mean and refer to each any individual parcel of land within Cavitt Creek Estates Plat 2 which is shown upon the recorded Official Plat of Cavitt Creek Estates Plat 2 and numbered as Lots 1 through 21, inclusive.
- 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.

2. DESIGNATION OF USE.

All Lots in Cavitt Creek Estates shall be residential lots and shall not be improved, used or

occupied for other than single family 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 provisions of the zoning ordinance of the City of Indianola, Iowa and except model homes during the construction period.

3. **BUILDING TYPES.**

No outbuilding or other building or structure shall be constructed, altered, or maintained on any Lot other than a detached, single family dwelling with a basement. No mobile home or manufactured home as defined in the Iowa Code shall be placed upon or erected on any Lot.

4. **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. Lots 1 – 5 of Cavitt Creek Estates: One story dwellings shall have finished floor area of not less than 1,200 square feet, one and one-half story dwellings shall have finished floor area of not less than 1,400 square feet, and two story dwellings shall have finished floor area of not less than 1,600 square feet.
- B. Lots 6 – 21 of Cavitt Creek Estates: One story dwellings shall have finished floor area of not less than 1,200 square feet, one and one-half story dwellings shall have finished floor area of not less than 1,300 square feet, and two story dwellings shall have finished floor area of not less than 1,400 square feet.
- C. In computing total finished area, only twenty-five percent (25%) of a finished area which has its floor below the exterior grade shall be included in the total finished area requirement.
- D. 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 or another conservative and traditional residential dwelling color.

5. **GARAGES AND DRIVEWAYS.**

All dwellings shall have at least a two car attached or detached garage. No dwelling shall be constructed, altered or maintained on any Lot unless it has a Portland concrete driveway from

a street running to the improved premises. All driveways shall be constructed of concrete.

6. **TEMPORARY STRUCTURES OR EQUIPMENT.**

No temporary building or structure shall be maintained on any Lot. All recreational vehicles shall be parked or stored in a garage. No camper, motor home, boat, trailer, tent, shack, garage, unfinished dwelling basement or Outbuilding shall be used at any time as a dwelling home. At no time shall any automobile, motorcycle, truck, mechanical equipment or similar property, camper, boat, trailer, snow mobile or other type of recreational vehicle be parked or maintained on the yard or be disassembled, repaired or serviced on any Lot, except inside a garage or dwelling.

7. **SWIMMING POOLS.**

No above-ground swimming pools or other non-permanent swimming pools shall be permitted on any Lot; only in-ground swimming pools may be constructed.

8. **TRASH RECEPTACLES.**

No trash receptacles or garbage cans shall be permitted to be placed outside a residence or garage except as necessary for regular collection.

9. **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 of Indianola, 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, and (iii) customary and traditional signs (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 Declarant and its agents may enter upon such Lot and remove said signs.

10. **UTILITIES.**

All utility connection facilities and services shall be underground. No individual water supply system or individual sewage disposal system shall be permitted on any building Lot.

11. **ANTENNAS AND SATELLITE RECEIVERS.**

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 if attached directly to either the dwelling or the garage. A satellite dish or similar structure greater in diameter 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 Cavitt Creek Estates Property and streets and other properties adjoining Cavitt Creek Estates.

12. **NUISANCES; MAINTENANCE.**

No noxious or offensive sounds, activity or odors shall be permitted upon or shall be permitted 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.

13. **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, the driveway, fence, screening and all other improvements.

14. **CERTAIN ANIMALS PROHIBITED.**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats and other household pets provided they are not kept, bred or maintained for commercial purposes. Dogs must be kept either in the dwelling or in a shelter which is aesthetically compatible with the dwelling and surrounding areas and dog runs shall be totally hidden from view by a customary and traditional screen of suitable height from all other areas of Cavitt Creek Estates and streets adjoining Cavitt Creek Estates.

15. **EASEMENTS.**

Easements for installation and maintenance of utilities and surface water drainage facilities are reserved as shown on the recorded Official Plat of Cavitt Creek Estates. The Owner or occupant of each Lot, jointly or severally, shall keep, maintain and preserve that portion of the easement area within the Lot in good repair and condition and shall neither erect nor permit erection of any building, structure, fence or other improvement of any kind within said easement areas which might interfere with the use, maintenance, replacement or inspection of any of the utility services and drainage facilities within the easement areas.

16. **SURFACE WATER.**

The topography of Cavitt Creek Estates is such that surface water may flow from certain Lots onto other Lots. In regard to all matters related to 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.

17. **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 other remedy or combination of remedies recognized at law or in equity.

18. **AMENDMENT OF COVENANTS.**

This Declaration of Residential Covenants, Conditions and Restrictions may be amended from time to time with the approval of the Owners. Said approval shall be given by the affirmative vote of not less than two-thirds (2/3) of the Owners. The Owner of each Lot 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 Conditions and Restrictions without the consent of any other Owners or any other party. 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 records of the Recorder of Warren County, Iowa.

19. **PERIOD OF COVENANTS.**

This Declaration of Covenants, Conditions and Restrictions shall continue and remain in full and effect at all times as to the property included within Cavitt Creek Estates and as to the Owners of any Lot therein, regardless of how title was acquired, until the 30th day of September, 2026, on which date this Declaration of Covenants, Conditions and Restrictions shall terminate and end and thereafter be of no further legal or equitable effect; provided, however, that 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 set forth above, the Owners of not less than fifty percent (50%) of the Lots, by written instrument duly recorded, declare termination of the same.

20. **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 Indianola, Iowa, the more restrictive provision shall be binding.

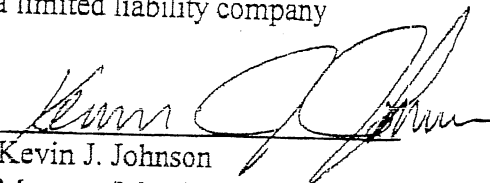
21. **DISCLAIMER**

Declarant may at anytime by written instrument filed with the Warren County Recorder, disclaim its rights and powers hereunder and thereafter it shall have no rights or responsibilities hereunder. Declarant shall have no liability in or for damages of any sort to any Owner, or any lessee or occupant of any Lot, or otherwise to any person for any exercise or failure to exercise any right (or duty or obligation, if any) of Declarant hereunder, for the making of an amendment or modification hereto by Declarant for the granting of approval or withholding of approval required or permitted under the terms of this Declaration or in any other manner arising herefrom. Provided, however, any Owner may exercise any rights such Owner may have against Declarant or otherwise seek to enforce the provisions of this Declaration against Declarant by an action in equity for specific performance or injunctive relief to which the Declarant shall be subject. The remedies of specific performance and injunctive relief shall be the only remedies against Declarant for any exercise or failure to exercise any right (or duty or obligation, if any) of Declarant hereunder, for the making of an amendment or modification hereto by Declarant, for the granting of approval or withholding of approval required or permitted under the terms of this Declaration or for other matters arising herefrom, all other remedies being expressly waived. Notwithstanding the foregoing, the rights and powers of the Declarant hereunder shall be deemed to have been disclaimed by Declarant five (5) years following the date on which Declarant conveys the last Lot it owns in Cavitt Creek Estates, and thereafter enforcement of this Declaration may be carried out exclusively by the Owners as provided herein.

<Signature Page Follows>


IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be signed as of the date first above written.

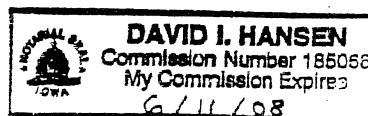
KD PARTNERS, LLC,
an Iowa limited liability company

By: 
Name: Kevin J. Johnson
Title: Manager/Member

STATE OF IOWA)
) ss
COUNTY OF POLK)

On this 19 day of October, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Kevin J. Johnson to me personally known, who being by me duly sworn, did say that he is the Manager and a Member of KD Partners, LLC, an Iowa limited liability company; that no seal has been procured by said company, and that said instrument was signed on behalf of said company by authority of its members and that the said Kevin J. Johnson, on behalf of said limited liability company acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it and by him voluntarily executed.


Notary Public in and for said State



WARREN COUNTY, IOWA
FILED FOR RECORD

07 JAN 18 PM 2:16

BOOK 2007 PAGE 555
Polly J. Glascock RECORDER

DEPUTY

Recorder's Cover Sheet

\$ 17.00
F.A.T.
chg

Preparer Information: Patrick T. Burk, Bradshaw Law Firm, 801 Grand, Suite 3700, Des Moines, IA 50309, 515-246-5816

Return Address: David I. Hansen, 12035 University Avenue, Suite 101, Clive, Iowa 50325 (515) 309-4580

Legal Description: Lots 1 through 21 in Cavitt Creek Estates Plat 2, an Official Plat, now included in and forming a part of the City of Indianola, Warren County, Iowa

Document or instrument number if applicable: Book 2005 at page 12305

Grantor/Grantee - see page 2.

**FIRST AMENDMENT TO
DECLARATION OF RESIDENTIAL
COVENANTS, CONDITIONS AND RESTRICTIONS**

This First Amendment to Declaration of Residential Covenants, Conditions and Restrictions ("First Amendment") is made this 17 day of January, 2007 by the Declarant, Cavitt Creek II, LLC, an Iowa limited liability company, as successor in interest to KD Partners, LLC, an Iowa limited liability company.

WHEREAS, Declarant published certain Declaration of Residential Covenants, Conditions and Restrictions ("Declaration") dated the 26th day of October, 2005 and recorded in Book 2005 at page 12305 of the Warren County Records subjecting to the Declaration the following real property located in the City of Indianola, Warren County, Iowa and legally described as follows:

Lots 1 through 21 in Cavitt Creek Estates Plat 2, an Official Plat, now included in and forming a part of the City of Indianola, Warren County, Iowa

WHEREAS, in accordance with paragraph 18 of the Declaration, the Declarant may make amendments and modifications to the Declaration from time to time until twelve (12) months following the date on which the Declarant has sold all Lots provided the Owners are provided a copy of the amendment or modification;

WHEREAS, Declarant continues to own one or more Lots and now desires to amend the Covenants to permit the outdoor storage of boats, recreational vehicles, automobiles and other such vehicles as specifically set forth by this First Amendment as indicated below.

NOW, THEREFORE, Declarant hereby publishes and declares as follows:

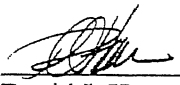
1. Paragraph 6 of the Declaration titled Temporary Structures or Equipment is amended to add the following sentence at the end of the paragraph:

"Notwithstanding anything in this paragraph to the contrary, fully functional boats, recreational vehicles, campers, motor homes, trailers, automobiles, motorcycles, trucks and other such vehicles may be stored on a Lot provided such storage occurs in the driveway and/or on a concrete pad adjacent to the driveway or garage. No inoperable vehicles or equipment are permitted to be stored in this manner nor shall any owner permit the storage of unsightly vehicles or equipment such as those with excessive rust or partially or wholly dismantled."

2. The Declaration shall only be amended as specifically set forth in this First Amendment.


CAVITT CREEK II, LLC, an Iowa limited liability company

By: KD PARTNERS, LLC, an Iowa limited liability company, its Manager

By: 
Name: David I. Hansen
Title: Vice President

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this 17 day of January, 2007, before me, a Notary Public in and for the said State, personally appeared David I. Hansen, to me personally known, who being by me duly sworn did say that that person is Vice President of KD Partners, LLC, the Manager and sole Member of Cavitt Creek II, LLC, and that said instrument was signed on behalf of the said limited liability companies by authority of its manager and the said David I. Hansen acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability companies by it voluntarily executed.


Notary Public

