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Polk County Iowa  
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File# 2021-00116780  
BK 18844 PG 225-235

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR HOPE COMMERCIAL PLAT 4**

**Preparer Information:**

Bryan M. Loya  
Wilson & Egge, P.C.  
222 N.W. Sunrise Drive  
Waukee, Iowa 50263  
(515) 369-2502

**Taxpayer Information:**

N/A

RETURN TO

**Return Document To:**

Wilson & Egge, P.C.  
222 N.W. Sunrise Drive  
Waukee, Iowa 50263

**Grantor:**

Hope K. Farms, LLC

**Grantee:**

N/A

**Legal Description:**

Lots Fourteen (14) through Fifty-six (56), inclusive, in Hope Commercial Plat 4, an Official Plat, now included in and forming a part of the City of Grimes, Polk County, Iowa.

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS FOR HOPE COMMERCIAL PLAT 4**

THIS DECLARATION is made this 27<sup>th</sup> day of October, 2021, by Hope K. Farms, LLC, an Iowa limited liability company (“Declarant”).

RECITALS:

WHEREAS, Declarant, concurrently herewith, has subdivided, developed and platted Hope Commercial Plat 4 located in the City of Grimes, Polk County, Iowa (“Hope Commercial”), and is the owner of Lots 14 through 56 (the “Lots”) in said Hope Commercial; and

WHEREAS, Declarant is desirous of establishing certain covenants, conditions, easements and restrictions for the benefit of the owners of the Lots.

NOW, THEREFORE, Declarant hereby publishes and declares that the Lots shall be held, sold and conveyed subject to the following covenants, conditions, easements and restrictions, all of which are for the purpose of enhancing and protecting the value and attractiveness, and desirability of the Lots, and all of which shall run with the land and shall be a burden upon and a benefit to, any and all parties acquiring or owning any right, title or interest in any part of the Lots, and their heirs, successors, assigns, grantees, executors, administrators and devisees.

**I. DEFINITIONS**

- A. “Association” shall mean Hope Commercial Owners Association, Inc.
- B. “City” shall mean the City of Grimes, Iowa, as each is applicable.
- C. “Common Area” shall mean those portions of the Lots that are outside of exterior walls of buildings or other structures from time to time located on the Lots, and which are either unimproved, or are improved as, without limitation, parking areas, landscaped areas, driveways, roadways, walkways, light standards, curbing, paving, entrances, exits and other similar exterior site improvements.
- D. “County” shall mean Polk County, Iowa.
- E. “Declarant” shall mean Hope K. Farms, LLC, and its successors and assigns, as to the entirety of the Lots that has not theretofore been conveyed to builders or owners, unless the context indicates otherwise.
- F. “Lot” shall mean and refer to Lots 14 through 56, inclusive, as shown on the recorded plat of Hope Commercial Plat 4.
- G. “Outlot” shall mean and refer to Outlot Z, as shown on the recorded plat of Hope Commercial Plat 4.
- H. “Owner” shall mean a person the person or persons who from time to time collectively hold the entire fee title to a Lot, including sellers under executory contracts of sale (but shall not include any person or entity who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such security instruments).

I. Words and phrases in this Declaration shall be construed as in the singular or plural number, unless the context permits only one such manner.

## II. DESIGNATION OF USE

The use of all Lots shall be limited to light-industrial, commercial, and retail use, and may be developed only with other uses of land or structures customarily incidental and subordinate to the light-industrial, commercial, and retail use as permitted by the City Zoning Ordinance, unless such uses or structures are otherwise regulated or prohibited by this Declaration.

A. No building or structure of a temporary character and no trailer, basement, tent, shack, garage or outbuilding shall be used at any time as a residential dwelling on any Lot, either temporarily or permanently.

B. 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 nuisance, either temporarily or permanently.

C. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, provided, however, that the operation of veterinary offices and hospitals, and animal boarding facilities shall be permitted as an ongoing business concern upon a commercial Lot within Hope Commercial Plat 4.

D. Any construction or earth moving on any Lot(s) (whether greater or less than one acre in size) shall be in compliance with all statutes, rules and/or ordinances relating to storm water and erosion control compliance and permitting. The Owner understands and agrees that he/she is the sole responsible permittee for the Lot(s) with respect to compliance with all terms, provisions and requirements of the NPDES Storm Water Discharge Permit No. 2, the storm water pollution prevention plan which includes the Lot(s) and any and all applicable storm water and/or erosion control statutes, rules and ordinances.

Each 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: 1) any discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the Lot(s) identified above; and/or 2) any alleged violation of any NPDES, storm water and/or erosion control statute, rule or ordinance, after the date of sale of the Lot(s).

E. No activity shall be conducted upon any Lot which are or might be unsafe or hazardous to any person or other Lot or improvement, which shall be determined by Declarant and/or the Association, in their respective sole discretion. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot, no open fire shall be lighted or permitted on any Lot and no explosive or fireworks shall be set off on any Lot.

F. No activities or uses which are contrary to the laws, rules or regulations of any governmental unit or political subdivision shall be permitted.

G. Lots 29 through 35, inclusive, and Lots 39 through 56, inclusive, shall NOT be used for any of the following uses:

- (1) the sale of (i) edible perishable products, including, but not limited to fruits, vegetables, meat and seafood; (ii) pre-packaged food and/or pre-packaged

beverages, provided, however that the same may be sold on the Property so long as the sale of such products does not exceed ten percent (10%) of the gross sales of such business; (iii) alcoholic beverages for off premises consumption; and/or (iv) prescription and/or over-the-counter pharmaceuticals; provided, however, the restrictions contained in this Section 8 shall not prohibit restaurant uses (including, without limitation, full-service, fast food, fast casual, take out, deliver, buffet and cafeteria style restaurants) or a prototypical Menards or similar home improvement center;

- (2) a grocery store, supermarket, or specialty food store (by way of example only, and not limitation: Fareway, Albertson's, Kroger, Safeway, Publix, Price Chopper, Meijer, Dillons, Giant Eagle, Schnucks, The Fresh Market, Fresh Thyme Farmer's Market, Woodman's, WinCo, Wal-Mart Express, Aldi, Lidl, Trader Joes, Whole Foods Market, 365 by Whole Foods, Campbell's Nutrition, Cub Foods, Lund's, Byerly's, Coborn's, Cash Wise, Kowalski's, Festival Foods);
- (3) a pharmacy and/or drug store (by way of example only, and not in limitation: CVS, Walgreens, Rite Aid, Medicap, Health Mart, The Medicine Shoppe);
- (4) a retail store marketed as any form of "dollar store," or derivation thereof (by way of example only, and not in limitation: Dollar General, Family Dollar, Dollar Tree, 99 Cents Only, Five Below);
- (5) a retail and/or club and/or wholesale store that sells non-food merchandise and that includes a grocery section or department (by way of example only, and not in limitation: Wal-Mart, Wal-Mart Supercenter, Target, Super Target, Costco, Sam's Club); provided, however, the restrictions contained in this Section 8 shall not prohibit a prototypical Menards, Home depot, Lowes or similar home improvement center;
- (6) a convenience store (with or without gas) and/or gasoline station, including any type of business that sells diesel fuel, ethanol fuel, bio-fuel or any other type of fuel used to power motorized vehicles designed primarily for use on public streets and highways;
- (7) a Panera Bread® restaurant (including any successor name, in the event the same is re-named from time-to-time), and/or any retail store marketed as any type of bagel shop, donut shop, and/or bakery outlet;

H. No Lot shall be used for any of the following uses:

- (1) any lockers, lock-boxes or other type of storage system that is used to receive or store merchandise from a catalog or online retailer;
- (2) manufacturing use; industrial use, warehouse, wholesale or distribution facility; coin operated laundry facility; dry cleaning plant (provided, a dry cleaning drop-

off only location is not prohibited hereby); pornographic or “triple-x” video or adult book store; flea market; off-track betting establishment.

- (3) heavy automotive body repair/vehicular repair. Light service or repair not excluded;
- (4) outdoor exercise areas/runs for domesticated animal boarding/kennels;
- (5) warehouse facilities;
- (6) mini storage/self-storage facilities; and
- (7) used car lots.

In addition, Lots 47 through 51, inclusive, shall not be used for financial institutions.

### **III. DESIGN AND CONSTRUCTION**

A. In order to preserve the general design for the development of the whole of Hope Commercial Plat 4, no structure or other improvement, or addition thereto, shall be erected upon any Lot unless the plan, design, building materials and location thereof shall have been first approved by the Declarant or such person or persons designated by the Declarant for this purpose. All such plans shall be submitted to the Declarant in writing along with an application fee determined by the Declarant. The initial application fee shall be Five Hundred and NO/100 Dollars (\$500.00), and shall be subject to change as deemed appropriate by the Declarant. Approval of such plans shall not be unreasonably withheld.

B. The review and approval of plans by Declarant shall not be a substitute for compliance with the permitting and approval requirements of the City, or other governmental authorities having jurisdiction. It is the responsibility of applicant to obtain all necessary permits and approval.

C. Approval of plans and specifications shall be based, among other things, on such written design guidelines as Declarant may publish from time to time, the adequacy of site dimensions, conformity and harmony of external design and of location with neighboring structures and sites, conformity with natural surroundings and aesthetic considerations, relation of finished grades and elevations to neighboring sites, and conformity to both the specific and general intent of the protective covenants. If, in the judgment of the Declarant the circumstances require, the Executive Committee (as hereinafter defined) may grant reasonable variances from the terms and condition of this Declaration.

D. Neither the Declarant, the Executive Committee, nor any of the members of such Executive Committee shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Owner of land affected by this Declaration by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval, or failure to approve or to disapprove, any plans and specifications.

E. All improvements shall be constructed in accordance with the site plans approved by the Declarant pursuant to this Article and Articles V and VI. The Declarant, or its designated representatives may, if the Executive Committee so elects, monitor any approved improvements for the purpose of determining that the construction of such improvements complies with any and all approved site plans.

The Executive Committee, or its designated representatives may enter upon any Lot and any improvements thereon at any reasonable time or times to inspect the progress, work status or completion of any improvement. Each Owner and such Owner's contractor shall cooperate with the Executive Committee or its designated representatives in connection with any such inspection.

F. All development and construction shall, at a minimum, adhere to the provisions of the City Zoning Ordinances, as may be amended from time to time, including but not limited to, in each of the following respects:

- (1) Minimum setback lines;
- (2) Building heights;
- (3) Minimum lot sizes;
- (4) Minimum lot widths;
- (5) Maximum lot coverage;
- (6) Maximum height of improvements;
- (7) Minimum front yard widths;
- (8) Minimum rear yard widths; and
- (9) Minimum side yard widths.

G. Upon completion of any construction upon any Lot, or any portion thereof, the Owner shall complete all landscaping in accordance with the landscaping plan as submitted to Declarant, and as shall be required pursuant to any City Ordinance or the requirements of any other applicable governmental authority, and shall complete all improvements and remove all construction materials and debris, all within sixty (60) days following the completion of construction; provided however, that the date for completion may be extended by the written approval of the Declarant if warranted due to adverse weather conditions or other causes beyond the control of the Owner. In the event said actions are not completed within the applicable time period, Declarant or the Association may, but is not obligated, to complete said actions at the expense of the Owner.

H. All building structures or improvements of any kind must be completed within twelve (12) months of Declarant conveying title to the initial Owner of a Lot.

I. No building shall be erected on any Lot nearer than the building setback lines as shown on the recorded plat.

#### **IV. MAINTENANCE OF LOTS AND SURFACE WATER**

A. The owner or person in possession of each Lot, whether vacant or improved, shall keep the same well maintained, groomed and mowed, free of uncut weeds, rubbish, garbage and debris. Damaged or dead trees and shrubbery will be trimmed out or removed. Failing this, the Owner agrees that upon receipt of written notice from the Declarant to mow or cut such vegetation, trim or remove damaged trees or shrubbery, and/or remove such debris within ten (10) days, the Owner will be subject to a combination of remedies recognized at law or equity.

B. Vegetation in conservancy easements, flowage easements, creek channels, drainage ways and/or timbered areas shall not become overgrown with weeds, but may be planted in ground-cover species appropriate to the topography and land form.

C. The topography of Hope Commercial Plat 4 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 such easements as may exist for 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 law.

## V. EXECUTIVE COMMITTEE

### A. Establishment/Function

The Declarant's Executive Committee (the "Executive Committee") is hereby established. The Executive Committee shall consist of the Manager or Managers of the Declarant or the designee(s) of such Manager or Managers. The functions of the Committee shall be to interpret and apply these Covenants, Conditions, Easements and Restrictions and to review building plans as described below in Article VI during the time that property is being developed. These Covenants, Conditions, Easements and Restrictions may also be enforced by any affected Lot Owner.

### B. Meetings, Quorum and Vote

The Executive Committee shall meet at a reasonably convenient time and place within ten (10) days after receiving the request of any interested party. One-half of the members of the Executive Committee shall constitute a quorum. A majority vote of the Executive Committee members present (assuming a quorum present) shall be sufficient for Committee action and decision.

### C. Election of Replacement Committee

If the Executive Committee should be discontinued, regarding the property, Declarant shall designate a successor entity to carry out the duties of the Executive Committee, but only with respect to the property described in this Declaration.

### D. Executive Committee Procedure

(1) Design review by the Executive Committee is intended to protect and enhance the distinctive character and natural attractiveness of the Hope Commercial Plat 4 area. All buildings, structures or appurtenances thereto, to be erected, constructed, established, altered or enlarged within the property must be reviewed and approved by the Executive Committee as described below in Article VI.

(2) The Executive Committee shall consider and approve or disapprove the materials required to be submitted pursuant to these Covenants, Conditions, Easements and Restrictions.

(3) Prior to change of any building's exterior character by remodeling or alteration, the Owner, or his or her designated agent, shall secure the written approval of the Executive Committee.

## VI. REVIEW AND APPROVAL OF PLANS

### A. Plans and Specifications to be Submitted for Approval.

(1) Final site plan documents drawn to scale outlining the following must be submitted to the Executive Committee for review and approval prior to the commencement of any construction on a Lot:

- (a) Property legal description with scale and arrow on plan showing North;
- (b) Building locations including setback dimensions;
- (c) Driveways and sidewalks;
- (d) Special features, such as fencing, lighting, underground utilities and mechanical equipment;
- (e) Contour lines or slope of draining;
- (f) Landscaping plan, submitted prior to installations;
- (g) Size, height, type and color of any sign; and
- (h) Parking areas, points of access, as well as any easements for access and means of screening; and
- (i) Any other document requested by the Executive Committee.

(2) Final building plans and specifications outlining the following must be submitted to the Executive Committee for review and approval prior to the commencement of any construction on a Lot:

- (a) Floor plans, exterior elevations and sections;
- (b) Square footage of buildings;
- (c) Exterior colors and material samples for exposed exterior materials; and
- (d) Perspective rendering or photo, if available; and
- (e) Any other item or specification requested by the Executive Committee.

## **VII. COVENANT ENFORCEMENT/GENERAL PROVISIONS**

### **A. Penalties**

In addition to the remedies described below in Paragraph B or elsewhere in this Declaration, the Declarant is hereby authorized to levy against any Lot in violation of this Declaration of Covenants, Conditions and Restrictions an assessment penalty not to exceed \$100 for each day a violation of this Declaration continues beyond thirty (30) days after notice of a violation has been given by the Declarant to the Owner of said Lot by certified mail, return receipt requested, or delivered in writing in by personal service. If the Owner of the Lot cannot be located after a diligent search or inquiry, the Declarant shall publish notice of the violation for two (2) successive weeks in a newspaper of general circulation in Polk County, Iowa. If the Owner has not fully complied with the terms of this Declaration within thirty (30) days after receiving notice, or thirty (30) days after second publication of notice, the Declarant shall have the authority to levy an assessment penalty as described herein. This assessment shall be a lien on the Lot



and shall have the same status as any other assessment levied by the Declarant. Any Lot Owner objecting to the notice of violation shall have the right within thirty (30) days of receiving notice to request a hearing before the Declarant. Assessment of the penalty shall be stayed pending a hearing and final decision by the Declarant.

B. Specific Enforcement Of Restrictions

All Owners of Lot covenant and agree, by acceptance of a deed to such Lot, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the breach of the restrictions and covenants contained in this Declaration and that this Declaration may be specifically enforced by Declarant, the City, or an adversely affected Lot Owner.

C. Attorney's Fees

In the event it shall be necessary to secure the services of an attorney to enforce the provisions of this Declaration, then the fee of such attorney, and all other costs in connection with the enforcement of this Declaration shall be the obligation of the Owner of the Lot which is the subject of such enforcement action, unless such Owner is found not to have violated any provision of this Declaration.

D. Covenants Binding and Running with The Land.

Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of Declarant and the Owners of each Lot, and their successors and assigns and all parties and persons claiming under any of them, and shall be deemed covenants that run with the land, and shall continue for the applicable periods specified in this Declaration.

It is the intent that, notwithstanding anything in the Code of Iowa to the contrary, all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be covenants running with the land for the full period specified in this Declaration without further action by either Declarant or any Owner of any Lot in Hope Commercial Plat 4. However, in the event that Section 614.24 of the Code Iowa, as the same may be amended or replaced, may require that a verified claim be filed in the Office of the Recorder for Polk County, Iowa prior to the twenty-first anniversary of the date of this Declaration or the twenty-first anniversary of the last filing of such verified claim in order to continue all or some of the covenants of this Declaration, including, but not limited to, any covenant, term, provision or restriction that is or may be considered a use restriction, reversion or right of reverter, in effect throughout the applicable periods specified in this Declaration, then:

(1) any or all of the Owners of the Lots, acting jointly or severally, shall file all verified claims necessary to keep all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration;

(2) a verified claim filed by Owner of a Lot in Hope Commercial Plat 4 shall be valid and binding upon all the then Owners of Lots in Hope Commercial Plat 4, and their successors and assigns, with the same effect as if executed by all such persons, and in order to facilitate filing of any verified claim required to so continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration in full force and effect, each Owner of a Lot is hereby irrevocably appointed the attorney-in-fact for all of the other Interested Parties for the purpose of filing any such verified claim.

E. Duration.

Any easements granted in or pursuant to this Declaration, and any other provisions of this Declaration to the extent applicable to such easements, and any other covenants, indentures, restrictions and reservations of this Declaration that are reasonably or necessarily incidental to the benefit or burden of such easement rights, including any rights of assessment or for liens for the payment of costs associated therewith, shall continue in perpetuity, unless sooner modified or terminated as provided in this Declaration.

Except as provided in the preceding paragraphs of this Article, the covenants, conditions, restrictions and easements in this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for an initial period of twenty-one years after the date they are recorded in the County Recorder's Office, unless sooner modified or terminated as provided in this Article.

F. Amendment of This Declaration.

This Declaration may be amended in writing by an instrument signed and filed of record in the Office of the Polk County, Iowa Recorder, by at least fifty-one percent (51%) of the Lot owners, if the Declarant does not own a Lot. Notwithstanding the foregoing, the Declarant retains the sole right to amend this Declaration for any reason so long as Declarant has an ownership interest in any Lot.

G. Insurance.

Throughout the term of this Declaration, each Owner shall procure and maintain general and/or comprehensive public liability and property damage insurance against claims for personal injury, death, or property damage occurring upon such Owner's Lot, with single limit coverage of not less than an aggregate of \$3,000,000.00 including umbrella coverage, if any.

H. Taxes and Assessments.

Each Owner shall timely pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Lot.

I. Development Agreement.

All economic development or similar payments made by City under a development agreement shall be the sole property of Hope Development & Realty, LLC, its successors-in-interest and assigns. Each Owner, by acceptance of a deed to any Lot or Outlot, agrees to pay all real estate taxes after closing before delinquency and to sign documents reasonably requested by Declarant to direct City payments to Hope Development & Realty, LLC. Any deed to any Lot or Outlot may further incorporate the obligations contained herein.

J. Severability/Conflict.

In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited. In the event of any conflict between the provisions of this

Declaration and any law, ordinance, code development plan, plat or any other requirement imposed by any governmental authority, the provisions of this Declaration shall prevail; provided however, that if any provision of this Declaration violates or would result in a violation of any law, ordinance, code, development plan, plat or any other requirement imposed by any governmental authority, then such provision of this Declaration shall be void and of no effect, but the remaining provisions of this Declaration shall continue in full force and effect after deletion of the repugnant provision.

K. Captions.

The captions of the articles, sections and any paragraphs, of this Declaration, or the lack thereof, are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

**ARTICLE VIII. ANNEXATION AND REMOVAL OF LAND**

A. Additional Land

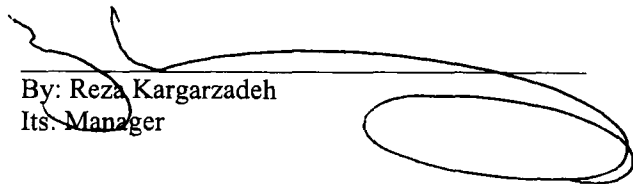
Declarant shall have the irrevocable right now, and in the future, to subject additional land to the terms of this Declaration at any time in the future without the consent or approval of any owner or other third party. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the Recorder of Polk County, Iowa.

B. Removal of Land

Declarant shall have the irrevocable right now, and in the future, to remove any portion of the property from the operation of this Declaration without the consent or approval of any owner or other third party. Declarant shall signify this removal by filing an amendment to this Declaration with the Recorder of Polk County, Iowa.

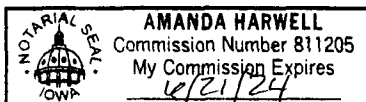
Dated this 27 day of October, 2021.

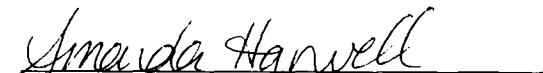
**HOPE K. FARMS, LLC, DECLARANT**

  
By: Reza Kargarzadeh  
Its. Manager

STATE OF IOWA                    )  
  ) ss:  
COUNTY OF Polk                )

This record was acknowledged before me on this 27 day of October, 2021, by Reza Kargarzadeh, Manager of Hope K. Farms, LLC.



  
Notary Public in and for the State of Iowa