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 Linn County Iowa  
 JOAN MCCALMANT RECORDER

BK **7889** PG **204-211**

*\$44.00 / 1033*

Return to: Pines at Turtle Creek LLC, 3325 Wild Rose Rd, Cedar Rapids, Iowa 52411

**Restrictive Covenants  
 of Pines at Turtle Creek 1<sup>st</sup> Addition  
 To the City of Hiawatha, Iowa**

Declaration of Conditions, Covenants, Restrictions, Grants, and Easements.

This Declaration made February 25, 2011 by Pines at Turtle Creek LLC (the "Developer") with their successors in interest.

**Recitals**

The Developer desires to subject the real estate described in Article 1 of this Declaration to the conditions, covenants, restrictions, grants, and easements set forth in this Declaration (collectively, the "Covenants"), which are for the benefit of the real estate described in Article 1 of this Declaration and each owner of the real estate described in Article 1 of this Declaration shall inure to the benefit of and pass with the real estate described in Article 1 of this Declaration, and each and every parcel.

Now, therefore, the Developer declares, covenants and agrees with and for the benefit of (i) all parties to whom the Developer has contracted to transfer or may transfer the real estate described in Article 1 of this Declaration (each a "transferee"), (ii) itself as Developer, and (iii) the respective successors of the transferees and the Developer, that the real estate described in Article 1 of this Declaration shall be subject to Covenants. The transferees, by acceptance of the conveyance of title, shall be deemed to have consented to this Declaration.

ARTICLE I

**Property Subject to this Declaration**

The real estate which is, and shall be held, transferred, sold, conveyed, and occupied subject to the Covenants is located in Linn County, Iowa, and is more particularly described as follows:

Lots Ten through Thirty-three, and Outlots B and C, of Pines of Turtle Creek 1<sup>st</sup> Addition to the City of Hiawatha, Iowa.

ARTICLE II

**General Purposes of this Declaration**

The Real Estate is subject to the Covenants to insure the tasteful and consistent development of the Real Estate; to protect each Owner and the Developer from improper use of surrounding lots that may depreciate the value of their lots; to guard against the erection of buildings improperly designed or built of unsuitable materials; to insure adequate and responsible development of the Real Estate; to encourage the erection of individually designed buildings and attractive improvements in the Real Estate with appropriate locations; to prevent haphazard and inharmonious improvements; to secure and maintain proper setbacks for streets and adequate free spaces between structures; to insure desired high standards of maintenance; to provide for an owners association

to handle maintenance of the "Common Areas" (as hereinafter defined) owned by each of the Owners within the development; and in general, to provide adequately for a residential subdivision of high quality and character.

### ARTICLE III

#### **Definitions**

- 1) Addition.** Pines at Turtle Creek 1<sup>st</sup> Addition, Hiawatha, Iowa
- 2) Basement.** A portion of building located partly underground, but having half or more than half its clear floor-to-ceiling height below the average grade of the adjoining ground at the front of the building.
- 3) Building.** Any roofed structure (including a dwelling or home) that is intended for the shelter, housing, or enclosure of any person, animal, or personal property.
- 4) Building Accessory.** A subordinate building or portion of a principal building, the use of which is incidental to the use of the principal building and customary in connection with that use.
- 5) Building Height.** The vertical distance measured from the established ground level to the highest point of a mansard roof and to the mean level of the topside of the rafters between the eaves and the ridge of a gable, hip, or gambrel roof; chimneys and ornamental architectural projection shall not be included in calculating the height.
- 6) Common Areas.** Outlots B and C as designated on the final plat of the Addition.
- 7) Dwelling.** A single-family residential building or portion of a single-family residential building but specifically excluding hotels, motels, rooming houses, nursing homes, mobile homes, or any form of camping vehicle unless zoned multi-family.
- 8) Family.** One or more persons related to each other by blood, marriage, or legal adoption, together with his or her domestic servants maintaining a common household in a dwelling as governed by the City of Hiawatha.
- 9) Garage.** An enclosed storage area with doors designed or used for storage of motor vehicles.
- 10) Lot.** A parcel of land, under common fee ownership, occupied by or intended for occupancy by one dwelling and having frontage upon a street; a "lot" may or may not coincide with a lot of record.
- 11) Lot Area.** The lot area of a horizontal plane, bounded by the vertical planes through front, side and rear lot lines.
- 12) Lot Line, Front.** The boundary of a lot, which is along an existing or dedicated street line as shown on the recorded plat. On corner lots, the Developer must approve the owner's selection of the intended front yard designation.
- 13) Lot Line, Rear.** The boundary of a lot, which is most distant from the front lot line, and is, or approximately is, parallel to the front line. If the rear lot line is less than ten feet in length or if the lot line forms a point at the rear, the rear lot line shall be deemed to be a line ten feet in length within the lot, parallel to, and at the maximum distance from the front lot line.
- 14) Lot Line, Side.** Any boundary of a lot, which is not a front or rear lot line.
- 15) Story.** The portion of a building included between the surface of any floor and the surface of the next floor above; or if there is no floor above, the space between the floor and the next ceiling above. A basement shall be counted as a story where one or more sides are a part of the exterior elevation. A cellar shall not be counted as a story.
- 16) Structure.** Anything other than a building or accessory building erected or constructed on a lot, the use requires more or less a permanent location on or in the ground. A sign or other advertising device, detached or projecting, shall be constructed to be a separate structure.

## ARTICLE IV

### **General Restrictions**

**1) Land Use and Building Type.** All lots in the Addition covered by this Declaration shall be used for private residence purposes only, and no building, except as specifically authorized elsewhere in this Declaration, shall be erected for occupancy by more than one family, and an attached or detached private garage containing no more than four, nor less than two, parking spaces for the sole use of the owners or occupants of the dwelling. An additional two or four car detached garage, in addition to the attached garage may be constructed conditioned upon such location on the lot being approved by the Developer and such location does not detract from the residence or adjacent properties. The garages may have living quarters in connection with the garages for the sole use of servants or the owner occupants, but shall not be used for rental purposes. Other accessory buildings and structures may be erected in such manner and location only as provided in this Declaration or as approved in writing by the Developer. When the construction of any building, fence, accessory building, or structure is once begun, work thereon must be prosecuted diligently and must be completed within a reasonable time (12 months from start to finish maximum construction period) including seeding and/or sodding any disturbed land areas. No building, accessory building, kennel, or structure shall be occupied during construction.

**2) Building Height.** No dwelling shall be erected, altered, or placed which is more than three stories or thirty feet in height, whichever is less. No accessory building or structure shall exceed twenty feet in height unless the Developer approves a greater height in writing or such variation is approved as a part of the approval of the original plan of the building or buildings.

**3) Dwelling—Quality and Size.** It is the intention and purpose of the covenants to assure that all dwellings shall be of high quality design, workmanship and materials approved by the Developer. All dwellings shall be constructed in accordance with the applicable building code and with more restrictive standards that may be required by the Developer. The floor area of the dwelling, exclusive of attached garages, open terraces and breezeways, shall be:

- A. For a one-story dwelling, not less than 1,400 sq ft.
- B. For a dwelling of more than one-story, not less than 1,800 sq ft.
- C. For dwellings with walkouts, the lower level finish area can account for 10% of the above sq ft.

**4) Location on Lot.** As per city zoning requirements, swimming pools and tennis courts shall require location approval by Developer and in no case shall be located closer to a side or front set back line than established for dwellings and shall be screened by shrubs or privacy fence. Lighting of such courts and pool areas shall be designed to not interfere with adjacent property owners' quiet enjoyment of their premises.

**5) Maintenance by Owners.** The owner of each lot shall be responsible for maintaining such lot free of weeds, debris, or other waste and shall be placed in sanitary containers having tight fitting lids. There shall be no open burning within the subdivision. In addition, the owners will be responsible for their share of the cost of maintaining the Common Areas, as is set forth below.

**6) Driveways.** Access driveways and other paved areas for vehicular use on a lot shall have a base of compacted gravel, crushed stone or other approved base material, and shall have a wearing surface of brick pavers, asphalt concrete or concrete.

**7) Excavations.** All settlements which occur on any lot resulting from excavations for waterlines, foundations, or other excavations shall be promptly filled and repaired by owners.

**8) Natural Drainage Ways.** Where there exists on any lot or lots a natural condition of accumulation of storm or surface water remaining over an extended period of time, the lot owner may, with written approval of the Developer, take such steps as necessary to remedy such conditions; provided, however, that no alterations or

diversions of such natural flow proposed by the lot owner will cause damage to other property, either inside or outside the confines of the Addition.

**9) Utility and Drainage Easements.** The Developer reserves all easements for utility or drainage shown on the recorded final plat of the Addition and full rights of ingress and egress for itself, its agents and employees assign over any part of the Additions for the purpose of installing and servicing the utilities for which the easements are reserved. No building, accessory building, or structure, including walls and fences, shall be erected upon any part of the property, which will interfere with the rights of ingress and egress provided in this paragraph.

**10) Home Occupations, Nuisances and Livestock.** No home occupation or profession shall be conducted in any dwelling or accessory building located in the Addition, which occupation or profession have any negative impact upon the neighbors and the development in general. "Negative impacts" shall include, (but not be limited to) parking, traffic, outside advertising, outside lighting, or any outside clutter visible from the street or neighbor's window. No noxious or offensive activity shall be carried on in the Addition, nor shall anything be done in the Addition, which may be or become an annoyance or nuisance to the neighborhood. No animals, of any kind, shall be raised, bred or kept on any lot except, that no more than three (in total) dogs, cats, or other household pets may be kept, provided they are not for any commercial purpose. No "Dog Runs" or exterior kennels for pets, portable storage, or fireplace fuel shall be placed to be visible from any front or side street. All pets must be kept on a leash unless they are locked in a kennel or similar structure. No burning of refuse shall be permitted in excess of rights granted by the City of Hiawatha. The use of any carport driveway, or parking area which may be in front of, adjacent to, or part of any lot as a parking place for recreational or commercial vehicles that leaves such vehicles exposed to adjacent property owners or the passing public is prohibited. All "commercial vehicles" (trucks, trailers, etc.) and "recreational vehicles" or articles shall be stored inside garages at all times. It shall be a violation of these Covenants to park "commercial vehicles" on public streets located within the Addition.

**11) Plant Diseases or Noxious Insects.** No plants or seeds or other things or conditions harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of the lot.

**12) Nameplates, Mailboxes, Hospitality Light Standards, Television and Radio Antennae, Towers and Fences.** There shall be no more than one nameplate on each lot. A nameplate shall be no more than 200 square inches in area and contain the name of the occupant or the name and address of the dwelling. It may be located on the door of the dwelling or the wall adjacent to the dwelling or upon the wall of an accessory building or structure or freestanding in the front or side yard. No television antennae, radio antennae, or tower shall be erected on any lot, which is a separate structure apart from the dwelling, and no television antennae, radio antennae, or tower shall extend beyond a height of 30 feet. No telephone antennae, radio antennae, or tower shall cause any electrical interference to the radio and television reception of the owners of the other lots in the Addition. No clotheslines shall be erected which are visible from the street. Flag poles are permitted provided the pole is not more than 25 feet in height, unless otherwise permitted by Developer. *Location of satellite dishes shall be approved by Developer.* The construction & style of any fences is on a case-by-case review by the Developer.

**13) Temporary Structure.** No trailer, basement of an uncompleted building, shack, barn and no temporary building or structure of any kind on a lot shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling shall be on the same lot as the dwelling, and such buildings or structures shall be removed promptly upon the completion of construction.

**14) Architectural Controls.** The purpose of architectural control is to secure an attractive, harmonious residential development having continuing appeal. No construction of building, accessory building, fence, wall, or other structure shall be commenced, nor shall any addition, change or alteration thereto be made (except interior alterations) until the construction plans and specifications, showing nature, kind, shape, height, materials, color scheme and proposed location on said lot, together with the grading plan, landscape plan and drainage plan (underground drain pipe) have been submitted and approved by Developer. Developer hereby retains in its absolute discretion the right to refuse any construction, grading, landscape, and site plans which are not suitable or compatible with the neighborhood and the intent of the paragraph. *It is the responsibility of the lot owner to install and maintain silt fences during construction process until vegetation is properly established as per City of Hiawatha ordinance.* The lot owner should not place playground equipment in drainage ways or swails which

would restrict the flow of water during heavy rains or cause ponding of water near the playground equipment. Playground equipment shall not be placed to be visible from the front street subject to Developer approval.

**15) Underground Wiring.** No above ground communication, electric or television lines or cable shall be permitted to be placed anywhere in the Addition other than within buildings or structures. It is intended that all such necessary and approved conduits and cables will be constructed, placed and maintained underground.

**16) Parking Equipment, Trucks, and Recreational Vehicles.**

- (A) No truck larger than a ¾ ton pick-up shall be maintained or parked on the premises for any purpose (other than loading or unloading) in the Addition, unless placed inside a garage or other suitable building not visible to either the public or adjacent property owners.
- (B) No part of any lot shall be used at any time either temporarily or permanently for storing of any automobile, truck, bus, trailer, or the motorized vehicle which is in an inoperative state or for the dismantling of same unless same is maintained inside of a garage or other suitable building until same is operational.
- (C) No business property or farm equipment (other than that to maintain a lot or Common Area and or maintain and construct a subdivision by Developer) and machinery, or other property of any kind whatsoever shall be stored upon any lot which may be unsightly or which may tend to create a rodent or health problem.
- (D) Recreational Vehicles including boats may be parked in Owner's driveway for no more than 48 hours to facilitate loading unloading, etc.

**17) Lot and Premises Maintenance.** The owner of a lot, vacant or improved, shall keep his lot or lots free of weeds and debris and should a Developer ascertain lot needs mowing, he shall notify owner and seven (7) days thereafter may cause the lot to be mowed and costs assessed to the owner. The retention of native wooded and/or brush areas shall not be deemed lawn area for purposes of the paragraph. Failure of owner to promptly pay said costs of required lot maintenance shall cause Developer to place a lien of record at the highest permissible interest rate, determined by the State of Iowa.

No vegetable garden shall be planted closer to the front property line than fifty (50) feet and not closer to a side lot line than twenty-five (25) feet unless screened from adjacent properties and public roadway by solid screening hedges and/or privacy fence, *approved by the Developer*. No agriculture crops, other than grazing type, (oats, hay, pasture) shall be raised on any lot.

**18) Community Lights, Ponds, Walking Trails and Common Area.** Walking trails, lighting, landscaping, fencing, and water features may be installed in which the lot owner of all lots shall be an equal owner pursuant to Section 19 of this Declaration. The owners, of all common areas not claimed by the City, will equally share responsibility of the cost and maintenance of the above.

**19) Owners Association and Maintenance.** Each owner subject to this Declaration shall automatically become a member of Pines at Turtle Creek Homeowners Association, Inc. (the "Association") and shall be subject to assessment to carry out the purposes of the Association. The Association is organized and shall operate for the purpose of perpetually owning and maintaining outlots within all of the Pines at Turtle Creek Additions in Hiawatha, Iowa, for the purposes set forth in the Articles of Incorporation for the Association as recorded with the Iowa Secretary of State and for any other lawful purpose. The initial owners association start up fee shall be \$240.00 which amount will be held in escrow by the Association until the Common Areas are deeded to the Association by the Developer. The initial payment will be collected at closing, and successive annual fees may be adjusted to reflect costs incurred at a later date. Each owner shall pay an equal share (defined as the cost divided by the number of lots sold) of the cost to insure, maintain, repair and operate the lighting system, water features, detention basins, rain gardens, landscape, fencing and other appurtenances located in the Common Areas. The Developer will assume responsibility for such expenses until 60% of the numbered lots in the Pines at Turtle Creek First Addition are transferred by the Developer. When 60% of the numbered lots in the Pines at Turtle Creek First Addition are transferred, the Developer will not be responsible for further repair and maintenance costs and the Association will assume all of the above described

duties and responsibilities for maintenance and care. The Developer may convey and the Association shall accept Outlots B and C, in the Addition and any other common area outlots in future additions of Pines at Turtle Creek, to the Association, including any and all of its right, title and interest in and to the streets, lighting system and other appurtenances located in the common areas or public property or within easements located in the development. Upon earlier of either (a) the sale by Developer of 100% of all numbered lots located within the Addition, or (b) Developer assigns any or all of its responsibilities under these Covenants to the Association then all of the responsibilities and benefits granted Developer hereinabove shall flow to the Association as provided for under Chapter 504, Code of Iowa. The responsibilities assigned shall be listed in writing. The membership of the Association may be expanded, at Developer's sole discretion, to incorporate any additional new developments (*phases or Additions*) of adjacent land into the Association.

**21) Liability.** The Developer shall be free from liability and claims for damages due to injuries, damages caused by, or resulting from any "Acts of God" occurring on or after the date of this declaration to any persons or property on this declaration to any persons or property on this lot. Buyers shall defend and indemnify the Developer from all liability, loss and obligations, including reasonable attorney fees.

**22) Deviations by Agreement with the Developer.** The Developer reserves the right to enter into agreements with the owner of any lot or lots (without the consent of owners of other lots or adjoining or adjacent property) to deviate from any or all of the Covenants, provided there are practical difficulties or particular hardships evidenced by the owner desiring such deviation, and any such deviation (which shall be manifested by an agreement in writing) shall not constitute a waiver of the particular Covenant involved or any other Covenants to the remaining property in the Addition.

## ARTICLE V

### **General Provisions**

**1) Duration.** Each of the Covenants shall continue and be binding for an initial period of twenty (20) years from the date of recording the Declaration and thereafter for successive periods of twenty (20) years each.

**2) Running With the Land.** The Covenants shall run with the land and bind the Developer, its successors, grantees, and assigns, and all other parties claiming by, through or under them regardless of whether the parties have signed a written acceptance of the Covenants.

**3) Remedies for Violation of Covenants.** The Developer, its successors, or assigns, and each owner or owners of any of the Real Estate from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the Covenants in addition to the right to bring an ordinary legal action for damages. Whenever there shall have been built on any lot in the Addition any structure which is and remains in violation of the Covenants for a period of thirty (30) days after written notice of such violation from the Developer to the owner of such lot, then the Developer shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. In no event shall the failure of the Developer to enforce any of the Covenants as to a particular violation be deemed to be a waiver of the right to do so as to any subsequent violation.

**4) Modification.** The record owners in fee simple of the numbered lots in the Addition may revoke, modify, amend, or supplement in whole or in part any or all of the Covenants and conditions contained in this Declaration and may release any or all of the Real Estate from the Covenants, but only at the following time and in the following manner:

- A. Any such change or changes may be made effective at any time from the date of recording of this Declaration if the record owners in fee simple of at least three-fourths of the lots in the Additions consent.
- B. Any such change or changes may be made effective at the end of the initial twenty (20) year term of this Declaration or any successive twenty (20) year term if the record owners in fee simple of at least two-thirds of the lots in the Addition consent at least five (5) years prior to the end of any such term.

- C. Any such consent shall be effective only if expressed in a written instrument or instruments executed and acknowledged by each of the consenting owners and recorded in the Office of the Recorder of Linn County, Iowa. A recordable certificate by an accredited abstractor or title guaranty company doing business in Linn County, Iowa, as to the record ownership of the Real Estate shall be deemed conclusive evidence with regard to compliance with the provisions of the section. Upon and after the effective date of any such change or changes, the change or changes shall be binding upon all persons, firms and corporations then owning a property in the Addition and shall run with the land and bind all persons claiming by, through or under any one or more of them.
- D. Any such change or changes shall require the consent of the Developer as long as the Developer or its successors or assigns has any ownership in the Real Estate.

**5) Farming Area.** There is a farming area to the east & west of the Pines at Turtle Creek Additions in Hiawatha, Iowa, with all benefits and detriments of an agricultural environment.

**6) Liens.** All covenants, liens and other provisions set forth in this Declaration shall be subject to and subordinate to all mortgages or deeds of trust in the nature of the mortgage now and hereafter executed, encumbering any of the Real Estate; and none of the covenants, liens or other provisions shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust in the nature of a mortgage. However, if any such property is acquired in lieu of foreclosure or sold under foreclosure of any mortgage or under the provisions of any deed of trust in the nature of a mortgage or any judicial sale, any purchaser at such sale, his or her grantees, heirs, personal representatives, successors, or assigns shall hold any and all property so purchased or acquired subject to all of the covenants, liens or other provisions of this Declaration.

**7) Invalidation.** If a court of competent jurisdiction shall hold invalid or unenforceable any part of any covenant or provision contained in the Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of the Declaration, which shall run in full force and effect.

**8) Notice.** Each owner of a lot in the Addition shall file the correct mailing address of such owner address with the Developer and shall notify the Developer promptly in writing of any subsequent change of address. A written or printed notice, deposited in the United States Post Office, postage prepaid, and addressed to any owner of the last address filed by such owner with the Developer, shall be sufficient prior notice to such owner wherever notices are required in this Declaration.

**9) Recitals.** The Recitals of this Declaration are substantive portions hereto and are incorporated herein by reference.

Pines at Turtle Creek LLC

  
 \_\_\_\_\_  
 Alvin W. Frey, Member

State of Iowa )  
 ) SS:  
 County of Linn)

On this 25<sup>th</sup> day of February, 2011, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Alvin W. Frey, to me known to be the person named in and who executed the foregoing Restrictive Covenants, and acknowledged that such person executed the same as such person's voluntary act and deed as Member of Pines at Turtle Creek LLC.



  
 \_\_\_\_\_  
 Notary Public

**HOMEOWNER ACKNOWLEDGEMENT**

IN WITNESS WHEREOF the undersigned acknowledges having read and accepted the Restrictive Covenants of Pines at Turtle Creek 1<sup>st</sup> Addition to the City of Hiawatha, Iowa, dated February 25, 2011.

\_\_\_\_\_ DATE \_\_\_\_\_

\_\_\_\_\_ DATE \_\_\_\_\_

***SUMMARY OF RESTRICTIVE COVENANTS***

The intent is to protect lot Owners' investments.

- Size
  - One story dwelling – not less than 1,400 square feet
  - Dwelling of more than one story – not less than 1,800 square feet
  - For dwellings with walkouts, the lower level finish area can account for 10% of the above sq ft
- Restricted Home Occupation
  - No parking of commercial or recreational vehicles
  - Yard fencing will be on a case by case basis
  - All pets must be kept on a leash when outside of the dwelling
- Architectural review will be governed by the Developer until lots are 100% sold or responsibility is delegated
- Maintenance of common areas shall be the responsibility of the Developer until 60% of the lots in the 1<sup>st</sup> Addition are sold, at which time it will be the responsibility of the Homeowner Association
- There is a Homeowner Association start up fee of \$240.00 per lot collected at closing. Annual fees will be adjusted to reflect costs incurred @ a later date.
- This is a farming area and is subject to change