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## DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR HYPERION WOODS

**Preparer Information:**

Lisa R. Wilson  
475 Alice's Road, Suite A  
Waukee, Iowa 50263  
(515) 369-2502

**Taxpayer Information:**

N/A

**RETURN TO:**

**Return Document To:**

Wilson & Egge, P.C.  
475 Alice's Road, Suite A  
Waukee, Iowa 50263

**Grantor:**

Hyperion Woods, L.L.C.

**Grantee:**

N/A

**Legal Description:**

Lots One (1) through Nine (9), inclusive, and Outlot Z, in Hyperion Woods, an Official Plat, now included in and forming a part of the City of Johnston, Polk County, Iowa.

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS FOR HYPERION WOODS**

**THIS DECLARATION** is made this 2 day of May, 2019, by Hyperion Woods, L.L.C., an Iowa limited liability company (“Declarant”).

RECITALS:

**WHEREAS**, Declarant, concurrently herewith, has subdivided, developed and platted Hyperion Woods in the City of Johnson, Polk County, Iowa (“Hyperion Woods”), and is the owner of Lots 1 through 9, inclusive, and Outlot Z, in said Hyperion Woods.

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

**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 Hyperion Woods Owners Association, Inc., a non-profit corporation organized pursuant to Chapter 504, Revised, of the Code of Iowa, and its successors and assigns.

B. **“Board”** shall mean the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.

C. **“City”** shall mean the City of Johnston, Iowa.

D. **“Declarant”** shall mean Hyperion Woods, L.L.C., and its successors and assigns, as to the entirety of the Lots that has not theretofore been conveyed to homebuilders or homeowners, unless the context indicates otherwise.

E. **“Lot”** shall mean and refer to Lots 1 through 9, inclusive, as shown on the recorded plat of Hyperion Woods.

F. **“Outlot”** shall mean and refer to Outlot Z as shown on the recorded plat of Hyperion Woods.

G. **“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).

H. 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 single-family residential use with not more than one single-family dwelling on each Lot, and may be developed only with other uses of land or structures customarily incidental and subordinate to the single-family residential use as permitted by the City Zoning Ordinance, unless such uses or structures are otherwise regulated or prohibited by this Declaration. No full-time or part-time business activity may be conducted on any Lot or in any building or structure on any Lot, except to the extent of a home occupation permitted by the City Zoning Ordinance, and except that home builders may maintain model homes during construction, and Declarant may maintain a sales office during its development and sales of the Lots in Hyperion Woods.

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 trailer, boat, camper, motor home, or truck rated larger than 3/4 ton or other movable or temporary structure or enclosure shall be maintained or parked on any Lot or street within public view. All overnight street parking of any vehicle is strictly prohibited.

C. No mobile home or Manufactured Homes as defined in the Code of Iowa shall be placed on or erected on any Lot.

D. 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.

E. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. In no event however, shall more than two dogs be maintained on any one lot at any one time. Dogs must be tied or fenced or kept in a dog run, which dog run must meet the requirements of paragraph J of Article III.

F. 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).

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

A. In order to preserve the general design for the development of the whole of Hyperion Woods, 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. Approval of such plans shall not be unreasonably withheld.

B. All building structures or improvements of any kind must be completed within 12 months of the commencement date of construction.

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

D. No building or structure shall be constructed, altered or maintained on any Lot unless it has a driveway running from a street to the dwelling, which must be of sufficient area to park at least two cars entirely off the street right-of-way. All driveways shall be constructed of concrete surfacing.

E. All dwellings must be constructed with the minimum of a three-car attached or built-in basement garage. No detached garages are permitted.

F. The exterior of any dwelling, garage or outbuilding located on any Lot shall be finished in white or other earth tone conservative color design that will blend well with the abutting subdivisions, unless otherwise approved by Declarant. A minimum of twenty percent (20%) of the front elevation of the dwelling on each Lot shall be covered with a brick, stone veneer or stucco. All siding must be a 50-year hard board (commonly referred to as "Hardie Plank", "James Hardie Siding" or "LP Smartside"). Neither steel nor vinyl siding is permitted.

In addition to the foregoing, all areas of exposed concrete, concrete block or tile foundations shall be either painted to blend with the exterior wall finishes, or covered with brick or stone veneer or the equivalent.

G. The pitch of the roof of all dwellings must be a minimum of 4/12, unless otherwise approved by the Executive Committee. All roof material shall be slate, tile, cedar shakes, or composition shingles. Composition shingles shall be architectural grade, with a minimum thirty-year (30) warranty. Shingle colors shall be muted earth tones and be compatible with and complimentary to the exterior materials and colors of the building structures. Notwithstanding the foregoing, white-flecked or white shingles are not allowed.

H. All dwellings shall contain a minimum square footage of living space exclusive of attached garages, breezeways, and porches as follows:

(1) One-story dwellings must have a minimum of 2,200 total square feet, with no less than 1,800 square feet of finished floor area directly under roof. In determining the required finished area, a maximum of fifty percent (50%) of the finished area of a basement or lower level may be included in total required finished area.

(2) One and one-half story dwellings must have a minimum of 2,200 square feet of finished floor area directly under roof.

(3) Two story dwellings must have a minimum of 2,200 square feet of finished floor area directly under roof.

(4) Split-foyer and split-level plans are not allowed in Hyperion Woods.

I. Playhouses, utility buildings, outbuildings, storage sheds, pool houses or other similar structures shall be permitted only on Lots 1, 2 and Outlot Z; provided that:

- (1) The structure complies with all local ordinances or is otherwise approved in writing by the City; and
- (2) The structure does not exceed 2,000 square feet; and
- (3) The exterior and the roof of any such structure visible from the street shall be constructed of the same material, have the same color and appearance as the residential dwelling on the same Lot; and
- (4) The structure is located in the rear yard only; with the exception of any structure located on the Outlot; and
- (5) No such structure shall be located closer than twenty feet (20') from any Lot line, unless the Declarant has specifically approved the structure and location; and
- (6) The placement of the structure shall not impede water flow or otherwise cause an undue hardship on the landscape and/or topography of the Lot.

(7) Playsets are allowed but must be approved by Declarant.

J. A dog run shall not be permitted on any Lot unless: (i) it is located at the rear of the house or garage and extends toward the rear of the Lot from that portion of the house or garage which is the closest to the rear Lot line; (ii) it is entirely enclosed with a fence in compliance with Article IV of this Declaration; and (iii) and is screened from public view with landscape plantings or hedges. Any dog house constructed on a Lot shall not exceed twenty (20) square feet in area, shall be constructed of the same material and have the same color and appearance as the residential dwelling, and shall be located in the rear yard of a Lot no closer than twenty (20) feet from any Lot line.

K. Notwithstanding the foregoing, the existing outbuilding located on the Outlot shall be exempt from Article III(A) through (H) above; provided however, any future material reconstruction thereof completed from and after the date of this Declaration shall be subject to the provisions of this Article III.

#### **IV. LANDSCAPING AND FENCES**

A. Within thirty (30) days of completion of the dwelling on a Lot, the Lot shall be fully sodded, except where the topography, conservancy districts, creek slopes or tree cover does not make sodding practical. If weather conditions make the time requirement for sodding impossible to comply with, Declarant shall establish a reasonable period of time for compliance. Only the Outlot may be seeded in lieu of sod.

B. Within thirty (30) days of completion of a dwelling on a Lot, a minimum of two (2) trees must be planted on the Lot having a diameter measuring at least one and one-half inches (1 ½") measured two (2) feet vertically from the ground level. The party purchasing the Lot from the Declarant shall be responsible for planting these trees and cannot transfer said responsibility to the party who first occupies the dwelling as a residence.

C. No fences shall be permitted upon any Lot except as follows:

(1) No fence shall exceed six (6) feet in height and shall be constructed of black wrought iron, black aluminum, black PVC, or black vinyl-coated chain link, unless otherwise approved by Declarant. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing to ensure the solid, finished side of the fence faces the outside perimeter.

(2) No fence shall be constructed forward of the dwelling's back building line, and shall not be constructed within a drainage easement area without the prior written consent of the City.

(3) No fence shall be installed in a manner that impedes water flow.

(4) Pool fences shall be landscaped and screened with shrubs and bushes.

**(5) Notwithstanding the foregoing, no fence shall be constructed in any easement areas created in Paragraph B of Article VII without the prior written consent of the Declarant or the Association.**

D. DNR erosion control practices, including but not limited to, rain gardens, shall be incorporated into the landscaping on all lots in Hyperion Woods so as to preserve the topography and prevent erosion.

#### **V. SATELLITE DISHES, ANTENNAS, POLES**

A. Satellite dishes or parabolic devices in excess of twenty inches (20") in diameter used to receive television or other signals from satellites shall not be permitted. The satellite dish or parabolic device shall be mounted on the rear elevation of the dwelling or garage, or the rear half of the side elevation only. In no event shall a satellite dish or parabolic device be mounted on the front elevation or the front half of a side elevation.

B. No exterior towers or antennae of any kind shall be constructed, modified or permitted on the ground of any Lot or on any dwelling, garage or other permitted structure. All antennae shall be concealed with the attic space of the dwelling or garage.

C. No light pole shall be used or placed upon any Lot that extends more than ten feet (10') above grade, except those to light a tennis court. All light poles shall be of a residential design and shall be positioned on a Lot in a manner that will avoid direct lighting onto adjoining Lots. In no event shall a light pole be located any closer than twenty feet (20') from any property line.

#### **VI. MISCELLANEOUS RESTRICTIONS**

A. No sign of any kind or description shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except: (i) street markers, traffic signs and other signs displayed by the City or other governmental units; (ii) signs which have been approved by the Declarant or its authorized agent not exceeding 144 square inches in area upon which there shall only be exhibited the street number or name, or both, of the resident; and (iii) a customary sign (one per Lot) advertising a dwelling for sale, not exceeding 1296 square inches in area. In the event that any sign, other than those described above, shall be placed or exposed to view on any of the Lots restricted hereby, the officers or agents of the Declarant are hereby given the right to enter upon those Lots and remove said signs. Real estate signs by the Declarant will be permitted until such development is completed. Declarant reserves the right to install entrance and directional signs with respect to Hyperion Woods, at locations and of design determined by the Declarant, and in a manner consistent with the ordinances of the City.

B. No trash receptacles, garbage cans or recycling bins shall be permitted to be placed outside a dwelling or garage except as is necessary for regular collection.

C. Only below-ground swimming pools shall be permitted on a Lot, which shall be located in the rear yard and shall be enclosed by a fence (if required by the City and approved by the Executive Committee) or hedges. No above-ground swimming pools are allowed.

D. All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground. No private wells or septic systems shall be permitted on any Lot.

E. Lot 3 shall be tied with Outlot Z and neither lot shall be held, sold or conveyed independent of one another.

## VII. EASEMENTS

A. Certain perpetual easements are reserved as shown on the recorded plat of Hyperion Woods, and/or as may be granted to the City by the Declarant and filed of record in the Office of the County Recorder. Except as otherwise set forth herein, the owner or occupant of a Lot or Outlot shall, at their own expense, keep and preserve that portion of the easement within their Lot/Outlot in good repair and condition, and shall neither erect nor permit erection of any building, structure or fences of any kind within the easement which might interfere in any way with the use of such easement.

B. Declarant hereby grants to the Association, for and on behalf of the Owners of all Lots within Hyperion Woods, the following permanent easements:

(1) A nonexclusive ingress, egress and access easement for the purpose of installing, maintaining, operating, repairing and replacing an access drive to and from N.W. Beaver Drive located on, over and under the following easement area:

A 50.00 FOOT-WIDE PRIVATE DRIVE EASEMENT ACROSS A PART OF LOT 1, KNORRWOODS, AN OFFICIAL PLAT, CITY OF JOHNSTON, POLK COUNTY, IOWA, AND PART OF LOTS 7 AND 8, IN THE OFFICIAL PLAT OF THE SE ¼ OF SECTION 36, TOWNSHIP 80 NORTH, RANGE 25 WEST OF THE 5<sup>TH</sup> P.M., CITY OF JOHNSTON, POLK COUNTY, IOWA. SAID EASEMENT BEING CENTERED ON A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, KNORRWOODS, RECORDED BOOK 6271 PAGE 965 OF THE POLK COUNTY RECORDER; THENCE S89°32'05"W, 164.32 FEET ALONG THE NORTH LINE OF SAID LOT 1; THENCE S00°00'00" E, 49.80 FEET TO THE POINT OF BEGINNING; THENCE N90°00'00" W, 171.61 FEET TO A TANGENT 100.00 FEET RADIUS CONCAVE TO THE SOUTHEAST; THENCE SOUTHWESTERLY, 71.82 FEET ALONG SAID CURVE, SAID CURVE HAS A CHORD LENGTH OF 70.28 FEET AND A CHORD BEARING OF S69°25'34"W; THENCE S48°51'08"W, 94.77 FEET TO A TANGENT 200.00 FEET RADIUS CONCAVE TO THE NORTHWEST; THENCE SOUTHWESTERLY, 64.83 FEET ALONG SAID CURVE, SAID CURVE HAS A CHORD LENGTH OF 64.55 FEET AND A CHORD BEARING OF S58°08'20"W TO A REVERSE CURVE WITH A RADIUS OF 150.00 FEET; THENCE SOUTHWESTERLY, 81.41 FEET ALONG SAID CURVE, SAID CURVE HAS A CHORD LENGTH OF 80.41 FEET AND A CHORD BEARING OF S51°52'41"W TO A REVERSE CURVE WITH A RADIUS OF 200.00 FEET; THENCE SOUTHWESTERLY, 48.21 FEET ALONG SAID CURVE, SAID CURVE HAS A CHORD LENGTH OF 48.09 FEET AND A CHORD BEARING OF S43°14'11"W TO A REVERSE CURVE WITH A RADIUS OF 350 FEET; THENCE SOUTHWESTERLY, 84.96 FEET ALONG SAID CURVE, SAID CURVE



