NOTICE: You are hereby notified these Covenants are preliminary and not yet filed of record. Said Covenants are subject to change without further notice to you. In the event you purchase a lot within Biltmore Plat 1, you shall be bound by those Covenants placed of record regardless of any conflict with this initial draft or your reliance hereon. It is your sole and absolute responsibility to obtain and review in detail those Covenants placed of record at a later date.

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR BILTMORE PLAT 1

Preparer Information:
Bryan M. Loya
222 N.W. Sunrise Drive
Urbandale, Iowa 50263
(515) 369-2502

Taxpayer Information:
N/A

Return Document To:
Wilson & Egge, P.C.
222 N.W. Sunrise Drive
Urbandale, Iowa 50263

Grantor:
Cloud 9 Holdings, L.L.C.

Grantee:
N/A

Legal Description:
Lots One (1) through Forty (40), inclusive, and Outlots "W", "X", "Y", and "Z", in Biltmore Plat 1, an Official Plat, now included in and forming a part of the City of Urbandale, Dallas County, Iowa.

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR BILTMORE PLAT 1

THIS DECLARATION is made this ____ day of _____, 2022, by Cloud 9 Holdings, L.L.C., an Iowa limited liability company ("Declarant").

RECITALS:

WHEREAS, Declarant, concurrently herewith, has subdivided, developed and platted Biltmore Plat 1 in the City of Urbandale, Dallas County, Iowa ("Biltmore"), and is the owner of Lots 1 through 40, inclusive, and Outlots "W", "X", "Y", and "Z", in said Biltmore (the "Lots" and "Outlots" respectively); and

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

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 the Biltmore 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 Urbandale, Iowa.

D. "County" shall mean Dallas County, Iowa

E. "Declarant" shall mean Cloud 9 Holdings, 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.

F. "Lot" shall mean and refer to Lots 1 through 40, inclusive, as shown on the recorded plat of Biltmore Plat 1.

G. "Outlot" shall mean and refer to Outlots "W", "X", "Y", and "Z", as shown on the recorded plat of Biltmore Plat 1.

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 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 Biltmore.

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, commercial work trucks bearing company logos, 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 L 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 Biltmore Plat 1, 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 and Declarant shall have the sole authority to approve any alternative building plan, design, material or other deviation of the requirements contained in this Declaration.

B. All Lots shall, within 12 months of purchase be seeded, sodded, or otherwise stabilized by the Owner in 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 and any and all applicable storm water and/or erosion control statutes, rules and ordinances. Notwithstanding the preceding, the purchaser of a Lot whose purpose and business is the construction of a dwelling on the Lot for occupancy by a subsequent purchaser shall be permitted to leave the Lot in its unaltered state existing at the time of purchase, provided, however, that said purchaser shall at all times sufficiently maintain the Lot in 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.

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

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

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E. 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.

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

G. The exterior of any dwelling, garage or outbuilding located on any Lot shall be finished in an earth tone conservative color design that will blend well with the abutting subdivisions. A minimum of twenty-five percent (25%) of the front elevation of any dwelling shall be covered with a brick, stone veneer, or stucco finish, unless otherwise approved in writing by the Declarant. 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.

H. 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.

I. All dwellings situated on Lots 1 through 21, inclusive, and Lot 40 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 1,800 square feet of finished floor area directly under roof.

(2) One and one-half story dwellings must have a minimum of 1,800 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 Biltmore.

J. All dwellings situated on Lots 22 through 35, inclusive, and Lots 37 through 39, inclusive, 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 square feet of finished floor area directly under roof, but a 25% credit will be given for finished area of lower level which is 50% exposed over finished grade.

(2) One and one-half story dwellings must have a minimum of 2,000 square feet of finished floor area directly under roof, but a 25% credit will be given for finished area of lower level which is 50% exposed over finished grade.

(3) Two story dwellings must have a minimum of 3,000 square feet of finished floor area directly under roof, but a 25% credit will be given for finished area of lower level which is 50% exposed over finished grade.

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

K. Playhouses, utility buildings, storage sheds, pool houses or other similar structures shall be permitted; provided that the exterior and the roof of any such structure shall be constructed of the same material, have the same color and appearance as the residential dwelling on the same Lot and are located only in rear yards. No such structure shall be located closer than thirty feet (30') from any Lot line, unless the Declarant has specifically approved the structure and location. Playsets are allowed but must be either Rainbow or Backyard Adventures brand, unless otherwise approved by Declarant.

L. 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 thirty (30') feet from any Lot line.

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 Outlots 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 two and one-half inches (2 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 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 cedar, black wrought iron, black aluminum or vinyl. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing.

(2) No privacy fence shall be constructed on a Pond Lot (as hereinafter defined).

(3) 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.

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

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

V. SATELLITE DISHES, ANTENNAS, POLES

A. Satellite dishes or parabolic devices in excess of thirty-six inches (36") 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 thirty feet (30') 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 Biltmore, 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. The Owner of the Lot(s) on which a mailbox cluster unit is located shall be responsible for removal of snow and ice which would obstruct access to the mailbox cluster units by the mail carrier and other Owners.

F. A pond will be located within Outlot "Y" and on a portion of the rear yard of Lots 22 through 36, inclusive ("Pond Lots") which shall be for storm water detention for the entirety of Biltmore ("Pond"). The Association shall be responsible for all maintenance of the Pond, including any equipment or features related thereto, and shall maintain insurance thereon naming the Owners of the Ponds Lots as additional insureds. Any Owner of a Pond Lot shall not change the grade of the Pond or alter the boundaries in any way without the written permission of the Association. Recreational use of the Pond by any Owner shall be strictly prohibited. No structure or fence shall be built in, on or around said Pond without the written approval of the Association. Owners and their invitees unconditionally and irrevocably agree to indemnify and hold harmless the Association and all other Owners from and against any loss, liability, expense, or claim, including attorney fees, asserted by said Owner or his/her/its invitees for damage to personal property or for bodily injury, or both, related to recreational use of the Pond.

G. In order to protect the integrity of Biltmore and to ensure that those persons residing therein have similar proprietary interests in their Lots, no Lot and no portion of any dwelling located thereon, shall be leased or rented to any person or third party without the prior written approval of the Association. All leases shall be in writing with a minimum term of one (1) year, and shall be subject to the terms of this Declaration, Articles of Incorporation, Bylaws and any rules or regulations adopted by the Association. Short-term and vacation rentals are strictly prohibited, as well as any marketing, advertising or procurement of tenants by or through sites such as Airbnb, VRBO, HomeAway or other similar forum. Sub-leasing is not allowed under any circumstance. A copy of the written lease shall be provided to the Association prior to the date of possession. No lease shall relieve an Owner from liabilities and responsibilities to the

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Association and other Owners as set forth in this Declaration, or otherwise imposed under the laws of the State of Iowa.

VII. EASEMENTS

A. Certain perpetual easements are reserved as shown on the recorded plat of Biltmore Plat 1, and/or as may be granted to the City by the Declarant and filed of record in the Office of the Dallas County Recorder. Except as otherwise provided in an easement or agreement filed of record in the Office of the Dallas County Recorder, or as may be otherwise set forth herein, the owner or occupant of a Lot shall, at their own expense, keep and preserve that portion of the easement within their Lot 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 Biltmore, the following permanent easements:

(1) An easement for the purpose of installing, maintaining, operating, repairing and replacing signage, other entrance features and landscaping in, on, over and under the following easement areas:

The South 50 feet of Outlot "W" in Biltmore Plat 1, an Official Plat, now included in and forming a part of the City of Urbandale, Dallas County, Iowa.

(2) A nonexclusive landscape buffer easement for the purpose of installing, maintaining, operating, repairing and replacing any landscaping features, irrigation system and electrical systems, if any, located, on, over and under the following easement areas:

The South 50 feet of Outlots "W" and "X" in Biltmore Plat 1, an Official Plat, now included in and forming a part of the City of Urbandale, Dallas County, Iowa.

(3) An ingress/egress easement for Pond access over, under and through Outlot "Y" in Biltmore Plat 1 as provided in this Declaration.

(4) The easements granted in paragraphs B (1) through B (3) above shall be subject to the following conditions and/or restrictions:

(a) Any signs shall be for purposes of identifying the Biltmore development, and shall conform to the ordinances, rules, and regulations of the City. If any irrigation system or lighting is installed by the Declarant within the easement areas, the charge for such service(s) shall be separately metered or otherwise separately billed by the utility entity furnishing such service(s), and charged to the Association.

(b) The Declarant shall install the initial signs and landscaping features within the easement areas, and the Association shall maintain, operate and replace all signs, entrance features, landscaping within the easement areas.

(c) Neither the Declarant nor the Association shall locate any such signage, entrance features, or landscaping in a manner to obstruct any vision triangles that overlap a portion of such easement areas, if any.

(d) The Owner of the Lot upon which an easement area is located shall not make any modifications or improvements to any such easement area without the consent of the Declarant or Association.

(e) No fence may be constructed within any of the easement areas without the prior written consent of the Declarant or the Association.

VIII. SIDEWALKS

The purchaser of a Lot shall, at the purchaser's expense, install public sidewalks in accordance with specifications of the City upon the earlier of the date the dwelling is built upon the Lot or within one year of purchase of the Lot from the Declarant.

IX. MAINTENANCE OF LOTS/OUTLOTS 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 Biltmore 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.

D. No structure of any kind, including fences, shall be built upon the Outlots and such Outlots shall be maintained by its Owner in accordance with this Declaration and any other easement filed of record with the Polk County Recorder. All plant material located within the Outlots must be maintained and/or replaced as needed by the Owners of the Outlots.

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E. The Association shall maintain, repair, reconstruct, and restore all aspects of storm water detention serving Biltmore, including but not limited to the Pond and any dams, spillways, and other features as required by and in accordance with the provisions of the Storm Water Management Facility, Spillway and Dam Management and Maintenance Covenant Agreement filed contemporaneously herewith. The Association shall at all times comply with applicable requirements of the Iowa Department of Natural Resources relating to such responsibilities, including coordination and completion of all required inspections and addressing deficiencies noted in inspection reports and based on Iowa Department of Natural Resources guidance. The obligations contained in this Article IX(E) shall be perpetual and shall not expire with the lapse of this Declaration based on the passage of time.

ARTICLE X. BILTMORE OWNERS ASSOCIATION

A. Duties of the Association. The Association, through its Board of Directors, shall have the right, power and authority to provide for the enforcement of this Declaration; to perform all maintenance, repair, reconstruction, restoration, and replacement of the improvements made by the Declarant within the easement areas pursuant to Article VII or any other common area owned or controlled by the Association, including but not limited to the landscape buffer areas as required by the City of Urbandale along Meredith Drive; to perform all maintenance, repair, reconstruction, restoration, and replacement of any storm water detention areas and tile lines owned or controlled by the Association, including the ***Pond*** and Outlots "W", "X" and "Z"; to perform all maintenance, repair, reconstruction, restoration and replacement of any fencing in common areas owned or controlled by the Association; to levy, collect, and have jurisdiction, control and possession of assessments as hereinafter provided; and, to enter into contracts, including contracts for insurance, as may be necessary or desirable to carry out the provisions of this Declaration.

B. Membership and Voting Rights.

(1) Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to the ownership of a Lot and shall be indivisible from such ownership. Ownership of a Lot shall be the sole qualification for membership.

(2) There shall be appurtenant to each Lot one vote in the Association. When more than one person holds an interest in any such Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall the vote be split with respect to any such Lot. In the event that the owners of a Lot fail to determine how to cast any vote, no vote shall be cast for said Lot.

NOTWITHSTANDING THE ABOVE, THE DECLARANT SHALL BE THE SOLE VOTING MEMBER OF THE ASSOCIATION UNTIL TWELVE (12) MONTHS AFTER THE DECLARANT CONVEYS THE LAST LOT/OUTLOT IN BILTMORE, AND FOR SUCH ADDITIONAL TIME AS DUSTIN W. JONES SHALL OWN A LOT IN

BILTMORE. SO LONG AS DECLARANT IS THE SOLE VOTING MEMBER OF THE ASSOCIATION, DECLARANT SHALL HAVE THE RIGHT TO ELECT ALL MEMBERS OF THE BOARD, ELECT ALL OFFICERS OF THE ASSOCIATION AND AMEND THIS DECLARATION FOR ANY REASON.

(3) The Association shall suspend the voting rights of a member for a period during which any assessment against said member's Lot remains unpaid.

C. Board of Directors. The Board of Directors shall manage the affairs of the Association. The members of the Association entitled to vote shall elect the Board of Directors of the Association as prescribed by the Association's Bylaws.

D. Assessments.

(1) Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association assessments as provided in this Declaration. The assessments levied by the Association and any other charges against the Owner of a Lot set forth elsewhere in this Declaration, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or charge is made senior to all liens except the first mortgage of record, any ad valorem taxes, and any special assessments levied by the City. Such assessment or charge, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment or charge fell due. The personal obligation for delinquent assessments or charges shall not pass to said Owner's successor in title unless expressly assumed by them.

(2) The assessments levied by the Association shall be used exclusively to carry out the duties of the Association as set forth above or elsewhere herein, including, but not limited to, payment of legal liabilities or obligations of the Association and all fees, costs, expenses and attorney fees in connection therewith.

(3) The Association may levy general annual assessments which shall commence as to each respective Lot on the first day following the conveyance by the Declarant of a Lot, and shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of such general assessments at least thirty (30) days in advance of each annual assessment period. Written notice of such assessments shall be sent to every member of the Association subject thereto. The due dates shall be established by the Board of Directors of the Association, and the general annual assessments may be collected in equal annual, semi-annual, quarterly or monthly installments at the discretion of the Board of Directors.

(4) In addition to the general annual assessments, the Association may levy a special assessment if necessary to finance or perform any of its stated duties under this Declaration,

provided that any such special assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for such purpose.

(5) To assist the Association in establishing adequate funds to meet its capital expenses, each Owner who acquires a Lot together with a completed dwelling constructed thereon shall pay to the Association at closing Two Hundred Fifty Dollars ($250.00) (the "Capital Reserve Fee"). Such payment shall be required upon each transfer of title to each Lot upon which a Dwelling Unit exists, and the Capital Reserve Fee shall be reflected on the settlement statement at closing. Funds paid to the Association pursuant to this Section D(5) are to be deposited by the Association into the Capital Reserve Fund, (b) shall be nonrefundable, and (c) shall not be considered as an advance payment of any other Assessments levied by the Association pursuant to this Declaration. By agreeing to be bound by this Declaration, each Owner who acquires a Lot together with a completed dwelling thereon agrees and acknowledges that this method of establishing and maintaining a Capital Reserve Fund is adequate to meet anticipated costs to maintain and replace Capital Improvements.

(6) Written notice of any meeting called for the purpose of taking any action authorized under paragraph 4 above, shall be sent to all members not less than five (5) days no more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(7) As long as the Declarant owns any Lot, at closing on any sale or transfer of Declarant's Lots, the Declarant, in its sole discretion, may collect from the prospective Owner an amount at least equal to two years of the annual general assessment charge set forth in this subsection for each Lot. Once all the Lots have been sold by the Declarant, then the Association shall collect these funds.

NOTWITHSTANDING ANYTHING IN THIS DECLARATION TO THE CONTRARY, LOTS OWNED BY THE DECLARANT OR DUSTIN W. JONES THAT DO NOT HAVE A COMPLETED DWELLING CONSTRUCTED THEREON SHALL BE EXEMPT FROM THE ASSESSMENTS DESCRIBED HEREIN.

(8) Every assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided, unless the assessment by its own terms provides for payment in monthly, quarterly or semi-annual installments, in which case each such payment shall be due as stated in such notice. From and after the date when said payment is due, it shall bear interest at the rate of twenty percent (20%) per annum or at the highest rate allowed by Iowa law, whichever is higher, until paid. Such payment and interest shall constitute a lien upon the Lot, and said lien shall continue in full force and effect until the assessment is fully paid. At any time after the passage of the resolution levying an assessment and its entry in its minutes, the

Board may, in addition, execute and acknowledge with respect to any Lot and cause same to be recorded in the Recorder's Office for Dallas County, Iowa, and the Board may, upon payment, cancel or release any assessable property from the liability of assessment (as shown by recorded instrument) by executing, acknowledging and recording (at expense of the Owner of the property affected) a release of such assessment with respect to any Lot affected. Notwithstanding any other provision herein, the Association may bring an action at law against the Owner personally obligated to pay such assessment, or foreclose the lien against the Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment, the cost of preparation and filing the petition in such action, including reasonable attorney's fees.

(9) If any Lot subject to a lien created by this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien except the liens for assessments, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of the sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure. Such assessments shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of the lien of such assessments. All such assessments shall be deemed to be an expense of the Association, and the Association shall have the right to collect said sums from the defaulting Owner personally.

(10) The Association shall, upon request, and for a reasonable charge, furnish a statement signed by an authorized representative of the Association setting forth whether the assessments owing by a member have been paid. A properly executed statement of the Association as to the status of assessments is binding upon the Association as of the date of its issuance.

(11) In the event that the need for maintenance, replacement or repair of any portion of the property owned or controlled by the Association, or the improvements thereon, is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the cost of such maintenance, replacement or repair shall be added to and become part of the assessment to which the Owner is subject and a lien upon the Lot of such Owner and shall become due and payable upon demand.

XI. 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 and landscaping plans as described below in Article XII during the time that property is being developed. These Covenants, Conditions, Easements and Restrictions may also be enforced by the Association or any affected Lot Owner. Notwithstanding anything to the contrary herein, Declarant shall have the sole authority to approve any alternative building plan, design, material or other deviation of the requirements contained in this Declaration.

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 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 Biltmore area. All buildings, structures or appurtenances thereto, including landscaping, 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 XII.

(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.

XII. 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.

XIII. COVENANT ENFORCEMENT/GENERAL PROVISIONS

A. Penalties

In addition to the remedies described below in Paragraph B or elsewhere in this Declaration, the Association is hereby authorized to levy against any Lot in violation of this Declaration of Covenants, Conditions, Easements 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 Association 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 Association shall publish notice of the violation for two (2) successive weeks in a newspaper of general circulation in Dallas

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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 Association 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 Association. 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 Association Board of Directors. Assessment of the penalty shall be stayed pending a hearing and final decision by the Association Board of Directors.

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, the Board, or an adversely affected Lot Owner.

C. Attorneys Fees

In the event it shall be necessary to secure the services of an attorney to enforce or comply with the provisions of this Declaration, then the fee of such attorney, and all other costs in connection with the enforcement or compliance 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 by a court of competent jurisdiction 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, the Association, 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, the Association, or any Owner of any Lot in Biltmore. 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 Dallas 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) the Association, or 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 the Association or any Owner of a Lot in Biltmore shall be valid and binding upon the Association and all the then Owners of Lots in Biltmore, 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, the Association and 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 a 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 paragraph D of 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 Dallas County, Iowa Recorder, by at least fifty-one percent (51%) of the Lot owners, if the Declarant does not own a Lot/Outlot or is not the sole voting member of the Association. 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/Outlot or is the sole voting member of the Association.

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G. Severability

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.

H. 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 XIV. ANNEXATION AND REMOVAL OF LAND

A. Additional Common Area

Declarant shall have the sole right at any time to convey additional Common Area to the Association or to add additional association responsibility elements. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to convey additional common area to the Association in the future. The Association shall be obligated to accept any additional common area so conveyed by Declarant and to hold and maintain the additional common areas pursuant to the terms of this Declaration.

B. Additional Land

Declarant shall have the irrevocable right to subject additional land to the terms of this Declaration or the Association at any time in the future without the consent of the Association. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration and Owners of Lots within the additional land shall automatically become members of the Association in the same manner as described in this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration or by the filing of a separate declaration of covenants with the Recorder of Dallas County, Iowa. No approval of the Association or any other third party shall be necessary.

C. Removal of Land

Declarant shall have the right now, and in the future, to remove any portion of the property from the operation of this Declaration. Declarant shall signify this removal by filing an amendment to this Declaration with the Recorder of Dallas County, Iowa. No approval of the Association or any other third party shall be necessary.

Dated this ____ day of _____, 2022.

CLOUD 9 HOLDINGS, L.L.C., DECLARANT

By: _____
Dustin W. Jones, Manager

STATE OF IOWA)
) ss:
COUNTY OF _____)

This record was acknowledged before me on this _____ day of _____, 2022, by Dustin W. Jones, as Manager of Cloud 9 Holdings, L.L.C.

_____
Notary Public in and for the State of Iowa

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