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Daneen Schindler, RECORDER/REGISTRAR  
DELAWARE COUNTY IOWA

**BI-ATTACHED DWELLING  
COVENANTS AND EASEMENTS DECLARATION**

Recorder's Cover Sheet

**Preparer Information:**

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**Return Document To:**

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**Grantor:**

S & R Construction, Inc.

**Grantees:**

The Public

**Legal Description:**

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TSC#232201

**BI-ATTACHED DWELLING  
COVENANTS AND EASEMENTS DECLARATION**

This Declaration, dated this 1 day of August, 2023, is submitted by S & R Construction, Inc. (hereinafter "S & R").

WITNESSETH:

WHEREAS, S & R is the titleholder to the following described parcels of real estate situated in Delaware County, Iowa, to-wit:

Lot 7-1 of Oakview Estates Subdivision of Lots 6, 7 and 8, a Subdivision of Lots 6, 7 and 8 of Oakview Estates First Subdivision of a part of the Northeast Quarter of the Southwest Quarter of Section 33, Township 89 North, Range 5 West of the 5<sup>th</sup> P.M., in the City of Manchester, Delaware County, Iowa, pursuant to the Plat of Survey filed July 20, 2023, in Book 2023 Page 1690 (hereinafter "Lot 7-1").

Lot 7-2 of Oakview Estates Subdivision of Lots 6, 7 and 8, a Subdivision of Lots 6, 7 and 8 of Oakview Estates First Subdivision of a part of the Northeast Quarter of the Southwest Quarter of Section 33, Township 89 North, Range 5 West of the 5<sup>th</sup> P.M., in the City of Manchester, Delaware County, Iowa, pursuant to the Plat of Survey filed July 20, 2023, in Book 2023 Page 1690 (hereinafter "Lot 7-2").

WHEREAS, a duplex-type, two-family structure is located on Lot 7-1 and Lot 7-2, such that approximately one-half of said structure is located on Lot 7-1 and the other one-half of the structure is located on Lot 7-2.

WHEREAS, the final plat of Oakview Estates Subdivision of Lots 6, 7 and 8, filed in Book 2023 Page 169, was completed after the foundation of the duplex situated on Lot 7-1 and Lot 7-2 was completed and the shared wall separating the two residential structures runs along the boundary line between Lot 7-1 and Lot 7-2.

WHEREAS, S & R desires to convert the structure into two separate bi-attached dwellings sharing a common dividing wall running along the boundary between Lot 7-1 and Lot 7-2.

**DECLARATION**

NOW THEREFORE, S & R does hereby convert the duplex, two-family structure located on Lot 7-1 and Lot 7-2 into bi-attached dwellings, and further does hereby declare as follows:

**I. PARTY WALLS**

The division of the real estate into two parcels as described herein has been made in a manner such that a single, attached dwelling is located on each parcel with a common wall dividing the dwellings. The parties agree that the common wall runs along the boundary line dividing Lot 7-1 and Lot 7-2. The common wall is declared to be a party wall as to the owners of the respective contiguous parcels on which the wall is located and each of said owners shall have an undivided share of the easement as to that part of the footing and common wall standing on the parcel of the other for lateral support

and the location of beams and flues, and water, sewer and any other utility pipes or conduits, and any other elements common to the entire structure as are now, or will be located within said party wall.

In the event that said party wall is damaged or destroyed for any reason whatsoever, or the necessity arises for the repair or replacement of the said party wall or any of the pipes, conduits or other elements therein enclosed which service each of the contiguous dwellings, then said party wall or any such pipes, conduits or other elements therein enclosed shall be repaired or replaced at the joint and equal expense of the owners of Lot 7-1 and Lot 7-2. If, however, any such damage or destruction is attributable solely to the intentional acts or negligence of only one of the owners of Lot 7-1 and Lot 7-2, or to the intentional acts or negligence of others for or on behalf of that party, then that owner shall be entirely responsible for the repairs, replacement, or costs resulting from any such intentional acts or negligence.

Neither of said owners shall alter or change the party wall, interior decorations or appliances excepted, or any of the wires, pipes, conduits, or other elements located therein without the express permission of the other owner.

## **II. ROOFS, GUTTERS, DOWN SPOUTS AND ENCROACHMENTS**

With respect to each attached dwelling unit, the owner of the parcel upon which that unit is erected shall bear the expense of any repairs or replacement of the roof covering for his or her unit.

With respect to each unit, the owner of the parcel upon which said unit is erected is granted an easement for the gutters and down spouts attached to the unit of the other adjacent owner for the purpose of collecting and discharging the water accumulating in the gutters attached to the unit. Each owner shall keep the gutter and down spouts attached to his or her unit in a clean and good state of repair.

If any existing portion of the dwelling unit or driveway encroaches upon an adjoining lot, or if any such encroachment shall hereafter arise because of scaling or shifting of the building or other unintentional cause, there shall be deemed to be an easement in favor of the owner of the encroaching unit to the extent of such encroachment so long as the same shall exist.

## **III. UTILITY AND COMMUNICATIONS FACILITIES**

The owner of each dwelling unit is hereby granted an easement for the repair and replacement of water, gas, sewer, electricity and communication facilities and services. Any such easement shall run along, and shall extend for five feet beyond either side of any such facilities and services.

The expense of repairs or replacement of the water, gas, sewer, electric and communication lines or facilities shall be borne equally by the owners of the unit(s) serviced by said lines or facilities.

## **IV. REPAIRS AND MAINTENANCE**

The owner of each parcel shall make all necessary repairs and replacements to the building and improvements thereon at his or her own expense except as otherwise provided herein.

The exterior components of any unit shall be repaired and replaced with components similar to pre-existing components and of the same design and color, and the owner of any unit may paint the exterior of such unit with paint of pre-existing color or colors, but such owner may not, either in the

course of ordinary maintenance, repairs, or remodeling and replacement, or in restoration after damage or destruction, use different siding, roofing, or other exterior components of a different color scheme, unless the owner of the adjoining unit gives prior written consent to do so. Any proposed siding, roofing material, color scheme or other changes shall be in harmony with the design of the adjoining unit.

Each owner shall keep that portion of the lot upon which that owner's unit is located free of weeds and debris, and shall keep the lawn and landscaping maintained in a good, presentable, and orderly condition.

The owner of each parcel is granted an access easement for exterior repair purposes extending 10 feet beyond his or her unit.

#### **V. MECHANIC'S LIENS**

The owner of each parcel subject to this instrument shall indemnify and hold harmless the owner of the adjoining parcel for any mechanic's liens arising from work performed or materials supplied for or on behalf of that owner.

#### **VI. INSURANCE**

Each parcel owner shall furnish proof of hazard insurance to the other parcel owner. Said insurance shall protect against loss from liabilities to third parties and from general casualty in the amount of 100% of replacement value. Proceeds of insurance obtained because of fire or casualty loss shall be used to re-construct the dwelling or repair the damage for which the insurance proceeds were paid.

#### **VII. ARBITRATION**

In the event of any dispute between the owners of Lot 7-1 and Lot 7-2 concerning a party wall or concerning any of the provisions contained in this instrument, each party shall choose one arbitrator, and such arbitrators shall choose a third arbitrator, and the decision of a majority of all of said arbitrators shall be final and conclusive as to the question or dispute involved, and shall be binding on all parties. If either party shall refuse or fail to promptly appoint an arbitrator within ten days following written request to do so from the other party, such arbitrator may be appointed by any District Court Judge of the Iowa District Court for Delaware County, Iowa. Arbitration shall be in accordance with the rules of the American Arbitration Association, and the costs thereof shall be shared equally between the parties.

The owner of either parcel subject to this instrument shall have the right to enforce this agreement or any portion thereof in law or in equity, subject to the provisions for arbitration set forth herein.


#### **VIII. GENERAL**

All easements and other provisions created by this instrument shall be perpetual, shall run with the land, and shall be binding on all successors in interest to the real estate subject hereto. The City of Manchester, Iowa, shall be deemed a party benefitted by all easements and covenants created by this instrument.

The bi-attached dwelling units subject to this agreement shall be restricted to residential uses only, and each and every party accepting a deed or other instrument of conveyance to any parcel subject to this instrument from the undersigned owner, or its heirs, devisees, successors, or assigns shall be bound by all of the terms and conditions of this instrument.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 1 day of September, 2022.

S & R Construction, Inc.

  
\_\_\_\_\_  
By: Steve Pettlon, as President

STATE OF IOWA )  
COUNT OF Delaware ) ss.

This instrument was acknowledged before me on this 1 day of August, 2023, by Steve Pettlon, as President of S & R Construction, Inc.

  
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Notary Public in and for the State of Iowa

