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Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2008-00024998

BK 12379 PG 370-382

RETURN TO:

Prepared by and return to: Stuart I. Feldstein, 1525 NE 36<sup>th</sup> St., Ankeny, IA 50021 Telephone: (515) 242-2400

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made this 13 day of September, 2007, by the Declarant, D.R.A. Properties, L.C., an Iowa limited liability company.

WHEREAS, Declarant is the Owner of certain real property located in the City of Ankeny, the County of Polk, in the State of Iowa, which is legally described as:

See Exhibit A, attached hereto and incorporated herein by reference.

WHEREAS, said property is referred to herein as the "Prairie Trail Property"; and

WHEREAS, Declarant is desirous of protecting the value and desirability of the Prairie Trail Property.

NOW, THEREFORE, Declarant hereby declares that the Prairie Trail Property shall be held, sold and conveyed subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Prairie Trail Property and which shall run with the land and shall be binding on all parties having any right, title or interest therein or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

I. DEFINITIONS

For the purpose of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided:

A. "Architectural Review Board" shall mean the Prairie Trail Architectural Review Board, which shall be composed of representatives of the Declarant having one (1) vote, representatives of the City of Ankeny having one (1) vote, and an architect or home designer jointly selected by Declarant and the

City of Ankeny. All plan submittals and correspondence to the Architectural Review Board shall be addressed to the offices of the City of Ankeny.

B. "Association" shall mean and refer to Prairie Trail Owners Association, Inc., its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa as amended.

C. "Association Board" shall mean the board of directors of the Prairie Trail Owners Association, Inc.

D. "Common Areas" shall mean and refer to all portions of the Prairie Trail Property now or hereafter owned by the Declarant or Association from time to time designated or declared by Declarant for the common use and enjoyment of the Owners. Included within the Common Areas, but not limited to the following, are any maintenance areas, , parking lots, walkways, sidewalks, detention ponds, storm water improvements, lakes, recreational areas, street lighting, and signage which may be constructed or erected on the Common Areas and which have not been publicly dedicated; provided, however, that the inclusion of these improvements in this definition shall in no way be construed to impose upon Declarant any obligation to construct or erect such improvements. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment therein. The designation of Common Areas by the Declarant may or may not be recorded among the Public Records at the option of the Declarant. Common Areas may be modified by additions or deletions thereto, from time to time by the Declarant, including, but not limited to Common Areas outside the boundaries of the Prairie Trail Property.

E. "Declarant" shall mean and refer to D.R.A. Properties, L.C.

F. "Lot" shall mean and refer to each and any individual parcel of land within the Prairie Trail Property, shown on any recorded Official Plat of the Prairie Trail Property.

G. "Owner" shall mean and refer to the owner of record (whether one or more persons or entities) of the legal or equitable title to any Lot.

H. "Outbuilding" shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a detached garage, tool shed or garden house.

I. "Pattern Book" shall mean the Prairie Trail Pattern Book, which is available at: <http://www.prairietrailankeny.com/resources>.

## II. RESIDENTIAL AND COMMERCIAL USE

Except as otherwise specifically noted by Declarant in a subsequently filed and recorded amendment to this Declaration, or except as specifically authorized by the PUD, all Lots in the Prairie Trail Property designated as such shall be residential lots and shall not be improved, used or occupied for other than private residential purposes. No full-time or part-time business activity may be conducted on any Lot or in any dwelling or structure constructed or maintained on any Lot except those activities permitted under the terms of the provisions of the zoning ordinance of the City of Ankeny applicable to the Prairie Trail Property.

## III. BUILDING TYPES

Permitted residential building types shall be only those specified in Section C and D of the Pattern Book.

No mobile home or Manufactured Home as defined in the Code of Iowa shall be placed or erected on any Lot. No dwelling structure of any kind may be moved onto any Lot.

No Outbuilding, or other building or structure shall be constructed, altered, or maintained on any Lot, other than one Outbuilding (excluding detached garage) that conforms to the exterior design and construction features of a dwelling on such Lot and does not occupy a space larger than specified in Section B of the Pattern Book.

Permitted commercial building types shall be only those specified in Sections B and D of the Pattern Book.

## IV. BUILDING AREA

No dwelling or other building shall be constructed on any Lot unless the design and location comports with the specifications for the applicable building type specified in Section B and D of the Pattern Book. Dwellings and other buildings must be scaled to complement the lot size, geometry and existing landscaping as well as neighboring houses and other buildings, where applicable.

## V. DESIGN AND CONSTRUCTION

All design elements of buildings on every Lot shall conform to the requirements stated in the Pattern Book, including, without limitation:

A. All buildings, dwellings and Outbuildings shall be designed and constructed in accordance with one of the Architectural Patterns set forth in Section C and D of the Pattern Book and utilizing materials specified in the Pattern Book for the applicable Architectural Pattern.

B. All dwellings shall have a garage meeting the requirements of Section B of the Pattern Book for the applicable Lot type.

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

D. The Association hereby delegates to the Architectural Review Board the authority to determine Compliance with the architectural standards of the pattern book. All appropriate Architectural Review Board Documents shall be submitted to the City of Ankeny.

E. Lighting Design Guidelines:

1) The following reference guidelines from the Illuminating Engineering Society of North America (IESNA) shall be utilized as a basis for design when selecting and designing an exterior lighting system:

- IESNA RP-8-00 "Roadway Lighting"
- IESNA RP-33-99 "Lighting for Exterior Environments"
- IESNA G-1-03 "Guideline on Security Lighting for People, Property, and Public Spaces"

2) Commercial property parking areas shall be designed with the MAXIMUM lighting level as follows:

- 5 foot-candle average
- 1 foot-candle minimum
- 10:1 max:min

3) All private commercial property shall extinguish 90% of their parking lot lighting by 11:00pm unless the business uses a third shift or a large workforce who work non-traditional hours past midnight. All building mounted area lighting or other lighting used for security lighting around the perimeter of the building may remain on from dusk to dawn.

4) All private commercial property shall utilize full cut-off optics, minimize lighting trespass from commercial zones to residential zones and use minimum required lighting levels and/ or night-time curfews on parking lot lighting where businesses are not operational 24 hours a day. Minimize building floodlighting and utilize high performance optics to again minimize the amount of light either being reflected off of the façade or directed up into the sky.

## VI. TEMPORARY AND OTHER STRUCTURES; CERTAIN USES

No temporary building or structure shall be built or maintained on any Lot. No above-ground (or other non-permanent) swimming pools capable of holding more than 24 inches of water shall be permitted on any Lot.

No camper, motor home, boat, trailer, tent, shack, garage, unfinished dwelling basement or Outbuilding shall be used at any time as a dwelling, unless approved by the Association Board. No truck with a gross vehicle weight greater than forty-five hundred (4,500) pounds and no camper, motor home, boat, jet ski, snowmobile, trailer, commercial sized vehicle, mechanical equipment or similar property may be parked or maintained on any Lot or on the public street

adjacent to any Lot (except entirely inside a closed garage); provided that this restriction shall not apply to what are customarily considered sport utility vehicles, passenger pick-up trucks, passenger vans or "conversion vans," or to trucks, equipment or trailers used in connection with construction of or rebuilding of a dwelling on any Lot. Temporary shall mean no more than a total of ten (10) days per year. At no time shall an automobile, motorcycle, truck, camper, motor home, other vehicle, boat, jet ski, snowmobile, trailer, mechanical equipment or similar property be disassembled, repaired or serviced on any Lot, except inside a garage or dwelling. No automobile, motorcycle, truck, camper, motor home, other vehicle, boat, jet ski, snowmobile, trailer, work van, work truck, mechanical equipment or similar property may be at anytime parked or maintained on the yard of any Lot.

#### VII. FENCES

No fences shall be built or maintained on any Lot unless they conform to the specifications set forth in Section B and F of the Pattern Book and the plans for such fencing are reviewed and approved by the Association Board in advance of installation or construction. All fences must be maintained to installation quality.

No exterior dog runs shall be allowed in residential areas. "Invisible Fences" for dogs shall be permitted.

#### VIII. RUBBISH CONTAINERS (RESIDENTIAL ONLY)

On Lots having back alley access, no rubbish container shall be visible from the front street at any time, and all garbage collection shall take place from the alley. On all other Lots, no rubbish container shall be visible from the front street with the exception of the scheduled pick-up time and twelve hours prior to and after the scheduled pick-up time.

#### IX. LANDSCAPING

Lot landscaping shall be the responsibility of the Owner and shall reflect one or more of the landscape patterns recommended for the type of Lot in Section D of the Pattern Book. Additionally, the amount of lot landscaping specified in Section F of the Pattern Book shall be strictly adhered to by the Owner. Frontage street trees as shown on the final plat construction plans shall be included on the dwelling landscape plans and installed with the Lot landscaping or upon installation of the sidewalk. All landscaping must be installed within six (6) months from the completion of construction. All landscaping shall be maintained and replaced (as necessary) by the Owner in conformance with the standards of the Pattern Book.

Following completion of construction of the improvements on any Lot, the front yard, side yard and rear yard other than those which are landscaped shall be fully sodded, but such parts of the yard which were previously seeded and have a full stand of grass shall not be required to be sodded.

No hedge or shrub planting which obstructs sightlines at elevations between thirty (30) inches and ten (10) feet above the roadways and alleys shall be placed or permitted to remain on any corner lot within the triangular area formed by the street and alley property lines and a line

connecting them at points thirty (30) feet from the intersection of the street lines, or in the case of a rounded property corner within the triangular area formed from the intersection of the street property line with the edge of the driveway. No trees shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sightlines.

The Owner shall keep the Lot free of debris and shall keep the grass mowed so that it does not exceed six inches in height.

If the Owner of a Lot does not commence construction within six (6) months after the purchase of a Lot from Declarant, the Owner shall be required to grade the Lot, seed the Lot to grass and keep it properly mowed.

#### X. SIDEWALKS

The purchaser of a Lot shall, at the purchaser's expense, install public sidewalks in accordance with the specifications of the City of Ankeny and the Pattern Book. The installation and construction of the sidewalks shall be completed upon the earlier of: (i) substantial completion of the improvements on said Lot; or (ii) one (1) year following the purchase of the Lot from Declarant.

#### XI. ARCHITECTURAL REVIEW

11.01 Procedure. The Architectural Review Board shall review plans and specifications for all proposed buildings, structures, and outbuildings.

#### XII. EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Official Plats of the Prairie Trail Property or are reserved on separately recorded easements. The Owner and/or occupant of each Lot, jointly and severally, shall at the expense of such Owner and/or occupant, maintain, keep, and preserve that portion of the easement area within the Lot at all times in good repair and condition and shall neither erect nor permit erection of any building, structure or other improvement of any kind within said easement areas (except customary and traditional ground cover) which might interfere in any way with the use, maintenance, replacement, inspection or patrolling of any of the utility services and drainage facilities within such easement areas. The Owner and/or occupant of a each Lot, jointly and severally, shall at the expense of such Owner and/or occupant, preserve and maintain any berm and/or swale constructed for drainage purposes to accomplish the purposes for which it was constructed.

#### XIII. NUISANCES

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 what a reasonable person would consider to be a genuine annoyance or a genuine nuisance, either temporarily or permanently.

XIV. SIGNS (RESIDENTIAL ONLY)

No sign of any kind shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except (i) street markers, traffic signs, or any signs installed by the City of Ankeny, by other governmental entities or by the Declarant, (ii) signs which have been approved by Declarant in writing not exceeding 144 square inches in area on which there shall only be exhibited the street number and/or the name of the resident, and (iii) a customary and traditional sign (one per Lot) advertising a Lot or dwelling for sale, not exceeding 1,296 square inches. In the event that any signs other than those described above shall be placed or exposed to view on any Lot, the agents of the Declarant are hereby given the right to enter upon such Lot and remove said signs. An Owner may request a variance for a temporary sign not in conformance with these standards through the Association's managing agent. Any such request is subject to the discretion

XV. UTILITIES

All utility connection facilities and services shall be underground. No individual water supply system or individual sewage disposal system shall be permitted on any Lot.

Declarant reserves the right to provide exclusive access to providers of telecommunications, cable, internet, and other utilities to the Prairie Trail Property.

XVI. ANTENNAS

No exterior towers or antennas of any kind shall be constructed, modified, or permitted on any Lot, except as herein specifically permitted. Customary television or radio antennas not exceeding five (5) feet in height shall be permitted if attached directly to either the dwelling or the garage. A satellite dish (or similar structure) shall be permitted in a size and manner as provided by rules of the Association Board.

XVII. MAINTENANCE

The Owner and/or occupant of each Lot shall jointly and severally be responsible to keep the Lot free of trash, weeds and debris and to keep the lawn and landscaping well maintained and healthy. The Owner and/or occupant of each Lot shall jointly and severally be responsible to maintain the exterior of any dwelling, the driveway, fence, screening and all other improvements.

XVIII. CERTAIN ANIMALS PROHIBITED

No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential 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 a total of three dogs and/or cats be kept at any one Lot at any one time. Animals must reside in the dwelling.

## XIX. SURFACE WATER

The topography of the Prairie Trail Property 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 and benefited by such easements as may exist for the flowage of surface water under the law 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. The pattern book provides guidelines for those parties interested in this matter.

## XX. COVENANT FOR ASSESSMENTS

### A. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Prairie Trail Property, and improved for which a certificate of occupancy has been issued, hereby covenants, and each other Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) regular assessments or charges, and (ii) special assessments for capital improvements and operating deficits, and other special assessments as provided in this Declaration; such assessments to be established and collected as hereinafter provided. The regular and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made senior to all liens except a first mortgage of record, municipal utilities, and any ad valorem taxes. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

### B. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Prairie Trail Property and for the improvement and maintenance of the Common Areas and for other purposes specifically provided herein; PROVIDED, HOWEVER, that Declarant and/or the Association reserves the right to include Common Areas outside the boundaries of Prairie Trail Property, and other lot owners of property outside the boundaries of Prairie Trail Property may be granted the right to utilize the Common Areas located within Prairie Trail Property. In addition, the regular assessment shall include repayment of sums advanced by the Declarant on behalf of the Association.

### C. Special Assessments for Capital Improvements and Operating Deficits.

In addition to the regular assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, which the Association required to maintain or for operating deficits which the Association may from time to time incur.



**D. Date of Commencement of Regular Assessments: Due Dates.**

The regular assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to an Owner of a Lot with completed living unit constructed thereon and for which a certificate of occupancy has been issued. Lots which do not have completed living units constructed thereon and for which certificates of occupancy have not been issued, shall be exempt from assessments. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

**E. Effect of Nonpayment of Assessments: Remedies of the Association.**

Any assessment not paid within thirty (30) days after the due date shall, in addition to being a lien upon such Owner's Lot, bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, 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 preparing and filing the petition in such action, including reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

**F. Subordination of Assessments Liens.**

If any Lot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in 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 that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a 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 shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

#### XXI. ENFORCEMENT OF COVENANTS

This Declaration of Residential Covenants, Conditions and Restrictions shall be deemed to run with the land, and the Declarant and/or the Owner of any Lot may bring an action in any court of competent jurisdiction to enforce this Declaration of Residential Covenants, Conditions and Restrictions and enjoin its violation or for damages for the breach thereof, or for any other remedy or combination of remedies recognized at law or in equity.

#### XXII. AMENDMENTS OF COVENANTS

This Declaration of Residential Covenants, Conditions and Restrictions may be amended from time to time with the approval of the Owners. Said approval shall be given by the affirmative vote of not less than two-thirds (2/3) of the Owners. The Owner of each Lot (or the joint Owners of a single Lot in the aggregate) shall be entitled to cast one vote on account of each Lot owned. Provided, however, until twelve (12) months following the date on which the Declarant has sold all of the Lots, it may make amendments or modifications to this Declaration of Residential Covenants, Conditions and Restrictions without the consent of any other Owners or any other party. Such amendments or modifications by the Declarant shall be effective only after all other Owners are provided with a copy of the amendment or modification by ordinary mail and the amendment or modification has been filed with the Polk County Recorder.

#### XXIII. PERIOD OF COVENANTS

This Declaration of Covenants, Conditions and Restrictions shall continue and remain in full force and effect at all times as to the Prairie Trail Property and as to the Owners of any Lot, regardless of how title was acquired, for a term of twenty (20) years from the recording of this Declaration, on which date this Declaration of Covenants, Conditions and Restrictions shall terminate and end and thereafter be of no further legal or equitable effect; provided, however, that this Declaration of Covenants, Conditions and Restrictions shall automatically be extended for one additional period of twenty (20) years, unless on or before the end of the initial period, the Owners of not less than fifty percent (50%) of the Lots, by written instrument duly recorded, declare a termination of same.

#### XXIV. ENFORCEMENT AND WAIVER

A. In the event that any one or more of the foregoing covenants, conditions or restrictions shall be declared for any reason by a court of competent jurisdiction to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions and restrictions not so expressly held to be void, which shall continue unimpaired and in full force and effect.

B. Wherever there is a conflict between this Declaration and the zoning ordinance of the City of Ankeny, the more restrictive provision shall be binding.

XXV. DISCLAIMER

Declarant may at anytime by written instrument filed with the Polk County Recorder, disclaim their rights and powers hereunder and thereafter it shall have no rights or responsibilities hereunder. Declarant shall have no liability in or for damages of any sort to any Owner, or any lessee or occupant of any Lot, or otherwise to any person for any exercise or failure to exercise any right (or duty or obligation, if any) of Declarant hereunder, for the making of an amendment or modification hereto by Declarant for the granting of approval or withholding of approval required or permitted under the terms of this Declaration or in any other manner arising herefrom. Provided however, any Owner may exercise any rights such Owner may have against Declarant or otherwise seek to enforce the provisions of this Declaration against Declarant by an action in equity for specific performance or injunctive relief to which Declarant shall be subject. The remedies of specific performance and injunctive relief shall be the only remedies against Declarant for any exercise or failure to exercise any right (or duty or obligation, if any) of Declarant hereunder, for the making of an amendment or modification hereto by Declarant, for the granting of approval or withholding of approval required or permitted under the terms of this Declaration or for other matters arising herefrom, all other remedies being expressly waived. Notwithstanding the foregoing, the rights and powers of the Declarant hereunder shall be deemed to have been disclaimed by Declarant five (5) years following the date on which Declarant conveys the last Lot it owns in Prairie Trail Property, and thereafter enforcement of this Declaration may be carried out exclusively by the Owners as provided in Article XIX, above.

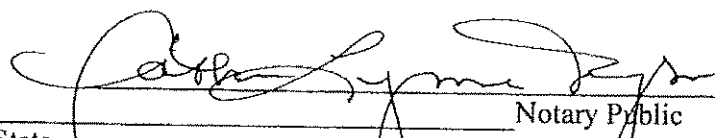
This Declaration of Residential Covenants, Conditions and Restrictions, was made the date first written above by the Declarant.

D.R.A. PROPERTIES, L.C.

By: Tara Meredith  
Tara Meredith, Secretary

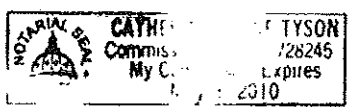
STATE OF IOWA            )  
                                  ) ss.  
COUNTY OF POLK        )

This instrument was acknowledged before me on 13 Sept, 2007, by Tara Meredith, Secretary of D.R.A. Properties, L.C.

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

in and for said State

My commission expires May 3, 2010



## EXHIBIT A

Parcel "F" in the Northwest  $\frac{1}{4}$  and the South  $\frac{1}{2}$  of Section 27, AND Parcel "G" in John Deere Place, an Official Plat, AND Parcel "H" in the Northeast  $\frac{1}{4}$  of Section 27 and the Southeast  $\frac{1}{4}$  of Section 22, AND Parcel "I" in the Southeast  $\frac{1}{4}$  of Section 22 and the South  $\frac{1}{2}$  of Section 23 and the East  $\frac{1}{2}$  of Section 27 and the North  $\frac{1}{2}$  of Section 26, all in Township 80 North, Range 24 West of the 5<sup>th</sup> P.M., City of Ankeny, Polk County, Iowa, all as described on that Plat of Survey recorded on September 20, 2005 in Book 11295, Page 669 in the Office of the Polk County Recorder, EXCEPT Parcel "L" of the Plat of Survey filed in the Office of the Recorder of Polk County, Iowa on April 20, 2007 and recorded in Book 12156, Page 89, said Parcel "L" being a part of Parcel "I" of the Plat of Survey recorded in Book 11295, Page 669, and a part of Parcel "K" of the Plat of Survey recorded in Book 11969, Page 32, AND EXCEPT Lot 1 of Ankeny Police Headquarters Plat 1, an Official Plat in the City of Ankeny, Polk County, Iowa;

AND

Lot 13 in John Deere Place, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa, and that part of Lot 11 in said John Deere Place conveyed to the City of Ankeny, Iowa by Quit Claim Deed filed June 9, 1965, in Book 3685, Page 325 in the Office of the Polk County Recorder;

AND

Parcel "J" of the Plat of Survey filed in the Office of the Recorder of Polk County, Iowa, on October 26, 2006 and recorded in Book 11920, Page 256, being a part of the SE  $\frac{1}{4}$  of Section 27 and a part of the SW  $\frac{1}{4}$  of Section 26; and Parcel "M" of the Plat of Survey filed in the Office of the Recorder of Polk County, Iowa, on April 20, 2007 and recorded in Book 12156, Page 90, being a part of the SW  $\frac{1}{4}$  of Section 26, all in Township 80 North, Range 24 West of the 5<sup>th</sup> P.M., in the City of Ankeny, Polk County, Iowa.

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Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2016-00036703

BK 16234 PG 497-503

RETURN TO:

Prepared by/Return to: Larry J. Handley 2575 N Ankeny Blvd., Ste. 221, Ankeny, Iowa 50023 (515)965-1200

DECLARATION OF RESIDENTIAL  
COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made this 20th day of Oct, 2016, by the Declarant, D.R.A. Properties, L.C., an Iowa Limited Liability Company.

WHEREAS, Declarant is the Owner of certain real property located in the City of Ankeny, the County of Polk, in the State of Iowa, which is legally described as:

All Lots in Heritage Village At Prairie Trail, Plat 1, an Official Plat now included in and forming a part of the City of Ankeny, Polk County, Iowa.

WHEREAS, said property is referred to herein as the "Heritage Village At Prairie Trail, Plat 1"; and,

WHEREAS, Declarant is desirous of protecting the value and desirability of the lots in Heritage Village at Prairie Trail, Plat 1.

NOW, THEREFORE, Declarant hereby declares that said Property shall be held, sold and conveyed subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Heritage Village at Prairie Trail Plat 1 and which shall run with the land and shall be binding on all parties having any right, title or interest therein or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

I. DEFINITIONS

For the purpose of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided:

- A. "Association" shall mean and refer to Heritage Village at Prairie Trail Owners Association, Inc., its successors and assigns, a non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa as amended.

- B. "Common Areas" shall mean and refer to all portions of the Heritage Village at Prairie Trail, Plat 1 or hereafter owned by the Declarant or Association from time to time designated or declared by Declarant for the common use and enjoyment of the Owners. Included within the Common Areas, but not limited to the following, are any maintenance areas, parking lots, walkways, sidewalks, detention ponds, storm water improvements, recreational areas, street lighting, and signage which may be constructed or erected on the Common Areas and which have not been publicly dedicated; provided however, that the inclusion of these improvements in this definition shall in no way be construed to impose upon Declarant any obligation to construct or erect such improvements. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment therein. The designation of Common Areas by the Declarant may or may not be recorded among the Public Records at the option of the Declarant. Common Areas may be modified by additions or deletions thereto, from time to time by the Declarant, including, but not limited to Common Areas outside the boundaries of Heritage Village at Prairie Trail, Plat 1.
- C. "Declarant" shall mean and refer to D.R.A. Properties, L.C.
- D. "Lot" shall mean and refer to each and any individual parcel of land within Heritage Village at Prairie Trail, Plat 1, shown on the recorded Official Plat of Heritage Village at Prairie Trail, Plat 1.
- E. "Owner" shall mean and refer to the owner of record (whether one or more persons or entities) of the legal or equitable title to any Lot.

## II. RESIDENTIAL USE

All Lots in the Heritage Village at Prairie Trail Property shall be residential lots and shall not be improved, used or occupied for other than private residential purposes. No full-time or part-time business activity may be conducted on any Lot or in any dwelling or structure constructed or maintained on any Lot except those activities permitted under the terms of the provisions of the zoning ordinance of the City of Ankeny applicable to the Heritage Village at Prairie Trail Property.

## III. EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Official Plat Heritage Village at Prairie Trail or are reserved on separately recorded easements. The Owner and/or occupant of each Lot, jointly and severally, shall, at the expense of such Owner and/or occupant, maintain, keep, and preserve that portion of the easement area within the Lot at all times in good repair and condition and shall neither erect nor permit erection of any building, structure or other improvement of any kind within said easement areas (except customary and traditional ground cover) which might interfere in any

way with the use, maintenance, replacement, inspection or patrolling of any of the utility services and drainage facilities within such easement areas. The Owner and/or occupant of each Lot, jointly and severally, shall, at the expense of such Owner and/or occupant, preserve, maintain any berm and/or swale constructed for drainage purposes to accomplish the purposes for which it was constructed.

#### IV. RUBBISH

The Association shall select the garbage collection contractor for all Lots in the Heritage Village at Prairie Trail Property following a competitive bidding process.

#### V. ALLEYS; ACCESS

All lots with access to the alley must have driveway access off of the alley and may NOT have driveway access of any kind on the street.

Snow removal in alleys shall be the responsibility of the Association. The City of Ankeny shall have responsibility for all major maintenance of the alleys.

#### VI. COVENANT FOR ASSESSMENTS

##### A. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Heritage Village at Prairie Trail Property, and improved with a living unit for which a certificate of occupancy has been issued, hereby covenants, and each other Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) regular assessments or charges, and (ii) special assessments for capital improvements and operating deficits, and other special assessments as provided in this Declaration; such assessments to be established and collected as hereinafter provided. The regular and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

##### B. Purpose of Assessments

The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residence in the Heritage Village at Prairie



Trail Property and for the improvement and maintenance of the Common Areas and for other purposes specifically provided herein; PROVIDED, HOWEVER, that Declarant and/or Association reserves the right to include Common Areas outside the boundaries of Heritage Village at Prairie Trail, and other lot owners of property outside the boundaries of Heritage Village at Prairie Trail may be granted the right to utilize the Common Areas located within Heritage Village at Prairie Trail. In addition, the regular assessment shall include repayment of sums advanced by the Declarant on behalf of the Association.

C. Special Assessments for Capital Improvements and Operating Deficits.

In addition to the regular assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, which the Association required to maintain or for operating deficits which the Association may from time to time incur.

D. Date of Commencement of Regular Assessments: Due Dates.

The regular assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to an Owner of a Lot with completed living unit constructed thereon and for which a certificate of occupancy has been issued. Lots which do not have completed living units constructed thereon and for which certificates of occupancy have not been issued, shall be exempt from assessments. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

E. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall, in addition to being a lien upon such Owner's lot, bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, 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 preparing and filing the Petition in such action, including reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

F. Subordination of Assessment Liens.

If any Lot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in 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 that assessment liens, if any, or as shall have come due up to the expiration of the applicable redemption period and issuance of 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 shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

VII. ENFORCEMENT OF COVENANTS

This Declaration of Residential Covenants, Conditions and Restrictions shall be deemed to run with the land, and the Declarant and/or the Owner of any Lot may bring an action in any court of competent jurisdiction to enforce this Declaration of Residential Covenants, Conditions and Restrictions and enjoin its violation or for damages for the breach thereof, or for any other remedy or combination of remedies recognized at law or in equity.

VIII. AMENDMENTS OF COVENANTS

This Declaration of Residential Covenants, Conditions and Restrictions may be amended from time to time with the approval of the Owners. Said approval shall be given by the affirmative vote of not less than two-thirds (2/3) of the Owners. The Owner of each Lot (or the joint Owners of a single Lot in the aggregate) shall be entitled to cast one vote on account of each Lot owned. Provided, however, until twelve (12) months following the date on which the Declarant has sold all of the Lots, it may make amendments or modifications to this Declaration of Residential Covenants, Conditions and Restrictions without the consent of any other Owners

or any other party. Such amendments or modifications by the Declarant shall be effective only after all other Owners are provided with a copy of the amendment or modification by ordinary mail and the amendment or modification has been filed with the Polk County Recorder.

#### IX. PERIOD OF COVENANTS

This Declaration of Covenants, Conditions and Restrictions shall continue and remain in full force and effect at all times as to the Heritage Village at Prairie Trail Property and as to the Owners of any Lot, regardless of how title was acquired, for a term of twenty (20) years from the recording of this Declaration, on which date this Declaration of Covenants, Conditions and Restrictions shall terminate and end and thereafter be of no further legal or equitable effect; provided, however, that this Declaration of Covenants, Conditions and Restrictions shall end at the initial period, the Owners of not less than fifty percent (50%) of the Lots, by written instrument duly recorded, declare a termination of same.

#### X. ENFORCEMENT AND WAIVER

A. In the event that any one or more of the foregoing covenants, conditions or restrictions shall be declared for any reason by a court of competent jurisdiction to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions and restrictions not so expressly held to be void, which shall continue unimpaired and in full force and effect.

B. Wherever there is a conflict between this Declaration and the zoning ordinance of the City of Ankeny, the more restrictive provision shall be binding.

#### XI. DISCLAIMER

Declarant may at any time, by written instrument, filed with the Polk County Recorder, disclaim their rights and powers hereunder and thereafter it shall have no rights or responsibilities hereunder. Declarant shall have no liability in or for damages of any sort to any Owner, or any lessee or occupant of any Lot, or otherwise to any person for any exercise or failure to exercise any right (or duty or obligation, if any) of Declarant hereunder, for the making of an amendment or modification hereto by Declarant for the granting of approval or withholding of approval required or permitted under the terms of this Declaration or in any other manner arising herefrom. Provided however, any Owner may exercise any rights such Owner may have against Declarant or otherwise seek to enforce the provisions of this Declaration against Declarant by an action in equity for specific performance or injunctive relief to which Declarant against shall be subject. The remedies of specific performance and injunctive relief shall be the only remedies against Declarant for any exercise or failure to exercise any right (or duty or obligation, if any) of Declarant hereunder, for the making of an amendment or modification hereto by Declarant, for the granting of approval or withholding of approval

required or permitted under the terms of this Declaration or for other matters arising herefrom, all other remedies being expressly waived. Notwithstanding the foregoing, the rights and powers of the Declarant hereunder shall be deemed to have been disclaimed by Declarant five (5) years following the date on which Declarant conveys the last Lot it owns in Heritage Village at Prairie Trail Property, and thereafter enforcement of this Declaration may be carried out exclusively by the Owners as provided in Article V, above.

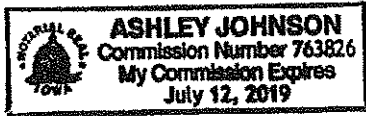
This Declaration of Residential Covenants, Conditions and Restrictions, was made the date first written above by the Declarant.

D.R.A. PROPERTIES, L.C.

By: Tara Meredith  
Tara Meredith, Secretary

STATE OF IOWA    )  
                                  )ss.  
COUNTY OF POLK )

This instrument was acknowledged before me on 20th day of Oct, 2016, by Tara Meredith, Secretary of D.R.A. Properties, L.C.



Ashley Johnson  
NOTARY PUBLIC IN AND FOR  
THE STATE OF IOWA

12A  
Pd



Doc ID: 034001370002 Type: GEN  
Kind: RESTRICTIVE COVENANT  
Recorded: 05/29/2019 at 01:37:51 PM  
Fee Amt: \$12.00 Page 1 of 2  
Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2018-00084825

BK 17344 PG 263-264

RETURN TO:  
Prepared by/Return to: Dawn Takekawa, 1610 SW Main Street, Suite 207, Ankeny, IA 50023  
(515) 964-2000

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AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
HERITAGE VILLAGE AT PRAIRIE TRAIL

THIS AMENDMENT IS MADE this 24<sup>th</sup> day of May, 2019, by the  
Declarant, D.R.A. Properties, L.C., an Iowa Limited Liability Company.

WHEREAS, the Declarant filed a Declaration of Covenants, Conditions and Restrictions  
on October 20, 2016, in the Office of the Polk County Recorder in Book 16234 at Page 497.

WHEREAS, Article VIII of said Declaration permits for the Developer to amend the  
covenants so long as the Developer is an owner of a lot within the plat.

WHEREAS, Declarant is desirous of adding property, specifically, Lots 1-17 in Parkway  
South at Prairie Trail Plat 1, and Lots 1-34 Heritage Village at Prairie Trail Plat 2 to be subject to  
the Covenants.

NOW THEREFORE, the Declarant hereby modifies the Covenants filed at Book 16234  
at page 497 as follows:

1. Article I(D) is amended to include the following lots:

Lots 1-17 in Parkway South at Prairie Trail Plat 1, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa; and

Lots 1-34 Heritage Village at Prairie Trail Plat 2, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa.

IT IS AFFIMATIVELY STATED that all other provisions of the Covenants as filed shall remain in full force and effect.

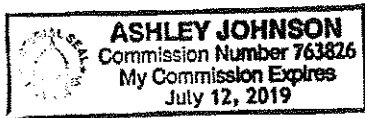
Dated this 24<sup>th</sup> day of May, 2019.

D.R.A. Properties, L.C.

Tara Meredith  
By: Tara Meredith, Secretary

STATE OF IOWA    )  
                          )     ss:  
COUNTY OF POLK )

On this 24<sup>th</sup> day of May, 2019, before me, a notary public in and form the State of Iowa, personally appeared Tara Meredith, to me personally known who being by me duly sworn did say that she is the Secretary of D.R.A. Properties, L.C., that no seal has been procured by D.R.A. Properties, L.C., and that said instrument was signed by authority of its members and was the voluntary act and deed.



Ashley Johnson  
Notary Public

### 6.E.3 FENCES, WALLS, AND PLANTINGS.

- a. Permit Required. No person shall erect, alter or relocate any fence, wall, or other vision barrier without first obtaining a building permit, the fee for which shall be established by resolution of the City Council.
- b. Fences shall be permitted in any yard.
  1. Fences located in front and side yards adjacent to a public street right-of-way shall not exceed 42 inches in height.
  2. Fences located in rear yards adjacent to a street right-of-way shall not exceed 42 inches in height unless they are set back from the street right-of-way at the main façade of the house at a minimum; then those fences are allowed to meet the same standard as a side and/or rear yard not adjacent to a street right-of-way.
  3. In side and rear yards not adjacent to a street right-of-way, fences or walls facing a public street right-of-way shall not exceed 72 inches in height, but fences exceeding 42 inches and shall have the top 12 to 24 inches constructed with 50% of the surface area open.
  4. In side and rear yards not adjacent to a street right-of-way, fences or walls not facing a public street right-of-way shall not exceed 72 inches in height and need not have the top 12 to 24 inches constructed with 50% of the surface area open.
- c. Fences are not allowed within a buffer or landscaping easement. All fences shall adhere to the requirements for visibility at street, alley and driveway intersections. (See City Municipal Code Section 191.16.)
- d. Fences shall be constructed of one of the following materials: brick, stone, wood, wrought iron, or pvc. Hedgerow fencing is also permitted
- e. Nothing in this section shall be deemed to apply to public tennis courts, public pools, public baseball fields, and any other public recreational use facility accessible to the public, except where traffic visibility is impaired.