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 Polk County Iowa  
 JULIE M. HAGGERTY RECORDER  
 File# 2008-00024997  
 BK 12379 PG 361-369

RETURN TO:  
 Prepared by and return to: Robert D. Andeweg, 4500 Westown Parkway, Suite 277, West Des Moines, IA  
 50266 Telephone: (515) 242-2400

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
REGARDING THE  
PRAIRIE TRAIL SCHOLARSHIP FUND

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.

WITNESSETH

WHEREAS, Declarant is the fee simple title owner of the real property described  
 in Exhibit "A" attached hereto and made a party hereof for all purposes; and

WHEREAS, Declarant desires to subject its fee simple interests in the real  
 property described in "Exhibit A" to this Declaration and to the covenants, conditions,  
 restrictions, assessments, liens and charges herein set forth; and

WHEREAS, Des Moines Area Community College (DMACC) Foundation (the  
 "Foundation"), a non-profit corporation, has been incorporated under the laws of the  
 State of Iowa for the purpose of exercising the powers and functions hereunder;

WHEREAS, the Foundation has deemed it desirable to establish a sustainable scholarship program (the "Prairie Trail Scholarship Fund") to support residents of Prairie Trail by providing funding for higher education and educators;

WHEREAS, Declarant has deemed it desirable for the efficient management of the Property and the preservation of the value, desirability and attractiveness of the Property to provide the Foundation with a funding mechanism for the Prairie Trail Scholarship Fund; and

WHEREAS, Declarant will hold and convey title to the Property or any part thereof subject to the covenants, conditions, restrictions, easements, liens and changes herein set forth.

NOW THEREFORE, Declarant hereby covenants, agrees and declares that the Property shall be owned, held, transferred, leased, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, liens and charges herein set forth.

#### ARTICLE I DEFINITIONS

Section 1.1 "Assessment" shall mean and refer to a Scholarship Assessment deemed payable pursuant to Section 2.1 of this Declaration.

Section 1.2 "Declarant" shall mean and refer to D.R.A. Properties, L.C., its successors and assigns.

Section 1.3 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions Relating to the Prairie Trail Fund.

Section 1.4 "Foundation" shall mean and refer to the Des Moines Area Community College (DMACC) Foundation, its successors and assigns. The Foundation is located at 2006 South Ankeny Boulevard, Ankeny, IA 50023, and the telephone number is (515) 964-6447.

Section 1.5 "Lot" shall mean and refer to any lot, plot, parcel or tract of real estate shown on any recorded subdivision map or plat as amended from time to time, to the extent such lot, plot, parcel or tract is a part of the Property, which is designated as a lot therein and which is or will be improved with one (1) single-family attached or detached residential dwelling in conformity with the building restrictions contained herein and in the Master Declaration; provided, however, the term "Lot" shall not include (i) any portion of the Residential Common Area or any real property owned by or leased to the Residential Association for the common use and enjoyment of the Members, (ii) any Condominium Unit in a Condominium Building, or (iii) any lot, tract or parcel of real estate out of or part of the Property which is or will be improved with an Apartment Complex; (iv) any lot, tract or parcel of real estate out of or a part of the Property which is or will be improved for commercial use, including, but not limited to, any

governmental, professional, office, hotel, motel, business, business park, commercial, eleemosynary, trade, industrial, retail, financial, or medical use. Lot shall also mean and refer to any separate platted lot which is improved or is to be improved with a single-family residential townhome structure which is joined to another dwelling unit on one or more sides by a party wall or abutting wall.

Section 1.6 "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.

Section 1.7 "Property" shall mean and refer to all existing real property described in Exhibit "A" attached hereto and made a party hereof for all purposes, including any and all improvements thereon, and any additions of real property, as are subject to this Declaration.

Section 1.8 "Tract" shall mean and refer to unsubdivided, improved or unimproved land within the Property, developed or to be developed for residential use. The term "Tract" shall not include land upon which is located a Condominium Building, Apartment Complex, or land is encompassed within a Lot.

## ARTICLE II SCHOLARSHIP ASSESSMENT

Section 2.1 The Prairie Trail Scholarship Fund Assessment. The Declarant hereby covenants and agrees that any Owner granting, assigning, transferring, or otherwise conveying title to Property by deed or other writing, shall pay to the Foundation, a Scholarship Assessment equal to one-half of one percent (.5%) of the full amount of the actual sale price of the real property involved, as reflected on the Declaration of Value Statement filed in accordance with Iowa Code Section 428A.1 with the County Clerk of Polk County, Iowa. The aforementioned Scholarship Assessment shall be due and payable by the Owner at the closing of the sale of any lot, tract or parcel of real property and shall be used by the Foundation for any of its lawful purposes.

Section 2.2 Date of Commencement of Scholarship Assessment and Due Date of Scholarship Assessment. The Scholarship Assessment provided for in this Declaration shall commence on the filing of this Declaration, and such assessment shall be considered delinquent if not paid at the closing of such transaction by which the lot, tract or parcel of real property out of the Property is sold, transferred or conveyed.

Section 2.3 No Offsets. All Scholarship Assessments shall be payable in the amount specified herein and no offsets against such amount shall be permitted for any reason.

Section 2.4 Nonpayment of Scholarship Assessments.

(a) Delinquency. Any Scholarship Assessment provided for in this Declaration, which is not paid in full when due shall be delinquent on the day following the due date (the "delinquency date"). The Foundation shall have the right to reject partial payment of a Scholarship Assessment and demand full payment thereof. If the Scholarship Assessment is not paid in full within thirty (30) days after the delinquency date, the unpaid amount of such assessment shall bear interest from the due date at a rate equal to the lesser of fifteen percent (15%) per annum or the maximum rate allowed by Iowa law.

(b) Lien. The unpaid portion amount of any Scholarship Assessment not paid by the delinquency date shall, together with the interest thereon as provided in Section 2.4 of this Declaration and the cost of collection thereof, including reasonable attorneys' fees, as herein provided, thereupon become a continuing lien and charge upon the land covered by such assessment, whether or not expressly assumed by deed or other writing. The lien for the unpaid Scholarship Assessment shall be unaffected by any subsequent sale or assignment of any lot, parcel or tract of real estate and shall continue in full force and effect until the delinquent Scholarship Assessment is paid in full satisfaction. The aforesaid lien shall be superior to all other liens and charges against the real estate, except only for tax liens, liens for assessments and the liens of a bona fide mortgage or deed of trust now or hereafter placed upon said real property and which mortgage or deed of trust is recorded prior to recordation of written notice of past due Scholarship Assessments. The Foundation shall have the power to subordinate the lien securing the payment of any Scholarship Assessment imposed pursuant to this Declaration to any other lien. Such power shall be entirely discretionary with the Foundation.

The existence of the lien shall be self-operative, but to further evidence the aforesaid lien, the Foundation (or its duly authorized agent) may prepare a written notice of the lien setting forth the amount of the unpaid indebtedness and a description of the property covered by such lien. Such notice shall be executed by one of the officers of the Foundation and shall be recorded in the office of the County Clerk of Polk County, Iowa.

To evidence the release of the aforesaid lien, the Foundation (or its duly authorized agent) shall likewise prepare a written certification of the satisfaction of any Scholarship Assessment.

(c) Remedies. This Declaration shall be deemed to run with the land. Subsequent to the recording of a notice of the lien as provided in this Section, the Foundation may institute an action in any court of competent jurisdiction to enforce this Declaration and enjoin its violation or for damages for the breach thereof, or for any remedy or combination of remedies recognized at law or in equity. The lien shall have the priority set forth in this Section. In any foreclosure proceeding, the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Foundation. In the event an action at law is instituted against the Owner or the Owners personally obligated to pay the Scholarship Assessment, there shall be added to the amount of any such assessment the interest provided in this Section, the costs of

preparing and filing the complaint in such action and the reasonable attorneys' fees incurred in connection with such action; and in the event a judgment is obtained, such judgment shall include interest on the Scholarship Assessment as provided in this Section and reasonable attorneys' fee to be fixed by the court, together with the costs of the action. Each Owner vests in the Foundation or its assigns the right and power to bring all actions at law or lien foreclosure against such Property for the collection of such delinquent Scholarship Assessments. Upon the written request of any mortgagee holding a prior lien on any part of the Property, the Foundation shall report to said mortgagee any Scholarship Assessments remaining unpaid for longer than sixty (60) days after the delinquency date of such assessment.

Section 2.5 Exemptions. The above mentioned Scholarship Assessment shall not apply to:

- (a) Any instrument of mortgage, assignment, extension, partial release, or satisfaction thereof;
- (b) Any transfer of property pursuant to a will;
- (c) Any plat;
- (d) Any lease;
- (e) Any property purchased, dedicated or accepted by the State of Iowa, its agencies or political subdivisions including, but not limited to Polk County, the Ankeny School District, the City of Ankeny, or their successors or assigns;
- (f) Any Deed which, without additional consideration, confirms, corrects, modifies, or supplements a deed previously recorded;
- (g) Any property transferred between husband and wife, or parent and child, without actual consideration;
- (h) Any tax deed;
- (i) Any deed of partition where the interest conveyed is without consideration, unless a party takes a share greater in value than their undivided interest, in which case the Scholarship Assessment applies to said value;
- (j) Any deed for the transfer of property or the transfer of an interest in Property when the deed is executed between former spouses pursuant to a decree of dissolution of marriage;
- (k) Any deed transferring easements;
- (l) Any deed giving back real property to lienholders in lieu of forfeitures or

foreclosures;

(m) Any deed executed by public officials in the performance of their official duties; and

(n) All portions of the Property owned by non-profit organizations and charitable organizations and restricted for use as schools or churches; provided, however, the exemption of such organizations and the portions of the Property owned by same is subject to review and approval by the Foundation, such exemption being contingent upon approval by the Foundation.

### ARTICLE III GENERAL PROVISIONS

Section 3.1 Duration. The Covenants, Conditions and Restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Foundation and its respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date that this Declaration is recorded in the office of the County Clerk of Polk County, Iowa.

Section 3.2 Amendments. Notwithstanding Section 3.1 of this Article and subject to the provisions of Section 3.8 hereof, where applicable, these Covenants and Restrictions may be revoked, amended and/or modified with the written consent of the Foundation and at least two-thirds (2/3) of the Owners; provided that, Declarant at any time may revoke, or make amendments or modifications to this Covenants and Restrictions without the consent of any other Owners or any other party. Such revocation, amendment or modification by the Declarant shall be effective only after all other Owners are provided with a copy of the revocation, amendment or modification by ordinary mail and the revocation, amendment or modification has been filed with the Polk County Recorder.

Any and all amendments, if any, shall be recorded in the office of the County Clerk of Polk County, Iowa.

Section 3.3 Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, or to recover damages, or to enforce any lien created by these covenants; and failure by the Foundation to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Declarant or the Foundation shall have the right, but not the obligation, to enforce these covenants and restrictions in accordance with the provisions set forth within this Declaration.

Section 3.4 Termination of and Responsibility of Declarant. If Declarant should convey all of its rights, title and interest in and to the Property to any partnership,

individual or individuals, corporation or corporations, then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 3.5 Owners Compliance. Each Owner shall comply with the provisions of this Declaration, and shall comply with the decisions and resolutions of the Foundation or its duly authorized representative, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages and/or fines or for injunctive relief.

Section 3.6 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provision which shall remain in full force and effect.

Section 3.7 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 3.8 Notices to an Owner. Any notice required to be given to an Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the address of the lot, tract or parcel of real estate owned by its Owners. Notices of past due assessments, of the intention to institute any enforcement provisions hereof, of any sanctions to be imposed hereunder or of any violations of this Declaration shall be sent to the affected person or entity by certified mail, return receipt request and addressed as aforesaid. Notices to the Foundation shall be sent to its registered agent.

IN WITNESS WHEREOF, D.R.A Properties, L.C. being the Declarant herein, has caused this instrument to be executed this 12 day of September, 2007.

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

By: Jana Meredith

THE STATE OF IOWA     §  
  §  
COUNTY OF POLK     §

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

*Catherine Lynne Tyson*  
Notary Public

in and for said State





**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, EXCEPT Lot 1 of Plaza Shops at Prairie Trail, an Official Plat in the City of Ankeny, Polk County, Iowa; 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.