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Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2008-00024999

BK 12379 PG 383-391

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 RESIDENTIAL  
COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made this 13 day of Sept, 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 "Precedence at Prairie Trail Property"; and

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

NOW, THEREFORE, Declarant hereby declares that the Precedence at 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 Precedence at 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:

B. "Association" shall mean and refer to Precedence at 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. "Common Areas" shall mean and refer to all portions of the Precedence at 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, 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 Precedence at Prairie Trail.

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

E. "Lot" shall mean and refer to each and any individual parcel of land within Precedence at Prairie Trail, shown on the recorded Official Plats of Precedence at Prairie Trail, and numbered as follows:

- Plat 1: Lots 1 – 26
- Plat 2: Lots 1 – 21
- Plat 3: Lots 1 – 54
- Plat 4: Lots 1 – 19
- Plat 5: Lots 1 – 16

F. "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 Precedence 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 Precedence 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 of Precedence 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 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.

### IV. RUBBISH

The Association shall select the garbage collection contractor for all Lots in the Precedence 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. Lots requiring alley access are:

- Plat 1: All Lots
- Plat 2: Lots 1-10; 14-21
- Plat 3: Lots 1-12; 31-48
- Plat 4: Lots 1-14
- Plat 5: Lot 14

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. BUILDING AREA

Manor lots in Precedence at Prairie Trail Plat 2 should be a minimum of 2,000 square feet on the main level (not including garages).

### VII. COVENANT FOR ASSESSMENTS.

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

The Declarant, for each Lot owned within the Precedence 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 residents in the Precedence 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 the Association reserves the right to include Common Areas outside the boundaries of Precedence at Prairie Trail , and other lot owners of property outside the boundaries of Precedence at Prairie Trail may be granted the right to utilize the Common Areas located within Precedence 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 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.

VIII. 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.

IX. 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.

X. 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 Precedence 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 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.

XI. 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.

XII. 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 Precedence 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 Sept 13, 2007, by Tara Meredith, Secretary of D.R.A. Properties, L.C.

Catherine Lynne Tyson  
Notary Public

in and for said State

My commission expires: May 3, 2010



## “EXHIBIT A”

### Legal Description Precedence at Prairie Trail

A TRACT OF LAND LOCATED IN THOSE PARTS OF LOTS 11, 13, AND 14 OF JOHN DEERE PLACE, BEING AN OFFICIAL PLAT IN THE CITY OF ANKENY, POLK COUNTY, IOWA; THOSE PARTS OF PARCEL "F", PARCEL "G", AND PARCEL "H" OF SECTION 27, TOWNSHIP 80 NORTH, RANGE 24 WEST OF THE FIFTH PRINCIPLE MERIDIAN, CITY OF ANKENY, POLK COUNTY, IOWA AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 11295, PAGES 669-674; ALL OF WHICH IS LOCATED IN SECTION 27, TOWNSHIP 80 NORTH, RANGE 24 WEST OF THE FIFTH PRINCIPLE MERIDIAN, CITY OF ANKENY, POLK COUNTY, IOWA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER CORNER OF SAID SECTION 27; THENCE S89°52'59"E, 450.00', ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 27, TO THE POINT OF BEGINNING; THENCE N48°09'39"W, 363.67'; THENCE N82°00'00"W, 287.40'; THENCE N08°00'00"E, 57.00'; THENCE N57°30'00"E, 32.47'; THENCE N17°00'00"E, 264.20'; THENCE NORTHEASTERLY 472.59' ALONG A CURVE TO THE RIGHT, TANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 4028.50', A DELTA ANGLE OF 06°43'17", AND A CHORD DISTANCE OF 472.31' WHICH BEARS N20°21'39"E; THENCE NORTHWESTERLY 38.93' ALONG A CURVE TO THE LEFT, TANGENT TO THE LAST DESCRIBED CURVE, HAVING A RADIUS OF 25.00', A DELTA ANGLE OF 89°13'21", AND A CHORD DISTANCE OF 35.11' WHICH BEARS N20°53'24"W; THENCE N65°30'04"W, 148.76', TANGENT TO THE LAST DESCRIBED CURVE; THENCE N24°29'56"E, 186.51'; THENCE S63°22'05"E, 42.50'; THENCE N26°37'55"E, 149.71'; THENCE N29°39'42"E, 164.22'; THENCE N28°59'27"E, 55.00'; THENCE N28°00'00"E, 124.99'; THENCE N32°35'27"E, 20.00'; THENCE S57°24'33"E, 6.42'; THENCE N28°00'00"E, 119.60'; THENCE SOUTHEASTERLY 221.07' ALONG A CURVE TO THE RIGHT, NOT TANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 2950.50', A DELTA ANGLE OF 04°17'34", AND A CHORD DISTANCE OF 221.02 WHICH BEARS S58°46'03"E; THENCE S56°37'16"E, 852.38', TANGENT TO THE LAST DESCRIBED CURVE; THENCE SOUTHEASTERLY 862.48' ALONG A CURVE TO THE LEFT, TANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 2050.00', A DELTA ANGLE OF 24°06'20", AND A CHORD DISTANCE OF 856.13' WHICH BEARS S68°40'26"E; THENCE S32°30'34"E, 44.74', TO THE WEST RIGHT-OF-WAY LINE OF SW STATE STREET, NOT-TANGENT TO THE LAST DESCRIBED CURVE; THENCE S15°42'27"W, 782.85', ALONG SAID WEST RIGHT-OF-WAY LINE OF SW STATE STREET; THENCE SOUTHWESTERLY 288.67' ALONG A CURVE TO THE LEFT, CONTINUING ALONG SAID RIGHT-OF-WAY OF SW STATE STREET, TANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 2934.79', A DELTA ANGLE OF 05°38'08", A CHORD DISTANCE OF 288.55' WHICH BEARS S12°53'23"W; THENCE N31°44'26"W, 33.33', NOT-TANGENT TO THE LAST DESCRIBED CURVE; THENCE NORTHWESTERLY 160.03' ALONG A CURVE TO THE RIGHT, NOT-TANGENT TO THE LAST DESCRIBED CURVE, HAVING A RADIUS OF 1028.50', A DELTA ANGLE OF 08°54'54", AND A CHORD DISTANCE OF 159.87' WHICH BEARS N69°05'44"W; THENCE N64°38'17"W, 11.07', TANGENT TO THE LAST DESCRIBED CURVE; THENCE NORTHWESTERLY 65.52' ALONG A CURVE TO THE LEFT, TANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 471.50', A DELTA ANGLE OF 07°57'43", AND A CHORD DISTANCE OF 65.47' WHICH BEARS N68°37'08"W, TO SAID SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 27; THENCE N89°52'59"W, 1202.99', NOT TANGENT TO THE LAST DESCRIBED CURVE, ALONG SAID SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 27, TO THE POINT OF BEGINNING, CONTAINING 62.74 ACRES MORE OR LESS.

SAID TRACT SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.