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Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2015-00138674

BK **15741** PG **423-434**

Prepared by and return to: Larry J. Handley, 2575 N. Ankeny Blvd., Ste. 221, Ankeny, IA 50023

**REVISED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS REVISED AND RESTATED Declaration of Covenants, Conditions and Restrictions is made this 9th day of SEPTEMBER, 2015, by Declarant, D.R.A. Properties, L.C., an Iowa Limited Liability Company ("Declarant").

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";

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

WHEREAS, the Original Declaration of Covenants, Conditions and Restrictions for Prairie Trail Property dated September 13, 2007, was recorded in the Office of the Polk County Recorder on September 19, 2007, in Book 12379 Page 370 ("Original Declaration");

WHEREAS, the Original Declaration was amended pursuant to that certain First Amendment dated January 14, 2013, and recorded in the Office of the Polk County Recorder on January 24, 2013, in Book 14627 Page 98 ("Amended Declaration"); and,

WHEREAS, the Declarant has authority to revise and does affirmatively hereby restate the Original Declaration as set forth herein without the desire or the intent to alter any of the conditions of the Amended Declaration;

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 Property, 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 Property, 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 and any Multifamily Property (ex: Havenwood) shall be considered one (1) Lot.

G. "Multi-family Property" shall mean plats within the Prairie Trail property development containing apartment units (ex: Havenwood) and such definition shall not include duplexes or townhomes.

H. "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.

I. "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.

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

K. "Residential Family Unit" shall mean any dwelling unit utilized or recognized for use as a single family residence.

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 or commercial lots within commercially designated areas as approved by Declarant and residential lots 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 residential lot or in any dwelling or structure constructed or maintained on any residential 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. Commercial lots may as determined by the Declarant by and through the specific platting of commercial lots be subject to separate and distinct covenants /associations for such commercial areas; however, the same shall be subject to these master covenants for Prairie Trail Property.

III. BUILDING TYPES

Permitted residential building types shall be only those specified in Section C 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 and must be approved by the Architectural Review Board.

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 Sections 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 as stated and approved in writing by the Architectural Review Board and the Declarant.

All building structures or improvements of any kind must be commenced within twelve (12) months of the date of purchase and completed within reasonable construction time frame unless otherwise approved in writing by the Declarant.

VI. TEMPORARY AND OTHER STRUCTURES; CERTAIN USES

No temporary building or structure shall be built or maintained on any lot. No aboveground (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 to the same is 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, 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 Ankeny City Council.

B. Fences Permitted.

1. Fences located in front and side yards adjacent to a public street right-of-way shall not exceed forty-two (42) inches in height.
2. Fences located in rear yards adjacent to a public street right-of-way shall not exceed forty-two (42) inches in height unless such fences are set back from the street right-of-way at the main facade of the house at a minimum; then such 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 seventy-two (72) inches in height but fences exceeding forty-two (42) inches in height shall have the top twelve (12) to twenty-four (24) inches with fifty percent (50%) of the surface area open.
4. In side and rear fences not adjacent to a street right-of-way, fences or walls not facing a public street right-of-way shall not exceed seventy-two (72) inches in height and are not required to have the top twelve (12) to twenty-four (24) inches constructed with fifty percent (50%) of the surface area open.

C. Fences Not Permitted.

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. Fence Materials.

Fences shall be constructed of one of the following materials: brick, stone, wood, wrought iron or PVC. Hedge row fencing is also permitted.

E. Exceptions.

Nothing in this section shall be deemed to apply to public tennis courts, public pools, public baseball fields and other public recreational use facilities assessable to the public, except where traffic visibility is impaired.

VIII. RUBBISH CONTAINERS (RESIDENTIAL ONLY)

No rubbish container shall be visible at any time, and all garbage collection shall take place from the alley, if applicable, otherwise from the street. No rubbish container shall be

visible at any time with the exception of the scheduled pickup time and twelve hours prior to and after the scheduled pick-up time.

IX. LANDSCAPING

Lot landscaping shall be the responsibility of 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.

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

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 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

No sign of any kind shall be placed, exposed to view or permitted to remain on any residential 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 of the Association Board.

No sign of any kind shall be placed, exposed to view or permitted to remain on any commercial lot that has not been approved by the Architectural Review Board and not in compliance with the ordinances of the City of Ankeny.

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. 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.

XVII. CERTAIN ANIMALS PROHIBITED

No animals, livestock or poultry of any kind shall be raised, bred or kept on or in any residential family unit 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 (3) dogs and/or cats be kept on or in any one family residential family unit at anyone time except for units in Multi-family property in which case there shall not be more than a total of two (2) dogs and/or cats kept at any one time. Animals must reside in the dwelling.

XVIII. 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 benefitted 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.

XIX. 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 any successors in title unless expressly assumed.

B. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the owners 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 may be 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 improvement is constructed thereon and for which a certificate of occupancy has been issued. Lots which do not have completed improvements 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 the 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.

G. Special Limits on Assessments.

Notwithstanding the total number of lots contained or deemed to be contained in the Multi-family Property located within a Plat (ex: Havenwood) for the purposes of this Article XIX, the total amount of assessments due and payable each year with respect to such a Multi-family Property, in total, shall not exceed the amount of Five Hundred Dollars (\$500.00) for the first five (5) years post plat approval and shall be increased annually thereafter by an amount not to exceed five percent (5%) annually.

XX. 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.

XXI. AMENDMENTS OF COVENANTS

This Declaration of 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.

XXII. 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, 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.

XXIII. ENFORCEMENT AND WAIVER

A. In the event that anyone 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.

XXIV. 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 XX, above.

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

D.RA PROPERTIES, L.C.

BY: Tara Meredith
Tara Meredith, Secretary

STATE OF IOWA)
)
COUNTY OF POLK)ss:

Subscribed and sworn to be for me this 9 day of September, 2015, by Tara Meredith as the Secretary for DRA Properties, L.C. with full authority and power in her capacity to do so on behalf of the members of the Limited Liability Company and voluntarily by her in such capacity.



Tracy L Nemitz
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA