

Preparer

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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS,  
FOR  
EAGLE TRAIL SUBDIVISION PHASE 1  
IN THE CITY OF COUNCIL BLUFFS, IOWA

THIS DECLARATION, made this 13th day of October, 2004 by the undersigned, Eagles Nest, L.L.C., an Iowa limited liability company.

WITNESSETH:

WHEREAS, the undersigned is the Owner and Developer of the real estate described in Clause I of this Declaration, and is desirous of subjecting the real property described in said Clause I to the conditions, restrictions, limitations, covenants, reservations, easements, liens and charges hereinafter set forth, each and all of which is and are for the benefit of said property and for each owner thereof and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors-in-interest and any owner thereof;

NOW, THEREFORE, the undersigned hereby declares that the real property described in and referred to in Clause I hereof, is and shall be held, transferred, sold and conveyed, subject to the conditions, restrictions, limitations, covenants, reservations, easements, liens and charges herein set forth.

CLAUSE I

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is, and shall be, held and shall be conveyed, transferred, and sold, subject to these conditions, restrictions, limitations, reservations, easements, liens and charges, with respect to the various portions thereof set forth in the various clauses and subdivisions of this Declaration is located in the City of Council Bluffs, Pottawattamie County, State of Iowa, and is more particularly described in the final plat of Eagle Trail Subdivision Phase 1 in Council Bluffs, Iowa, attached hereto and incorporated herein by reference, except for Outlot 1 thereof.

No property other than that described above shall be subject to this Declaration, unless and until specifically made subject thereto.

## CLAUSE II

### GENERAL PURPOSES OF CONDITIONS

The real property described in Clause I hereof is subject to the conditions, restrictions, limitations, covenants, reservations, easements, liens and charges hereby declared to insure the best use and the most appropriate development and improvement of each building site thereof.

Plans and specifications must be submitted to the Eagle Trail Subdivision Phase 1 Developer or its designee (hereafter referred to as Eagle Trail Subdivision Phase 1 Developer) for approval to protect owners and guard against improper use of surrounding building sites as will depreciate the value of their property; to preserve, as far as practical, the natural beauty of said property; to guard against erection of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to insure the highest and best development of said property; to prevent haphazard and inharmonious improvements of building sites; to prevent inappropriate location of structures on building sites; to obtain harmonious color schemes; to encourage and secure the erection of attractive homes thereon; to secure and maintain proper setbacks from street and adequate free spaces between structures; and in general to provide adequately for quality improvement of said property and thereby enhance the values of investments made by the purchasers of the building sites therein.

1. All lots described herein shall be known, described and used solely as residential lots and no structures shall be erected on any lot other than one detached single family dwelling not to exceed two stories in height and a garage for not less than two automobiles and not more than three automobiles.

2. No trailer, basement, tent, shack, garage, barn or outbuilding shall be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted.

3. Recreational vehicles, mobile homes, campers, motor homes, trailers, motorcycles, motor boats, house boats or similar water boats may be maintained, stored or kept on any parcel of property covered by these covenants, provided they are placed to the rear of the parcel and are screened from view by an attractive fence, plans for which shall be submitted to the Eagle Trail Subdivision Phase 1 Developer as referred to in Paragraph 5 or housed within the garage of said home. Unused vehicles shall be housed within the garage

and no lot shall be used for the purpose of selling, leasing or repairing vehicles for commercial purposes.

4. No building shall be erected on any lot unless the design and location is in harmony with the existing structures and location in the tract, and does not violate any of the protective covenants herein. All buildings shall have not less than 950 total square feet of living area. Square footage requirements are exclusive of porches and/or attached garages.

5. No changes, alterations, additions, buildings, fences or walls shall be commenced without submission and approval of plans and specifications to the Eagle Trail Subdivision Phase 1 Developer, showing the nature, kind, shape, height, materials and location of same. In the event such plans are neither approved or disapproved within 30 days after submission, such approval shall not be required so long as such design and location are harmonious with existing structures and do not violate any restrictive covenants. The primary purpose of this covenant is to protect the value of the homes in the development. This covenant is not to be construed as a means of suppressing expressions of individuality.

6. No fence shall be erected on any lot which would extend forward past the rear of any house erected thereon.

7. All front foundations facing streets are to be covered with brick, stone, or painted.

8. The front, side and back yards shall be seeded or sodded with grass.

9. The titleholder or contract holder of each lot, vacant or improved, shall keep his/her lot or lots free of weeds and debris.

10. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes.

11. No offensive or obnoxious trade shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

12. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes.

13. No satellite dish or tower for television or other communication purposes shall be placed on any lot, except one satellite dish, not to exceed 2 feet in diameter, may be placed on each lot.

14. Each property owner shall exercise as much care as is possible to retain natural vegetation, trees, shrubs and other similar growth. Prior to removal of such growth, the plans referred to in paragraph "5" shall be submitted to the Eagle Trail Subdivision Phase 1 Developer for approval.

15. The drainage system as designed in the approved plat, or as may be installed, and the drainage easement may not be altered or interfered with in any manner. Each individual lot owner is to take all steps necessary to reasonably and adequately regulate the drainage from his or her lot and to control unreasonable and undesirable erosion. Necessary repairs to the drainage system shall be done under the supervision of the Eagle Trail Subdivision Phase 1 Developer or its designee.

16. Garden sheds, or other similar type structures, will be allowed upon approval of plans and specifications by the Eagle Trail Subdivision Phase 1 Developer. Buildings for garden tools, etc. shall be required to have a design similar to the house design with regard to siding materials, roofing materials and roof design. Metal storage buildings will not be allowed.

17. No dwelling from outside the development shall be moved to any location within Eagle Trail Subdivision Phase 1.

18. The maximum time allowed to complete construction and landscaping will be one year from commencement of construction. Excess dirt from excavation shall be hauled from the lot within the construction period. All excavation, backfilling and landscaping shall be done in a manner such that the natural drainage is not altered to an extent that unreasonable or undesirable drainage or erosion results.

19. Materials and equipment used during the construction and landscaping process shall be stored and maintained on the lot in an orderly manner.

20. No business activities shall be conducted on any lot if the conduct of said business activity will result in an unreasonable increase in the traffic flow, or an increase in the number of vehicles parked in the street.

21. No sign, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on any lot except that real estate for-sale or for-rent signs shall be permitted temporarily in the yards of dwellings which are being offered for sale or rent.

22. Notwithstanding the foregoing provisions, paragraphs 20 and 21 shall not restrict the business activities, advertising, signs and billboard, or the construction and

maintenance of structures by the Eagle Trail Subdivision Phase 1 Developer, its agents and assignees, during the construction and sale period of this development.

23. A perpetual easement for utility installation, maintenance and drainage facilities is reserved over, across and through the side five feet of all lots, and over, across and through the rear ten feet of all lots, and as otherwise specified on the final plat.

24. All buildings and improvements shall be constructed in compliance with the pertinent zoning and building codes of the City of Council Bluffs, Iowa.

25. No building shall be erected on any residential lot nearer than 25 feet from the front lot line. The setback for all buildings on the side of any corner lots abutting a public street or avenue shall be a minimum of 15 feet. The side yard set back line on each side of all other lots and on the side of a corner lot that does not abut a public street or avenue shall be a minimum of 10 percent of the lot width at the building setback line, or a minimum of five feet, whichever is greater. The building set back line in the rear yard shall be a minimum of 20 feet for the residence and a minimum of 10 feet for any garden shed as contemplated in paragraph 16.

26. Public sidewalks shall be constructed of concrete four feet wide by four inches thick in front of each built-upon lot and along the street side of each built-upon corner lot.

27. Fruit or vegetable gardens shall not be permitted which would extend forward past the rear of any house erected on any lot.

### CLAUSE III

#### HOMEOWNERS ASSOCIATION

1. Every lot owner, regardless of which phase of the development it is located, shall be deemed to have membership in the Eagle Trail Homeowners Association, Inc. (hereinafter "Association"). Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to this Declaration.

2. The Association shall have two classes of voting membership:

CLASS A. Class A members shall be all lot owners, with the exception of the Eagle Trail Subdivision Phase 1 Developer, and shall be entitled on all issues to one (1) vote for each lot owned. When more than one (1) person holds an interest in a lot, all such persons shall be members. The vote for such lot shall be exercised as each lot owner determines and advises the secretary prior to any meeting. In no event shall more than one (1) vote be cast

with respect to any lot. In the absence of agreement by multiple owners of a lot, that lot's vote shall be suspended if more than one (1) person seeks to exercise it.

CLASS B. The Class B member(s) shall be the Eagle Trail Subdivision Phase 1 Developer, its successors and assigns and shall be entitled to twenty-five (25) votes for each lot owned.

3. Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association shall be set forth in its Bylaws. In any event, if any provisions set forth in this Declaration applicable to notice, voting and quorum requirements are in conflict with any provisions of Iowa law applicable to not-for-profit corporations on the date of this Declaration, or at any time after said date, the applicable provisions of Iowa shall control.

4. Pursuant to the powers granted to it in its Articles and Bylaws, the Association is hereby expressly authorized and empowered to levy ordinary and special assessments against all lots in Eagle Trail Subdivision Phase 1. Provided, however, except as may be otherwise indicated, no assessment shall be levied against lots owned by the Eagle Trail Subdivision Phase 1 Developer or any successor developer. The assessments shall be administered as follows, to-wit:

- a. Notice of each assessment amount and the date for payment shall be given to each lot owner of record in the Pottawattamie County Auditor's office, addressed to such owner at the address of the lot and mailed to such owner by ordinary mail. The notice shall be deemed given when said notice is deposited in the United States Mail, postage prepaid, and addressed as herein provided. If the owner does not live on the lot, then the address shall be the address as shown on the Pottawattamie County Treasurer's office records for the lot owner or such address as the lot owner may designate to the Association Board in writing. The amount of the assessment levied by the Association shall be paid to it on or before the date or dates fixed by resolution of the Board. If not so paid, the amount of such assessment, plus any other charges thereon, including interest at the maximum limit provided by law per annum from date of delinquency and costs of collection, including attorney fees if any, shall constitute and become a lien on the lot so assessed. The Board may cause to be recorded in the office of the Pottawattamie County Recorder, a notice of assessment which shall state the amount of such assessment and such other charges and a description of the lots which have been assessed. Such notice shall be signed by the

Secretary of the Association. Upon satisfaction thereof, the Board shall, within a reasonable time, cause to be recorded a further notice stating the satisfaction and the release of said lien.

- b. Conveyance of any lot shall not affect any lien for assessments provided herein. Such lien shall be prior to all other liens recorded subsequent to said notice of assessment. The assessment lien shall be a lien against the real estate and shall remain a lien on the real estate until paid.
- c. The lien provided for herein may be foreclosed by suit by the Association in like manner as a mortgage and, in such event, the Association may be a bidder at the foreclosure sale. The Association may also pursue any other remedy against any owner owing money to it which is available to it by law or equity for the collection of a debt.
- d. Upon request, the Association shall furnish a statement certifying that all assessments then due have been paid or indicating the amount then due.
- e. The Association shall not be required to transfer membership on its books or to allow the exercise of any rights or privileges of membership on account thereof to any owner or to any persons claiming under them unless or until all assessments and charges to which they are subject have been paid.

#### CLAUSE IV

1. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until October 13, 2025. It shall be lawful for any person or persons owning any lot in Eagle Trail Subdivision Phase 1 to proceed at law or in equity against the person or persons violating or attempting to violate such covenant or restriction and either to enjoin him/her or them from so doing and to recover damages for such violation.

2. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

3. This Declaration may be amended by the Eagle Trail Subdivision Phase 1 Developer in any manner which it may determine in its full and absolute discretion, until all lots have been sold or for a period of ten (10) years from the date hereof, whichever first occurs.

