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 Linn County Iowa  
 JOAN MCCALMANT RECORDER

BK 9698 PG 409-413

*2700 sq ft Iowa Title*

THIS INSTRUMENT PREPARED BY/~~RECORDED~~ Cynthia Hanna Castelletti, 316 – 2<sup>nd</sup> St. SE, Ste. 124, Cedar Rapids, Iowa 52401, (319) 362-2137

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**RESTRICTIVE COVENANTS FOR  
 HAWKS POINT SEVENTH ADDITION IN THE CITY OF CEDAR RAPIDS, LINN COUNTY,  
 IOWA**

The undersigned, being the owner of all the land and real estate in Hawks Point Seventh Addition in the City of Cedar Rapids, Linn County, Iowa, does hereby covenant and agree that each of the lots and lands in said addition shall be subject to the following restrictions and covenants and adopts the same, all as follows, to-wit:

Article 1.  
 Definitions

Sec. 1.1: For all purposes of this Declaration and of these covenants, restrictions and agreements, and of any modifications thereof or amendments thereto, certain words and terms are defined as follows:

(a) Words used in the present tense include the future; the word "building" includes the word "structure"; the word "shall" is mandatory and not directory. Any words not herein defined shall be construed as defined in the Building Code of the City of Cedar Rapids, Iowa.

(b) Accessory Building: A subordinate building, the use of which is incidental to that of the main building.

(c) Basement: A story partly underground but having at least one-half of its height above the street level or the highest level of the immediately adjoining ground. A basement shall not be counted as a story for purposes of height measurement.

(d) Cellar: A story having more than one-half of its height below the street level or below the highest level of the adjoining ground. A cellar shall not be counted as a story for purposes of height measurement.

(e) Garage: A separate building (hereinafter referred to as a detached garage) or portion of a private dwelling (such portion hereinafter referred to as an attached garage) used primarily for housing not more than 3 automobiles.

(f) Lot: (i) Any one of Lots 4 to 35, inclusive, as shown upon the plat of Hawks Point Seventh Addition in the City of Cedar Rapids, Linn County, Iowa, or (ii) Two or more adjoining numbered lots under common ownership, or (iii) A retained portion of a numbered lot containing at least 8,040 square feet and otherwise in compliance with Sec. 2.18, or (iv) One numbered lot and an abutting portion of an adjoining numbered lot if in compliance with Sec. 2.18. In no event can fractional portions of two numbered lots be combined to constitute a lot for purposes of these covenants. All structures on any lot permitted by the foregoing must still be in compliance with the yard set-back and other provisions of this instrument.

(g) Lot Lines: The lines bounding a lot as herein defined are the lot lines.

- (h) Private Dwelling: A detached building designed for and occupied exclusively by one family.
- (i) Set Back: The minimum horizontal distance between the street line on which the lot fronts and the nearest line of the building or any projection thereof exclusive of steps, unenclosed porches, bay windows, eaves and cornices.
- (j) Side Lines: The opposite lot lines intersecting the street upon which the lot fronts.
- (k) Story: That part of any building comprised between any floor and the floor or roof next above.
- (l) Story, One-Half: A story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than four feet above the floor of such story.
- (m) Two-Story Dwelling: A dwelling containing two full stories above grade, the floor area of each story being at a uniform level.
- (n) Cape Cod Type Dwelling: A dwelling with the first story being a full story and the second story being a one-half story as defined in (l) above.
- (o) Ranch Type Dwelling: A dwelling containing one full story, the floor area of said story being at a uniform level.
- (p) Street Level: "Street Level" means the level of the established center line of the street in front of the building measured at the center of such front.
- (q) Street Line: The nearer side line of the street.
- (r) Yard: An open space on the same lot with a building unoccupied and unobstructed from the ground upward except by steps, unenclosed porches, bay windows, eaves, cornices, trees and shrubbery, and by fences.
- (s) Yard, Front: A yard extending across the full width of the lot between the property line on which the lot fronts and the nearest line of the private dwelling, garage or accessory building situated on such lot.
- (t) Yard, Side: A yard between the nearest line of the private dwelling, garage or accessory building and the nearer side line of the lot and extending from the front yard to the rear line of the lot.
- (u) Yard, Rear: A yard to the rear of the private dwelling situated on the lot and extending the full width of the lot.

## Article 2. Restrictions

Sec. 2.1: No building shall be erected or maintained except upon a lot and no building shall be erected or maintained on any lot other than (a) one private dwelling, (b) one garage, (c) one accessory building and (d) one outdoor fireplace.

Sec. 2.2: No private dwelling shall be erected or maintained having a height of more than 2 stories, and a basement.

Sec. 2.3: No attached garage shall be erected or maintained having a height of more than 2 stories. No detached garage shall be erected or maintained having a height of more than one story.

Sec. 2.4: No accessory building shall be erected or maintained having a height of more than 1 story or a usable floor area of more than 400 square feet and shall not be visible from the street.

Sec. 2.5: No garage or accessory building shall be erected or maintained on any lot unless it shall be in harmony with the residence on said lot and be constructed of the same or similar types of building material.

Sec. 2.6: No fuel tanks shall be erected or maintained above ground on the outside of any residence.

Sec. 2.7: No private drive shall be constructed or maintained on any lot except a drive made of cement, brick, stone, asphalt, or other permanent hard surfacing.

Sec. 2.8: No papers or refuse shall be burned outside the residence. Refuse receptacles for refuse which cannot be burned shall not be exposed to public view or allowed to become a nuisance.

Sec. 2.9: No animals, livestock or poultry of any kind shall be raised, bred or kept for sale on any lot except that dogs, cats or other household pets may be kept in accordance with applicable ordinances of the City of Cedar Rapids, Iowa.

Sec. 2.10: No detached garage, no trailer, no basement, no cellar, no tent, no shack and no structure of a temporary character shall be used as a residence either temporarily or permanently.

Sec. 2.11: There shall be maintained at all times on each and every lot a front yard of not less than 30 feet. There shall be maintained at all times on each and every lot, 2 side yards of not less than

required by the ordinances of the City of Cedar Rapids, Iowa in force at the time of the commencement of construction, and a rear lot of not less than 25 feet or not less than required by the ordinances of the City of Cedar Rapids, Iowa in force at the time of the commencement of construction.

Sec. 2.12: The set-backs and yard sizes provided for in Sec. 2.11 may be interpreted, increased, decreased, or waived by the City of Cedar Rapids, Iowa.

Sec. 2.13: No voice or key radio transmitters of any kind or character shall be operated on the premises, and no business, trade, occupation, or profession of any kind whatsoever shall be carried on in any private dwelling, garage, or accessory building or otherwise upon the premises.

Sec. 2.14: No sign of any kind shall be erected, maintained or exposed on any part of any building or on any lot or lands except a sign having an area of not more than 1 square foot setting forth or indicating the name of the person occupying the said premises and/or the street number thereof, or a sign having an area of not more than 2 square feet offering the property on which it is erected for sale or for rent, and no more than one of each such sign shall be erected, maintained or exposed on any one lot.

Sec. 2.15: No private dwelling, garage, accessory building, or outdoor fireplace shall be erected or maintained or altered until the building plans, specifications and plot plan showing the location of such private dwelling or garage has been approved in writing as to external design and as to location and topographic and finished ground level by the developer. In the event the developer fails to approve or disapprove such plans, specifications and other matters as in this paragraph provided within thirty (30) days after said plans and specifications or other matters have been submitted to the developer, such plans, specifications and other matters shall be deemed approved for the purposes of commencing construction, and if no suit to enjoin the erection of such type of dwelling or garage or making of alterations has been commenced prior to the completion thereof on the ground that actual construction is not in compliance with the approval given or deemed given, no further approval will be required and this covenant will be deemed to be fully complied with without more.

Sec. 2.16: No private dwelling shall be constructed on the premises having less than the following usable floor area (which floor area shall be exclusive of cellar, basement, attic, open porch, breezeway, garage or accessory building):

A two-story dwelling, not less than 1,300 square feet. A Cape Cod type dwelling, not less than 1,500 square feet with not more than one-seventh of the total square footage on the second one-half story to be includable in computing the total square footage.

A ranch type dwelling with a basement and attached two car garage, not less than 1,100 square feet.

Sec. 2.17: No private dwelling, garage or accessory building shall be altered, reconstructed or changed in any manner whatsoever unless following such alteration, reconstruction or change it will be in compliance with all of the covenants, restrictions and agreements of this Declaration and the building plans, specifications and plot plat shall have been approved as provided in Sec. 2.15 hereof.

Sec. 2.18: No subdivision or sale of part of any of Lots 4 to 35, inclusive, shall be made but nothing herein contained shall prevent a sale of any part of any of said lots to the owner of an adjoining numbered lot if (a) The seller retains at least 7,150 square feet of land area and a width which meets existing code requirements at the front line of any private dwelling located or to be located on that portion of said lot retained by the seller, or (b) The seller owns another numbered lot adjoining the retained portion, or (c) A middle numbered lot is contemporaneously divided into two parts which are sold to the owners of the two numbered lots which flank it and abut the portion purchased. Any part of a lot which is sold must be divided and defined by a line running from the front lot line to the rear lot line.

Sec. 2.19: No fence, wall, hedge or mass planting of any kind or character shall be installed or maintained upon that part of any of said lots lying between the street line and the rear building line of the private dwelling erected upon any of said lots except upon obtaining the consent of the developer under the same terms and conditions as provided for in Sec. 2.15 hereof.

Sec. 20: The titleholder, whether legal or equitable, of each of said lots, whether vacant or improved, shall keep such lot or lots free of weeds and debris.

Sec. 2.21: A trailer, mobile home, camper, or similar mobile equipment and a motor boat or sailboat or houseboat or other water-borne vehicle, and a snowmobile, and a motorcycle or other power driven mobile vehicle or device of any kind may be kept, maintained and stored on any of said lots if they cannot be seen from the street.

Sec. 2.22: If any person shall violate or attempt to violate any of the covenants or restrictions herein it shall be lawful for any person owning all or any interest in any lot in said addition, to commence and prosecute any proceeding at law or in equity against the person violating or attempting to violate any of such covenants or restrictions and either to prevent him from so doing or to require the restoration of the property to conformity with these covenants and restrictions. Such action must be commenced within two years from the date of the violation or attempted violation.

Sec. 2.23: All utilities, including but not limited to, telephone, gas, water and electrical installed in any part of the addition shall be completely buried in the ground and none exposed and the owners of any of said lots when making any connections, if said connections shall cross a street or sidewalk, shall make said connections only by boring or pushing under such street or sidewalk in such a manner as not to break or damage same.

Sec. 2.24: Notwithstanding any other provision hereof, no construction or use of any kind shall be permitted as would interfere with the purpose and use of any of the easements reserved in the plat proceedings of Hawks Point Seventh Addition in the City of Cedar Rapids, Linn County, Iowa.

Sec. 2.25 All residences shall be roofed with architectural style shingles.

Sec. 2.26 No building shall be erected unless the owner and/or builder takes necessary action to provide for erosion control as may required by any statute, ordinance or regulation of the City of Cedar Rapids and the State of Iowa then in effect.

### Article 3 Releases and Modifications or Amendments

Sec. 3.1: The covenants, restrictions and agreements herein set forth may be released in whole or in part or otherwise modified or amended by the vote of the owners of not less than 60% of all the lots (as defined and permitted by Sec. 1.1(f) in the Addition and evidenced by their consents in writing, duly signed and acknowledged, provided no change shall be effective unless the 60% majority shall include the consent(s) of at least 50% of the owners of lots upon which dwellings have already been constructed. Each owner shall have but one vote irrespective of the number of lots owned except that so long as Thomas Dostal Developers, Inc. owns two or more lots and/or two or more lots upon which dwellings have been constructed it shall have one vote for each such lot and the total number of votes to be cast shall be increased accordingly and the required vote and consent shall be 60% or 50% as applicable of that increased total. Such exceptions do not apply and are not required in the event of exceptions or modifications made as to a particular lot, made by the developer of Hawks Point Seventh Addition to the City of Cedar Rapids, Linn County, Iowa when acting or granting approval as authorized by Sec. 2.15, Sec. 2.17, Sec. 2.19 or otherwise herein.

### Article 4 Easements

Sec. 4.1: The utility (including sewer) and drainage easements are reserved perpetually as set forth on the recorded plats of Hawks Point Seventh Addition in the City of Cedar Rapids, Linn County, Iowa.

### Article 5 Covenants Run with Land and Purpose; Severable; Status

Sec. 5.1: The covenants, restrictions, and agreements herein contained shall run with the land and shall be binding on all parties hereto and all persons claiming under them as herein set forth or as may be modified or amended as herein authorized until January 1, 2027, at which time said covenants, restrictions, and agreements shall be extended automatically for a period of 10 years unless by vote of the owners of the residential lots in said addition now constituting Lots 4 to 35 inclusive, it is agreed to terminate or change said covenants in whole or in part. The owner(s) of any lot may initiate and circulate such vote, which vote, however, in order to so terminate or change shall not be effective unless evidenced in writing in recordable form and placed of record, and the covenants, restrictions, and agreements shall be deemed extended unless such writing in recordable form to the contrary is placed of record prior to January 1, 2027. Any decision to terminate or change under this Section and the vote

herein contemplated must be initiated and concluded within not less than 60 days prior to January 1, 2027. Unless the covenants, restrictions, and agreements are wholly terminated as of January 1, 2027, they shall in like manner be subject to automatic extension, termination or change each 10 years thereafter. The required vote and consents of both 60% and 50% as applicable and the number of votes to be cast by each owner in order to effect a change or termination under this Article and the determination of the number of lots and votes for such purposes shall be exactly the same as set forth in Sec. 3.1.

Each and all of the provisions of all the 5 Articles of this instrument and of each article and section shall be severable and the invalidity of any one shall not affect the others.

Sec. 5.2: The purpose and intent of this instrument and of said restrictions, covenants, and agreements is to secure an attractive, reasonably harmonious overall residential development of good quality and continuing appeal which will benefit all lots and homes in the Addition, and this instrument shall be construed in that light. The basis for the discretionary judgment and authority committed to the developer is in recognition of the sometimes unique, unusual and varying terrain of the lots in the Addition and the varying and sometimes irregular shape and topography thereof, it being noted no authority is given for discretionary modification of any use restriction.

Sec. 5.3 In event in any action to enforce these Covenants, if the party seeking enforcement incurs attorneys' fees, costs and expenses in connection with such action, and in such enforcing action prevails, in addition to the judgment or other relief granted, such party shall be entitled to a personal judgment for reasonable attorneys' fees, costs and expenses incurred against the Lot Owner against whom the enforcement action has been undertaken. In the event in such action the Lot Owner prevails and it is determined by the Court that there is no judgment of any kind or nature against the Lot Owner and no relief is granted against the Lot Owner, the Lot Owner shall be entitled to a judgment against the person which commenced the action for reasonable attorneys' fees, costs and expenses incurred by the Lot Owner. It is recognized that depending on the nature of the action and the defenses asserted, attorneys' fees, costs and expenses may far exceed the amount involved. Nevertheless, it is a provision of the Covenants that reasonable fees, costs and expenses shall be awarded in accordance with the provisions set forth above.

In witness whereof, the undersigned owner has caused this instrument to be duly executed and dated this 24 day of October, 2016.

THOMAS DOSTAL DEVELOPERS, INC.

BY: Randy T. Dostal  
Randy T. Dostal, President

STATE OF IOWA        )  
                                  )  
COUNTY OF LINN    )

This instrument was acknowledged before me on this 24<sup>th</sup> day of October, 2016, by Randy T. Dostal as President of Thomas Dostal Developers, Inc.

[Signature]  
NOTARY PUBLIC - STATE OF IOWA

