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Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2019-00035263

BK 17548 PG 262-282

RETURN TO:

Preparer, Return to: David L. Wetsch, 699 Walnut Street, Suite 1600, Des Moines, IA 50309 (515) 246-4555

**DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS
AND RESTRICTIONS**

THIS DECLARATION is made this 21 day of August, 2019, by **Brooke Field Estates Northwest Plat 1, L.L.C.**, an Iowa limited liability company (the "Declarant").

WHEREAS, Declarant is the owner of certain real property legally described as follows:

Lots 1 through 14 in BROOKE FIELD ESTATES NORTHWEST PLAT 1, an Official Plat, now included in and forming a part of Polk County, Iowa.

WHEREAS, Declarant is desirous of protecting the value and desirability of the Plat.

NOW, THEREFORE, Declarant hereby declares that all property within the Plat shall be held, sold and conveyed and be subject to the following restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the Plat and 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. "Plat" shall mean and refer to the real property described as Lots 1 through 14, inclusive, in BROOKE FIELD ESTATES NORTHWEST PLAT 1, an Official Plat, now included in and forming a part of Polk County, Iowa.

- B. "Declarant" shall mean and refer to **Brookefield Enterprises, L.L.C.**, an Iowa limited liability company, its successors or assigns.
- C. "Lot" shall mean and refer to an individual parcel of land within the Plat upon which a dwelling may be constructed.
- D. "Building Lot" shall mean and refer to one or more Lots, or one or more Lots and the portion or portions of adjacent platted Lots in the Plat, used for the construction of one dwelling as herein permitted.
- E. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot or Building Lot that is a part of the Plat.
- F. "Association" shall refer to **Brooke Field Estates Northwest Plat 1 Owners Association**, an Iowa non-profit corporation.
- G. "Outbuilding" shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed or garden house.

II. DESIGNATION OF USE

All Lots shall be known and described as residential lots and shall not be improved, used or occupied for other than 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 zoning ordinances of the City.

III. BUILDING TYPES AND MATERIALS

- A. No building or structure shall be constructed, altered, or maintained on any Building Lot other than a single-family dwelling with no less than a three-car attached or triple-basement garage. Any outbuilding shall be built with finishes to match the residence.
- B. The total area of front elevation of any residence and garage located on any lot shall be finished with a minimum of 35% brick or stone, or as an alternative, no brick or stone is required if all sides of the home and garage are finished with horizontal lapped siding with a maximum exposure of seven inches (7"). No vinyl siding shall be permitted.
- C. The construction of any building or structure on any Building Lot shall be performed utilizing then acceptable construction methods and procedures, including (but not limited to) on-site "stick-built" construction and/or off-site modular or panelized construction.
- D. All exposed exterior concrete or concrete block wall material shall be painted or

veneered.

IV. BUILDING AREA DESIGN AND CONSTRUCTION

To insure that Lots are developed in reasonable harmony within the Plat and that the covenants, restrictions and conditions contained herein are met in connection with such development, no structure or other improvement shall be constructed or substantially altered on any Lot unless and until the details of design, material, color, elevation, site grade, landscaping, fencing, roofing, sidewalks, driveways and other such matters have been first approved by Declarant or such persons designated by Declarant for this purpose. Approval of such plans shall not be unreasonably withheld. No dwelling shall be constructed or permitted to remain upon any Lot unless the design and location is in reasonable harmony with existing structures and unless it meets the following requirements:

- A. One story dwellings must have a main floor finished area of not less than 1,700 square feet.
- B. One and one-half story dwellings must have a minimum total of 2,300 square feet of finished area on the first floor and upper one-half story.
- C. Two story dwellings must have a minimum of 1,000 square feet on the main floor and not less than a total of 2,300 square feet on both the main and second floors.
- D. Split entry dwellings must have a finished upper level of not less than 1,700 square feet.
- E. Split level dwellings must have a finished upper level area of not less than 1,900 square feet.
- F. A basement area that is professionally finished may have up to a 25% credit toward the total square footage requirements.
- G. Dwellings with finished screened porches may have a 100% credit toward the total square footage requirements.
- H. All exterior painted portions of any dwelling, garage or outbuilding located on any Lot shall be finished with earth tone colors approved in writing by Declarant. Prior to commencement of painting of the exterior of any dwelling, a sampling of the approved exterior color(s) chosen by the owner shall be applied to the dwelling to be viewed by Declarant for final color approval. All exterior painted portions of dwellings that are repainted shall be repainted in one of such earth tone colors approved in writing by Declarant.
- I. All roof material shall be earth tone colors and be a decorator or laminated shingle.

- J. The single family dwelling on each respective Lot shall be under construction within twenty-four (24) months from the date of conveyance of such Lot by Declarant.
- K. All buildings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.

No building or structure, nor any addition or alteration thereof, shall be constructed or substantially altered on any Building Lot unless and until a design plan and a site plan (collectively the "Plans") have been submitted to and approved by Declarant. The Plans shall contain details of design, color scheme, elevation, site grade, landscaping, fencing, roofing, sidewalks, driveways and other similar matters. The Plans shall also state the type of construction, including external details and materials. Declarant shall, within thirty (30) days from the date of submittal of the Plans, deliver to the Owner written approval of, rejection of, or required changes to the Plans. The intent of this provision is to insure that buildings and structure are developed in reasonable harmony within the Plat and that the covenants, restrictions and conditions contained herein are met in connection with such development. Declarant may terminate the requirements of this provision at any time, in its sole and absolute discretion, by recording notice of such termination.

V. BUILDING SETBACK

The front yard setback shall be a minimum of 50 feet, but this is to only permit flexibility for the siting of the home with regard to saving existing trees, but setbacks of greater than fifty feet are recommended.

VI. DRIVEWAYS

No building or structure shall be constructed, altered or maintained on any Building Plot unless it has a driveway from a street running to the dwelling, which must be sufficient area to park at least two cars entirely off the street. All driveways shall be constructed of concrete.

VII. TEMPORARY STRUCTURES OR EQUIPMENT AND RECREATIONAL VEHICLES

No building or structure of a temporary character, and no trailer, basement, tent, shack, garage or outbuilding shall be used at any time as a residential dwelling on any Building Plot either temporarily or permanently.

No recreational vehicle or boat shall be parked so that such vehicle or boat is visible from the street for a period of time longer than one week.

Any garden shed or pool house shall comply with all existing Building Codes.

VIII. FENCES

No fences will be permitted within two feet (2') of the front line of any Building Plot. No fences over three feet (3') in height will be permitted within the front thirty feet (30') of any Building Plot unless wrought iron fencing is used in the front yard. Wrought iron fencing is allowed as long as the brick and/or stone columns are placed no further than twenty-five feet (25') apart, and the columns and/or fence does not exceed eight feet (8') in heights.

Rear yards may have wood, wrought iron or chain link fences. No chain link fence shall be allowed except that which is behind the furthest point of the home in the rear yard and then only black vinyl clad chain link fencing can be used.

IX. SODDING OR SEEDING.

Within ninety (90) days of completion of a dwelling upon a Lot, all portions of the Lot shall be fully sodded or seeded, except Declarant may permit seeding to the rear lot line for those Lots with longer rear yards, or where the topography or a steep slope does not permit, or under special circumstances. If weather conditions make this requirement impossible to meet, Declarant shall establish a reasonable period of time for compliance.

X. EASEMENTS.

Easements for installation and maintenance of utilities, sanitary sewer, storm sewers, overland flowage, sidewalks and water mains as shown on the Official Plat of **Brooke Field Estates Northwest Plat 1**, are hereby reserved and the Declarant shall have the right to make a specific grant of the "Public Utility Easements" shown thereon for construction, reconstruction and maintenance of underground electric lines and/or telephone lines to MidAmerican Energy and/or U.S. West, or their successors, grantees or assigns, and to make a specific grant of sanitary sewer, storm sewer, overland flowage, sidewalk and water main easements to Polk County, Iowa. The Owner and/or occupant of a Building Plot, shall, at their own expense, keep, and preserve that portion of the easement or sidewalk located within the Building Plot at all times in good repair and condition and shall neither erect nor permit erection of any building, structure, fence or other improvement of any kind, nor permit any growth of any kind which might interfere in any way with the use and maintenance of the easement area or sidewalks. Further, the owner of any lot encumbered with a telephone, electric, gas, drainageway, storm sewer, overland flowage, sanitary sewer and/or water main easement shall, at all times, be maintained by the burdened Lot's Owner. Polk County shall at all times have reasonable access to all lots for fire and police protection.

XI. 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 an annoyance or a nuisance, either temporarily or permanently.

XII. EROSION CONTROL AND STORM WATER DISCHARGE PERMITTING REQUIREMENTS.

The Owner and/or occupant of each Lot, jointly and severally, whether vacant or improved, their agents, assigns, heirs and/or building contractors, shall take all necessary precautions to prevent, stabilize and control erosion within its Lot to prevent sediment migration and soil erosion from extending beyond the boundaries of the Lot. In the event of any occurrence of soil erosion, the Owner and/or occupant of the Lot shall, jointly and severally, promptly clean up all eroded sediment and restore all affected areas to their original condition.

Any construction or earth moving on any Lot shall be in compliance with all laws relating to storm water discharge permitting. The Owner shall be solely responsible for the Lot with respect to compliance with all terms, provisions and requirements of any NPDES Storm Water Discharge Permit No. 2 and any storm water pollution prevention plan which includes the Lot.

During the ownership of the Lot, Owner shall protect, defend, indemnify and hold the Declarant and other Owners harmless from any and all damages, claims, liabilities, fines, penalties, cleanup costs and/or attorneys and consultant fees caused by, or in any manner related to (i) any discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the Lot and/or (ii) any alleged violation of any NPDES or storm water discharge rules or regulation.

XIII. SIGNS.

No sign of any kind shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except (i) street markers, traffic signs, or any signs installed by the City 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, (iii) a customary sign (one per Building Lot) advertising a Building Lot or dwelling for sale, not exceeding 1,296 square inches, and (iv) signs which have been approved by Declarant in writing advertising the builder or for promotional or marketing purposes. 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 such signs.

Declarant reserves the right to install entrance and directional signs with respect to the Plat, at locations and of design determined by the Declarant in a manner consistent with the ordinances of the City.

XIV. TRASH RECEPTACLES.

No trash receptacles or garbage cans shall be permitted to be placed on a Lot outside a dwelling, garage or outbuilding. However, unscreened trash in proper containers and/or bags shall be allowed to be placed on a Lot outside a dwelling, garage or outbuilding no earlier than twelve (12) hours prior to a scheduled pick up of such trash. Such unscreened trash containers must be returned to the screened area or underground location, or inside a dwelling, garage or outbuilding, within twelve (12) hours following the scheduled pick up of such trash.

XV. UTILITIES.

All utility connection facilities and serves shall be underground.

XVI. TOWERS AND ANTENNAS.

No exterior transmission tower, antenna or television transmission dish of any kind shall be constructed, installed, modified, or permitted on the ground, on dwellings, on garages or on outbuildings. Notwithstanding the foregoing, an exterior tower, antenna or receiver dish which is twenty-four (24) inches or less in diameter shall be permitted. No more than one (1) such exterior tower, antenna or receiver dish shall be permitted on each Lot. No more than one (1) penetration in the dwelling shall be permitted for the cable from such exterior tower, antenna or receiver dish. No other exterior towers or antenna shall be constructed, installed, modified or permitted on the ground, on dwellings, on garages or on outbuildings.

XVII. MAINTENANCE.

The Owner and/or occupant of each Lot shall jointly and severally be responsible to keep the same free of trash, weeds and debris and to keep the lawn and landscaping well maintained and healthy, including (but not limited to) maintaining the lawn at a height not to exceed six (6) inches. 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.

XVIII. CERTAIN ANIMALS PROHIBITED.

No animals, livestock, pigs, snakes or poultry of any kind shall be raised, bred or kept on any Lot 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 two (2) dogs and/or cats be kept at any one Building Lot at any one time. Dogs must be either kept in the dwelling or in a shelter aesthetically compatible with the dwelling and surrounding areas, and dog runs, if any, must be located at the rear of the house or garage and extend toward the rear of the Lot from that portion of the house or garage which is closest to the rear Lot line. All pets must be leashed and under the control of its owner if not tied up or kept within a fenced yard or dog run. Small chicken coops for private use are allowed, subject to all provisions of the Polk County Code.

XIX. ACCESSORY STRUCTURES.

Each Building Plot may have no more than one (1) customary and traditional accessory structure such as a tool shed, garden house, in-ground swimming pool, tennis court and the like. Any trash receptacle, or tool shed, garden house or other outbuilding of like nature, shall be properly screened by a privacy fence and/or shrubbery. Swimming pools, tennis courts, outbuildings and other accessory structures and improvements, including dog kennels and runs, shall not extend farther than the front line of the residential dwelling extended to the side lot lines and shall not be located within 20 feet of any side or rear Lot line, as the minimum distance established by the current Polk County zoning ordinances, or existing Code regulations as established in the Plat as recorded.

XX. SURFACE WATER

The topography of the Plat is such that surface water may flow from certain Building Lots onto other Building Lots. In regard to all matters concerning surface water, each Building Lot shall be subject to and benefitted by such easements as may exist from the flowage of surface water under the laws 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 laws.

XXI. MAILBOXES.

The Declarant may, at its discretion, install neighborhood mailbox cluster units according to United States Postal Service regulations. The Owner and/or occupant of the Lot(s) on which a mailbox cluster unit is located shall be responsible for removal of snow and ice which would obstruct access to the mailbox cluster units by the mail carrier and other Owners.

Any mailbox required to be placed by an individual Owner shall be installed and maintained by the Owner according to United States Postal Service regulations.

XXII. SECURITY LIGHTING.

Security or decorative lighting for driveways, parking and other areas shall be designed, located and directed in a manner which will avoid direct lighting onto adjoining Lots.

XXIII. STORM WATER DETENTION FACILITIES, PRIVATE EASEMENT.

Each Lot benefits from one (1) storm water detention basin designed to control storm water runoff through construction and maintenance of storm water detention basins with outlet control structures as designated on the plat map, within Lots 1 through 14, inclusive, in Brooke Field Estates Northwest Plat 1 (the "Storm Water Management Facilities"), and the private septic discharge collector lines.

The HOA shall, at its sole cost and expense, maintain and preserve that portion of the surface of the Storm Water Management Facilities located within the Plat in good condition. The Owners of each respective lot shall not plant nor permit to grow any trees or other vegetative growth which might reasonably be expected to obstruct or impair usage of the Storm Water Management

Facilities. Such maintenance obligations shall include, but are not limited to, mowing, weed control, replacement of permitted vegetation, removal of trash, litter and debris and control of the flow of water and designed storage volume within the basins by keeping the basin outlets and intakes clear of sediment and debris.

In the event that Polk County has determined that the Owners of a Lot containing a portion of the Storm Water Management Facilities have failed to adequately maintain the surface of the Storm Water Management Facilities as set forth above within a reasonable time after receipt of notice from the County, the HOA shall become responsible to initiate all required remedial action, and the reasonable and necessary costs of such work may be assessed against the individual Lot Owner that is responsible; or in the alternative, against all lot owners located within the Plat, as the Association deems appropriate under the circumstances. Such assessment shall constitute a lien against the Lot Owner's property, or all individual Lot Owners, as again, determined by the HOA.

The HOA shall be required to make an annual visual inspection of all pipes, inlets, outlets and basins for defects, obstructions and changes from the Storm Water Management Plan and private septic discharge collector lines. Whenever the Storm Water Management Facilities shall, in the judgment of the HOA, require repairs, grading, dredging, replanting, alterations, improvements or maintenance as outlined in Section 9 of the Management Facility Agreement, and the making of such repairs, grading, dredging, replanting, alterations, improvements or maintenance shall have been authorized by a resolution signed by the HOA, the HOA shall proceed with the work. The total reasonable and necessary costs of such work, including the expense of materials and equipment, to restore the Storm Water Management Facilities to compliance with the approved Storm Water Management Plan, shall be allocated in equal shares against all Lots. The Owners of each Lot, for themselves, their heirs, successors and assigns covenant and agree to pay promptly when due all amounts so assessed against them or their Lot. In the event that the Owners of a Lot fail to pay such amounts within a reasonable time after receipt of notice, the amount of the assessment shall be a lien against such Owners' Lot. The assessment lien may be enforced in equity as in the case of any lien foreclosure by the HOA. The assessment shall accrue to the benefit of and may be enforced by the then current Owners of each of the other Lots.

In the event that the County has determined that the HOA has failed to perform any repair, grading, dredging, replanting, alterations or improvements necessary to maintain the Storm Water Management Facilities in substantial compliance with the Storm Water Management Plan and Section 9 of the Management Facility Agreement within a reasonable time after receipt of notice from the County, the County may cause such work to be done as necessary to restore such facilities into substantial compliance with the Storm Water Management Plan and assess the reasonable and necessary costs of such work, including the cost of materials and equipment, as a special assessment against the HOA and upon the Lots pursuant to Section 6(C) of the Management Facility Agreement, which assessment shall be a lien on each Lot, billed and collected as ordinary taxes.

XXIV. ENFORCEMENT OF COVENANTS.

This Declaration shall be deemed to run with the land, and Declarant or the Owner of any Lot may bring an action in any court of competent jurisdiction to enforce this Declaration to 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, and shall further be entitled to recover reasonable legal fees and costs if the Declarant or Owner prevails in any such action.

XXV. AMENDMENT OF COVENANTS.

This Declaration may be amended from time to time with the approval of the Owners. Such 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 the Declarant, or its assignee, has sold all of the Lots, it may make amendments or modifications to this Declaration without the consent of any other Owners or other party. Such amendments or modifications by the Declarant shall be effective the date the amendment or modification has been filed with the Recorder.

XXVI. PERIOD OF COVENANTS.

The easements granted herein shall be perpetual in nature. All covenants, conditions, restrictions and reservations created by this Declaration shall run with the land and shall be binding upon all parties claiming under them for the maximum period allowed by law, subject to the right of Owners under Section 614.24 of the Iowa Code to file a verified claim in the office of the County Recorder to extend the effectiveness of these covenants for successive periods of twenty-one (21) years each on or before the twenty-first anniversary of the filing of this Declaration and prior to the twenty-first anniversary of the filing of the last verified claim. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way affect any of the provisions hereof, but the same shall remain in full force and effect.


XXVII. ENFORCEMENT AND WAIVER.

- A. In the event that any one or more of the foregoing covenants, conditions and 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. The Plat shall also be subject to any and all rights and privileges of the City, now held or hereafter acquired, by dedication or conveyance, or by reason of the platting and recording of the Plat, or by this Declaration or by law. Wherever there is a conflict between this Declaration and the zoning ordinance of the City, the more restrictive shall be binding.

C. This Declaration shall not be applicable to property dedicated to the City, and the City may allow appropriate public use on city-owned property within the Plat.

IN WITNESS WHEREOF, this Declaration of Residential Covenants, Conditions and Restrictions, was made the date first written above by the Declarant.

BROOKE FIELD ESTATES NORTHWEST
PLAT 1, L.L.C.

By: 
Friedrich Trost, Manager

STATE OF IOWA)
)ss
COUNTY OF POLK)

This instrument was acknowledged before me on August 21, 2019, by Friedrich Trost, as Manager of Brooke Field Estates Northwest Plat 1, L.L.C.


NOTARY PUBLIC - STATE OF IOWA

