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Linn County Iowa
JOAN MCCALMANT RECORDER

BK 9910 PG 621-629

\$47.00 / 1658

Prepared by and after recording return to:

DK Construction Inc.
Duane and Connie Kunkel

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Solon, IA 52333

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PROTECTIVE COVENANTS AND RESTRICTIONS
OF
DEER VALLEY THIRD ADDITION
ELY, IOWA

The undersigned, being the owner of the following described real estate:

**Lots 1 thru 19, Deer Valley Third Addition, Ely, Iowa according to the final plat thereof
recorded in Book 9910 at Page 606, Plat Records of Linn County, Iowa:**

**Lots numbered within the subdivision as shown on the final subdivision plat shall
be used only for the following purposes:**

Single-Family Residential (R-1): Lots 1-16;

Two-Family Residential (R-2): Lots 17-19

NOW, THEREFORE, the undersigned hereby declares that said Lots in the Third Addition of Deer Valley 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 properties and for the mutual benefits of those persons who own or may purchase any of the Lots in such subdivision and shall be binding on all parties having any right, title or interest in the properties, or any part thereof, their heirs, successors, and assigns, as covenants running with the land, and with such force and effect as if contained in each subsequent conveyance of said properties.

APPLICABILITY. This real estate to which this Declaration shall be initially applicable is known and designated as Deer Valley Third Addition, of Ely, Iowa according to the respective recorded plats thereof. This Declaration may also be made applicable to future Additions of Deer Valley Subdivision by the Declarant so electing in a written instrument filed of Record in the Office of the Linn County Recorder.

DEFINITIONS.

"Building" shall mean and refer to any structure that is constructed on a lot within the Subdivision.

"City" shall mean the City of Ely, Iowa.

"Common Areas" shall mean the features of the Subdivision initially or in the future set aside for the use of some or all of the Owners including Outlots that may be conveyed to the City including all walkways private storm water line and management facilities, landscaping, and other facilities and improvements, thereon easements that may have been granted by the Declarant (separately or with others) for which the City is or later becomes responsible for operating, owning and/or maintaining, for the benefit of the Owners in accordance with the Developers Agreement applicable to the Subdivision or any part thereof.

"Declarant" shall mean the Developer.

"Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions as may be amended as provided herein.

"Developer" shall mean and refer to Duane and Connie Kunkel, of DK Construction Inc., development owners and its assigns as Declarant.

"Dwelling" shall mean any building or portion thereof which is designed for and used exclusively for residential purposes.

"Dwelling, Single-Family" shall mean a building designed for or occupied exclusively by one family.

"Dwelling, Two-Family" shall mean a building designed for or occupied exclusively by two families living independently of each other.

"Lot" shall mean and refer to the numbered lots shown upon the plat(s) of the Subdivision as recorded in the office of the Recorder Linn County, Iowa.

"Owner" shall mean and refer to the record owner (including the Developer) whether one or more persons or entities.

"R-1" shall mean single family residential

"R-2" shall mean two-family residential

PUBLIC IMPROVEMENTS.

Sidewalks. Each Lot Owner shall be responsible for the installation of a sidewalk on said Owner's Lot in accordance with the Developer's Agreement with the City, and in accordance with the City's sidewalk requirements, and also in accordance with the terms of these covenants. Note: lots 8 and 16 will have additional requirements for the sidewalk running along Glendale Lane, contact the City of Ely for the specifications within the Developer's Agreement.

CONSTRUCTION AND ARCHITECTURAL CONTROL.

Application of Plan Approval. Plans and specifications for the proposed structure shall be submitted first to the Developer, and then to the City of Ely for approval. One full set of plans and specifications for the proposed structure shall be submitted to the Developer or its designee for approval.

Plan Approval. No construction shall begin until both the Developer and the City of Ely have approved all plans, drawings and specifications. Obtain from the Developer the "Deer Valley Subdivision Application of Plan Approval. Any home and/or outbuilding must follow the City of Ely's and the State of Iowa's building codes.

Approval or Disapproval. Developer retains the right, in Developer's absolute and sole discretion to reject any of the plans, specifications, and any other aspect of the proposed improvement which in Developer's sole opinion is not suitable or desirable for the Subdivision. Within ten days of submission of all the documents to Developer, the Developer will render its written decision.

Duration of Approval. In the event any proposed construction is not commenced within one (1) year from the date said plans and specifications have been approved by Developer, said approval shall lapse and it shall be the responsibility of the Lot owner to re-apply for approval prior to the commencement of construction.

Landscaping. Landscaping must be completed prior to occupancy of any Building. Before planting any shrubs, trees or hedges refer and follow the "Fence and Hedge" and "Supplementary District Regulations" in the City Code Title 6 Chapter 13.

Erosion Control. As part of the construction, each Lot Owner shall be responsible to grade, landscape and maintain such Owner's Lot in such manner so as to minimize damage that might result to other Lots as a result of erosion and surface water drainage. Lot owners agree to assume from Developer all obligations to minimize erosion during the development of, and the construction on their Lot and to prevent silt from leaving the site. The obligation assumed includes silt fences or other measures to minimize erosion and the run-off pollution as may be required by any governmental body to satisfy any governmental requirements applicable to the Lot. Follow the City Code Ordinance 241.

Building Requirements.

1. For R-1 single-family residential lots, no residence shall be erected having less than 1,400 square feet in the case of a one story structure, nor less than 1,600 square feet combined in the upper two floors. Areas not considered as part of the required floor area are:

basements, garages, breezeways, porches and decks. All R-1 single-family dwelling units to have a minimum 2 or 3 stall attached garage.

2. For R-2 two-family residential lots, no residence shall be erected having less than 1,200 square feet in the case of a one story structure. Areas not considered as part of the required floor area are: basements, garages, breezeways, porches and decks. All R-2 two-family dwelling units to have a minimum 2 stall attached garage.
3. No trailer, mobile home, or modular home shall be placed on any lot, nor shall any residence of a temporary character be permitted.
4. No trailers, boats, recreational vehicles or disabled vehicles may be placed upon any lot unless fully contained in an approved garage, outbuilding or within an area enclosed by privacy fence which must be approved by the Developer.
5. One detached storage building may be added only after obtaining written approval from Ely officials. It must be built using the same materials and colors as the house, and must include a concrete floor. For Lots 1-16 maximum sized outbuilding may be 12 ft. x 12 ft. For Lots 16, 17 and 19 no outbuildings allowed. Other than the requirements listed here it must comply with the City of Ely's Supplementary District Regulations relating to "Accessory Buildings and Structures". Follow the City Code Title 6 Chapter 13.
6. The front of the home to have not less than 25% be constructed of stone, brick, or a combination thereof. Other materials may be specifically approved in writing by the Developer. Shingles to be a minimum 25 year wear asphalt, architectural style. No "three-tab" shingles are allowed.
7. Building Setbacks – Follow the City Code Title 6 Chapter 13
 - a. For an R-1 single-family dwelling it shall not be constructed nearer than 25 feet to the front lot line. All other building setbacks shall follow the Ely minimum yard requirements for dwelling use in the R-1 zone district as specified on the date of filing the Final plat. Such setbacks are: rear = 30 feet; side = 8 feet; street side corner lot = 25 feet or as noted on final subdivision plat.
 - b. For an R-2 two-family dwelling it shall not be constructed nearer 25 feet to the front lot line. All other building setbacks shall follow the Ely minimum yard requirements for dwelling use in the R-2 zone district as specified on the date of filing the Final plat. Such setbacks are: rear – 30 feet; side = 8 feet (one story); corner lot 15 feet or as noted on final subdivision plat.
8. Sidewalks – Follow the City Code Title 6 Chapter 8. Each lot owner shall assume the responsibility and expense installing sidewalks on such lot as may be required under the Developer's/Subdivider's Agreement entered into in connection with the Final Plat of the Subdivision. Sidewalks shall be installed when required in accordance with the specifications of the City of Ely. It is the responsibility of the lot owner/builder to contact the City of Ely regarding these specifications.

9. Fencing - may be installed. Follow City Code Title 6 Chapter 13. Fencing may be a vinyl fence up to six (6) feet in height or black chain link fence construction four (4) feet in height. In the event fencing is required in a specific area by the City of Ely it will be allowed only in the area where required. No fence shall extend along any boundary of the front yard or closer to the front of the dwelling than the front outside corner of said dwelling.
10. Small satellite dishes (diameter under 36") are allowed if they do not extend over 42" over the main roof line of the home and are attached only to the home. No other antennas may be installed unless attached only to the home and project no more than 42" over the roof line.
11. Easements – It is the responsibility of the lot owner or homeowner to be aware of any utility or other easements located on their property. The utility companies and including the City of Ely or Developer for the subdivision may use the easements as shown on the final plat of said subdivision. Any easement designated on your lot shall adhere to the following: No permanent improvements or trees shall be placed on the areas so designated for easements, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or the rights herein reserved.
12. One tree with a minimum of 1 ½" diameter must be planted in the front yard prior to occupancy.
13. Each Lot Owner/builder as part of the construction:
 - a. Shall install grass sod and/or seed on their lot. Such sodding and/or seeding shall be commenced immediately upon the earliest to occur of substantial completion of the dwelling or obtaining an occupancy permit except when delayed by weather or season.
 - b. During the course of construction, all building contractors shall keep mud, dirt, debris and building materials off of all subdivision roads and other building lots. During any concrete work any and all clean-out shall be put on each lot owner/builders own lot.

ADDITIONAL BUILDING REQUIREMENTS FOR R-2 TWO FAMILY DWELLINGS.

1. The common wall connecting the two (2) laterally attached dwelling units shall be a party wall, and the owner of each dwelling unit shall have the right to use said wall jointly with the owner of the other dwelling unit as provided by Iowa law, subject to the terms hereof.
2. A permanent easement ten (10) feet in width from lot line to lot line the center line of which is the party wall, is reserved for all owners for maintenance of the party wall and adjoining portions of the structure (zero lot line duplex). Each owner shall also have an easement over so much of the adjoining property as is necessary to maintain, repair, or restore any common aspect of the properties.
3. Except as otherwise provided herein, all elements, including but not limited to utilities, water sanitary sewer, storm sewer, and driveways, shall be separate utilities and the owner

of a dwelling unit shall have no right to use said elements jointly with the owner of the other dwelling unit.

4. Should the common wall or any common aspect, including but not limited to utilities, water sanitary sewers, storm sewers, easements, and driveways, be damaged or destroyed, or require maintenance or repair for any reason, the owner of each dwelling unit shall be jointly and severally liable with the owner of the other dwelling unit for the cost of such maintenance, repair, or replacement, except as modified below; provided, however, that any sum received from insurance coverage shall first be applied to such repair or restoration. It is expressly understood, however, that if repairs, replacement, or building is required because off the sole negligence of one of the owners of a dwelling unit, the cost thereof shall be at his or her sole expense.
5. No owner of a dwelling unit shall alter or change said common wall, (interior decorations excepted), or any of the pipes or conduits located therein without the permission of the other owner.
6. The owner of each dwelling unit shall bear the expense of any repairs or replacement of the roof covering their dwelling unit. Each owner shall make all necessary repairs and replacements of his dwelling unit at their own expense in order to maintain the interior, exterior and structural portions of the dwelling unit in good condition. The following provisions shall govern exterior repairs or replacement:
 - a. The owner of a dwelling unit may replace exterior components of his dwelling unit with similar components of the same design and color but may not, either in the course of ordinary replacement, remodeling or restoration after damage or destruction, employ different siding, roofing material or a different color scheme, for the components of the dwelling unit (including but not limited to the exterior doors and garage door), unless first obtaining the written consent of the owner of the other dwelling unit, which consent may only be given for the variation in siding, roofing material or color scheme is adopted by the owner of the other dwelling unit and if such variation satisfies other restrictive covenants of record.
 - b. If any dispute arises concerning a change of siding, roofing materials, or color scheme, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator and the decision of the majority of all the arbitrators shall be final and conclusive of the question presented. If either party refuses or fails to promptly appoint an arbitrator, the same may be appointed by any Judge of the District Court of Iowa in and for Linn County. Arbitration shall be in accordance of the rules of the American Arbitration Association and the cost thereof shall be equally shared by the parties.
7. The owner of each dwelling unit shall insure their dwelling unit for 100% replacement value and the proceeds of such policy shall be used to repair, replace, or restore the damaged premises to the same condition that existed before the loss. The owner of each dwelling unit shall coordinate their insurance policy on the premises with the owner of the other dwelling unit in order to assure there is adequate coverage for the unit and all other common aspects, including, but not limited to utilities, water, sanitary sewers, storm

sewers, easements and driveway. The owner of each dwelling unit shall be insured to the extent of their interest in a dwelling unit and any common aspect and should be named as an additional insured on any insurance policy held by the owner of the other dwelling unit. In addition, the mortgagee of each dwelling unit, if any, shall be designated as an insured to the extent of its interest in the dwelling unit, that portion of the insurance proceeds required to replace or repair said common wall or other common aspects shall be paid over to the mortgagee of each respective dwelling unit and shall be distributed by the mortgagee as required to make the repairs or replacement.

8. If a common wall is destroyed or damaged by fire or other casualty or by physical deterioration, any owner who has used the wall may restore it, and shall have an easement over the adjoining dwelling unit for purposes of making such restoration, and the adjoining owner shall contribute to the cost of restoration thereof on an equal basis without prejudice, however, to the right of any such owner to call for a larger contribution from the owners under any rule of law regarding liability for willful acts or omissions.
9. If any portion of a dwelling unit on any lot shall encroach upon any other lot, or if any such encroachment shall hereafter arise because of settling or shifting of the building or other cause, there shall be deemed to be an easement in favor of the owner of the encroaching dwelling unit to the extent of such encroachment so long as the same shall exist.
10. If any repairs, installation or other work is required in the external utility easement area described herein the area shall be returned to the condition prior to such work at the expense of the owner(s) of the dwelling unit(s) benefited by the work. The owner(s) of the dwelling units benefited by the work shall be responsible for the cost of such work, and the cost of repairing damage to the utilities in the easement area and to the dwelling units. All work shall be done in workmanlike fashion by appropriately licensed personnel. The owner of a dwelling unit may seek indemnification or contribution from any party for the cost of the work.
11. The owner of each dwelling unit agrees to indemnify and to hold harmless the owner of an adjoining dwelling unit for any mechanic's liens arising from work done or material supplied to make repairs or replacements for which said owner is responsible.

MAINTENANCE.

Restoration of Damage. In the event of a total destruction of any Building, the Owner shall within ninety (90) days after such event commence removal of the debris and restore the site to a satisfactory condition. Said removal shall be completed within (30) days after its commencement date.

PETS. No animals, livestock or poultry shall be raised or kept within the subdivision except for usual household pets, or as allowed in the City of Ely ordinance; and provided the same are not kept or maintained for commercial purposes. Any outbuilding is not to be used as a kennel or dog run as they are prohibited within the subdivision.

GENERAL PROVISIONS.

Land Use. All lots shall be used only for single-family residential purposes and no structure shall be erected on any lot other than a single-family dwelling and one outbuilding per dwelling is allowed.

All R-2 lots may only be used for two-family residential purposes and no other outbuildings may be built on said lot.

Conveyance of Lots. No lot shall be subdivided. This provision shall not prevent a conveyance of a portion of one lot to the abutting owner of another so long as said conveyance does not result in an additional building lot being created thereby.

Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Developer, the persons in ownership from time to time of the Lots and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorney's fees and the costs and expenses incurred as a result thereof.

Other than applicable requirements of the Ely Zoning Ordinance and the Developer's Agreement entered into with the City of Ely in connection with the approval of the subdivision, the Developer may waive or consent to variances in any of the preceding building regulations to prevent hardship to or unintended results for any Lot owner.

Notwithstanding anything herein contained, the Developer shall have no liability whatsoever for architectural viability or integrity or any drainage issues resulting from work done by other builders, contractors, subcontractors, suppliers of material of any other suppliers.

Requirements of the "Storm Water Management" area for Deer Valley: At the time of the City of Ely's approval of the final plat for the Deer Valley First Addition, the City will assume ownership of Outlot A.

The following provisions apply to all lots in the subdivision:

- A. Each home built on any lot in this Third Addition or continued Additions will be assessed a monthly fee as determined by the City Council of the City of Ely. The fee is to be used exclusively for Outlot A as the City of Ely will own, operate and maintain said Outlot A as a storm water management area.
- B. These Covenants are to run with the land and shall be binding on all the parties and all persons claiming under them for 20 Years, at which time said Covenants shall be automatically extended for successive periods of 10 years unless by a vote of the majority of the then owners of the lots it is agreed to change the said Covenants in whole or in part. If any of the parties hereto, or their heirs or assigns shall violate or attempt to violate any of the Covenants or restrictions herein it shall be lawful for any person or persons owning any lots in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons and either to prevent him or them from so doing or to recover damages or compensation for such

violation or violations. Anyone found guilty of violating any of the above Covenants shall agree to pay all attorney's fees court costs, etc. of all parties involved. In no event shall the failure to enforce any of the Covenants as to a particular violation be deemed to be a waiver of the right to do so as to any subsequent violation.

LIMITATION OF LIABILITY. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall development and value of the Subdivision; they do not create any duty to any Person. Review and approval of any submission pursuant to this Section is made on the basis of maintaining and enhancing the development and value of the Subdivision, and the Developer or any Person charged with reviewing any submission required pursuant to this Article shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Buildings are of comparable quality, value or size of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

IN WITNESS WHEREOF the Developers have caused this Declaration to be executed this

17 day of August, 2017.

By:

Duane Kunkel

Duane Kunkel, Owner/Developer

Connie Kunkel

Connie Kunkel, Owner/Developer

STATE OF IOWA

)

) ss:

LINN COUNTY

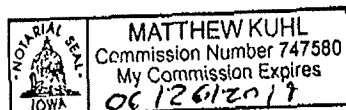
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This foregoing instrument was acknowledged on Aug 17th 2017, by the Owners of this portion of the real estate located with Deer Valley First Addition and execute this Declaration to accept and consent to these covenants being imposed upon that portion of Deer Valley First Addition owned by them.

Johniso

State of Iowa, County of linn, ss:

The foregoing instrument was acknowledged before me on Aug 17th 2017 by Duane Kunkel and Connie Kunkel, husband and wife.



Matthew Kuhl
Notary Public for said State