

82A  
R.



Doc ID: 031212460016 Type: GEN  
Kind: RESTRICTIVE COVENANT  
Recorded: 09/26/2016 at 11:15:28 AM  
Fee Amt: \$82.00 Page 1 of 16  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2016-00027831

BK **16195** PG **571-586**

**Recorder's Cover Sheet  
Declaration of Covenants for  
Brinmore Estates, Ankeny, Polk County, Iowa.**

Preparer Information: Matthew M. Hum  
Wasker, Dorr, Wimmer and Marcouiller, PC  
4201 Westown Pkwy, Suite 250  
West Des Moines, IA 50266  
(515)283-1801 (1820RE)

Taxpayer Address: Classic Development, L.L.C.  
1910 S.W. Plaza Shops Lane  
Ankeny, IA 50023

Return Address: Matthew M. Hum  
Wasker, Dorr, Wimmer, and Marcouiller, PC  
4201 Westown Parkway, Suite 250  
West Des Moines, IA 50266  
(515) 283-1801

RETURN TO:

Legal Description: See Exhibit "A"

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND EASEMENTS FOR BRINMORE ESTATES,  
A SUBDIVISION IN POLK COUNTY, IOWA**

THIS DECLARATION, made on the date hereinafter set forth, is made by **CLASSIC DEVELOPMENT, L.L.C.**, an Iowa Limited Liability Company, hereinafter referred to as "Declarant".

PRELIMINARY STATEMENT

The Declarant is the Owner of certain real property to be platted and known as Brinmore Estates Plat 1, located within the City of Ankeny, County of Polk, in the State of Iowa, the legal description of which is set forth in Exhibit "A" attached and by reference made a part hereof.

The Declarant desires to provide for the preservation of the values and amenities of Brinmore Estates, for the maintenance of the character and residential integrity, and for the purpose of enhancing and protecting the desirability and attractiveness of the Lots contained therein.

**NOW, THEREFORE**, the Declarant hereby declares that all Lots in Brinmore Estates Plat 1, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa, shall be held, sold, and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions, and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot or any part thereof, as is more fully described herein. The Lots are, and each Lot is and shall be subject to all and each of the following conditions and other terms, except as may otherwise be provided herein:

ARTICLE I

DEFINITIONS

- A. **"Declarant"** shall mean and refer to Classic Development, L.L.C., its successors, or assigns.
- B. **"Developer"** shall mean and refer to Classic Development, L.L.C., its successors or assigns.
- C. **"Owner"** shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of Brinmore Estates other than streets or out lots.

- D. **“Development Board”** shall mean and refer to a board appointed by Declarant, its successors and assigns. Until such time as Declarant appoints a Development Board, Declarant shall serve solely as the Development Board.

## ARTICLE II

### GENERAL RESTRICTIONS AND COVENANTS RELATING TO LOTS WITHIN THE PLAT

- A. Each Lot shall be used exclusively for single family residential purposes.
- B. No advertising signs, bill boards, including signs of any nature, kind or description that identify, advertise, or in any way describe the existence or conduct of a home occupation, or any unsightly objects or nuisances shall not be displayed on any Lot without the prior written approval of the Development Board; provided, however, that an Owner shall be entitled to display one (1) “for sale” sign of standard and customary size and materials in connection with attempts by the Owner to market a Lot. Nothing in this Article shall affect the rights of Declarant.

Declarant, however, reserves the right to maintain the improvements on one or more Lots as a model or as a sales and display office for itself or for its sales agents or assigns; to display or post signs of any type of size which are a part of the development and marketing of the development or houses for sale; and, to have agents and employee equipment and material on any Lot used for a model or sales office.

- C. No home occupation shall be conducted or maintained on any Lot other than one which is incident to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot. Nor shall the premises be used in any way for any purpose, which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots or dwellings.
- D. No exterior television or radio antenna, satellite receiving disc, or exterior solar heating or cooling device of any sort shall be permitted on any Lot except satellite discs may be attached to the residence that do not exceed 36” in diameter and are not located on the front of the residence.
- E. No repair of any boat, automobile, motorcycle, truck, camper or similar vehicle requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot except during actual building operations.

- F. No boat, snowmobile, recreational vehicle, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any Lot (other than in an enclosed structure) for more than seven (7) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading, excavating equipment, commercial vehicles, trucks, truck tractors, or semi-tractors/trailers shall be parked, stored, kept or maintained in any yards, driveways or streets. However, this section shall not apply to pick-up trucks or other sport utility vehicles (suv). In addition to the foregoing, trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction.
- G. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or trash container shall be permitted unless completely screened from view, except for trash pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside the dwelling, except when in actual use. No garbage, refuse, rubbish, or cutting shall be deposited on any street, road or Lot. Only retractable or collapsible clothes lines are permitted. Such clothes lines shall be located in the rear yard area and not visible from the street. All clothes lines shall be retracted or collapsed when not in use. Produce or vegetable gardens shall be located in the rear yards only and not be any larger in size than  $\frac{1}{4}$  of the rear yard area, excluding any easement areas.
- H. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that no more than three (3) dogs and two (2) cats may be kept, provided that they are not kept, bred or maintained for any commercial purposes. Any dog run or dog house must be constructed up against the house in the rear yard and must be screened from neighbors' view. Dogs must reside inside the dwelling. No dog may be kept outside a dwelling for more than two (2) hours per day.
- I. No noxious or offensive activities not involving the maintenance of the Lots shall be carried on upon any Lot nor shall anything be done thereon that may be or may become an annoyance or a nuisance to the neighborhood. Nor shall any Lot be used for any unlawful purpose. Nor shall any Owner cause, or suffer or harbor the source of, any noise or activity that disturbs the peace, comfort, and quiet enjoyment of other Owners.
- J. The Owner of each Lot shall keep the same free of weeds and debris. No grass, weeds, shrubs, trees, or other vegetation will be allowed to remain on any Lot that constitutes an actual or potential public nuisance, creates a hazard or undesirable proliferation or

detracts from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth, concrete remains, or any waste materials, brush, or any other debris.

- K. No temporary structure, trailer, tent, shack, garage, barn, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently. The Development Board must approve any additional structures built on a lot in addition to the residence for compatibility to the neighborhood.
- L. Garage doors shall be kept closed except during time of access and use of the garage.
- M. Below grade swimming pools shall be allowed. Proper fencing surrounding the pool must be installed as per the building code. Above ground swimming pools shall not be allowed.
- N. No residence, building, fence, wall, driveway, patio, patio enclosures, swimming pool, hot tub, pool house, landscaping, or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for improvements which have been approved in writing by the Development Board.
- O. Exterior lighting installed on any Lot shall either be indirect or such a controlled focus and intensity as not to disturb the resident of adjacent Lots.

### ARTICLE III

#### RESTRICTIONS AND COVENANTS RELATING TO SITE DEVELOPMENT

- A. No fences, walls, hedges or barriers shall be permitted upon or adjoining Lot lines except as follows:
  - 1. Hedges not exceeding three (3) feet in height are permitted along front Lot lines and side property lines in the front yard setback areas. Any hedges must be trimmed and kept neat in appearance and not allowed to grow unevenly.
  - 2. Walls, fences and hedges not exceeding six (6) feet in height are permitted along rear Lot lines and side Lot lines behind the centerline of the house built on a Lot.
  - 3. The fence material shall be mounted on the exterior face of the fence posts.
  - 4. At no point in time shall there be a fence on fence across two adjoining property lines.

5. Approved fencing material shall be limited to the following: black vinyl chain link, black wrought iron/aluminum, tan or white PVC. The Board of Directors must approve any other materials other than those listed.
6. Decorative brick or stone columns with black wrought iron/aluminum fencing or white/tan PVC shall be allowed along the front property line and at driveway entrance.
7. In no event shall wood fencing be allowed.
8. In any event, the planting of all hedges or installation of any fencing and walls shall require prior written request and approval of the Development Board before installation or planting.

#### B. Landscaping

1. All minimum landscaping requirements must be installed within 180 days of occupancy.
2. The Builder, at their cost, shall provide and plant two trees. All trees and any replacements thereof shall have a minimum 1 ½" trunk diameter, measured 6' vertically from ground level when planted.
3. The first Owner of each lot shall be responsible for planting all shrubs and other plants. Shrubs and foundation plantings will address at least the front and front corners of the house.
4. There may be public utility and drainage easements across various Lots as may be shown on the recorded plat. Drainage is not to be altered so as to impede the natural flow of surface water once the Lot grade is established or as shown on the Final Plat.
5. Any surface water drainage easement areas will naturally be wet during rainy seasons and in addition will carry away the excess water from the yards due to irrigation of the yards. This is to be anticipated by the Lot Owners. No fencing or any other obstructions of any kind will be allowed to disturb or impede the natural flow of drainage of water across or through the drainage easement areas on the Lot.

6. Any field tile which is broken during construction shall be replaced so as to maintain continuous uninterrupted operation; and shall be routed into the nearest storm sewer; or other approved drain tile and is the responsibility of the Lot Owner.
  7. Wood kept on the premises for use in domestic fireplaces shall be neatly stacked behind the dwelling out of sight from public view and shall not consist of more than one such stack which shall not be in excess of 4' x 4' x 8' in size.
  8. The size, type, location, design, color, and materials used for all mailboxes shall conform to the specifications established by the Declarant.
- C. All parking and drives shall be hard-surfaced using Portland cement, approved brick pavers or stamped/colored concrete.

D. Minimum Setbacks:

1. Front Yard: 30 feet
2. Side Yard: 7 feet minimum each side, 15 feet total
3. Rear Yard: 35 feet

Minimum setbacks shall be measured from the foundation of the residence which has a structure attached to it, to the property line from which the setback is being measured. Minimum setbacks may vary throughout the plat and depend on the type of home that is constructed. Verify all setbacks with the City of Ankeny Building Department.

#### ARTICLE IV

#### RESTRICTIONS AND COVENANTS RELATING TO BUILDING STANDARDS

Good aesthetic design is a very important covenant for residences within Brinmore Estates. The highest standards of architectural quality are encouraged. The Development Board must approve all architectural plans previous to the start of any construction.

A. Criteria and Guidelines:

1. Vinyl, steel, LP Smart Side and Handi Plank are approved siding materials. All others must be approved by the Development Board.

2. Roof materials shall be a minimum of 30 year warranty laminated or textured shingles. Wood shakes, wood shingles, slate or concrete barrel tile are also allowed.
3. The Development Board before application for all brick, stone, sidings, shingles and paint colors must approve exterior colors and materials.
4. All dwellings shall have at least a two car attached garage.
5. Any additional storage shed, outbuildings or detached structure, shall be constructed of similar materials and of the same roof pitch and shingles as the residence and must be located in the rear yard of the residence. Temporary sheds, metal sheds or any structure that does not fit in with the neighborhood will not be allowed. In any event, all structures must be approved by the Development Board.
6. No prefabricated, mobile home, modular home, pre-built home, or any type of home brought to the Lot by truck or trailer, substantially constructed and set upon the Lot by crane or otherwise will be allowed within Brinmore Estates. The preceding paragraph does not intend to disallow the use of prefabricated roof trusses, components, or panelized sections of a home constructed off-site.

B. Dwellings shall have a minimum square footage as measured to the exterior wall face of the finished air-conditioned areas as follows:

1. One story dwellings must have a main floor finished areas of not less than 1,400 square feet.
2. One and one-half story dwellings must have not less than 1,800 square feet exclusive of any basement finish.
3. Two story dwellings must have not less than 1,800 square feet exclusive of any basement finish.
4. Any other styles or sizes need to be approved by the Development Board.
5. All building structures and/or improvements of any kind must be completed within 12 months of the commencement date of construction.
6. Each dwelling shall include a minimum of a 2 car attached garage.



Note: In computing floor areas, square footage shall not include porches, decks, or garages.

## ARTICLE V

### PLANS AND SPECIFICATIONS TO BE SUBMITTED TO THE DEVELOPMENT BOARD

The following shall be submitted to the Development Board in connection with the review and approval process as previously described in these covenants. No construction shall commence until the Development Board has approved the following:

- A. Final Site Plan Documents drawn to scale outlining the following: (Minimum site plan submitted to include the entire Lot).
  1. Lot legal description, local address, scale, and arrow on plan showing North.
  2. Building shown in relation to the Lot, including minimum setbacks from all lot lines, and any drainage easements. In addition, show any minimum opening elevations for basements in relation to the minimum elevations as shown on the plat where applicable.
  3. Driveways and sidewalks.
  4. Special features (patios, decks, porches, fencing, mechanical equipment, etc.).
  5. Landscaping plan, including exterior uplighting submitted prior to installation.
  6. Floor plans for all levels including the basement or foundation plan, garages, decks, and porches. Plans shall be the construction blueprints drawn at 1/4" scale.
  7. Exterior elevations showing siding materials for all 4 elevations.
  8. Exterior colors and materials for sidings, exterior trim, roofing, any exterior masonry, and paint colors.
  9. Perspective rendering or photo, if available.
  10. All building plans and site plans must adhere to all City of Ankeny Building Codes and Zoning Ordinances and to these Restrictive Covenants, whichever is the more restrictive.

## ARTICLE VI

### REVIEWS AND APPROVALS

#### A. Development Board – Procedure

1. Design review by the Development Board is intended to protect and enhance the distinctive character and natural attractiveness of the Brinmore Estates development. All buildings, structures or appurtenances thereto, to be erected, constructed, established, altered or enlarged within the Brinmore Estates development must be reviewed and approved by the Development Board, before being constructed, installed, altered, erected or established.
2. The Development Board shall consider and approve or disapprove the material required to be submitted pursuant to these covenants.
3. Prior to change of any building's exterior character by remodeling or alteration, the Lot Owner, or the Owner's designated agent, shall secure the approval of the Development Board.
4. Within five (5) working days from the date of submission of the final site plan documents and final building plans and specifications, the Development Board shall approve or reject the above submittals, and shall notify the applicant of the decision in writing. If the submittals are rejected, the specific reasons for rejection shall be set forth in writing. Any items such as color selections not submitted in the initial submission must be submitted before such items are applied to the home.
5. After the Development Board has given the approval, revisions shall not be made, unless written request for revisions has been submitted, and the Development Board has given approval.
6. Approval of the plans and specifications shall expire unless construction commences within 6 months after the approval was given and said construction proceeds with reasonable diligence until completed. All construction must be completed within 12 months from the date approval was given.

## ARTICLE VII

### ENFORCEMENT OF COVENANTS

The covenants shall be deemed to run with the land to which they apply, and the Owner of any land to which these covenants and restrictions apply may bring an action in any court of competent jurisdiction to enforce these covenants and enjoin their violations or to recover damages for the breach thereof or for any other remedy or combination of remedies recognized at law or in equity.

## ARTICLE VIII

### AMENDMENTS TO COVENANTS

These covenants may be amended from time to time by the affirmative vote of not less than three-fourths (3/4) of the owners of property in Brinmore Estates to which these covenants apply; but the owner or owners of such property shall be entitled to cast, in the aggregate, only one (1) vote on account of each Lot owned thereby. Until such time as the Declarant maintains ownership in one Lot, the Declarant shall have the right to change, modify, delete, or amend these covenants in any manner they see fit with no vote of or notice to the property owners necessary.

## ARTICLE IX

### PERIOD OF COVENANTS

All of the foregoing covenants, conditions, regulations and restrictions shall continue and remain in full force and effect at all times as to the property described in this Declaration and as to the owners of any Lot in such premises regardless of how title was acquired, until the commencement of the calendar year 2075, at which time all said covenants shall be automatically extended for successive period of ten years, unless amended as provided by Article VIII herein.

## ARTICLE X

### ENFORCEABILITY AND WAIVER

- A. No delay or omission on the part of any owner of land to which these covenants, conditions, regulations, and restrictions apply in exercising any rights, power or remedy herein allowed in the event of any breach of the covenants, conditions, regulations or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein. No right or action shall accrue and no action shall be brought or maintained by anyone whomsoever against Classic Development, L.L.C., its successors or assigns, the Development Board or any member thereof for or on account of any action or inaction taken or not taken thereby in connection herewith.

- B. In the event that any one or more of the foregoing covenants, conditions, regulations, 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, regulations, and restrictions not so expressly held to be void and the remainder thereof shall remain in full force and effect.
- C. In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then and in that event, such terms shall be reduced to a period of time which will not violate the rule against perpetuities as set forth in the laws of the State of Iowa, and as such shall be determined by the court as being reasonable.
- D. All property subject hereto shall also be subject to any and all rights and privileges of the City of Ankeny, Iowa and/or Polk County, Iowa, acquired or hereafter acquired by said town or county by dedication, conveyance, filing or recording of plats or covenants as authorized by law. Wherever there is a conflict as between these covenants and/or the zoning ordinance or law of the city, county or state within which the subject property is located, that which is most restrictive shall be binding.

## ARTICLE XI

### NOTICES

- A. The time period for approval, when specified, after submission of the required documents and plans to the Development Board, shall commence on the date such information is received by a member of the staff at the stated mailing address of the Development Board.
- B. Any party entitled to written notice of any proceedings or action of the Development Board may be given notice by mail or by email.
- C. Whenever in this Document, it is provided that notices, documents, plans or otherwise be mailed to, delivered or given to the Development Board, the following address shall be used unless otherwise designated by the Board:

Classic Development, L.L.C.  
1910 SW Plaza Shops Lane  
Ankeny, IA 50023

## ARTICLE XIII

### CERTIFICATE OF COMPLIANCE

The Development Board shall upon request thereof, issue a Certificate of Compliance and/or approval as to plats, plans and other documents, which are, in fact, approved by the Development Board and/or determined by the Development Board to be in compliance with these covenants. Said certificate shall be in recordable form, signed and acknowledged on behalf of said Development Board, by a member of said Development Board or such other person as the Development Board shall direct.

## ARTICLE XII

### EASEMENTS

#### A. Drainage and Utility Easements

As noted on the recorded Plat of the Properties, Declarant has reserved certain areas of the Lots for public utility, drainage, and street tree easements. In doing so, it is the intention of Declarant to provide the needed flexibility, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electrical, telephone, cable TV, water, gas, sewer, storm sewer, and other utility service (including all lines, pipes, wires, cables, ducts, etc.) to the Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such easements and any fences installed shall be subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair, or remove any necessary facilities and the right of Declarant and the property owners to provide for and maintain appropriate drainage. Regardless of whether shown on the recorded plat, each Lot shall accept surface water drainage from adjacent properties whether or not located within the Properties and each Lot shall have the right to drain its surface water to the adjacent Lots located within the Properties.

#### B. Additional Easement Rights

Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement right, title and authority to relocate, alter or otherwise change the location of any drainage, utility or sewer easement and to grant such further easements, licenses, and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of the Properties. Declarant further reserves the right to more specifically describe or to change the description of any such

drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, or amendment to the Plat recorded in the Office of the Recorder of Polk County, Iowa. Each Owner shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in this Section B shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section B shall run with the land.

C. Easement for Emergency Purposes

An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulance, etc., and emergency personnel, public and private, over and upon all Lots and any pedestrian walkways or sidewalks.

D. Easement for Signs

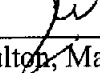
Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to the Owners, the right and easement to erect and maintain an entryway sign or signs.

E. General Easements

Each Lot is burdened with an easement of ingress and egress for maintenance, repair and replacement of public utilities as may be shown upon any subdivision plat.

IN WITNESS WHEREOF, Classic Development, L.L.C., as Declarant has caused this instrument to be executed by its duly authorized officers this 19 day of September, 2016.

CLASSIC DEVELOPMENT, L.L.C.  
An Iowa Limited Liability Company

By:   
Joshua Moulton, Manager

STATE OF IOWA            )  
  ) SS.  
COUNTY OF POLK        )

On this 9<sup>th</sup> day of September, A.D. 2016, before me, the undersigned, a Notary Public in and for said County and said State personally appeared Joshua Moulton, to me personally known, who, being by me duly sworn, did say that he is the Manager of Classic Development, LLC, a Limited Liability Company; that no seal has been procured by the said corporation; and that the said Joshua Moulton as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.




  
Notary Public for State of Iowa

EXHIBIT "A"

All Lots in Brinmore Estates Plat 1, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa.