

**DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS
EASEMENTS AND RESTRICTIONS FOR ASHWORTH
ACRES**

Preparer Information:

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Taxpayer Information:

N/A

Return Document To:

Wilson & Egge, P.C.
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Waukee, Iowa 50263

Grantor:

Ashworth Land, L.L.C.

Grantee:

N/A

Legal Description:

Lots One (1) through Forty-two (42) in Ashworth Acres Plat 2, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa.

Document or instrument number of previously recorded documents: N/A

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS FOR ASHWORTH ACRES PLAT 2**

THIS DECLARATION is made this 30 day of October, 2020, by Ashworth Land, L.L.C., an Iowa limited liability company (“Declarant”).

RECITALS:

WHEREAS, Declarant, concurrently herewith, has subdivided, developed and platted Ashworth Acres Plat 2 in the City of Waukee, Dallas County, Iowa (“Ashworth Acres”), and is the owner of Lots 1 through 42 in said Ashworth Acres.

WHEREAS, Declarant is desirous of establishing certain covenants, conditions, easements and restrictions for the benefit of the owners of the Lots.

NOW, THEREFORE, Declarant hereby publishes and declares that the Lots shall be held, sold and conveyed subject to the following covenants, conditions, easements and restrictions, all of which are for the purpose of enhancing and protecting the value and attractiveness, and desirability of the Lots, and all of which shall run with the land and shall be a burden upon and a benefit to, any and all parties acquiring or owning any right, title or interest in any part of the Lots, and their heirs, successors, assigns, grantees, executors, administrators and devisees.

I. DEFINITIONS

- A. “City” shall mean the City of Waukee, Iowa.
- B. “Declarant” shall mean Ashworth Land, L.L.C., and its successors and assigns, as to the entirety of the Lots that has not theretofore been conveyed to homebuilders or homeowners, unless the context indicates otherwise.
- C. “Lot” shall mean and refer to Lots 1 through 42, inclusive, as shown on the recorded plat of Ashworth Acres Plat 2.
- D. “Owner” shall mean a person the person or persons who from time to time collectively hold the entire fee title to a Lot, including sellers under executory contracts of sale (but shall not include any person or entity who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such security instruments).
- E. Words and phrases in this Declaration shall be construed as in the singular or plural number, unless the context permits only one such manner.

II. DESIGNATION OF USE

The use of all Lots shall be limited to single-family residential use with not more than one single family dwelling on each Lot, and may be developed only with other uses of land or structures customarily incidental and subordinate to the single-family residential use as permitted by the City of Waukee Zoning Ordinance, unless such uses or structures are otherwise regulated or prohibited by this Declaration. No full-time or part-time business activity may be conducted on any Lot or in any building or structure on any Lot, except to the extent of a home occupation permitted by the City of Waukee Zoning Ordinance,

and except that home builders may maintain model homes during construction, and Declarant may maintain a sales office during its development and sales of the Lots in Ashworth Acres Plat 1.

A. 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 Lot, either temporarily or permanently.

B. No trailer, boat, camper, motor home, or truck rated larger than 3/4 ton or other movable or temporary structure or enclosure shall be maintained or parked on any Lot or street within public view.

C. No mobile home or Manufactured Homes as defined in the Code of Iowa shall be placed on or erected on any Lot.

D. No noxious or offensive activity, noise, or odors shall be permitted on or to escape from any Lot, nor shall anything be done thereon which is or may become a nuisance, whether temporary or permanent, disturbing the peace, comfort, or quiet enjoyment of any other Owner.

E. No animals, livestock, 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, shall more than three dogs be kept on any one Lot. Dogs must be tied or fenced or kept in a dog run, which dog run must meet the requirements of paragraph J of Article III. Owner's keeping animals shall immediately pick up all pet waste when walking pets.

(F) No personal property shall be stored outside of a home or garage on any Lot overnight.

(G) All Lot Owners' vehicles shall be parked in garages on any Lot. Garage doors shall remain closed at all times, except when entering or exiting the garage and shall immediately be closed upon entering or exiting. Guests utilizing on-street parking shall park only in locations designated for parking by the City of Waukee, Iowa. Owners are encouraged to limit on-street and driveway parking.

(H). Any construction or earth moving on any lot(s) (whether greater or less than one acre in size) shall be in compliance with all statutes, rules and/or ordinances relating to storm water and erosion control compliance and permitting. The Owner understands and agrees that he/she is the sole responsible permittee for the lot(s) with respect to compliance with all terms, provisions and requirements of the NPDES Storm Water Discharge Permit No. 2, the storm water pollution prevention plan which includes the lot(s) and any and all applicable storm water and/or erosion control statutes, rules and ordinances.

Each 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: 1) any discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the lot(s) identified above; and/or 2) any alleged violation of any NPDES, storm water and/or erosion control statute, rule or ordinance, after the date of sale of the lot(s).

III. DESIGN AND CONSTRUCTION

A. In order to preserve the general design for the development of the whole of Ashworth Acres Plat 1, no structure or other improvement, or addition thereto, shall be erected upon any Lot unless the plan, design, building materials and location thereof shall have been first approved by the Declarant's

Executive Committee, or such person or persons designated by the Declarant for this purpose. Approval of such plans shall not be unreasonably withheld.

B. All building structures or improvements of any kind must be completed within 12 months of the commencement date of construction. Additionally, all construction must be commenced within 12 months of the purchase of a Lot in Ashworth Acres.

C. No building shall be erected on any Lot nearer than the building setback lines as shown on the recorded plat.

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

E. All dwellings must be constructed with the minimum of a two-car attached or built-in basement garage.

F. The exterior of any dwelling, garage or outbuilding located on any Lot shall be finished in an earth tone conservative color design that will blend well with the abutting subdivisions. A brick or stone veneer shall cover, at a minimum, the garage columns at a 42" minimum elevation. All siding must be 30-50 year concrete board (commonly referred to as "Hardie Plank", "James Hardie Siding" or "LP Smartside"). Vinyl siding is not permitted.

In addition to the foregoing, all areas of exposed concrete, concrete block or tile foundations shall be either painted to blend with the exterior wall finishes, or covered with brick or stone veneer or the equivalent. Steel siding is not permitted.

G. All roof material shall be slate, tile, cedar shakes, or composition shingles. Composition shingles shall be architectural grade, with a minimum thirty-year (30) warranty. Shingle colors shall be muted earth tones and be compatible with and complimentary to the exterior materials and colors of the building structures.

H. All dwellings shall contain a minimum square footage of living space exclusive of attached garages, breezeways, and porches as follows:

- (1) One-story dwellings must have a minimum of 1,400 square feet of finished floor area directly under roof.
- (2) One and one-half story dwellings must have a finished floor area of at least 1,700 square feet.
- (3) Two-story dwellings must have a finished floor area of at least 1,700 square feet.
- (4) Split-level dwellings must have a finished floor area of at least 1,400 square feet.

I. Playhouses, utility buildings, or other similar structures shall be permitted; provided that the exterior and the roof of any such structure shall be constructed of the same material, have the same color and appearance as the residential dwelling on the same Lot, are located only in rear yards and constructed in an attractive and workmanlike manner as determined by the Executive Committee, as hereinafter defined. The location of such structure in relation to any Lot line shall be strictly in accordance with the City permit specifications.

J. A dog run shall not be permitted on any Lot unless: (i) it is located at the rear of the house or garage and extends toward the rear of the Lot from that portion of the house or garage which is the closest to the rear Lot line; (ii) it is entirely enclosed with a fence in compliance with Article IV of this Declaration; and (iii) and is screened from public view with landscape plantings or hedges. Any dog house constructed on a Lot shall not exceed twenty (20) square feet in area, shall be constructed of the same material and have the same color and appearance as the residential dwelling, and shall be located in the rear yard of a Lot no closer than twenty (20) feet from any Lot line.

IV. LANDSCAPING AND FENCES

A. Within thirty (30) days of completion of the dwelling on a Lot, the Lot shall be fully sodded, except where the topography, conservancy districts, creek slopes or tree cover does not make sodding practical. If weather conditions make the time requirement for sodding impossible to comply with, Declarant shall establish a reasonable period of time for compliance.

B. Within thirty (30) days of completion of a dwelling on a Lot, a minimum of two (2) trees must be planted on the Lot having a diameter measuring at least one and one-half inches (1 1/2") measured two (2) feet vertically from the ground level. The party purchasing the Lot from the Declarant shall be responsible for planting these trees and cannot transfer said responsibility to party who first occupies the dwelling as a residence.

C. No fences shall be permitted upon any Lot except as follows:

(1) No fence shall exceed six (6) feet in height and shall be constructed of board-on-board cedar or black vinyl coated chain link. No vinyl/pvc fencing is allowed. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing, except as otherwise required herein.

(2) No fence shall be constructed forward of the dwelling's back building line, and shall not be constructed within any easement area without the prior written consent of the Executive Committee or City.

(3) Pool fences shall be landscaped and screened with shrubs and bushes.

(4) Artificial plants shall not be used as landscaping.

(5) Lawns shall be mowed and maintained to no greater than Three (3") inches in length as measured from the ground level.

(6) Irrigation and weed control shall be maintained as is seasonally appropriate by lawncare industry standards, and under no circumstances shall an Owner permit their Lot to become overgrown by weeds.

V. SATELLITE DISHES, ANTENNAS, POLES

A. Satellite dishes or parabolic devices in excess of twenty inches (20") in diameter used to receive television or other signals from satellites shall not be permitted. The satellite dish or parabolic device shall be mounted on the rear elevation of the dwelling or garage, or the rear half of the side elevation only. In no event shall a satellite dish or parabolic device be mounted on the front elevation or the front half of a side elevation.

B. No exterior towers or antennae of any kind shall be constructed, modified or permitted on the ground of any Lot or on any dwelling, garage or other permitted structure. All antennae shall be concealed with the attic space of the dwelling or garage.

C. No light pole shall be used or placed upon any Lot that extends more than ten feet (10') above grade, except those to light a tennis court. All light poles shall be of a residential design and shall be positioned on a Lot in a manner that will avoid direct lighting onto adjoining Lots. In no event shall a light pole be located any closer than twenty feet (20') from any property line.

VI. MISCELLANEOUS RESTRICTIONS

A. No sign of any kind or description shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except: (i) street markers, traffic signs and other signs displayed by the City or other governmental units; (ii) signs which have been approved by the Declarant or its authorized agent not exceeding 144 square inches in area upon which there shall only be exhibited the street number or name, or both, of the resident; and (iii) a customary sign (one per Lot) advertising a dwelling for sale, not exceeding 1296 square inches in area. In the event that any sign, other than those described above, shall be placed or exposed to view on any of the Lots restricted hereby, the officers or agents of the Declarant are hereby given the right to enter upon those Lots and remove said signs. Real estate signs by the Declarant will be permitted until such development is completed. Declarant reserves the right to install entrance and directional signs with respect to Ashworth Acres Plat 1, at locations and of design determined by the Declarant, and in a manner consistent with the ordinances of the City.

B. No trash receptacles, garbage cans or recycling bins shall be permitted to be placed outside a dwelling or garage except as is necessary on the day of regular collection.

C. Only below-ground swimming pools shall be permitted on a Lot, which shall be located in the rear yard and shall be screened by a fence or hedge. No above-ground swimming pools are allowed.

D. All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground. No private wells or septic systems shall be permitted on any Lot.

VII. EASEMENTS

Certain perpetual easements are reserved as shown on the recorded plat of Ashworth Acres, and/or as may be granted to the City by the Declarant and filed of record in the Office of the Dallas County Recorder. Except as otherwise provided in an easement or agreement filed of record in the Office of the Dallas County Recorder, or as may be otherwise set forth herein or in the Declaration of Owners Association for Ashworth Acres, the owner or occupant of a Lot shall, at his own expense, keep and preserve that portion of the easement within his Lot in good repair and condition, and shall neither erect nor permit erection of any building, structure or fences of any kind within the easement which might interfere in any way with the use of such easement.

VIII. SIDEWALKS

The purchaser of a Lot shall, at the purchaser's expense, install public sidewalks in accordance with specifications of the City upon the earlier of the date the dwelling is built upon the Lot, or within one year of purchase of the Lot from the Declarant.

IX. MAINTENANCE OF LOTS AND SURFACE WATER

A. The owner or person in possession of each Lot, whether vacant or improved, shall keep the same well maintained, groomed and mowed, free of uncut weeds, rubbish, garbage and debris. Damaged or dead trees and shrubbery will be trimmed out or removed. Failing this, the Owner agrees that upon receipt of written notice from the Declarant to mow or cut such vegetation, trim or remove damaged trees or shrubbery, and/or remove such debris within ten (10) days, the Owner will be subject to a combination of remedies recognized at law or equity.

B. Vegetation in conservancy easements, flowage easements, creek channels, drainage ways and/or timbered areas shall not become overgrown with weeds, but may be planted in ground-cover species appropriate to the topography and land form.

C. The topography of Ashworth Acres is such that surface water may flow from certain Lots onto other Lots. In regard to all matters concerning surface water, each Lot shall be subject to such easements as may exist for the flowage of surface water under the laws of the State of Iowa, as may be in effect from time to time, an all Owners shall have such rights and obligations with respect thereto as may be provided by such law.

X. EXECUTIVE COMMITTEE

A. Establishment/Function

The Declarant's Executive Committee (the "Executive Committee") is hereby established. The Executive Committee shall consist of the Manager or Managers of the Declarant or the designee (s) of such Manager or Managers. The functions of the Committee shall be to interpret and apply these Covenants, Conditions, Easements and Restrictions and to review building and landscaping plans as described below in Article XI during the time that property is being developed. These Covenants, Conditions, Easements and Restrictions may also be enforced by the Association or any affected Lot Owner. Notwithstanding anything to the contrary herein, Declarant shall have the sole authority to approve any alternative building plan, design, material or other deviation of the requirements contained in this Declaration.

B. Meetings, Quorum and Vote

The Executive Committee shall meet at a reasonably convenient time and place within ten (10) days after receiving the request of any interested party. One-half of the members of the Committee shall constitute a quorum. A majority vote of the Executive Committee members present (assuming a quorum present) shall be sufficient for Committee action and decision.

C. Election of Replacement Committee

If the Executive Committee should be discontinued, regarding the property, Declarant shall designate a successor entity to carry out the duties of the Executive Committee, but only with respect to the property described in this Declaration.

D. Executive Committee Procedure

(1) Design review by the Executive Committee is intended to protect and enhance the distinctive character and natural attractiveness of the Ashworth Acres area. All buildings, structures or appurtenances thereto, including landscaping, to be erected, constructed, established, altered or enlarged within the property must be reviewed and approved by the Executive Committee as described below in Article XI.

(2) The Executive Committee shall consider and approve or disapprove the materials required to be submitted pursuant to these Covenants, Conditions, Easements and Restrictions.

(3) Prior to change of any building's exterior character by remodeling or alteration, the Owner, or his or her designated agent, shall secure the written approval of the Executive Committee.

XI. REVIEW AND APPROVAL OF PLANS

A. Plans and Specifications to be Submitted for Approval.

(1) Final site plan documents drawn to scale outlining the following must be submitted to the Declarant for review and approval, in writing, prior to the commencement of any construction on a Lot:

- (a) Property legal description with scale and arrow on plan showing North;
- (b) Building locations including setback dimensions;
- (c) Driveways and sidewalks;
- (d) Special features, such as fencing, lighting, underground utilities and mechanical equipment;
- (e) Contour lines or slope of draining;
- (f) Landscaping plan, submitted prior to installations;
- (g) Size, height, type and color of any sign; and
- (h) Parking areas, points of access, as well as any easements for access and means of screening; and
- (i) Any other document requested by the Executive Committee.

(2) Final building plans and specifications outlining the following must be submitted to Declarant for review and approval prior to the commencement of any construction on a Lot:

- (a) Floor plans, exterior elevations, roof pitch and sections;

- (b) Square footage of buildings;
- (c) Exterior colors and material samples for exposed exterior materials; and
- (d) Perspective rendering or photo, if available; and
- (e) Any other document requested by the Executive Committee.

XII. NOTICE OF ADJACENT AGRICULTURAL USE

The adjacent property as well as properties in the general vicinity are being used, and may continue to be used, for agricultural purposes as permitted by the applicable Zoning Ordinance, including, but not limited to, farming operations and raising of livestock. Any Lot Owner shall be deemed to have consented to the use of adjacent property or property in the general vicinity pursuant to the agricultural uses presently permitted as a matter of right under the applicable Zoning Ordinance and also barred from objecting to any use which was lawful under the Zoning Ordinance as of the filing date of this Declaration. All Lot Owners covenant and agree to assume the risk of odors and migration of chemicals from the surrounding farming operations.

XIII. COVENANT ENFORCEMENT/GENERAL PROVISIONS

A. Penalties

In addition to the remedies described below in Paragraph B or elsewhere in this Declaration, the Declarant is hereby authorized to levy against any Lot in violation of this Declaration an assessment penalty not to exceed \$100 for each day a violation of this Declaration continues beyond thirty (30) days after notice of a violation has been given by the Declarant to the Owner of said Lot by certified mail, return receipt requested, or delivered in writing in by personal service. If the Owner of the Lot cannot be located after a diligent search or inquiry, the Declarant shall publish notice of the violation for two (2) successive weeks in a newspaper of general circulation in Dallas County, Iowa. If the Owner has not fully complied with the terms of this Declaration within thirty (30) days after receiving notice, or thirty (30) days after second publication of notice, the Declarant shall have the authority to levy an assessment penalty as described herein. This assessment shall be a lien on the Lot and shall have the same status as any other assessment levied by the Declarant. Any Lot Owner objecting to the notice of violation shall have the right within thirty (30) days of receiving notice to request a hearing before the Declarant. Assessment of the penalty shall be stayed pending a hearing and final decision by the Declarant.

B. Specific Enforcement of Restrictions

All Owners of Lot covenant and agree, by acceptance of a deed to such Lot, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the breach of the restrictions and covenants contained in this Declaration and that this Declaration may be specifically enforced by Declarant, the City, or an adversely affected Lot Owner.

C. Attorney's Fees

In the event it shall be necessary to secure the services of an attorney to enforce the provisions of this Declaration, then the fee of such attorney, and all other costs in connection with the enforcement of this Declaration shall be the obligation of the Owner of the Lot which is the subject of such enforcement action, unless such Owner is found not to have violated any provision of this Declaration.

D. Covenants Binding and Running with The Land.

Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of Declarant and the Owners of each Lot, and their successors and assigns and all parties and persons claiming under any of them, and shall be deemed covenants that run with the land, and shall continue for the applicable periods specified in this Declaration.

It is the intent that, notwithstanding anything in the Code of Iowa to the contrary, all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be covenants running with the land for the full period specified in this Declaration without further action by either Declarant or any Owner of any Lot in Ashworth Acres. However, in the event that Section 614.24 of the Code Iowa, as the same may be amended or replaced, may require that a verified claim be filed in the Office of the Recorder for Dallas County, Iowa prior to the twenty-first anniversary of the date of this Declaration or the twenty-first anniversary of the last filing of such verified claim in order to continue all or some of the covenants of this Declaration, including, but not limited to, any covenant, term, provision or restriction that is or may be considered a use restriction, reversion or right of reverter, in effect throughout the applicable periods specified in this Declaration, then:

- (1) any or all of the Owners of the Lots, acting jointly or severally, shall file all verified claims necessary to keep all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration;
- (2) a verified claim filed by Owner of a Lot in Ashworth Acres shall be valid and binding upon all the then Owners of Lots in Ashworth Acres, and their successors and assigns, with the same effect as if executed by all such persons, and in order to facilitate filing of any verified claim required to so continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration in full force and effect, each Owner of a Lot is hereby irrevocably appointed the attorney-in-fact for all of the other Interested Parties for the purpose of filing any such verified claim.

E. Duration.

Any easements granted in or pursuant to this Declaration, and any other provisions of this Declaration to the extent applicable to such easements, and any other covenants, indentures, restrictions and reservations of this Declaration that are reasonably or necessarily incidental to the benefit or burden of such easement rights, including any rights of assessment or for liens for the payment of costs associated therewith, shall continue in perpetuity, unless sooner modified or terminated as provided in this Declaration.

Except as provided in the preceding paragraphs of this Article, the covenants, conditions, restrictions and easements in this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for an initial period of twenty-one years after the date they are recorded in the Dallas County Recorder's Office, unless sooner modified or terminated as provided in paragraph D of this Article.

F. Amendment of This Declaration.

This Declaration may be amended in writing by an instrument signed and filed of record in the Office of the Dallas County, Iowa Recorder, by at least fifty-one percent (51%) of the Lot owners, if the Declarant does not own a Lot. Notwithstanding the foregoing, the Declarant retains the sole right to amend this Declaration for any reason so long as Declarant has an ownership interest in any Lot.

G. Severability.

In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

H. Captions.

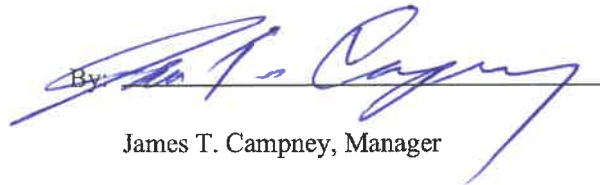
The captions of the articles, sections and any paragraphs, of this Declaration, or the lack thereof, are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

I. Membership in Association

Every Owner of a Lot shall be a Member of Ashworth Acres Owners Association, Inc. (the "Association") and shall be subject to assessments made by the Association pursuant to the Declaration of Owners Association for Ashworth Acres filed of record in Dallas County.

Dated this 30 day of October, 2020.

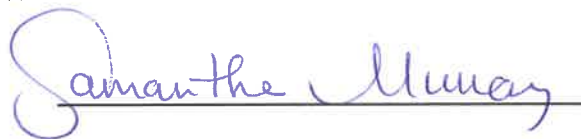
ASHWORTH LAND, L.L.C., DECLARANT

By: 
James T. Campney, Manager

STATE OF IOWA, COUNTY OF Dallas :

This record was acknowledged before me on October 30, 2020, by James T. Campney, Manager of Ashworth Land, L.L.C.




Signature of Notary Public

**AMENDED AND RESTATED DECLARATION OF OWNERS
ASSOCIATION FOR ASHWORTH ACRES**

Preparer Information:

Lisa R. Wilson
475 Alice's Road, Suite A
Waukee, Iowa 50263
(515) 369-2502

Taxpayer Information:

N/A

Return Document To:

Wilson & Egge, P.C.
475 Alice's Road, Suite A
Waukee, Iowa 50263

Grantor:

Ashworth Land, L.L.C.

Grantee:

N/A

Legal Description:

Lots 1 through 45, and Outlot Y, in Ashworth Acres Plat 1 AND Lots 1 through 42 in Ashworth Acres
Pla 2, Official Plats, now included in and forming a part of the City of Waukee, Dallas County, Iowa.

Document or instrument number of previously recorded documents:

Book 2020, Page 2805

AMENDED AND RESTATED DECLARATION OF OWNERS ASSOCIATION
FOR ASHWORTH ACRES

THIS AMENDED AND RESTATED DECLARATION, made on the date hereinafter set forth by Ashworth Land, L.L.C., an Iowa limited liability company (“Declarant”) as developer of Ashworth Acres (“Ashworth Acres”) and, in support of this Declaration, states and provides as follows:

RECITALS

WHEREAS, Declarant is the owner of certain property in the City of Waukee, Dallas County, Iowa, which is more particularly described as:

Lots 1 through 45, and Outlot Y, in Ashworth Acres Plat 1, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa,

AND

Lots 1 through 42 in Ashworth Acres Plat 2, an Official Plat, now included in and forming a part of the City of Waukee, Dallas County, Iowa,

(collectively the “Property” or “Properties”).

WHEREAS, Declarant desires that the Property be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability thereof.

NOW, THEREFORE, Declarant hereby declares that the Property be held, sold and conveyed subject to the following easements, covenants and conditions which shall run with the real property and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

1. DEFINITIONS.

- A. “Association” shall mean and refer to Ashworth Acres Owners Association, Inc., its successors and assigns, a non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa as amended.
- B. “Association Responsibility” shall mean the maintenance of Outlot Y.
- C. “Board of Directors” shall mean and refer to the Board of Directors of the Association.
- D. “City” shall mean the City of Waukee, Iowa.
- E. “Declarant” shall mean and refer to Ashworth Land, L.L.C., and its successors and assigns.
- F. “Declaration” shall mean and refer to this Declaration to which the Properties are subject, as the same may be amended from time to time.

- G. "Lot(s)" shall mean and refer to Lots 1 through 45, inclusive, in Ashworth Acres Plat 1; Lots 1 through 42, inclusive, in Ashworth Acres Plat 2; any additional lots within any replats of the Properties made and recorded in accordance with statutes of the State of Iowa which may later be brought within the jurisdiction of the Association and the Declaration.
- H. "Member" shall mean and refer to those persons entitled to membership as provided in this Declaration, the Articles of Incorporation of the Association and the Bylaws of the Association.
- I. "Outlot" shall mean and refer to Outlot Y as shown on the record plat for Ashworth Acres, and any additional outlots within any replats of the Properties made and recorded in accordance with statutes of the State of Iowa which may later be brought within the jurisdiction of the Association and the Declaration.
- J. "Owner" shall refer to the record owner, whether one or more persons and entities, including the Declarant, or a fee simple title to any part of the Properties, but excluding those having such interest merely as security for the performance of any obligation, and excluding those having a lien upon the property by provision of operation of law. A vendee in possession under a recorded contract of sale of any part of the Properties shall be deemed the owner thereof.
- K. "Plat" shall mean and refer to the final plat of Ashworth Acres Plat 1 and Ashworth Acres Plat 2, as applicable, filed of record in the Dallas County Recorder's Office.
- L. "Property" or "Properties" shall mean and refer to that certain real property described above, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, but shall exclude and not refer to any portion thereof conveyed, dedicated or granted to the City now or in the future.

2. EASEMENTS AND ENCROACHMENTS.

Section 1. Easement for Maintenance. Declarant reserves unto the Association a nonexclusive easement over the Lots for the sole benefit of the Association in performance of its maintenance obligation under this Declaration. This easement shall not be for the benefit of the members or the public at large.

Section 2. Additional Easement Rights of the Declarant. Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement and full right, title and authority to relocate, alter, or otherwise leave the location of any drainage, utility, and easement and to grant such further easements, licenses and rights of way, temporary or permanent, exclusive or nonexclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any portion of the Property. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and easement, or other easement, license or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Dallas County, Iowa and the Association and any Owner of any Lot shall be subject to the right and easements reserved herein; provided, however, the rights reserved in this Section 2 shall not be exercised in a manner which unreasonably and adversely affects the any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any common area. The rights and easements reserved by Declarant in this Section 2 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall no longer own an interest in the Property.

3. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.

Section 1. Membership. The owner or owners of the Properties or any subdivisions thereof shall be members of the Association. Membership shall be appurtenant to the ownership of the real property and shall be indivisible from such ownership.

Section 2. Voting. There shall be appurtenant to each Lot one vote in the Association. When more than one person holds an interest in any such Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall the vote be split with respect to any such Lot. In the event that the owners of a Lot fail to determine how to cast any vote, no vote shall be cast for said Lot.

NOTWITHSTANDING THE ABOVE, THE DECLARANT SHALL BE THE SOLE VOTING MEMBER OF THE ASSOCIATION UNTIL TWELVE (12) MONTHS AFTER THE DECLARANT CONVEYS THE LAST LOT/OUTLOT IN ASHWORTH ACRES OR UNTIL THE DECLARANT WAIVES THE RIGHT TO BE SOLE VOTING MEMBER, WHICHEVER FIRST OCCURS. SO LONG AS DECLARANT IS THE SOLE VOTING MEMBER OF THE ASSOCIATION, DECLARANT SHALL HAVE THE RIGHT TO ELECT ALL MEMBERS OF THE BOARD, ALL OFFICERS OF THE ASSOCIATION AND AMEND THIS DECLARATION FOR ANY REASON.

Section 3. Board of Directors. The Owners entitled to vote shall elect a Board of Directors of the Association as prescribed by the Association's Bylaws. The Board of Directors shall manage the affairs of the Association.

Section 4. Suspension of Voting Rights. The Association shall suspend the voting rights of a member for any period during which any assessments against his or her Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

4 COVENANT FOR ASSESSMENTS.

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements and operating deficits, and other special assessments as provided in this Declaration; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made senior to all liens except a first mortgage of record and any ad valorem taxes. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the costs associated with obligations imposed on the Association under the Agreement, and for other purposes specifically provided herein, including, but not limited to, payment of legal liabilities or obligations of the Association and all fees, costs, expenses, and attorney's fees in connection therewith.

Section 3. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of

performing any of its stated obligations and responsibilities under this Declaration, including, without limitation, the cost of any construction, reconstruction, repair or replacement of a capital improvement in any detention area or other common area, including fixtures and personal property related thereto, which the Association is required to maintain, or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Notice and Quorum for an Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized above shall be sent to all members not less than ten (10) days, no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of all the votes of membership subject to the assessment shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 6. Date of Commencement of Monthly Assessments. The annual assessments provided for herein shall be due as to each Lot on the first day January of each year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the effective date of such increase. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 7. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12% per annum or at the highest rate allowed by Iowa law, whichever is higher. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the cost of preparing and filing the petition in such action, including reasonable attorney's fees.

Section 8. Subordination of Assessments Liens. If any Lot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been

paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

5 GENERAL PROVISIONS.

Section 1. Enforcement of Declaration.

- A. Legal Action. This Declaration shall be deemed to run with and be a burden upon the land to which they apply and all improvements thereon. The owner of any lot or portion thereof to which this Declaration apply may bring an action in any Court of competent jurisdiction to enforce this Declaration and enjoin their violation, mandate their compliance or to recover damages for the breach thereof or for any other remedy or combination of remedies recognized at law or in equity.
- B. Delays in Enforcement. No delay or omission on the part of any owner of land to which this Declaration applies in exercising any rights, power or remedy herein allowed shall be construed as a waiver of acquiescence therein. No right, claim or action shall accrue to and no action or claim shall be brought or maintained by anyone against Declarant on account of any action or inaction under this Declaration.
- C. Conflict with Governmental Regulations. All property subject to this Declaration shall be also subject to any and all regulations of the City and any other governmental entities having jurisdiction, including, but not limited to, zoning ordinances, subdivision ordinances, building codes or other such regulations. Whenever there is a conflict between the provisions of this Declaration and the ordinances, statutes or regulations of the City, Dallas County, State of Iowa or the United States Government, the provision which is most restrictive shall be binding.

Section 2. Term of Declaration/Severability/Amendment.

- A. Duration. This Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Declarant, its successors and assigns, or the owners or owners from time to time of any lots subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of twenty-one (21) years after recordation hereof.
- B. Severability. In the event that one or more of the terms or conditions of this Declaration shall be declared for any reason, by the court of competent jurisdiction, to be null and void, such judgment or decree shall in no way affect, modify, change, abrogate or nullify any of the remaining covenants, conditions, restrictions or terms not so expressly held to be void and the remaining parts of this Declaration shall remain in full force and effect.
- C. Amendment. This Declaration may be amended in writing by an instrument signed and filed of record in the Office of the Dallas County, Iowa Recorder, by at least fifty-one percent (51%) of the Lot owners, if the Declarant does not own a Lot/Outlot. Notwithstanding the foregoing, the Declarant retains the sole right to amend this Declaration for any reason so long as Declarant has an ownership interest in any Lot or Outlot. Furthermore, none of the rights and duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval.

Section 3. Annexation and Removal of Land.

A. Additional Common Area.

Declarant shall have the sole right at any time to convey additional Common Area to the Association or to add additional association responsibility elements. Nothing in this Section, however, shall be deemed to be an obligation on the part of Declarant to convey additional common area to the Association in the future. The Association shall be obligated to accept any additional common area so conveyed by Declarant and to hold and maintain the additional common areas pursuant to the terms of this Declaration.

B. Additional Land.

Declarant shall have the irrevocable right to subject additional land to the terms of this at any time in the future without the consent of the Association. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration and Owners of Lots within the additional land shall automatically become members of the Association in the same manner as described in this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the Recorder of Dallas County, Iowa. No approval of the Association or any other person shall be necessary.

C. Removal of Land.

Declarant shall have the right now, and in the future, to remove any portion of the property from the operation of this Declaration. Declarant shall signify this removal by filing an amendment to this Declaration with the Recorder of Dallas County, Iowa. No approval of the Association or any other person shall be necessary.

Dated this 18th day of December, 2020.

-SIGNATURE PAGE TO FOLLOW-

-SIGNATURE PAGE-

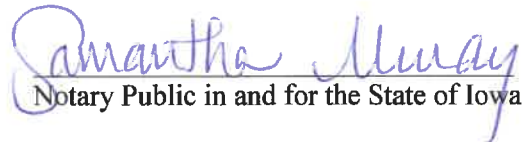
DECLARANT:

ASHWORTH LAND, L.L.C.

By: 
Dan Kruse, Manager

STATE OF IOWA, COUNTY OF Dallas, ss

This record was acknowledged before me on December 18, 2020, by Dan Kruse,
Manager of Ashworth Land, L.L.C.


Notary Public in and for the State of Iowa

