

DOCUMENT PREPARED BY: Paul D. Hietbrink, 616 Franklin Place, Pella, Iowa, 50219 (641)628-4513

DECLARATION OF RESTRICTIVE COVENANTS

WHEREAS, the undersigned, Ewing Land Development & Services, L.L.C., (aka Ewing Land Development Services, LLC) Legacy Construction, Inc., and Legacy Nursery Investors LLC are the owners of the following described real estate situated in Dallas County, Iowa, to wit:

The, West 1/2 of the Northeast 1/4 of Section 35 in Township 79 North, Range 26 West of the 5th P. M., City of Waukee, Dallas County, Iowa, Except Commencing at the Northwest corner of the Northeast 1/4 of Section 35, Township 79 North, Range 26 West of the 5th P. M., Dallas County, Iowa, thence East along the North line of the NE 1/4 of said Section 35, 724.25 feet, thence South, parallel to and 600.0 feet West of the East line of the W 1/2 NE 1/4 of said Section 35, 33.0 feet, to a point on the South right-of-way line of U.S. Highway No 6, as it is presently established, and to the point of beginning, thence South, parallel to and 600.0 feet West of the East line of the W 1/2 NE 1/4 of said Section 35, 372.0 feet, thence East, parallel to and 405.0 feet South of the North line of the NE 1/4 of said Section 35, 600.0 feet, thence North, along the East line of the W 1/2 NE 1/4 of said Sec. 35, 355.0 feet, to a point on the South right-of-way line of said U.S. Highway No.6, thence West, parallel to and 50.0 feet South of the North line of the NE 1/4 of said Section 35, and along the South right-of-way line of U.S. Highway No. 6, 320.0 feet, thence North, parallel to and 320.0 feet West of the East line of the W 1/4 NE 1/4 of said Section 35, 17.0 feet, thence West, parallel to and 33.0 feet South of the North line of the NE 1/4 of said Section 35, and along the South right-of-way line of said U.S. Highway No. 6, 280.0 feet, to the point of beginning and Except land deeded to the State of Iowa and recorded in Book 844, Page 601.

That property can also be described as follows:

A part of the West One-Half of the Northeast Quarter of Section 35 - Township 79 North, Range 26 West of the 5th P.M., City of Waukee, Dallas County, Iowa more particularly described as follows: Commencing at the NW corner of said West 1/2 - NE 1/4; thence S 0° 03' 55" W 60.00 feet along the West line thereof to the South Right-of-Way line of U.S. Highway 6 (Hickman Road) and the Point of Beginning; thence S 89° 45' 40" E 724.51 feet along said South R.O.W. line to the West line of a certain tract of land described in Deed Book 633 at page 618, Dallas County Records; thence S 0° 06' 45" W 345.00 feet to the SW corner thereof; thence S 89° 45' 40" E 600.00 feet to the SE corner thereof and the East line of said West 1/2 - NE 1/4; thence S 0°06' 45" W 2,232.00 feet to the SE corner of said West 1/2 - NE 1/4; thence N 89° 52' 42" W 1,322.38 feet to the SW corner thereof; thence N 0° 03' 55" E 2,579.73 feet to the Point of Beginning containing 73.58 acres. The West line of said West 1/2 - NE 1/4 if assumed to bear N 0° 03' 55" E for purposes of this description.

BILL TO: EWING LAND DEVELOPMENT
2421 WASHINGTON
PELLA, IOWA 50219

RETURN TO: CITY OF WAUKEE
230 HIGHWAY 6
WAUKEE, IOWA 50263

Book 8004 Page 1291

WHEREAS, Ewing Land Development & Services, L.L.C., (aka Ewing Land Development Services, LLC) Legacy Construction, Inc., and Legacy Nursery Investors LLC have had said premises surveyed and divided into lots and platted as **Legacy Pointe at Waukee - Plat 1**;

WHEREAS, Ewing Land Development & Services, L.L.C., (aka Ewing Land Development Services, LLC) Legacy Construction, Inc., and Legacy Nursery Investors LLC desire to impose certain restrictive covenants upon said property;

NOW THEREFORE, Ewing Land Development & Services, L.L.C., Legacy Construction, Inc., and Legacy Nursery Investors LLC do hereby impose upon said property the following restrictive covenants, all of which shall be covenants running with the land and which shall bind and benefit the parties hereto and their respective heirs, successors, and assigns:

I. THE COMMON DRIVEWAY

Lots 9, 10, 11, 12, 13, and 14 are served by a common private roadway, shown on the plat as "30' Wide Access and Utility Easement" (hereinafter "The Common Driveway"). The owners of said Lots and their guests and invitees, and providers of either essential or emergency services (e.g. police, fire, ambulance, sanitation, etc.) shall be entitled to use The Common Driveway for purposes of ingress and egress to their Lots. The owners of said Lots shall, by majority vote of the owners of said Lots in the weighted percentages hereinafter specified, determine the nature, extent, and cost of all repairs, maintenance, improvements and services required or advisable with respect to The Common Driveway, and shall also have the authority to landscape, install ornamental gates or gateposts, street signs and signposts, and streetlights and lightposts, and to plant trees, shrubs, or other plantings along The Common Driveway, and to install and pay for any utilities required to operate any such gates, signs, or lamps. All costs and expenses incurred in improving, maintaining, repairing and servicing The Common Driveway (including snow removal) and in landscaping, installing ornamental gates or gateposts, street signs and signposts, streetlights and lightposts, any utilities required to operate said gates, signs, or lights, and planting trees, shrubs, or other plantings along the Common Driveway, shall be assessed to the owners of Lots 9, 10, 11, 12, 13, and 14 in equal percentages.

The owners of each of said 6 Lots shall have equal voice and vote in determining the nature, extent, and cost of all repairs, maintenance, improvements and services required or advisable with respect to The Common Driveway. The owners of each of said lots, for themselves, their heirs, successors, and assigns covenants and agrees to pay promptly when due all amounts so assessed against them or their Lot. In the event of a lot owner's failure to pay any assessment promptly when due, the amount of the assessment shall be a lien against the lot owner's property to which the assessment applies. The assessment lien may be enforced in equity as in the case of any lien foreclosure. The assessment shall accrue to the benefit of and may be enforced by the then current owners of each of the other Lots.

II. HOMEOWNER'S ASSOCIATION

A. Each and every owner of Lots 5 through 22, in accepting a deed or contract for any of said lots agrees to and shall be a member of and be subject to the obligations and duly enacted Bylaws and rules of a homeowners association to be formed as a non-profit corporation and which shall be called the Legacy Pointe at Waukee – Plat 1 Homeowners Association or a similar name to be selected by Ewing Land Development & Services, L.L.C., (aka Ewing Land Development Services, LLC) and Legacy Construction, Inc.

B. Said homeowners association shall have the responsibility to maintain all landscaped areas lying within the median of Legacy Pointe Boulevard and shall also maintain all other common elements and amenities eventually developed to serve said Lots.

C. All costs and expenses incurred by the homeowners association in improving, maintaining, repairing and servicing said landscaped areas and common elements and amenities shall be assessed to the owners of Lots 5 through 22 in such proportions as may be specified in subsequent amendments to these covenants.

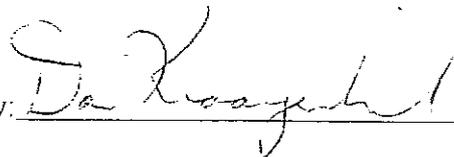
D. Until such time as Ewing Land Development & Services, L.L.C., (aka Ewing Land Development Services, LLC) and Legacy Construction, Inc., the developers, or their successors in interest as developer, shall have sold one (1) of said eighteen (18) lots, the said developers or their successors in interest as developer, shall (1) have the sole responsibility to maintain under subparagraph B above, and (2) shall also have the exclusive right and authority to enforce these covenants, to amend these covenants, and to exercise all rights and powers reserved or granted herein to itself or to the homeowners association, including the right to establish the amount of any assessment under subparagraph C above. Upon transfer of title to the first (1st) of said eighteen (18) lots, the developers or their successors in interest as developer shall grant and convey all their rights to enforce these covenants to said homeowners association, and the homeowners association shall thereupon become entitled to exercise the powers reserved or granted to it pursuant to the terms hereof and pursuant to its Articles of Incorporation and Bylaws, provided that the developers shall always have and maintain the right to vote as a member of said homeowners association with respect to each of said eighteen (18) lots then owned by the developers.

Dated at Pella, Iowa, this 17 day of January, 2004.

Ewing Land Development & Services, L.L.C.

Legacy Construction, Inc.

By: 

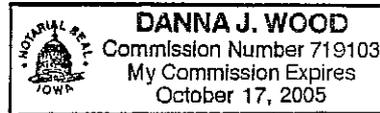
By: 

Jeffrey Ewing, President

Dan Kraayenbrink, President

Legacy Nursery Investors LLC

Jeffrey Ewing, President

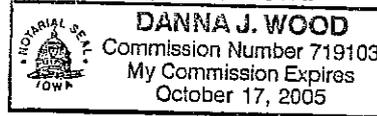


STATE OF IOWA, MARION COUNTY, ss:

On this 19 day of January, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey Ewing, to me personally known, who, being by me duly sworn, did say that he is the President of said limited liability company; that no seal has been procured by said limited liability company; that said instrument was signed on behalf of said limited liability company by authority of its members; and that the said Jeffrey Ewing, as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of the limited liability company, by it and by him voluntarily executed.

Notary Public

in and for the State of Iowa

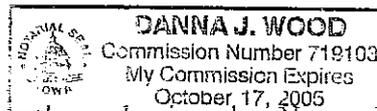


STATE OF IOWA, MARION COUNTY, ss:

On this 19 day of January, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Dan Kraayenbrink, to me personally known, who, being by me duly sworn, did say that he is the President of said corporation; that no seal has been procured by said corporation; that said instrument was signed on behalf of said corporation by authority of its members; and that the said Dan Kraayenbrink, as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.

Notary Public

in and for the State of Iowa



STATE OF IOWA, MARION COUNTY, ss:

On this 19 day of January, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey Ewing, to me personally known, who, being by me duly sworn, did say that he is the President of said limited liability company; that no seal has been

procured by said limited liability company; that said instrument was signed on behalf of said limited liability company by authority of its members; and that the said Jeffrey Ewing, as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of the limited liability company, by it and by him voluntarily executed.

Anna J. Wood

Notary Public
in and for the State of Iowa