

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WEST F AVE INDUSTRIAL PARK ADDITION**

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**Grantors/Grantees:** On Track Holdings, LLC

**Legal Description:** Legal description referenced by Declaration on page 2

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WEST F AVE INDUSTRIAL PARK ADDITION**

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WEST F AVE INDUSTRIAL PARK ADDITION** (this “**Declaration**”) is made this 24<sup>th</sup> day of February 2023, by On Track Holdings, LLC an Iowa limited liability company, (the “**Declarant**”).

**RECITALS**

A. Declarant is the owner of the following described real estate located in Story County, Iowa: *Lots 1 through 5, inclusive, and Outlot A, West F Ave Industrial Park Addition, Nevada, Story County, Iowa* (the “**Property**”).

B. The Declarant is desirous of subjecting the Property to protective conditions, covenants, restrictions, reservations, and easements hereinafter set forth, each and all of which is and are for the benefit of the Property and for each owner thereof and the Declarant hereunder, and shall inure to the benefit of and pass with the Property and each and every parcel thereof and shall apply to and bind the successors in interest and any owner thereof.

NOW, THEREFORE, Declarant hereby publishes and declares that the Property 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 desirability of the Property, 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 nay right, title or interest in any part of the Property, and their heirs, successors, assigns, grantees, executors, administrators and devisees.

**ARTICLE I. DEFINITIONS**

**Section 1.01.** “**Improvements**” shall mean and include a building or buildings, outbuildings, parking areas, and any structures of any type or kind, together with associated loading areas, fences, walls, hedges, signs, lawns, landscaping, and poles, and all additions to any of the foregoing.

**Section 1.02.** “**Industrial Park**” shall mean all property which makes up West F Ave Industrial Park Addition as shown on the Final Plat thereof.

**Section 1.03.** “**Design Criteria**” shall mean and refer to the development criteria and design standards prescribing the quality and character specifications as may be prepared by the Declarant from time to time. Such Design Criteria may be modified or amended from time to time in the future by the Declarant in its sole discretion subject to any necessary approval and/or changes by any regulatory authorities of the City of Nevada, County of Story or other governing body and shall be binding upon all of the Property.

**Section 1.04.** “**Property**” shall mean and refer to the real property described in the Recitals, above.

**Section 1.05.** “**Lot**” shall mean all numbered lots and Outlot A, as shown upon the Final Plat of West F Ave Industrial Park Addition.

**Section 1.06.** Words and phrases in this Declaration shall be construed as in the singular or plural number, unless the context permits only one such manner.

## ARTICLE II. PURPOSE OF DECLARATION

**Section 2.01. Purpose.** The Property is subjected to this Declaration to ensure the proper use and most appropriate development of and improvements on each building site thereof. It is the intent of this Declaration to provide conditions, covenants, restrictions, reservations, standards, and easements to insure that the Property will always be maintained as an attractive setting for business and industry with ample, landscaped, open areas; attractive, high quality structures; proper and desirable use and appropriate development and improvement of all property; to protect the owners, lessees and sublessees of property against improper and undesirable use of surrounding property; to guard against depreciation in value of property, to guard against erection of structures constructed improperly or of unsuitable materials or design; to encourage the erection of attractive improvements at appropriate locations; to prevent haphazard and inharmonious improvement of property; to insure the proper maintenance of the Industrial Park signage, common ground, storm water detention systems; and in general to provide adequately for a high type and quality of improvement and development in the Industrial Park.

## ARTICLE III. ARCHITECTURAL REVIEW

### **Section 3.01. Procedure.**

- a. No Improvement shall be erected, placed, altered, maintained, or permitted to remain on any Lot until plans and specifications showing plot layout and all exterior elevations, with materials and colors therefor and structural design, signs and landscaping, shall be prepared and submitted to the Declarant, and approved in writing by the Declarant. Such plans and specifications shall be submitted in writing over the signature of the owner or lessee of the Lot or the owner's or lessee's authorized agent. The Declarant may also require submission of samples of building materials and colors proposed for use on any Lot or the Property and may require such additional information as reasonably may be necessary for the Declarant to evaluate completely the proposed improvement in accordance with this Declaration. Reviews shall be coordinated with any required City and County approvals or approvals of other governing bodies.
- b. Declarant's approval or disapproval shall be predicated upon the Declarant's sole opinion as to whether said building, structures, or improvements conform to the general character of the Industrial Park in accordance with the general guidelines and intent of Article II above. Approval shall be based, among other things, upon adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring structures, effect of location and use of improvements on neighboring sites, relation of topography, grade, and finished ground elevation of the site being improved to that of neighboring sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration.
- c. The Declarant may adopt, from time to time, design criteria for use in making determinations under this Article; provided, however, compliance with any then-existing design criteria shall not divest Declarant of its right to approve or disapprove plans submitted to Declarant for review. No application for a building permit shall be made or issued without receiving such approval, as hereinabove provided.
- d. If the Declarant fails either to approve or disapprove such plans and specifications within thirty (30) days after the same had been submitted Declarant, it shall be conclusively presumed that the Declarant has approved said plans and specifications.

- e. If any Improvement is changed, modified or altered without prior approval of the Declarant, then the owner of such Lot shall upon demand cause the Improvements to be restored to comply with the plans and specifications originally approved by the Declarant and shall bear all costs and expenses of such restoration, including the costs and reasonable attorney's fees of the Declarant.

**Section 3.02. Covenant to Commence Construction.** The owner of each Lot, other than Declarant, shall commence construction of primary building structures within thirty-six (36) months of the date on the deed from the Declarant. All excess dirt from the excavation shall be hauled from the Lot or used as a part of the final landscape plan. Any excess dirt, concrete, or other debris may not be placed on other land within the Industrial Park. **IF CONSTRUCTION HAS NOT BEGUN ON A LOT WITHIN THIRTY-SIX (36) MONTHS OF THE DATE ON THE DEED FROM THE DECLARANT, THEN THE OWNER OF RECORD, AT THE DECLARANT'S REQUEST, AGREES TO DEED THE PROPERTY BACK TO THE DECLARANT FOR THE ORIGINAL PURCHASE PRICE WITH NO ADJUSTMENT FOR TAXES, CLOSING COSTS OR INTEREST AT THE TIME THE DEED IS CONVEYED TO THE DECLARANT. THE DECLARANT WILL PAY ONLY FOR DEED PREPARATION, RECORDING FEES, AND TRANSFER TAXES. ON ISSUANCE OF AN OCCUPANCY PERMIT, THIS RIGHT TO REPURCHASE SHALL TERMINATE AS TO THAT LOT.**

**Section 3.03. Limitation of Liability.** The Declarant shall not be liable in damages to anyone so submitting plans for approval or making any other request of the Declarant, or to any owner, lessee, or sublessee of property in the Industrial Park by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval, or failure to approve any plans or other request. Likewise, anyone so submitting plans or a request for approval, agrees, by submission of such plans, and every owner or lessee of any of said property agrees, by acquiring title thereto or interest herein, that such person will not bring any action or suit against the Declarant to recover any such damages.

**Section 3.04. Limitation of Action.** Notwithstanding anything to the contrary herein contained, after the expiration of three (3) year from the date of issuance of a building permit by the appropriate governmental authority for any Improvement or six (6) months after the completion of any Improvement, whichever shall last occur, said Improvement shall, in favor of purchasers and encumbrancers, in good faith and for value, be deemed to be in compliance with all provisions of this Article, unless actual notice of such noncompliance or noncompletion, executed by the Declarant, shall appear of record in the Public Records of Story County, Iowa, or unless legal proceedings shall have been instituted to enforce compliance of completion.

**Section 3.05. Violation.** Any person, firm, or corporation violating this Article shall be liable for all costs incurred in remedying such violation, including, but not limited to, removal of any construction commenced without such approval and attorneys' fees and court costs.

#### **ARTICLE IV. GENERAL COVENANTS**

**Section 4.01. Permitted Operations and Uses.** All Lots are intended to be used for industrial uses and business of a kindred nature, including accessory or directly related services in compliance with all ordinances of the City of Nevada, Iowa and/or Story County, Iowa. No portion of the Property shall be rezoned without the prior written consent of Declarant. Unless otherwise specifically prohibited by the ordinances of the City of Nevada, Iowa or Story County, Iowa, any operation and use will be permitted if it is performed or carried out entirely within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to adjacent sites, such as, but not limited to, vibration, sound, electro-mechanical disturbance and radiation, electro-magnetic disturbance, radiation, air

or water pollution, dust, emission of odorous, toxic or non-toxic matter and all lighting is to be shielded and confined within property lines.

**Section 4.02. Prohibited Operations and Uses.**

- a. The operation and use of drilling for and/or removal of oil, gas, or other hydrocarbon substances on any property subject to this Declaration shall not be permitted without the prior written consent of the Declarant.
- b. The following operations and uses shall not be permitted on any property subject to this Declaration: (1) Trailer or mobile home courts; (2) Labor camps; (3) Junkyards; (4) Commercial excavation of building or construction materials; (4) Distillation of bones; (5) Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals or refuse; (6) Fat rendering; (7) Stockyard or slaughter of animals; (8) Refining of petroleum or its products; (9) Smelting of iron, tin, zinc, or other ores; (10) The raising of animals of any kind or nature.
- c. No residential use of any type shall be permitted on any Lot unless a prior written approval of the Declarant has been given.

**Section 4.03. Other Operations and Uses.** Operations and uses which are neither specifically prohibited nor specifically authorized by this Declaration may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by the Declarant and the use is authorized by the zoning ordinance of the City Nevada, Iowa and Story County, Iowa. Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses on other property subject to this Declaration or upon the occupants thereof. The Declarant's failure either to approve or to disapprove such operational plans and specifications within thirty (30) days after the same have been submitted to it, absent a written extension granted by the Declarant, shall be deemed the Declarant's approval of said plans and specifications.

**Section 4.04. Waste and Refuse.** No waste material or refuse shall be dumped upon or permitted to remain on any part of the property outside the buildings constructed thereon.

**Section 4.05. No Right to Resubdivide.** Once a Lot has been purchased from the Declarant, its successors or assigns, such Lot shall be considered as a single unit, and it shall not be subdivided, or a portion of the Lot sold, leased, or rented, unless written approval is given by the Declarant.

**Section 4.06. Weed Removal.** It shall be the duty of the owners of each and every parcel of land subject to this Declaration to keep their respective parcels of land totally free from weeds; and in the event any such owner does not comply with this provision within ten (10) days after the Declarant gives any such owner written notice to comply, the Declarant shall have the right to enter on such owner's Lot and cut any weeds thereon and charge the cost of such work to the owner. If such charge is not paid within ten (10) days after such owner is notified of the cost thereof, it shall become a lien on the land in question, enduring and collectible the same as a mechanic's lien pursuant to Iowa Code Chapter 572.

**Section 4.07. Condition of Premises.** All owners, lessees, or sublessees in the Industrial Park shall carefully maintain and repair their property and all structures, buildings, and improvements of whatever nature thereon in a safe, clean, and tasteful manner and in first-class condition and repair at all times. In the event any such owner does not comply with this provision within thirty (30) days after the Declarant gives any such owner written notice to comply, the Declarant shall have the right to enter on such owner's parcel in question and perform any necessary maintenance and repair and charge the costs of such work to the owner as a lien and enforce the collection of such lien the same as provided in Section 4.06, above.

**Section 4.08. Governmental and Agency Regulations.** Each and every parcel of land in the Industrial Park shall be subject to all present and future applicable laws, ordinances, rules and regulations and orders of the United States Government, the State of Iowa, or any political subdivision of either of the foregoing.

**Section 4.09. Easements Upon a Lot.** There are easements affecting the Lots appearing on the Final Plat for West F Ave Industrial Park Addition. The owner or occupant of any Lot shall, at such owner's or occupant's expense, keep and preserve that portion of such easement within such owner's or occupant's Lot, at all times, in good condition, and shall neither erect nor permit erection of any Improvement or structure of any kind nor permit any growth of any kind within such easement area nor change the grade of any such easement area in any manner that might interfere in any way with the use, maintenance, repair, restoration or replacement of any of the utility services, drainage, or easement improvements or appurtenances thereto, located in said easement area, without the prior written consent of the Declarant or the applicable governmental body or utility company or companies for whose benefit such easement runs. Any such Improvement or structure erected, growth permitted, or change in grade made within an easement area without such written consent may be removed or regraded by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Lot owner or occupant to restore, repair or replace such Improvement, structure, growth or change in grade.

**Section 4.10. Tax Matters.** The Property is subject to that certain Development Agreement between the City of Nevada and On Track Construction, LLC, dated October 26, 2020 and which provides for a term expiring not later than June 1, 2034 (the "Term"). During the Term, no owner of any Lot shall be permitted to apply for any real estate tax abatement or real estate tax exemption without Declarant's prior written consent.

#### ARTICLE V. MISCELLANEOUS PROVISIONS

**Section 5.01. Duration.** All of the terms, conditions, and restrictions herein shall be deemed to be covenants running with the land and shall endure and be binding upon all parties hereto, their successors and assigns, for a period of twenty-one (21) years from the date of the recording of these covenants, unless claims to continue any interest in the covenants are filed as provided by law.

**Section 5.02. Amendment.** This Declaration may not be altered, amended, modified, supplemented or terminated, in whole or in part, except in writing and as provided in this Section or to the extent expressly provided in another Section of this Declaration. Declarant, for so long as Declarant retains ownership of any Lot within the Industrial Park, and after Declarant has no interest in the Industrial Park, the owners who own sixty percent (60%) or more of the then existing Lots in the Industrial Park may, by written declaration signed and acknowledged by them and recorded in the Office of the Recorder for Story County, Iowa, alter, amend, supplement, add to, or terminate such conditions, covenants, indentures, provisions, restrictions, reservations or terms of this Declaration.

**Section 5.03. Assignment.** Declarant may assign its rights herein to any third-party, and such assignee shall have all the same rights as provided for Declarant by this Declaration.

**Section 5.04. Enforcement.** This Declaration shall operate as covenants running with the land into whosoever hands the above-described property, or any part thereof, shall come, and shall be enforceable at the suit of any and every owner thereof or by the Declarant by a proper proceeding, either in equity or at law, and by an injunction, prohibitive or mandatory, to prevent the breach of or the enforcement or observance of the restrictions and conditions herein set forth. The failure of Declarant to enforce any of the restrictions herein set forth, at the time of violation, shall in no event be deemed to be a waiver of the right of the Declarant to do so as to any subsequent violation.

**Section 5.05. Invalidation of Part.** Invalidation of any provision of this Declaration or any part thereof by judgments or Court order shall in no way affect any of the other provisions which shall remain in full force and effect.

**Section 5.06. Captions.** The captions, section numbers and article numbers appearing in this Declaration are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Declaration nor in any way modify or affect this Declaration.

[SIGNATURES ON FOLLOWING PAGES]

**ON TRACK HOLDINGS, LLC,**  
an Iowa limited liability company,

By: \_\_\_\_\_

  
Matthew Runge, Manager

STATE OF IOWA, COUNTY OF STORY ) ss:

This instrument was acknowledged before me on February 24, 2023 by Matthew Runge, as  
Manager of On Track Holdings, LLC, an Iowa limited liability company.

  
Notary Public in and for said State





