

DECLARATION OF RESTRICTIONS FOR ARBOR WOODS SUBDIVISION PHASE II

This Declaration is made this _____ day of _____, 1996, by Tricor, Inc., an Iowa corporation, by and through its undersigned officers, hereinafter called "Developer".

ARTICLE I

STATEMENT OF INTENT

Developer owns the real estate commonly known as Arbor Woods Subdivision Phase II in Pottawattamie County, Iowa, as more specifically identified in the Addendum to this Declaration. Developer desires to provide for the preservation of values in the development of said facilities, and, therefore, desires to subject said real estate to covenants, restrictions, easements, charges, and liens hereinafter set forth which are for the benefit of said property.

THEREFORE, the Developer hereby declares that the subject real estate known as Arbor Woods Subdivision, Phase II shall be held, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth, which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof.

Developer further declares that this declaration of restrictions for Arbor Woods Subdivision, Phase II shall apply to the subject real estate only and shall not extend to other additional real estate.

ARTICLE II

DEFINITIONS

For the purpose of these Restrictions, the following words shall be defined as follows:

(1) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration, and all Common Areas, in the residential community known as Arbor Woods Subdivision Phase II.

(2) "Lot" shall mean and refer to any separately-owned parcel as may be shown by any recorded subdivision plat of the Properties. Where the context indicates or requires, the term "Lot" includes any structure on the Lot.

(3) "Residence" shall mean and refer to any portion of a building situated upon the properties designed and intended for use and occupancy as a residence by a single family.

(4) "Lotowner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot situated upon the Properties. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, unless such person or entity has acquired title pursuant to foreclosure or upon proceeding instead of foreclosure. Lotowner shall include Developer.

(5) "Developer" shall mean and refer to Tricor, Inc., an Iowa corporation, its successors and assigns.

(6) "Front Property Line" shall mean the property line of any lot abutting the right-of-way of any street.

(7) "Outbuilding" shall mean an enclosed, covered structure not directly attached to the residence to which it is appurtenant.

(8) "Exterior Structure" means any structure erected or maintained on a Lot other than the main residential structure or any structural component thereof, including but not limited to any deck, gazebo, greenhouse, doghouse or other animal shelter or run, outbuilding, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, basketball goal, swingset, trampoline, sand box, playhouse, treehouse, or other recreational or play structure.

ARTICLE III

Section 1.

Use of Land. None of the Lots may be improved, used or occupied for other than single family private residential purposes, and no duplex, flat or apartment house, although intended for residential purposes, may be erected thereon. No residential building which has previously been at another location shall be moved onto the Lot. No trailer, outbuilding or exterior structure erected on any Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any residence of temporary character be erected on any of such Lots or used for human habitation; provided, however, that nothing herein shall prevent the Developer from erecting temporary buildings and using such temporary buildings or any residence for model, office, sales or storage purposes during the development of the Properties.

Section 2.

Setback Lines. No part of any residence, except as hereinafter provided, may be erected or maintained on any of the lots nearer to the front street than twenty-five (25) feet. Provided, however, that Developer shall have and does hereby reserve the right with the consent in writing of the record owner of the fee simple title to any such Lot, to

change any building line on any such Lot or Lots, without the necessity of obtaining consent from the record owner or owners of other Lots in the Subdivision that are not affected by the change, so long as the change conforms to such front, rear and side setback lines as are contained in the Pottawattamie County, Iowa Zoning Ordinance for the City of Council Bluffs, Iowa as the same is now enforced or may hereafter be amended.

Section 3.

Dwelling Size. Any residence one story in height erected on any of said Lots shall contain a minimum of one thousand (1,000) square feet of enclosed floor area. The words "enclosed floor area" as used in this Section 3 shall include in all cases areas on the first and second floor of the residence enclosed and finished for all-year occupancy computed on outside measurement of the residence, and shall not include any area in any basement, garage, porch or attic finished for all-year occupancy and further shall not include any area in any basement, garage, porch or attic finished or unfinished. No residence erected on any of said lots shall be more than two stories in height, unless consented to in writing by Developer. Developer shall have and hereby reserves the right to reduce the floor area requirement set forth above, provided the total reduction for any one residence may not exceed twenty (20) percent of such minimum floor area requirements for such residence.

Section 4.

Approval of Plans and Post-Construction Changes.

a. No Residence or Exterior Structure may be erected upon or moved onto any Lot unless and until the building plans, specifications, exterior color scheme, materials, location, elevation, grade and landscaping thereof have been submitted to and approved in writing by the Developer or, in the case of delegation of such approval power by Developer as provided herein. Nor shall any change or alteration in such building plans, specifications, exterior color scheme, materials, location, elevation, grade and landscaping thereof be made until such change or alterations has been submitted to and approved in writing by the Developer.

b. Following the completion of construction of any Residence or Exterior Structure, no exterior colors or landscaping thereof or with respect thereto shall be changed and no exterior additions or alterations to any structure shall be made unless and until the changes have been submitted to and approved in writing by the Developer or in the case of delegation of such approval power by Developer as provided herein. All replacement of all or any portion of a structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same material as the original structure unless the changes have been submitted to and approved in writing

by the Developer or, in the case of delegation of such approval power by Developer as provided herein.

c. Architectural Control in the properties, including the power of approval as set forth in subsections (a) and (b) of this Section 4, shall be solely the function of Developer. Developer may, at its option delegate all or any part of the function of architectural control to its designee. If such delegation is made, architectural control shall be the function and obligation of the Developer's designee, and it may not be delegated to a separate architectural control committee or other similar group. Any such delegation by Developer of all or part of its architectural control function shall not be effective unless done in writing and signed by a person authorized to act on behalf of Developer.

Section 5.

Building Material Requirements. Exterior walls of all buildings, structures and appurtenances thereto shall be made of steel, vinyl, brick, stone, stucco, wood shingles, wood siding, wood paneling, glass blocks, vinyl siding, steel siding, or any combination thereof. Windows, doors and louvers shall be of wood, fiberglass or metal and glass. Roofs shall be covered with wood shingles, wood shakes, composition shingles, asphalt shingles, slate or tile. Exteriors, except roofs and shake sidewalls, shall be covered with no less than two coats of good paint or stain. No building shall be permitted to stand with its exterior in an unfinished condition for longer than five months after commencement of construction. In the event of fire, windstorm, or other damages, no building shall be permitted to remain in damaged condition longer than three (3) months.

Section 6.

Building or Uses Other Than For Residential Purposes; Noxious Activities; Miscellaneous

a. Except as otherwise provided in Article III, Section 1 above, a Residence or Exterior Structure shall not be placed, erected or used for business, professional, trade or commercial purposes on any Lot, provided, however that this restriction shall not prevent a Lotowner from maintaining an office area in their residence which is not their principal place of business.

b. No noxious or offensive activity shall be carried on with respect to any Lot, nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot or Common Area, or be permitted to accumulate or remain on any Lot except such compost facilities as may be approved by Developer in writing, nor shall anything be done which may be or become an annoyance or a nuisance to the neighborhood, including but not limited to mechanical work on automotive or other equipment of any kind. Each Lotowner shall properly maintain their Lot in a neat, clean and orderly fashion. All Residences and Exterior Structures shall be kept and maintained in good condition and repair at all times.

Developer retains the right to keep and maintain such materials and equipment as it deems reasonably necessary to further development of this and any adjacent property owned by Developer.

c. No vehicles including but not limited to trailers, buses, campers, motor homes, recreational vehicles, boats, trucks, or commercial vehicles or any similar apparatus shall be parked, maintained or stored on any Lot or in any Common Area for more than a 24 hour period. All said vehicles shall not be parked on the street or any other Common Area, other than in the street or in the area two hundred (200) feet beyond the back building line of a residence.

d. No television, radio, citizens' band, satellite dish, short wave or other antenna, solar panel, windmill, wind-driven electrical generating system, sun energy system, or other unsightly projection shall be attached to the exterior of any residence or erected in any yard. Should any part or all of the restriction set forth in the preceding sentence be held by a court of competent jurisdiction to be unenforceable because it violates the First Amendment or any other provision of the United States Constitution, or for any other reason, the Developer or its designee shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the neighborhood and any such rules and regulations shall be binding upon all of the Lots. No lights or other illumination shall be higher than the residence.

e. No speaker, horn, whistle, siren, bell or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any residence or in any yard.

f. All public utilities shall be underground.

g. In the event of vandalism, fire, windstorm or other damage, no residence or exterior structure shall be permitted to remain in damaged condition for longer than three months.

h. No exterior Christmas lights and/or decorations may be erected or maintained on any of the lots hereby restricted, except during a sixty (60) day period beginning November 15th of each calendar year.

i. Dogs shall be confined to their owner's lot. No dogs shall be allowed to run at large in the Common Areas hereby restricted.

j. No greenhouses may be constructed or maintained on any of the lots hereby restricted, without prior consent in writing by Developer.

k. No air conditioning apparatus or unsightly projections shall be attached or affixed to the front of any residence.

l. No bright light (Mercury Vapor or Sodium) shall be placed on the exterior of any structure or constructed separately without the written consent of Developer.

Section 7.

Exterior Structures.

a. No Exterior Structure including but not limited to any outbuildings shall be erected upon, moved onto or maintained upon any Lot except (i) with and pursuant to the advance written approval of the Developer or its designee, and (ii) in compliance with the additional specific restrictions set forth in subsections (b) through (e) of this Section 7; provided, however, that the approval of the Developer or its designee shall not be required for any deck, gazebo or similar Exterior Structure that has been specifically approved by the Developer as part of the residential construction plans approved by the Developer and has been built in accordance with such approved plans.

b. All basketball goals shall be free-standing and not attached to the residence unless the Developer or its designee determines that there are compelling reasons for the basketball goal to be attached to the residence. All basketball goals shall be consistent with the standard designs and materials to be selected by the Developer or its designee. All backboards shall be clear or white and made of fiberglass, plastic or other approved materials. All poles shall be an earthtone color and of one-piece construction. There shall be no more than two basketball goals per Lot. The location of each goal shall be approved by Developer. The Developer or its designee shall have the right to establish reasonable rules regarding the hours of the use of basketball goals and any such rules shall be binding upon all of the Lots.

c. All recreational or play structures (other than basketball goals) shall be located behind the back building line of the residence.

d. No above-ground swimming pools shall be permitted. All pools and hot tubs shall be fenced. All pools and hot tubs shall be kept clean and maintained in operable condition.

e. All residential fences and privacy screens (other than those installed by Developer) shall be consistent with the standard designs, heights and materials to be selected by the Developer or its designee. All fences shall be constructed with the finished side out. No metal (other than wrought iron, or chain link fence of a maximum height of 48 inches) or similar fence or privacy screen shall be permitted. The use of chain link fences of a maximum height of 48 inches shall be limited to fences that start at a point no more than three (3) feet in front of the back building line of the house and

then extend from that point to the back of the Lot. All fences must be maintained and kept up on a regular basis.

Section 8.

Animals. No animal of any kind shall be raised, bred or kept on any Lot except that dogs or cats that are household pets may be kept, as long as they are in compliance with the City of Council Bluffs, Iowa, Zoning Ordinance of Pottawattamie County, Iowa, as the same is now enforced or may hereafter be amended.

Section 9.

Driveways. All driveways must be improved with hard surface, consisting of a minimum of four (4) inches of reinforced concrete or other materials approved in writing by the Developer.

Section 10.

Signs. No sign, advertisements, billboards, or advertising structures of any kind may be erected or maintained on any of said Lots without the consent, in writing, of Developer; provided, however, that permission is hereby granted for erection and maintenance of not more than one advertising board on each lot or tract as sold and conveyed, which advertising board shall not be more than seven (7) square feet in size and may be used for the sole and exclusive purpose of advertising for sale or lease the lot or tract upon which it is erected.

Section 11.

Landscaping and Lawns. Prior to occupancy, and in all events within five months after commencement of construction, all front and back lawns, including all areas between each Residence and any adjacent street, regardless of the distance and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully seeded and shall remain fully seeded at all times thereafter; provided, however, that a Lotowner may leave a portion of the Lot as a natural area with the express written permission of the Developer. All vegetable gardens shall be located in the backyard. The Owner of each Lot shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four inches and shall properly maintain and replace all trees and landscaping. Noxious weeds and plants shall be kept seasonably mowed and dead or unsightly growth shall be removed from all improved Lots. All fence lines will be kept clean of weeds and brush.

Section 12.

Easements for Public Utilities; Drainage; Maintenance. The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines and other utilities, and to give or grant right-of-ways or easements and rights-of-way shown on the recorded plat of the Properties or any Common Area. All utility easements and rights-of-way shall inure to the benefit of all utility companies, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of all Lotowners in the Properties as a cross-easement for utility line or service maintenance.

ARTICLE IV

GENERAL PROVISIONS

Section 1.

Property Subject to This Declaration. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration as of the Date of this Declaration is that property more specifically identified in the addendum to this Declaration.

Section 2.

Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Developer, or its successors and assigns, or by the Lotowner of any real estate subject to the Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of five (5) years, unless an instrument signed by the Lotowners of two-thirds of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless written notice of the proposed Agreement is sent to every Lotowner at least sixty (60) days in advance of any action taken.

Section 3.

Notices. Any notice required to be sent to any member or Lotowner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as a member or Lotowner on the records of the Developer at the time of such mailing.

Section 4.

Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages or both and against the land to enforce any lien created by these covenants, and failure by any Lotowner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5.

Severability. In the event any one of these covenants or restrictions are held invalid by a judgment or court order, this shall in no way effect any other provisions which shall remain in full force and effect.

Section 6.

Amendment. By written consent of the owners of the area of land within the district as then constituted, evidenced by a Declaration duly executed and acknowledged by such owners and recorded in the Office of the Recorder of Pottawattamie County, Iowa, this instrument may be modified and amended.

Tricor, Inc.

By _____
Jerry F. Duggan, President

By _____
James M. Duggan, Vice President

On this _____ day of _____, 1996, before me, a notary public in and for said county, personally appeared Jerry F. Duggan and James M. Duggan, to me personally known, who being by me duly (sworn or affirmed) did say that they are the President and Vice President of said corporation, that (the seal affixed to said instrument is the seal of said or no seal has been procured by the said) corporation, and that said instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors and the said Jerry F. Duggan and James M. Duggan acknowledge the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Notary Public

www.omahatitle.com

**ADDENDUM TO DECLARATION OF RESTRICTION FOR
ARBOR WOODS SUBDIVISION PHASE I**

The real estate which is the subject of the Declaration of REstriction for Arbor Woods Subdivision Phase I, executed on the _____ day of _____, 1994, is legally described as follows:

A TRACT OF LAND LOCATED IN PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN, COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 31; THENCE N 90°00'00" W (ASSUMED) 23.44 FEET; THENCE S 00°03'13" W 33.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF GLEASON AVENUE AND THE POINT OF BEGINNING; THENCE S 00°03'15" W 235.65 FEET; THENCE S 35°13'12" W 488.53 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF BONHAM AVENUE; THENCE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE BEING CURVED TO THE LEFT HAVING A RADIUS OF 580.00 FEET, AND AN ARC DISTANCE OF 139.72 FEET (CHORD - 139.39 FEET, CHORD BEARING - N 68°56'12" W) TO A POINT OF TANGENCY; THENCE CONTINUING ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID BONHAM AVENUE N 75°50'17" W 154.97 FEET; THENCE N 29°38'28" E 379.60 FEET; THENCE N 00°00'00" W 217.74 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF SAID GLEASON AVENUE; THENCE 90°00'00" E (ASSUMED) ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE 372.55 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 4.913 ACRES, MORE OR LESS.

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CERTIFICATE REGARDING DECLARATION OF RESTRICTIONS
FOR ARBOR WOODS SUBDIVISION PHASE II

FILE
COPY

STATE OF IOWA)
)ss.
COUNTY OF POTTAWATTAMIE)

We hereby certify that the following document will be recorded with the Pottawattamie County Recorder contemporaneous with the filing of the final plat of Arbor Woods Subdivision Phase II:

A. Declaration of Restrictions for Arbor Woods Subdivision Phase II.

We hereby certify that we will meet all equal opportunity and fair marketing requirements consistent with federal, state, and local guidelines.

Tricor, Inc.

By: _____ Date _____
Jerry F. Duggan, President

By: _____ Date _____
James M. Duggan, Vice President

On this _____ day of _____, 1996, before me, a notary public in and for said county, personally appeared Jerry F. Duggan and James M. Duggan, to me personally known, who being by me duly (sworn or affirmed) did say that they are the President and Vice President of said corporation, that (the seal affixed to said instrument is the seal of said or no seal has been procured by the said) corporation, and that said instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors and the said Jerry F. Duggan and James M. Duggan acknowledge the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Notary Public

