

98-5847

Cloverleaf Acres Phase 2

**Preparer**

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**DECLARATION OF RESTRICTIONS AND COVENANTS FOR  
CLOVERLEAF ACRES PHASE II**

This Declaration is made this 16th day of May, 1997, by J and M Development, L.C. hereinafter called "Developer."

**ARTICLE I**  
**STATEMENT OF INTENT**

Developer owns the real estate commonly known as CLOVERLEAF ACRES PHASE II in Pottawattamie County, Iowa. Developer desires to provide for the preservation of values in the development of said subdivision, 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. In connection with the maintenance of certain portions of said real estate, it is the intent and desire of Developer to incorporate the CLOVERLEAF ACRES HOMEOWNERS ASSOCIATION, INC., as a not-for-profit corporation, which Association shall have powers of maintaining and administering the common properties and facilities and enforcing the covenants and restrictions and collecting and disbursing assessments and charges for CLOVERLEAF ACRES SUBDIVISION and CLOVERLEAF ACRES PHASE II.

THEREFORE, the Developer hereby declares that the subject real estate 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.

**ARTICLE II**  
**DEFINITIONS**

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

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98- 5864

(1) "Association" shall mean and refer to the Cloverleaf Acres Homeowners Association, Inc., its successors and assigns.

(2) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration and any addition to the residential community known as CLOVERLEAF ACRES SUBDIVISION which Developer may in its discretion make subject to this Declaration as hereinafter set forth.

(3) "Lot" shall mean and refer to the numbered plots shown upon the recorded subdivision plat of the Properties 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.

(4) "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.

(5) "Lot Owner" shall mean and refer to the record owner, including contract purchases, 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 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. Lot Owner shall include Developer.

(6) "Developer" shall mean and refer to J and M Development, L.C., its successors and assigns.

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

(8) "Outbuilding" shall mean an enclosed, covered structure or other structure not directly attached to the Residence to which it is appurtenant.

(9) "Board of Directors" shall mean the Board of Directors of the Association as set forth in the Association's Articles of Incorporation and By-Laws.

(10) "Exterior Structure" shall mean 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,

outbuilding, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, basketball goal, swing set, trampoline, sand box, play house, tree house, 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 Lot shall be further subdivided. 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; 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 seventy-five(75) feet, nor nearer to the side Lot line 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, so long as the change conforms to the Pottawattomie County, Iowa Zoning Ordinances.

**SECTION 3. DWELLING SIZE.** A. Residences designed for construction on Lots in CLOVERLEAF ACRES SUBDIVISION will be required to have the following minimum square footage; to-wit:

- 1) One Story Residences: 1500 square feet of finished living area will be required on ground level.
- 2) One and One-half Story Residences: 1800 square feet of finished living area will be required above the basement level, with at least 1100 square feet of finished living area required on the first floor.
- 3) Two Story Residences: 2000 square feet of finished living area will be required above basement level, with at least 1000 square feet of finished living area required on the first floor.

Developer, or its designee has approved in advance and in writing such use of the Lot and construction of the outbuilding.

I. Approvals and/or consents required by these covenants shall be solely the function of Developer. Developer may, at its option, delegate all or any part of the function of control to the Board of Directors of the Association. If such delegation is made, control shall be the function and obligation of the Board of Directors of the Association. Any such delegation by Developer of all or part of its control function to the Board of Directors shall not be effective unless done in writing and signed by all members of the Developer.

#### SECTION 5

A. Building Material Requirements. Exterior walls of all buildings, structures and appurtenances thereto shall be made of brick, stone, stucco, wood shingles, wood siding, wood paneling, glass blocks, 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 or asphalt shingles to be imitation shake shingles only, slates 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 (5) months after commencement of construction. In the event of fire, windstorm, or other damages, no building shall be permitted to remain in a damaged condition longer than three (3) months, unless good cause for delay in repairing the structure is shown to the Developer, or its designee.

B. Utilities, Services and Access. All wells and sewage and septic systems on each Lot shall comply with the applicable State and Local ordinances and Regulation and be located on each lot within the area shown on the Plat. Each Lot Owner shall be responsible for any expenses related to the provision of sewage and septic systems and private water wells. Additionally, each Lot Owner shall be responsible for any expenses related to the extension of utility services to their individual Residence from the main utility lines already provided by Developer. Each Lot Owner shall also be responsible for any expenses related to providing vehicular access to their Lot from the dedicated platted streets.

#### SECTION 6. BUILDING OR USES OTHER THAN RESIDENTIAL PURPOSES: NOXIOUS ACTIVITIES; MISCELLANEOUS.

A. Except as otherwise provided in Article 3, Section I above, no Residence or Exterior Structure shall ever be placed, erected or used for business, professional,

4) Bi-Level and Split-Level and Split-Entry Residences: 2000 square feet of finished living area will be required, with at least 1500 square feet of finished living area required on the first floor.

B. The phrase "finished living area" as used in this Section 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. The term shall not include any area in any basement, garage, porch, or attic finished or unfinished. No Residence erected on any lot shall be more than two stories in height, unless consented to in writing by Developer, or its designee. Developer, or its designee, 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.

C. Each Residence shall include at least an attached two car garage.

#### SECTION 4 APPROVAL OF PLANS AND POST-CONSTRUCTION CHANGES.

A. The subdivision is composed of 12 building Lots in Phase I and 43 building lots in Phase II, which have been developed expressly for residential purposes and the construction of Residences. The primary purpose of design and other controls is to protect and preserve the value of the Residence in Cloverleaf Acres for the benefit of both the individual lot owner and the public in general. These controls are not to be viewed as a means for suppressing expressions of individuality nor as a mere land restriction. A secondary purpose of the design and other controls are to protect the Developer's financial investment in the unsold Lots.

B. No Residence or Exterior Structure, well or septic system may be erected upon a Lot unless and until the building plans, specification, exterior color scheme, material, location, elevation, grade, soil erosion and sediment control plan 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 proved herein, the Board of Directors of the Association. No structures of any kind shall be moved onto any Lot. Nor shall any change or alteration in such building plans, specification, exterior color scheme, materials, location, elevation, grade, soil erosion and sediment plan, and landscaping thereof be made until such change or alteration has been submitted to and approved in writing by the Developer, or its designee. Nor shall any change or alteration in such elevation, grade and landscaping be made unless such change or alteration is in conformance with Pottawattamie County, Iowa Zoning

Ordinances. Nor shall any change in the soil erosion and sediment control plan be approved until said changes have been approved by the Soil Conservation District.

C. 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 alteration to any structure shall be made unless and until the changes have been submitted to and approved in writing by the Developer, or its designee. 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 its designee.

D. No building, fence, wall or other structure, shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition to, change or alteration therein, be made until the plans, specification, and plot plan showing the nature, kind, shape, height, material and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to the surrounding structures and topography by the Developer or its designee. All such plans and specification shall be submitted to the Developer at its Council Bluffs, Iowa office.

E. The drainage system designed in the approved plat, or as may be installed, may not be altered or interfered with in any manner. Each individual Lot owner is to take all steps necessary to reasonably and adequately regulate the drainage from their Lot and to control unreasonable and undesirable erosion.

F. Material and equipment used during the construction and landscaping process will be stored and maintained on the Lot in an orderly manner. Discard materials, rubbish and unneeded equipment will be removed from the Lot weekly. Construction and landscaping activities will be confined to the Lot on which the construction is in process.

G. No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, motorcycle, van, aircraft, grading or excavation equipment, or any other, portable vehicle shall be stored, repaired, or routinely parked on the streets of the subdivision as shown by the plat nor on any Lot unless stored within a fully enclosed outbuilding. Each Lot Owner shall provide off-street parking to adequately meet his or her needs and, in any event, off street parking for two automobiles, shall be provided in addition to the attached two car garage space.

H. No owner of a Lot may construct an outbuilding or any other improvement, unless a residence has been constructed on said Lot or unless the

trade or commercial purposes on any Lot, provided, however that this restriction shall not prevent a Lot Owner from maintaining an office area in his or her residence which is not his or her 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, nor shall any trash, ashes or other refuse accumulate or remain on any Lot, except such compost facilities as may be approved by Developer, or its designee, 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 Lot Owner shall properly maintain his or her 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 other property owned by Developer.

C. No incinerator or trash burner shall be allowed on any Lot, no fuel tank shall be permitted to remain outside of any Residence, and except on pick-up day, no garbage or trash shall be permitted outside of any dwelling unless within an area that is fully screened from view from any adjoining street or Lot as shown on the plat.

D. No Lot Owner shall use, suffer or permit any person or persons in any manner whatsoever, to use Owner's Lot for any purpose in violation of the laws and regulations of the United States, the State of Iowa, or the ordinances and regulations of Pottawattamie County, Iowa, or any other lawful authority. No Lot Owner shall use, suffer or permit any person or persons in any manner whatsoever, to use Owner's Lot for any purpose which will constitute an unreasonable and improper invasion upon the quiet use and enjoyment of any other Lot Owner's property. Each Lot Owner shall maintain Owner's Lot in a clean and wholesome condition. All health and police regulations shall in all respects and at all times be fully complied with by the Lot Owner so as to prevent noxious and offensive activities or conditions which could constitute a public or private nuisance.

#### SECTION 7.

A. All Lots, whether occupied or unoccupied, and any improvements placed thereon shall be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, Developer or the Association shall have the right, through its agents and employees, to do so, the cost of which shall be added to and become an assessment to which such Lot is subject. Neither

Developer, the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work as performed.

B. 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 unless they are parked, maintained and stored inside the Residence or other Outbuilding and shall not be parked on the street. It is the intent of the parties hereto that all automobiles and vehicles shall be kept in an enclosed garage whenever possible. No motorized vehicles shall be operated on any Lot or within the entire boundaries of CLOVERLEAF ACRES SUBDIVISION other than in the street or in the driveways. No all terrain vehicles shall be operated within the entire boundaries of CLOVERLEAF ACRES SUBDIVISION.

C. No television, satellite dish over 24 inches in diameter, radio citizens' band, 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. Any satellite dish placement shall be approved in writing by Developer or its designee. 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 regulation 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 the Lots. No lights or other illumination shall be higher than the Residence.

D. No garage sales, sample sale or similar activities shall be held within the Properties without the written consent of the Developer or its designee.

E. No mailbox or stand therefor shall be erected or installed without prior approval of style, material, construction, and location being granted by the Developer or its designee.

F. 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.

G. All public utilities and services on all Lots shall be underground.

H. No exterior Christmas lights and/or decoration 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 on the Properties. The location, size, and design of dog kennels shall be subject to the approval of the Developer, or its designee prior to construction.

J. No greenhouses may be constructed or maintained on any of the Lots hereby restricted, without prior consent in writing by Developer or its designee.

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, or its designee.

M. Each Lot Owner shall keep drainage ditches, culverts and swales located on his or her Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his or her Lot as may be reasonably required for proper drainage.

N. Neither the Developer, its designee, nor any Lot Owner shall allow or permit any hunting or the discharge of any firearms within the entire boundaries of CLOVERLEAF ACRES SUBDIVISION.

#### SECTION 8. EXTERIOR STRUCTURES.

A. No Exterior Structure including, but not limited to any Outbuilding 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 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, or its designee, as part of the residential construction plans, and has been built in accordance with such approved plans.

B. All residential fences and privacy screens (other than those installed by Developer) shall be consistent with standard designs, heights, materials and location to be approved by the developer or its designee. Fences and walls shall not obstruct

the developer or its designee. Fences and walls shall not obstruct the scenic view of any Lot. Fences and walls will be permitted only with the approval of the Developer or its designee.

C. All basketball goals shall be freestanding 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. There shall be no more than two (2) basketball goals per Lot. The location of each goal shall be approved by Developer or its designee.

D. The design, materials and location of all recreational or play structures shall be approved by the Developer or its designee.

E. No above-ground swimming pools shall be permitted. All pools shall be fenced. All pools and hot tubs shall be kept clean and maintained in operable condition. All exterior hot tubs not located on a deck or porch shall be enclosed. Access to exterior hot tubs shall be restricted in a way that will not allow children access.

F. No Outbuilding shall be erected until approved in writing by the Developer or its designee as outlined herein. If an unattached structure is approved for a Lot, the design, materials, location, size, and construction shall be as approved in writing by the Developer or its designee as outlined herein.

**SECTION 9. ANIMALS.** No animal of any kind shall be raised, bred or kept on any Lot, except that up to two(2) dogs, cats or other household pets may be kept, as long as they are in compliance with the Pottawattamie County, Iowa Zoning Ordinances. Under no circumstances are any poultry, including but not limited to chickens, ducks, geese, exotic birds or turkeys, or horses, donkeys, reptiles, mules or members of the swine family, to be raised, bred or kept on any Lot.

**SECTION 10. DRIVEWAYS.** All driveways must be made of concrete or brick construction consisting of materials approved in writing by Developer or its designee. All such driveways shall be limited to service of the primary Residence on the Lot, unless otherwise approved in writing by the Developer or its designee.

**SECTION 11. SIGNS.** No signs, advertisements, billboards, or advertising structures of any kind may be erected or maintained on any Lot without the consent, in writing, of Developer, or its designee; 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. Developer, for itself and its designee, reserves the right to install and maintain any entrance/identification signs for the Properties on Lots 1 and 12.

**SECTION 12. LANDSCAPING, LAWNS AND TREES.** Upon completion of construction or twelve (12) months after commencement of construction, whichever shall first occur, 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 Lot Owner may leave a portion of the back yard as a natural area with the express written permission of the Developer or its designee. All vegetable gardens shall be located in the back yard. The Owner of each Lot shall keep the lawn uniformly mowed and clipped and shall properly maintain and replace all trees and landscaping. Noxious weeds and plants shall be kept reasonably mowed and dead or unsightly growth shall be removed from all improved Lots. Trees over six (6) inches in diameter (measure at a point two feet above ground level) may be removed from the Lots only with the approval of the Developer, or its designee, pursuant to the provisions of the Declaration, must identify each tree proposed to be removed.

**SECTION 13. 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 rights-of-way or easements and rights-of-way shown on recorded plat of the Properties. 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 Lot Owners in the Properties and the Association as a cross-easement for utility line or service maintenance

The Developer shall have and does hereby reserve for itself, its successors and assigns and the Association and its successors and assigns, an easement over and through all unimproved portions of each Lot in the Properties for the purpose of performing the duties of the Association.

**SECTION 14. SOIL EROSION AND SEDIMENT CONTROL EASEMENT.** Prior to any land disturbing activity, as defined in §161a.64(3) Code of Iowa, on any lot, the lot owner shall cause a soil erosion and sediment control plan to be prepared in

accordance with the technical standards and specifications of the District Soil Conservationist. When necessary the lot owner shall submit the plan to the Soil Conservation District for approval, as provided in Chapter 161A, Code of Iowa. The lot owner shall be liable for the successful implementation and completion of said plan. This covenant shall constitute an easement that runs with the land and shall bind the lot owner and his, her or their successors and assigns. This easement may be enforced as provided in Article V, Section 4 and/or under the provisions of Chapter 161A, Code of Iowa.

**ARTICLE IV.**  
**HOMEOWNERS ASSOCIATION**

**SECTION 1.** Every Lot Owner shall be deemed to have membership in the Homes Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration.

**SECTION 2.** The Association shall have two classes of voting membership:

**CLASS A.** Class A members shall be all Lot Owners, with the exception of Developer, and shall be entitled on all issues to one (1) vote for each Lot owned. When more than one (1) person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine and advise the secretary prior to any meeting. In no event shall more than one (1) vote be cast with respect to any Lot. In the absence of agreement by multiple owners of a Lot, that Lot's vote shall be suspended if more than one (1) person seeks to exercise it.

**CLASS B.** The Class B member(s) shall be Developer, its successors and assigns and shall be entitled to twenty-five (25) votes for each Lot owned.

**SECTION 3. ARTICLES OF INCORPORATION AND BYLAWS.** Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association shall be set forth in its Articles and Bylaws. In any event, if any provisions set forth in this Declaration applicable to notice, voting and quorum requirements are in conflict with any provisions of Iowa law applicable to not-for-profit corporations on the date of this Declaration, or at any time after said date, the applicable provisions of Iowa law shall control.

**ARTICLE V**  
**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 Lot Owner of any real estate subject to the Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) 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 Lot Owners 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 Lot Owner at least sixty (60) days in advance of the action taken.

**SECTION 3. NOTICE.** Any notice required to be sent to any member or Lot Owner 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 Lot Owner on the records of the Developer or the Association 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 the Association or any Lot Owner 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 provision which shall remain in full force and effect.

**SECTION 6. AMENDMENT.** By written consent of the Lot Owners of the Properties within the subdivision as then constituted, evidenced by a Declaration duly executed and acknowledged by such Lot Owners and recorded in the Office of the Recorder of

Pottawattamie County, Iowa, this instrument may be modified and amended, except that the Developer may amend same without the approval of any Lot Owners until all Lots are sold.

**SECTION 7. INSURANCE.** The Board of Directors of the Association shall obtain and maintain, to the extent reasonably available, such forms, types and amounts of insurance coverage as the Board of Directors, in its discretion, deems advisable. Types of insurance the Board of Directors, may obtain include, but are not limited to, casualty insurance to cover damage or loss up to the replacement cost of improvements located upon real estate owned by the Association, by reason of fire or other hazard covered by a standard extended coverage endorsement; casualty insurance to cover such other risks as shall customarily be covered with respect to property similar in construction, location and use; public liability insurance; worker's compensation insurance to the extent necessary to comply with any applicable law; a legal expense's indemnity endorsement, or its equivalent, affording protection for the officers and directors of the Association for expenses and fees incurred by any of them in defending any suit or settling any claim, judgment or cause of action to which any such officer or Director shall have been made a party by reason of his or her services as such; fidelity insurance against dishonest acts on the part of directors, managers, trustees, employees or volunteers; and such other policies of insurance, if authorized by applicable Iowa law and by the Board of Directors of the Association.

**SECTION 8. DEVELOPER APPROVAL/CONSENT.** Notwithstanding anything to the contrary, whenever the approval or consent of the Developer, or its designee, is required for any action, such approval or consent shall be in writing and be signed and dated by the Developer or its designee. Any approval or consent not in writing as required herein shall be unenforceable.

**SECTION 9. OBLIGATION OF DEVELOPER.** No responsibility, liability or obligation shall be assumed by or imposed upon Developer, or its designee, by virtue of the authority granted to Developer in this Declaration, or as a result of any act or failure to act by Developer, or its designee, with respect to any proposed improvement.

**SECTION 10. GRANTEE'S ACCEPTANCE.** Each grantee or purchaser of any Lot shall by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such Lot, accept such deed or contract subject to each and all of the provisions of this Declaration of Restriction and Covenants and to the jurisdiction, rights, powers, privileges and immunities of Developer and its designee. By such acceptance, such grantee or purchaser shall, for himself/herself, his/her, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with this Declaration and the grantee or purchaser of each other Lot to

keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

J AND M DEVELOPMENT, L.C.

By John H. Jerkovich  
John H. Jerkovich, Member

McCARTHY CONSTRUCTION, INCORPORATED,  
MEMBER

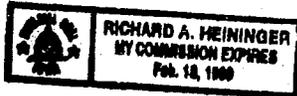
By Robert P. McCarthy  
Robert P. McCarthy, President

STATE OF IOWA

)  
) ss.

COUNTY OF POTTAWATTAMIE

On this 16 day of May, 1997, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared John H. Jerkovich, to me personally known, who, being by me duly sworn, did say that he is a member of said limited liability company executing the within and foregoing instrument, that no seal has been procured by the said company; that said instrument was signed on behalf of said company by authority of its members; and that the said John H. Jerkovich, as such member acknowledged the execution of said instrument to be the voluntary act and deed of said company, by it and by them voluntarily executed.



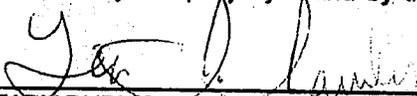
Richard A. Heining  
NOTARY PUBLIC IN AND FOR SAID STATE

STATE OF IOWA

)  
)ss.  
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COUNTY OF POTTAWATTAMIE

On this 27th day of May, 1997, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert P. McCarthy, to me personally known, who being by me duly sworn, did say that he is the President of McCarthy Construction, Incorporated, which is one of the members of J and M Development, L.C., an Iowa limited liability company, executing the foregoing instrument, that no seal has been procured by the corporation or the limited liability company; that the instrument was signed on behalf of the corporation as a member of J and M Development, L.C., a limited liability company, by authority of the corporation's Board of Directors and by authority of the limited liability company's members; and that he as the officer acknowledged execution of the instrument to be the voluntary act and deed of the corporation and the limited liability company by it and by the officer voluntarily executed.

  
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NOTARY PUBLIC IN AND FOR SAID STATE



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