

103-27727

Coy First Addition  
**COMPARED**

INST # 6885  
RECORDING FEE 2500  
AUDITOR FEE \_\_\_\_\_  
RMA FEE 700

FILED FOR RECORD  
POTTAWATTAMIE CO. IA.

02 OCT -4 AM 9:42

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

JOHN SCIORTINO  
RECORDER

THIS DECLARATION, made on the date hereinafter set forth by 23<sup>rd</sup> Avenue LTD, Limited Partnership, through its Limited Partner, William E. Perdue and Gerald A. Mahan, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property legally described as:

Lots 30, 31, and 32 inclusive Coy's Lot Addition, subdivision in Pottawattamie County, Iowa, as surveyed, platted and recorded.

NOW, THEREFORE, Declarant hereby declares that all the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding upon all the parties having any right, title or interest thereof, and upon their heir, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

**DEFINITIONS**

**Section 1.** "Owner" shall mean and refer to the owner of record, whether one or more persons or entities, of a fee simple title to any lot or part of a lot on which one residence, attached or unattached, is or may be erected, as approved by Council Bluffs, Pottawattamie County, Iowa.

**Section 2.** "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto all may hereinafter be brought within the scope of this Declaration by the developer or its assigns or successors.

**Section 3.** "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, or a portion of a legally platted plot upon which one residence attached or unattached is or may be erected. The Properties within this Declaration was platted in 2000, to allow a maximum of six (6) residential units by dividing each lot into two parcels. Each of sold parcels shall mean and be referred to as if it is a full lot.

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**Section 4:** "Declarant" shall mean and refer 23<sup>rd</sup> Avenue, LTD, Limited Partnership, its successors, assigns and legal representative. Declarant shall also mean and refer to the developer of the Properties.

## ARTICLE II

### NON-EXISTENCE OF COMMON AREAS

**Section 1.** In order to minimize monthly and other assessments on property owners, to avoid costs of organization and other home owner's association related costs, the developer has not created a Home Owner Association. Since there are no common areas, there is no requirement for a Home Owner Association to own and maintain such common areas.

**Section 2.** Any owner assumes the obligation of properly maintaining the exterior of said owner's property. Any adjoining property owner may initiate arbitration, as set forth in this Declaration, in the event such adjoining property owner deems maintenance of exterior not adequately maintained or otherwise not substantially kept up as other properties covered herein.

**Section 3.** Notwithstanding the provisions of this Section or any other in this Declaration, the owners of the properties may at anytime they so desire organize and create a Home Owner Association, except that such Association may not be created without developer's written approval as long as developer holds title to any lot included herein.

## ARTICLE III

### ARCHITECTURAL CONTROL

After the construction of the original structure on each lot, no building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to, or change, or alteration, therein be made until the plans and specifications showing the nature, kind, shape, type of materials, and locations of same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the developer. Such right of approval by the developer shall remain until developer will have sold all the Properties. Thereafter property owners shall be limited by (a) other provisions of this Declaration and (b) City zoning and building ordinances.

## ARTICLE IV

### PARTY WALLS

**Section 1. General Rules of Law to Apply.** Any wall built as part of the original cost of the homes upon the Properties and placed on the dividing line between the Lots shall

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constitute a party wall and to the extent not inconsistent with the provisions of this Article, that general rules of law regarding party walls and liability for property damage due to negligence of willful acts or commissions shall apply thereto.

**Section 2. Sharing of Responsibility**

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**Section 2. Animals, Livestock, and Poultry.** No animals, livestock, or poultry of any kind shall be raised or kept on any building site in the Properties other than household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside of the home and patio area. No such pet will be kept, bred or maintained for commercial purpose.

**Section 3. Noxious Activity.** No noxious or offensive activity shall be carried on the Properties nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any vacant building site, nor shall anything ever be done which may be or may become any annoyance or nuisance to the neighborhood.

**Section 4. Billboards Prohibited.** No signs, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on any lot except that real estate for-sale or for-rent signs shall be permitted temporarily in the yard of dwelling which are being offered for sale or rent. This prohibition does not apply to the developer.

**Section 5. Temporary Structure.** No trailer, tent, shack, garage, barn or other outbuilding, whether temporary or permanent in nature, shall be constructed or used at anytime as a residence.

**Section 6. Automobile Repair Prohibited.** No automobile or vehicle repair will be permitted outside garages on any Lot at anytime. No automobile in a state of disrepair shall be kept on the premises of any Lot for a period in excess of (3) days. All garage doors must remain closed at all times except when cars are entering or exiting from the garage.

## ARTICLE VI

### EASEMENTS AND LICENSES

A 5-foot wide permanent easement on each side of all side lot lines, a 10-foot wide permanent easement wide all front lot lines, and a 5-foot wide permanent easement along all rear lot lines, except the rear lot lines for lot 23 through 29, inclusive which will have a 10-foot wide permanent easement, are reserved for the installation and maintenance of utilities.

## ARTICLE VII

### GENERAL PROVISIONS

**Section 1. Enforcement.** Any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration. Failure by any Owner shall in no event be deemed a waiver of the right to do so thereafter.

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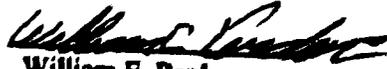
**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment of court order shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restriction of this Declaration shall run with and bind the land for a term of Twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of Ten (10) years.

IN WITNESS WHEREOF, the undersigned being Partners of 23<sup>rd</sup> Avenue LTD Limited Partnership and authorized to execute this instrument, has caused this instrument to be executed as the Declarant on this 25<sup>th</sup> day of Sept., 2002.



Gerald A. Mahan  
PARTNER, 23<sup>RD</sup> AVE LTD  
LIMITED PARTNERSHIP

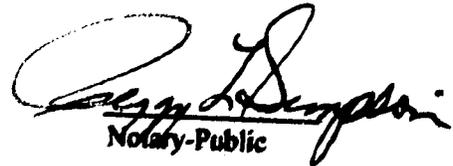


William E. Perdue  
PARTNER, 23<sup>RD</sup> AVE LTD  
LIMITED PARTNERSHIP

STATE OF IOWA

COUNTY OF POTTAWATTAMIE

The foregoing instrument was acknowledged before me as the voluntary act and deed of 23<sup>rd</sup> Avenue LTD, Limited Partnership, this 25 day of Sept., 2002



Notary-Public

