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CERTIFICATE REGARDING DECLARATION OF RESTRICTIONS
FOR FERDALE SUBDIVISION PHASE I

STATE OF IOWA)
)ss.
COUNTY OF POTTAWATTAMIE)

I hereby certify that the following document will be recorded with the Pottawattamie County Recorder contemporaneous with the filing of the final plat of Ferndale Subdivision Phase I.

A. Declaration of Restrictions for Ferndale Subdivision Phase I.

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

Ferndale, L.C.

By: Jerry F. Duggan, member Date 11-26-96
Jerry F. Duggan, Member

On this 26th day of November 1996, before me, a notary public in and for said county, personally appeared Jerry F. Duggan, to me personally known, who being by me duly (sworn or affirmed) did say that he is a member of said limited liability company, that no seal has been procured by the said company, and that said instrument was signed on behalf of the said company by authority of its members, and the said Jerry F. Duggan acknowledged the execution of said instrument to be the voluntary act and deed of said company by it voluntarily executed.



Leo P. Martin
Notary Public

97-21181

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DECLARATION OF RESTRICTIONS FOR FERNDALE SUBDIVISION PHASE I

This Declaration is made this 26th day of November, 1996, by Ferndale, L.C., an Iowa limited liability company, by and through its undersigned member, hereinafter called "Developer."

ARTICLE I

STATEMENT OF INTENT

Developer owns the real estate commonly known as Ferndale Subdivision Phase I 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 Ferndale Subdivision, Phase I 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 Ferndale Subdivision, Phase I shall apply to the subject real estate only and shall not extend to other additional real estate.

ARTICLE II

FERNDALE REAL ESTATE IMPROVEMENT DISTRICT,
POTTAWATTAMIE COUNTY, IOWA

Section 1. All Properties Contained in District. All Properties contained within the Ferndale Subdivision Phase I are part of the Ferndale Real Estate Improvement District ("District") formed pursuant to Chapter 358C of the Iowa Code ("Code"). The District is a body corporate and political with the authority to exercise all powers conferred upon the District by Chapter 358C and other applicable laws.

Section 2. Special Assessments. The District has the power and authority under Chapter 358C to levy and assess special assessments on property within the District to pay for the costs of public improvements within the District. At or near the time of the filing of the final plat for Ferndale Subdivision Phase I, the District levied and assessed certain costs of the public improvements against the Lots within the District.

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ANYONE INTERESTED IN PURCHASING A LOT OR A RESIDENCE IN THE DISTRICT MUST VERIFY THE TOTAL AMOUNT OF SPECIAL ASSESSMENTS LEVIED AGAINST SUCH LOT. SPECIAL ASSESSMENTS ARE PAYABLE AS PROVIDED BY IOWA LAW, INCLUDING WITHOUT LIMITATION, CHAPTERS 358C AND 384 OF THE CODE.

Section 3. Taxes. The District has limited authority to tax the owners of Lots in the District as provided under Iowa law, including without limitation, Chapter 358C.

ARTICLE III

DEFINITIONS

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

(1) "Association" shall mean the homeowners' association, if any, established in connection with the Townhome Lots (as defined below) in Ferndale Subdivision in the manner set forth herein which homeowners' association (if formed) shall be an Iowa non-profit corporation. The provisions of the Declaration concerning the Association shall become effective upon formation of the Association (if ever formed) and shall continue to be effective during the period of time that the Association is in existence pursuant to this Declaration.

(2) "Board" shall mean the board of directors of the Association (if formed), as set forth herein.

(3) "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 Ferndale Subdivision Phase I.

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

(5) "Single Family Lot" shall mean and refer to any separately-owned parcel as may be shown by a recorded subdivision plat of the Properties except it shall not include any "Townhome Lot." Lot numbers of lots classified as a "Single Family Lot" shall include Lots 7 through 78, both inclusive, as shown by the recorded subdivision plat for the properties in Ferndale Subdivision Phase I.

(6) "Townhome Lot" shall mean and refer to Lots 1, 2, 3, 4, 5 and 6 of the recorded subdivision plat for the Properties in Ferndale Subdivision Phase I.

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(7) "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.

(8) "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.

(8) "Developer" shall mean and refer to Ferndale, L.C., and Iowa limited liability company, its successors and assigns.

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

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

(11) "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, swing set, trampoline, sand box, playhouse, treehouse, or other recreational or play structure.

ARTICLE IV

USE RESTRICTIONS

Section 1. Use of Land. None of the Single Family 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. All Townhome Lots may be used or occupied as a duplex intended exclusively for residential purposes. No residential building which has previously been at another location shall be moved onto any 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.

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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, 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 900 square feet of enclosed floor area. Any Residence more than one story in height erected on any of said Lots shall contain a minimum of six hundred and fifty (650) feet of enclosed floor on the first floor and a minimum of one thousand two hundred (1,200) square feet of enclosed floor area in the entire Residence. 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 furnished 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, General Contractors 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 and the name of the licensed general contractor 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 or the licensed general contractor 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.

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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 IV, 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

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parked, maintained or stored on any Lot or in any Common Area or on the street for more than a 24 hour period.

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 neighborhoods 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 speakers, 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, except for utilities within the fifteen foot (15') area covered by the easement granted to Iowa Power and Light Co., its successors and assigns dated April 26, 1968 recorded August 18, 1969 in Book 1490, Page 174 of the records of the Pottawattamie County Recorder's office, and except for an overhead electric line easement for overhang purposes only, granted to Iowa Power and Light Company dated October 2, 1989, filed October 13, 1989, in Book 90, Page 8283 of the records of the Pottawattamie County Recorder's office as subsequently amended. The location of both easements is shown on the plat of Ferndale Subdivision Phase I.

g. In the event of vandalism, fire, windstorm or other damages, 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 Area 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.

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1. 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 designees, and (ii) in compliance with the additional specific restrictions set forth in subsection (b) through (e) of this Section 7; provided, however, that the approval of the Developer or its designees shall not be required for any deck, gazebo or similar Exterior Structure that has been specifically 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 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 polls shall be an earthtone color and 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 clean and maintained in operable condition.

e. All residential fences and privacy screen (other than those installed by Developer) shall be consistent with the standard designs, heights and materials to be selected by the Developer or its designees. All fences shall be constructed with the finished side out. Fences or privacy screens shall not be made of metal other than wrought iron, or chain link fence of a maximum height of 48 inches. All fences or privacy screens shall start at a point no more than three (3) feet in front of the back building line of the house and then extended 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.

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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 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 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 streets, regardless of the distance and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully seeded at all times thereafter; provided, however, that a Lotowner may leave a portion of the Lot as a neutral 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 right-of-way shown on the recorded plat of the Properties or any Common Area. All utility easements and right-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 V

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION AND VOTING RIGHTS OF THE TOWNHOME LOT OWNERS

Section 1. Membership in the Association. In the event the Association is formed and created in connection with the Townhome Lots in Ferndale Subdivision, then, upon formation and creation of the Association, every owner of a Townhome Lot shall be a member of the Association, which shall function as a homeowners' association for the owners of Townhome Lots in the Subdivision. Membership shall be appurtenant to, and shall not be separated from, ownership of a Townhome Lot.

Section 2. Voting Rights. (a) Members shall be all owners of Townhome Lots and shall be entitled to two (2) votes for each Townhome Lot. When more than one (1) person holds an interest in any Townhome Lot, two such persons shall be designated as members, but the votes for such Townhome Lot shall be exercised as they among themselves determine.

Section 3. Board of Directors. (a) If the Association is created, the members of the Association shall, subject to the provisions of subparagraph (b) hereof, elect the board of directors (the "Board") of the Association, and the Board shall, by majority rule, conduct all of the business of the Association, except when membership votes are required pursuant to this Declaration or pursuant to the articles of incorporation or bylaws of the Association. Notwithstanding the above provision, for three (3) years after the date hereof, the Developer must approve any decisions made by the Board.

(b) Notwithstanding anything contained in the preceding subparagraph (a) or elsewhere in this Declaration to the contrary, as long as the Developer owns any Townhome Lot(s) in the subdivision, the Developer shall be entitled to appoint all of the members of the Board.

Section 4. Bylaws. The Association (if created) may make whatever rules and bylaws it deems desirable to govern the Association and its members, provided, however, any conflict between such bylaws and the provisions hereof shall be controlled by the provisions hereof.

Section 5. Inspection Rights. Each owner shall have the right to inspect and examine the books, records and accounts of the Association at reasonable times upon reasonable written notice, provided that such inspection and examination shall be at such owner's sole cost and expense.

ARTICLE VI

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

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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 know address of the person who appears as a 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 covenants or restrictions, either to restrain 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 those covenants or restrictions are held invalid by a judgment or court order, this shall in no way affect other provisions which shall remain in full force and effect.

Section 6. Amendment. By written consent of the owners of the Lots within the Ferndale Subdivision 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, this instrument may be modified and amended.

FERNDALE, L.C.

By Jerry F. Duggan, member
Jerry F. Duggan, Member

On this 26th day of November, 1996, before me, a notary public in and for said county, personally appeared Jerry F. Duggan, to me personally known, who being by me duly (sworn or affirmed) did say that he is a member of said limited liability company, that no seal has been procured by the said company, and that said instrument was signed on behalf of the said company by authority of its members and the said Jerry F. Duggan acknowledged the execution of said instrument to be the voluntary act and deed of said company by it voluntarily executed.

Leo P. Martin

Notary Public

A:DECLAR. I:WT



