

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR CERTAIN LOTS IN THE  
TOWN OF UNDERWOOD, POTTAWATTAMIE COUNTY, IOWA  
FIELDCREST ADDITION, PHASE 1

THIS DECLARATION, made on the date hereinafter set forth, is made by SHAWN McKEE and REBECCA L. McKEE, (hereinafter referred to as the "Declarant").

**PRELIMINARY STATEMENT**

The Declarant is the owner of certain real property identified as Fieldcrest Addition, Phase 1, consisting of 14 single-family residential lots, all located within the Town of Underwood, County of Pottawattamie, State of Iowa, as shown on and described on the Subdivision Plat attached hereto marked Exhibit A and made a part hereof. Such lots are sometimes hereinafter referred to collectively as either the "Subdivision" or the "Lots" and individually as each "Lot".

The Declarant desires to provide for the preservation of the values and amenities of a residential community and for the maintenance of the character and residential integrity of the Subdivision.

NOW, THEREFORE, the Declarant hereby declares that for a period of twenty-one (21) years after the filing of this Declaration, each of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements (hereinafter referred to collectively as "Covenants"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots. These Covenants shall run with such real property and shall be binding upon all parties having or acquiring any right, title or interest in any Lot, or any part thereof, as is more fully described herein. The Lots, and each Lot is and shall be subject to all and each of the following conditions and other terms:

**ARTICLE I  
COVENANTS**

Except as hereinafter provided:

- A. No Lot will be occupied or used for other than single-family residential purposes; and no Lot will be occupied or used for such residential purposes at a density greater than one single-family residence for each Lot.
- B. The structure or associated structures comprising a single-family residence (hereinafter referred to as "Residence") will consist of a detached dwelling designed to accommodate a single person or one family group of not more than two stories in height. A family group shall include a nanny or caretaker for children, elderly or disabled family members. Additional domestic or health care professionals shall be

entitled to live with the family group as may be approved by action of Declarant. Each Residence shall maintain a minimum of a two-car enclosed attached private garage.

- C. No single-family Residence will be altered, built, constructed, or otherwise maintained on any Lot without approval in writing by Declarant. Approval shall be based on general appearance, exterior color or colors, harmony of external design and location in relation to surroundings and topography or other relevant architectural factors, including location within Lot boundary lines and the quality of construction, size, and suitability for residential purposes of such single-family Residence.

1. **Approval Procedure:** No Residence, building, driveway, patio, patio enclosure, dog house or run, play house, tree house, solar heating or cooling device, exterior air conditioning equipment, antenna, satellite receiving stations ("discs"), ditch, fence, basketball bangboard, flag pole, tool or plant shed, landscaping (trees, shrubs and/or ponds), gazebos, windmills, swimming pool, pool house, tennis court, wall, or other external improvement above or below the ground (herein all referred to as any "Improvement") in any location will be built, constructed, erected, installed, altered, planted, or otherwise maintained or undertaken on any Lot nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:
  - a. **Submission of Plans:** An owner or contract purchaser of any Lot (hereinafter referred to as "Owner") desiring to erect or undertake an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "Plans"). Such Plans shall include a description of type, quality, color and use of materials proposed for such Improvement. Concurrent with submission of the Plans, Owner shall notify Declarant of the Owner's mailing address. Comments and action of Declarant will be identically marked on both copies of said submissions. One copy will be returned to Owner and one copy retained as part of the permanent records of Declarant.
  - b. **Repair or Replacement:** An Owner desiring to repair a previously approved Improvement may do so without submitting plans to Declarant so long as the repair is completed with material of like-kind and quality and which otherwise meet the building provisions of these Declarations. However, to avoid confusion, Declarant recommends submission of all repair Plans, even those of like kind.
  - c. **Factors Considered by the Declarant:** Declarant shall review such Plans in relation to the type and exterior of Improvements constructed, or approved for construction on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall be a developed residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant to promote development of the Lots and to protect the values, character and residential quality of the Lots. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a

quality residential community, Declarant may refuse approval of the proposed Improvement.

- d. **Time to Approve:** Written notice of any approval/disapproval of a proposed Improvement shall be mailed to the Owner at the address specified by the Owner upon submission of the Plans. Such notice or a request for additional time to review the Plans shall be mailed within thirty (30) days after the date of submission of the Plans.
  - e. **Liability:** No Lot Owner, or combination of Owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Declaration, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.
2. **Timeliness:** After commencement of any Improvement construction on any Lot, such construction will be diligently prosecuted to completion as soon as possible, and no approved or permitted construction will be maintained on any Lot in uncompleted or unfinished conditions for more than twelve (12) months.
  3. **Specific Building Requirements:** All Improvements or construction are subject to the building requirements contained in this Declaration:
    - a. **Size:** All ranch, split-entry or split-level style homes shall have a minimum of fourteen hundred (1,400) square feet of living space and two-story and cape cod style homes shall have a minimum of eighteen hundred (1,800) square feet of living space.
    - b. **Minimum Lot Sizes, Setbacks and Height Regulations:** Lot sizes, setbacks and height regulations shall comply with the Code of Ordinances of the City of Underwood, Iowa, except the front lot setbacks shall be thirty (30) feet and the rear setbacks shall be forty (40) feet.
    - c. **Foundations:** The exposed foundation walls must be constructed of or faced with brick or stone or stucco or other material approved by Declarant. All foundations shall be constructed of concrete, concrete blocks, brick or stone.
    - d. **Driveways and Sidewalks:** All driveways, including the approaches to the Residence and sidewalks surrounding the Residence must be constructed of concrete, brick, paving stone, or laid stone. If repair or replacement becomes necessary, the repair or replacement shall also be of concrete, brick, paving stone, or laid stone. The use of asphalt overlay on driveways, approaches and sidewalks is prohibited. No driveway will be constructed or maintained on any Lot connected to or with an adjoining public street other than through its curb cut unless approved by Declarant.
    - e. **Chimneys:** Fireplace chimneys shall be covered with clay-fired brick, or other material approved in writing by Declarant.

- f. **Roofs:** Unless other materials are specifically approved by Declarant, the roof of all Improvements shall be covered with wood shakes or shingles, tile, slate or asphalt, or other material approved in writing by Declarant.
- g. **Antennas and Satellite Dishes:** Only one satellite dish or disc, not to exceed twenty-four (24) inches in diameter or its equivalent, may be installed out of view of the street, not on the front portion of any Residence and at least six feet (6') below the highest point of the general roof line of the Residence. Any antenna must be installed in an attic area rather than on the exterior. No antennas used to receive distant over-the-air television signals, or antennas used for AM/FM radio, amateur (ham) radio, citizen's band (CB) radio or Digital Audio Radio Services (DAR's) will be permitted
- h. **Prohibited Structures:** No outbuildings or other unattached structures of any kind or similar structures shall be permitted on any Lot. No detached garages or carports shall be constructed.
- i. **Restricted Structures:** Any non-prohibited structure will be allowed only after securing written approval of Declarant. Such structure must be installed in a location out of public view and to the rear of the back line of a single-family Residence. The sole exception to this restriction is that an Owner may install one freestanding basketball backboard and standard as long as it is not attached to any portion of the residential structure.
- j. **Awnings:** Awnings or sunscreens may be installed only after written approval of the Declarant.
- k. **General Appearance Restrictions:** No exterior burner, incinerator, or other receptacle for garbage trash, or other refuse will be maintained on any Lot. No garbage or trashcans shall be allowed to remain outside of any Residence unless completely screened from view of every street and from all other Lots in the Subdivision. No trailer or other movable or temporary structure will be maintained on any Lot other than for temporary use or uses appropriate, convenient, or necessary for residential purposes for not more than seven days within any calendar year or for use or uses connected and coterminous with approved or permitted construction.
- l. **Lawns, Trees and Gardens:** All Lots shall be sodded upon completion of construction of the Residence. No grass, weeds, or other vegetation will be grown or otherwise permitted to commence or continue and no dangerous, diseased, or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard of undesirable contagion or proliferation, or detract from a neat and trim appearance. No vegetable gardens shall be permitted except in the rear of the Residence out of view from the street.
- m. **Exterior Lighting:** Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.
- n. **Fences:** No fence shall be permitted to extend beyond the front line of the Residence structure. Unless other materials are specifically approved in writing by the Declarant, fences shall only be composed of wood, wrought iron, brick,

vinyl or well-maintained chain link fencing. No fence or wall shall exceed a height of six (6) feet.

- o. **Mailboxes:** All mailboxes shall be metal, brick or wood.
- p. **Garden Equipment:** No garden implements, lawn mower, or other maintenance equipment not in actual use will be kept or otherwise maintained on any Lot, other than in a location out of public view.
- q. **Signs:** No advertising sign, contractor sign or other poster, billboards, unsightly objects or other nuisances shall be erected, placed or permitted to remain on any Lot, except one sign per Lot consisting of an area not more than six square feet advertising such Lot for sale, promoting a garage/estate sale or announcing the sale of any Lot belonging to Declarant as Owner of such Lot, will be permitted on any Lot. The permitted signs may remain on the affected Lot for the following time periods and must be removed thereafter:
  - (1) "For Sale" Signs: During the period of the sale: Directional signs permitted only during the period of an open house;
  - (2) Garage/Estate Sales: Only on the day of the sale from 8:00 a.m. to 6:00 p.m.;
  - (3) Political Signs: Two weeks before election and taken down the day after election;

it being understood that Declarant reserves the right to approve other signs as deemed appropriate.

- r. **Building Materials and Rubbish:** No excess or unused building material or materials will be kept, stored, or otherwise maintained on any Lot, other than for use or uses connected and coterminous with approved or permitted construction; and no junk, rubbish, waste material, or other refuse will be abandoned, stored, or otherwise maintained on any Lot.
- s. **Vehicle Restrictions:** No boat, camper, trailer, or similar chattel will be maintained any Lot, other than in an enclosed garage, for more than seven days within any calendar year; and no automobile, motorcycle, truck, or other vehicle will be repaired, torn down, or stored on any Lot, other than in an enclosed garage. No motor vehicle may be parked or stored outside on any Lot except vehicles driven on a regular basis (at least daily) by the occupants of the Residence. Garage doors shall be kept closed except when in actual use. Garage entrances must not face the street wherever the terrain permits an alternate design. Any vehicle parked on a City street, if in violation of current City Code, will be reported to authorities.
- t. **Restrictions on Animals:** No birds, livestock, poultry, or animals other than up to four domesticated non-commercial animals will be bred, kept, or otherwise maintained on any Lot. No stable shall be constructed on any Lot. All dog runs, doghouses or kennel enclosures must have written approval from Declarant.
- u. **Restricted Activities:** No commercial enterprise or gainful public business, occupation or profession, no public annoyance or nuisance, and no noxious or offensive activity will be carried on, conducted, or otherwise permitted on any Lot. No Lot may be used in any way for any purpose that may endanger the

health or unreasonably disturb the Owner or Owners of any Lot or any lawful resident thereof.

- v. **House Colors and Siding**: Exterior colors of Residences shall be in gray, white or earth tones. All colors must be approved by the Declarant. Pastels and bold colors are expressly prohibited. Matte-finish vinyl or metal siding is permitted with approval by Declarant as to color, type and finish.
- w. **Hidden Utility Mechanisms**: Gas meters and air conditioning units must be hidden either architecturally, aesthetically landscaped or through use of a remote reading device.
- x. **Swimming Pools**: No swimming pool shall be permitted that extends more than one (1) foot above ground level.

## ARTICLE II EASEMENTS AND PERPETUAL RIGHTS

All Lots within the Subdivision are and will be subject to all and each of the following easements for landscape purposes, utility conduits, connections, maintenance, and services, which are hereafter called "Easements".

- A. A perpetual license and/or easement is reserved by Declarant for surface water drainage purposes on, over, through, under and across certain strips of land of various widths, as shown on Exhibit A.
- B. A perpetual license and/or easement is hereby reserved in favor of and granted to the Town of Underwood and any firm, entity or utility company, their successors and/or assigns, which has been granted a right or franchise to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone, telegraph, internet and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across certain strips of land, of various widths, abutting the front, rear and/or side boundary lines of the Lots, all as shown on Exhibit A; this license and/or easement being granted for the use and benefit of all Owners of these Lots; PROVIDED, HOWEVER, that such licenses and/or easements are granted upon the specific conditions that if any of such facilities are constructed but are thereafter removed without replacement within sixty (60) days after their removal, then such license and/or easement shall automatically terminate and become void as to such unused or abandoned license and/or easementways; and further PROVIDED, HOWEVER, that the license or easement for any such strip in each Lot will terminate if no facility is installed therein or thereon on or before the expiration of fifteen (15) years after the filing of these Declarations. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

- C. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

**ARTICLE III  
ENFORCEMENT**

- A. The covenants and restrictions of this Declaration shall run with and bind the Lots in the Fieldcrest Addition for a term of twenty-one (21) years from the date this Declaration is recorded. This Declaration may be amended by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner that it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.
- B. The Declarant or Owner of a Lot shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages for such violation. Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- C. In addition to the above enforcement provisions, the Declarant may, in its discretion, impose a charge against each Lot not to exceed the sum of \$50.00 per day for each separate incidence of nonconformance of any Lot with any Covenant set forth in Article II of the Declaration as may from time to time be amended.
- D. Lot Owner will be notified of any covenant violation/complaint by written notice from the Declarant, and will be given thirty (30) days to respond with a plan of corrective action or a disputation of the complaint.
- E. Invalidation of any Covenant in this Declaration by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has executed this Declaration at Underwood, Pottawattamie County, Iowa, this 26<sup>th</sup> day of March, 2004.

Mary Jo Hough  
Witness:

Shawn McKee  
Shawn McKee

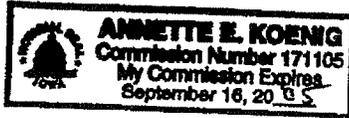
Mary Jo Hough  
Witness:

Rebecca L. McKee  
Rebecca L. McKee

STATE OF IOWA                    ]  
  ] ss  
POTTAWATTAMIE COUNTY ]

Before me the undersigned, a Notary Public, personally came SHAWN McKEE and REBECCA L. McKEE, to me known to be the identical persons who executed the foregoing instrument, and acknowledged the execution of the above to be their voluntary act and deed.

WITNESS my hand and notarial seal the day and year last above written.



*Annette E. Koeng*  
Notary Public