

CONFIDENTIAL

Entry No. 74 Continued

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HEARTLAND HEIGHTS FIRST ADDITION
LOTS 1 - 30
IN COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA

THIS Declaration, made this 8th day of September, 1995, by the undersigned,

WITNESSETH:

WHEREAS, the undersigned is the owner of the real estate described in Clause I of this Declaration, and is desirous of subjecting the real property described in said Clause I to the restrictions, covenants, reservations, easements, liens and charges hereinafter set forth, each and all of which is and are for the benefit of said property and for each owner thereof, and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest and any owner thereof:

NOW, THEREFORE, the undersigned hereby declares that the real property described in and referred to in Clause I hereof, is and shall be held, transferred, sold and conveyed, subject to the conditions, restrictions, covenants, reservations, easements, liens and charges herein set forth.

ARTICLE I

Property Subject to this Declaration

The real property which is, and shall be, held and shall be conveyed, transferred, and sold, subject to these conditions, restrictions, reservations, easements, liens and charges, with respect to the various portions thereof set forth in the various clauses and subdivisions of this Declaration is located in Council Bluffs, Pottawattamie County, State of Iowa, and is more particularly described in the Plat of Heartland Heights First Addition, Lots 1 through 30, in Council Bluffs, Pottawattamie County, Iowa, attached hereto and incorporated herein by this reference.

No property other than that described above shall be subject to this Declaration, unless and until specifically made subject thereto.

ARTICLE II

DEFINITIONS

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

- (1) "The Property" shall mean and refer to all such existing properties as are subject to this Declaration and any addition to the residential community known as HEARTLAND HEIGHTS FIRST ADDITION which Developer may in its discretion make subject to this Declaration as hereinafter set forth.
- (2) "Lot" shall mean and refer to any separately-owned parcel as may be shown by any recorded subdivision plat of the Property. Where the context indicates or requires, the term "Lot" includes any structure on the Lot.
- (3) "Residence" shall mean and refer to any portion of a building situated upon the Property designed and intended for use and occupancy as a residence by a single family.
- (4) "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title.

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to any lot situated upon the Property. 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. Lot Owner shall include Developer.

(5) "Developer" shall mean and refer to BCD CORPORATION, its successors and assigns.

ARTICLE III

GENERAL PURPOSES OF CONDITIONS & BUILDING CONDITIONS

The real property described in Clause I hereof is subject to the covenants, restrictions, conditions, reservations, liens and charges hereby declared to insure the best use and the most appropriate development and improvement of each building site thereof, to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to preserve, as far as practical, the natural beauty of said property; to guard against the erection of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon with appropriate locations thereon on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure and maintain proper setbacks from street and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvement of said property, and thereby to enhance the values of investments made by the purchaser of building sites therein.

A. All lots described herein shall be known, described and used solely as residential lots, and no structures shall be erected on any lot other than one detached single-family dwelling, not to exceed thirty (30) feet in height and measured from the lowest point on top of the curb of each lot, unless otherwise approved by the Developer. Unless otherwise approved by the Developer, no dwelling shall contain finished living areas, exclusive of porches, breezeways, carports, and garages of less than:

1. One Story Residences: 1,300 square feet on the ground floor for a one-story house, unless it has a basement garage, in which case 1,400 square feet shall be required on the ground floor.
2. One and One-Half Story Residences: 1,200 square feet on the ground floor for a one and one-half story house, with a minimum of 1,800 square feet above basement level.
3. Two Story Residences: 1,600 square feet above basement level with 1,000 square feet on the main floor for a two-story house.
4. Tri-Level and Split-Level Residences: 1,850 square feet of living area above ground for a tri-level house or a split-level house.
5. Split-Entry Residences: 1,850 square feet of main floor living area for a split-entry house.

All dwellings shall have a garage for at least two (2) automobiles, which shall be for the use only of the occupants of the residence to which they are appurtenant, and which garage must be attached to the residence.

The Developer shall have the right to define the terms one-story house; one and one-half story house; two-story house; tri-

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level house; split-level house; and split-entry house. Houses of unusual design and not included in the categories herein listed will be considered on an individual basis. Square foot areas are to be computed to the outside surface of enclosing walls.

B. 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, slate or tile. Exteriors, except roofs and shake sidewalls, shall be covered with no less than two coats of good paint or stain.

C. The construction and landscaping of each Residence shall be completed within twelve (12) months from the date the construction of the Residence's foundation is commenced. Excess dirt resulting from excavation done on any Lot may be hauled from the Lot to other sites within the Development as may be specified by the Developer or used in landscaping the Lot within the construction time period. Dirt may be removed from the Development only by the written consent of the Developer. All excavation or alteration of the existing topography and native growth will be done in a manner such that the natural drainage or designated drainage is not altered to such an extent that unreasonable or undesirable drainage or erosion results. Improvements not so completed, or upon which construction has ceased for ninety (90) consecutive days, or which have been partially or totally destroyed and not rebuilt within twelve (12) months shall be deemed nuisances. Developer may remove any such nuisance or repair or complete the same at the cost of the Lot Owner.

D. No outbuilding, garage, shed, tent, trailer, or temporary building of any kind shall be erected, constructed, permitted or maintained prior to commencement of the erection of a residence, and no outbuilding, garage, shed, tent, trailer, basement or temporary building shall be used for permanent or temporary residence purposes; provided, however, that this paragraph shall not be deemed or construed to prevent the use of a temporary construction shed during the period of actual construction of any structure on the property, nor the use of adequate sanitary toilet facilities for workmen which shall be provided during such construction.

E. No building, fence, landscaping or other structural improvement, including but not limited to, playground equipment, storage sheds, antennae, pet confinements, rock gardens, fountains, statues, trees, and shrubs, shall be commenced, erected or maintained upon the premises, nor shall any exterior painting, resurfacing, addition to or change or alteration therein, be made until plans and specifications showing the nature, kind and shape, heights, size, floor plan, materials, color of paint and location of the same shall have been submitted to and approved in writing as to the harmony of external design, color, and location in relation to surrounding structures and topography by the Developer.

F. The Developer shall have the right to disapprove any such plans or specifications or grading or landscaping plans which are not suitable or desirable in the Developer's opinion for aesthetic or other reasons, and in passing upon such plans, specifications, grading or landscaping plans, the Developer shall have the right to take into consideration suitability of the proposed building or other structure and of the materials of which it is to be built, size, floor plans, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof of the surroundings, the topography of the land and the effect of the building or other structure or landscaping as planned on the outlook from the adjacent or neighboring property, and if it is in accordance with all of the provisions of this Declaration.

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G. The Developer may disapprove if the plans and specifications submitted are incomplete, or in the event the Developer deems the plans, specifications, details or any part thereof, to be contrary to the spirit or interest of these conditions and restrictions. The decisions of the Developer shall be final.

H. Exposed portions of the foundation of each building are to be covered with either siding or brick unless otherwise approved in writing by the Developer.

I. All building plans and plot plans shall be approved in writing by the Developer, prior to the commencement of any construction.

J. A dwelling on which construction has begun must be completed within one (1) year from the date the foundation was dug for said dwelling.

K. All utility service lines shall be underground.

ARTICLE IV

OTHER RESTRICTIONS

A. No boat or similar water-borne vehicle, camping trailer, recreational vehicle, snowmobile, auto-drawn trailer of any kind, mobile home, truck, motorcycle, jeep, van, aircraft, grading or excavating equipment or other heavy machinery or equipment, or any other portable vehicle shall be stored outside the garage or in any manner left exposed on any lot at any time. Each Lot Owner shall provide off-street parking to adequately meet his or her needs. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling except when in actual use.

B. No television, radio, citizens' band, short wave or other antenna, solar panel, windmill, wind-driven electrical generating system, sun energy system, clothes line or pole, 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 regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the neighborhood and any such rules and regulations shall be binding upon all of the Lots. No lights or other illumination shall be higher than the Residence.

C. No noxious or offensive activity or trade 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 be permitted to 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 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.

D. Trash, garbage or other wastes shall not be kept on any Lot, except in sanitary containers. No incinerator or trash burner

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shall be allowed on any Lot, no fuel tank shall be permitted to remain outside of any Residence, and, except on pick-up days, 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.

E. No repair of automobiles will be permitted outside of garages on any lot at any time; nor will any vehicle offensive to the neighborhood be visibly stored, parked or abandoned in the neighborhood.

F. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any lot, including pet confinements and dog runs.

G. Vegetable gardens are prohibited on any yards adjoining streets.

H. The titleholder of each lot, vacant or improved, shall keep his or her lot or lots free of weeds and debris.

I. 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 rights-of-way or easements and rights-of-way shown on the recorded plat of the Property. 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 Property as a cross-easement for utility line or service maintenance.

J. All garage doors shall remain closed at all times except when necessary for entry or exit.

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

L. 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.

M. 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.

N. 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.

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

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

Q. No Exterior Structure including, but not limited to, any outbuildings shall be erected upon, moved onto or maintained upon any Lot except (i) with and pursuant to the advance written approval of the Developer or its designee, and (ii) in compliance with the additional specific restrictions set forth herein; 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

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plans approved by the Developer, or its designee, and has been built in accordance with such approved plans.

R. 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 scenic view of any Lot. Fences and walls will be permitted only with the approval of the Developer or its designee.

S. All basketball goals shall be free-standing and not attached to the Residence unless the Developer or its designee determines that there are compelling reasons for the basketball goal to be attached to the Residence. All basketball goals shall be consistent with the standard designs and materials to be selected by the Developer or its designee. All backboards shall be clear or white and made of fiberglass, plastic or other approved materials. All poles shall be an earth-tone color. There shall be no more than one (1) basketball goal per Lot. The location of each goal shall be approved by Developer or its designee.

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

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

V. No animal of any kind shall be raised, bred or kept on any Lot, except that up to a maximum number of two (2) household pets, including dogs, cats or other household pets, may be kept, as long as they are in compliance with the Council Bluffs, Iowa Ordinances as the same is now enforced or may hereafter be amended. 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.

W. All driveways must be improved with hard surface, 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.

X. 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 Property on Lots 1, 8, 9 and 15.

ARTICLE V

GENERAL PROVISIONS

A. The Covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by Developer or its successors as it sees fit for a period of five (5) years from the date hereof. This Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the lots. Any amendment must be recorded.

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HEARTLAND

B. 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.

C. 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 upon and subject to each and all of the provisions of this Declaration of Restrictions 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 heirs, 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.

D. Developer reserves the right to delegate its duties hereunder to a designee of its choice.

Executed on the above date set forth.

BCD CORPORATION.

By *Donald F. Coats*
DONALD F. COATS, Its President

STATE OF IOWA)
COUNTY OF POTTAWATTAMIE) ss.

On this 8th day of September, 1995, before me, the undersigned, a Notary Public in and for said County and State, personally appeared DONALD F. COATS, to me personally known, who, being by me duly sworn, did say that he is the President of said corporation executing the within and foregoing instrument, that the corporation has no seal, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and the said DONALD F. COATS, as President acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

 DEBORAH L. PETERSEN
MY COMMISSION EXPIRES
12-19-96

Deborah L. Petersen
NOTARY PUBLIC

