

Covs for Pottawattmie

McPherson Woods

BK 107-6207

Prepared by and return to:
Craig A. Knickrehm, Valentine, O'Toole, McQuill

Omaha Title & Escrow

**DECLARATION OF RESTRICTIONS AND COVENANTS FOR
McPHERSON WOODS**

This Declaration is made this 21st day of September 2006, by McPHERSON DEVELOPMENT, L.L.C., hereinafter called "Developer".

ARTICLE I

STATEMENT OF INTENT

Developer owns the real estate commonly known as McPHERSON WOODS, a subdivision in Council Bluffs, Pottawattmie 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. In connection with the maintenance of certain portions of said real estate, it is the intent and desire of Developer to incorporate the McPHERSON WOODS 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.

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:

(1) "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 McPHERSON WOODS, which Developer may in its discretion make subject to this Declaration as hereinafter set forth, including Common Areas, if any.

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(2) "Lot" shall mean and refer to any separately owned 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.

(3) "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.

(4) "Lot Owner" 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 that 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 McPHERSON DEVELOPMENT, L.L.C., its successors and assigns.

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

(7) "Homeowner's Association" shall mean McPHERSON WOODS HOMEOWNERS ASSOCIATION, INC., the Iowa not-for-profit corporation to be formed by the Developer for the purpose of serving as the Homeowner's Association for the Properties.

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

(9) "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, animal shelter, 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, tree house, or other recreational or play structure.

ARTICLE III

USE OF LAND

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 or other 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. All residences shall be erected and maintained in compliance with the setback line requirements contained in the Council Bluffs, Iowa Zoning Ordinances and the Final Plat.

Section 3.

Dwelling Size.

a. Residences designed for construction on Lots in McPHERSON WOODS will be required to have the following minimum square footage, whenever practicable in light of the unique topography, existing trees and other native growth, and the other provisions of these covenants, conditions and restrictions, to-wit:

1. One Story Residences: 1100 square feet of enclosed floor area will be required on the ground level.

2. One and One-Half Story Residences: 1500 square feet of enclosed floor area will be required above the basement level, with at least 800 square feet of enclosed floor area required on the first floor.

3. Two Story Residences: 1500 square feet of enclosed floor area will be required above the basement level, with at least 700 square feet of enclosed floor area required on the first floor.

4. Bi-Level and Split-Level and Split-Entry Residences: 1200 square feet of finished living area will be required, with at least 1000 square feet of finished living area required on the main finished levels.

b. The phrase "enclosed floor 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, 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, 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 ten (10) percent of such minimum floor area requirements for such Residence.

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

Section 5.

Approval of Plans and Post-Construction Changes.

a. No Residence or Exterior Structure may be erected upon any Lot unless and until the building plans, specifications, exterior color scheme, materials, location, elevation, grade 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 provided herein, the Board of Directors of the Homeowner's Association. No structures of any kind shall be moved onto any Lot. Nor shall any change or alteration in such building plans, specifications, exterior color scheme, materials, location, elevation, grade 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 Council Bluffs, Iowa, Zoning Ordinances.

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, the Board of Directors of the Homeowner's Association. 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 and color 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, the Board of Directors of the Homeowner's Association.

c. No building, fence, wall or other structure, shall be commenced, erected or maintained upon a Lot, nor shall any exterior painting, resurfacing, addition to, change or alteration therein, be made until the plans, specifications, and plot plan showing the size, nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing as to harmony of external design, color and location in relation to the surrounding structures and topography by the Developer, or its designee.

d. All such plans and specifications shall be submitted to the Developer at its Council Bluffs, Iowa, office. The subdivision is composed of in part of 34 building Lots, 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 Residences in McPHERSON WOODS for the benefit of both the individual Lot Owners and the public in general. These controls are not to be viewed as a means for suppressing expressions of individuality or as a mere land restriction. A secondary purpose of the design and other controls is to protect the Developer's financial investment in the unsold Lots.

e. 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. 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 shall be hauled from the Lot or used in landscaping the Lot within the construction time period. 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 ninety (90) days shall be deemed nuisances. Developer or the

Homeowner's Association may remove any such nuisance or repair or complete the same at the cost of the Lot Owner.

g. Construction of the Residence on the Lot shall commence not later than eighteen (18) months after the initial conveyance of title from the Developer to Lot Owner. This period of eighteen (18) months shall be binding upon subsequent purchasers of any Lot, and shall run from the initial conveyance from the Developer and shall not be extended without the written consent of the Developer or its designee. If construction is not commenced within eighteen (18) months after the initial conveyance of title from the Developer, then Developer shall have the right, at its option, to repurchase the Lot from the Lot Owner for the original price Lot Owner paid to Developer for the original purchase, less ten (10) percent of the total original purchase price. Developer may exercise this option at any time after the expiration of eighteen (18) months from the date of the initial conveyance of title from the Developer, so long as construction has not been commenced. Additionally, Developer shall have the first right of refusal to purchase any Lot if the Lot Owner desires to sell such Lot within the eighteen (18) months following the initial conveyance from Developer. During this period, Lot Owner shall give Developer immediate written notice of any accepted offer to purchase the Lot, and Developer shall have thirty (30) days after the date of the Notice to exercise its first right of refusal hereunder, by tendering its offer to purchase to Lot Owner, on substantially the same terms and conditions of the prior accepted offer. If Developer does not exercise this first right of refusal to purchase within the thirty (30) day period, this right shall terminate and Lot Owner may proceed to sell the Lot pursuant to the prior accepted offer. All options and first rights of refusal hereunder shall terminate upon completion of construction of the Residence on the Lot.

h. Material and equipment used during the construction and landscaping process will be stored and maintained on the Lot in an orderly manner and discarded 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.

i. No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, motorcycle, van, aircraft, grading or excavating equipment, or any other portable vehicle shall be stored, repaired, or routinely parked on the streets of the subdivision as shown by the Plat. 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 garage space.

j. If a Lot Owner intends to hold title to any Lot without constructing a Residence thereon, the Lot Owner Shall first obtain the approval of the Developer, or its designee, to avoid compliance with paragraph "f" of this Section.

k. 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 Homeowner's Association. If such delegation is made, control shall be the function and obligation of the Board of Directors of the Homeowner's Association, and it may not be delegated to a separate control committee or other similar group. 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 a person authorized to act on behalf of Developer.

l. Welcome Homes, Inc. or Mark McKeever and/or their assigns, are the

exclusive builder for McPHERSON WOODS.

Section 6.

Building Material Requirements; Utilities, Service and Access.

a. Building Material Requirements. Exterior walls of all buildings, structures and appurtenances thereto shall be made of brick, stone, wood shingles, wood siding, glass blocks, vinyl or steel siding, or any combination thereof. Windows, doors and louvers shall be of vinyl, wood, fiberglass or metal and glass. The roof of all improvements shall be covered with a minimum of Tamko Heritage Laminate 25 year shingles, or wood cedar shakes, or other material approved by Developer. Standard three-tab shingles are not allowed. Exteriors, except roofs, shall be covered with no less than two coats of good paint or stain. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with materials approved in writing by Developer. No curb cut shall extend beyond the two-foot concrete curb and gutter. No building shall be permitted to stand with its exterior in an unfinished condition for longer than five (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 one (1) month.

b. Utilities, Service and Access. 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 platted streets.

Section 7.

Buildings or Uses Other than for Residential Purposes; Noxious Activities Miscellaneous.

a. Except as otherwise provided in Article 3, Section 1 above, no Residence or Exterior Structure shall ever be placed, erected or used for business, professional, 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 or in the Common Areas, nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot or in the Common Areas or be permitted to accumulate or remain on any Lot or in the Common Areas, 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. 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. Trash placed at the curb for weekly pick up must be in enclosed containers. Trash bags or loose items of trash shall not be placed outside at any time.

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, the City of Council Bluffs and 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 or the Common Areas 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 and 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 8.

Maintenance of Lots.

a. All Lots, whether occupied or unoccupied, and any improvements placed thereon shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, Developer or the Homeowner's 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 Homeowner's 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. All said vehicles shall be parked, maintained and stored inside the Residence 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 on the Common Areas or within the entire boundaries of McPHERSON WOODS other than in the streets or in the driveways. No all terrain vehicles shall be operated in the entire boundaries of McPHERSON WOODS.

c. 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.

d. All garage doors shall remain closed at all times except when necessary

for entry or exit.

e. In any event, each Lot shall have a mailbox consistent in size and style with others in the subdivision, constructed in conformity with all U.S. Post Office regulations. Mailboxes shall be subject to the approval by the Developer and the Post Master.

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. In the event of vandalism, fire, windstorm or other damage, no Residence or Exterior Structure shall be permitted to remain in a damaged condition for longer than one (1) month.

i. Christmas lights and/or decorations may be erected or maintained on any of the Lots hereby restricted, only during a sixty (60) day period beginning November 15th of each calendar year.

j. Dogs shall be confined to their Owner's Lot. No dogs shall be allowed to run at large in the Properties.

k. Air conditioning apparatus or unsightly projections shall not be attached or affixed to the front or side 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 designees.

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 McPHERSON WOODS.

Section 9.

Exterior Structures.

a. No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot without the prior written approval by Developer or the Homeowner's Association.

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

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

d. No swimming pools shall be permitted unless the plans and specifications for the pool are approved in writing by the Developer or the Homeowner's Association. All pools and hot tubs shall be fenced, with materials and design approved by the Developer or its designee. All pools and hot tubs shall be kept clean and maintained in operable condition.

e. No dog runs shall be permitted on any Lot.

Section 10.

Animals. No animal of any kind shall be kept on any Lot, except that up to two (2) dogs and/or cats may be kept, as long as they are in compliance with the Council Bluffs, Iowa Zoning Ordinances as the same is now enforced or may hereafter be amended.

Section 11.

Driveways, Sidewalks and Drainage.

a. Driveways. All driveways must be concrete. 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.

b. Sidewalks. All sidewalks must be concrete and shall be installed by Lot Owner, at Lot Owner's expense, in accordance with all Council Bluffs, Iowa Ordinances and the Final Plat of McPHERSON WOODS. The required sidewalks shall be installed as soon after construction of a dwelling as weather permits.

c. Residence Drainage. All drainage from roofs of the Residence, coming from downspouts, gutters or otherwise, shall be drained underground either to the street adjacent to the Lot or to the rear yard of the Lot. No drainage pipes or extensions shall be visible at ground level or below.

Section 12.

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.

Section 13.

Landscaping. All landscaping must be approved by the Developer or the Homeowner's Association.

a. Landscaping and Lawns. Prior to occupancy, all front and back lawns,

including all areas between each Residence and any adjacent street, shall be fully sodden; however, a Lot Owner may leave a portion of the Lot as a natural area with the express written permission of the Developer or its designee. The Owner of each Lot shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four (4) inches and shall properly maintain and replace all trees and landscaping. Noxious weeds and plants shall be kept reasonably mowed and dead and all unsightly growth shall be removed from all improved Lots.

b. Trees. Each Lot Owner shall plant, at Lot Owner's expense, at least two 1-1/2 inch trees in the front yard of the Lot. The species of trees to be planted shall be approved by the Developer or its designee. The required trees shall be planted as soon after construction of a dwelling as weather permits.

c. Sprinkler System. Each Lot Owner shall install, maintain and repair, at Lot Owner's expense, lawn sprinkler systems on each Lot. The installation of the sprinkler system shall be completed at the time the dwelling construction is complete.

d. Landscaping Required. In addition to the cost and the requirements of the preceding three (3) paragraphs, each Lot Owner shall provide, at his or her expense, professional landscaping improvements on each Lot in the minimum amount of \$2,000.00 for such improvements. All such required landscaping shall be completed by the Lot Owner prior to occupancy.

Section 14.

Easements for Public Utilities; Drainage; Maintenance; Signs and Fences.

a. 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 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 Homeowner's Association as a cross-easement for utility line or service maintenance.

b. Other easements are provided for in the final plat of McPHERSON WOODS.

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

ARTICLE IV.
HOMEOWNERS' ASSOCIATION

Section 1.

The Association. Developer has caused the incorporation of McPHERSON WOODS HOMEOWNERS ASSOCIATION, an Iowa not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of McPHERSON WOODS, including:

a. While Developer does not intend to provide common facilities, the Association may in the future acquire, construct, landscape, improve, equip, maintain, operate, repair, keep up and replace Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include playgrounds and parks; dedicated and non-dedicated roads, paths, ways, entry areas and green areas; and signs and entrances for McPHERSON WOODS. Common Facilities may be situated on property owned or leased by the Association, on private property subject to an easement in favor of the Association, or on public property.

b. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of any Common Facility.

c. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of McPHERSON WOODS and the protection and maintenance of the residential character of McPHERSON WOODS.

Section 2.

Membership and Voting. McPHERSON WOODS has 34 lots (referred to as the "Lots") . The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lots merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee. The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Owner of each Lot other than Developer, whether one or more persons and entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association.

Developer shall be entitled to one hundred (100) votes per Lot that it owns.

Section 3.

Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Iowa Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

a. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations regulating to the Common Facilities.

b. The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks, medians, thoroughfares or public property within or near McPHERSON WOODS.

c. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

d. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

e. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

f. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

g. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

h. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

i. General administration and management of the Association and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

j. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

k. The exercise of any and all rights assigned to the Association by Developer including but not limited to the architectural control of the improvements constructed in McPHERSON WOODS.

Section 4.

Mandatory Duties of the Association. The Association shall maintain and repair the fences and signs that have been or will be installed by Developer along the entrances to McPHERSON WOODS.

Section 5.

Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

Section 6.

Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Developer or sold by the Developer to a contractor for future construction of a home.

Section 7.

Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

Section 8.

Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Section 3 of this Article.

Section 9.

Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 10, below, the aggregate dues, which may become due and payable in any year, shall not exceed the greater of:

- a. One Hundred and No/100 Dollars (\$100.00) per Lot.
- b. In each calendar year beginning on January 1, 2007, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

Section 10.

Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Three Hundred and No/100 Dollars (\$300.00) per Lot.

Section 11.

Excess Dues and Assessments. With the approval of sixty percent (60%) of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

Section 12.

Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 6, above.

Section 13.

Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

Section 14.

Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessment, which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of ten percent (10%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise

escape liability of the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any right of the Association.

Section 15.

Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

Section 16.

Developer's Lots. Notwithstanding the above requirements regarding the payment of assessments, lots owned by Developer and held for sale shall not be subject to the payment of any-assessments until they are sold.

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 Homeowner's 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 representative, 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 any action taken.

Section 3.

Notices. 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 Homeowner's 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 Homeowner's 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 provisions which shall remain in full force and effect.

Section 6.

Amendment. This Declaration may be amended only by written consent of the Lot Owners holding at least seventy five percent (75%) of the votes entitled to be cast pursuant to Article IV, Section 2 hereof, evidenced by a Declaration duly executed and acknowledged by such Lot Owners and recorded in the office of the Recorder of Pottawattamie County, Iowa.

Section 7.

Insurance. The Board of Directors of the Homeowner's 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 Homeowner's 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 expenses indemnity endorsement, or its equivalent, affording protection for the officers and directors of the Homeowner's 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 Homeowner's 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.

Obligations 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 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.

McPHERSON DEVELOPMENT, L.L.C.

By: Mark McKeever
Mark McKeever, Managing Member

STATE OF IOWA)
) ss:
COUNTY OF POTTAWATTAMIE)

On this 21st day of September, 2006, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Mark McKeever, 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 said instrument was signed on behalf of said limited liability company by authority of its Members; and that the said Mark McKeever, as such Member acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it and by him voluntarily executed.



Christine M. Blum
NOTARY PUBLIC

**ADDENDUM TO DECLARATION OF RESTRICTIONS AND COVENANTS FOR
McPHERSON WOODS**

Lots 1 through 34, and Outlot 1, McPherson Woods, a subdivision, as surveyed platted and recorded in Pottawattamie County, Iowa.

Outlot 1 as depicted on the Final Plat is to be conveyed to and maintained by the Homeowners Association. As reflected on the Final Plat, there can be no structures constructed on Outlot 1.