

COMMISSION

Preparer

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**RESTRICTIONS AND COVENANTS
OPAL 2nd ADDITION IN THE CITY OF
COUNCIL BLUFFS, IOWA**

Declarant is the owner of all of the lots of Opal 2nd Addition, a subdivision located in the City of Council Bluffs, Iowa, and does hereby adopt the following Restrictions and Covenants, to-wit:

1. As used herein, the following definitions shall apply:
 - a. "Subdivision" shall mean Opal 2nd Addition.
 - b. "Addition" shall mean Opal 2nd Addition.
 - c. "Architectural Control Committee" shall mean the Developer or a committee appointed by the Developer.
 - d. "Declarant" shall mean Opal Drive, L.L.C., its assigns and successor developers.
 - e. "Developer" shall mean the Declarant, its assigns and successor developers.
 - f. "Lot" shall mean and refer to any plat of land shown upon the recorded plat of the addition.
 - g. "Owner" or lot owner means:
 - (1) Any person, including Declarant, who holds fee simple title to any lot in the subdivision which is at any time subject to the provisions of this Declaration.

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- (2) Any person or legal entity who has contracted to purchase fee simple title to a lot pursuant to a written agreement in which case the seller under said agreement shall cease to be the Owner while said agreement is in effect.
 - (3) Any person or legal entity who has commenced legal proceedings to forfeit a contract of sale or foreclose a mortgage on any lot or serves as a court appointed receiver to manage said lot or serves as a Trustee under the bankruptcy law.

h. "Residence" shall mean custom-built, duplexes or single-family attached dwellings.

2. The Subdivision shall be subject to the control of the following architectural control covenants.

- a. Scope of Architectural Control. No building, fence, wall or other structure, shall be commenced, erected or maintained upon a lot, nor shall any exterior addition to, change or alteration therein, be made until the plans, specifications, exterior siding, color scheme, and plot plan showing the nature, kind, shape, height, materials and location of the same have been submitted to and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to the surrounding structures and topography by the Developer, or by an architectural control committee appointed by said Developer. In the event the Developer or its designated committee fails to approve or disapprove in writing such design and location within thirty days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. All such plans and specifications shall be submitted to the Developer in care of Heartland Properties, Inc., 301 West Broadway, Council Bluffs, Iowa 51503, or such other place as the Developer may designate.

b. Guidelines for Architectural Control. The following statements regarding design, location and construction of Residences are intended to be merely guidelines, not absolute criteria, that the Developer or the Architectural Control Committee will use in granting architectural approval. Deviations from the guidelines will be made in order to protect the unique topography and existing timber and other native growth that are essential elements to both the nature and character of the Addition.

- (1) Living trees over six inches in diameter (measured at a point two feet above ground level) may be removed from the lots with the approval of the Developer. The plans submitted to the Developer pursuant to the provisions of Article 2, Paragraph a., above, must identify each tree proposed to be removed.
- (2) Each individual lot owner is to take all steps necessary to reasonably and adequately regulate the drainage from the owner's lot and to control unreasonable and undesirable erosion.
- (3) The provisions of the Council Bluffs City Code will govern the setback requirements for the lots in the Addition, subject to the approval of the Architectural Control Committee or Developer. Rear setbacks shall not be less than 10 feet. Furthermore, side and rear setback variances will be granted only in the event that it is necessary to achieve reasonable and proper slope control, drainage, and preservation of existing trees and other native growth. Provided, however, said side and rear setback variances will not be granted if to do so would produce undesirable design, location, scenic or aesthetic results. As to the common side yard, side yard setbacks shall not apply to zero lot line town home construction; however the side yard setbacks shall apply to the side yards adjacent to other lots.

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- (4) Should an unattached maintenance structure be desired on the lot, it shall be of the same design and construction as the accompanying Residence.
- (5) No lot shall be further subdivided and each lot is limited to the construction of one Residence.
- (6) There shall be no fences in the front yard and no sign obstructing structures or plants shall be allowed in the front yard including but not limited to wind breaks, row of Poplar trees, evergreens, hedges, earthen berms.
- (7) All foundation walls of any Residence shall face any adjoining street shall be covered with either brick or siding in harmony with the design and construction of the Residence. The exterior surface of all other foundation walls will be designed and finished to compliment the design and construction of the Residence.
- (8) Areas which will be used to store, repair or routinely park recreational vehicles, or other vehicles will be designed to include a reasonable screening device to insure, where appropriate, that the contents of said area cannot be seen from any adjoining street or lot. In no event may said vehicles be parked or repaired in the front yard for a period longer than 24 hours.
- (9) Residences designed for construction on lots in the Addition will be required to have the following square footage, whenever practicable in light of the unique topography, existing trees and other nature growth, and the other provisions of these covenants, conditions and restrictions, to-wit:
 - (a) One-Story Residences: 900 square feet will be required on the ground level.

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- (b) One and One-Half Story and Two-Story Residences: At least 650 square feet required on the first floor above the basement level and a total square footage of 1300 square feet not counting the basement.
 - (c) Bi-Level, Split-Level, and Split-Entry Residences: 900 square feet of finished living area will be required.
 - (d) The above square footage requirements shall not include the attached car garage.
 - (e) The Developer reserves the right to amend these square footage requirements by up to 20% of the above amounts, which amendment shall be effective upon the recording of same.
- (10) No single family residence shall be designed or be converted for the use of more than one family. No zero lot line duplex residence shall be designed or be connected for the use of more than one family in each one-half of the duplex.
 - (11) The side yard, front yard and rear yard setback law shall not apply to open patios or uncovered porches.
 - (12) No earth homes or other subterranean homes shall be allowed.
 - (13) Each lot owner shall construct a public sidewalk in front of each lot and upon each side street side of each corner lot. Construction of the sidewalk shall be in accordance with the City of Council Bluffs specifications and shall be completed before the residence is occupied, or as soon thereafter as weather permits.

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- c. No responsibility, liability or obligation shall be assumed by or imposed upon Developer by virtue of the authority granted to Developer in this section, or as a result of any act or failure to act by Developer with respect to any proposed improvement.

3. The construction and landscaping of each residence shall be completed within 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 90 consecutive days, or which have been partially or totally destroyed and not rebuilt within 12 months shall be deemed nuisances. Declarant may remove any such nuisance or repair or complete the same at the cost of the owner.

4. 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.

5. Construction and landscaping activities will be confined to the lot on which the construction is in process. The individual lot owner is responsible for any expenses related to providing utilities to the residence.

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6. No hazardous conditions or equipment shall be acquiesced to or maintained by the lot owner during construction or any other time without reasonable and proper warnings and safeguards.

7. 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 laws and regulations of the State of Iowa, or the ordinances and regulations of the City of Council Bluffs, 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 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.

8. The City of Council Bluffs City Code shall control the types and numbers of animals that may be kept on the lots; provided, however, that under no circumstances are any poultry, including but not limited to chickens, ducks, geese or turkeys, to be raised, bred or kept on any lot. All household pets shall be confined to the owner's lot and not allowed to run at large.

9. No vegetable gardens shall be permitted in the front yard.

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10. No lot shall be used or maintained as a dumping ground for solid waste, dirt, stone, brick or similar inorganic material, organic material, hazardous waste or nuclear material. No lot shall be used or maintained as a composting, recycling or salvage yard. No vehicles offensive to the neighborhood shall be visibly stored, parked, or abandoned on any lot. The terms herein shall be defined by the Iowa Code.

11. No unsightly objects will be erected, placed or maintained on any lot. No billboards and signs shall be permitted unless approved by the Architectural Control Committee. No advertising signs will be allowed on any lot unless approved by the Architectural Control Committee; provided, however, one "For Sale" sign of not more than 4 square feet may be placed or maintained on a lot. Notwithstanding the foregoing provisions, this paragraph shall not restrict the business activities, advertising, signs and billboards, or the construction and maintenance of structures by the Declarant, its agents and assigns, during the construction and sale period of this Addition.

12. 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 Opal Drive in front of the Addition 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 double car garage space.

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13. 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.

14. Maintenance of Lots. All lots and parcels, 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, Declarant or the Architectural Control Committee shall have the right to enforce this covenant by legal proceedings, including a suit for specific performance, and for the costs of such action, including reasonable attorney fees.

15. Ditches, Culverts and Swales. Each owner shall keep drainage ditches, culverts and swales located on owner's lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon owner's lot as may be reasonably required for proper drainage.

16. Reservations. The following easements over each lot or parcel and the right to ingress or egress to the extent reasonably necessary to exercise such easements, are reserved to Declarant and its licensee:

A. Utility and Drainage Easements. An easement on, over and under the rear 10 feet, the side 5 feet (except the zero lot line side), and the front 10 feet of each lot in the Development for the purpose of installing, maintaining and operating utilities thereon or thereunder, for the purpose of drainage control; for access to any lot or parcel; and for purposes of maintenance of said lots. This easement shall include the right to trim or remove trees, fences or other obstructions.

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- B. Duplex Party Wall Easement. The common wall between the duplex residences shall be a party wall to the center of the wall. The owners of each side of said party wall shall have a right to use it jointly to the middle of said party wall. Any extension of the wall shall be a party wall and part of the existing wall. If it becomes necessary or desirable to repair or rebuild the whole or any part of the wall, the repairing or rebuilding expense shall be borne equally by the parties, or by their heirs and assigns who shall be using it at the time of the repair or rebuilding. Any repairing or rebuilding of the wall shall be on the same location and of the same size as the original wall or part of the original wall, and of the same or similar material of the same quality as that used in the original wall or part of the original wall. This easement shall run with the land and shall bind the respective parties and their heirs, legal representatives and assigns.
- C. Duplex Easements. Each duplex unit built will contain common elements beneficial to the owners of each side. These common elements are the roof, exterior walls and foundation. As to each duplex the repair, painting, maintenance and replacement of these common elements shall be borne equally by the parties or by their heirs, legal representatives and assigns. Any repairing or rebuilding shall be on the same location and of the same size as the original duplex or part thereof and of the same or similar quality materials as used in the original construction. Any disputes between the owners of a duplex shall be submitted to the Architectural Control Committee for resolution. A majority vote of the members of the Architectural Control Committee on any dispute shall control. All repair, painting, maintenance and replacement shall first be approved by the Architectural Control Committee.
- D. Duplex Utility Easement. In the event pipes, wires, conduits or other public utility lines run through one side of a duplex unit which are utilized for or serve the other side, a valid easement for the maintenance of said pipes, wires, conduits or other public utility lines shall exist and in the

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event any part of the building is partially or totally destroyed and later rebuilt, repaired or restored as hereinafter provided, a valid easement for replacement and maintenance of said pipes, wires, conduits or other public utility lines shall exist.

E. Other Easements. Any other easements shown on the plat.

F. Use of and Maintenance by Owners. The areas of any lots affected by the easements reserved herein shall be maintained continuously by the owner of such lot, but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purposes herein set forth. Improvements within such areas shall be maintained by the owner except those for which a public authority or utility company is responsible.

G. Declarant reserves an easement across each lot for ingress and egress to any lots owned by Declarant. Once Declarant has sold all lots, this easement shall terminate.

17. Liability for Use Easements. No owner shall have any claim or cause of action against Declarant or its licensees arising out of the exercise or failure to exercise any easement reserved hereunder or shown on the plat except in cases of willful or wanton misconduct.

18. If an owner in the Subdivision or their heirs or assigns shall violate or attempt to violate any of the covenants or the restrictions contained herein, it shall be lawful for declarant or any other person or persons owning any lots in said Subdivision, to prosecute any proceedings at law or in equity against the person or

persons violating or attempting to violate any such covenant or restriction and either to prevent him or them from doing so or to recover damages or both for such violations.

19. Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision of this declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

20. Grantee's Acceptance. Each grantee or purchaser of any lot or parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot or parcel, accept such deed or contract upon and subject to each and all of the provisions of these restrictions and covenants and to the jurisdiction, rights, powers, privileges and immunities of Declarant and of the Architectural Control Committee. By such acceptance, such grantee or purchaser shall, for himself or herself, his or her heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with Declarant and the grantee or purchase of each other lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this document.

21. Amendment. The covenants, conditions and restrictions of this document shall run with and bind the land, and shall inure to the benefit of and be enforceable by the declarant, any lot owner, their legal representatives, heirs, successors and assigns, subject to this declaration, for a period of twenty-one (21) years from the date this declaration is filed in the records of the County Recorder of Pottawattamie County, Iowa, and after which time said covenants, conditions and restrictions may be automatically preserved and extended for successive periods of twenty-one (21) years by at least one lot owner, properly filing a claim once every twenty-one (21) years. The covenants, conditions and restrictions of this document may be amended during the first twenty-one (21) year period by an instrument signed by the owners of 100 percent of the lots in said subdivision, except that Developer may amend same without the approval of any lot owners until all lots are sold. Amendments of the Developer shall take precedent over all other amendments.

22. Severability Clause. In the event any portion of these restrictions and covenants shall, for any reason be held to be invalid, illegal and unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of these restrictions and covenants are invalid, illegal or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable,

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then such provision shall be deemed to be written, construed and enforced as so limited.

Dated this 24TH day of September, 1997.

OPAL DRIVE, L.L.C.

John H. Jerkovich
JOHN H. JERKOVICH, Member

Neil R. Bach
NEIL R. BACH, Member

Ronald D. Johnson
RONALD D. JOHNSON, Member

STATE OF IOWA

COUNTY OF POTTAWATTAMIE

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On this 24TH day of September, 1997, before me, a Notary Public in and for the State, personally appeared John H. Jerkovich, Neil R. Bach and Ronald D. Johnson, to me personally known, who being by me duly sworn did say that those persons are all of the members of said limited liability company, that no seal has been procured by the said limited liability company and that said instrument was signed on behalf of the said limited liability company by authority of its managers and the said John H. Jerkovich, Neil R. Bach and Ronald D. Johnson acknowledged the execution

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of said instrument to be the voluntary act and deed of said limited liability company by
it and by them voluntarily executed.



Christine M. Ritter
NOTARY PUBLIC IN AND FOR SAID STATE

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