

**COMPARED**AMENDED AND SUBSTITUTED PROTECTIVE AND RESTRICTIVE  
COVENANTS FOR SPENCER'S MOUNTAIN SUBDIVISION

THIS DECLARATION is made on this 16<sup>th</sup> day of  
June, 1978, by Spencer's Mountain, Inc., an Iowa  
 corporation, the owner of all of the land made a part of Spencer's  
 Mountain Subdivision as follows:

WHEREAS, said corporation is the owner of all of the land  
 made a part of Spencer's Mountain Subdivision more particularly  
 described as follows:

Beginning at a point on the north line of the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of  
 Section 23, Township 77 North, Range 44 West of the 5th P.M.  
 in Pottawattamie County, Iowa, located South 88° 39' 16" East  
 assumed bearing 799.24 feet east of the northwest corner of  
 said SE $\frac{1}{4}$  SW $\frac{1}{4}$  and marked by a 10"x4" limestone; thence  
 continuing along said north line of the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , South 88°  
 39'16" East 513.56 feet; thence South 88° 49' 56" East 1,312.8  
 feet to the eastline of the SW $\frac{1}{4}$  SE $\frac{1}{4}$ ; thence along the east  
 line of the SW $\frac{1}{4}$  SE $\frac{1}{4}$  South 0° 1' 22" West 1,251.05 feet; thence  
 North 89° 04' 56" West 1,212.93 feet to a cemetery fence; thence  
 North 0° 18' 53" East 267.88 feet; thence South 80° 11' 09" West  
 307.83 feet; thence South 15° 55' East 30.71 feet; thence South  
 50° 14' 18" West 305.91 feet; thence South 24° 2' 48" West 43.75  
 feet; thence South 89° 43' 34" West 129.59 feet; thence along  
 the east line of Iowa highway 183 right-of-way North 15° 55' West  
 224.75 feet; thence North 54° 21' 40" West 104.94 feet  
 thence North 15° 55' West 63.82 feet; thence North 88° 39' 16" West  
 20 feet; thence North 15° 55' West 113.37 feet; thence North  
 88° 39' 16" East 30.00 feet; thence North 15° 55' West 141.00  
 feet; thence South 88° 39' 16" East 90.00 feet; thence North  
 15° 55' West 690.00 feet to the point of beginning containing  
 an area of 48.400 acres,

WHEREAS, said corporation wishes to subject that land to the  
 following restrictions, covenants, reservations, easements, liens  
 and charges for the benefit of said subdivision and each future  
 owner of lots therein, and

WHEREAS, these restrictions, covenants, reservations, easements,  
 liens and charges are to replace and to supersede the protective  
 and restrictive covenants now of record in Book 76 at Page 12445 in  
 the office of the Recorder of Pottawattamie County, Iowa.

NOW, THEREFORE, said corporation hereby declares that the land  
 described above shall be held, transferred, sold and conveyed sub-  
 ject to the conditions, restrictions, covenants, reservations, ease-  
 ments, liens and charges hereinafter set forth:

**GENERAL PURPOSES**

The land in the subdivision is subjected to covenants,  
 restrictions, conditions, reservations, liens and charges in  
 order to insure the highest and best development of the land for

## COMPARED

-2-

single family residential purposes. The preservation so far as practical of the natural beauty of the land, the enhancement of values of investments made by purchasers of building sites and protections against the improper use of the land.

### PERMANENT EASEMENTS

Permanent easements are created as follows:

a. Common area I shown on the plat of Spencer's Mountain Subdivision consisting of 0.536 acres, more or less, attached to and made a part of Lot 9 shall be retained as the place for a pond and shall not be improved in any manner inconsistent with the original construction by the owner. It shall be a place for the drainage of surface waters from other areas of the subdivision.

b. Common area II shown on the plat of Spencer's Mountain Subdivision consisting of 0.954 acres, more or less, attached to and made a part of Lot 17 shall be retained as the place for ponds and shall not be improved in any manner inconsistent with the original construction by the owner. It shall be a place for the drainage of surface waters from other areas of the subdivision.

c. Common areas III and IV shown on the plat of Spencer's Mountain Subdivision consisting of 0.245 acres, more or less, attached to and made a part of Lot 1 shall be retained as the places for a pond and shall not be improved in any manner inconsistent with the original construction by the owner. They shall be places for drainage of surface waters from other areas of the subdivision.

d. The well adjoining Lot 18 which also is designated as Common area V shall be retained by the owner until it is transferred to a nonprofit corporation owned by the landowners in the subdivision and shall serve as a source of water for the water system for the lots in the subdivision.

e. The well easement shown on the plat as a part of Lot 42 shall be retained by the owner until transferred to a nonprofit corporation for the benefit of lot owners in the subdivision and shall be used for the purpose of providing water for the water system for the lots in the subdivision.

COMPARED

-3-

f. The yard hydrants or freezeless hydrants shown on the plat of the subdivision which are located on Lots 16, 22, 36 and 37 and the fire hydrant shown on the plat of the subdivision on Lot 1 shall remain the property of the owner until transferred to a nonprofit corporation for the benefit of the lot owners in the subdivision. Easements are retained for the construction, reconstruction, repair and replacement of those hydrants.

g. The private road shown on the plat of the subdivision abutting Lots 7, 8 and 9 shall be in the nature of an easement for roadway purposes for the owners of Lots 7, 8 and 9 only.

h. The private road shown on the plat of the subdivision abutting Lots 10, 11 and 12 shall be in the nature of an easement for roadway purposes for the owners of Lots 10, 11 and 12 only.

i. The private road shown on the plat of the subdivision abutting Lots 13 through 17 inclusive shall be in the nature of an easement for roadway purposes for the owners of Lots 13 through 17 inclusive only.

j. Seller reserves to itself and its licensees and any authorized public utilities perpetual easements 15 feet wide along both sides of all road rights of way and 10 feet wide along the side and rear lines of each lot in the subdivision together with the right of ingress and egress for the purpose of installing, operating and maintaining any utilities, drainage ditches and appurtenances thereto, and the right to trim or remove any trees or shrubs necessary for such purposes. No permanent buildings or new trees shall be placed in or on said easement tracts but the same may be used for garden, shrubs, landscaping and other purposes which do not interfere with the foregoing uses and rights. Where any lot owner who owns two or more contiguous lots uses an area greater than one lot for a building site, the sideline easement shall not be effective as to interior lot lines on which the building is erected.

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-4-

k. As shown by the plat of the subdivision a 20 foot drainage easement is reserved along the southerly side of Lot 3, a 20 foot drainage easement is reserved along the southerly side of Lot 1, a 15 foot drainage easement is reserved along the northerly side of Lot 2 and a 15 foot drainage easement is reserved along the northerly side of Lot 31.

### WATER SYSTEM

The subdivision shall have a water distribution system to serve the lots platted in that subdivision. The ownership of the system shall remain in Spencer's Mountain, Inc. until such time as there is formed a nonprofit corporation of which all lot owners shall automatically be participants and members. When the nonprofit corporation is formed, the ownership of the water system shall be transferred from Spencer's Mountain, Inc. to that nonprofit corporation.

For so long as it retains ownership, Spencer's Mountain, Inc. shall assess the owners of each lot \$13.00 per month on a quarterly basis (adjusted not more often than yearly for inflation) for the cost of maintenance and operation of the water system. This assessment shall not begin until the lot owner has tied into the water system. After a period of five years, or sooner if approved by a majority of the lot owners and the developer, a nonprofit corporation shall be formed and the water system shall be transferred to that nonprofit corporation. The nonprofit corporation shall have the right to assess all costs relating to the system on an equitable basis or to require the owners of each lot to install water meters, if approved by the majority of the lot owners, of a kind selected by the nonprofit corporation and to pay the proportionate cost based upon the water usage.

The cost of tying in a residence to the water system shall be borne by the lot owner or owners. Any charges assessed against the

# COMPARED

-5-

lot owners by Spencer's Mountain, Inc. or the nonprofit corporation to be formed hereafter will be liens against the lots for any amounts which are delinquent. The lot owners by purchasing lots in the subdivision agree to the imposition of these liens. The assessed amounts may be collected not less frequently than every three months.

The lot owners purchase lots with the express understanding that if a municipal water supply later become available that the cost of becoming a part of that municipal water system shall be borne by the lot owners.

## ROAD MAINTENANCE AND SNOW REMOVAL

Until the roads in Spencer's Mountain Subdivision become a part of the county road system, Spencer's Mountain, Inc. may provide road maintenance and snow removal and shall have the right to assess the lot owners on an equitable basis for the costs of such maintenance and snow removal. If a nonprofit corporation is formed for the operation of the water distribution system, that same nonprofit corporation shall assume the responsibility for maintenance and snow removal for so long as the roads are not a part of the county road system. The nonprofit corporation shall have the right to assess charges against the lot owners on an equitable basis. The lot owners by purchasing lots in the subdivision agree to the imposition of the assessments and liens for collection of the assessment. Unpaid assessments shall be liens against the lots.

## OTHER RESTRICTIONS AND COVENANTS

All of the land in the subdivision shall be subject to the following restrictions and covenants:

1. Title to all roads or streets within the subdivision other than private roads to which reference previously has been made is dedicated to the public and will be conveyed and dedicated to Putnam County when the roads and streets are accepted in the county road system. The road right of way shall be that portion of the land

# COMPARED

-6-

extending 25 feet on either side of the platted road center line or a total of 50 feet in width.

2. The lots in the subdivision shall be used exclusively for single family residential purposes and no purchaser may subdivide a platted lot.

3. Any improvements on the lots must comply with existing local building codes enforced at the time of construction.

4. Not more than one single family dwelling may be erected or constructed on any one lot. All plans for dwellings shall be submitted to Spencer's Mountain, Inc. and must be approved or disapproved in writing within 30 days of the submission of said plans. Failure on the part of Spencer's Mountain, Inc. to disapprove the plans within 30 days of their submission shall conclusively be presumed to be an approval of the plans. No building may be erected on any lot prior to the erection of a dwelling except a tool shed may be constructed upon receiving written permission from the Seller. No accessory or temporary building or basement, or house trailer shall be used or occupied as living quarters at any time. No unpainted or unfinished exteriors shall be permitted. Exposed portions of the foundations of each dwelling shall be covered with either siding or brick unless otherwise directed by Spencer's Mountain, Inc. No open basement or foundation shall remain unclosed without permanent subflooring for more than six weeks. The exteriors of all buildings must be completed within nine months from the date that construction commences. No single family dwelling placed or erected upon any lot shall be occupied in any manner while in the course of construction nor at any time prior to its being fully completed.

5. No dwelling shall be moved from a location outside of Spencer's Mountain Subdivision to any lot within the subdivision. Double wide mobile homes are prohibited.

UNMARKED

-7-

6. No building shall be constructed on any lot other than one detached single-family dwelling containing finished living areas exclusive of porches, breezeways, carports and garages of less than:

a. 1200 square feet on the ground floor for a one story house, except that if the house has a basement garage 1300 square feet shall be required on the ground floor.

b. 1200 square feet on the ground floor for a one and a half story house.

c. 1800 square feet above basement level with 1000 square feet on the main floor for a two story house.

d. 1550 square feet of living area above ground for a bi-level, tri-level or a split-level house.

e. 1300 square feet of main floor living area for a split-entry house.

Houses of unusual design not included in the categories stated above shall meet the standards most closely applicable unless individual modifications are granted by Spencer's Mountain, Inc.

7. No part of any building shall be located within 30 feet of the right of way of any public road or within 10 feet of the side boundaryline of any contiguous lot under other ownership or within 10 feet of any rear lot line or within 25 feet from any water line shown on the plat of the subdivision. In addition, all buildings must comply with the zoning and building ordinances of Pottawattamie County, Iowa. Eaves, steps and open porches shall be considered part of any building for the purpose of this provision.

8. If at a later time some form of central sewage plant and collection lines may be required the lot owners agree to pay their equitable share of any charges for the construction, maintenance and operation of such facilities.

# COMPARED

-8-

9. No noxious or offensive activity shall be permitted on any lot nor shall anything be done thereon which shall be or become a nuisance. In addition, the following specific requirements are made:

- a. Customary household pets may be kept in reasonable numbers, but not for breeding purposes. Care should be taken to keep these pets within the confines of one's own property. No livestock, such as horses, will be allowed to be kept in the subdivision. No animal shall be kept, bred, or maintained for commercial purposes.
- b. The discharge of firearms or hunting is prohibited.
- c. No outside burning of trash or leaves will be allowed. All refuse recepticals shall be of either an approved waterproof underground type or if above ground, shall be tightly covered and screened from view.
- d. Propane or fuel oil tanks which are not placed underground, air conditioning and heating units, swimming pool filters and clothes lines must be screened, fenced, or walled in such a manner that they are not visible from the streets and surrounding property. Design, landscaping and materials used for this purpose must enhance the overall aesthetics of the subdivision.
- e. No commercial sign other than "For Sale" signs pertaining to property sales within the subdivision shall be permitted.
- f. Automobiles, trucks and recreational vehicles may be parked in driveways or garages only. There shall be no on-street parking at any time. No motor vehicle which is under repair or not in operating condition shall be permitted on any portion of any lot unless it is within a structure or screened from view.
- g. All antennas where practicable shall be enclosed or placed in an unobtrusive location so as not to be distracting to the other property owners.

10. All lots and ditches between the lot and the shoulder of the road must be maintained by the purchaser in a manner satisfactory to Pottawattamie County or to any municipality which shall hereafter have jurisdiction over this subdivision. Installation of all culverts or tubes shall be made so as not to disrupt

# COMPARED

-9-

the natural flow of the water or the flow dictated by improvements created by Spencer's Mountain, Inc. in connection with the development of the subdivision. Such culverts or tubes are required with respect to driveways and must not be less than 18 inches in diameter and 24 feet in length. The cost of installation shall be borne by the owner of the lot. The cost of any repairs and any changes necessary to eliminate a disruption of the natural flow of water or the flow of water as created by the improvements installed by Spencer's Mountain, Inc. as developer of the subdivision shall be borne by the lot owner.

## SEPTIC TANK SYSTEMS

No building or improvement shall be constructed on any lot until the proposed septic tank system is approved by the State of Iowa or its appropriate departments, agencies or representatives (presently the State Health Department).

## GENERAL PROVISION

The following provisions apply with respect to all of the foregoing covenants, restrictions, conditions and reservations:

1. All of the easements are perpetual.
2. All restrictions, covenants, and reservations are covenants running with the land. In the event of a violation of any of them, any owner of an interest in any lot may prosecute an action at law or in equity to recover damages or to enjoin any violation of them. Any owner of any interest in any lot by acquiring that interest agrees that in the event of violation of any covenant, restriction or reservation that the legal remedy may be inadequate and that an injunction may be issued against him or her.

## COMPARED

-10-

3. If any provision is inconsistent with a provision of an ordinance, statute or law of the State of Iowa or Pottawattamie County or any municipal corporation which shall hereafter have jurisdiction over this subdivision, the more restrictive of the provision, ordinance, statute or law shall be deemed applicable.

4. If any provision shall be adjudged invalid or unconstitutional, the remaining provisions hereof shall continue in full force and effect.

SPENCER'S MOUNTAIN, INC., an  
Iowa corporation

By Gail O. Frazier

By Nancy M. Johnson  
NANCY M. JOHNSON

STATE OF IOWA )  
POTTAWATTAMIE COUNTY ) SS.

On this 16th day of June, 1978, before the undersigned, a notary public in and for the State of Iowa, personally appeared Gail O. Frazier and Nancy M. Frazier, to me personally known, who being by me duly sworn, did say that they are the president and secretary, respectively, of Spencer's Mountain, Inc.; that the seal affixed to the foregoing instrument is the seal of the said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and the said Gail O. Frazier and Nancy M. Frazier acknowledge the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily admitted.

David Peter

78 25100

# COMPANY

Entered for taxation JUN 20 1978

STATE OF IOWA, Pottawattamie County

Time for record (P.M.) Day of June  
1978 at 10:45 a.m. Recorded  
in book B-25078

County Auditor

Dorothy Langer  
Recorder  
Wilson Larson  
Deputy

NW CORNER  $SE \frac{1}{4} SW \frac{1}{4}$  N 80° 34' 16" W 999 24  
SEC 23, T77N, R44W  
& LIMESTONE 10E-N-4" NS

$SW \frac{1}{4} SW \frac{1}{4}$

$SE \frac{1}{4} SW \frac{1}{4}$

(SOUTHEAST) - SW COR. SEC 23-1/333 1/4 TOWNSHIP  
BASING BY DISTANCES  
TO CORNER'S NEARLY