

78-20946

Woodhill 1st Addition

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
WOODHILL 1st ADDITION IN THE CITY OF COUNCIL BLUFFS,  
POTTAWATTAMIE COUNTY, IOWA

THIS DECLARATION is made on the date hereinafter set  
forth by THE WOODHILL DEVELOPMENT COMPANY, an Iowa corporation,  
hereinafter referred to as "Declarant."

RECITALS:

1. Declarant is the owner of certain property in the  
County of Pottawattamie, State of Iowa, which is more  
particularly described as:

A tract of land located in part of SE $\frac{1}{4}$  SW $\frac{1}{4}$ , and  
part of Lot 2 of an Auditor's Subdivision of the  
SW $\frac{1}{4}$  SW $\frac{1}{4}$  all in Section 33, Township 75 North,  
Range 43 West, and also part of the NW $\frac{1}{4}$  NW $\frac{1}{4}$  and  
part of the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 4, Township 74  
North, Range 43 West of the 5th Principal Meridian,  
Pottawattamie County, Iowa, more fully described  
as follows:

Commencing at the Northwest corner of said SE $\frac{1}{4}$   
SW $\frac{1}{4}$ ; thence S 0°09'11"W along the West line of  
said SE $\frac{1}{4}$  SW $\frac{1}{4}$  a distance of 33.00 feet to a point  
on the South right-of-way line of Steven Road and  
point of beginning; thence N 89°55'53"E along the  
South right-of-way line of said Steven Road, and  
parallel to the North line of said SE $\frac{1}{4}$  SW $\frac{1}{4}$  a  
distance of 971.18 feet; thence S 0° 04'07"E a  
distance of 210.00 feet; thence S 89°55'53"W and  
parallel to the North line of said SE $\frac{1}{4}$  SW $\frac{1}{4}$  a  
distance of 305.62 feet; thence S 20°58'40"E a  
distance of 439.09 feet; thence S 4°34'30"W a  
distance of 453.25 feet; thence S 4°12'16"W a  
distance of 191.41 feet; thence N 89°30'38"W a  
distance of 168.76 feet; thence N 50°51'03"W a  
distance of 64.03 feet; thence N 89°30'38"W a  
distance of 573.35 feet; thence S 8°40'42"E a  
distance of 207.44 feet; thence S 77°58'09"W a  
distance of 135.57 feet to a point on the Easterly  
right-of-way line of Franklin Avenue; thence N  
12°01'51"W along the Easterly right-of-way line of  
said Franklin Avenue a distance of 974.59 feet to  
a point on the North line of said Lot 2 of an  
Auditor's Subdivision of the SW $\frac{1}{4}$  SW $\frac{1}{4}$ ; thence N  
89°54'35"E along the North line of said Lot 2 a  
distance of 322.07 feet to the Northeast corner of  
said Lot 2, said Northeast corner being on the  
West line of said SE $\frac{1}{4}$  SW $\frac{1}{4}$ ; thence N 0°09'11"E  
along the West line of said SE $\frac{1}{4}$  SW $\frac{1}{4}$  a distance of  
494.75 feet to the point of beginning. Said tract  
contains 27.671 acres, more or less.

NOTE: The North line of said SE $\frac{1}{4}$  SW $\frac{1}{4}$  is assumed  
to bear N 89°55'53"E for this description.

Which has been platted as WOODHILL 1st ADDITION,  
Pottawattamie County, Iowa, which plat appears in Book  
\_\_\_\_\_, Page \_\_\_\_\_ of the records in the Office of the County  
Recorder for Pottawattamie County, at the Courthouse in  
Council Bluffs, Iowa.

# COMPARED

-2-

2. Declarant will convey the lots of said Addition, or portions thereof, subject to the protective covenants, conditions, restrictions, reservations, liens and charges hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold, conveyed, and leased subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property in the Addition. These easements, covenants, restrictions, and conditions touch and concern the land and the burdens and benefits arising therefrom shall run with the property and shall be binding on all parties having or requiring any right, title or interest in the described properties, or any part thereof, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

A. "Developer" shall mean and refer to The Woodhill Development Company, its successors or assigns, if such successors or assigns should acquire equitable ownership for the purpose of development of more than one undeveloped Lot at any one period of time either by conveyance, contract, gift, devise or inheritance from the Declarant.

B. "Lot" shall mean and refer to any plot of land shown upon the recorded plat of the Addition.

C. "Addition" shall mean and refer to Lots 1 through 46 of Woodhill 1st Addition in the City of Council Bluffs, Pottawattamie County, Iowa.

D. "Perimeter Lots" shall mean and refer to Lots 14, 15, 17, 18, and 38 through 45, inclusive, which lots have frontages on either Steven Road or Franklin Avenue.

E. "Residence" shall mean custom-built single-family detached dwellings.

## ARTICLE II

### 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 and specifications showing the nature, kind, shape, height, materials 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 at its Council Bluffs, Iowa office.

## COMPARED

-3-

B. Reason for Architectural Control. The Addition is composed of 45 lots which for the most part have been developed expressly for residential purposes and the construction of Residences. The primary purpose of architectural control is to protect and preserve the value of the Residences in the Addition for the benefit of both the individual lot owners and the public in general. This control is not to be viewed as a means for suppressing expressions of individuality nor as a mere land restriction. The secondary purposes of the architectural control are:

- a. To protect the Developer's financial investment in the unsold Lots.
- b. To give the lot owners essential information regarding the Addition.
- c. To offer advice related to design and location problems so as to insure the best possible design and aesthetic results for all parties concerned.

C. 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 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.

- a. 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 II, Paragraph A above, must identify each tree proposed to be removed.
- b. The drainage system (including, but not limited to, silt basin facilities) designed in the approved plat may not be altered or interfered with in any manner.
- c. The provisions of Section 15.08.070 of the Municipal Code of the City of Council Bluffs, Iowa, will govern the setback requirements for the Lots in the Addition. Approved variances in the Code's setback requirements are specified on the final plat. Frontage setback variances for some of the Lots in the Addition have been approved at 15 feet; however, these frontage setback variances will not be exercised unless it is necessary to prevent the needless destruction of existing trees and other native growth in the Addition. Side and rear setbacks shall not be less than 15 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 or aesthetic results.

## COMPARED

-4-

- d. Each Residence shall include an attached, double car garage unless the unique topography or existing trees and other native growth make an unattached double car garage more desirable. In that event, the unattached double car garage must be of the same design and construction as the accompanying Residence.
- e. Should an unattached maintenance structure be desired on the Lot, it shall be of the same design and construction as the accompanying Residence and prefabricated or metal structures will not be approved. Furthermore, unattached maintenance structures shall not be within 30 feet of an adjoining Lot.
- f. No Lot shall be further subdivided and each Lot is limited to the construction of one Residence.
- g. Fences and walls will be permitted if they do not exceed 6 feet in height and if they do not extend beyond that foundation line of the Residence which is nearest to any adjoining street as shown on the plat. Residences that are designed to incorporate walls in the frontage line of the Residence in such a manner as to contain a front courtyard may be approved. Dense, uniform shrubbery or other similar vegetation will be considered a fence. Chain link fences may be used only around swimming pools or animal runs and in no event will they be used as a perimeter fence.
- h. All foundation walls of any Residence which 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.
- i. Areas which will be used to store, repair or routinely park recreational vehicles, or other vehicles referred to in Article IV, Paragraph F below, will be designed to include a screening device to insure that the contents of said area cannot be seen from any adjoining street as shown by the plat.
- j. Residences constructed on any perimeter Lot will be required to have the following square footage whenever practicable in light of the unique topography, existing trees and other native growth, and other provisions of these covenants, conditions and restrictions. The square footage of a Residence is to be computed from the outside surface of all exterior walls but, square footage will not include porches, breezeways, car ports, or garages.

# COMPARED

-5-

1. One Story and One and One-Half Story Residences: 1200 square feet will be required on the ground level unless the Residence is designed with a basement garage, in which case 1300 square feet will be required on the ground level.
2. Two Story Residences: 1800 square feet will be required above the basement level, with 1000 square feet will be required on the first floor.
3. Bi-Level, Split-Level, Tri-Level Residences: 1350 square feet will be required above the ground level.
4. Split-Entry Residences: A minimum of 1200 square feet will be required on the ground level.

k. Residences designed for construction on Lots other than Perimeter 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 native growth, and the other provisions of these covenants, conditions and restrictions.

1. One Story and One and One-Half Story Residences: 1360 square feet will be required on the ground level unless the Residence is designed with a basement garage, in which case 1460 square feet will be required on the ground level.
2. Two Story Residences: 1800 square feet will be required above the basement level, with 1000 square feet required on the first floor.
3. Bi-Level, Split-Level, Tri-Level Residences: 1550 square feet will be required above the ground level.
4. Split-Entry Residences: A minimum of 1360 square feet will be required on ground level.

l. The design and location of each Residence will be in harmony with the design and location of existing Residences.

m. Each individual lot owner is to take all steps necessary to reasonably and adequately regulate the drainage from his Lot and to control unreasonable and undesirable erosion.

## ARTICLE III

### COVENANTS RELATED TO THE CONSTRUCTION OF RESIDENCES

A. The construction and landscaping of each Residence shall be completed within one year 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 is not altered to such an extent that unreasonable or undesirable drainage or erosion results.

CONFIDENTIAL

-6-

B. 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.

C. Construction and landscaping activities will be confined to the Lot on which the construction is in progress. The individual lot owner is responsible for any expenses related to providing natural gas to the Residence. All utility services will be carried underground.

D. When sidewalks are required by the City of Council Bluffs, Iowa, the individual lot owner will bear the cost of the sidewalks and will be responsible for their installation. Said installation will be in compliance with the specifications provided by the Developer and said specifications will be of the type established by the City Engineer for the City of Council Bluffs, Iowa. The required installation shall be completed within the construction period referred to in Article III, Paragraph A above.

E. 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.

#### ARTICLE IV

##### GENERAL USE COVENANTS

A. Each Lot is restricted to the construction of Residences.

B. No external television or radio antennae will be allowed. Provided, however, radio transmitting antennae will be allowed if installed so that they cannot be viewed from any adjoining street as shown by the plat; with the exception, that a radio transmitting antenna may be erected along the rear exterior wall of the Residence if it does not extend above the abutting wall by more than 10 feet.

C. No Lot owner shall use, suffer or permit any person or persons in any manner whatsoever, to use his 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 his 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 his 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.

# CUMPARED

-7-

D. No billboards or any other unsightly objects will be erected, placed or maintained on any Lot. No advertising signs will be allowed on any Lot; provided, however, one "For Rent" or one "For Sale" sign of not more than 5 square feet may be placed or maintained on a Lot. No business activities shall be conducted on any Lot if the conduct of said business activity will result in an unreasonable increase in the traffic flow within the Addition, or an unreasonable increase in the number of vehicles parked on the streets within the Addition, or the presence of unsightly commercial vehicles within the Addition. 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 Developer, its agents and assigns, during the construction and sale period of this Addition.

E. 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 Addition as shown by the plat. Each lot owner shall provide off-street parking to adequately meet his needs and, in any event, off-street parking for two automobiles will be provided. If said vehicles are to be stored, repaired or routinely parked on a Lot, then they shall be kept in a garage and no repairs shall be made on such vehicles unless performed inside a garage. In the alternative, if such vehicles are to be stored or routinely parked outside of a garage, then they are to be confined to an area on the Lot which is designed to be fully screened from view from any adjoining street as shown by the plat. Unused vehicles shall be removed from the premises and no Lot shall be used for the purpose of selling, leasing, showing or repairing vehicles for commercial purposes.

F. Field crops and vegetable gardens shall be excluded from any front or side yard adjoining any street as shown by the plat.

G. No animals, livestock, fowl or poultry of any kind shall be kept, raised, kennelled, maintained or bred on any Lot except, domestic household pets will be allowed provided that they are not kept, raised, kennelled, maintained, or bred for commercial purposes.

H. No incinerator or trash burner 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. Furthermore, each lot owner shall keep his Lot free of unsightly weeds, rubbish, and debris and each lot owner shall be responsible for landscaping the topography and maintaining the vegetation and native growth on his Lot in a reasonable and aesthetically desirable manner.

CONFIRMED

-8-

ARTICLE V.

GENERAL CONDITIONS AND RESTRICTIONS

A. Enforcement. The Developer or any lot owner shall have the right to enforce, by any proceedings at law or in equity, all covenants, conditions and restrictions now or hereafter imposed by the provisions of this Declaration. Failure by the Developer or any lot owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The covenants, conditions and restrictions contained herein shall become enforceable by the Developer and all lot owners as a common neighborhood scheme from the time of the sale of the first Lot in the Addition.

B. Severability. invalidation of any one of these covenants, conditions or restrictions by judgment or by court order shall in no event affect any other provision which shall remain in full force and effect.

C. Amendment. The covenants, conditions 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, and any lot owner, their legal representatives, heirs, successors and assigns, subject to this Declaration, for a period of twenty-one years from the date this Declaration is filed in the Records of the County Recorder for Pottawattamie County, Iowa, after which time said covenants, conditions and restrictions may be automatically preserved and extended for successive periods of twenty-one years by at least one lot owner properly filing a claim once every twenty-one years. The covenants, conditions and restrictions of this Declaration may be amended during the first twenty-one year period by an instrument signed by the owners of 90 percent of the Lots as shown by the plat, and said covenants, conditions and restrictions may be amended thereafter by an instrument signed by the owners of not less than 75 percent of the Lots. All amendments must be properly recorded to be valid and enforceable.

DATED this 26<sup>th</sup> day of March, 1978.

THE WOODHILL DEVELOPMENT COMPANY,  
an Iowa corporation

BY: John G. Harrison, Pres.  
JOHN G. HARRISON, PRESIDENT

BY: Florence Folsom Harrison, Secy  
FLORENCE FOLSOM HARRISON, SECRETARY