

COMPARED

INST # 6885
RECORDING FEE 2500
AUDITOR FEE _____
RMA FEE 100

FILED FOR RECORD
POTTAWATTAMIE CO. IA.

02 OCT -4 AM 9:42

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

JOHN SCIORTINO
RECORDER

THIS DECLARATION, made on the date hereinafter set forth by 23rd Avenue LTD, Limited Partnership, through its Limited Partner, William E. Perdue and Gerald A. Mahan, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property legally described as:

Lots 30, 31, and 32 inclusive Coy's Lot Addition, subdivision in Pottawattamie County, Iowa, as surveyed, platted and recorded.

NOW, THEREFORE, Declarant hereby declares that all the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding upon all the parties having any right, title or interest thereof, and upon their heir, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Owner" shall mean and refer to the owner of record, whether one or more persons or entities, of a fee simple title to any lot or part of a lot on which one residence, attached or unattached, is or may be erected, as approved by Council Bluffs, Pottawattamie County, Iowa.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto all may hereinafter be brought within the scope of this Declaration by the developer or its assigns or successors.

Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, or a portion of a legally platted plot upon which one residence attached or unattached is or may be erected. The Properties within this Declaration was platted in 2000, to allow a maximum of six (6) residential units by dividing each lot into two parcels. Each of sold parcels shall mean and be referred to as if it is a full lot.

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Section 4: "Declarant" shall mean and refer 23rd Avenue, LTD, Limited Partnership, its successors, assigns and legal representative. Declarant shall also mean and refer to the developer of the Properties.

ARTICLE II

NON-EXISTENCE OF COMMON AREAS

Section 1. In order to minimize monthly and other assessments on property owners, to avoid costs of organization and other home owner's association related costs, the developer has not created a Home Owner Association. Since there are no common areas, there is no requirement for a Home Owner Association to own and maintain such common areas.

Section 2. Any owner assumes the obligation of properly maintaining the exterior of said owner's property. Any adjoining property owner may initiate arbitration, as set forth in this Declaration, in the event such adjoining property owner deems maintenance of exterior not adequately maintained or otherwise not substantially kept up as other properties covered herein.

Section 3. Notwithstanding the provisions of this Section or any other in this Declaration, the owners of the properties may at anytime they so desire organize and create a Home Owner Association, except that such Association may not be created without developer's written approval as long as developer holds title to any lot included herein.

ARTICLE III

ARCHITECTURAL CONTROL

After the construction of the original structure on each lot, no building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to, or change, or alteration, therein be made until the plans and specifications showing the nature, kind, shape, type of materials, and locations of same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the developer. Such right of approval by the developer shall remain until developer will have sold all the Properties. Thereafter property owners shall be limited by (a) other provisions of this Declaration and (b) City zoning and building ordinances.

ARTICLE IV

PARTY WALLS

Section 1. General Rules of Law to Apply. Any wall built as part of the original cost of the homes upon the Properties and placed on the dividing line between the Lots shall

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constitute a party wall and to the extent not inconsistent with the provisions of this Article, that general rules of law regarding party walls and liability for property damage due to negligence of willful acts or commissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance-Party Walls, Roofs, and Painting. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Any roof repairs or total replacement of shingles shall be done as follows: (A) Partial replacement: Any Owner may undertake necessary repair on such Owner's roof without consent of Owner of adjoining roof. (B) Total replacement: If total replacement is deemed necessary by both parties, a written agreement shall be entered into by the respective parties and each owner shall bear the proportionate cost of such total replacement.

Color of roof shall remain same unless mutually agreed otherwise. Any painting of eaves, garage doors, windows and trim, etc., shall always be matched as close as possible to original color unless mutually agreed otherwise.

Section 3. Destruction by Fire of Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other Owner thereafter make use of the wall they shall contribute to the cost of restoration thereof in proportion to such use without prejudice however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Right of Contribution-Runs with Land. The right of any Owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5. Arbitration. In the event of any dispute arising between to lot Owners, concerning a party wall or under any provision of this Declaration of Covenants, each party shall choose an arbitrator and such arbitrator shall choose one additional arbitrator and the decision shall be done by a majority of all arbitrators.

ARTICLE V

GENERAL RESTRICTIONS

Section 1. Awnings-Antennas. No awnings or sun screens of any type, or antenna shall be affixed to any building or structure within the properties without the written consent of the developer. After the developer sold all properties an owner desiring awnings, etc. shall need to secure a written comment from the majority (3) of the (5) clauses adjoining Properties front door. If within 30 days of written request no decision was made, the request shall be deemed as approved. No clotheslines or clothes hangers shall be permitted outside of any dwelling at any time except on umbrella-type clothesline per lot.

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Section 2. Animals, Livestock, and Poultry. No animals, livestock, or poultry of any kind shall be raised or kept on any building site in the Properties other than household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside of the home and patio area. No such pet will be kept, bred or maintained for commercial purpose.

Section 3. Noxious Activity. No noxious or offensive activity shall be carried on the Properties nor shall any trash, ashes or other refuse be thrown, placed, or dumped upon any vacant building site, nor shall anything ever be done which may be or may become any annoyance or nuisance to the neighborhood.

Section 4. Billboards Prohibited. No signs, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on any lot except that real estate for-sale or for-rent signs shall be permitted temporarily in the yard of dwelling which are being offered for sale or rent. This prohibition does no apply to the developer.

Section 5. Temporary Structure. No trailer, tent, shack, garage, barn or other outbuilding, whether temporary or permanent in nature, shall be constructed or used at anytime as a residence.

Section 6. Automobile Repair Prohibited. No automobile or vehicle repair will be permitted outside garages on any Lot at anytime. No automobile in a state of disrepair shall be kept on the premises of any Lot for a period in excess of (3) days. All garage doors must remain closed at all times except when cars are entering or exiting from the garage.

ARTICLE VI

EASEMENTS AND LICENSES

A 5-foot wide permanent easement on each side of all side lot lines, a 10-foot wide permanent easement wide all front lot lines, and a 5-foot wide permanent easement along all rear lot lines, except the rear lot lines for lot 23 through 29, inclusive which will have a 10-foot wide permanent easement, are reserved for the installation and maintenance of utilities.

ARTICLE VII

GENERAL PROVISIONS

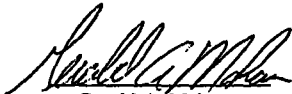
Section 1. Enforcement. Any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration. Failure by any Owner shall in no event be deemed a waiver of the right to do so thereafter.

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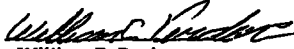
Section 2. Severability Invalidation of any one of these covenants or restrictions by judgment of court order shall remain in full force and effect.

Section 3. Amendment. The covenants and restriction of this Declaration shall run with and bind the land for a term of Twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of Ten (10) years.

IN WITNESS WHEREOF, the undersigned being Partners of 23rd Avenue LTD Limited Partnership and authorized to execute this instrument, has caused this instrument to be executed as the Declarant on this 25th day of Sept. 2002.



Gerald A. Mahan
PARTNER, 23RD AVE LTD
LIMITED PARTNERSHIP



William E. Perdue
PARTNER, 23RD AVE LTD
LIMITED PARTNERSHIP

STATE OF IOWA

COUNTY OF POTTAWATTAMIE

The foregoing instrument was acknowledged before me as the voluntary act and deed of 23rd Avenue LTD, Limited Partnership, this 25 day of Sept., 2002



Notary-Public

