

Prepared by
& Return to: Thomas G. Fisher, Jr. 3101 Ingersoll Ave., Des Moines, Iowa 50312 (515) 279-9059

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made this 26th day of September, 1997.

WHEREAS, Declarant is the owner of certain real property located in the County of Dallas, in the State of Iowa, more particularly described in attached Exhibit "A" (the "Property").

NOW, THEREFORE, Declarant hereby publishes and declares that all of the Property shall be held, sold and conveyed subject to the following easements and restrictions, covenants, conditions, uses, limitations, and obligations, all of which are for the purpose of protecting the value and desirability of the Property and all of which shall run with the land and shall be a burden and a benefit to, and all parties acquiring or owning any right, title, or interest in any part of the Property and their heirs, successors, assigns, grantees, executors, administrators, and devisees:

I. DEFINITIONS.

For the purpose of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided.

- A. "Westgate Plat 2" shall mean and refer to the real property located in the residential subdivision described above.
- B. "Declarant" shall mean Westgate Partnership, an Iowa general partnership, its successors and assigns.
- C. "Lot" shall mean and refer to any individual parcel of land which is described above as shown upon the recorded plat of Westgate Plat 2.
- D. "Building Lot" shall mean and refer to one or more platted lots, or one platted lot and portion or portions of adjacent platted lots, intended for the construction of a building.
- E. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the legal or equitable title to any Lot or Building Lot which is a part of Westgate Plat 2.

II. DESIGNATION OF USE.

All Lots shall be known and described as residential lots and shall not be developed with more than one single family dwelling on each, and shall not be improved, used, or occupied for other than private residential purposes.

III. BUILDING TYPES.

- A. No building or structure shall be constructed, altered, or maintained on any Building Lot other than a detached single family dwelling with an attached private garage.
- B. No structure of any kind shall be moved onto any Lot.
- C. The exterior of any residence, garage or outbuilding located on any Lot shall be finished with one of the colors designated in writing by Declarant as being acceptable exterior color. All roof material shall be certaineed weathered wood or of equal color and appearance thereto.

IV. BUILDING AREA.

No dwelling shall be constructed or permitted to remain upon any Lot unless it meets the following ground floor area requirements:

- A. One story dwellings must have a main floor finished area of not less than 1,150 square feet.
- B. All multilevel dwellings, including but not limited to split-levels, one and one-half story dwellings, two-story dwellings, and dwellings having more than two stories must have finished areas of not less than 1,150 square feet.
- C. Split foyer dwellings must have a finished area of not less than 1,150 square feet.

In the computation of finished floor area, the same shall not include any porches, breezeways, basements, attached or built-in garages.

V. PROXIMITY AND ACCESS TO STREET.

No dwelling or other structure shall be located closer than 30 feet to any street.

VI. GARAGES.

No less than a two-car attached or built-in basement garage will be permitted.

VII. DRIVEWAYS.

No building or structure shall be constructed, altered, or maintained on any building lot unless it has a driveway from a street running to the improved premises. All driveways shall be constructed of portland cement concrete.

VIII. TEMPORARY STRUCTURES OR EQUIPMENT.

No building or structure of a temporary character and no trailer, basement, tent, shack, garage or outbuilding shall be used at any time as a residential dwelling on any building lot either temporarily or permanently. All recreational vehicles and boats shall be parked or stored in a garage or totally screened or not visible from street and neighbor's view.

IX. TRASH RECEPTACLES.

No trash receptacles or garbage cans shall be permitted to be placed on a Building Lot unless hidden by an attractive screen of suitable height or unless sunken to ground level in a hole lined with permanent cribbing.

X. UTILITIES.

All utility connection facilities and services shall be underground.

XI. TOWERS AND ANTENNAS.

No exterior transmission towers, antennas or television and/or microwave transmission dishes of any kind shall be constructed, installed, modified, or permitted on the ground, on dwellings, on garages or on outbuildings. Exterior towers, antennas or television and/or microwave receiver dishes which are not designed to receive direct broadcast satellite service, including direct home satellite service, and have a diameter of less than one (1) meter, or which are not designed to receive video programming services by a multipoint distribution service, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and are one (1) meter or less in diameter or diagonal measurement, shall not be constructed, installed, modified or permitted on the ground, on dwellings, on garages or on outbuildings.

XII. NUISANCES.

No noxious or offensive activity, shining lights, noise or odors shall be permitted on or to escape from any Building Lot nor shall anything be done thereon which is or may become an annoyance or a nuisance, either temporarily or permanently.

XIII. LIVESTOCK AND POULTRY PROHIBITED.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot hereby restricted, except that dogs, cats, and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. In no event, however, shall more than three (3) dogs or cats be maintained on any one Building Lot at any one time. Dogs must be either kept in the residence or in a shelter aesthetically compatible with the residence and surrounding areas. Dog runs, if any, shall not be permitted between the front line of the residence and street and shall be completely screened from the view of the street and all neighbors with privacy fence.

XIV. EASEMENTS.

Easements for installation and maintenance of utilities and surface water drainage facilities are reserved as shown on the recorded plat of Westgate Plat 2. The Owner or occupant of a Building Lot shall, at his/her own expense, keep and preserve that portion of the easement within his/her property in good repair and condition at all times, and shall neither erect nor permit erection of any building structure or fences of any kind, nor permit any growth of any kind within the easement which might interfere in any way with the use and maintenance of the utility services and drainage areas located within the easements.

XV. WEED CONTROL.

The Owner and/or occupant of each Lot shall keep the same free of weeds and debris, and keep all lawns on occupied Building Lots mowed with grasses not exceeding 6" in height, and failing this, agrees that after receipt of written notice, given by certified mail, from Declarant or by any property Owner owning property within 500 feet of such Lot, those weeds shall be cut, the lawn mowed and such debris shall be removed within fifteen (15) days, and failing which Declarant or the property owner giving such notice, as the case may be, may enter upon the property to cut or cause to be removed such debris, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, which shall be a lien against such Lot in favor of the Declarant or such property Owner, who performed such work, as the case may be, until paid.

XVI. ACCESSORY STRUCTURES.

Trash receptacle, tool sheds, storage buildings, or other out buildings or structures of like nature shall not be allowed. Swimming pools, tennis courts or other similar accessory structures or improvements shall not extend farther than the front line of the residence extended to the side Lot lines and shall not be located within ten (10) feet of any side or rear Lot line, subject to the City of Waukee ordinances. Dog kennels, dog runs or similar accessory structures shall not extend farther than the front line of the residence extended to the side Lot lines and shall not be

located within twenty (20) feet of any side or rear Lot line, subject to the City of Waukee ordinances.

XVII. SURFACE WATER.

The topography of Westgate Plat 2 is such that surface water may flow from certain Building Lots onto other Building Lots. In regard to all matters concerning surface water, each Building Lot shall be subject to such easements as may exist for the flow of surface water under the law of the State of Iowa, as may be in effect from time to time. All Owners shall have such rights and obligations with respect thereto as may be provided by such law. All Owners shall be responsible to properly drain their respective building lots, direct storm water drainage toward drainage easements and away from buildings, and not permit drainage onto adjacent properties in areas which do not provide adequate conveyance of storm water through the property and away from buildings.

XVIII. MODIFICATIONS OF RESTRICTIONS.

The covenants, restrictions, and provisions of this instrument shall be deemed covenants running with the land, and shall remain in full force and effect until August 31, 2018 at which time the covenants, restrictions and provisions shall automatically be extended for successive periods of ten (10) years each unless the covenants, restrictions and provisions are amended, modified, changed or canceled, in whole or in part, by written agreement signed by the Owner or Owners of more than fifty percent (50%) of the Lots hereby restricted, and recorded in the office of the Recorder of Dallas County, Iowa, at least one (1) year prior to the original expiration date or to a subsequent expiration date, whichever is applicable. However, Declarant has the right to amend the covenants, restrictions and provisions at any time during which Declarant has an ownership interest in any Lot in Westgate Plat 2.

XIX. ENFORCEMENT.

If any party shall violate or attempt to violate any of the covenants, conditions or restrictions contained herein, it shall be lawful for any Owner owning any Building Lot in Westgate Plat 2 entitled to the protection provided herein to prosecute proceeding in law or in equity against the person or persons violating or attempting to violate the covenants, conditions or restrictions, and to either prevent him/her or them from so doing or recover damages for such violations.

XX. SEVERABILITY.

Invalidation of any of these covenants, conditions, or restrictions by judgment or court shall in no way affect any of the other covenants, conditions or restrictions contained herein which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand as of the day and year first above written.

WESTGATE PARTNERSHIP, an Iowa
general partnership
By: Michael R. Myers Properties,
Inc., its General Partner

By: *Michael R. Myers*
Michael R. Myers, President

STATE OF IOWA)
)ss:
COUNTY OF POLK)

On this 26th day of September, 1997, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Michael R. Myers, to me personally known who, being by me duly sworn, did say that he is the President of Michael R. Myers Properties, Inc., a General Partner of Westgate Partnership, an Iowa general partnership, executing the foregoing instrument, that no seal has been procured by the corporation; that said instrument was signed on behalf of the corporation as the General Partner of Westgate Partnership, a general partnership, by authority of the corporation's Board of Directors; and that Michael R. Myers as that officer acknowledged execution of the instrument to be the voluntary act and deed of the corporation and partnership by it and by the officer voluntarily executed.

Thomas G. Fisher Jr.
_____, Notary Public in
and for the State of Iowa

