

**DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS
AND RESTRICTIONS**

THIS DECLARATION is made this 24 day of July, 2001, by Westgate Partnership, an Iowa general partnership.

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

Lots 1 - 36, WESTGATE PLAT 4, an Official Plat, now included in and forming a part of Waukee, Dallas County, Iowa; and

WHEREAS, Declarant is desirous of protecting the value and desirability of the Plat;

NOW, THEREFORE, Declarant hereby declares that all property within the Plat shall be held, sold and conveyed and be subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Plat and shall run with the land and shall be binding on all parties having any right, title or interest therein or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

I. DEFINITIONS.

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

- A. "Plat" shall mean and refer to the real property described as Lots 1 - 36, WESTGATE PLAT 4, an Official Plat, now included in and forming a part of Waukee, Dallas County, Iowa.
- B. "Declarant" shall mean and refer to Westgate Partnership.
- C. "Lot" shall mean and refer to an individual parcel of land within the Plat.
- D. "Building Lot" shall mean and refer to one or more Lots, or one or more Lots and the portion or portions of adjacent platted Lots in the Plat, used for the construction of one dwelling as herein permitted.

- 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 that is a part of the Plat.
- F. "Outbuilding" shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed or garden house.
- G. "City" shall mean the city of Waukee, Iowa.

II. DESIGNATION OF USE.

All Lots shall be known and described as residential lots and shall not be improved, used or occupied for other than private residential purposes. No full-time or part-time business activity may be conducted on any Lot or in any dwelling or structure constructed or maintained on any Lot except those activities permitted under the terms of the zoning ordinance of the City.

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 certainteed weathered wood or of equal color and appearance thereto.

IV. BUILDING AREA DESIGN AND CONSTRUCTION.

No dwelling shall be constructed or permitted to remain upon any Lot unless the design and location is in reasonable harmony with existing structures and unless it meets the following requirements:

- A. One story, one and one-half story, two story, split-level, and split foyer dwellings must have a finished area of not less than 1,200 square feet.
- B. In computing total finished area, only 50% of a finished area that has its floor below the exterior grade shall be included in the total finished area requirement.
- C. In the computation of floor area, the same shall not include any porches, breezeways, or attached or built-in garages.

D. No dwelling structure of any kind may be moved onto any Lot. All exterior painted portions of new dwellings constructed on any Lot shall be painted with one of the colors designated in writing by Declarant as being an acceptable exterior color. All exterior painted portions of dwellings that are repainted shall be repainted in one of such colors. All buildings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.

V. GARAGES AND DRIVEWAYS.

All dwellings shall have a two-car attached garage. All dwellings shall have a portland cement concrete driveway not less than 16 feet in width and running from the city street to the garage.

VI. TEMPORARY AND OTHER STRUCTURES; CERTAIN USES.

No temporary building or structure shall be built or maintained on any Lot. No camper, motor home, boat, trailer, unfinished dwelling basement, tent, shack, garage, or Outbuilding shall be used at any time as a dwelling. No truck with a gross vehicle weight greater than 4,500 pounds and no camper, motor home, boat, trailer, or mechanical equipment may be parked or maintained on any Lot (except inside a garage) or on the public street adjacent to any Lot, other than on a temporary basis; provided that this restriction shall not apply to passenger vans or "conversion vans" or to trucks, equipment or trailers used in connection with construction of or rebuilding of a dwelling on any Lot. Temporary shall mean no more than a total of thirty (30) days per year. At no time may any vehicle, trailer or camper be parked or maintained in the yard of any Lot. At no time shall a vehicle or any mobile equipment be disassembled, repaired or serviced on any Lot, except inside a garage or dwelling.

VII. FENCES.

No fences or other structures may be built or maintained within the front building setback areas as shown on the Plat as recorded and no fences shall be built or maintained in front of the front line of the residential dwelling extended to the side Lot lines.

VIII. EASEMENTS.

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat as recorded. The Owner and/or occupant of each Lot, jointly and severally, shall at the expense of such Owner and/or occupant, maintain, keep, and preserve that portion of the easement within the Lot at all times in good repair and condition and shall neither erect nor permit erection of any building, structure or other improvement of any kind within the easement areas (except

customary ground cover) which might interfere in any way with the use, maintenance, replacement, inspection or patrolling of any of the utility services and drainage facilities within such easements areas. Any berm and/or swale constructed for drainage purposes shall be preserved and maintained to accomplish the purposes for which it was constructed.

IX. NUISANCES.

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

X. SIGNS.

No sign of any kind shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except (i) street markers, traffic signs, or any signs installed by the City by other governmental entities or by the Declarant, (ii) signs which have been approved by Declarant in writing not exceeding 144 square inches in area on which there shall only be exhibited the street number and/or the name of the resident, and (iii) a customary sign (one per Building Lot) advertising a Building Lot or dwelling for sale, not exceeding 1,296 square inches. In the event that any signs other than those described above shall be placed or exposed to view on any Lot, the agents of the Declarant are hereby given the right to enter upon such Lot and remove such signs.

Declarant reserves the right to install entrance and directional signs with respect to the Plat, at locations and of design determined by the Declarant in a manner consistent with the ordinances of the City.

XI. TRASH RECEPTACLES.

No trash receptacles or garbage cans shall be permitted to be placed on a Lot outside a dwelling, garage or Outbuilding unless hidden by an attractive screen of suitable height, or unless sunken to ground level in a hole lined with permanent cribbing. However, unscreened trash in proper containers and/or bags shall be allowed to be placed on a Lot outside a dwelling, garage or Outbuilding no earlier than twelve (12) hours prior to a scheduled pick up of such trash. Such unscreened trash containers must be returned to the screened area or underground location, or inside a dwelling, garage or Outbuilding, within twelve (12) hours following the scheduled pick up of such trash.

XII. UTILITIES.

All utility connection facilities and services shall be underground.

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XIII. 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 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 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 be permitted. No other exterior towers or antennas shall be constructed, installed, modified or permitted on the ground, on dwellings, on garages or on Outbuildings.

XIV. MAINTENANCE.

The Owner and/or occupant of each Lot shall jointly and severally be responsible to keep the same free of trash, weeds and debris and to keep the lawn and landscaping well maintained and healthy. The Owner and/or occupant of each Lot shall jointly and severally be responsible to maintain the exterior of any dwelling, the driveway, fence, screening and all other improvements.

XV. CERTAIN ANIMALS PROHIBITED.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot 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 a total of three (3) dogs and/or cats be kept at any one Building Lot at any one time. Dogs must be either kept in the dwelling or in a shelter aesthetically compatible with the dwelling and surrounding areas, and dog runs, if any, must be completely screened or otherwise hidden from view from any other Lot and all streets within the Plat.

XVI. ACCESSORY STRUCTURES.

Each Building Lot may have customary and traditional accessory structures such as a tool shed, garden house, in-ground swimming pool, tennis court and the like. Any trash receptacle, or tool shed, garden house or other Outbuilding of like nature, shall be properly screened by a privacy fence and/or shrubbery. No above-ground or non-permanent swimming pools shall be permitted on any Lot. Swimming pools, tennis courts, Outbuildings and other accessory structures and improvements, including dog kennels and runs, shall not extend farther than the front line of the residential dwelling extended to the side lot lines and shall not be located within 20 feet of any side or rear Lot line, as the minimum distance established by the zoning ordinance of the City

or the minimum distance as established in the Plat as recorded, whichever is the more restrictive.

XVII. SURFACE WATER.

The topography of the Plat 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 and benefited by such easements as may exist from the flowage of surface water under the laws of the State of Iowa, as may be in effect from time to time; and all Owners shall have such rights and obligations with respect thereto as may be provided by such laws.

XVIII. ENFORCEMENT OF COVENANTS.

This Declaration shall be deemed to run with the land, and the Declarant or the Owner of any Lot may bring an action in any court of competent jurisdiction to enforce this Declaration to enjoin its violation or for damages for the breach thereof, or for any other remedy or combination of remedies recognized at law or in equity, and shall further be entitled to recover reasonable legal fees and costs if the Declarant or Owner prevails in any such action.

XIX. AMENDMENTS OF COVENANTS.

This Declaration may be amended from time to time with the approval of the Owners. Such approval shall be given by the affirmative vote of not less than two-thirds (2/3) of the Owners. The Owner of each Lot (or the joint Owners of a single Lot in the aggregate) shall be entitled to cast one vote on account of each Lot owned. Provided, however, until the Declarant has sold all of the Lots, it may make amendments or modifications to this Declaration without the consent of any other Owners or other party. Such amendments or modifications by the Declarant shall be effective only after all other Owners are provided with a copy of the amendment or modification and the amendment or modification has been filed with the Recorder.

XX. PERIOD OF COVENANTS.

This Declaration shall continue and remain in full force and effect at all times as to the Plat and as to the Owners of any Lot, regardless of how title was acquired, until the date twenty-one (21) years after the recording of this Declaration, on which date this Declaration shall automatically be extended for two (2) successive periods of five (5) years each, unless on or before the end of the base period, or the first extension period, the Owners of not less than fifty percent (50%) of the Lots, by written instrument duly recorded, declare a termination of the same.

XXI. ENFORCEMENT AND WAIVER.

- A. In the event that any one or more of the foregoing covenants, conditions or restrictions shall be declared for any reason by a court of competent jurisdiction to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions and restrictions not so expressly held to be void, which shall continue unimpaired and in full force and effect.
- B. The Plat shall also be subject to any and all rights and privileges of the City, now held or hereafter acquired, by dedication or conveyance, or by reason of the platting and recording of the Plat, or by this Declaration or by law. Wherever there is a conflict between this Declaration and the zoning ordinance of the City, the more restrictive shall be binding.
- C. This Declaration shall not be applicable to property dedicated to the City, and the City may allow appropriate public use on city-owned property within the Plat.

IN WITNESS WHEREOF, this Declaration of Residential Covenants, Conditions and Restrictions, was made the date first written above by the Declarant.

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

By: 
Michael R. Myers, President

STATE OF IOWA)
)ss:
COUNTY OF POLK)

On this 24 day of July, 2001, 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 the 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

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execution of the instrument to be the voluntary act and deed of the corporation and general partnership by it and by the officer voluntarily executed.

Peggy Hutchinson
Notary Public in
and for the State of Iowa



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