

106-8224

Whispering Woods Phase 3

Prepared by: Craig A. Knickrehm, 11240 Davenport Street, P.O. Box 540125, Omaha, Nebraska 68154-0125  
Return to: Robert P. McCarthy, 535 West Broadway, Suite 100, Council Bluffs, IA 51503

**DECLARATION OF RESTRICTIONS AND COVENANTS FOR  
WHISPERING WOODS PHASE 3**

This Declaration is made this 23 day of August, 2005, by WESTERN IOWA LAND DEVELOPMENT, LLC, hereinafter called "Developer".

**ARTICLE I**

**STATEMENT OF INTENT**

Developer owns the real estate commonly known as WHISPERING WOODS PHASE 3, a subdivision in Council Bluffs, Pottawattamie County, Iowa, as more specifically identified in the Addendum to this Declaration. Developer desires to provide for the preservation of values in the development of said facilities, and, therefore, desires to subject said real estate to covenants, restrictions, easements, charges, and liens hereinafter set forth which are for the benefit of said property.

THEREFORE, the Developer hereby declares that the subject real estate be held, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth, which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof.

**ARTICLE II**

**DEFINITIONS**

For the purpose of these Restrictions, the following words shall be defined as follows:

(1) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration and any addition to the residential community known as WHISPERING WOODS PHASE 3, which Developer may in its discretion make subject to this Declaration as hereinafter set forth, including Common Areas, if any.

(2) "Lot" shall mean and refer to any separately owned parcel as may be shown by any recorded subdivision plat of the Properties. Where the context indicates or requires, the term "Lot" includes any structure on the Lot.

(3) "Residence" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

(4) "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title, to any lot situated upon the Properties. The foregoing does not include persons who or entities that hold an interest in any Lot merely as security for the performance of an obligation, unless such person or entity has acquired title pursuant to foreclosure or upon any proceeding in lieu of foreclosure. Lot Owner shall include Developer.

(5) "Developer" shall mean and refer to WESTERN IOWA LAND DEVELOPMENT, LLC, its successors and assigns.

(6) "Front Property Line" shall mean the property line of any Lot abutting the right-of-way of any street.

(7) "Exterior Structure" shall mean any structure erected or maintained on a Lot (other than the main residential structure or any structural component thereof) including but not limited to any deck, gazebo, animal shelter, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, basketball goal, swing set, trampoline, sand box, playhouse, tree house, or other recreational or play structure.

### ARTICLE III

#### USE OF LAND

##### Section 1.

Use of Land. None of the Lots may be improved, used or occupied for other than single-family private residential purposes, and no duplex, flat or apartment house, although intended for residential purposes, may be erected thereon. No Lot shall be further subdivided. No residential building, which has previously been at another location, shall be moved onto the Lot. No trailer or Exterior Structure shall at any time be used for human habitation; provided, however, that nothing herein shall prevent the Developer from erecting temporary buildings and using such temporary buildings or any residence for model, office, sales or storage purposes during the development of the Properties.

##### Section 2.

Setback Lines. Except as otherwise provided on the final plat filed in the office of Pottawattamie County Recorder for the Whispering Woods Phase 3, no part of any Residence, except as hereinafter provided, may be erected or maintained on any of the Lots nearer to the front street right-of-way ("R.O.W.") than twenty-five (25) feet, nor nearer to the side Lot line than ten per cent (10%) of the width of the lot at the building set back line, nor nearer to the side street right of way ("R.O.W.") than the greater of Fifteen (15) feet or ten per cent (10%) of the width of the lot at the building set back line, nor nearer to the rear Lot line than Twenty (20) feet. WESTERN IOWA LAND DEVELOPMENT, LLC shall have and does hereby reserve the right with the consent in writing of the record owner of the fee simple title to any such Lot, to change any setback line on any such Lot or Lots, so long as the change conforms to such front, rear and side setback lines as are contained in the Council Bluffs, Iowa, Zoning Ordinances as the same is now enforced or may hereafter be amended.

##### Section 3.

###### Dwelling Size.

a. Residences designed for construction on Lots in WHISPERING WOODS PHASE 3 will be required to be Raised Ranch, Bi-Level, Split-entry, or Split-level and shall have at least 1100 square feet of enclosed floor area.

b. The phrase "enclosed floor area" as used in this Section shall include in all cases areas on the first and second floor of the Residence enclosed and finished for all-year occupancy computed on outside measurement of the Residence, and shall not include any area in any basement, garage, porch or attic finished for all-year occupancy and further shall not include any area in any basement, garage, porch or attic finished or unfinished. No Residence erected on any of said Lots shall be more than two stories in height, unless consented to in writing by Developer, or its designee. Developer, or its designee, shall have and hereby reserves the right to reduce the floor area requirement set forth above, provided the total reduction for any one Residence may not exceed ten (10) percent of such minimum floor area requirements for such Residence.

c. Each Residence shall include at least an attached two-car garage.

#### Section 4.

##### Approval of Plans and Post-Construction Changes.

a. No Residence or Exterior Structure may be erected upon any Lot unless and until the building plans, specifications, exterior color scheme, materials, location, elevation, grade and landscaping thereof have been submitted to and approved in writing by the Developer or, in the case of delegation of such approval power by Developer, or by its designee. No structures of any kind shall be moved onto any Lot. Nor shall any change or alteration in such building plans, specifications, exterior color scheme, materials, location, elevation, grade and landscaping thereof be made until such change or alteration has been submitted to and approved in writing by the Developer, or its designee. Nor shall any change or alteration in such elevation, grade and landscaping be made unless such change or alteration is in conformance with Council Bluffs, Iowa, Zoning Ordinances.

b. Following the completion of construction of any Residence or Exterior Structure, no exterior colors or landscaping thereof or with respect thereto shall be changed and no exterior additions or alterations to any structure shall be made unless and until the changes have been submitted to and approved in writing by the Developer, or in the case of delegation of such approval power by Developer, by its designee. All replacement of all or any portion of a structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same material as the original structure unless the changes have been submitted to and approved in writing by the Developer or, in the case of delegation of such approval power by Developer, by its designee.

c. No building, fence, wall or other structure, shall be commenced, erected or maintained upon a Lot, nor shall any exterior painting, resurfacing, addition to, change or alteration therein, be made until the plans, specifications, and plot plan showing the size, nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing as to harmony of external design, color and location in relation to the surrounding structures and topography by the Developer, or its designee.

d. All such plans and specifications shall be submitted to the Developer at its Council Bluffs, Iowa, office. The subdivision is composed of in part of thirteen (13) building Lots, which have been developed expressly for residential purposes and the construction of Residences. The primary purpose of design and other controls is to protect and preserve the value of the Residences in WHISPERING WOODS PHASE 3 for the benefit of both the

individual Lot Owners and the public in general. These controls are not to be viewed as a means for suppressing expressions of individuality or as a mere land restriction. A secondary purpose of the design and other controls is to protect the Developer's financial investment in the unsold Lots.

e. Each individual Lot Owner is to take all steps necessary to reasonably and adequately regulate the drainage from their Lot and to control unreasonable and undesirable erosion.

f. The construction and landscaping of each Residence shall be completed within twelve (12) months 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 or designated drainage is not altered to such an extent that unreasonable or undesirable drainage or erosion results. Improvements not so completed, or upon which construction has ceased for ninety (90) consecutive days, or which have been partially or totally destroyed and not rebuilt within ninety (90) days shall be deemed nuisances. Developer or the Homeowner's Association may remove any such nuisance or repair or complete the same at the cost of the Lot Owner.

g. Construction of the Residence on the Lot shall commence not later than twenty four (24) months after the initial conveyance of title from the Developer to Lot Owner. This period of twenty four (24) months shall be binding upon subsequent purchasers of any Lot, and shall run from the initial conveyance from the Developer and shall not be extended without the written consent of the Developer or its designee. If construction is not commenced within twenty four (24) months after the initial conveyance of title from the Developer, then Developer shall have the right, at its option, to repurchase the Lot from the Lot Owner for the original price Lot Owner paid to Developer for the original purchase, less ten (10) percent of the total original purchase price. Developer may exercise this option at any time after the expiration of twenty four (24) months from the date of the initial conveyance of title from the Developer, so long as construction has not been commenced. Additionally, Developer shall have the first right of refusal to purchase any Lot if the Lot Owner desires to sell such Lot within the twenty four (24) months following the initial conveyance from Developer. During this period, Lot Owner shall give Developer immediate written notice of any accepted offer to purchase the Lot, and Developer shall have thirty (30) days after the date of the Notice to exercise its first right of refusal hereunder, by tendering its offer to purchase to Lot Owner, on substantially the same terms and conditions of the prior accepted offer. If Developer does not exercise this first right of refusal to purchase within the thirty (30) day period, this right shall terminate and Lot Owner may proceed to sell the Lot pursuant to the prior accepted offer. All options and first rights of refusal hereunder shall terminate upon completion of construction of the Residence on the Lot.

h. 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. Construction and landscaping activities will be confined to the Lot on which the construction is in process.

i. No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, commercial van, aircraft, grading or excavating equipment, or any other portable vehicle, shall be stored, repaired, or routinely parked on the streets of the subdivision as shown by the

Plat. Each Lot Owner shall provide off-street parking to adequately meet his or her needs and, in any event, off-street parking for two automobiles, shall be provided in addition to the attached garage space.

j. If a Lot Owner intends to hold title to any Lot without constructing a Residence thereon, the Lot Owner shall first obtain the approval of the Developer, or its designee, to avoid compliance with paragraph "g" of this Section.

k. Approvals and/or consents required by these covenants shall be solely the function of Developer. Developer may, at its option, delegate all or any part of the function of control to the Board of Directors of a Homeowner's Association. If such delegation is made, control shall be the function and obligation of the Board of Directors of such Homeowner's Association, and it may not be delegated to a separate control committee or other similar group. Any such delegation by Developer of all or part of its control function to such Board of Directors shall not be effective unless done in writing and signed by a person authorized to act on behalf of Developer.

#### Section 5.

##### Building Material Requirements; Utilities, Service and Access.

a. Building Material Requirements. Exterior walls of all buildings, structures and appurtenances thereto shall be made of brick, stone, wood shingles, wood siding, glass blocks, permanent siding or any combination thereof, subject to approval by Developer or its designee. Windows, doors and louvers shall be of wood, fiberglass or metal and glass. The roof of all Improvements shall be covered with asphalt or laminate shingles or materials approved by Developer or its designee. Exteriors, except roofs, shall be covered with no less than two coats of good paint or stain. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with materials approved in writing by Developer or its designee. All concrete and all concrete block foundation walls shall be painted. No curb cut shall extend beyond the two-foot concrete curb and gutter. No building shall be permitted to stand with its exterior in an unfinished condition for longer than five (5) months after commencement of construction. In the event of fire, windstorm, or other damages, no building shall be permitted to remain in a damaged condition longer than one (1) month.

b. Utilities, Service and Access. Each Lot Owner shall be responsible for any expenses related to the extension of utility services to their individual Residence from the main utility lines already provided by Developer. Each Lot Owner shall also be responsible for any expenses related to providing vehicular access to their Lot from the platted streets.

#### Section 6.

##### Buildings or Uses Other than for Residential Purposes; Noxious Activities Miscellaneous.

a. Except as otherwise provided in Article 3, Section 1 above, no Residence or Exterior Structure shall ever be placed, erected or used for business, professional, trade or commercial purposes on any Lot, provided, however that this restriction shall not prevent a Lot Owner from maintaining an office area in his or her residence which is not his or her principal place of business.

b. No noxious or offensive activity shall be carried on with respect to any Lot or in the Common Areas, nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot or in the Common Areas or be permitted to accumulate or remain on any Lot or in the Common Areas, except such compost facilities as may be approved by Developer, or its designee, in writing, nor shall anything be done which may be or become an annoyance or a nuisance to the neighborhood, including but not limited to mechanical work on automotive or other equipment of any kind. Each Lot Owner shall properly maintain his or her Lot in a neat, clean and orderly fashion. All Residences and Exterior Structures shall be kept and maintained in good condition and repair at all times. Developer retains the right to keep and maintain such materials and equipment, as it deems reasonably necessary to further development of this and any other property owned by Developer.

c. 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.

d. No Lot Owner shall use, suffer or permit any person or persons in any manner whatsoever, to use Owner's Lot for any purpose in violation of the laws and regulations of the United States, the State of Iowa, the City of Council Bluffs and Pottawattamie County, Iowa, or any other lawful authority. No Lot Owner shall use, suffer or permit any person or persons in any manner whatsoever, to use Owner's Lot or the Common Areas 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 Owner's 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.

#### Section 7.

##### Maintenance of Lots.

a. All Lots, whether occupied or unoccupied, and any improvements placed thereon shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, Developer or the Homeowner's Association shall have the right, through its agents and employees, to do so, the cost of which shall be added to and become an assessment to which such Lot is subject. Neither Developer, its designee nor any Homeowner's Association formed for the subdivision or any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work as performed.

b. It is the intent of the parties hereto that all automobiles and vehicles shall be kept in an enclosed garage whenever possible. No motorized vehicles, except lawn care equipment, shall be operated on any Lot or on the Common Areas or within the entire boundaries of WHISPERING WOODS PHASE 3 other than in the streets or in the driveways. No all terrain vehicles shall be operated in the entire boundaries of WHISPERING WOODS PHASE 3.

c. There shall be no individual mailboxes in the subdivision. The developer intends to allow the U.S. Post Office to install one or more cluster or common mailboxes in the

right of way in the subdivision, constructed in conformity with all U.S. Post Office regulations.

d. No speaker, horn, whistle, siren, bell or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Residence or in any yard.

e. All public utilities and services on all Lots shall be underground.

f. In the event of vandalism, fire, windstorm or other damage, no Residence or Exterior Structure shall be permitted to remain in a damaged condition for longer than one (1) month.

g. No exterior Christmas lights and/or decorations may be erected or maintained on any of the Lots hereby restricted, except during a sixty (60) day period beginning November 15th of each calendar year.

h. Dogs shall be confined to their Owner's Lot. No dogs shall be allowed to run at large in the Properties.

i. No air conditioning apparatus or unsightly projections shall be attached or affixed to the front any residence.

j. No bright light (Mercury Vapor or Sodium) shall be placed on the exterior of any structure or constructed separately without the written consent of Developer, or its designee.

k. Each Lot Owner shall keep drainage ditches, culverts and swales located on his or her Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his or her Lot as may be reasonably required for proper drainage.

l. Neither the Developer, its designee, nor any Lot Owner shall allow or permit any hunting or the discharge of any firearms within the entire boundaries of WHISPERING WOODS PHASE 3.

#### Section 8.

##### Exterior Structures.

a. No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot, unless approved in writing by the Developer or its designee.

b. All residential fences and privacy screens (other than those installed by Developer) shall be consistent with standard designs, heights, materials and location to be approved by the Developer or its designee. Fences and walls shall not obstruct the scenic view of any Lot. Fences and walls will be permitted only with the approval of the Developer or its designee.

c. No dog runs or kennels shall be permitted on any Lot.

#### Section 9.

Animals. Pets shall be in compliance with the Council Bluffs, Iowa Zoning

Ordinances as the same is now enforced or may hereafter be amended.

Section 10.

Driveways, Sidewalks and Drainage.

a. Driveways. All driveways must be concrete. All such driveways shall be limited to service of the primary Residence on the Lot, unless otherwise approved in writing by the Developer or its designee.

b. Sidewalks. All sidewalks must be concrete and shall be installed by Lot Owner, at Lot Owner's expense, in accordance with all Council Bluffs, Iowa Ordinances and the Final Plat of WHISPERING WOODS PHASE 3. The required sidewalks shall be installed as soon after construction of a dwelling as weather permits.

c. Residence Drainage. All drainage from roofs of the Residence, coming from downspouts, gutters or otherwise, shall be drained either to the street adjacent to the Lot or to the rear yard of the Lot.

Section 11.

Signs. No signs, advertisements, billboards, or advertising structures of any kind may be erected or maintained on any Lot without the consent, in writing, of Developer, or its designee; provided, however, that permission is hereby granted for erection and maintenance of not more than one advertising board on each Lot or tract as sold and conveyed, which advertising board shall not be more than seven (7) square feet in size and may be used for the sole and exclusive purpose of advertising for sale or lease the Lot or tract upon which it is erected.

Section 12.

Landscaping.

a. Landscaping and Lawns. Prior to occupancy, all front and rear yards, including all areas between each Residence and any adjacent street, shall be fully sodden. The owner of each Lot shall keep the lawn uniformly mowed and clipped. Noxious weeds and plants shall be kept reasonably mowed and dead and all unsightly growth shall be removed from all improved Lots.

b. Landscaping. Each Lot Owner shall provide, at his or her expense, landscaping improvements on each Lot. All such landscaping must be approved by the Developer or its designee.

Section 13.

Easements for Public Utilities; Drainage; Maintenance; Signs and Fences.

a. The Developer shall have, and does hereby reserve, the right, to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water mains and



lines, electric and telephone lines and other utilities, and to give or grant rights-of-way or easements and rights-of-way shown on the recorded plat of the Properties. All utility easements and rights-of-way shall inure to the benefit of all utility companies, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of all Lot Owners in the Properties and the Homeowner's Association as a cross-easement for utility line or service maintenance.

b. Other easements are provided for in the final plat of WHISPERING WOODS PHASE 3.

c. The Developer shall have and does hereby reserve for itself, its successors and assigns, including any Homeowner's Association that is created, and its successors and assigns, an easement over and through all unimproved portions of each Lot and any and all Common Areas in the Properties for the purpose of performing the duties of the Homeowner's Association, and for the purpose of maintenance and improvement of all Common Areas.

#### ARTICLE IV

#### GENERAL PROVISIONS

##### Section 1.

Property Subject to this Declaration. The real property, which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration as of the date of this Declaration, is that property more specifically identified in the Addendum to this Declaration.

##### Section 2.

Duration. The covenants 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, or its successors and assigns, or by the Lot Owner of any real estate subject to the Declaration, their respective legal representative, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of five (5) years, unless an instrument signed by the Lot Owners of two-thirds of the Lots has been recorded, agreeing to change or terminate said covenants and restrictions in whole or in part; provided, however, that no such agreement to change or terminate shall be effective unless written notice of the proposed Agreement is sent to every Lot Owner at least sixty (60) days in advance of any action taken.

##### Section 3.

Notices. Any notice required to be sent to any member or Lot Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as a member or Lot Owner on the records of the Developer, or its designees, including the Homeowner's Association, if one is created, at the time of such mailing.

##### Section 4.

Enforcement. Enforcement of these covenants and restrictions shall be by any

proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages or both and against the land to enforce any lien created by these covenants, and failure by the Homeowner's Association or any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5.

Severability. In the event any one of these covenants or restrictions is held invalid by a judgment or court order, this shall in no way effect any other provisions which shall remain in full force and effect.

Section 6.

Amendment. This Declaration may be amended only upon the consent of the Developer as long as the Developer owns any lots in the subdivision. Thereafter, this Declaration may be amended by written consent of the Lot Owners of at least two thirds of the Lots within the subdivision as then constituted, evidenced by a Declaration duly executed and acknowledged by such Lot Owners and recorded in the office of the Recorder of Pottawattamie County, Iowa, this instrument may be modified and amended.

Section 7.

Developer Approval/Consent. Notwithstanding anything to the contrary, whenever the approval or consent of the Developer, or its designee, is required for any action, such approval or consent shall be in writing and be signed and dated by the Developer or its designee. Any approval or consent not in writing as required herein shall be unenforceable.

Section 8.

Obligations of Developer. No responsibility, liability or obligation shall be assumed by or imposed upon Developer, or its designee, by virtue of the authority granted to Developer in this Declaration, or as a result of any act or failure to act by Developer, or its designee, with respect to any proposed improvement.

Section 9.

Grantee's Acceptance. Each grantee or purchaser of any Lot shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such Lot, accept such deed or contract upon and subject to each and all of the provisions of this Declaration of Restrictions and Covenants and to the jurisdiction, rights, powers, privileges and immunities of Developer and its designee. By such acceptance, such grantee or purchaser shall, for himself/herself, his/her heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with this Declaration and the grantee or purchaser of each other Lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

WESTERN IOWA LAND DEVELOPMENT, LLC

By:   
Robert P. McCarthy, Member

STATE OF IOWA                    )  
  ) ss:  
COUNTY OF POTTAWATTAMIE )

On this 23<sup>rd</sup> day of August, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert P. McCarthy to me personally known, who, being by me duly sworn, did say that he is a member of said limited liability company executing the within and foregoing instrument, that said instrument was signed on behalf of said corporation by authority of its Members; and that the said Robert P McCarthy acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it and by him voluntarily executed.

  
NOTARY PUBLIC

**ADDENDUM TO DECLARATION OF RESTRICTIONS AND COVENANTS FOR  
WHISPERING WOODS PHASE 3**

**Lots 1 through 13, WHISPERING WOODS PHASE 3, a subdivision, as surveyed platted  
and recorded in Pottawattamie County, Iowa.**