

WHISPERING MEADOWS PART TWO

RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS: The undersigned, C B Development, Ltd., hereinafter called the "Subdivider", being the owner of all lots in the addition to Iowa City, Iowa, known as Whispering Meadows Subdivision Part Two, hereinafter the "Subdivision", hereby imposes the following covenants and restrictions on each lot in said Subdivision for the mutual benefit of those persons who may purchase any of the lots in the Subdivision, which covenants and restrictions shall be binding upon all the present and future owners of each and every parcel of ground in said subdivision as covenants running with the land, and with such force and effect as if contained in each subsequent conveyance of land.

1. All lots in the Subdivision shall be used solely as residential lots and no structures shall be erected thereon other than a single family dwelling, provided that two separate single family dwelling units on adjoining lots may be laterally attached (sharing a common wall) with each unit having a separate access and utility service.

2. In the event two separate single family dwelling units on adjoining lots are laterally attached, the following restrictions shall be applicable:

A. The wall dividing the two laterally joined dwelling units shall be a party wall with at least a two hour fire rating and the owner of each dwelling unit shall have the right to use said wall jointly with the owner of the other dwelling unit as provided by Iowa law.

B. All common aspects, including but not limited to utilities, water, sanitary sewer, storm sewer, easements and driveway, shall be party utilities and easements and each owner of a dwelling unit shall have the right to use such common aspects, up to the point of their division, jointly with each owner of the adjoining dwelling.

C. Should the common wall or any common aspects, including but not limited to utilities, water, sanitary sewer, storm sewer, easements or driveway be destroyed or damaged or require maintenance or repair for any reason, the owner of each dwelling unit shall be jointly and severally liable with the owner of the other dwelling unit for the cost reasonably necessary for replacement, maintenance, and/or repair, except as may otherwise be set forth herein, and any sum received from joint insurance coverage shall first be applied to such replacements, maintenance and repairs. Provided, however, that in the event replacement, maintenance and/or repairs are required because of the sole negligence of one of the owners

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of a dwelling unit or said owner's family or invitees, the cost thereof shall be at such owner's sole expense.

D. No owner of a dwelling unit shall in any way alter or change the common wall, interior decorations excepted, or any of the pipes, conduits, ducts, insulation or special components located therein without the written consent of the owner of the other dwelling unit.

E. Each owner of a dwelling unit shall be solely responsible for repairing and/or replacing the roof covering such dwelling unit. Each owner shall further be solely responsible for all replacement, maintenance and repairs of the interior and exterior of his or her dwelling unit, except as otherwise provided herein, and shall keep the exterior of his or her dwelling unit in good condition at all times. In the event of a destruction of all or any portion of any unit by fire or other casualty, the owner of such unit shall immediately take whatever precautions may be reasonably required to preserve and protect any adjoining unit from further damage. In addition, each owner of laterally attached units shall have an obligation to reconstruct his or her unit unless both owners agree that either one or both of such attached units shall not be reconstructed. The following provisions shall govern exterior replacements, maintenance and repairs and reconstruction.

(i) The owner of a dwelling unit may repair and replace exterior components of such dwelling unit with components similar to pre-existing components and of the same design and color, and may paint the exterior of such dwelling unit with paint of the existing color or colors, but such owners may not, either in the course of ordinary replacement, maintenance, repair and remodeling, or in restoration after damage or destruction, use different siding, roofing or other exterior components, or a different color scheme, unless the owner of the adjoining dwelling unit gives a written consent to do so.

(ii) In the event of any dispute arising between the owners of adjoining dwelling units concerning a change of siding, roofing materials, color scheme, or any other exterior components, each party shall choose one arbitrator and such arbitrators shall choose a third arbitrator, and the decision of the majority of all arbitrators shall be final and conclusive of the question involved and binding on all parties. The arbitrators' decision shall be based on whether the proposed siding, roofing material, color scheme or other changes are in harmony with the design of the adjoining dwelling unit. If either

party refuses or fails to appoint an arbitrator within ten (10) days of a written request to do so by the other party, such arbitrator may be appointed by any Judge of the District Court for Johnson County. Arbitration shall be in accordance with the rules of the American Arbitration Association and the costs thereof shall be shared equally by the parties.

F. If the common wall is damaged or destroyed by fire or other casualty or by physical deterioration, the owner of either dwelling unit may restore it, and shall have an easement over the adjoining dwelling unit reasonably necessary for such restoration, and the owner of the adjoining dwelling unit shall contribute to the cost of restoration on an equal basis, without prejudice, however, to the right of any such owner to call for a larger contribution from the other owner under any rule of law regarding liability for negligent or willful acts or omissions.

G. If any existing portion of a dwelling unit or driveway encroaches upon an adjoining lot, or if any such encroachment shall hereafter arise because of settling or shifting of the building or other unintentional cause, there shall be deemed to be an easement in favor of the owner of the encroaching dwelling unit or driveway to the extent of such encroachment so long as the same shall exist.

H. Each owner of a dwelling agrees to indemnify and hold harmless the owner of the adjoining living unit from any mechanic's liens arising from work done or material supplied for repairs, replacements or improvements solely to their own dwelling unit or property.

I. Compliance with the restrictions contained in this paragraph 1 shall not relieve the lot owner from any of the requirements contained in paragraph 6 of these covenants.

J. In the event any portion of a dwelling unit has an exterior wall located on the lot line separating two attached dwelling units, which wall is not a common wall with the adjoining dwelling unit along its entire length, then the owner of said unit shall have a ten foot easement over that portion of the adjoining lot immediately adjacent to the outside surface of said exterior wall for the purpose of providing access to said outside surface for maintenance and repair.

2. No temporary structure for living quarters shall be erected on any lot in the Subdivision and no trailer, basement of an uncompleted house, tent, shack, garage, barn or other out building erected in the Subdivision shall at any time be

used as a residence temporarily or permanently nor shall any residence of a temporary character be permitted.

3. No noxious or offensive trade shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

4. Construction of any residence within the Subdivision shall be completed within one year from the date said construction is begun.

5. A. No buildings or other structure shall be erected upon any lot in the Subdivision until the following documents have been approved, in writing, by an authorized officer of the Subdivider or its nominee:

(1) Complete plans and specifications describing all buildings and structures, including but not limited to floor plans, elevations, construction materials and color scheme.

(2) Plot plan showing the proposed location on the lot of all improvements including any fences, walls, planting or other site improvements.

B. The Subdivider or its nominee shall have the right to refuse approval of any such plans for any reason which the Subdivider, in its sole discretion, may deem to be in the best interest of the present and future owners of lots within the Subdivision.

C. In the event the Subdivider or its nominee fails to approve or disapprove plans and specifications within 30 days after the same have been submitted to it or its nominee, or in any event, if no suit to enjoin the construction has been commenced prior to the completion of such construction, approval will be conclusively presumed to have been given and these covenants shall be deemed to have been fully complied with.

D. When plans submitted by the owner have been approved by the Subdivider or its nominee, such approval shall be delivered to the owner in writing and the owner shall not thereafter deviate from said plans so approved if said deviation affects the exterior of the proposed improvement.

6. Basements may be constructed only on those lots in the subdivision which have access to a subsurface drainage system. Basements when constructed shall comply with the

provisions of the Amended Conditional Zoning Agreement applicable to the subdivision.

7. Nothing contained herein shall relieve the owner from the obligation to comply with all ordinances of the City relative to Zoning or Building Permit Applications.

8. During construction it shall be the responsibility of each lot owner to insure that the construction site is kept free of unsightly accumulations of rubbish and scrap materials and that construction materials are kept in a neat and orderly manner.

9. As a part of the construction, each lot owner shall be responsible to grade and maintain such lot in a manner so as to minimize damage which might result to other lots as a result of erosion and surface water drainage.

10. Each lot owner shall assume the obligation to install sidewalks on the lot as required by the City of Iowa City, Iowa.

11. Motor vehicles used by residents shall be parked in areas designated in the building plans and plot plans as parking areas. All parking areas shall be hard-surfaced and no parking area shall be predominantly constructed of loose rocks, stones, gravel or similar loose-surfaced materials. No motor vehicles shall be parked in any manner or at anytime so as to interfere with the flow of traffic. Except during the months of May through September of each year, recreational vehicles, including campers, trailers and boats shall be stored within a garage or at such other place where such items are not visible from the street.

12. The owner of any building damaged by fire or Act of God shall within ninety (90) days of such damage, unless an extension of time is obtained from the Subdivider, commence restoration or removal of said building and work shall be completed within one (1) year. In the event of total destruction of any building, the owner shall, within said period of time as above specified, commence removal of the debris and restore the site to a satisfactory condition.

13. If any lot owner shall violate or attempt to violate any of these covenants, any other lot owner, may prosecute any proceedings at law or in equity to prevent such violation or to cover damages for such violation.

14. In any legal or equitable proceeding for the enforcement or to restrain the violation of these covenants or

any provision hereof, the losing party or parties shall pay the attorneys fees of the prevailing party or parties, in such amount as may be fixed by the Court in such proceedings. All remedies provided herein at law or in equity shall be cumulative and not exclusive.

15. The failure of the Subdivider or any other property owner to enforce any restrictions herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction or covenants.

16. The invalidation of any of these covenants by Judgment or Court Order or Decree shall in no way affect any of the other covenants which shall remain in full force and effect.

17. These covenants shall be binding on all lot owners until January 1, 2011, at which time said covenants shall be automatically extended for successive periods of 10 years unless by a vote of a majority of the then owners of the lots and the consent of all mortgagees, said covenants are amended, in whole or in part.

Dated this 18TH day of January, 1994.

C B DEVELOPMENT, LTD.

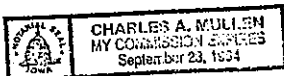
By Carol Barker
Carol Barker
President and Secretary

STATE OF IOWA)

JOHNSON COUNTY)

ss:

On this 18th day of January, 1994, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Carol Barker to me personally known, who, being by me duly sworn, did say that she is the President and Secretary, respectively, of said corporation executing the within and foregoing instrument to which this is attached, that no seal has been procured by the corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Carol Barker as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by her voluntarily executed.



Charles A. Mullen
Notary Public in and for said State

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#63425



City of
IOWA CITY

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JOHNSON COUNTY RECORDER
IOWA CITY, IOWA

STATE OF IOWA)
JOHNSON COUNTY) SS
)

I, Marian K. Karr, City Clerk of Iowa City, Iowa, do hereby certify that the Resolution attached hereto is a true and correct copy of Resolution No. 02-413 which was passed by the City Council of Iowa City, Iowa, at a regular meeting held on the 10th day of December, 2002, all as the same appears of record in my office.

Dated at Iowa City, Iowa, this 11th day of December, 2002.

SEAL

Marian K. Karr
Marian K. Karr
City Clerk

lres

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Prepared by: Sarah E. Holecek, First Asst. City Attorney, 410 E. Washington St., Iowa City, IA 52240 (319)356-5030

RESOLUTION NO. 02-413

RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND THE CITY CLERK TO ATTEST A CONSENT TO AMENDMENT OF RESTRICTIVE COVENANTS FOR WHISPERING MEADOWS PART 2, IOWA CITY, IOWA

WHEREAS, the developers of Whispering Meadows Part 2, as majority property owners in the subdivision, are proceeding to amend the restrictive covenants for the development to allow for the construction of duplex residences and to remove a portion of the development from said covenants; and

WHEREAS, said covenants may be amended by a vote of a majority of the lot owners and upon the consent of all mortgagees; and

WHEREAS, as a sponsor of the Tenant to Ownership Program, the City is in the position of a mortgagee on Lot 81 of the subdivision, and therefore the City's consent is required to amend the covenants as proposed by the developer; and


WHEREAS, the Director of Housing and Inspection Services, as Chief Administrator of the Public Housing Program, does not object to the proposed amendments, as zero lot line construction is already permitted and the amendment will not result in a large increase in density within the development; and

WHEREAS, the execution of said covenants are in the public interest and advance the public health, safety and welfare of the citizens of Iowa City, Iowa.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF IOWA CITY, IOWA, THAT:

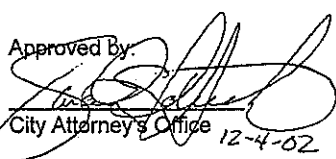
1. The Mayor is hereby authorized to sign and the City Clerk to attest the Consent to Amendment To Restrictive Covenants for Whispering Meadows Part 2, Iowa City, Iowa.
2. The City Clerk is hereby authorized and directed to certify a copy of this Resolution and to forward the same to the Developer's Attorney to be recorded in the Office of the Johnson County Recorder at the property owners' expense.

Passed and approved this 10th day of December, 2002.


MAYOR

ATTEST: 
CITY CLERK

Approved By:


City Attorney's Office

12-4-02

SEAL

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It was moved by Champion and seconded by O'Donnell the Resolution be adopted, and upon roll call there were:

AYES:

X
X
X
X
X
X
X

NAYS:

ABSENT:

 Champion
 Kanner
 Lehman
 O'Donnell
 Pfab
 Vanderhoef
 Wilburn

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WHISPERING MEADOWS PART 2
AMENDMENT TO RESTRICTIVE COVENANTS

This document amends the Restrictive Covenants dated January 18, 1994 and recorded March 30, 1994 in Book 1724, at Page 79, all in the records of the Recorder of Johnson County, Iowa.

KNOW ALL MEN BY THESE PRESENTS: The undersigned, representing a majority of the owners and all mortgagees of the above-described real estate in Johnson County, Iowa, hereby amend the Restrictive Covenants on the above-described real estate, which amendment shall be binding upon all the present and future owners of said real estate as covenants running with the land, and with such force and effect as if contained in each subsequent conveyance of said real estate:

1. Duplex dwellings may be constructed on the lots within the subdivision provided the construction of said duplex dwelling complies the zoning requirements applicable to this subdivision.

2. Lots 96 through 136 in the subdivision are hereby released from the requirements of these Restrictive Covenants in consideration of the fact that these lots are being resubdivided as Whispering Meadows, Part Three. Separate Restrictive Covenants shall be filed in connection with the resubdivision of these lots into Whispering Meadows, Part Three.

Dated this 28th day of October, 2002.

C B DEVELOPMENT, LTD.

By: Carol Barker
Carol Barker, President

By: Robert G. Barker
Robert G. Barker, Secretary
Owners of Lots: 96 through 136
138 through 156
159 through 161
170, 168

STATE OF IOWA)
)
JOHNSON COUNTY) ss:

On this 28 day of October, 2002, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Carol Barker and Robert G. Barker to me personally known, who, being by me duly sworn, did say that they are the President and Secretary,

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respectively, of said corporation executing the within and foregoing instrument to which this is attached, that no seal has been procured by the corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Carol Barker and Robert G. Barker as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



Michael J. Pugh
Notary Public in and for said State

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WHISPERING MEADOWS, PART 2
CONSENT TO AMENDMENT TO RESTRICTIVE COVENANTS
DATED OCTOBER 28, 2002

Dated this 10 day of DECEMBER, 2002.

CITY OF IOWA CITY, IOWA

By:

Ernest W. Lehman
Ernest W. Lehman, Mayor

Attest:

Marian K. Karr
Marian K. Karr, City Clerk

Approved by

SEAL

[Signature]
City Attorney's Office

STATE OF IOWA)
)ss:
JOHNSON COUNTY)

On this 10 day of DECEMBER, 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Ernest W. Lehman and Marian K. Karr, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of said municipal corporation executing the within and foregoing instrument; that the seal affixed thereto is the seal of said municipal corporation; that said instrument was signed and sealed on behalf of said municipal corporation by authority of City Council of said municipal corporation; and that the said Ernest W. Lehman and Marian K. Karr acknowledged the execution of said instrument to be the voluntary act and deed and said municipal corporation, by it and by them voluntarily executed.



Sondrae Fort
Notary Public in and for the State of Iowa

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