

*THIS INSTRUMENT PREPARED BY: STEPHEN C. NELSON
Moyer & Bergman, PLC, 2720 1st Ave. NE, PO Box 1943, Cedar Rapids, IA 52406-1943, (319) 366-7331*

GARDENVIEW SECOND ADDITION TO CEDAR RAPIDS, IOWA
DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS
RESERVATIONS AND EASEMENTS

THIS DECLARATION is made July ____, 2005, by Gardenview, Inc., an Iowa corporation ("Gardenview") and its successors and assigns.

RECITALS

A. Gardenview is the titleholder to all of the lots in Gardenview Second Addition to Cedar Rapids, Iowa.

B. Gardenview desires to subject the real estate described in Article I of this Declaration (the "Real Estate") to the conditions, covenants, restrictions, reservations and easements set forth in this Declaration, which are for the benefit of the Real Estate and each owner of the Real Estate and shall inure to the benefit of and pass with the Real Estate, and each and every parcel.

NOW, THEREFORE, Gardenview declares, covenants and agrees with and for the benefit of all persons to whom Gardenview has contracted to sell or may sell the Real Estate (who, by acceptance of the conveyance of title, shall be deemed to have consented to this Declaration), and for the benefit of itself and himself and the respective successors, assigns, heirs, or legal representatives that the lots in Gardenview Second Addition to Cedar Rapids, Iowa (the "Addition") shall be held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, reservations and easements (collectively referred to as "Covenants") set forth in this Declaration.

1. Property Subject to this Declaration.

The Real Estate which is, and shall be held, transferred, sold, conveyed and occupied subject to the Covenants is located in Linn County, Iowa, and is more particularly described as follows:

Lots 15 through 47, Gardenview Second Addition to Cedar Rapids, Iowa.

2. General Purposes of this Declaration.

The Real Estate is subject to the Covenants to insure the tasteful and consistent development of the Addition; to protect each lot owner from improper use of surrounding lots that may depreciate the value of their lots; to guard against the erection of buildings improperly designed or built of unsuitable materials; to insure adequate and reasonable development of the Addition; to encourage the erection of originally designed buildings and attractive improvements in the Addition with appropriate locations; to prevent haphazard and inharmonious improvements; to secure and maintain proper setbacks from streets and adequate free spaces between structures; to insure desired high standards of maintenance; and in general, to provide adequately for a residential subdivision of high quality and character.

3. Definitions.

A. **BASEMENT.** A portion of a building located partially underground, but having half or more than half its clear floor-to-ceiling height below the average grade of the adjoining ground at the front of the building.

B. **BUILDING.** Any roofed structure intended for the shelter, housing or enclosure of any person, animal or personal property.

C. **BUILDING, ACCESSORY.** A subordinate building or portion of a principal building, the use of which is incidental to the use of the principal building and customary in connection with that use.

D. **BUILDING HEIGHT.** The vertical distance measured from the established ground level to the highest point of a mansard roof, and to the mean level of the topside of rafters between the eaves and the ridge of a gable, hip or gambrel roof; chimneys and ornamental architectural projections shall not be included in calculating the height.

E. **DWELLING.** A single-family residential building or portion of a single-family residential building, but specifically excluding hotels motels, rooming houses, nursing homes, mobile homes, or any form of camping vehicle.

F. **FAMILY.** One or more persons related to each other by blood, marriage or legal adopting, together with his or their domestic servants maintaining a common household in a dwelling.

G. **GARAGE.** An enclosed storage area with doors designed or used for storage of motor vehicles.

H. **LOT.** A parcel of land, under common fee ownership, occupied by or intended for occupancy by one dwelling and having frontage upon a street; a "lot" may or may not coincide with a lot of record.

I. **LOT AREA.** The lot area of a horizontal plane, bounded by the vertical planes through front, side and rear lot lines.

J. **LOT LINE, FRONT.** The boundary line of a lot which is along an existing or dedicated street line as shown on the recorded plat. On corner lots, Gardenview must approve the owner's selection of the intended front yard designation.

K. LOT LINE, REAR. The boundary line of a lot which is most distant from the front lot line, and is, or approximately is, parallel to the front lot line. If the rear lot line is less than ten feet in length, or if the lot line forms a point at the rear, the rear lot line shall be deemed to be a line ten feet in length within the lot, parallel to and at the maximum distance from the lot line.

L. LOT LINE, SIDE. Any boundary of a lot which is not a front or rear lot line.

M. STORY. That portion of a building included between the surface of any floor and the surface of the floor next above; or if there is not floor above, the space between the floor and the ceiling next above. A basement shall be counted as a story where one or more sides is a part of the exterior elevation. A cellar shall not be counted as a story.

N. STRUCTURE. Anything other than a building or accessory building erected or constructed on a lot, the use of which requires more or less permanent location on or in the ground. A sign or other advertising device, detached or projecting, shall be construed to be a separate structure. For purposes of the definition, ornamental masonry walls and fences shall also be construed to be structures.

4. General Restrictions.

A. LAND USE AND BUILDING TYPE. All lots in the Addition shall be used for private residence uses only, and no building, except as specifically authorized elsewhere in this Declaration, shall be erected, re-erected, or maintained on a lot except one dwelling erected for occupancy by one family, and an attached or detached private garage containing no more than four, nor less than two, parking spaces for the sole use of the owners or occupants of the dwelling. The garages may have living quarters in common with garages for the sole use of servants or the owner or occupants, but shall not be used for rental purposes. Other accessory buildings and structures may be erected in such manner and location only as provided in this Declaration or as approved in writing by Gardenview. When the construction of any building, accessory building or structure is once begun, work must be prosecuted diligently and must be completed within a reasonable time. No building, accessory building or structure shall be occupied during construction.

B. BUILDING HEIGHT. No dwelling shall be erected, altered or placed which is more than three stories or thirty feet in height, whichever is lesser. No accessory building or structure shall exceed seventeen feet in height unless a greater height is approved in writing by Gardenview.

C. DWELLING-QUALITY AND SIZE. It is the intention and purpose of these Covenants to assure that all dwellings shall be of high quality design, workmanship and materials approved by Gardenview. All dwellings shall be constructed in accordance with the applicable governmental building code and with more restrictive standards that may be required by Gardenview. The floor area of the dwelling, exclusive of attached garages, carports, open terraces and breezeways, shall be:

- (1) for a one-story dwelling, not less than 1,100 square feet, and
- (2) for dwellings of more than one story, not less than 1,524 square feet with the first story not less than 900 square feet.

D. LOCATION ON LOT. No building shall be located on a lot nearer to the front lot line than twenty-five (25) feet. No dwelling shall be located within twenty-five (25) feet on a rear lot line or five (50) feet of a side lot line not adjoining a street. If the side lot line adjoins a street, the dwelling shall not be closer to the side lot line than seven (7) feet. The construction of tennis courts and swimming pools shall require the prior written approval of Gardenview and shall be screened from any interior street or adjoining lot by a wall, solid fence, evergreen hedge or other visual barrier as approved in writing by Gardenview. No tennis court or swimming pool shall be located on a lot nearer to the front lot line than the front of any dwelling constructed on the lot, nor closer to a side lot line or adjoining street than would be allowed for a dwelling.

E. DRIVEWAYS. Access driveways and other paved areas for vehicular use on a lot shall have a base of compacted gravel, crushed stone or other approved base material, and shall have a wearing surface of asphaltic concrete or concrete.

F. EXCAVATIONS. All settlements which occur on any lot resulting from excavations for waterlines, foundations or other excavations shall be promptly filled and repaired.

G. NATURAL DRAINAGE WAYS. Where there exists on any lot or lots a natural condition of accumulation of storm or surface water remaining over an extended period of time, the lot owner may, with the written approval of Gardenview, take such steps as necessary to remedy such condition; provided however, that no alterations or diversions of such natural water flow proposed by the lot owner will cause damage to other property, either inside or outside the confines of the Addition. No fences shall be constructed to block natural drainage ways.

H. UTILITY AND DRAINAGE EASEMENTS. Gardenview reserves all easements for utilities or drainage shown on the recorded plat and full rights of ingress and egress for itself, its agents, employees and assigns over any part of the Addition for the purpose of installing and servicing the utilities for which the easements are reserved. No building, accessory building or structure, including walls and fences, shall be erected upon any part of the property which will interfere with the rights of ingress and egress provided in this paragraph.

I. HOME OCCUPATIONS, NUISANCES AND LIVESTOCK. No home occupation or profession shall be conducted in any dwelling or accessory building located in the addition unless it complies with the Cedar Rapids zoning ordinance. No noxious or offensive activity shall be carried on in the Addition nor shall anything be done in the Addition which may become an annoyance or nuisance to the neighborhood. No livestock, poultry or more than two dogs or cats over four months of age shall be kept or maintained on any lot. No burning of refuse shall be permitted outside the dwelling, except the burning of leaves will be permitted as or if allowed by ordinance of the City of Cedar rapids from time to time. The use of any open carport, driveway or parking area which may be in front of, adjacent to, or part of any lot as a parking place for recreational or commercial vehicles or articles is prohibited. All "commercial vehicles" (automobiles, station wagons, trucks, trailers, etc.), "recreational vehicles" or "articles" shall be stored inside the garages at all times.

J. PLANT DISEASES OR NOXIOUS INSECTS. No plants or seed, or other things or conditions harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a lot.

K. NAMEPLATES, MAILBOXES, HOSPITALITY LIGHT STANDARDS, TELEVISION AND RADIO ANTENNAE AND TOWERS. There shall be no more than one

nameplate on each lot. A nameplate shall be no more than 200 square inches in area, and contain the name of the occupant or the name and address of the dwelling. It may be located on the door of the dwelling or the wall adjacent to the dwelling, or upon the wall of any accessory building or structure, or free-standing in the front or side yard. No television or radio antennae, or tower shall be erected on any lot which is a separate structure apart from the dwelling, and no television or radio antennae or tower attached to a dwelling shall extend beyond a height of 30 feet. No telephone or radio antennae or tower shall cause any electrical interference to the radio and television reception of the owners of other lots in the Addition. Flag poles are permitted provided the pole is not more than 25 feet in height, unless otherwise approved by Gardenview.

L. TEMPORARY STRUCTURES. No trailer, basement of an uncompleted building, tent, shack, barn, and no temporary building or structure of any kind on a lot shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling shall be on the same lots as the dwelling, and such buildings or structures shall be removed promptly upon the completion of construction.

M. ARCHITECTURAL CONTROLS. It is understood and agreed that the purpose of architectural controls is to secure an attractive, harmonious residential development having continuing appeal. No construction of a building, accessory building, fence, wall or other structure shall be commenced, nor shall any addition, change or alteration be made (except "interior" alterations) until the construction plans and specifications, showing the nature, kind, shape, height, materials, color scheme, and proposed location on the lot, together with the grading plan and landscape plan for the proposed improvement have been submitted to and approved in writing by Gardenview. Gardenview retains the right, in its absolute discretion, to refuse any such construction plans and specifications, location, grading plan or landscape plan, which are not suitable or desirable, in the opinion of Gardenview, or aesthetic for other reasons; and in so passing upon such construction plan and specifications, location, grading plan or landscape plan, Gardenview shall have the right to take into consideration the suitability of the proposed building or other structure with the surroundings, and the effect of the building or other structures on the compatibility with adjacent or neighboring properties. In no instance shall a building or design exactly the same as any other in the Addition be permitted. All plans, specifications and other materials pertinent to any proposed construction shall be submitted to the office of Gardenview together with the payment of Fifty Dollars. A report in writing setting forth the decisions of Gardenview and its reasons shall be transmitted to the applicant by Gardenview within thirty days after the date of filing the plans, specifications and other material by the applicant. Gardenview, following the submission, will aid and assist the prospective residents or their agent and will make every attempt to reasonably cooperate with the wishes of a lot owner. Lot owners are encouraged to submit preliminary sketches for "informal comment" prior to the submittal of architectural drawings and specifications for full review. In the event (a) Gardenview fails to approve or disapprove within thirty days after submission of the final plans, specifications and other materials, as required by this Declaration, or (b) no suit to enjoin construction has been filed within thirty days after commencement of such construction, approval shall not be required, and the related requirements of this paragraph shall be deemed to have been met.

N. UNDERGROUND WIRING. No above ground communication, electric or television lines or cable shall be permitted to be placed anywhere in the Addition other than within buildings or structures. It is intended that all such necessary and approved conduits and cables will be constructed, placed and maintained underground.

O. DEVIATIONS BY AGREEMENT WITH GARDENVIEW. Gardenview reserves the right to enter into agreements with the owner of any lot or lot (without the consent of owners of other lots or adjoining or adjacent property) to deviate from any or all of the Covenants, provided there are practical difficulties or particular hardships evidenced by the owner desiring such deviation, and any such deviation (which shall be manifested by an agreement in writing) shall not constitute a waiver of the particular Covenant involved or any other Covenant as to the remaining property in the Addition.

5. Storm Water Detention Area and Gardenview Second Owners Association

A. THE ASSOCIATION. Ownership of a lot or lots in the Addition shall automatically invoke membership in Gardenview Second Owners Association, Inc., a non-profit homeowners association established under Chapter 504A of the Code of Iowa (the "Association"). Ownership of each lot shall be subject to the applicable terms of the Articles of Incorporation and By-laws of the Association, including the provision made for assessments against all lots in the Addition. The owners of the lots shall pay assessments to the Association for the purpose of paying real estate taxes for and maintaining, repairing and landscaping the private storm water detention area located adjacent to and west of Lots 16 through 21, inclusive, of Gardenview Second Addition to Cedar Rapids, Iowa (the "Common Area"). The Developer reserves the right to add the owners of lots in other adjacent additions as members of the Association.

B. COMMON AREA. Initially, the Common Area shall only include the area within the private storm water detention easement which is located adjacent to and west of Lots 16 through 21, Gardenview Second Addition to Cedar Rapids, Iowa.

C. ASSESSMENTS. The Association shall establish an annual fee for each of the lots in the Addition to cover the expenses of maintaining and repairing the Common Area. The Association shall establish the date when each lot owner shall pay their respective fees. Each lot owned by the Developer shall not be subject to assessment by the Association until the respective lot is conveyed. The Association reserves the right to modify the annual assessments for each lot commencing January of 2006.

D. LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Each owner of a lot is deemed to covenant, by acceptance of such owner's deed or real estate contract for the lot, whether or not it shall be so expressed in the deed or real estate contract, to pay assessments for the repair, replacement, improvement, maintenance, construction, acquisition and landscaping of the Common Area. The assessments and fees shall include, but not be limited to, the maintenance and repair expenses, liability insurance premiums and the payment of real estate taxes on the Common Area. However, payment for any damage to Common Area caused by the negligence or willful conduct of a lot owner or persons using a lot, pursuant to the authority of the lot owner, shall be the responsibility of the respective lot owner. Any such damage to the Common Area shall be due and payable in full within thirty (30) days from the date the repair work is completed.

E. EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES. Any assessment not paid within thirty (30) days after the due date shall be deemed to be in default and shall bear interest from the due date at the rate of fifteen percent (15%) per annum; however, if that interest rate is in excess of the highest legal rate permissible under the Iowa law, the interest rate shall be reduced to the highest legal rate permissible under the Iowa law. If the owner of any lot fails or refuses to pay any assessment when due, the assessment shall

constitute a lien on the lot for which the assessment has not been paid and shall be a personal liability of the lot owner. The lien shall be established and perfected by an owner of a lot that is not in default filing a Notice of Lien signed by such lot owner or an officer of the Association and recorded in the Office of the Recorder of Linn County, Iowa. A copy of the Notice of Lien shall be mailed by the owner or an officer of the Association who signed the Notice of Lien to the owners who are in default by certified mail, return receipt requested. The lien may be enforced in the same manner as a mechanic's lien is enforced under the Iowa Code with all expenses of collection, including attorney fees and court costs, being chargeable to the owners in default. Such lien shall remain a lien until paid in full and shall be released by an affidavit filed in the Office of the Recorder of Linn County, Iowa by the owner who files the Notice of Lien or an officer of the Association. No owner or owners of any lots may waive or otherwise escape liability for assessments provided for in this Declaration on the basis of non-use of the Common Area.

F. SUBORDINATION OF ASSESSMENT LIEN TO MORTGAGES.

Notwithstanding any other provisions of this Declaration, the assessment liens provided in this Declaration shall be subject to and subordinate to the lien of any first mortgage or first deed of trust encumbering any lot in the Addition. A sale or transfer of any lot shall not affect assessment liens. No sale or transfer shall relieve such lot or the owner of such lot from liability for any assessments thereafter becoming due or from the lien of such assessments. However, a sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu of such foreclosure shall extinguish an assessment lien as to payments that became due prior to such sale or transfer of a lot.

6. General Provisions.

A. DURATION. Each of the covenants shall continue and be binding for an initial period of twenty-one (21) years from the date of recording of this Declaration and thereafter for successive periods of twenty-five (25) years each.

B. RUNNING WITH THE LAND. The Covenants shall run with the land and bind Gardenview, its successors, grantees and assigns, and all other parties claiming by, through or under them.

C. REMEDIES FOR VIOLATION OF COVENANTS. Gardenview, its successors or assigns, and each owner or owners of any of the Real Estate from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the Covenants in addition to the right to bring an ordinary legal action for damages. Whenever there shall have been built on any lot in the Addition any structure which is and remains in violation of the Covenants for a period of thirty days after written notice of such violation from Gardenview to the owner of such lot, then Gardenview shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. In no event shall the failure of Gardenview to enforce any of the Covenants as to a particular violation be deemed to be a waiver of the right to do so as to any subsequent violation.

D. MODIFICATION. The record owners in fee simple of the residential lots in the Addition may revoke, modify, amend or supplement in whole or in part any or all of the Covenants and conditions contained in this Declaration and may release the Real Estate from the Covenants, but only at the following time and in the following manner:

- (1) Any such change or changes may be made effective at any time from the date of recording this Declaration if the record owners in fee simple of at least three-fourths of the lots in the Addition consent.
- (2) Any such change or changes may be made effective at the end of the initial twenty-one (21) year term of this Declaration or any successive twenty-five (25) year term if the record owners in fee simple of at least two-third of the lots in the Addition consent at least five (5) years prior to the end of any such term.
- (3) Any such consents shall be effective only if expressed in a written instrument or instruments executed and acknowledged by each of the consenting owners and recorded in the Office of the Recorder of Linn County, Iowa. A recordable certificate by an accredited abstracter or title guaranty company doing business in Linn County, Iowa, as to the record ownership of the Real Estate shall be deemed conclusive evidence with regard to compliance with the provisions of this section. Upon and after the effective date of any such change or changes, the change or changes shall be binding upon all persons, firms and corporations then owning property in the Addition and shall run with the land and bind all persons claiming by, through or under any one or more of the them.
- (4) Any such change or changes shall require the consent of Gardenview as long as Gardenview or its successor or assigns has any ownership interest in the Real Estate.

E. LIENS. All covenants, liens and other provisions set forth in this Declaration shall be subject to and subordinate to all mortgages or deeds of trust in the nature of a mortgage now or hereafter executed, encumbering any of the Real Estate; and none of the Covenants, liens or other provisions shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust in the nature of a mortgage. However, if any such property is acquired in lieu of foreclosure or sold under foreclosure of any mortgage or under the provisions of any deed of trust in the nature of a mortgage or under any judicial sale, any purchaser at such sale, his or its grantees, heirs, personal representatives, successors or assigns shall hold any and all property so purchased or acquired subject to all of the Covenants, liens or other provisions of this Declaration.

F. INVALIDATION. If a court of competent jurisdiction shall hold invalid or unenforceable any part of any Covenant or provision contained in this Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of this Declaration which shall run in full force and effect.

G. NOTICE. Each owner of a lot in the Addition shall file the correct mailing address of such owner with Gardenview and shall notify Gardenview promptly in writing of any subsequent change of address. A written or printed notice, deposited in the United States Post Office, postage prepaid, and addressed to any owner of the last address filed by such owner with Gardenview, shall be sufficient prior notice to such owner wherever notices are required in this Declaration.

GARDENVIEW, INC, an Iowa Corporation

By _____
Troy C. Hames, Jr., President

STATE OF IOWA)
) ss:
COUNTY OF LINN)

On this _____ day of July, 2005, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Troy C. Hames, Jr., to me personally known, who, being by me duly sworn, did say that he is the President of said corporation; that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Troy C. Hames, as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

Notary Public in and for the State of Iowa