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Recorded: 10/24/2023 at 02:02:58 PM
Fee Amt: \$62.00 Page 1 of 12
Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2023-00057215

BK **19635** PG **935-946**

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR KIMBERLEY WOODS PLAT 1

Preparer Information:

Lisa R. Wilson
Wilson & Egge, P.C.
222 N.W. Sunrise Drive
Waukee, Iowa 50263
(515) 369-2502

Taxpayer Information:

N/A

Return Document To:

Wilson & Egge, P.C.
222 N.W. Sunrise Drive
Waukee, Iowa 50263

RETURN TO:

Grantor:

Kimberley Development Corporation

Grantee:

N/A

Legal Description:

Lots One (1) through Thirty-six (36) inclusive, in Kimberley Woods Plat 1, an Official Plat, now included in and forming a part of the City of Elkhart, Polk County, Iowa.

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS FOR KIMBERLEY WOODS PLAT 1**

THIS DECLARATION is made this 3 day of October, 2023, by Kimberley Development Corporation, an Iowa corporation ("Declarant").

RECITALS:

WHEREAS, Declarant, concurrently herewith, has subdivided, developed and platted Kimberley Woods Plat 1 in the City of Elkhart, Polk County, Iowa ("Kimberley Woods"), and is the owner of Lots 1 through 36 in said Kimberley Woods.

WHEREAS, Declarant is desirous of establishing certain covenants, conditions, easements and restrictions for the benefit of the owners of the Lots.

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

I. DEFINITIONS

- A. "City" shall mean the City of Elkhart, Iowa.
- B. "County" shall mean Polk, Iowa.
- C. "Declarant" shall mean Kimberley Development Corporation, and its successors and assigns, as to the entirety of the Lots that has not theretofore been conveyed to homebuilders or homeowners, unless the context indicates otherwise.
- D. "Lot" or "lot" shall mean and refer to Lots 1 through 36, inclusive, as shown on the recorded plat of Kimberley Woods Plat 1.
- E. "Owner" shall mean a person the person or persons who from time to time collectively hold the entire fee title to a Lot, including sellers under executory contracts of sale (but shall not include any person or entity who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such security instruments).
- F. Words and phrases in this Declaration shall be construed as in the singular or plural number, unless the context permits only one such manner.

II. GENERAL RESTRICTIONS AND DESIGNATION OF USE

- A. Each Lot shall be used exclusively for single family residential purposes.
- B. No unsightly objects, nuisances, advertising signs or bill boards shall be displayed on any Lot, including signs of any nature, kind or description that identify, advertise, or in any way describe the existence or conduct of a home occupation; provided, however, that an Owner shall be entitled to display one (1) "for sale" sign of standard and customary size and materials in connection with attempts by the

Owner to market a Lot. Nothing in this subsection shall affect the rights of Declarant and Declarant reserves the right to maintain improvements on one or more Lots as a model or as a sales and display office for itself or for its sales agents or assigns. Declarant reserves the right to display or post signs of any type of size which are a part of the development and marketing of the development or houses for sale, and to have agents and employee equipment and materials on any Lot used for a model or sales office.

C. No home occupation shall be conducted or maintained on any Lot other than one which is incident to a business, profession or occupation of the Owner or occupant of any such Lot, and which is generally or regularly conducted in another location away from such Lot. No Lot shall be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots or dwellings located thereon.

D. No exterior television or radio antenna, satellite receiving disc or exterior solar heating or cooling device of any sort shall be permitted on any Lot, except satellite discs may be attached to the dwelling that do not exceed 36" in diameter and are not located on the front half of the dwelling or the front half of the roof.

E. No repair of any boat, automobile, motorcycle, truck, camper or similar vehicle requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time, nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot.

F. No boat, snowmobile, recreational vehicle, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper-truck or similar chattel shall be maintained or stored on any Lot (other than in an enclosed structure) for more than seven (7) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading, excavating equipment, trucks over one (1) ton GVWR, truck-tractors, or semi-tractors/trailers shall be parked, stored, kept or maintained in any yards, driveways or streets. However, this section shall not apply to pick-up trucks, vans, trucks under one (1) ton GVWR, or other sport utility vehicles (SUV). In addition to the foregoing, trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction are not prohibited.

G. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash container/receptacle shall be permitted unless completely screened from view, except for trash pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside the dwelling, except when in actual use. No garbage, refuse, rubbish, or cutting shall be deposited on any street, road or Lot. Only retractable or collapsible clothes lines are permitted. Such clothes lines shall be located in the rear yard area and not visible from the street. All clothes lines shall be retracted or collapsed when not in use. Produce or vegetable gardens shall be located in the rear yards only and not be any larger in size than $\frac{1}{4}$ of the rear yard area, excluding any easement areas. Any garden areas must be frequently weeded and kept in a neat manner so as not to present a nuisance to any neighbor.

H. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs and cats may be kept, provided that they are not kept, bred or maintained for any commercial purposes. Any dog run or doghouse must be constructed up against the house in the rear yard and must be screened from neighbors' view. Dogs must reside inside the dwelling. No dog may be kept unattended outside a dwelling for more than two (2) hours per day.

I. No noxious or offensive activities not involving the maintenance of the Lots shall be carried on upon any Lot, nor shall anything be done thereon that may be or may become an annoyance or a nuisance to the neighborhood. No Lot shall be used for any unlawful purpose, nor shall any Owner cause, suffer or harbor the source of, any noise or activity that disturbs the peace, comfort, and quiet enjoyment of other Owners.

J. The Owner of each Lot shall keep the same free of weeds and debris. No grass, weeds, shrubs, trees, or other vegetation will be allowed to remain on any Lot that constitutes an actual or potential public nuisance, creates a hazard or undesirable proliferation or detracts from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth, concrete remains or any waste materials, brush or any other debris.

K. No temporary structure, trailer, tent, shack, garage, barn or other building shall be used on any Lot at any time as a dwelling, either temporarily or permanently. The Executive Committee must approve any additional structure built on a Lot in addition to the dwelling for compatibility with the neighborhood.

L. Garage doors shall be kept closed except during the time of access and use of the garage.

M. Above grade and below grade swimming pools shall be allowed. Proper fencing surrounding the pool must be installed in accordance with the City's building code.

N. No dwelling, building, fence, wall, driveway, patio, patio enclosures, swimming pool, hot tub, pool house, landscaping or other external improvement, above or below the ground, shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any such improvement be commenced, until approved in writing by the Executive Committee.

O. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity so as not to disturb the Owners of adjacent Lots.

P. Any construction or earth moving on any Lot(s) (whether greater or less than one acre in size) shall be in compliance with all statutes, rules and/or ordinances relating to storm water and erosion control compliance and permitting. The Owner understands and agrees that he/she is the sole responsible permittee for the Lot(s) with respect to compliance with all terms, provisions and requirements of the NPDES Storm Water Discharge Permit No. 2, the storm water pollution prevention plan which includes the Lot(s) and any and all applicable storm water and/or erosion control statutes, rules and ordinances.

Each Owner shall protect, defend, indemnify and hold the Declarant and other Owners harmless from any and all damages, claims, liabilities, fines, penalties, cleanup costs and/or attorneys and consultant fees caused by, or in any manner related to: 1) any discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the Lot(s) identified above; and/or 2) any alleged violation of any NPDES, storm water and/or erosion control statute, rule or ordinance, after the date of sale of the Lot(s).

III. SITE DEVELOPMENT

A. No fences, walls, hedges or barriers shall be permitted upon or adjoining Lot lines except as follows:

(1) Hedges not exceeding three (3) feet in height are permitted along front Lot lines and

side property lines in the front yard setback areas. Any hedges must be trimmed and kept neat in appearance and not allowed to grow unevenly.

(2) Walls, fences and hedges not exceeding six (6) feet in height are permitted along rear Lot lines and side Lot lines behind the centerline of the dwelling built on a Lot.

(3) The fence material shall be mounted on the exterior face of the fence posts.

(4) At no point in time shall there be a fence on fence across two adjoining property lines.

(5) A proper permit has been obtained from the City prior to commencement of installation of the fence. It is the sole responsibility of the Owner installing the fence to have all lot lines surveyed by a licensed surveyor to ensure the fence is installed wholly within the boundaries of the Lot.

(6) No fence shall be constructed within a drainage easement area without the prior written consent of the City.

B. Landscaping Requirements.

(1) All minimum landscaping requirements must be installed within one hundred eighty (180) days of occupancy.

(2) The Owner of a dwelling will, at its cost, provide and plant one (1) tree in the front yard. All trees and any replacements thereof shall have a minimum 1 ½" trunk diameter, measured 6' vertically from ground level when planted.

(3) There may be public utility and drainage easements across various Lots as may be shown on the recorded plat of Kimberley Woods. Drainage is not to be altered so as to impede the natural flow of surface water once the Lot grade is established or as shown on the final plat of Kimberley Woods.

(4) Any surface water drainage easement areas will naturally be wet during rainy seasons and in addition will carry away the excess water from the yards. This is to be anticipated by the Lot Owners. No fencing or any other obstructions of any kind will be allowed to disturb or impede the natural flow of drainage of water across or through the drainage easement areas on the Lot.

(5) Any field tile which is broken during construction shall be replaced, at Owner's cost, so as to maintain continuous uninterrupted operation, and shall be routed into the nearest storm sewer or other approved drain tile.

(6) Wood kept on any Lot for use in domestic fireplaces shall be neatly stacked behind the dwelling out of sight from public view and shall not consist of more than one such stack which shall not be in excess of 4' x 4' x 8' in size.

C. All parking and drives shall be hard surfaced using Portland cement, approved brick pavers or stamped/colored concrete.

D. Required Minimum Setbacks:

(1) Front Yard: 30 feet

- (2) Side Yard: 7 feet minimum each side
- (3) Rear Yard: 25 feet

Minimum setbacks shall be measured from the foundation of the dwelling (including any structure attached thereto) to the property line from which the setback is being measured. Verify all setbacks with the City Building Department and the final plat of Kimberley Woods.

IV. BUILDING STANDARDS

A. No building or structure shall be constructed, altered or maintained on any Lot unless it complies with the following criteria and guidelines:

- (1) Vinyl, steel, LP Smart Side or Hardie Plank (James Hardie) concrete board. Brick, Stone, Cultured Stone and EIFS are approved siding materials. All others must be approved by the Executive Committee. No minimums are required for masonry materials.
- (2) Roof materials shall be a minimum of 3-tab fiberglass or asphalt shingles. Wood shakes, wood shingles, slate, concrete barrel tile or metal standing seam panels are also allowed.
- (3) All dwellings shall have at least a two-car attached garage.
- (4) Any additional storage shed, outbuildings or detached structure must be located in the rear yard of the dwelling. Temporary sheds, metal sheds or any structure that does not fit in with the neighborhood will not be allowed. In any event, all structures must be approved by the City of Elkhart.

B. No prefabricated, mobile home, modular home, pre-built home or any type of home brought to the Lot by truck or trailer, substantially constructed and set upon the Lot by crane or otherwise, will be allowed within Kimberley Woods. The preceding paragraph does not intend to disallow the use of prefabricated roof trusses, components or panelized sections of a home constructed off-site.

C. Dwellings shall have a minimum square footage as measured to the exterior wall face of the finished air-conditioned areas as follows:

- (1) One story dwellings must have a main floor finished areas of not less than 1,300 square feet.
- (2) One and one-half story dwellings must have not less than 1,700 square feet exclusive of any basement finish.
- (3) Two story dwellings must have not less than 1,700 square feet exclusive of any basement finish.
- (4) Any other styles or sizes need to be approved by the Executive Committee.
- (5) All building structures and/or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.
- (6) Each dwelling shall include a minimum of a 2-car attached garage.

Note: In computing floor areas, square footage shall not include porches, decks or garages.

V. EASEMENTS

Certain perpetual easements are reserved as shown on the recorded plat of Kimberley Woods, and/or as may be granted to the City by the Declarant and filed of record in the Office of the County Recorder. Except as otherwise provided in an easement filed of record in the Office of the Polk County Recorder, or as may be otherwise set forth herein, the owner or occupant of a Lot shall, at their own expense, keep and preserve that portion of the easement within their Lot in good repair and condition, and shall neither erect, nor permit erection of any building, structure or fence of any kind within the easement which might interfere in any way with the use of such easement.

VI. MAINTENANCE OF LOTS AND SURFACE WATER

A. The Owner or person in possession of each Lot, whether vacant or improved, shall keep the same well maintained, groomed and mowed, free of uncut weeds, rubbish, garbage and debris. Damaged or dead trees and shrubbery will be trimmed out or removed. Failing this, the Owner agrees that upon receipt of written notice from the Declarant to mow or cut such vegetation, trim or remove damaged trees or shrubbery, and/or remove such debris within ten (10) days, the Owner will be subject to a combination of remedies recognized at law or equity.

B. Vegetation in conservancy easements, flowage easements, creek channels, drainage ways and/or timbered areas shall not become overgrown with weeds, but may be planted in ground-cover species appropriate to the topography and land form.

C. The topography of Kimberley Woods is such that surface water may flow from certain Lots onto other Lots. In regard to all matters concerning surface water, each Lot shall be subject to such easements as may exist for 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 law.

VII. EXECUTIVE COMMITTEE

A. Establishment/Function

The Declarant's Executive Committee (the "Executive Committee") is hereby established. The Executive Committee shall consist of the Manager or Managers of the Declarant or the designee (s) of such Manager or Managers. The functions of the Committee shall be to interpret and apply these Covenants, Conditions, Easements and Restrictions and to review building plans as described below in Article VIII during the time that property is being developed. These Covenants, Conditions, Easements and Restrictions may also be enforced by any affected Lot Owner. Notwithstanding anything to the contrary herein, Declarant shall have the sole authority to approve any alternative building plan, design, material or other deviation of the requirements contained in this Declaration.

B. Meetings, Quorum and Vote

The Executive Committee shall meet at a reasonably convenient time and place within ten (10) days after receiving the request of any interested party. One-half of the members of the Committee shall constitute a quorum. A majority vote of the Executive Committee members present (assuming a quorum present) shall be sufficient for Committee action and decision.

C. Election of Replacement Committee

At such time as the Declarant no longer retains an ownership interest in any Lot, or Declarant waives its rights to control the Executive Committee, all such voting control and authority of the Executive Committee shall automatically transfer to the Owners.

D. Executive Committee Procedure

(1) Design review by the Executive Committee is intended to protect and enhance the distinctive character and natural attractiveness of the Kimberley Woods area. All buildings, structures or appurtenances thereto, to be erected, constructed, established, altered or enlarged within the property must be reviewed and approved by the Executive Committee as described below in Article VIII.

(2) The Executive Committee shall consider and approve or disapprove the materials required to be submitted pursuant to these Covenants, Conditions, Easements and Restrictions.

(3) Prior to change of any building's exterior character by remodeling or alteration, the Owner, or his or her designated agent, shall secure the written approval of the Executive Committee.

VIII. REVIEW AND APPROVAL OF PLANS

A. Plans and Specifications to be Submitted for Approval.

(1) Final site plan documents drawn to scale outlining the following must be submitted to the Executive Committee for review and approval prior to the commencement of any construction on a Lot:

- (a) Property legal description with scale and arrow on plan showing North;
- (b) Building locations including setback dimensions;
- (c) Driveways and sidewalks;
- (d) Special features, such as fencing, lighting, underground utilities and mechanical equipment;
- (e) Contour lines or slope of draining;
- (f) Landscaping plan, submitted prior to installations;
- (g) Size, height, type and color of any sign; and
- (h) Parking areas, points of access, as well as any easements for access and means of screening; and
- (i) Any other document requested by the Executive Committee.

(2) Final building plans and specifications outlining the following must be submitted to the Executive Committee for review and approval prior to the commencement of any construction on a Lot:

- (a) Floor plans, exterior elevations and sections;

- (b) Square footage of buildings;
- (c) Exterior colors and material samples for exposed exterior materials; and
- (d) Perspective rendering or photo, if available; and
- (e) Any other item or specification requested by the Executive Committee.

IX. COVENANT ENFORCEMENT/GENERAL PROVISIONS

A. Penalties

In addition to the remedies described below in Paragraph B or elsewhere in this Declaration, the Declarant is hereby authorized to levy against any Lot in violation of this Declaration of Covenants, Conditions and Restrictions an assessment penalty not to exceed \$100 for each day a violation of this Declaration continues beyond thirty (30) days after notice of a violation has been given by the Declarant to the Owner of said Lot by certified mail, return receipt requested, or delivered in writing in by personal service. If the Owner of the Lot cannot be located after a diligent search or inquiry, the Declarant shall publish notice of the violation for two (2) successive weeks in a newspaper of general circulation in Polk County, Iowa. If the Owner has not fully complied with the terms of this Declaration within thirty (30) days after receiving notice, or thirty (30) days after second publication of notice, the Declarant shall have the authority to levy an assessment penalty as described herein. This assessment shall be a lien on the Lot and shall have the same status as any other assessment levied by the Declarant. Any Lot Owner objecting to the notice of violation shall have the right within thirty (30) days of receiving notice to request a hearing before the Declarant. Assessment of the penalty shall be stayed pending a hearing and final decision by the Declarant.

B. Specific Enforcement Of Restrictions

All Owners of Lot covenant and agree, by acceptance of a deed to such Lot, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the breach of the restrictions and covenants contained in this Declaration and that this Declaration may be specifically enforced by Declarant, the City, or an adversely affected Lot Owner.

C. Attorney's Fees

In the event it shall be necessary to secure the services of an attorney to enforce the provisions of this Declaration, then the fee of such attorney, and all other costs in connection with the enforcement of this Declaration shall be the obligation of the Owner of the Lot which is the subject of such enforcement action, unless such Owner is found not to have violated any provision of this Declaration.

D. Covenants Binding and Running with The Land.

Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of Declarant and the Owners of each Lot, and their successors and assigns and all parties and persons claiming under any of them, and shall be deemed covenants that run with the land, and shall continue for the applicable periods specified in this Declaration.

It is the intent that, notwithstanding anything in the Code of Iowa to the contrary, all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration

shall be covenants running with the land for the full period specified in this Declaration without further action by either Declarant or any Owner of any Lot in Kimberley Woods. However, in the event that Section 614.24 of the Code Iowa, as the same may be amended or replaced, may require that a verified claim be filed in the Office of the Recorder for Polk County, Iowa prior to the twenty-first anniversary of the date of this Declaration or the twenty-first anniversary of the last filing of such verified claim in order to continue all or some of the covenants of this Declaration, including, but not limited to, any covenant, term, provision or restriction that is or may be considered a use restriction, reversion or right of reverter, in effect throughout the applicable periods specified in this Declaration, then:

(1) any or all of the Owners of the Lots, acting jointly or severally, shall file all verified claims necessary to keep all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration;

(2) a verified claim filed by Owner of a Lot in Kimberley Woods shall be valid and binding upon all the then Owners of Lots in Kimberley Woods, and their successors and assigns, with the same effect as if executed by all such persons, and in order to facilitate filing of any verified claim required to so continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration in full force and effect, each Owner of a Lot is hereby irrevocably appointed the attorney-in-fact for all of the other Interested Parties for the purpose of filing any such verified claim.

E. Duration.

Any easements granted in or pursuant to this Declaration, and any other provisions of this Declaration to the extent applicable to such easements, and any other covenants, indentures, restrictions and reservations of this Declaration that are reasonably or necessarily incidental to the benefit or burden of such easement rights, including any rights of assessment or for liens for the payment of costs associated therewith, shall continue in perpetuity, unless sooner modified or terminated as provided in this Declaration.

Except as provided in the preceding paragraphs of this Article, the covenants, conditions, restrictions and easements in this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for an initial period of twenty-one years after the date they are recorded in the County Recorder's Office, unless sooner modified or terminated as provided in this Article.

F. Amendment of This Declaration.

This Declaration may be amended in writing by an instrument signed and filed of record in the Office of the County, Iowa Recorder, by at least fifty-one percent (51%) of the Lot owners, if the Declarant does not own a Lot. Notwithstanding the foregoing, the Declarant retains the sole right to amend this Declaration for any reason so long as Declarant has an ownership interest in any Lot.

G. Severability.

In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

H. Captions.

The captions of the articles, sections and any paragraphs, of this Declaration, or the lack thereof, are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

ARTICLE X. ANNEXATION AND REMOVAL OF LAND

A. Additional Land

Declarant shall have the irrevocable right now, and in the future, to subject additional land to the terms of this Declaration at any time in the future without the consent or approval of any owner or other third party. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the Recorder of Polk County, Iowa. No approval of any owner or other third party shall be necessary.

B. Removal of Land

Declarant shall have the irrevocable right now, and in the future, to remove any portion of the property from the operation of this Declaration without the consent or approval of any owner or other third party. Declarant shall signify this removal by filing an amendment to this Declaration with the Recorder of Polk County, Iowa.

Dated this 3rd day of October, 2023.

-SIGNATURE PAGE TO FOLLOW-

-SIGNATURE PAGE-

KIMBERLEY DEVELOPMENT CORPORATION,
DECLARANT

By: Jenna Kimberley
Jenna Kimberley, Vice President

STATE OF IOWA)
) ss:
COUNTY OF Dallas)

This record was acknowledged before me on this 3rd day of October, 2023, by Jenna Kimberley, Vice President of Kimberley Development Corporation.



Jennifer M. Hill
Notary Public in and for the State of Iowa

U.S.
S.S.
U.S.



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Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2023-00057225

BK **19636** PG **1-12**

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR KIMBERLEY WOODS PLAT 2

Preparer Information:

Lisa R. Wilson
Wilson & Egge, P.C.
222 N.W. Sunrise Drive
Waukee, Iowa 50263
(515) 369-2502

Taxpayer Information:

N/A

Return Document To:

RETURN TO:

Wilson & Egge, P.C.
222 N.W. Sunrise Drive
Waukee, Iowa 50263

Grantor:

Kimberley Development Corporation

Grantee:

N/A

Legal Description:

Lots One (1) through Forty-four (44) inclusive, in Kimberley Woods Plat 2, an Official Plat, now included in and forming a part of the City of Elkhart, Polk County, Iowa.

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS FOR KIMBERLEY WOODS PLAT 2**

THIS DECLARATION is made this 3rd day of October, 2023, by Kimberley Development Corporation, an Iowa corporation ("Declarant").

RECITALS:

WHEREAS, Declarant, concurrently herewith, has subdivided, developed and platted Kimberley Woods Plat 2 in the City of Elkhart, Polk County, Iowa ("Kimberley Woods"), and is the owner of Lots 1 through 44 in said Kimberley Woods.

WHEREAS, Declarant is desirous of establishing certain covenants, conditions, easements and restrictions for the benefit of the owners of the Lots.

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

I. DEFINITIONS

- A. "City" shall mean the City of Elkhart, Iowa.
- B. "County" shall mean Polk, Iowa.
- C. "Declarant" shall mean Kimberley Development Corporation, and its successors and assigns, as to the entirety of the Lots that has not theretofore been conveyed to homebuilders or homeowners, unless the context indicates otherwise.
- D. "Lot" or "lot" shall mean and refer to Lots 1 through 44, inclusive, as shown on the recorded plat of Kimberley Woods Plat 2.
- E. "Owner" shall mean a person the person or persons who from time to time collectively hold the entire fee title to a Lot, including sellers under executory contracts of sale (but shall not include any person or entity who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such security instruments).
- F. Words and phrases in this Declaration shall be construed as in the singular or plural number, unless the context permits only one such manner.

II. GENERAL RESTRICTIONS AND DESIGNATION OF USE

- A. Each Lot shall be used exclusively for single family residential purposes.
- B. No unsightly objects, nuisances, advertising signs or bill boards shall be displayed on any Lot, including signs of any nature, kind or description that identify, advertise, or in any way describe the existence or conduct of a home occupation; provided, however, that an Owner shall be entitled to display one (1) "for sale" sign of standard and customary size and materials in connection with attempts by the

Owner to market a Lot. Nothing in this subsection shall affect the rights of Declarant and Declarant reserves the right to maintain improvements on one or more Lots as a model or as a sales and display office for itself or for its sales agents or assigns. Declarant reserves the right to display or post signs of any type of size which are a part of the development and marketing of the development or houses for sale, and to have agents and employee equipment and materials on any Lot used for a model or sales office.

C. No home occupation shall be conducted or maintained on any Lot other than one which is incident to a business, profession or occupation of the Owner or occupant of any such Lot, and which is generally or regularly conducted in another location away from such Lot. No Lot shall be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots or dwellings located thereon.

D. No exterior television or radio antenna, satellite receiving disc or exterior solar heating or cooling device of any sort shall be permitted on any Lot, except satellite discs may be attached to the dwelling that do not exceed 36" in diameter and are not located on the front half of the dwelling or the front half of the roof.

E. No repair of any boat, automobile, motorcycle, truck, camper or similar vehicle requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time, nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot.

F. No boat, snowmobile, recreational vehicle, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper-truck or similar chattel shall be maintained or stored on any Lot (other than in an enclosed structure) for more than seven (7) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading, excavating equipment, trucks over one (1) ton GVWR, truck-tractors, or semi-tractors/trailers shall be parked, stored, kept or maintained in any yards, driveways or streets. However, this section shall not apply to pick-up trucks, vans, trucks under one (1) ton GVWR, or other sport utility vehicles (SUV). In addition to the foregoing, trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction are not prohibited.

G. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash container/receptacle shall be permitted unless completely screened from view, except for trash pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside the dwelling, except when in actual use. No garbage, refuse, rubbish, or cutting shall be deposited on any street, road or Lot. Only retractable or collapsible clothes lines are permitted. Such clothes lines shall be located in the rear yard area and not visible from the street. All clothes lines shall be retracted or collapsed when not in use. Produce or vegetable gardens shall be located in the rear yards only and not be any larger in size than $\frac{1}{4}$ of the rear yard area, excluding any easement areas. Any garden areas must be frequently weeded and kept in a neat manner so as not to present a nuisance to any neighbor.

H. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs and cats may be kept, provided that they are not kept, bred or maintained for any commercial purposes. Any dog run or doghouse must be constructed up against the house in the rear yard and must be screened from neighbors' view. Dogs must reside inside the dwelling. No dog may be kept unattended outside a dwelling for more than two (2) hours per day.

I. No noxious or offensive activities not involving the maintenance of the Lots shall be carried on upon any Lot, nor shall anything be done thereon that may be or may become an annoyance or a nuisance to the neighborhood. No Lot shall be used for any unlawful purpose, nor shall any Owner cause, suffer or harbor the source of, any noise or activity that disturbs the peace, comfort, and quiet enjoyment of other Owners.

J. The Owner of each Lot shall keep the same free of weeds and debris. No grass, weeds, shrubs, trees, or other vegetation will be allowed to remain on any Lot that constitutes an actual or potential public nuisance, creates a hazard or undesirable proliferation or detracts from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth, concrete remains or any waste materials, brush or any other debris.

K. No temporary structure, trailer, tent, shack, garage, barn or other building shall be used on any Lot at any time as a dwelling, either temporarily or permanently. The Executive Committee must approve any additional structure built on a Lot in addition to the dwelling for compatibility with the neighborhood.

L. Garage doors shall be kept closed except during the time of access and use of the garage.

M. Above grade and below grade swimming pools shall be allowed. Proper fencing surrounding the pool must be installed in accordance with the City's building code.

N. No dwelling, building, fence, wall, driveway, patio, patio enclosures, swimming pool, hot tub, pool house, landscaping or other external improvement, above or below the ground, shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any such improvement be commenced, until approved in writing by the Executive Committee.

O. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity so as not to disturb the Owners of adjacent Lots.

P. Any construction or earth moving on any Lot(s) (whether greater or less than one acre in size) shall be in compliance with all statutes, rules and/or ordinances relating to storm water and erosion control compliance and permitting. The Owner understands and agrees that he/she is the sole responsible permittee for the Lot(s) with respect to compliance with all terms, provisions and requirements of the NPDES Storm Water Discharge Permit No. 2, the storm water pollution prevention plan which includes the Lot(s) and any and all applicable storm water and/or erosion control statutes, rules and ordinances.

Each Owner shall protect, defend, indemnify and hold the Declarant and other Owners harmless from any and all damages, claims, liabilities, fines, penalties, cleanup costs and/or attorneys and consultant fees caused by, or in any manner related to: 1) any discharges of soil, silt, sediment, petroleum product, hazardous substances or solid waste from the Lot(s) identified above; and/or 2) any alleged violation of any NPDES, storm water and/or erosion control statute, rule or ordinance, after the date of sale of the Lot(s).

III. SITE DEVELOPMENT

A. No fences, walls, hedges or barriers shall be permitted upon or adjoining Lot lines except as follows:

(1) Hedges not exceeding three (3) feet in height are permitted along front Lot lines and

side property lines in the front yard setback areas. Any hedges must be trimmed and kept neat in appearance and not allowed to grow unevenly.

(2) Walls, fences and hedges not exceeding six (6) feet in height are permitted along rear Lot lines and side Lot lines behind the centerline of the dwelling built on a Lot.

(3) The fence material shall be mounted on the exterior face of the fence posts.

(4) At no point in time shall there be a fence on fence across two adjoining property lines.

(5) A proper permit has been obtained from the City prior to commencement of installation of the fence. It is the sole responsibility of the Owner installing the fence to have all lot lines surveyed by a licensed surveyor to ensure the fence is installed wholly within the boundaries of the Lot.

(6) No fence shall be constructed within a drainage easement area without the prior written consent of the City.

B. Landscaping Requirements.

(1) All minimum landscaping requirements must be installed within one hundred eighty (180) days of occupancy.

(2) The Owner of a dwelling will, at its cost, provide and plant one (1) tree in the front yard. All trees and any replacements thereof shall have a minimum 1 ½" trunk diameter, measured 6' vertically from ground level when planted.

(3) There may be public utility and drainage easements across various Lots as may be shown on the recorded plat of Kimberley Woods. Drainage is not to be altered so as to impede the natural flow of surface water once the Lot grade is established or as shown on the final plat of Kimberley Woods.

(4) Any surface water drainage easement areas will naturally be wet during rainy seasons and in addition will carry away the excess water from the yards. This is to be anticipated by the Lot Owners. No fencing or any other obstructions of any kind will be allowed to disturb or impede the natural flow of drainage of water across or through the drainage easement areas on the Lot.

(5) Any field tile which is broken during construction shall be replaced, at Owner's cost, so as to maintain continuous uninterrupted operation, and shall be routed into the nearest storm sewer or other approved drain tile.

(6) Wood kept on any Lot for use in domestic fireplaces shall be neatly stacked behind the dwelling out of sight from public view and shall not consist of more than one such stack which shall not be in excess of 4' x 4' x 8' in size.

C. All parking and drives shall be hard surfaced using Portland cement, approved brick pavers or stamped/colored concrete.

D. Required Minimum Setbacks:

(1) Front Yard: 30 feet

- (2) Side Yard: 7 feet minimum each side
- (3) Rear Yard: 25 feet

Minimum setbacks shall be measured from the foundation of the dwelling (including any structure attached thereto) to the property line from which the setback is being measured. Verify all setbacks with the City Building Department and the final plat of Kimberley Woods.

IV. BUILDING STANDARDS

A. No building or structure shall be constructed, altered or maintained on any Lot unless it complies with the following criteria and guidelines:

- (1) Vinyl, steel, LP Smart Side or Hardie Plank (James Hardie) concrete board. Brick, Stone, Cultured Stone and EIFS are approved siding materials. All others must be approved by the Executive Committee. No minimums are required for masonry materials.
- (2) Roof materials shall be a minimum of 3-tab fiberglass or asphalt shingles. Wood shakes, wood shingles, slate, concrete barrel tile or metal standing seam panels are also allowed.
- (3) All dwellings shall have at least a two-car attached garage.
- (4) Any additional storage shed, outbuildings or detached structure must be located in the rear yard of the dwelling. Temporary sheds, metal sheds or any structure that does not fit in with the neighborhood will not be allowed. In any event, all structures must be approved by the City of Elkhart.

B. No prefabricated, mobile home, modular home, pre-built home or any type of home brought to the Lot by truck or trailer, substantially constructed and set upon the Lot by crane or otherwise, will be allowed within Kimberley Woods. The preceding paragraph does not intend to disallow the use of prefabricated roof trusses, components or panelized sections of a home constructed off-site.

C. Dwellings shall have a minimum square footage as measured to the exterior wall face of the finished air-conditioned areas as follows:

- (1) One story dwellings must have a main floor finished areas of not less than 1,300 square feet.
- (2) One and one-half story dwellings must have not less than 1,700 square feet exclusive of any basement finish.
- (3) Two story dwellings must have not less than 1,700 square feet exclusive of any basement finish.
- (4) Any other styles or sizes need to be approved by the Executive Committee.
- (5) All building structures and/or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.
- (6) Each dwelling shall include a minimum of a 2-car attached garage.

Note: In computing floor areas, square footage shall not include porches, decks or garages.

V. EASEMENTS

Certain perpetual easements are reserved as shown on the recorded plat of Kimberley Woods, and/or as may be granted to the City by the Declarant and filed of record in the Office of the County Recorder. Except as otherwise provided in an easement filed of record in the Office of the Polk County Recorder, or as may be otherwise set forth herein, the owner or occupant of a Lot shall, at their own expense, keep and preserve that portion of the easement within their Lot in good repair and condition, and shall neither erect, nor permit erection of any building, structure or fence of any kind within the easement which might interfere in any way with the use of such easement.

VI. MAINTENANCE OF LOTS AND SURFACE WATER

A. The Owner or person in possession of each Lot, whether vacant or improved, shall keep the same well maintained, groomed and mowed, free of uncut weeds, rubbish, garbage and debris. Damaged or dead trees and shrubbery will be trimmed out or removed. Failing this, the Owner agrees that upon receipt of written notice from the Declarant to mow or cut such vegetation, trim or remove damaged trees or shrubbery, and/or remove such debris within ten (10) days, the Owner will be subject to a combination of remedies recognized at law or equity.

B. Vegetation in conservancy easements, flowage easements, creek channels, drainage ways and/or timbered areas shall not become overgrown with weeds, but may be planted in ground-cover species appropriate to the topography and land form.

C. The topography of Kimberley Woods is such that surface water may flow from certain Lots onto other Lots. In regard to all matters concerning surface water, each Lot shall be subject to such easements as may exist for 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 law.

VII. EXECUTIVE COMMITTEE

A. Establishment/Function

The Declarant's Executive Committee (the "Executive Committee") is hereby established. The Executive Committee shall consist of the Manager or Managers of the Declarant or the designee (s) of such Manager or Managers. The functions of the Committee shall be to interpret and apply these Covenants, Conditions, Easements and Restrictions and to review building plans as described below in Article VIII during the time that property is being developed. These Covenants, Conditions, Easements and Restrictions may also be enforced by any affected Lot Owner. Notwithstanding anything to the contrary herein, Declarant shall have the sole authority to approve any alternative building plan, design, material or other deviation of the requirements contained in this Declaration.

B. Meetings, Quorum and Vote

The Executive Committee shall meet at a reasonably convenient time and place within ten (10) days after receiving the request of any interested party. One-half of the members of the Committee shall constitute a quorum. A majority vote of the Executive Committee members present (assuming a quorum present) shall be sufficient for Committee action and decision.

C. Election of Replacement Committee

At such time as the Declarant no longer retains an ownership interest in any Lot, or Declarant waives its rights to control the Executive Committee, all such voting control and authority of the Executive Committee shall automatically transfer to the Owners.

D. Executive Committee Procedure

(1) Design review by the Executive Committee is intended to protect and enhance the distinctive character and natural attractiveness of the Kimberley Woods area. All buildings, structures or appurtenances thereto, to be erected, constructed, established, altered or enlarged within the property must be reviewed and approved by the Executive Committee as described below in Article VIII.

(2) The Executive Committee shall consider and approve or disapprove the materials required to be submitted pursuant to these Covenants, Conditions, Easements and Restrictions.

(3) Prior to change of any building's exterior character by remodeling or alteration, the Owner, or his or her designated agent, shall secure the written approval of the Executive Committee.

VIII. REVIEW AND APPROVAL OF PLANS

A. Plans and Specifications to be Submitted for Approval.

(1) Final site plan documents drawn to scale outlining the following must be submitted to the Executive Committee for review and approval prior to the commencement of any construction on a Lot:

- (a) Property legal description with scale and arrow on plan showing North;
- (b) Building locations including setback dimensions;
- (c) Driveways and sidewalks;
- (d) Special features, such as fencing, lighting, underground utilities and mechanical equipment;
- (e) Contour lines or slope of draining;
- (f) Landscaping plan, submitted prior to installations;
- (g) Size, height, type and color of any sign; and
- (h) Parking areas, points of access, as well as any easements for access and means of screening; and
- (i) Any other document requested by the Executive Committee.

(2) Final building plans and specifications outlining the following must be submitted to the Executive Committee for review and approval prior to the commencement of any construction on a Lot:

- (a) Floor plans, exterior elevations and sections;

- (b) Square footage of buildings;
- (c) Exterior colors and material samples for exposed exterior materials; and
- (d) Perspective rendering or photo, if available; and
- (e) Any other item or specification requested by the Executive Committee.

IX. COVENANT ENFORCEMENT/GENERAL PROVISIONS

A. Penalties

In addition to the remedies described below in Paragraph B or elsewhere in this Declaration, the Declarant is hereby authorized to levy against any Lot in violation of this Declaration of Covenants, Conditions and Restrictions an assessment penalty not to exceed \$100 for each day a violation of this Declaration continues beyond thirty (30) days after notice of a violation has been given by the Declarant to the Owner of said Lot by certified mail, return receipt requested, or delivered in writing in by personal service. If the Owner of the Lot cannot be located after a diligent search or inquiry, the Declarant shall publish notice of the violation for two (2) successive weeks in a newspaper of general circulation in Polk County, Iowa. If the Owner has not fully complied with the terms of this Declaration within thirty (30) days after receiving notice, or thirty (30) days after second publication of notice, the Declarant shall have the authority to levy an assessment penalty as described herein. This assessment shall be a lien on the Lot and shall have the same status as any other assessment levied by the Declarant. Any Lot Owner objecting to the notice of violation shall have the right within thirty (30) days of receiving notice to request a hearing before the Declarant. Assessment of the penalty shall be stayed pending a hearing and final decision by the Declarant.

B. Specific Enforcement Of Restrictions

All Owners of Lot covenant and agree, by acceptance of a deed to such Lot, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the breach of the restrictions and covenants contained in this Declaration and that this Declaration may be specifically enforced by Declarant, the City, or an adversely affected Lot Owner.

C. Attorney's Fees

In the event it shall be necessary to secure the services of an attorney to enforce the provisions of this Declaration, then the fee of such attorney, and all other costs in connection with the enforcement of this Declaration shall be the obligation of the Owner of the Lot which is the subject of such enforcement action, unless such Owner is found not to have violated any provision of this Declaration.

D. Covenants Binding and Running with The Land.

Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of Declarant and the Owners of each Lot, and their successors and assigns and all parties and persons claiming under any of them, and shall be deemed covenants that run with the land, and shall continue for the applicable periods specified in this Declaration.

It is the intent that, notwithstanding anything in the Code of Iowa to the contrary, all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration

shall be covenants running with the land for the full period specified in this Declaration without further action by either Declarant or any Owner of any Lot in Kimberley Woods. However, in the event that Section 614.24 of the Code Iowa, as the same may be amended or replaced, may require that a verified claim be filed in the Office of the Recorder for Polk County, Iowa prior to the twenty-first anniversary of the date of this Declaration or the twenty-first anniversary of the last filing of such verified claim in order to continue all or some of the covenants of this Declaration, including, but not limited to, any covenant, term, provision or restriction that is or may be considered a use restriction, reversion or right of reverter, in effect throughout the applicable periods specified in this Declaration, then:

(1) any or all of the Owners of the Lots, acting jointly or severally, shall file all verified claims necessary to keep all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration;

(2) a verified claim filed by Owner of a Lot in Kimberley Woods shall be valid and binding upon all the then Owners of Lots in Kimberley Woods, and their successors and assigns, with the same effect as if executed by all such persons, and in order to facilitate filing of any verified claim required to so continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration in full force and effect, each Owner of a Lot is hereby irrevocably appointed the attorney-in-fact for all of the other Interested Parties for the purpose of filing any such verified claim.

E. Duration.

Any easements granted in or pursuant to this Declaration, and any other provisions of this Declaration to the extent applicable to such easements, and any other covenants, indentures, restrictions and reservations of this Declaration that are reasonably or necessarily incidental to the benefit or burden of such easement rights, including any rights of assessment or for liens for the payment of costs associated therewith, shall continue in perpetuity, unless sooner modified or terminated as provided in this Declaration.

Except as provided in the preceding paragraphs of this Article, the covenants, conditions, restrictions and easements in this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for an initial period of twenty-one years after the date they are recorded in the County Recorder's Office, unless sooner modified or terminated as provided in this Article.

F. Amendment of This Declaration.

This Declaration may be amended in writing by an instrument signed and filed of record in the Office of the County, Iowa Recorder, by at least fifty-one percent (51%) of the Lot owners, if the Declarant does not own a Lot. Notwithstanding the foregoing, the Declarant retains the sole right to amend this Declaration for any reason so long as Declarant has an ownership interest in any Lot.

G. Severability.

In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

H. Captions.

The captions of the articles, sections and any paragraphs, of this Declaration, or the lack thereof, are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

ARTICLE X. ANNEXATION AND REMOVAL OF LAND

A. Additional Land

Declarant shall have the irrevocable right now, and in the future, to subject additional land to the terms of this Declaration at any time in the future without the consent or approval of any owner or other third party. The additional land shall be automatically subject to the applicable terms and conditions of this Declaration. Declarant shall signify the addition of land by filing an amendment to this Declaration with the Recorder of Polk County, Iowa. No approval of any owner or other third party shall be necessary.

B. Removal of Land

Declarant shall have the irrevocable right now, and in the future, to remove any portion of the property from the operation of this Declaration without the consent or approval of any owner or other third party. Declarant shall signify this removal by filing an amendment to this Declaration with the Recorder of Polk County, Iowa.

Dated this 3rd day of October, 2023.

-SIGNATURE PAGE TO FOLLOW-

-SIGNATURE PAGE-

KIMBERLEY DEVELOPMENT CORPORATION,
DECLARANT

By: Jenna Kimberley
Jenna Kimberley, Vice President

STATE OF IOWA)
COUNTY OF Dallas) ss:

This record was acknowledged before me on this 3rd day of October, 2023, by Jenna Kimberley, Vice President of Kimberley Development Corporation.



Jennifer Hill
Notary Public in and for the State of Iowa