



# COVENANT SUMMARY

## Boulder Creek Plat 1 & 2

---

### Square Footage Minimums:

Ranch	1,400 sq. ft*
Story and a Half	2,000 sq. ft*
Two Story	2,000 sq. ft*
Split Level	2,000 sq. ft*

\*Exclusive of attached garages, breezeways, and porches

### Utilities:

Electric	Mid-American
Gas	Mid-American
Internet	CenturyLink, Eventis, Frontier, HughesNet, Mediacom, mi-fiber, ViaSat & Vonage
Water	City of Altoona

**School District:** Southeast Polk High School, Pleasant Hill

**HOA: Yes/Managed by:** Kimberley Development; 515.963.8335, HOA@kimdev.com

**HOA Fees:** Initiation fee of \$750 at closing; \$350 Annually thereafter.

**Exterior Elements Excluded:** No above ground pools allowed; upon approval, below grade pools allowed with proper fencing, and permitted by City of Altoona.

**Front Elevation Material Requirements:** N/A

**Garage Minimum:** 3 cars attached

**Siding Material Excluded:** No Vinyl or Steel Siding

**Fence Material Allowed:** Upon approval, back yard fencing in black vinyl chain link, black wrought iron, or painted aluminum only; 6 feet or less in height. Must be permitted by the City of Altoona. The owner is required to have property surveyed to determine property boundaries and call-in underground locations before installation of any fencing. Owners must protect any fencing, including any lawn fencing.

**Storage Sheds, Play Structure Requirements:** Upon approval, any exterior outbuilding must be no more than 12x12, single story, with a 12' maximum height to ridgeline, and constructed of similar materials/roof pitch as dwelling. Cannot be located in any easement or drainage area and must be permitted by the City of Altoona.

Upon approval, 1 piece of permanent playground equipment allowed.

**Street Tree Requirements:** N/A

**Landscaping Requirements:** A minimum of 1 tree shall be in the front yard of specific diameter and height.

The owner may plant more than 1 tree in the front yard, in addition to the above requirements.

**Pets:** Dog run/house must be in the rear and against the house and screened from neighbor's view. No dog may be kept outside for more than 2 hours a day, unattended.



Doc ID: 038397390003 Type: GEN  
Kind: RESTRICTIVE COVENANT  
Recorded: 11/30/2022 at 01:45:11 PM  
Fee Amt: \$17.00 Page 1 of 3  
Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2022-00088879

BK 19340 PG 466-468

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS FOR BOULDER CREEK ESTATES**

**Preparer Information:**

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

**Taxpayer Information:**

N/A

RETURN TO:

**Return Document To:**

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

**Grantor:**

William Kimberley Development Corporation

**Grantee:**

N/A

**Legal Description:**

Lots One (1) through Twenty-eight (28), inclusive, and Outlots X, Y and Z, in Boulder Creek Estates Plat 1, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa AND Lots One (1) through Thirty-seven (37), inclusive, and Outlots Y and Z, in Boulder Creek Estates Plat 2, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa.

**Document or instrument number of previously recorded documents:**

Book 19332, Page 932

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS FOR BOULDER CREEK ESTATES**

THIS AMENDMENT TO DECLARATION is made this 10<sup>th</sup> day of November, 2022.

WHEREAS, a Declaration of Covenants, Conditions, Easements and Restrictions for Boulder Creek Estates was executed on October 28, 2022, by William Kimberley Development Corporation, an Iowa corporation (“Declarant”) and filed of record in Polk County, Iowa, on November 21, 2022 in Book 19332, Page 932 (“Declaration”).

WHEREAS, the undersigned Declarant, pursuant to rights granted under Article XIII of the Declaration as filed, has the right to annex additional land and common area to the terms of the Declaration.

WHEREAS, Declarant desires to subject Lots 1 through 37, and Outlots Y and Z, in Boulder Creek Estates Plat 2 to the terms of the Declaration.

NOW, THEREFORE, the undersigned Declarant does hereby modify the Declaration as follows:

1. “Lot” as defined in the Declaration is amended to include the following described real estate:

Lots 1 through 37, inclusive, in Boulder Creek Estates Plat 2.

2. “Outlot” as defined in the Declaration is amended to include the following described real estate:

Outlots Y and Z in Boulder Creek Estates Plat 2.

3. Any general references in the Declaration to “Boulder Creek Estates” and “Boulder Creek Estates Plat 1” shall include lots in “Boulder Creek Estates Plat 2”, as may be applicable.

4. In all other respects, the Declaration shall remain unaffected and be enforceable as filed.

Dated on this day and year first written above.

-SIGNATURE PAGE TO FOLLOW-

-SIGNATURE PAGE-

WILLIAM 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 10th day of November, 2022, by Jenna Kimberley, Vice President of William Kimberley Development Corporation.

Janelle Valadez  
Notary Public in and for the State of Iowa



Recorded: 3/21/2023 at 9:25:37.0 AM  
County Recording Fee: \$17.00  
Iowa E-Filing Fee: \$3.00  
Combined Fee: \$20.00  
Revenue Tax:  
Polk County, Iowa  
Julie M. Haggerty RECORDER  
Number: 202300012757  
BK: 19423 PG: 918

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS FOR BOULDER CREEK ESTATES**

**Preparer Information:**

Lisa R. Wilson  
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

**Grantor:**

William Kimberley Development Corporation

**Grantee:**

N/A

**Legal Description:**

Lots One (1) through Twenty-eight (28), inclusive, and Outlots X, Y and Z, in Boulder Creek Estates Plat 1, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa AND Lots One (1) through Thirty-seven (37), inclusive, and Outlots Y and Z, in Boulder Creek Estates Plat 2, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa.

**Document or instrument number of previously recorded documents:**

Book 19332, Page 932; Book 19340, Page 466

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS FOR BOULDER CREEK ESTATES**

THIS SECOND AMENDMENT TO DECLARATION is made this 14<sup>th</sup> day of March, 2023.

WHEREAS, a Declaration of Covenants, Conditions, Easements and Restrictions for Boulder Creek Estates was executed on October 28, 2022, by William Kimberley Development Corporation, an Iowa corporation ("Declarant") and filed of record in Polk County, Iowa, on November 21, 2022 in Book 19332, Page 932, as amended by an Amendment to Declaration filed November 30, 2022 in Book 19340, Page 466 ("Declaration").

WHEREAS, the undersigned Declarant, pursuant to rights granted under Article XII(F) of the Declaration as filed has the right to amend the Declaration so long as it owns a lot in Boulder Creek Estates.

NOW, THEREFORE, the undersigned Declarant does hereby modify the Declaration as follows:

1. Article III(H) shall be deleted in its entirety and replaced with the following:

H. All dwellings shall contain a minimum square footage of finished living space exclusive of floor area below exterior grade, attached garages, breezeways, and porches as follows:

(1) One-story dwellings must have a minimum of 1,400 square feet of above-grade finished floor area.

(2) One and one-half story dwellings must have a minimum of 2,000 square feet of above-grade finished floor area.

(3) Two story and split-level dwellings must have a minimum of 2,200 square feet of above-grade finished floor area.

2. The undersigned represents and warrants as the Declarant that it is the fee titleholder of at least one lot within Boulder Creek Estates at this time.

3. In all other respects, the Declaration shall remain unaffected and be enforceable as filed.

Dated on this day and year first written above.

-SIGNATURE PAGE TO FOLLOW-

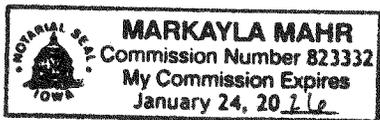
-SIGNATURE PAGE-

WILLIAM KIMBERLEY DEVELOPMENT CORPORATION, DECLARANT

By: Jenna Kimberley  
Jenna Kimberley, Vice President

STATE OF IOWA )  
 ) ss:  
COUNTY OF Polk )

This record was acknowledged before me on this 14<sup>th</sup> day of March, 2023, by Jenna Kimberley, Vice President of William Kimberley Development Corporation.



Markayla Mahr  
Notary Public in and for the State of Iowa

57



Doc ID: 038378800011 Type: GEN  
Kind: RESTRICTIVE COVENANT  
Recorded: 11/21/2022 at 02:21:46 PM  
Fee Amt: \$57.00 Page 1 of 11  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2022-00087256

BK **19332** PG **932-942**

## DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR BOULDER CREEK ESTATES

**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 TO:

**Return Document To:**

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

**Grantor:**

William Kimberley Development Corporation

**Grantee:**

N/A

**Legal Description:**

Lots One (1) through Twenty-eight (28), inclusive, and Outlots X, Y and Z, in Boulder Creek Estates Plat 1, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa.

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS FOR BOULDER CREEK ESTATES**

THIS DECLARATION is made this 28 day of October, 2022, by William Kimberley Development Corporation, an Iowa corporation (“Declarant”).

RECITALS:

WHEREAS, Declarant, concurrently herewith, has subdivided, developed and platted Boulder Creek Estates Plat 1 in the City of Altoona, Polk County, Iowa (“Boulder Creek Estates”), and is the owner of Lots 1 through 28, and Outlots X, Y and Z, in said Boulder Creek Estates.

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 Altoona, Iowa.
- B. “County” shall mean Polk, Iowa.
- C. “Declarant” shall mean William Kimberley Development Corporation, an Iowa 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” shall mean and refer to Lots 1 through 28, inclusive, as shown on the recorded plat of Boulder Creek Estates Plat 1.
- E. “Outlot” shall mean and refer to Outlots X, Y and Z as shown on the recorded plat of Boulder Creek Estates Plat 1.
- F. “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).
- G. 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. DESIGNATION OF USE**

The use of all Lots shall be limited to single-family residential use with not more than one single-family dwelling on each Lot, and may be developed only with other uses of land or structures customarily incidental and subordinate to the single-family residential use as permitted by the City Zoning Ordinance,

unless such uses or structures are otherwise regulated or prohibited by this Declaration. No full-time or part-time business activity may be conducted on any Lot or in any building or structure on any Lot, except to the extent of a home occupation permitted by the City Zoning Ordinance, and except that home builders may maintain model homes during construction, and Declarant may maintain a sales office during its development and sales of the Lots in Boulder Creek Estates.

A. No building or structure of a temporary character and no trailer, basement, tent, shack, garage or outbuilding shall be used at any time as a residential dwelling on any Lot, either temporarily or permanently.

B. No trailer, boat, camper, motor home, or truck rated larger than one (1) ton or other movable or temporary structure or enclosure shall be maintained or parked on any Lot.

C. No mobile home or Manufactured Homes as defined in the Code of Iowa shall be placed on or erected on any Lot.

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

E. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes.

F. 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).

G. Leasing is allowed in Boulder Creek Estates, including, but not limited to, Airbnb, VRBO and HomeAway. All leases shall be subject to the terms of this Declaration and of the Articles of Incorporation, Bylaws and any rules or regulations adopted by the Association. Sub-leasing is strictly prohibited. No lease shall relieve an Owner from liabilities and responsibilities to the Association and other Owners as set forth in this Declaration, or otherwise imposed under City ordinances and laws of the State of Iowa.

### **III. DESIGN AND CONSTRUCTION**

A. In order to preserve the general design for the development of the whole of Boulder Creek Estates, no structure or other improvement, or addition thereto, shall be erected upon any Lot unless the plan, design, building materials and location thereof shall have been first approved by the

Declarant or such person or persons designated by the Declarant for this purpose. Approval of such plans shall not be unreasonably withheld.

B. All building structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.

C. No building shall be erected on any Lot nearer than the building setback lines as shown on the recorded plat.

D. No building or structure shall be constructed, altered or maintained on any Lot unless it has a driveway running from a street to the dwelling, which must be of sufficient area to park at least two cars entirely off the street right-of-way. All driveways shall be constructed of concrete surfacing.

E. All dwellings must be constructed with the minimum of a three-car attached or built-in basement garage.

F. The exterior of any dwelling, garage or outbuilding located on any Lot shall be finished in an earth tone conservative color design that will blend well with the abutting subdivisions. All siding must be a 50-year hard board (commonly referred to as "Hardie Plank", "James Hardie Siding" or "LP Smartside"). Neither steel, nor vinyl siding is permitted.

G. All roof material shall be slate, tile, cedar shakes, or composition shingles. Composition shingles shall be architectural grade, with a minimum thirty-year (30) warranty.

H. All dwellings shall contain a minimum square footage of finished living space exclusive of floor area below exterior grade, attached garages, breezeways, and porches as follows:

(1) One-story dwellings must have a minimum of 1,600 square feet of above-grade finished floor area.

(2) One and one-half story dwellings must have a minimum of 2,000 square feet of above-grade finished floor area.

(3) Two story and split-level dwellings must have a minimum of 2,200 square feet of above-grade finished floor area.

I. Utility buildings, storage sheds, pool houses or other similar structures shall be permitted; provided that (i) the exterior and the roof of any such structure is constructed of the same material and has the same color and appearance as the residential dwelling on the same Lot; (ii) the structure is located only in the rear yard; (iii) the structure does not exceed 12 feet x 12 feet in size; (iv) the structure is single story; (v) a permit has been obtained from the City of Altoona; and (vi) the structure is not located in any easement or drainage area. Playground equipment is permitted, however, no more than one (1) piece of permanent playground equipment shall be allowed and all equipment must be approved by Declarant.

#### **IV. LANDSCAPING AND FENCES**

A. Within thirty (30) days of completion of the dwelling on a Lot, the Lot shall be fully sodded, except where the topography, conservancy districts, creek slopes or tree cover does not make sodding practical. If weather conditions make the time requirement for sodding impossible to comply with, Declarant shall establish a reasonable period of time for compliance.

B. Within thirty (30) days of completion of a dwelling on a Lot, a minimum of three (3) trees must be planted on the Lot, which shall meet the following criteria:

(1) A minimum of one (1) tree shall be located in the front yard approximately ten feet (10') from the front property line, and centered on the Lot from the driveway to the side yard located furthest from the driveway. The tree shall be a minimum of two inches (2") in caliper measured six feet (6') from the ground, and must be either an Autumn Blaze Maple or a Red Sunset Maple. The Lot may contain more than one (1) tree in the front yard. Shrubs and foundation plantings must be planted across the front elevation of the foundation.

(2) A minimum of two (2) trees shall be located in the back yard (unless the back yard landscape contains at least two existing trees).

(3) The party purchasing the Lot from the Declarant shall be responsible for planting all trees required hereunder and cannot transfer said responsibility to the party who first occupies the dwelling as a residence.

C. No fences shall be permitted upon any Lot except as follows:

(1) No fence shall exceed six (6) feet in height and shall be constructed of black vinyl coated chain link, black wrought iron or painted aluminum. The fence screening material shall be mounted on the exterior face of the fence posts or fence framing.

(2) No fence shall be constructed forward of the dwelling's front building line, and shall not be constructed within a drainage easement area without the prior written consent of the City.

(3) Pool fences shall be constructed as required by City ordinance.

(4) Prior to commencement of construction of any fence permitted hereunder, the Owner must:

(i) have applied for and received a permit from the City of Altoona;

(ii) have the Lot surveyed by a licensed surveyor to confirm Lot boundaries and proper placement of the fence;

(iii) obtain utility locates through Iowa One Call, or similar service.

(5) No fence shall interfere with any existing neighboring fence, including any farm fence.

(6) No fence shall restrict or interfere with any surface water flowage or drainage.

## V. SATELLITE DISHES, ANTENNAS, POLES

A. Satellite dishes or parabolic devices in excess of thirty-six inches (36") in diameter used to receive television or other signals from satellites shall not be permitted. The satellite dish or parabolic device shall be mounted on the rear elevation of the dwelling or garage, or the rear half of the side elevation only. In no event shall a satellite dish or parabolic device be mounted on the front elevation.

B. No exterior towers or antennae of any kind shall be constructed, modified or permitted on the ground of any Lot or on any dwelling, garage or other permitted structure. All antennae shall be concealed with the attic space of the dwelling or garage.

C. All lighted flag poles and exterior up lighting shall be of a residential design and shall be positioned on a Lot in a manner that will avoid direct lighting onto adjoining Lots.

## **VI. MISCELLANEOUS RESTRICTIONS**

A. No sign of any kind or description shall be placed, exposed to view or permitted to remain on any Lot or any street adjacent thereto, except: (i) street markers, traffic signs and other signs displayed by the City or other governmental units; (ii) signs which have been approved by the Declarant or its authorized agent not exceeding 144 square inches in area upon which there shall only be exhibited the street number or name, or both, of the resident; and (iii) a customary sign (one per Lot) advertising a dwelling for sale, not exceeding 1296 square inches in area. In the event that any sign, other than those described above, shall be placed or exposed to view on any of the Lots restricted hereby, the officers or agents of the Declarant are hereby given the right to enter upon those Lots and remove said signs. Real estate signs by the Declarant will be permitted until such development is completed. Declarant reserves the right to install entrance and directional signs with respect to Boulder Creek Estates, at locations and of design determined by the Declarant, and in a manner consistent with the ordinances of the City.

B. No trash receptacles, garbage cans or recycling bins shall be permitted to be placed outside a dwelling or garage except as is necessary for regular collection.

C. Only below-ground swimming pools shall be permitted on a Lot, which shall be approved by Declarant, located in the rear yard and shall be enclosed with a fence. No above-ground swimming pools are allowed. No pool shall be constructed on any Lot until a proper permit is obtained from the City of Altoona.

D. All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground. No private wells or septic systems shall be permitted on any Lot.

E. The Owner of the Lot(s) on which a mailbox cluster unit is located shall be responsible for removal of snow and ice which would obstruct access to the mailbox cluster units by the mail carrier and other Owners.

## **VII. EASEMENTS**

Certain perpetual easements are reserved as shown on the recorded plat of Boulder Creek Estates Plat 1, 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 fences of any kind within the easement which might interfere in any way with the use of such easement.

## **VIII. SIDEWALKS**

The purchaser of a Lot shall, at the purchaser's expense, install public sidewalks in accordance with specifications of the City upon the earlier of the date the dwelling is built upon the Lot, or within one year of purchase of the Lot from the Declarant.

## IX. 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 Boulder Creek Estates 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.

D. No structure of any kind, including fences, shall be built upon the Outlots and such Outlots shall be owned and maintained by the Association in accordance with the Declaration of Owners Association filed in the office of the Polk County Recorder.

## X. 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 and landscaping plans as described below in Article XI during the time that property is being developed and thereafter. 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 and is no longer the sole voting member of the Association, 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 Crossing area. All buildings, structures or appurtenances thereto, including landscaping, 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 XI.

(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.

**XI. 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

## **XII. 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 Boulder Creek Estates. 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 Boulder Creek Estates shall be valid and binding upon all the then Owners of Lots in Boulder Creek Estates, 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 Polk County, Iowa Recorder, and approved 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, or is the sole voting member of the Association.

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.

**XIII. 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 the Association or any 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. No approval of the Association or any other third party shall be necessary.

**XIV. ASSOCIATION**

Every Owner of a Lot shall be a Member of Boulder Creek Estates Owners Association, Inc. (the "Association") and shall be subject to assessments made by the Association pursuant to the Declaration of Owners Association for Boulder Creek Estates filed of record in Polk County.

Dated this 29 day of October, 2022.

WILLIAM 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 29 day of October, 2022, by Jenna Kimberley, Vice President of William Kimberley Development Corporation.

Charlotte D. Sloan  
Notary Public in and for the State of Iowa

