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Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2016-00108245

BK **16540** PG **85-97**

**Recorder's Cover Sheet
Declaration of Covenants for
Elk Run Plat 1, Elkhart, Polk County, Iowa.**

Preparer Information: Matthew M. Hurn
Wasker, Dorr, Wimmer and Marcouiller, PC
4201 Westown Pkwy, Suite 250
West Des Moines, IA 50266
(515)283-1801 (1967RE)

Taxpayer Address: Kimberley Development Corporation
2785 N Ankeny Blvd #22
Ankeny, IA 50023

Return Address: Matthew M. Hum
Wasker, Dorr, Wimmer, and Marcouiller, PC
4201 Westown Parkway, Suite 250
West Des Moines, IA 50266
(515) 283-1801

RETURN TO:

Legal Description: See Exhibit "A"

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
AND EASEMENTS FOR ELK RUN PLAT 1,
A SUBDIVISION IN POLK COUNTY, IOWA**

THIS DECLARATION, made on the date hereinafter set forth, is made by **KIMBERLEY DEVELOPMENT CORPORATION**, an Iowa Limited Liability Company, hereinafter referred to as “Declarant”.

PRELIMINARY STATEMENT

The Declarant is the Owner of certain real property to be platted and known as Elk Run Plat 1, located within the City of Elkhart, County of Polk, in the State of Iowa, the legal description of which is set forth in Exhibit “A” attached and by reference made a part hereof.

The Declarant desires to provide for the preservation of the values and amenities of Elk Run Plat 1, for the maintenance of the character and residential integrity and for the purpose of enhancing and protecting the desirability and attractiveness of the Lots contained therein.

NOW, THEREFORE, the Declarant hereby declares that all Lots in Elk Run Plat 1, an Official Plat, now included in and forming a part of the City of Elkhart, Polk County, Iowa, shall be held, sold, and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions, and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot or any part thereof, as is more fully described herein. The Lots are, and each Lot is and shall be subject to all and each of the following conditions and other terms, except as may otherwise be provided herein:

ARTICLE I

DEFINITIONS

- A. **“Declarant”** shall mean and refer to Kimberley Development Corporation, its successors, or assigns.
- B. **“Developer”** shall mean and refer to Kimberley Development Corporation, its successors or assigns.
- C. **“Owner”** shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of Elk Run Plat 1 other than streets or out lots.

- D. **“Development Board”** shall mean and refer to a board appointed by Declarant, its successors and assigns. Until such time as Declarant appoints a Development Board, Declarant shall serve solely as the Development Board.

ARTICLE II

GENERAL RESTRICTIONS AND COVENANTS RELATING TO LOTS WITHIN THE
PLAT

- A. Each Lot shall be used exclusively for single family residential purposes.
- B. No advertising signs, bill boards, including signs of any nature, kind or description that identify, advertise, or in any way describe the existence or conduct of a home occupation, or any unsightly objects or nuisances shall not be displayed on any Lot without the prior written approval of the Development Board; 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 Article shall affect the rights of Declarant.

Declarant, however, reserves the right to maintain the 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; 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 material 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. Nor shall the premises 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.
- 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 residence that do not exceed 36” in diameter and are not located on the front half of the residence 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 except during actual building operations.

- 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 ton GVW, 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 ton GVW, 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.

- G. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or trash container 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 as to not 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 no more than three (3) dogs and three (3) cats may be kept, provided that they are not kept, bred or maintained for any commercial purposes. Any dog run or dog house 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. Nor shall any Lot be used for any unlawful purpose. Nor shall any Owner cause, or 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 residence, either temporarily or permanently. The Development Board must approve any additional structures built on a lot in addition to the residence for compatibility to the neighborhood.
- L. Garage doors shall be kept closed except during time of access and use of the garage.
- M. Below grade swimming pools shall be allowed. Proper fencing surrounding the pool must be installed as per the building code. Above ground swimming pools shall not be allowed.
- N. No residence, building, fence, wall, driveway, patio, patio enclosures, swimming pool, hot tub, pool house, landscaping, or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for improvements which have been approved in writing by the Development Board.
- O. Exterior lighting installed on any Lot shall either be indirect or such a controlled focus and intensity as not to disturb the resident of adjacent Lots.

ARTICLE III

RESTRICTIONS AND COVENANTS RELATING TO 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 house 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. Approved fencing material shall be limited to the following: black vinyl chain link, black wrought iron/aluminum, tan or white PVC privacy fencing or open rail. The Board of Directors must approve any other materials other than those listed.
6. Decorative brick or stone columns with black wrought iron/aluminum fencing or white/tan PVC open rail shall be allowed along the front property line and at driveway entrance.
7. In no event shall wood fencing be allowed.
8. In any event, the planting of all hedges or installation of any fencing and walls shall require prior written request and approval of the Development Board before installation or planting.

B. Landscaping

1. All minimum landscaping requirements must be installed within 180 days of occupancy.
2. The Builder will, at their cost, provide and plant two trees in the front yard. All trees and any replacements thereof shall have a minimum 1 1/2" trunk diameter, measured 6' vertically from ground level when planted.
3. The homeowner is to plant shrubs and foundation plantings across the front and front corners of the house after closing.
4. There may be public utility and drainage easements across various Lots as may be shown on the recorded plat. 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.
5. 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.

6. Any field tile which is broken during construction shall be replaced so as to maintain continuous uninterrupted operation; and shall be routed into the nearest storm sewer; or other approved drain tile and is the responsibility of the Lot Owner or builder.
 7. Wood kept on the premises 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. 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 residence which has a structure attached to it, to the property line from which the setback is being measured. Verify all setbacks with the City of Elkhart Building Department and the Final Plat.

ARTICLE IV

RESTRICTIONS AND COVENANTS RELATING TO BUILDING STANDARDS

A. Criteria and Guidelines:

1. Vinyl, steel, LP Smart Side, Handi Plank, Board. Brick, Stone, Cultured Stone, and EIFS are approved siding materials. All others must be approved by the Development. 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 residence. 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 Development Board.
 - i. Maximum size:
 1. 24' x 24', single story, 18' max height to the Ridgeline.
 - ii. Minimum Setbacks:
 1. 10' from the residence.
 2. 7' from any side yard.
 3. 10' from the rear property line.
 4. 30' from the street on a sideyard if on a corner lot.
 - iii. No structure may be located within any drainage easement, utility easement, or any other restricted area.
5. 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 Elk Run Plat 1. The preceding paragraph does not intend to disallow the use of prefabricated roof trusses, components, or panelized sections of a home constructed off-site.

B. 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 1,100 square feet.
2. One and one-half story dwellings must have not less than 1,400 square feet exclusive of any basement finish.
3. Two story dwellings must have not less than 1,400 square feet exclusive of any basement finish.
4. Any other styles or sizes need to be approved by the Development Board.
5. All building structures and/or improvements of any kind must be completed within 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.

ARTICLE V

ENFORCEMENT OF COVENANTS

The covenants shall be deemed to run with the land to which they apply, and the Owner of any land to which these covenants and restrictions apply may bring an action in any court of competent jurisdiction to enforce these covenants and enjoin their violations or to recover damages for the breach thereof or for any other remedy or combination of remedies recognized at law or in equity.

ARTICLE VI

AMENDMENTS TO COVENANTS

These covenants may be amended from time to time by the affirmative vote of not less than three-fourths (3/4) of the owners of property in Elk Run Plat 1 to which these covenants apply; but the owner or owners of such property shall be entitled to cast, in the aggregate, only one (1) vote on account of each Lot owned thereby. Until such time as the Declarant maintains ownership in one Lot, the Declarant shall have the exclusive right to change, modify, delete, or amend these covenants in any manner they see fit with no vote of or notice to the property owners necessary. The Declarant reserves the right to amend these covenants to include future Final Plats within the Elk Run Development.

ARTICLE VII

PERIOD OF COVENANTS

All of the foregoing covenants, conditions, regulations and restrictions shall continue and remain in full force and effect at all times as to the property described in this Declaration and as to the owners of any Lot in such premises regardless of how title was acquired, until the commencement of the calendar year 2076, at which time all said covenants shall be automatically extended for successive period of ten years, unless amended as provided by Article VIII herein.

ARTICLE VIII

ENFORCEABILITY AND WAIVER

- A. No delay or omission on the part of any owner of land to which these covenants, conditions, regulations, and restrictions apply in exercising any rights, power or remedy herein allowed in the event of any breach of the covenants, conditions, regulations or restrictions herein contained, shall be construed as a waiver thereof or acquiescence

therein. No right or action shall accrue and no action shall be brought or maintained by anyone whomsoever against Kimberley Development Corporation, its successors or assigns, the Development Board or any member thereof for or on account of any action or inaction taken or not taken thereby in connection herewith.

- B. In the event that any one or more of the foregoing covenants, conditions, regulations, or restrictions shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the covenants, conditions, regulations, and restrictions not so expressly held to be void and the remainder thereof shall remain in full force and effect.
- C. In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then and in that event, such terms shall be reduced to a period of time which will not violate the rule against perpetuities as set forth in the laws of the State of Iowa, and as such shall be determined by the court as being reasonable.
- D. All property subject hereto shall also be subject to any and all rights and privileges of the City of Elkhart, Iowa and/or Polk County, Iowa, acquired or hereafter acquired by said town or county by dedication, conveyance, filing or recording of plats or covenants as authorized by law. Wherever there is a conflict as between these covenants and/or the zoning ordinance or law of the city, county or state within which the subject property is located, that which is most restrictive shall be binding.

ARTICLE IX

NOTICES

- A. The time period for approval, when specified, after submission of the required documents and plans to the Development Board, shall commence on the date such information is received by a member of the staff at the stated mailing address of the Development Board.
- B. Any party entitled to written notice of any proceedings or action of the Development Board may be given notice by mail or by email.
- C. Whenever in this Document, it is provided that notices, documents, plans or otherwise be mailed to, delivered or given to the Development Board, the following address shall be used unless otherwise designated by the Board:

Kimberley Development Corporation

2785 N Ankeny Blvd #22
Ankeny, IA 50023

ARTICLE X

EASEMENTS

A. Drainage and Utility Easements

As noted on the recorded Plat of the Properties, Declarant has reserved certain areas of the Lots for public utility, drainage, and street tree easements. In doing so, it is the intention of Declarant to provide the needed flexibility, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electrical, telephone, cable TV, water, gas, sewer, storm sewer, and other utility service (including all lines, pipes, wires, cables, ducts, etc.) to the Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such easements and any fences installed shall be subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair, or remove any necessary facilities and the right of Declarant and the property owners to provide for and maintain appropriate drainage. Regardless of whether shown on the recorded plat, each Lot shall accept surface water drainage from adjacent properties whether or not located within the Properties and each Lot shall have the right to drain its surface water to the adjacent Lots located within the Properties.

B. Additional Easement Rights

Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement right, title and authority to relocate, alter or otherwise change the location of any drainage, utility or sewer easement and to grant such further easements, licenses, and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of the Properties. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, or amendment to the Plat recorded in the Office of the Recorder of Polk County, Iowa. Each Owner shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in this Section B shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which

unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section B shall run with the land.

C. Easement for Emergency Purposes

An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulance, etc., and emergency personnel, public and private, over and upon all Lots and any pedestrian walkways or sidewalks.

D. Easement for Signs

Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to the Owners, the right and easement to erect and maintain an entryway sign or signs.

E. General Easements

Each Lot is burdened with an easement of ingress and egress for maintenance, repair and replacement of public utilities as may be shown upon any subdivision plat.

IN WITNESS WHEREOF, Kimberley Development Corporation, as Declarant has caused this instrument to be executed by its duly authorized officers this 24th day of June, 2017.

KIMBERLEY DEVELOPMENT CORPORATION

By: William B. Kimberley
William B. Kimberley, President

STATE OF IOWA)
) SS.
COUNTY OF POLK)

On this 24th day of June, A.D. 2017, before me, the undersigned, a Notary Public in and for said County and said State personally appeared William B. Kimberley, to me personally known, who, being by me duly sworn, did say that he is the President of Kimberley Development Corporation; that no seal has been procured by the said corporation; and that the said William B. Kimberley as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

Mary F. Suhr
Notary Public for State of Iowa



EXHIBIT "A"

All Lots in Elk Run Plat 1, an Official Plat, now included in and forming a part of the City of Elkhart, Polk County, Iowa.