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Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2015-00206158

BK 16025 PG 93-110

**Recorder's Cover Sheet
Declaration of Covenants, Conditions, Restrictions,
and Easements of The Reserve at Jester Park, A
Subdivision in Polk County, Iowa**

Preparer Information: Matthew M. Hurn (1171RE)
Wasker, Dorr, Wimmer, and Marcouiller P.C.
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West Des Moines, IA 50266
Phone 515-283-1801

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~~Preparer Information:~~ Matthew M. Hurn (1171RE)
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4201 Westown Parkway, Suite 250
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Legal Description: see attached Exhibit "A"

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND
EASEMENTS OF THE RESERVE AT JESTER PARK, A SUBDIVISION IN POLK
COUNTY, IOWA**

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

PRELIMINARY STATEMENT

The Declarant is the Owner of certain real property to be platted and known as The Reserve at Jester Park, all located within the City of Polk City, 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 The Reserve at Jester Park, 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 Lots 1 through 6 (each a “Lot” and together, the “Lots”), inclusive, in The Reserve at Jester Park 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. **“Declaration”** shall mean and refer to this Declaration of Covenants, Conditions, Restrictions, and Easements of The Reserve at Jester Park to which the Properties are subject, as the same may be amended from time to time.
- C. **“Developer”** shall mean and refer to Kimberley Development Corporation, its successors or assigns.
- D. **“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 The Reserve at Jester Park other than streets or out lots.
- E. **“Development Board”** shall mean and refer to a board appointed by Declarant, its successors and assigns. Specifically, Declarant shall serve as the sole member of the Development Board until all Lots within The Reserve at Jester Park are sold to individual homeowners and single family homes are constructed. Thereafter, Declarant shall, in Declarant’s discretion, appoint a Development Board.

- F. "Lot" shall mean and refer to Lots 1 through 6, The Reserve at Jester Park, Polk County, Iowa, as shown on the Official Plat thereof and any Lots created by a subdivision of any such Lots, including any and all real property that may hereafter become subject to this Declaration by amendment.

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. No child-care service or activity shall be regularly conducted on any Lot, except for incidental childcare activities for the sole benefit of the Owner of a Lot. 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 of the residence.
- 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, commercial vehicles, trucks, 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 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. All garbage or trash can or trash containers, shall be kept and stored inside the garage, 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.
- 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 two (2) 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 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. Swimming pools, either below grade or above ground, shall only be allowed upon approval in writing by the Development Board.
- N. 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.
- O. Each Owner shall be responsible for all snow removal, mowing, trimming and irrigation on the Owner's Lot.
- P. In order to protect the integrity of this subdivision and to insure that those persons residing therein have similar proprietary interests in their lots, no lot located thereon shall be leased or rented for a period of time of less than one (1) year and no lease or rental agreement to any such tenants or lessee shall be extended or renewed for a period of time longer than two (2) years.

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 dwelling's back building line, and shall not be constructed within a drainage easement or storm water detention area without prior written approval of the City.
 3. Any fence material shall be mounted on the exterior face of the fence posts.
 4. Approved fencing material shall be limited to the following: Black vinyl chain link, Black wrought iron or painted aluminum only. In no event shall any type of wood fencing or privacy fencing or privacy fencing be permitted. The Development Board must approve all fences and any other materials other than those listed that may be contemplated.
 5. Decorative brick or stone columns with wrought iron fencing shall be allowed along the front property line at the driveway entrance.
 6. In any event, all hedges, fencing and walls shall require approval of the Development Board before installation or planting.
- B. Landscaping.
1. All minimum landscaping requirements must be installed within 120 days of occupancy, unless delay is caused by weather, in which case, an extension may be granted by Declarant.
 2. The Owner of each Lot will, at their cost, provide and plant four (4) trees; two of which shall be placed in the rear yard unless the existing trees in the rear yard are sufficient that further planting of trees is unnecessary and two to be placed in the front yard. All trees and any replacements thereof shall have a minimum 2" trunk diameter, measured 6" vertically from ground level when planted.
 3. Each Lot must have shrubbery and ground cover across the front of the home.
 4. Lot areas not occupied by structures, walks, drives, or landscaping shall be either sodded, seeded, or hydro seeded within 120 days after occupancy of the structure. In the case of wooded lots or terrain that does not allow for a sodded or seeded area, these areas should be left in a natural state and only seeded or sodded as necessary to prevent erosion.
 5. 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. No fencing or obstructions of any kind will be allowed to be constructed across any areas on the Lots which are shown as drainage easements on the Final Plat. 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 due to irrigation of the yards. This is to be anticipated by the Lot owners.

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.
 7. Before construction of any residence, each Lot Owner or Builder should inspect the Final Plat to obtain the "minimum water entry level" elevation as shown on the Final Plat. No opening to any basement level such as the walk-out basement floor elevation, daylight window elevation, or window well elevation shall be below the minimum elevations as shown on the Plat.
 8. 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.
 9. The U.S. Post Office will install approved multiple (gang) mailboxes.
- C. All parking and drives shall be hard-surfaced using Portland cement, approved brick pavers, or stamped concrete.
- D. Accessory Buildings.
1. All Accessory Buildings must be approved by the Development board as to location, design, and materials.
 2. Accessory Buildings must be located in the rear yard, and must be behind the rear line of the home.
 3. Accessory Buildings must be a minimum of 10 feet away from any property line or as per Polk County Code, whichever is more restrictive.
 4. Accessory Buildings cannot be located within any utility easement or drainage or storm water easement.
- E. Minimum Setbacks: Refer to the Final Plat and the City of Polk City.
- F. Septic Systems.
1. All lots will be on private Septic Systems which will be the Lot Owners responsibility for design, installation, and costs.
 2. All Septic Systems must meet the Polk County Health Department standards and approval.
- G. Water.
1. All Lots will be serviced by Xenia Water Department.
 2. The Developer has installed water mains, hydrants, and infrastructure for the development according to Xenia Water Development and Polk County standards and approval.
 3. Each Lot Owner shall be responsible for any and all fees and/or expenses associated with the connection to Xenia Water Development.
- H. Storm Water Pollution Prevention Plan.
1. Upon taking possession of a Lot, the Owner agrees to comply with all erosion control requirements applying to their Lot including but not limited to:
 - i. Owners, their agents, assigns, heirs and/or building contractors shall take all necessary precautions to properly and lawfully manage storm water

- runoff; to prevent, stabilize, and/or control erosion; to prevent sediment migration and soil erosion from extending beyond the boundaries of the Lot and in the even to any of the above requirements are not met, to promptly clean up all eroded sediment and to restore all affected areas to their original condition and take all remedial steps required pursuant to applicable law, including City of Waukee requirements.
- ii. Owners shall comply with all applicable Federal, State, and local erosion control ordinances and permits which pertain to the Property, including, but not limited to, becoming a transferee of the Iowa Department of Natural Resources NPDES general Permit No. 2 (the permit) and having in place a Storm Water Pollution Prevention Plan (SWPPP) as required by the Environmental Protection Agency, (EPA).
 - iii. If the Declarant or a Lot Owner is cited for or notified about an alleged violation or any erosion control provision or storm water management requirements which occurs after an Owner takes possession of a Lot by a governmental authority including the City of Waukee, for a condition existing on or coming from the Owner's Lot or migrating beyond the Lot or other violation of law, the Owner shall promptly take the remedial action and corrective measures requested by the governmental authority and the Owner shall also indemnify and hold the Declarant harmless from and against any and all claims, damages, fines, attorney fees, assessments, levies and/or costs incurred by the Declarant related to the citation or notice caused by the Owner's action or inaction.
 - iv. If in the opinion of the Declarant, erosion is not properly controlled, corrective action may be taken by the Declarant and an automatic easement shall be granted by the Owner to the Declarant in order to implement the corrective action. All costs incurred by Declarant in taking the corrective action including an administrative fee shall be assessed against the offending Lot.
 - v. Drainage and water runoff from an Owner's Lot shall not adversely affect any other Owner or Street and each Owner shall indemnify and hold harmless all other Owners and the Declarant from and against any and all damages or liability caused by an Owner's violation of this paragraph regarding drainage and water runoff.

ARTICLE IV

RESTRICTIONS AND COVENANTS RELATING TO BUILDING STANDARDS

Good aesthetic design is a very important covenant for residences within The Reserve at Jester Park. The highest standards of architectural quality are encouraged. The Development Board must approve all architectural plans previous to the start of any construction.

A. Criteria and Guidelines:

- 1. Exterior foundations exposed above finish grade, which are not faced with brick or stone, must be painted.

2. Vinyl or steel sidings shall not be allowed.
 3. Roof materials shall be minimum of 30-year warranty. Such shingles shall be of the architectural grade laminated or textured shingles. Wood shakes, wood shingles, slate or concrete barrel tile are subject to Development Board approval.
 4. The Development Board, before application for all brick, stone, sidings, shingles, and paint colors, must approve exterior colors and materials.
 5. All dwellings shall have at least a three car attached garage.
 6. Any additional storage shed, outbuildings, or detached structure, shall be constructed of similar materials and of the same roof pitch and shingles as the residence and must be located in the rear yard of the residence and must be a minimum of ten (10) feet from any lot line. 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.
 7. 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 The Reserve at Jester Park. The preceding paragraph does not intend to disallow the use of pre-fabricated 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 area of not less than 1,600 square feet exclusive of any basement space.
 2. One and one-half story dwellings must have not less than 2,200 square feet exclusive of any basement finish.
 3. Two story dwellings must have not less than 2,400 square feet exclusive of any basement finish.
 4. Split-level dwellings must have not less than 2,400 square feet exclusive of any basement finish.
 5. Any other styles or sizes need to be approved by the Development Board.
- C. All building structures and/or improvements of any kind must be completed within 12 months of the commencement date of construction.
- D. The Development Board shall have the sole right to review and approve all development plans (as outline in Article V below) for the individual lots, including future remodeling and/or modifications.

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

ARTICLE V

PLANS AND SPECIFICATIONS TO BE SUBMITTED TO THE DEVELOPMENT BOARD

The following shall be submitted to the Declarant or Development Board in connection with the review and approval process as previously described in these covenants. No

construction shall commence until the Declarant or Development Board has approved the following:

- A. Final Site Plan Documents drawn to scale outlining the following: (Minimum site plan submitted to include the entire Lot):
 - 1. Lot legal description, local address, scale, and arrow on plan showing North.
 - 2. Building shown in relation to the Lot, including minimum setbacks from all lot lines, and any drainage easements and also any Conservation Easements. In addition, show any minimum opening elevations for basements in relation to the minimum elevations as shown on the plat where applicable.
 - 3. Driveways and sidewalks.
 - 4. Special features (patios, decks, porches, fencing, mechanical equipment, etc.).
 - 5. Landscaping plan, including exterior up lighting submitted prior to installation.
 - 6. Floor plans for all levels including the basement or foundation plan, garages, decks, and porches. Plans shall be the construction blueprints drawn at 1/4" scale.
 - 7. Exterior elevations showing siding materials for all 4 elevations.
 - 8. Exterior colors and materials for sidings, exterior trim, roofing, any exterior masonry, and paint colors.
 - 9. Perspective rendering or photo, if available.
 - 10. All building plans and site plans must adhere to all City of Polk City Building Codes and Zoning Ordinances and to these Restrictive Covenants, whichever is more restrictive.

ARTICLE VI

REVIEWS AND APPROVALS

- A. Development Board – Procedure
 - 1. Design review by the Development Board is intended to protect and enhance the distinctive character and natural attractiveness of The Reserve at Jester Park development. All buildings, structures or appurtenances thereto, to be erected, constructed, established, altered or enlarged within The Reserve at Jester Park must be reviewed and approved by the Development Board, before being constructed, installed, altered, erected, or established.
 - 2. The Development Board shall consider and approve or disapprove the material required to be submitted pursuant to these covenants.
 - 3. Prior to change of any building's exterior character by remodeling or alteration, the Lot Owner, or the Owner's designated agent, shall secure the approval of the Development Board.
 - 4. Within ten (10) working days from the date of submission of the final site plan documents and final building plans and specifications, the Development Board shall approve or reject the above submittals, and shall notify the applicant of the decision in writing. If the submittals are rejected, the specific reasons for rejection shall be set forth in writing.

5. After the Development Board has given the approval, revisions shall not be made, unless written request for revisions has been submitted, and the Development Board has given approval.
6. Approval of the plans and specifications shall expire unless construction commences within 6 months after the approval was given and said construction proceeds with reasonable diligence until completed. All construction must be completed within 12 months from the date approval was given.

ARTICLE VII

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.

F. Encroachment Easements

If, by reason of the location, construction, settling or shifting of a building, any part of a building appurtenant to a Lot (hereinafter "Encroaching Unit") encroaches upon any minor portion of any other adjacent Lot, then in such an event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use, and enjoyment of the Encroaching Unit and all appurtenances thereto, for the period during which the encroachment exists.

G. Shared Driveway Easements

An easement is hereby reserved and granted for the use of all Lots served by one driveway over one driveway. To the extent that a driveway serving a living unit is located partially or wholly on another Lot or Lots, the benefit of any easement over that portion of the other Lot or Lots covered by the driveway. This driveway easement shall be for ingress and egress purposes and no Owner shall park or allow to be parked any vehicular or other obstruction within the driveway areas so as to prevent access to the living units that such driveway serves. The paved driveway in front of each Owner's garage shall be for the exclusive benefit of such Owner and the Owner's guests. Further, there is hereby reserved an granted an easement for the benefit of each Lot served by a sidewalk and pedestrian walkway located partially or wholly on another Lot or Lots.

E. Easement at Entrance to Development and along NW 107th Street

1. Lots 1 and 6 must maintain the berms, trees, and shrubbery planted at the entrance of the development within the easement.
2. Lots 1 and 6 must maintain the development features in the landscaping and monument easement along NW 107th Street.

ARTICLE VIII

DEVELOPMENT BOARD

A. Establishment/Function

The Declarant's "Development Board" is hereby established. The Development Board shall consist of the Manager or Managers of the Declarant or the designee (s) of such Manager or Managers. The functions of the Board shall be to interpret and apply these Covenants, Conditions and Restrictions and to review building plans as described herein during the time that property is being developed. These Covenants, Conditions and Restrictions may also be enforced by any affected Lot Owner.

B. Meetings, Quorum and Vote

The Development Board 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 Development Board members present (assuming a quorum present) shall be sufficient for Board action and decision.

C. Election of Replacement Board

If the Development Board should be discontinued, regarding the property, Declarant shall designate a successor entity to carry out the duties of the Development Board, but only with respect to the property described in this Declaration.

D. Executive Committee Procedure

(1) Design review by the Development Board is intended to protect and enhance the distinctive character and natural attractiveness of The Reserve at Jester Park 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 Development Board as herein described.

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

(3) The Development Board shall, upon request thereof, issue a Certificate of Compliance and/or approval as to plats, plans and other documents, which are, in fact, approved by the Development Board and/or determined by the Development Board to be in compliance with these covenants. Said certificate shall be in recordable form, signed and acknowledged on behalf of said Development Board, by a member of said Development Board or such other person as the Development Board shall direct.

ARTICLE IX

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.

A. Penalties

In addition to the remedies described herein below or elsewhere in this Declaration, the Declarant is hereby authorized to levy against any Lot in violation of this Declaration of Covenants, Conditions, Restrictions, and Easements an assessment penalty not to exceed \$100.00 for each day a violation of the 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 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 received 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 a Lot hereby 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 the Declarant, the City, or an adversely affected Lot Owner.

C. Attorneys 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.

ARTICLE X

AMENDMENTS TO COVENANTS

Declarant may amend this Declaration at any time without the approval by the other Owners so long as Declarant has any ownership interest in any Lot. Thereafter, this Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder of Polk County, Iowa, signed or approved in writing by at least two-thirds (2/3) of the then Owners. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time within four (4) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof.

ARTICLE XI

ADDITION AND REMOVAL OF PROPERTY

- A. Subjecting Additional Land to Declaration. Declarant shall have the irrevocable right to subject additional land to the terms of this Declaration at any time in the future without the consent of the Property Owners of The Reserve at Jester Park. 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 Property Owners or any other person shall be necessary.
- B. Removing Land from Operation of Declaration. Declarant shall have the right now and in the future to remove any portion of the Property from the operation of this Declaration provided that the portion so removed has not yet been platted into individual lots and a plat for that portion has not been filed of record with the Auditor of Polk County, Iowa. Declarant shall signify any removals by filing an amendment to this Declaration with the Recorder of Polk County, Iowa. No approval of the Property Owners or any other person shall be necessary.

ARTICLE XII

PERIOD OF COVENANTS

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 in the Properties, 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.

The easements granted in or pursuant to this Declaration, any other provisions of this Declaration expressly incorporated in any Section of this Declaration granting such easements 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 paragraph of this Section, the covenants, indentures, restrictions and reservations in this Declaration shall be for an initial period of twenty-one (21) years from the date of recordation in the Office of the Recorder of Polk County, Iowa, and shall automatically extend for successive periods of twenty-one (21) years each unless prior to the expiration of any such twenty-one-year period it is amended or changed in whole or part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment of decree shall in no way affect any of the remaining provisions hereof, but the same shall remain in full force and effect.

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 The Reserve at Jester Park. However, in the event that Section 614.24 of the Code of 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:

- A. the Owners of the Lots acting jointly or severally, may 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;
- B. a verified claim filed by any Owner of a Lot in The Reserve at Jester Park shall be valid binding upon all the then Owners of Lots in The Reserve at Jester Park, (the "Interested Parties"), and their successors and assigns, with the same effect as if executed by all such person, 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 and each Owner of a Lot is hereby irrevocably appointed the attorney-in-fact for all of the other Interested Parties for the purpose of filling any such verified;
- C. that in the event of any defect in the verified claim or its filing and recording in the Office of the Recorder for Polk County, Iowa, no interested person or any claiming, by, through or under an interested person shall be entitled to assert such defect as a basis to avoid its duties and obligations under this Declaration unless, if such defect is in a claim prepared by any interested party, such defect is not corrected within thirty (30) days after notice of such defect to all interested parties;

- D. that each interested party by acquisition of its interest in The Reserve at Jester Park or under the Declaration, whether or not expressly provided in any instrument creating such interest, hereby waives its right to assert the failure to file any verified claim required by the Code of Iowa as legal basis to avoid any duty or obligation upon its and its respective portion of The Reserve at Jester Park throughout the applicable period specified in this Declaration.

ARTICLE XIII

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 Properties, Inc., 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 Polk City, 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 XIV

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, Suite 22
 Ankeny, IA 50021

IN WITNESS WHEREOF, Kimberley Development Corporation as Declarant has caused this instrument to be executed by its duly authorized officers this 5th day of May, 2016.

KIMBERLEY DEVELOPMENT CORPORATION
 An Iowa Corporation

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

STATE OF IOWA)
) SS.
 COUNTY OF POLK)

On this 5th day of May, A.D. 2016, 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, an Iowa 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"

The real estate which is subject to the covenants, conditions, regulations and restrictions hereto set forth is legally described as follows:

Lots 1, 2, 3, 4, 5, and 6 in The Reserve at Jester Park, an Official Plat, now included in and forming a part of the City of Polk City, Polk County, Iowa.