

52



Doc ID: 031447180016 Type: GEN
Kind: RESTRICTIVE COVENANT
Recorded: 12/05/2016 at 03:12:37 PM
Fee Amt: \$82.00 Page 1 of 16
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2016-00050654

BK **16296** PG **501-516**

DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR LOST LAKE ESTATES PLAT 3 POLK CITY, IOWA

Recorder's Cover Sheet

Preparer Information: Stacey C. Rogers, 323 6th Street PO BOX 664, Ames, IA 50010 (515)232-4732

Taxpayer Information: N/A

Return Document To: Preparer

Grantor: Diamond Development, LLC

Grantee: N/A

Legal Description: See page 2.

Document or instrument number of previously recorded documents: N/A

NOTE: THIS COVER PAGE IS PREPARED IN COMPLIANCE WITH IOWA CODE SECTION 331.606B. THIS COVER PAGE IS PROVIDED FOR INFORMATION PURPOSES ONLY.

**DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND
RESTRICTIONS FOR LOST LAKE ESTATES PLAT 3 POLK CITY, IOWA**

THIS DECLARATION is made this 10 day of November 2016 by **DIAMOND DEVELOPMENT, LLC**, an Iowa corporation (the "Declarant").

WHEREAS, Declarant is the owner and developer of certain real property legally described as follows:

Lots 1 through 30, inclusive, and Outlot 'Y' and Outlot 'Z' in LOST LAKE ESTATES PLAT 3, an Official Plat, included in and forming a part of the City of Polk City, Polk County, Iowa

(hereafter, the "Plat").

WHEREAS, Declarant is desirous of protecting the value and desirability of the Plat.

NOW, THEREFORE, Declarant hereby declares that all property within the Plat shall be held, sold and conveyed and be subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Plat and shall run with the land and shall be binding on all parties having any right, title or interest therein or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

I. DEFINITIONS.

For the purpose of this Declaration, the following terms shall have the following definitions, except as otherwise specifically provided:

- A. "Plat" shall mean and refer to the real property heretofore defined as the Plat, being a part of Lost Lake Estates Plat 3, an Official Plat, now included in and forming a part of Polk City, Polk County, Iowa.
- B. "Declarant" shall mean and refer to Diamond Development, LLC an Iowa corporation, and its successors or assigns as to all undeveloped lots, that is designated as the successor Declarant in any recorded Assignment of Declarant's Rights under this Declaration.
- C. "Lot" shall mean and refer to Lots 1 through 30, inclusive within the Plat, and any lots designated by number as lots for occupancy created in any replat of the Plat or any portion thereof.
- D. "Building Lot" shall mean and refer to one or more Lots, or one or more Lots and the portion or portions of adjacent platted Lots in the Plat, used for the construction of one dwelling as herein permitted.

- E. "Outlot" shall mean Outlot 'Y' and Outlot 'Z' only.
- F. "Owner" shall mean and refer to the record owner whether one or more persons or entities, of the legal or equitable title to any Lot or Building Lot that is a part of the Plat.
- G. "Outbuilding" shall mean an enclosed, covered structure (other than a dwelling or the attached garage), such as a tool shed, garden house, or detached garage.
- H. "City" shall mean the City of Polk City, Iowa.
- I. "Family" shall mean one or more persons occupying a single dwelling unit provided that unless all members are related by blood, marriage or adoption, no such family shall contain more than six (6) persons.
- J. "Covenants" or "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for Lost Lake Estates Plat 3, Polk City, Iowa, as filed for record in the Office of the Recorder for Polk County, Iowa, as the same may be amended from time to time by an amendment thereto approved as provided in this Declaration and filed for record in the Office of the Recorder for Polk County, Iowa.

II. DESIGNATION OF USE.

All Building Lots shall be known and described as residential lots and shall not be improved, used or developed for more than one single family dwelling on each such Building Lot. No full-time or part-time business activity may be conducted on any Building Lot or in any dwelling or structure constructed or maintained on any Building Lot except those activities permitted under the terms of the zoning ordinance of the City.

III. BUILDING RESTRICTIONS AND REQUIREMENTS.

- A. No building, improvement, or alteration of any kind shall occur on any Outlot.
- B. No building or structure shall be constructed, altered, or maintained on any Building Lot other than one detached single family dwelling with an attached private garage, and such other structures customarily incidental and subordinate to a single family home, unless prohibited or otherwise regulated by these Covenants. Notwithstanding the foregoing, the Declarant and any home builder who purchases a Lot from the Declarant for the purpose of building a home to be sold to its first occupant, may use a home constructed on any Lot for a sales and display office or as a model home, for marketing of its firm, this home, Lots within the Plat, or the sale of other existing or built-to-sit homes, and may have agents and employees located in such sales office or model home.
- C. No building or structure of any kind shall be moved onto any Lot or Outlot.

- D. The construction of any building or structure on any Building Lot shall be performed utilizing then acceptable construction methods and procedures, including (but not limited to) on-site "stick-built" construction and/or off-site modular or panelized construction.
- E. All dwellings construction on the Lots shall meet the following:
- (1) As to Lots 1 through 13, inclusive:
 - (a) One story dwellings must have not less than 1600 square feet of finished floor area.
 - (b) One and one-half story dwellings must have not less than 1800 square feet of finished floor area. This also applies to all split level and split entry dwellings.
 - (c) Two story dwellings must have not less than 2000 square feet of finished floor area, with a minimum of 1000 feet on the ground floor.
 - (2) As to Lots 14 through 30 inclusive:
 - (a) One story dwellings must have not less than 1500 square feet of finished floor area.
 - (b) One and one-half story dwellings must have not less than 1600 square feet of finished floor area. This also applies to all split level and split entry dwellings.
 - (c) Two story dwellings must have not less than 1800 square feet of finished floor area, with a minimum of 900 feet on the ground floor.
 - (3) All dwellings shall have at least a two car attached garage. GARAGE SHALL BE LOCATED ON THE SIDE OF THE LOT WITH HIGHER ELEVATION UNLESS APPROVED IN WRITING BY DECLARANT.
 - (4) No more than thirty (30) vertical inches of concrete block or poured concrete foundation shall be exposed on any building, excepting the rear of a walkout type residence or of a daylight type residence, and any such exposed materials shall be painted or covered with brick or stone veneer in accordance with these Covenants regarding material and allowable paint colors.
 - (5) No factory manufactured, prefabricated, or modular housing shall be permitted unless it conforms with subsections (E) (1) through (E) (4) of these Covenants, as applicable, and with all other provisions of these

Covenants, and in addition, shall have (a) a roof pitch of 4.5 or greater with a minimum of two dormers, (b) a minimum of eight foot sidewalls per story, (c) a minimum of a 12 inch wide soffit, (d) a minimum of a 12 inch wide overhang on all gable ends, and (e) a full basement.

- (6) In computation of finished floor area the same shall not include porches, breezeways, attached or built-in garages, or finished basement areas.
- (7) Roof material shall be slate, tile, cedar shakes, or composition shingles. Composition shingles shall be architectural grade with a minimum of a twenty-five year warranty. Shingle colors shall be muted earth tones and be compatible with and complimentary to the exterior materials and colors. White, white blend, and solid black roof shingles are not acceptable. All flashing and vents shall closely match or blend with the surrounding roof area. All vents and other roof penetrations should be located on the rear elevation wherever possible. Gutters should be part of the fascia detailing. Gutters and downspouts shall closely match the colors of the surfaces to which they are attached.
- (8) For Lots 1-13, inclusive, all dwellings must be constructed using hardboard siding by LP SmartSide or cement board siding by James Hardie or other brands approved in writing by Declarant as being acceptable exterior siding, and no vinyl siding shall be permitted on any such dwelling. All dwellings on Lots 1-13, inclusive, shall also have a minimum of ten percent (10%) of the building area facing any street covered with brick, stone, stone veneer, or other similar material approved by Declarant in writing as being acceptable.
- (9) Decks attached to a single family dwelling must be built from cedar, redwood, treated lumber, composite decking material, or other products approved by Declarant. Unpainted wood decks are not acceptable as front entry porches. Front entry porches should be designed as an integral, yet dominant feature, that invites entrance into the dwelling. Columns supporting porch roofs should be massive in scale (minimum 6" x 6"). Built up box columns or tapered round columns are encouraged. Handrails shall match the architectural style of the home. All steps to front porches must be cast in place concrete. No wood steps or precast concrete steps to front porches are permitted.
- (10) The finished grades for single family dwellings shall be established to permit positive drainage away from such dwelling and shall conform to the as built grades on file with the City, unless changes to such as built grades are approved by the City.
- (11) No house shall be erected on any Lot outside of the building setback lines as shown on the recorded Plat, unless approved by the City.

- E. No Lot shall be subdivided so as to be reduced in size to be less than the greater of (a) the minimum lot size required under the applicable zoning ordinance of the City, or (b) 95% of the original platted Lot, unless all portions of such subdivided Lot are added to and made part of an adjacent Building Lot.
- F. All structures built in the plat shall blend in with the terrain, rather than contrast with it.
- G. The use of natural materials is encouraged, i.e. stained wood, stone, brick, as well as soft earth tone colors. No house shall be painted in bright colors (for example, and not by way of limitation, orange, purple, mint green, bright blue or other colors that cannot be characterized as earth tone).
- H. No fences shall be built forward of the centering line of the house built on a Lot or Building Lot. Rear yard fencing is discouraged. There shall be no fencing or other obstructions on any conservancy district easement or overland flowage easement or other easement, unless allowed by the City. All fences shall be black chain link, or vinyl that is natural in color, or wood that is stained or painted in soft earth tone colors so as to blend in with the terrain, and not more than six feet in height. The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. All fences shall be kept in good repair and attractive appearance.
- I. No satellite dish or parabolic device used to receive television signals from satellites shall be located on any Lot unless it meets the following requirements:
 - (1) It shall not be mounted on a trailer or other temporary or portable device, but shall be permanently installed pursuant to this Declaration;
 - (2) If at all possible, it shall be located so that no part of the dish is in front of the home it serves;
 - (3) It shall not exceed two feet in diameter;
 - (4) It shall be black or gray in color or, to the extent technically feasible, be painted to match the color of the home it serves; and
 - (5) It shall be appropriately landscaped and screened with shrubs, bushes or appropriate fencing.
- J. No exterior towers or antennas of any kind shall be constructed or permitted on the ground of any Lot or Building Lot. Reasonable television or radio antennas are permitted on the residential dwelling or garage.
- K. No light poles shall be used or placed upon any Lot or Building Lot that extend more than 10 feet above grade, except for those used to light tennis courts. All light poles shall be of residential design. All light poles, external security lighting and external decorative lighting shall be located, positioned and directed so that the light shines on the Lot or Building Lot on which the light is constructed and does not provide direct lighting onto adjoining Lots and does not constitute a nuisance to any adjoining property Owner.

L. All utility connection facilities and services shall be underground. Utility meters shall be hidden architecturally or through the use of remote reading devices. No individual water supply system or individual sewage system shall be permitted on any Lot or Building Lot. No window mounted heating or air conditioning units are permitted.

M. No outbuildings shall be permitted except the following:

One (1) storage shed measuring no more than twelve (12) feet by twelve (12) feet, which conforms with the plan for a storage shed shown on plan sheet A.3, prepared by Plum Building Systems, LLC, that is attached hereto as Exhibit A or which conforms to an alternate plan for a storage shed of no greater height than that shown in the attached Exhibit A that is approved by Declarant,

As an alternative to a storage shed, Lots 6-9, inclusive, may have a detached garage with length and width measurements not exceeding twenty-four (24) feet by thirty (30) feet or otherwise not exceeding seven hundred twenty (720) square feet in area. Such detached garage shall be in addition to and not in lieu of the attached garage referenced in Section III.E.3.

All outbuildings must be of the same material and color as the dwelling unit. And must be placed on a suitable concrete slab. The location of all outbuildings must be approved by the City for compliance with setbacks and easement restrictions, and no sheds can be located in any easement area without the consent of the party to whom such easement rights are granted.

N. No trash receptacles or garbage cans shall be permitted to be placed on a Lot outside a dwelling, garage or Outbuilding unless hidden by an attractive screen or landscaping of suitable height and density and shall not be located closer than twenty (20) feet from any Lot or Building Lot line. However, unscreened trash in proper containers and/or bags shall be allowed to be placed on a Lot outside a dwelling, garage or Outbuilding at the place designate for trash pickup no earlier than the evening prior to a scheduled pick up of such trash. Such unscreened trash containers must be returned to the screened area, or inside a dwelling, garage or Outbuilding, within twelve (12) hours following the scheduled pick up of such trash. Firewood shall not be stored on the front or side of a house. Stacked firewood in excess of four (4) feet long by three (3) feet high shall be adequately screened from view and must be stacked in the rear yard and at least twenty (20) feet from any side or rear lot line. No material of any kind whatsoever may be stored in the front yard or side yard of a house, except that garden houses may be stored in a side yard adjacent to an outside faucet if neatly coiled or contained on a hose reel, and no material may be stored in a rear yard unless appropriately covered or screened from view by neighbors. No clotheslines shall be permitted. No clothing, rugs, or other items shall be hung on or from any railing, landscaping or window.

- O. Hot tubs and below-ground swimming pools are allowed provided that any hot tubs that are not below ground are skirted in wood or other materials approved in writing by Declarant and such skirting material is kept in good condition and repair. All swimming pools and hot tubs shall be located only in rear yards and screened by a privacy fence or hedge, and all outdoor hot tubs must be located within ten (10) feet of the dwelling. No above-ground swimming pools are allowed.
- P. No foil or other reflective materials visible from outside the house shall be used on any windows or on any sunscreens, blinds, shades or for any other purpose.
- Q. All buildings, structures or improvements of any kind must be completed within twelve (12) months of the commencement date of construction.

IV. REVIEW OF BUILDING AND SITE PLANS.

No building or structure, nor any addition or alteration thereof, shall be constructed or substantially altered on any Building Lot unless and until a design plan and a site plan (collectively the "Plans") have been submitted to and approved by Declarant. The Plans shall contain details of design, color scheme, elevation, site grade, landscaping, fencing, roofing, sidewalks, driveways and other similar matters. The Plans shall also state the type of construction, including external details and materials. Declarant shall, within thirty (30) days from the date of submittal of the Plans, deliver to the Owner written approval or rejection of, or required changes to, the Plans. The intent of this provision is to insure that buildings and structures are developed in reasonable harmony within the Plat and that the covenants, restrictions and conditions contained herein are met in connection with such development. Declarant may terminate the requirements of this provision at any time, in its sole and absolute discretion, by recording notice of such termination. The requirements of this provision shall terminate once all Lots or Building Lots have a completed and occupied single family home located thereon.

V. DRIVEWAYS.

All dwellings shall have a portland cement concrete driveway not less than 17 feet in width and running from the city street to the garage. All driveways shall provide off street parking for at least two vehicles outside of the garage.

VI. TEMPORARY STRUCTURES; RECREATIONAL VEHICLES AND WORK EQUIPMENT.

No temporary building or structure shall be built or maintained on any Lot. No camper, motor home, watercraft, boat, trailer, unfinished dwelling basement, tent, shack, garage, or Outbuilding shall be used at any time as a dwelling.

No vehicle with a gross vehicle weight greater than 7,000 pounds, and no camper, motor home, watercraft, boat, snowmobile, trailer, work van, work truck or mechanical equipment or similar property (hereafter referred to as "Recreational Vehicles and Work Equipment") may be parked or maintained on any Lot (except inside a garage) or on the public street, for more than thirty (30) consecutive days at any time or for more than thirty (30) days in aggregate during any calendar

year, unless the same is located within a garage or unless the same is parked in a side yard on a concrete driveway extension and completely screened from view at ground level from other Lots and from the public right-of-way by shrubbery (with or without leaves) or opaque fencing (otherwise in compliance with these covenants) which provide no gaps through which the object being screened can be seen; provided that this restriction shall not apply to what are customarily considered sport utility vehicles, passenger vans or "conversion vans," or to trucks, equipment or trailers used in connection with and during the construction or rebuilding of a dwelling on any Lot. At no time may any Recreational Vehicles and Work Equipment, or any automobile, motorcycle, or other vehicle be parked or maintained in the yard of any Lot. At no time shall any Recreational Vehicles or Work Equipment, or any automobile, motorcycle or other vehicle be disassembled, repaired or serviced on any Lot, except inside a garage or dwelling.

VII. CERTAIN ANIMALS PROHIBITED.

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. In no event, however, shall more than a total of three (3) dogs and/or cats be kept at any one Building Lot at any one time. No pet enclosures shall be located upon any Lot or Building Lot. While outdoors, all pets must be leashed and under the control of its owner if not tied up or kept within a fenced yard.

VIII. SOD AND LANDSCAPING.

- A. The Owner of each Lot is required to plant one tree on such Lot, within ninety (90) days of occupancy, such tree to be chosen at Owner's discretion from the following exclusive list of acceptable tree species: Red Maple (*Acer rubium*), Norway Maple (*Acer platanoides*), Northern Red Oak (*Quercus borealis*), Burr Oak (*Quercus macrocarpa*), Little Leaf Linden (*Tilia cordata*), or any other species approved by Declarant, in writing (collectively "Front Yard Trees"), in the front yard of the Lot, outside the public right-of-way, but within any street tree easement, if any, upon such Lot. If there is not a street tree easement, the Front Yard Tree should be planted as near to the right-of-way as possible and not within an easement area without the consent of the easement holder. Front Yard Trees shall be a minimum of 2" caliper in trunk diameter, 10'-12' in height, and have a minimum spread of 4'.
- B. Within sixty (60) days of completion of a dwelling upon a Lot, the front yard, side yards and twenty-five feet (25') of the rear yard measured from the rear of the dwelling foundation shall be fully sodded (except where the topography, conservancy districts, creek slopes or tree cover does not permit such sodding) and the remainder of the rear yard to the rear lot line shall be seeded or sodded. If weather conditions make this requirement impossible to meet, Declarant shall establish a reasonable period of time for compliance.
- C. The Owners of each Lot are responsible at all times for the maintenance of the trees, sod and other landscaping and the maintenance and repair of any stone wall that may exist on such Lot.

IX. SIDEWALKS

The first person who purchases each Lot or Building Lot from the Declarant shall construct a public sidewalk in the public right-of-way abutting such Lot or Building Lot to the specifications and requirements of the City.

X. EASEMENTS.

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat as recorded. The Owner and/or occupant of each Lot, jointly and severally, shall at the expense of such Owner and/or occupant, maintain, keep, and preserve that portion of the easement within the Lot at all times in good repair and condition and shall neither erect nor permit erection of any building, structure or other improvement of any kind within the easement areas (except customary ground cover) which might interfere in any way with the use, maintenance, replacement, inspection or patrolling of any of the utility services and drainage facilities within such easements areas. Any berm and/or swale constructed for drainage purposes shall be preserved and maintained to accomplish the purposes for which it was constructed.

XI. NUISANCES.

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 a nuisance, either temporarily or permanently.

XII. WEED, RUBBISH AND DEBRIS CONTROL AND MAINTENANCE

The Owner of each Lot, whether vacant or improved, shall keep the same free from rubbish, weeds, and debris, and keep the lawn and landscaping well maintained and healthy, including (but not limited to) maintaining the lawn at a height not to exceed six (6) inches. The Owner of each Lot shall be responsible to maintain the exterior of any dwelling, the driveway, fence, screening and all other improvements. The Owner of each Lot shall cut such grass or weeds and/or remove such weeds or debris within ten (10) days after such Owner receives written notice given by certified mail, receipt return request, or delivered in person, from the Declarant or the Owner of any Lot within seven hundred (700) feet of such Lot. If the grass is not cut or the weeds are not cut or removed or the debris not removed, within said ten (10) day period, then the person giving such notice shall have the right and easement to enter upon the premises and mow or cut the grass or weeds or remove the offending debris at the expense of the Owner of the Lot where such grass or weeds were not so mowed or where such debris is located, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, plus reasonable costs, including reasonable attorney's fees, of collecting such amount, if it is not paid within three (3) days of demand for reimbursement, plus interest on all such amounts at the lesser of (a) twelve percent (12%) per annum, or (b) the maximum rate allowed by law, from the date such cost is incurred until paid in full, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Polk County, Iowa, until such amount, the reasonable costs of collection of the same, including, but not limited, to reasonable attorney's fees and the costs of filing such lien and any release of

such lien upon payment, together with interest thereon at the rates stated in this section above, that are incurred by the lienholder, are paid in full.

XIII. CONSTRUCTION CLEAN UP AND MAINTENANCE

Each Owner (hereinafter the "Construction Lot Owner") shall confine all construction activities related to the construction, repair, alteration, or demolition of any improvements on such Construction Lot Owner's Building Lot solely to its Building Lot, shall keep its construction site clean, shall prevent any damage to any public streets, sidewalks, public utilities or easements granted in connection with the Plat or to any other Lot or improvements located thereon, and shall prevent any dirt, soil, construction debris or other material from its Lot being washed, blown, thrown, deposited, tracked and or otherwise getting into the storm sewers, any storm water detention ponds, any overland flowage ways, the public streets, the public sidewalks or trails or onto any other Lot in the Plat. The Construction Lot Owner shall provide trash dumpsters of sufficient size to handle the trash from its work and shall clean up and remove all trash and debris weekly. No trucks delivering cement to the construction site on any Lot or for any sidewalk adjacent to such Lot shall be washed out or left over cement deposited on any portion of the Plat. By Friday afternoon of each week during such work, any dirt from such work that is tracked into the public street or onto any public sidewalk shall be removed and the street or sidewalk cleaned. During initial construction of a house on a Lot or during any subsequent construction that will disturb the soil on the Lot, the Construction Lot Owner shall install and maintain silt fences or equivalent erosion control in good working order and in compliance with all applicable permits and laws. Construction Lot Owners are responsible for their contractors, subcontractors and material suppliers. Such Construction Lot Owner shall promptly repair any damage caused to and shall restore all such facilities, other Lots, or public streets, public sidewalks, utility facilities and any other property of others damaged thereby to its condition immediately prior to such damage, destruction, or deposit of dirt, construction material, or debris. If the Construction Lot Owner violates any of these requirements, and such violation continues for more than three (3) days after the Declarant or the Owner of any other Lot located within seven hundred (700) feet of the Lot where such construction work is being performed gives the Construction Lot Owner written notice of such default by certified mail, receipt return requested, or by personal delivery, then the person giving such notice may, return such building materials, equipment, or personal property to the Lot on which such construction work is being performed and cause it to be properly secured, may dispose of any such trash or debris, may remove or cause any such leftover or washed out cement to be removed and hauled to a proper disposal facility, may clean such streets and sidewalks, may repair any such damage and restore any such damaged facilities, public streets, public sidewalks, public utility facilities, or damage on other Lots, or repair, replace or install such erosion control measure, all at the cost of the Construction Lot Owner, the costs of which shall be reimbursed upon demand, and the person performing such work shall have the right and easement to come upon the Lot on which such Construction is being performed for this purpose. The Declarant or any other property Owner who remedies such default shall have a right of action against the Construction Lot Owner for collection of the cost thereof, if such amount is not paid within three (3) days of demand for reimbursement, plus reasonable costs, including reasonable attorney's fees, of collecting such amount plus interest on all such amounts at the lesser of (a) twelve percent (12%) per annum, or (b) the maximum rate allowed by law, from the date such cost is incurred until paid in full, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the

