

6/20



Doc ID: 013607720011 Type: GEN
Recorded: 09/08/2003 at 08:50:16 AM
Fee Amt: \$61.00 Page 1 of 11
Polk County Iowa
TIMOTHY J. BRIEN RECORDER
File# 2003-00034911

BK 10131 PG 857-867

Prepared by and after recording return to: Eugene E. Olson, 317 Sixth Avenue, Suite 300, Des Moines, Iowa 50309 (515) 243-8157

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR LOTS 1 THROUGH 27, INCLUSIVE, IN
THE NEIGHBORHOOD AT 86TH,
JOHNSTON, POLK COUNTY, IOWA
(SINGLE FAMILY)

THIS DECLARATION is made this 21st day of August, 2003, by
JEFFREY N. JOCHIMS (hereinafter called "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate in the City of Johnston, Polk County, Iowa, described as Lots 1 through 27, inclusive, as well as Outlot X, in The Neighborhood at 86th, an Official Plat, now included in and forming a part of the City of Johnston, Polk County, Iowa ("Property"); and

WHEREAS, Declarant is desirous of developing the Property as a Planned Community and to establish certain Covenants, Conditions and Restrictions for the benefit of Owners within The Neighborhood at 86th;

NOW, THEREFORE, Declarant by the execution and recording of this document, hereby declares that the Property shall be held, occupied, sold and conveyed subject to the Covenants, Conditions and Restrictions set forth herein.

ARTICLE I.
Use Restrictions and Building Specifications

Lots 1 through 27, inclusive, in The Neighborhood at 86th, an Official Plat, now included in and forming a part of the City of Johnston, Polk County, Iowa ("Property") shall be held, maintained, occupied, sold and conveyed subject to the following Covenants, Conditions and Restrictions (collectively this "Declaration"):

A. Single Family Residence.

The use of Lots shall be limited to single family residential use. The term "single

family” shall have the same meaning under this Declaration as contained in the City of Johnston, Iowa, Zoning Ordinance. Uses of land or structures customarily incidental and subordinate to the single family residential use as permitted by the City of Johnston ("City") zoning ordinance are permitted unless prohibited or otherwise regulated by this Declaration. In addition, Declarant or his agent shall be entitled to maintain a sales or management office as well as model homes on the Property and to maintain advertising signs for the sale of Lots and homes so long as the signs comply with the ordinances of the City.

B. Playhouses and Sheds.

No utility building, tool shed, storage shed, lean-to or other similar structure shall be permitted on any Lot except for such structures used by The Neighborhood at 86th Homeowners' Association to store supplies or equipment on Common Area ("Outlot X"); provided, however, that a child's playhouse shall be permitted if placed in the rear yard or side yard and maintained in an attractive and safe condition.

C. Garages.

Detached garages shall be permitted except that they shall be attached by a breezeway to the home on the Lot.

D. Fences and Walls.

No fences, walls, or barriers shall be permitted upon Lots or property lines except as follows:

- (i) Decorative fences, walls or barriers shall be allowed where appropriate as determined by the Board of Directors of The Neighborhood at 86th Homeowners' Association ("Association") so long as the fence, wall or barrier does not exceed four (4) feet in height and has adequate spacing so as not to unreasonably block the view from an adjoining Lot, street, or Common Area.
- (ii) No chain link fence shall be permitted.
- (iii) All fences, walls and barriers shall be kept in good repair and attractive appearance by the Lot Owner installing the same.
- (iv) Before any decorative fence, wall or barrier is erected, the specifications and location thereof shall be submitted to the Board of Directors of the Association for its review and approval in its sole discretion.

E. Landscaping.

No Lot Owner or person shall damage, destroy or remove any landscaping installed by Declarant or encroach upon any open space or buffer area or landscaping buffer zone required by the landscaping site plan approved by the City regarding the Property. Lot Owners shall be responsible to properly care for, maintain and timely trim all bushes, trees or landscaping installed by Lot Owners to supplement Declarant's landscaping.

F. Utility Meters; Air Conditioners.

Utility meters shall be hidden architecturally or through the use of remote reading devices. No window air-conditioner shall be permitted.

G. Mailboxes.

No individual mailboxes shall be permitted for each Lot. Mailboxes shall be installed by Declarant and maintained by the Association in a centralized mail center pursuant to Declarant's site plan for the Property as approved by the City.

H. Measurement of Setbacks.

The minimum setbacks regarding homes, garages and other structures shall be measured from the Lot line from which the setback is being measured to the nearest building or structure. No buildings or structures (except for permitted and approved fences) shall be constructed or maintained within the required minimum setback area as specified in the site plan for the Property which has been approved by the City. The definition of the terms "front yard", "side yard", "rear yard", "building", "structure" or other similar term relating to setbacks shall be the same as that definition contained in the City's zoning ordinance now or in the future.

I. Utilities.

All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and maintained underground except for that portion which utility companies customarily require to be above ground in the immediate proximity of any exterior utility meter.

J. Security Lighting.

Security lighting for driveways, parking and other areas shall be designed, located and directed in a fashion which will avoid direct lighting onto adjoining Lots.

K. Driveways.

All parking and driveway areas on a Lot shall be hard surfaced, using a suitable thickness of Portland cement or asphaltic binder pavement. A perpetual motor vehicle ingress-egress easement is hereby established and preserved between Lots as is shown on the Final Plat for The Neighborhood at 86th in dotted markings as access easements. This easement shall constitute a shared driveway between Lot Owners, the centerline of which shall be the common side Lot line where said driveway is installed. The easement shall also be for the purpose of turning a motor vehicle around on a Lot as well as providing access to and from the garage on each Lot. Maintenance of the shared driveway easement, including snow removal, shall be the responsibility of the Association. No persons shall block the easement.

L. Lawns.

All portions of a Lot not occupied by structures, walkways, driveways, parking, landscaping or gardens shall be maintained by the Association as an open lawn area. A Lot Owner shall be entitled to mow and maintain his or her own lawn in lieu of the Association doing so; however, the lawn must be mowed and maintained in the same or better fashion as the Association. The Lot Owner shall nevertheless pay his or her full assessment the same as other Lot Owners if the Lot Owner elects to maintain his or her own yard. A non-exclusive perpetual easement is hereby granted unto the Association for the purpose of allowing access to their agents, employees, and contractors to perform the maintenance described above.

M. Garbage Containers, Storage and Repairs.

Items such as garbage containers, clotheslines, lawn or garden equipment, building materials and other similar items shall be placed out of public view. Garbage containers shall comply with specifications adopted by the Board of Directors of the Association as well as rules and regulations for placing the garbage containers at curbside for pickup by the City or commercial garbage company. Firewood shall not be stored on the front side of a house. Any repair of motorcycles, automobiles, vehicles or boats shall be done out of public view except for emergency situations.

N. Tents and Trailers.

No tent, trailer, boat, personal watercraft, camper, motor home, recreational vehicle or truck rated larger than three-quarter ton or other movable or temporary structure or enclosure or inoperative motor vehicle shall be maintained or parked on any Lot or street within public view for more than a cumulative of seven (7) days in any calendar year and in no event not more than twenty-four (24) hours at a time..

O. Roof Material.

Roof materials, including all roof replacements in the future, shall be slate, tile,

medium to thick butt wood shingles or high quality asphalt shingles with a weight rating of at least 250 pounds.

P. Swimming Pools; Hot Tubs.

Above-ground swimming pools or non-permanent swimming pools are prohibited, except for small portable wading pools for infants or toddlers. Hot tubs, whirlpool baths and spas shall be permitted but not in the front yard so long as they do not encroach upon or violate any open space required by the City under the approved site plan for the Property.

Q. Satellite Dish.

A satellite earth station antenna or parabolic device used to receive television or telecommunication signals from satellites ("Satellite Dish") shall be permitted only if it meets the following requirements:

- (i) The Satellite Dish shall not be mounted on a trailer or other temporary or portable device, but shall be permanently installed;
- (ii) The Satellite Dish shall not exceed one meter in diameter or as measured diagonally;
- (iii) The Satellite Dish shall be located at the rear of the home it serves.
- (iv) The Satellite Dish shall be installed and maintained in accordance with reasonable safety regulations as may be adopted from time to time by the Board of Directors of the Association. In no event, however, shall the regulation of any Satellite Dish conflict with The Telecommunications Act of 1996, as amended, or other applicable Federal Act as well as any Federal Rules promulgated pursuant thereto. If there is a conflict between Federal law and the terms of this subparagraph R or the terms of any regulations adopted by the Association, the terms of the Federal law shall control.

R. Dog Runs and Houses.

Dog runs or dog houses shall not be permitted.

S. Building Plan.

When a building plan is filed with the City by an Owner or developer of a Lot, including any remodeling affecting the exterior of a home, garage or other structure (but not Declarant), a duplicate shall be filed at the same time with the Board of Directors of the Association. These plans shall be used by the Association for the

sole purpose of monitoring compliance with this Declaration.

T. Towers.

No radio or communication tower, mast or pole of any kind shall be constructed or maintained on any Lot; provided, however, that a video communication tower or mast may be constructed and maintained on a house if the tower, mast or antenna does not extend higher than twelve (12) feet above the roof line of the house.

U. Noxious Activities.

No unlawful, noxious or offensive activity, sound, vibration, noise, odors or disturbance shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance, offensive or a nuisance either temporarily or permanently, as determined by the Board of Directors of the Association.

V. Animals and Pets.

No animals, livestock, pigs, snakes or poultry of any kind shall be raised, bred or kept on any Lot or within any house or structure on a Lot except that domestic dogs, cats, and other small commonly accepted domestic pets may be kept so long as they are not kept, bred or maintained for commercial purposes or sale to the public and so long as they do not present any health or safety hazard or cause any offensive activity, sound, noise or odor or violate any ordinances of the City. In no event, however, shall more than two (2) dogs be maintained on any one Lot; provided, however, that pit bulls shall not be permitted under any circumstances. Dogs shall be kept on a leash or within effective voice control at all times by their Owners. No dogs shall be tied or staked on any Lot for extended periods of time.

W. Maintenance.

- (i) The Owner or person in possession of any Lot, whether vacant or improved, shall keep the Lot free of trash, litter and debris. Lot Owners are cautioned, however, that during the development of the Property by Declarant there will be minor annoyances and there may be some construction debris present as is customarily found in any new construction project and such annoyances or construction debris shall not be considered a violation of this Declaration. Each Owner of a Lot agrees that after he or she receives written notice given by certified mail, return receipt requested, or delivered in person by written notice from the Association, such trash, litter and debris shall be removed within five (5) days of receipt of the notice. If the appropriate corrective action is not taken within five (5) days of receiving notice, the Association shall have the right (but not the duty) and easement to enter upon the

premises and remove the offending trash, litter and debris. If the Association elects to remove the trash, litter and debris from the offending Lot after giving the above-described notice, the Association shall have the right to assess the actual cost thereof against the offending Lot in the same fashion as other assessments are imposed on Lots by the Association. All Lot Owners are solely responsible for maintenance, upkeep and repair of homes, garages and structures on Lots and to make certain that they are kept in good, attractive and safe condition so as to not detract from The Neighborhood at 86th or cause a decrease in property values. The Association shall have the right to take corrective action if homes, garages and structures are not properly maintained following written notice to a Lot Owner and after the Lot Owner has been given a reasonable period of time to correct the deficiency.

- (ii) All recreational improvements located on Outlot X in The Neighborhood at 86th, an Official Plat, now included in and forming a part of the City of Johnston, Polk County, Iowa, shall be maintained, repaired and replaced at the sole cost and expense of The Neighborhood at 86th Homeowners' Association ("Association"), which Association is more fully described in the Declaration of Homeowners' Association for The Neighborhood at 86th of the same date herewith. The Declarant herein and his heirs, successors and assigns shall be responsible for the original construction of the recreational improvements.
- (iii) All areas relating to the access easement as is set forth above and as is shown on the Final Plat for The Neighborhood at 86th in dotted markings shall be maintained (including snow removal), repaired, and replaced at the expense of the Association as is more fully set forth in the Declaration of Homeowners' Association for The Neighborhood at 86th of the same date herewith.

X. Vegetable Gardens.

Vegetable gardens shall be permitted on any Lot so long as they are not located in the front yard and do not encroach upon or violate any open space required by the City under the approved site plan for the Property.

Y. Paint.

Owners shall be given considerable latitude regarding the color scheme for repainting homes on Lots in the future. Before an owner repaints a house, however, he or she shall first submit the color scheme to the Board of Directors of the Association for review and approval.

Z. Rentals.

Any lease arrangement of a home shall require the Owner to provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and any rules and regulations established by the Board of Directors of the Association shall contain the agreement of the lessee to be bound by the terms of such documents and shall provide that any failure of the lessee to comply with the terms of such documents or rules shall be a default under the Lease or Rental Agreement. All leases shall be required to be in writing and any Owner leasing or renting a home shall, prior to the commencement of the Lease or rental term, deliver to the Association a complete copy of the Lease or Rental Agreement. No Lease shall be for a period of less than thirty (30) days. Other than the foregoing, the Owners shall have the absolute right to lease homes.

ARTICLE II.

Enforcement of Covenants

A. Legal Action.

This Declaration shall be deemed to run with the land to which it applies and all improvements thereon. The Owner of any Lot or portion thereof to which Declaration applies, Declarant or the Association may bring an action in any court of competent jurisdiction to enforce this Declaration and enjoin their violation, mandate their compliance or to recover damages for the breach thereof or for any other remedy or combination of remedies recognized at law or in equity.

B. Penalties.

In addition to the remedies described above in Paragraph A or elsewhere in this Declaration, the Association is hereby authorized to levy against any Lot in violation of this Declaration an assessment penalty not to exceed \$100 for each day a violation of the Covenants continues beyond thirty (30) days after notice of a violation has been given by the Association to the Owner of said Lot by certified mail, return receipt requested, or delivered in writing in person. If the Owner of the Lot cannot be located after a diligent search or inquiry, the Association 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 this Declaration within thirty (30) days of receiving notice, or thirty (30) days after second publication of notice, the Association 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 Association. Any Lot Owner objecting to the notice of violation shall have the right within ten (10) days of receiving notice to request a hearing before the Association Board of Directors. Assessment of the penalty shall be stayed pending a hearing and final decision by the Association Board of Directors.

C. Delays in Enforcement.

No delay or omission on the part of the Association, Declarant, or any Owner of land to which this Declaration applies in exercising any rights, power or remedy herein allowed shall be construed as a waiver or acquiescence therein. No right, claim or action shall accrue to and no action or claim shall be brought or maintained by anyone against Declarant or the Association or any officer, employee or agent thereof on account of any action or inaction under this Declaration.

D. Conflict with Governmental Regulations.

The Property subject to this Declaration shall also be subject to any and all applicable regulations of the City and any other governmental entities having jurisdiction including, but not limited to, zoning ordinances, subdivision ordinances, life safety and building codes as well as other such regulations. Whenever there is a conflict between the provisions of this Declaration and the ordinances, statutes or regulations of the City, County, State, or other applicable governmental entity having jurisdiction over the Property, that provision which is most restrictive shall be binding unless otherwise prohibited or preempted by law.

ARTICLE III.

Term of Covenants; Severability

A. Duration.

This Declaration shall continue and remain in full force and effect at all times as to the Property, regardless of how title was acquired, for a period of 21 years from and after the date of the filing of this Declaration with the Polk County Recorder's Office, unless amended by an affirmative vote of two-thirds (2/3) of the Lots within the Property, excluding Common Area (with each Lot entitled to one (1) vote). This Declaration may be extended for additional periods of 21 years by the filing of a claim in accordance with Section 614.24 and Section 614.25 of the Code of Iowa, 2003, as amended, or any successor statute. Pursuant to these sections, the Association shall also be deemed to be a claimant allowed to file a verified claim within the meaning of these sections. Any amendment at any time to this Declaration shall require the affirmative vote of 2/3 of the Lots within the Property, excluding Common Area, with each Lot entitled to one vote. Any amendment shall be accompanied by an affidavit by any officer of the Association certifying that two-thirds (2/3) of the votes allocated to the Lots (excluding Common Area) have voted in favor of such amendment as disclosed by the records of the Association. In determining ownership for purposes of consent, the records of the Association shall be conclusive. The Association is hereby appointed as attorney in fact to file of record with the Polk County Recorder any written notice of extension of this Declaration at any time as may be required by law.

B. Homeowners' Association and Driveway Easement Not Affected.

Termination of any or all of the Covenants, Conditions or Restrictions contained in this Declaration shall not operate in any way to terminate the Association and said Association and all functions and duties pertaining thereto shall remain in full force and effect pursuant to the Declaration creating the Association. Furthermore, the perpetual driveway easement described above in paragraph K of Article I shall not be terminated and shall remain in effect perpetually.

C. Severability.

In the event that any one or more of the terms or conditions of this Declaration shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall in no way affect, modify, change, abrogate or nullify any of the remaining Covenants, Conditions or Restrictions not so expressly held to be void and the remaining parts of this Declaration shall remain in full force and effect.

D. Reasonable Period of Enforcement.

If any of the terms of this Declaration shall be held by a court of competent jurisdiction to be void or unenforceable by reason of the period of time herein stated for which the Declaration may be effective or amount of any penalty imposed, such terms or penalty shall be reduced to a reasonable period of time or amount which shall not violate the rule against perpetuities as set forth in the laws of the State of Iowa or other applicable law, all as determined by the court.

E. Minor Amendments.

So long as Declarant owns any Lots within the Property, it shall have the absolute right to make minor amendments to this Declaration in order to correct any deficiencies, address any oversights, clarify any provision thereof or to carry out the intent of this Declaration or to address development issues not contemplated at the date hereof.

F. Rules and Regulations.

The Association is hereby authorized by resolution of its Board of Directors (and without the need for a vote of Association members) to adopt rules and regulations consistent with this Declaration in order to implement or clarify any provisions of this Declaration or define any terms herein and to carry out the intent of this Declaration.

G. Easements.

Whenever in this Declaration the Association shall have the right to take corrective action regarding a Lot, the Association and its employees, agents, contractors, subcontractors, engineers or architects shall be deemed to have a temporary easement to enter said Lot or any improvements thereon for the purpose of taking corrective action.

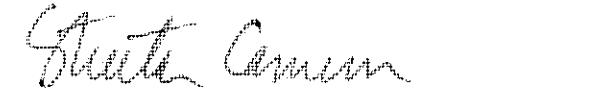


JEFFREY N. JOCHIMS

STATE OF IOWA :
 :
 :
SS
COUNTY OF POLK :

On this 21st day of August, 2003 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jeffrey N. Jochims, a single person, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.





Notary Public in and for the State of Iowa