

INSTR. NO. 09-01451

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RECORDER
DICKINSON COUNTY, IOWA
FEE \$ 17.00

This document is prepared by: Daniel E. DeKoter, 315 9th Street, Sibley, Iowa 51249
Return Document to: Daniel E. DeKoter, 315 9th St., P.O. Box 253, Sibley, Iowa 51249

AFFIDAVIT EXPLANATORY OF TITLE

RE:

**Declaration of Restrictive Covenants,
Lake Access, Utility/Sewer Provisions
and General Provisions of
East Oak Estates**

STATE OF IOWA

OSCEOLA COUNTY, ss:

I, Daniel E. DeKoter, being first duly sworn do on oath
depose and state:

1. I am a property owner in East Oak Estates, Dickinson County, Iowa. I am also a licensed and practicing attorney in Iowa. The facts stated in this affidavit are of my personal knowledge based on the investigation of pertinent legal documents and independent ascertainment of facts.
2. East Oak Estates was originally platted on May 9, 1978. The plat was recorded on May 9, 1978 in Book 13, page 147 of the records of the Dickinson County Recorder. Accompanying that plat were restrictive covenants. The covenants were not renewed until October 16, 2001, when certain officers of the East Oak Estates Property Owners Association filed a new Declaration as Instrument no. 017055 in the office of the Dickinson County

Recorder. The new declaration mimicked the original 1978 declaration and purported to renew the covenants.

3. Some owners of East Oak Estates have had questions raised by their attorneys concerning the legal effect of the covenants. There is a dispute about whether the original covenants were required to be renewed earlier than 2001 under the provisions of §614.24 of the Iowa Code. The dispute has raised questions about whether the covenants still have legal effect.

4. To alleviate concerns about the dispute; to protect their property values; and to protect them from potential personal liability relating to road maintenance and the common lot in East Oak Estates, the East Oak Estates Property Owners Association and members prepared new covenants for the signature of property owners in East Oak Estates. The association solicited the signatures of property owners in East Oak Estates to consent to the new covenants, which are substantially similar to the 1978 and 2001 covenants. The vast majority of property owners signed the new covenants but some have not signed as of the date of this affidavit.

As of the date of this affidavit, all lot owners have signed with the exception of owners of the following lots:

2; 4B; 5; 11; 12 18; 19; 21; 43; 46; 55; 56; and 66.

5. Concurrently with recording this affidavit, I have submitted for recording, the new covenants together with signature pages from those owners in East Oak Estates who have agreed to them.

6. The East Oak Estates Property Owners Association intends to submit additional consents from owners for recording as more owners decide to formally adopt the covenants. In the meantime those owners who have not signed will be assessed for maintenance fees under the authority of *Okoboji Camp Owners Cooperative vs. Carlson*, 578 N.W.2d 652 (Iowa 1998) (holding that non-members can be required to reimburse an area maintenance association for benefits conferred).

7. The lot numbers in East Oak Estates whose owners have consented to the new covenants, are shown on the signature pages attached to the new Declaration of Covenants filed concurrently with this affidavit.

Dated this 6th day of March, 2009.



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Subscribed and sworn to before me this 6th day of
March, 2009 by Daniel E. DeKoter.

Sherlene R. Krogman
Notary Public

