



# COVENANT SUMMARY

## Kimberley Estates

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### Square Footage Minimums:

Ranch	1,800 sq. ft.*
Story and a Half	2,200 sq. ft.*
Two Story	2,400 sq. ft.*
Split Level	Not Allowed

*\*Exclusive of attached garages, breezeways, and porches*

### Utilities:

Electric	Consumers Energy
Gas	MidAmerican Energy
Internet	Huxley Communication
Water	City of Ankeny

**School District:** North Polk High School

**HOA: Yes/Managed by:** Stanbrough Realty, Jeff Killpack, 515.334.3345; [jeff.killpack@stanbroughrealty.com](mailto:jeff.killpack@stanbroughrealty.com)

**HOA Fees:** \$500 initiation fee upon closing + Annual Dues not to exceed \$1,000 per year

**Exterior Elements Excluded:** Above grade swimming pools, hedges exceeding 6' tall, multiple play structures, trash and recycling receptacles must not be within view except for 24 hours prior to and after trash pick-up day.

All exterior changes and additions to be approved in writing by Development Review Board (Kimberley Development).

**Front Elevation Material Requirements:** 50% must be stone, brick, stucco, board & batten, shakes, or non-lap siding material

**Garage Minimum:** 3 car

**Siding Material Excluded:** Vinyl, steel

**Fence Material Allowed:** Black coated chain link, wrought iron, black painted aluminum

**Storage Sheds, Play Structure Requirements:** 1 per yard, must be constructed of similar materials and of same roof pitch and shingles of residence

**Street Tree Requirements:** Varying types so not impacted by disease. **Options include:** Maple, Locust, Crab, Oak, Thornless Hawthorn

**Landscaping Requirements:** The front elevation of all residences shall have night uplighting installed, controlled by a photocell to provide attractive lighting at night upon the home. Minimum of 4 trees must be planted per lot.

Homeowner must maintain and/or replace berm trees which were planted by Developer and shown upon approved Landscaping Plan for Development.

**Pets:** No more than three dogs and two cats may reside at a residence. No outdoor dog runs.

**Recorder's Cover Sheet**  
**Declaration of Residential Covenants, Conditions, and Restrictions,**  
**Kimberley Estates Plat 1, A**  
**Subdivision in Ankeny, Polk County, Iowa**

Preparer Information: Matthew M. Hurn (MMH283)  
Wasker, Dorr, Wimmer, and Marcouiller P.C.  
4201 Westown Parkway, Suite 250  
West Des Moines, IA 50266  
Phone 515-283-1801

Tax payer Address: Bill Kimberley, LC  
2785 N Ankeny Blvd, Ste 22  
Ankeny, IA 50023

Preparer Information: Matthew M. Hurn (MMH283)  
Wasker, Dorr, Wimmer, and Marcouiller P.C.  
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West Des Moines, IA 50266  
Phone 515-283-1801

Legal Description: Lots 1 – 29 in Kimberley Estates Plat 1, an Official Plat, now included in  
and forming a part of the City of Ankeny, Polk County, Iowa

**DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
KIMBERLEY ESTATES PLAT 1**

This Declaration of Covenants, Conditions and Restrictions Applicable to Kimberley Estates Plat 1, is made this 8<sup>th</sup> day of September, 2020, by Bill Kimberley, LC, an Iowa limited liability company;

WHEREAS, Bill Kimberley, LC (“Declarant”), owns the real property that is legally described as follows:

**Lots 1 – 29, inclusive, in Kimberley Estates Plat 1, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa (the “Property”).**

WHEREAS, Bill Kimberley, LC desires to establish and place residential covenants, conditions and restrictions and to reserve certain easements, all as hereinafter specifically set forth, for the benefit of such development on the Property.

**NOW, THEREFORE**, the Declarant hereby declares that Lots 1-29, inclusive, in Kimberley Estates Plat 1, shall be held, sold, and conveyed subject to the following restrictions, covenants and condition, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of , and which shall run with the real property and be binding on all parties having any rights, title or interest in the Properties or any part thereof, their heirs, successors and assigned, and shall inure to the benefit of each Owner thereof.

**ARTICLE I**  
**DEFINITIONS**

A. “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of the Kimberley Estates Owners Association, Inc. that are on file with the Secretary of State of the State of Iowa, as the same may be amended from time to time.

B. “Association” shall mean and refer to the Kimberley Estates Owners Association, Inc., its successor and assigns, a non-profit corporation organized pursuant to Chapter 504 of the Code of Iowa 2019, as amended.

C. “Association Responsibility Elements” shall mean the following:

1. Entrance monument signage, masonry columns, wrought iron fencing, lighting and irrigation at the entry and along the berms abutting NE Delaware, all located within the Landscape Easement area shown on the Final Plat.

2. Landscaping located in the entrance boulevard island;

3. Private Storm water area(s) and dry bottom ponds, and surrounding landscaping features located on Outlot Y and Outlot Z;

4. All landscaping and improvements located in the Trail Easement as depicted on the Final Plat.

D. “Board of Directors” shall mean and refer to the Board of Directors of the Kimberley Estates Owners Association, Inc.

E. "Building" shall mean and refer to any single-family residential dwelling unit structure constructed upon a Lot.

F. "Bylaws" shall mean and refer to the Bylaws of the Kimberley Estates Owners Association, Inc., as adopted by the Board of Directors, as the same may be amended from time to time.

G. "Common Area" shall mean all common areas so designated by Declarant, including but not limited to the private storm sewer areas, detention ponds, and all other similar common area property.

H. "Common Elements" shall mean the development identification signs, entrance monuments, private storm sewer area(s), detention pond(s), Landscape Easement area and Trail Easement area, all as depicted on the Final Plat.

I. "Declarant" shall mean and refer to Bill Kimberley, LC, its successors and assigns.

J. "Declaration" shall mean and refer to this Declaration of Residential Covenants, Conditions, and Restrictions to which the Properties are subject, as the same may be amended from time to time.

K. "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 Kimberley Estates Plat 1 are sold to individual Homeowners and single family homes are constructed. Thereafter, Declarant shall, in Declarant's discretion, appoint a Development Board.

L. "Living Unit" shall mean and refer to any portion of a building situated upon a Lot and designed and intended for use and occupancy as a single family home.

M. "Lot" shall mean and refer to Lots 1 through 29, Kimberley Estates Plat 1, Polk County, Iowa, as shown on the Official Plat thereof and any Lots created by any subdivision of any such Lots, including any and all real property that may hereafter become subject to this Declaration by amendment.

N. "Member" shall mean and refer to those persons entitled to membership as provided in this Declaration, the Articles of Incorporation of the Association and the Bylaws of the Association.

O. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot that is a part of the Properties, including contract sellers and vendees (deemed Co-owners), but excluding those having such interest merely as security for the performance of an obligation and excluding those having a lien upon the property by provision or operation of law.

P. "Property" shall have the meaning set forth on Page 1 thereof.

## ARTICLE II

### DESIGNATION OF USE; 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. Specifically, 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 the 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 are allowed that do not exceed 24" in diameter and are located on the rear of the residence or the rear half of the side elevation only. In no event shall a satellite dish or parabolic device be mounted on the front elevation or the front half of a side elevation. Preferably, the satellite dish shall be mounted on a pole located within 4 feet of the resident in the rear yard or rear half of the sideyard. Pole for the satellite dish shall not exceed 6 feet in height.
- 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. The Lot Owners that have trees and shrubs planted on their Lots by the Declarant, are burdened with the responsibility for the care, maintenance, trimming, pruning, removal of dead trees or plants, and the replacement with substantially similar plants as needed. In the event the Lot Owner does not maintain, remove and replace, as appropriate, within 30 days of written notice received from the Board of Directors, the Board of Directors reserves the right to enter onto any lot and take such action themselves. The actual costs to maintain, remove and replace such trees and/or shrubs will be assessed to the Lot Owner and shall become a lien upon the Lot.

Any such trees planted on the Lot by the Declarant shall not count toward the Lot Owners landscaping requirements.

- G. 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.

- H. 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.
- I. 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. In addition, each Owner is responsible for the action of their pets; specifically, there shall be no vicious or dangerous animals, as so deemed and/or adjudicated by any governing municipal authority, residing on any Lot.
- J. 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.
- K. 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.
- L. 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.
- M. Garage doors shall be kept closed except during time of access and use of the garage.
- N. Below grade swimming pools shall be allowed. Proper fencing surrounding the pool must be installed as per the building code. Above ground swimming pools shall not be allowed.
- O. No residence, building, fence, wall, driveway, patio, patio enclosures, swimming pool, hot tub, pool house, landscaping, or other external improvement, above or below the ground (herein all referenced to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved in writing by the Development Board.
- P. Exterior lighting installed on any Lot shall either be indirect or such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

**ARTICLE III**  
**RESTRICTIONS AND COVENANTS RELATING TO SITE DEVELOPMENT**

- A. No fences, walls, hedges, or barriers shall be permitted upon or adjoining Lot lines except as follows:
1. Hedges not exceeding three (3) feet in height are permitted along front Lot lines and side property lines in the front yard setback areas. Any hedges must be trimmed and kept neat in appearance and not allowed to grow unevenly.
  2. Walls, fences, and hedges not exceeding six (6) feet in height are permitted along rear Lot lines and side Lot lines behind the 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 and the Association.
  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 aluminum or Black wrought iron only. In no event shall any type of wood 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 black aluminum or black 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 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. If a lot does not allow for two trees to be planted in the front yard (for example, the lots on the cul de sac), said lot(s) are allowed to only have one (1) tree in the front yard. The following trees shall be allowed to be planted on any and all Lots: maple, locust, crabtree, oak, or thornless hawthorns. No other type of tree may be planted without the Owner seeking the approval of the Development Board.
  3. Shrubs and foundation planting will address at least the front and front corners of the house.
  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

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, at locations determined by the Post Office.
- 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 City of Ankeny 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 Ankeny.
- F. 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 Ankeny 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 Ankeny, 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.

- G. Each Lot shall be limited to one piece of playground equipment or playhouse structure, which shall be allowed in the rear yard only. For the purposes of this paragraph, any permanent or non-permanent structure or any material, which remains in the yard for a period of twenty-four hours or longer, shall be considered playground equipment. This includes but is not limited to swing sets, plastic playhouses, detached plastic slides, playsets, jungle gyms or similar structures. In any event, any and all permanent playground equipment or playhouse structures shall require the approval of the Development Board.

#### **ARTICLE IV** **RESTRICTIONS AND COVENANTS RELATING TO BUILDING STANDARDS**

Good aesthetic design is a very important covenant for residences within Kimberley Estates Plat 1. 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. Vinyl or steel sidings shall not be allowed.
  2. 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.
  3. The Development Board, before application for all brick, stone, sidings, shingles, and paint colors, must approve exterior colors and materials.
  4. All dwellings shall have at least a three car attached garage.
  5. 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.
  6. 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 Kimberley Estates Plat 1. 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.
  7. The front elevation of all residences shall have night up-lighting installed, controlled by a photo cell, to provide attractive lighting at night upon the home.
- 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 1,800 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, unless extension is approved by the Declarant.
- D. Each dwelling shall include a minimum of a 3 car attached garage.

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 Landscaping 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 ¼" 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 Ankeny 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 Kimberley Estates Plat 1 development. All buildings, structures or appurtenances thereto, to be erected, constructed, established, altered or enlarged within Kimberley Estates Plat 1 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, unless an extension is granted by the Declarant or Development Board.

## **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 landscaping easements and common amenities 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, internet, 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. Under no circumstances will the Owner be permitted to alter the grading of their Lot which would prohibit the free flow of water into the drainage easement areas. 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

Easement for Signs and Entry Features. 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 monument sign or signs and also for the construction and maintenance of an Entry Feature which may include the construction of Masonry columns and walls, wrought iron or similar material for fencing and landscaping at the entry to the community. Such features will be tastefully done and will be an attractive amenity for the affected lots as well as for the entire development. Such features will be maintained by the Association.

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. Additionally, Declarant or its Agents shall have a permanent easement across any Lot in order to repair, maintain, replace or remove any Association Responsibility Element.

**ARTICLE VIII**

**KIMBERLEY ESTATES OWNERS ASSOCIATION, INC.**

A. Obligations of the Association. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Common Area conveyed to it and all improvements thereon, including, but not limited to the Common Elements, and shall keep the same in good, clean, attractive, and sanitary conditions, order and repair in compliance with the standards of sound property management.

No person other than the Owner of a Lot, and/or the Owner's invitees shall have the right to enter upon, use or affect an Association Responsibility Element located within a Lot, except that the Association and its designates may enter upon and within a Lot and the Building located thereon at reasonable times for the following purposes:

1. Installation, maintenance, repair, removal, replacement or inspection of an Association Responsibility Element or Common Element.
2. Enforcement of any provisions of this Declaration or the Articles of Incorporation or the Bylaws or the Association.
3. Mowing and maintenance of grass and landscaping at the Entry, in the landscaping easement area and Outlots Y and Z.
4. Removal of snow on any sidewalks owned by the Association, if not handled by City of Ankeny.

5. Maintaining any lawn irrigation or watering of any common lawn, trees or shrubbery. Payment for all water for the irrigation system for the Association grass, trees and plantings at the entry and within the landscaping easement area.

6. Lighting installed by Declarant, including the costs of electricity for the lighting at the entry and abutting NE Delaware Avenue.

7. Cost of insurance premiums as determined necessary by the Board of Directors to insure the Association Responsibility Elements and to provide liability insurance for the Association, including insurance to indemnify the Board of Directors against claims of action or inaction.

In the event that the need for maintenance or repair of any portion of the Common Area, the improvements thereof, or of any Association Responsibility Elements or Common Elements is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the cost of such maintenance or repair, shall be added to and become part of the assessment to which the Owner is subject, shall be a lien upon the Lot and living unit of such Owner, and shall become due and payable upon demand.

#### B. Membership and Voting Rights

1. Membership and Voting. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership. Subject to provisions of Section 2 of this Article, the Owners of a Lot shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

2. Declarant as Sole Voting Member. Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Association for so long as it holds title to any Lot in Kimberley Estates Plat 1, or until Declarant waives, in writing, its right to be the sole voting Member. As such sole voting Member, Declarant shall have the right to elect all Directors of the Association and to cast all votes as it deems appropriate. Each Owner by acceptance of a deed to a Lot shall be deemed to have released Declarant from all claims with respect to actions taken or not taken while Declarant controls the Association.

3. Board of Directors. The voting Members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

4. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against the Member's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

5. Notice of Member's Meeting. Unless the Articles of Incorporation or the By-Laws otherwise provide, written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary, or the officer or persons calling the meetings, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at the Member's address as it appears on the records of the Association, with postage thereon prepaid. So long as Declarant is the sole voting member of the Association, no regular or special membership meeting of the Association need be held.

6. Duration. No dissolution of the Association shall occur unless another association or equivalent entity has been created to succeed to the duties and responsibilities of the Association under this Declaration.

#### C. Covenant for Maintenance Assessments

1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly or annual assessments or charges, (2) special assessments for capital improvements and operating deficits, and (3) special assessments as provided in this Article VIII; such assessments to be established and collected as hereinafter provided. The monthly or annual and special assessments, together with interest, late charges, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the joint and several personal obligation of each person who was the Owner of such property at the time when the assessment fell due. Each Owner shall be responsible for a portion of such expenses equal to one over the number of single family living unit homes completed for occupancy.

2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the Improvements, maintenance, repair, replacement, removal and demolition of Association Responsibility Elements, the Common Elements, and for other purposes specifically provided herein.

3. Initiation Fee. At the Closing of the initial Lot sale, after the residence has been constructed, and the title is transferred to the homeowner, the new Owner shall pay to the Association an initiation fee of \$500.00. Such fee shall be shown the Closing Statement and shall be collected and paid to the Association by the Closing Agent.

4. Maximum Assessments. Until January 31 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for each Owner shall be \$1,000.00. Thereafter, the maximum annual assessment may be increased, but such increase shall not be more than ten percent (10%) greater than the maximum assessment for the previous year for the aggregate of all items included in the annual assessment. The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

A portion of such annual assessments may be set aside or otherwise allocated in a separate reserve fund for the purpose of providing repair, replacement, removal and demolition of the Common Elements, the Association Responsibility Elements, or any capital improvement that the Association is required to maintain. The Directors of the Association shall be responsible for establishing the funding levels required.

Once the Declarant or Association, as applicable, has given the Owners written notice of any change in the annual assessment or any special assessment, the Declarant and Association shall not be required to submit annual statements for assessments to any Owner. All annual payments (and any special assessments that can be paid on an annual basis) shall be made annually on or before January 31. Any special assessments that cannot be paid on an annual basis shall be due and paid as stated in the notice of such special assessment, which due date can be no sooner than thirty (30) days after such notice is mailed to Owners.

5. Special Assessments for Capital Improvements and Operating Deficits; Fines. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement that the Association is required to maintain or for

operating deficits that the Association may from time to time incur. If the Board of Directors adopts any schedule of fines as a remedy for violation of the rules and regulations of the Association or this Declaration, then the imposition of any such fine after notice and a hearing before the Board of Directors shall be a special assessment against the Owner found to be in violation and the Lot owned by such Owner.

6. Notice and Quorum. Written Notice of any meeting called shall be sent to all Members not less than five (5) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7. Uniform Rate of Assessment. Both annual and special assessments (except for fines) must be fixed at a uniform rate for all Townhome Lots and for all Single-Family Lots and may be collected on a monthly basis. Current rates are as depicted on the attached Exhibit "A."

8. Date of Commencement of Annual Assessments; Due Dates. The initial Annual Assessment shall be at the Closing of the transfer of title from the Declarant to the initial Purchaser, and on the 31<sup>st</sup> of January each year thereafter. LOTS OWNED BY THE DECLARANT THAT DO NOT HAVE COMPLETED LIVING UNITS CONSTRUCTED THEREON AND COMPLETED UNITS OWNED BY THE DECLARANT THAT ARE NOT SOLD, LEASED OR OCCUPIED OR THAT ARE USED AS MODEL UNITS OR SALES OFFICES SHALL BE EXEMPT FROM THE ASSESSMENTS DESCRIBED IN THIS ARTICLE IV AND THE ASSESSMENTS DESCRIBED IN ARTICLE VII. The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of annual assessments. The insurance assessment provided for in Article VII shall commence as to each Lot on the date of conveyance of said Lot to an Owner (with a pro rata portion of portion thereof for the first year if the closing date is after the first of the year). The Board of Directors shall fix any increase in the amount of annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessment on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

9. Effect of Nonpayment of Assessments; Remedies of the Association. Any monthly assessment not paid by January 31<sup>st</sup> and any special assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum or at the highest rate allowed by Iowa law, whichever is lower. In addition, any such assessment not paid within said time periods shall be delinquent and shall be assessed a late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater. Any such late charge and interest on a delinquent payment shall also be part of the assessment against the Lot and subject to the lien for assessments created by this Declaration. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of mortgage, or both, and there shall be added to the amount of such assessment all cost and expenses incurred by the association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may waive or otherwise escape liability



for the assessments provided for herein by non-use of the Common Elements or abandonment of the Owner's lot.

10. Subordination of Assessments Liens. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The assessment shall be paid prior to or at the closing of sale or transfer of any Lot. The sale or transfer of any Lot shall not terminate the assessment lien against such Lot; provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments against such Lot that became due prior to the date of such sale or transfer.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

A. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them, and the Association shall have the right to enforce the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorney's fees and the costs and expenses incurred as a result thereof.

B. Amendment. 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.

C. Covenants Binding and Running with the Land; Duration. 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, the Association, 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. Invalidity of any of the covenants, conditions and restrictions of this Declaration by judgment or 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, the Association, or any Owner of any Lot in the Kimberley Estates Plat 1. 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:

1. the Association, or 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, and each Owner a Lot, by virtue of its acceptance of deed to such Lot, shall be deemed to have granted a power of attorney to the Association, as the agent or attorney in fact for such Owner, to file such verified claim on behalf of such Owner, which power of attorney is coupled with an interest and irrevocable;

2. a verified claim filed by the Association or any Owner of a Lot in the Kimberley Estates Plat 1 shall be valid binding upon the Association and all the then Owners of Lots in the Kimberley Estates Plat 1, (the "Interested Parties"), and their successors and assigns, with the same effect as if executed by all such persons, 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, the Association 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 filing any such verified;

3. 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;

4. that each interested party by acquisition of its interest in the Kimberley Estates Plat 1, or under third 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 Crossroads at The Lakes Plat 2 throughout the applicable period specified in this Declaration

#### ARTICLE X 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 Kimberley Estates Plat 1. 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.

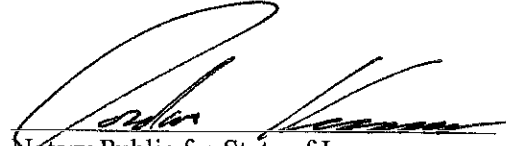
IN WITNESS WHEREOF, Bill Kimberley, LC as Declarant has caused this instrument to be executed by its duly authorized officers this 5<sup>th</sup> day of September, 2020.

BILL KIMBERLEY, LC, an Iowa limited liability Company ("Declarant")

By:   
William B. Kimberley, President

STATE OF IOWA                    )  
  ) SS.  
COUNTY OF POLK                )

On this 8<sup>th</sup> day of September, A.D. 2020, 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 Bill Kimberley, LC, an Iowa limited liability company; 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.

  
Notary Public for State of Iowa

