

**DECLARATION  
OF  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND  
EASEMENTS  
FOR  
THE FOXRIDGE FARMS  
NEIGHBORHOOD  
ASSOCIATION**

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**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
THE FOXRIDGE FARMS NEIGHBORHOOD ASSOCIATION**

This Declaration is made on May 15, 2001 by the Bolingbrook Limited Partnership, an Illinois limited partnership, by Kimball Hill, Inc., an Illinois corporation, its sole general partner (“Declarant”).

**RECITALS**

A. Declarant is the owner in fee simple of a certain parcel of real estate in Will County, Illinois, and legally described in Exhibit “A” attached hereto and made a part hereof (“Property”).

B. Declarant and Developer, as hereinafter defined desire to develop a single family residential development on the Property, known as Foxridge Farms (“Development”).

C. Declarant is desirous of submitting the Property, in whole, to the provisions of this Declaration.

NOW THEREFORE, Declarant hereby declares that the Property is, and shall be held, transferred, sold, conveyed and occupied, subject to the covenants, conditions, restrictions, reservations, and easements (sometimes hereinafter collectively referred to as the “Declaration”) hereinafter set forth.

**ARTICLE I  
DECLARATION PURPOSES**

Section 1. General Purposes. The Declarant is the owner of the Property located in Bolingbrook, Will County, Illinois, and desires to create thereon a free-standing single-family residential development for future owners of lots and residences to be created upon the Property.

(a) The Declarant desires to provide upon the Property, through its planning and layout, the harmonious development of a single-family community by the imposition of the covenants, conditions, restrictions and easements, as hereinafter set forth, for the benefit of the Property and the Owners, as hereinafter defined, thereof.

(b) The Declarant, by the imposition of covenants, conditions, restrictions and easements and the reservation of certain powers unto itself, does intend to provide for a development plan for the Property, which is intended to enhance and to protect the values of Declarant’s single-family residential community (“Foxridge Farms”).

(c) The Declarant desires to protect the Owners of the Lots, as hereinafter defined, against such improper use of surrounding Lots as may depreciate the value of their property.

(d) The Declarant desires to provide for: (i) the maintenance, repair and replacement of monuments and any landscaping located in the entryways to the Development, and (ii) the maintenance, repair and replacement of fences along 127<sup>th</sup> Street, Essington Road and the “Not Included” parcel.

Section 2. Declaration. To further the general purposes herein expressed, the Declarant, for itself, its successors and assigns, hereby declares that the Property, whether or not referred to in any deed of conveyance of such properties, at all times is and shall be held, transferred, sold, conveyed and occupied subject to the covenants and restrictions herein set forth. The provisions of this Declaration are intended to create mutual equitable servitude upon each Lot becoming subject to this Declaration in favor of each and all other such Lots; to create privity of contract and estate between the grantees of such Lots, their heirs, successors and assigns; and to operate as covenants running with the land for the benefit of each and all such Lots becoming subject to this Declaration, and the respective Owners of such Lots, present and future.

## **ARTICLE II** **DEFINITIONS**

Section 1. The following words and terms, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) “Association” shall mean and refer to the Foxridge Farms Neighborhood Association, an Illinois not-for-profit corporation, and its successors and assigns.

(b) “Board” shall mean and refer to the Board of Directors of the Association as constituted from time to time.

(c) “By-Laws” shall mean the By-Laws of the Association, as amended from time to time, which are attached hereto as Exhibit B and made a part hereof

(d) “Declarant” shall mean and refer to the Bolingbrook Limited Partnership, an Illinois limited partnership, by Kimball Hill, Inc., an Illinois corporation, its sole general partner and its successors and assigns, whether such succession of assignment applies to all or any part of the Property. Any such successor or assignee shall be deemed a Declarant and entitled to exercise all or a portion of the rights of Declarant provided herein if designated as such by Declarant in any instrument recorded for such purposes.

(e) “Developer” shall mean Kimball Hill, Inc., an Illinois corporation, and its successors and assigns.

(f) “Dwelling Unit” or “Unit” shall mean a single-family residence located on a Lot and intended for the shelter and housing of a Single Family, as hereinafter defined. Dwelling shall

include any Structure attached or adjacent to the dwelling utilized for storage of personal property, tools and equipment. Developer intends that each Lot which is made subject to this Declaration as part of the Premises shall be improved with a building consisting of one free standing residential unit.

(g) "Dwelling Unit Exterior" shall mean the roof, foundation, steps, footings, crawl space, outer surfaces of exterior walls of the residence which is part of the Dwelling Unit, and all portions of the Dwelling Unit which are not improved with such residence, including, without limitation, the driveways, walkways, patios, landscaped areas and fences.

(h) "Lot" shall mean each part of the Property, the size and dimension of which shall be established by the legal description in the Lot Deed conveying such Lot. A Lot may also be established by Declarant pursuant to the Subdivision Plat or by an instrument in writing executed, acknowledged and recorded by Declarant which designates a part of the Property as a Lot for the purposes of the Declaration.

(i) "Lot Deed" shall mean the deed of Declarant conveying a Lot to an Owner.

(j) "Member" shall mean and refer to every person or entity who holds membership in the Association.

(k) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall include the Developer to the extent of the number of Lots owned by Declarant and also includes the interest of Developer or of Declarant as contract seller of any Lot.

(l) "Property" shall mean and refer to the real estate legally described in Exhibit "A" attached hereto and made part hereof.

(m) "Single Family" shall mean one or more persons, each related to the other by blood, marriage or adoption, or a group of not more than three persons not all so related, maintaining a common household in a Dwelling.

(n) "Structure" shall mean any building or other improvement erected or constructed, the use of which requires more or less permanent location on or in the ground, or attached to something having a permanent location on or in the ground.

(o) "Subdivision Plat" shall mean the Foxridge Farms Plat of Subdivision as recorded or may be recorded at the Office of the Recorder of Deeds of Will County, Illinois and includes one or more phases or units thereof.

(p) "Village" shall mean the Village of Bolingbrook, Will County, Illinois.

**ARTICLE III**  
**GENERAL RESTRICTIONS**

Section 1. Land Use - Single-Family Residential. All Lots, shall be used only for free-standing single-family residences. Each Dwelling shall be used for private residential purposes only; provided, that no Owner shall be precluded from (i) maintaining his personal professional library therein, (ii) keeping his personal business records or accounts therein or (iii) handling his personal business or professional calls or correspondence therefrom.

Section 2. Standards for Construction. All Structures shall be constructed in accordance with applicable governmental building codes and zoning ordinances of the Village.

Section 3. Nuisances. No noxious or offensive activity or trade shall be carried on, in or upon the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No plants or seeds or other conditions, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Lot. No building shall be erected or maintained on any Lot for manufacturing, industrial or business purposes, excepting a temporary sales office.

Section 4. Temporary Structures. No temporary building, trailer, mobile home, recreational vehicle, tent, shack or other similar Structure shall, except as otherwise herein provided, be located upon the Lots.

Section 5. Lot Appearance. Each Lot shall be properly maintained and landscaped in such a way as to enhance the appearance of the Lot and the surrounding Lots and shall be neat in appearance and in good order. No person shall accumulate on a Lot junked vehicles, litter, refuse or other unsightly materials. Vacant Lots shall not be used for the purpose of gardening and/or raising crops thereon.

Section 6. Maintenance. Each Owner shall cause his Dwelling to be maintained so that the appearance of the Dwelling and the Dwelling Exterior is substantially similar to its appearance when first constructed, ordinary unavoidable wear and tear excepted.

Section 7. Vehicle Repair. The repair or body work on any motorized vehicle shall not be permitted except within the confines of the garage. Such repair or body work shall be on an occasional basis, during reasonable hours, and shall be on an Owner's vehicle only.

Section 8. Construction Equipment and Parking. Following the construction of a Dwelling Unit and sale of the Lot by the Developer, all equipment used in subsequent clearing, excavation or construction, not rubber-tired, shall only be loaded or unloaded within the boundary lines of each Lot. No private vehicles shall be continuously parked on the streets or roadways, but shall be kept on the driveway of the Lot, or in the private garage, it being the intention to prevent obstruction of the streets by continuous parking thereon.

Section 9. Accessory Buildings. No accessory buildings, storage sheds or similar structures shall be permitted; provided, however, that the Board may approve the construction of such structures after Turnover of the Association to the Owners.

Section 10. Other Prohibited Matters. No animals other than inoffensive common domestic household pets such as dogs and cats shall be kept on any Lot and no Lot shall be used for the keeping of any bees, fowl or livestock, such as but not limited to sheep, cattle and pigs of any type or breed. The breeding or keeping of dogs or cats or other animals for sale or profit is expressly prohibited. The operation of a “ham” radio station shall not be allowed. No communications discs over 18 inches shall be permitted on any Lot.

Section 11. Detention Areas and Storm Drainage Service. Each Owner shall maintain any drainage areas, Dwelling Unit storm drainage services and appurtenances located upon the Owner’s Lot.

Section 12. Fences. All fencing located at the perimeter of the Lots in the Development shall be: (i) uniform, (ii) constructed of unpainted/unstained natural cedar wood, board-on-board and (iii) not greater than four feet in height, except that fences bordering on 127<sup>th</sup> Street, Essington Road and at the rear of Lots 245, 246, 259, 260, 261, 263 and 264 adjacent to the “Not Included” parcel with an A-2 S.U. zoning shall not be greater than six feet in height.

All fences in the Development shall be maintained by their Unit Owners, except that fences bordering on 127<sup>th</sup> Street, Essington Road and at the rear of Lots 245, 246, 259, 260, 261, 263 and 264 shall be maintained, repaired and replaced by the Association and the cost of such maintenance, repair and replacement shall be an Association expense.

In order to carry out the construction, maintenance, repairs and replacement of the fences located at the rear of said lots adjacent to the “Not Included” parcel, the Developer, Declarant and the Association, their contractors, subcontractors, agents and employees, shall without charge, cost or rent, be entitled to access, ingress and egress over, upon and to said Lots as may be required in connection with the construction, maintenance, repair and replacement of such fences.

Section 13. Use During Construction and Sale Period. During the period of construction of the Dwelling Units on the Property by the Declarant, the Developer and Declarant, contractors and subcontractors and their respective agents and employees, shall without charge, cost or rent be entitled to access, ingress and egress to said Dwelling Units and Property as may be required in connection with said construction.

During the period in which sales of the Dwelling Units are conducted by the Declarant or Developer and for a reasonable time after conveyance by Declarant or Developer of the last Unit, the Declarant or Developer may occupy or grant permission to any person or entity to occupy, with or without rental, one or more Units for business or promotional purposes, including all business activities of Declarant or Developer regardless of any connections with the herein described real estate, including promotional activities, sales offices, model Units for display and the like and may maintain customary signs in connection therewith; provided, that the activities in the Units so occupied do not interfere with the quiet enjoyment of any other Owner.

**ARTICLE IV**  
**INSURANCE/REBUILDING**

Section 1. Insurance. Each Owner of a Dwelling Unit shall be responsible for and shall procure fire and all risk coverage insurance upon such Owner's Dwelling for not less than the full insurable replacement cost thereof under a policy or policies of insurance with such company or companies, in such form, and for such premiums and periods as he may determine to be appropriate.

Section 2. Rebuilding of Damaged Dwelling. In the event of damage to or destruction of any Dwelling Unit by fire or other casualty for which the Owner is required to carry insurance hereunder, the Owner thereof shall, within a reasonable time after such damage or destruction, repair or rebuild the Dwelling Unit in a workmanlike manner with material comparable to those used in the original structure and, in all respects, in conformity with then applicable laws or ordinances. The Dwelling Exterior when rebuilt, shall be substantially similar to, and its architectural design shall be in substantial conformity with the original plans and specifications for the Dwelling Exterior. The Owner shall not be relieved of his obligation to repair or rebuild his Dwelling Unit under these sections by his failure to carry sufficient insurance or the fact that proceeds received by the Owner from his insurer are not sufficient to cover the cost thereof.

**ARTICLE V**  
**FOXRIDGE FARMS NEIGHBORHOOD ASSOCIATION**

Section 1. Creation and Purposes. The Developer shall form an Illinois not-for-profit corporation to be known as the Foxridge Farms Neighborhood Association which shall provide for the maintenance, repair and replacement of the entryway features, the landscaping of the entryway and in general the maintenance and promotion of the desired character of the Property.

Section 2. Board of Directors and Officers. The Association shall have a Board of not less than 5 directors who shall be elected by the Members of the Association at such intervals as the By-Laws of the Association shall provide, except that vacancies in the Board occurring between regularly scheduled meetings of the Members may be filled by the Board if so provided by the By-Laws and that the first Board and subsequent Boards (until Developer has turned over control of the Association to the Members, as provided in Section 3 of this Article VD shall be appointed by the Developer and shall be 3 in number. The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly otherwise provided by the Articles of Incorporation or the By-Laws, all power and authority to act on behalf of the Association both pursuant to this Declaration and otherwise shall be vested in its Board from time to time and its officers under the direction of the Board, and shall not be subject to any requirement of approval on the part of its Members. The By-Laws of the Association shall include such added provisions for the protection and indemnification of its officers and directors as shall be permissible by law. The directors and officers of the Association shall not be liable to the Owners or others for any mistake of judgment or any acts or omissions made in good faith as such directors or officers. The Owners shall indemnify and hold

harmless each of such directors or officers against all contractual liability arising out of contracts made by such directors or officers on behalf of the Owners of the Association, unless any such contracts shall have been made in bad faith or contrary to the provisions of this Declaration. The liability of any Owner arising out of any such contract made by the Board or officers or out of the aforesaid indemnity in favor of the directors or officers to the extent not covered by insurance, shall be limited to such Owner's proportionate share of the total liability.

Section 3. Turnover Date. The Developer shall through the Board appointed by it in accordance with Section 2 of this Article, exercise control over all Association matters, until the first to occur of: (a) 3 years from the date of this Declaration, (b) the individual sale and conveyance of legal or equitable title to 75% of the Lots to Owners other than Declarant, or (c) Developer elects to voluntarily turn over to the Members the authority to appoint the Board, which election it shall evidence by directing the Declarant to execute an instrument setting forth its intention to so turn over its authority hereunder. The date upon which the authority to appoint the Board passes to the Members shall be hereinafter referred to as the "Turnover Date".

Section 4. Membership and Voting.

(a) Every person or entity who is record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including a contract seller, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification of membership. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successors in interest, if any, owns one or more Lots.

(b) From and after the time that the Developer has relinquished its authority to appoint the directors as hereinabove provided, each Member shall be entitled to one (1) vote on each matter submitted to a vote of Members for each Lot owned by him or it, provided, that where title to a Lot is in more than one person, such co-owners acting jointly shall be entitled to but one vote. When more than one person holds such interest in any Lot, all such persons shall be Members.

Section 5. Powers and Duties of the Association. The Association, through the Board, shall have the following powers and duties:

(a) Maintain, repair and replace the entryway monuments, if any, and the landscaping located in the entryway easement areas on Lots 241 and 242, and pay the utility expenses relating to such entryway features.

(b) Maintain, repair and replace fences bordering on 127<sup>th</sup> Street, Essington Road and at the rear of Lots 245, 246, 259, 260, 261, 263 and 264 adjacent to the "Not Included" parcel.

(c) In the event the Association fails to fulfill such responsibilities, the Village may, but shall not be obligated to do so, and the costs thereof, including reasonable attorneys fees may be

recorded as a lien on the title to all Lots, which may be foreclosed by court action initiated by the Village and in addition, the Village may bring an action at law against the Owner or Owners of record of such Lots.

(d) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate the contract for cause by the Association on 30 days written notice and without cause or payment of a termination fee by either party on 90 days written notice.

(e) Establish and maintain a working capital and contingency fund in an amount to be determined by the Board.

(f) Provide for maintenance, repairs, replacements, landscaping and grass mowing in the entryways and for maintenance, repair and replacement of fences bordering on 127<sup>th</sup> Street, Essington Road and the "Not Included" parcel.

(g) At its option, mow, care for, and maintain vacant and unimproved property and remove rubbish from same and to do any other things necessary or desirable in the judgment of the Board to keep any vacant and unimproved property and parkways in the Property neat in appearance and in good order. The foregoing rights shall not apply to any Lot or other portion of the Property owned by Declarant.

(h) Make such improvements to the Association property and provide such other facilities and services as may be authorized from time to time by the affirmative vote of 2/3 of the Members of the Association acting in accordance with By-Laws, provided, however, that any such action so authorized shall always be for the express purpose of keeping the Property a highly desirable residential community.

(i) Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Voting Members by the Articles of Incorporation, the Declaration or By-Laws.

(j) Adopt reasonable rules and regulations from time to time to implement the intent of this Declaration after a meeting of the Owners called for the specific purpose of discussing the proposed rules and regulations, and the power to assess fines and recover attorneys' fees and collection or litigation costs in enforcing this Declaration or any such rules and regulations. Such rules and regulations shall include but are not limited to rules and regulations regarding the size, type of material and location of fences, walls, buildings or other structures or improvements except for Dwelling Units, whether original or a replacement, temporary or permanent, located on any Lot. No rule or regulation shall be effective unless and until at least 10 days' notice thereof is given to Owners.

All such improvements subject to rules and regulations of the Association must comply with all applicable Village ordinances if, and to the extent there is any conflict between this Declaration, the rules and regulations implemented by the Board and the provisions of any

ordinances, codes, rules and regulations of the Village, then such conflict shall be resolved by the application of the more stringent provision as among this Declaration, the rules and regulations and such ordinances, codes, rules and regulations of the Village.

Section 6. Maintenance Assessments.

(a) Developer shall collect, from each initial purchaser of a Lot at the closing of the sale of such Lot, the sum of \$50, \$25 of which shall be allocated as a “Contingency and Replacement Reserve” for the Association to be utilized for repair and replacement of capital improvements made or to be made on the entryway area in Lots 241 and 242, and \$25 of which shall be allocated to the “Working Capital Fund” for the Association to be utilized for the Association’s working capital needs from time to time plus the prorata amount of the Annual Assessment due for the portion of such year following the closing, which assessment amount shall be determined by the Board.

After the Turnover Date, the Developer shall assign to the Association all proceeds of the Contingency and Replacement Reserve to be applied by the Association for the purposes set forth in the preceding paragraph. The Declarant and Developer shall have no right to utilize any of funds received from an initial purchaser prior to the Turnover Date. However, all of the above collected funds, except the Contingency and Replacement Reserve, may be used for, but not limited to, maintenance and landscaping as described in Section 5(a) above and the insurance expenses described in Section 8 of this Article.

(b) Each Owner, by acceptance of a deed or other conveyance from the Declarant, its successors or assigns, is deemed to covenant and agree to pay to the Association annual assessments or charges and special assessments for capital improvements and unforeseen expenses, to be collected from time to time as hereinafter provided in this Declaration, together with By-Laws of the Association. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with such interests, costs and reasonable attorney’s fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them. Notwithstanding the foregoing, Declarant shall be obligated to pay its share of assessments only for purposes of the maintenance, repair, upkeep and insurance of the entryway features area and for no other purpose. The portion of the assessments to be utilized for other expenses and purposes shall be allocated equally among all Owners other than Declarant.

(c) The assessment levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Property and in particular for the improvement and maintenance of the entryway features area. Such uses shall include, but are not limited to, the cost of the Association of all taxes, snow removal, insurance, repair, replacement and maintenance and other charges required by the Declaration or that the Board shall determine to be necessary or desirable to meet the primary purpose of the Association, including the establishment and maintenance of a reserve for repair, maintenance, replacements, taxes, and other charges as specified herein.

(d) In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the entryway features area, including the necessary fixtures and personal property related thereto, if any.

(e) Both annual and special assessments must be fixed at a uniform amount for all Lots. Annual assessments shall be collected, in advance, on a yearly basis.

(f) The annual assessments provided for herein shall commence for all Lots then subject to assessment hereunder on the first day of the month following the initial closing of the sale of a Lot to a purchaser for value. The Board shall fix the amount of the annual assessment of each annual assessment period and in lieu thereof, the amount of the prior year's annual assessment shall be the fixed amount. Any Lot conveyed by Declarant to a third-party purchaser after the commencement of the obligation to pay assessments shall be payable as follows: The Owner shall pay to Declarant (for delivery to the Association) the pro rata amount of the annual assessment due for the portion of such year following the closing. The Association shall upon demand at any time furnish a certificate in writing signed by an Officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein.

(g) Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest for the date of delinquency at the rate allowed by law or 18%, whichever is less, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. To the extent permitted by any decision or statute now or hereafter effective, the amount of any delinquent and unpaid charges or assessments and interest, costs and fees as above provided, shall be and become a lien or charge against the Lot of the Owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Each Owner, by such Owner's acceptance of a deed to a Lot, hereby expressly vest in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens. In addition, if any Owner shall default in the payment when same shall be due, of the aforesaid charges or assessments and default shall continue for 30 days after notice to the Owner by the Board, setting forth the amount of unpaid charges or assessments together with a demand for payment thereof, the Board shall have the right to declare the default a Forcible Detainer of the Dwelling and shall have the right, on behalf of the other Owners, to enter and take possession of the Lot and the Dwelling from the defaulting Owner, to put out the Owner, or any occupant or tenant claiming by, through or under the Owner, and to exercise any of the rights and remedies set forth in the Forcible Entry and Detainer provisions of the Illinois Compiled Statutes, as amended from time to time.

(h) The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed on the Lots prior to the effective dates of such

liens. In the event of the issuance of a deed, pursuant to the foreclosure of such prior mortgage or in lieu of such foreclosure, the grantee of such deed shall take title free and clear of any lien herein provided which may accrue prior to the recording to such deed.

(i) The regular yearly assessment shall be determined by the affirmative vote of the majority of the members serving on the Board.

Section 7. Dissolution of Association. All Owners, by acceptance of a deed to a Lot, covenant and agree that in the event the Association shall be dissolved, all restrictions and obligations created herein shall remain in full force and effect.

Section 8. Insurance. The Board shall also have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and worker's compensation insurance, and other liability insurance as it may deem desirable, insuring each Owner, the Association, its officers, members of the Board, the Declarant, and their respective employees and agents from liability and insuring the officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be common expenses payable out of the proceeds of the assessments required by and collected in accordance with Section 6 of this Article. The Association shall be further responsible for maintaining such policies of insurance for the entryway features area against loss or damage by fire and such other hazards contained in the customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable and may also obtain such other kinds of insurance as the Association shall from time to time deem prudent.

Section 9. Interim Procedure.

(a) Until each of the various Lots shall have been conveyed by the Declarant to the first Owner thereof (or to such Owner's nominee) the Developer shall, with respect to each such unsold Lot, have all of the rights granted to the Owners.

(b) Until the Association shall have been organized and shall have assumed its duties and powers, the Developer shall have all the rights, powers, duties and obligations herein granted to, or imposed upon, the Association and shall be authorized and empowered to take all such actions as the Board would have been authorized and empowered to take if the Association had then been formed. Alternatively, until the initial meeting of the Members, the Developer may appoint the Board (as more fully provided in Section 3 of this Article) which shall have the same powers and authority as given to the Board generally.

(c) Until the Turnover Date, Developer shall have the obligation to maintain the entryway features area, but shall be only responsible for payment of its proportionate share of all expenses and costs in connection with the entryway features area, including, without limitation, the costs of maintaining and landscaping the entryway features area (and any signs or monuments located thereon). The Association shall reimburse Developer for its maintenance

expenditures, if Developer's costs of maintaining the entryway features area before Turnover exceed its proportionate share.

(d) Developer shall be entitled at all times to conduct sales of Lots from the Property and shall have the right, for itself and its agents, employees, guests and invitees, to utilize roads, streets, entryway features area and all other portions of the Property, excluding sold Lots, for such purposes until all Lots in the Property are sold. Developer may at all times utilize signage, lighting and establish sales offices and model homes as required to conduct its sales and marketing of the Development.

## **ARTICLE VI**

### **VILLAGE OF BOLINGBROOK**

Section 1.     Easements. The Village of Bolingbrook is hereby granted the right and easement of access over, across and through the Property for any purposes reasonably related to the proper exercise of the rights and powers of the Village of Bolingbrook, including without limitation, the right and easement to come upon the Property to install, lay, construct, renew, operate, maintain, repair and replace lines, pipes, pumps and other equipment (including housings for such equipment) into, over, under, along and through the Property (including the entryway features area and Lots) for the purpose of providing water, storm sewer and sanitary sewer services and storm water detention areas, if any, to the Property or any part or parts thereto and to adjacent property and for the purpose of maintaining the entryway features area, as more fully described in Section 2 of this Article.

Section 2.     Maintenance. The Association shall maintain, repair and replace the entryway features area in compliance with all applicable laws and ordinances of the Village and all governmental bodies having jurisdiction over the Property, as such laws and ordinances may be amended and enforced from time to time and pursuant to requirements under this Declaration

If the Association fails to maintain the entryway features area, the Village shall have the right (but shall not be obligated) to give notice to the Association of its failure to perform its obligations under this Section. If such notice is given and the Association does not perform to the satisfaction of the Village within 30 days after the giving of such notice, then the Village may (but shall not be obligated to) enter the entryway features area and perform any and all work which it deems necessary and appropriate, either directly or through contractors engaged by the Village. The Village shall be entitled to recover its reasonable attorneys fees and court costs incurred by the Village in connection with enforcing the terms and conditions of the Declaration. The Unit Owner or the Association, as the case may be shall, upon demand, reimburse the Village for the reasonable cost of such work, including reasonable attorneys fees and if payment is not made within 30 days after demand, then, with respect to each Unit Ownership, the amount due shall become a lien on the Unit Ownership. If the payment is not paid within said 30 days after the due date, the amount due shall bear interest from the date of delinquency at the rate allowed by law or 18%, whichever or less. Each such lien shall be subordinate to the lien of the First Mortgage on the Unit Ownership, but shall be superior to the Association's assessment lien with respect to the Unit Ownership for assessments which become due after the date on which the Village's lien attaches to the Unit Ownership. At the request of the Village, the Association shall levy a special assessment for the payment of any such amounts which become due to the Village and the Village shall have the right to seek an injunction causing the Association to make

such a special assessment or, in the alternative, to record an appropriate notice of lien against all of the Unit Ownerships and to foreclose any such lien as provided for or permitted under applicable law.

**ARTICLE VII**  
**DEVELOPER'S RESERVED RIGHTS**

Section 1. In General. In the event of conflict between any rights or powers reserved of this Article and any other provisions of this Declaration or the By-Laws, the provisions of this Article shall govern. Except as otherwise provided in this Article, Declarant's rights under this Article shall terminate at such time as the Declarant is not longer vested with or controls title to a portion of the Property.

Section 2. Promotion Efforts. Declarant shall have the right, in its discretion, to maintain on the Property model Units, sales and leasing offices, displays, signs and other forms of advertising and, to the extent not prohibited by law, to come upon any portion of the Property for the purpose of showing the Property to prospective purchasers or lessees of Units, all without the payment of any fee or charge whatsoever. The Declarant shall have a non-exclusive access easement over and across the roads and walkways located on the Property for ingress and egress to and from those portions of the Foxridge Farms Neighborhood Area and this Declaration in order to exercise the rights reserved under this section and Section 3 below. The Declarant shall have the right and power to sell or lease a Unit to whomever it chooses on whatever terms it, in its sole discretion, shall deem appropriate.

Section 3. Construction. Declarant, its agents and contractors shall have the right to come upon the Property for the purpose of making alterations or improvements to the Property and shall have the right to store equipment and materials used in connection with such work on the Property without payment of any fee or charge whatsoever.

Section 4. Control of Board. Until the initial meeting of the Owners (which shall occur no later than the Turnover Date) and the election of the initial Board as provided for in the By-Laws, the rights, title, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board by this Declaration or the By-Laws shall be held and performed by the Declarant. The Developer may hold and perform such rights and obligations through the Board which, prior to the initial meeting, shall consist of 3 individuals designated by the Declarant from time to time. If the initial Board of Directors is not elected by the Owners at the time so established, the Declarant or Directors designated by the Declarant shall continue in office for a period of 30 days whereupon written notice of resignation shall be sent to all Unit Owners entitled to vote at such election. Prior to the Turnover Date, the Developer may appoint from among the Owners 3 non-voting counselors to the Board, who shall serve at the pleasure of the Developer.

**ARTICLE VIII**  
**GENERAL PROVISIONS**

Section 1. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Board, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of 20 years from the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of 20 years, subject to amendment as hereinabove set forth.

Section 2. If and to the extent that any of the covenants or restrictions would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of 21 years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of William Clinton, President of the United States and George Ryan, Governor of Illinois.

Section 3. If at any time or times the Board shall deem it necessary or advisable to rerecord this Declaration or any part hereof in the Office of the Recorder of Deeds of Will County, Illinois in order to avoid the expiration hereof or of any of the covenants, easements, agreements or other provisions herein contained under any of the provisions of the Illinois Compiled Statutes presently in force, or any other law or statute of similar purport, they shall submit the matter to a meeting of the Members of the Association called upon not less than 10 days notice, and unless at such meeting at least 2/3 of such Members shall vote against such rerecording, the Association shall have, and is hereby granted power to so rerecord this Declaration or such part thereof, and such rerecording shall be binding upon all Owners of any part of the Property in every way and with all the full force and effect as though such action were taken by each of the Owners and the rerecorded document executed and acknowledged by each of them.

Section 4. Each grantee of Declarant by the acceptance of a deed of conveyance, and each purchaser under any contract for such deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in the land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, and the rights described in this Section 4 or described in any other part of this Declaration shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such Lot ownership as fully and completely as though such rights were recited fully and set forth in their entirety in such documents.

Section 5. Developer, Association and each Owner or Owners of any of the Property from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants and restrictions above set forth, or any of them, in addition to the right to bring an ordinary legal action for damages. Whenever there shall have been built (or whenever there is being built) on any Lot in the Property and Structure which is and remains in violation of the covenants above set forth, or any of them, for a period of 30 days after actual receipt of written notice of such violation from Declarant or the Association by the Owner of such Lot, then Developer and Association shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily abate or remove same and such action shall not be deemed a trespass. In no event shall the failure of Developer, Association or such Owners to enforce any of the covenants herein set forth due to a particular violation be deemed to be a waiver of the right to do so as to any subsequent violation.

Section 6. Subject to the provisions of Section 7 of this Article, the record Owners in fee simple of the Lots in the Property may, by a 2/3 written vote of all Voting Members revoke, modify, amend or supplement in whole or in part any or all of the covenants and conditions contained in this Declaration and may release from any part or all of such covenants all or any part of the real property subject thereto. Any such change or changes may be made effective at any time by the Developer, so long as Declarant owns any Lots in the Development, and the Owners of at least 2/3 of the Lots not owned by Declarant consent thereto. Any such change or changes may be made effective at any time by the Developer, so long as Declarant owns any Lots in the Development, and the Owners of at least 2/3 of the Lots not owned by Declarant consent thereto. Any amendment effecting the rights or obligations of the Village hereunder must be approved in writing by the Village. Any such changes shall be effective only if expressed in a written instrument or instruments executed and acknowledged by each of the consenting Owners, certified by the Secretary of the Association and recorded in the Office of the Recorder of Deeds of Will County, Illinois.

Section 7. Declarant reserves the right and power to record a special amendment (“Special Amendment”) to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran’s Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or any in the future that may perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering any Lot ownership, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto.

In addition, a Special Amendment shall be also deemed to include, until the Turnover Date, such amendment to this Declaration as Declarant elects to record at any time and from time to time for any other purpose, so long as such amendment will not materially impair the rights of the Owners hereunder or materially increase the expenses to be borne by them hereunder. In furtherance of the foregoing, a power coupled with an interest, is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each

mortgage, trust deed, other evidence or obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this section shall terminate at such time as the Declarant no longer holds or controls title to any Lot.

Section 8. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for development.

Section 9. In the event title to any Lot is conveyed to a titleholding trust, under the terms of which all powers of management, operation and control of the Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Lot. No claim shall be made against any such titleholding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply, in whole or in part, against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Lot and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Lot.

Section 10. All articles and section headings set forth herein are intended for convenience only and shall not be given or construed to have any substantive effect on the provisions of this Declaration.

Section 11. If a court of competent jurisdiction shall hold invalid or unenforceable any part of any covenant or provision contained in this Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of this Declaration which shall remain in full force and effect.

Section 12. At any time or times Declarant may assign any or all of its rights conferred on it as set forth in this Declaration and upon its execution of any assignment by Declarant, it shall be relieved from any liability arising from the performance or non-performance of such rights or obligations.

Section 13. Each Owner of a Lot shall file the correct mailing address of such Owner with the Board of the Association and shall notify Declarant promptly in writing of any subsequent change of address. The Board of the Association shall maintain a file of such addresses and make the same available to the Association. A written or printed notice, deposited in the United States Post Office, postage prepaid, and addressed to any Owner at the last address filed by such Owner with the Board of the Association shall be sufficient and proper notice to such Owner wherever notices are required in this Declaration.

Section 14. The singular shall include the plural wherever the Declaration so requires, and the masculine shall include the feminine and neuter and vice versa.

Section 15. In the event provisions in this Declaration and provisions of a Village Ordinance apply to a situation, then the more restrictive provision shall apply.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on the date first set out above.

**Bolingbrook Limited Partnership, an  
Illinois limited partnership, by  
KIMBALL HILL, INC., its sole general partner**

By: \_\_\_\_\_  
David K. Hill, Chairman of the  
Board and Chief Executive Officer

ATTEST:

JoAnn Peterson, Secretary

STATE OF ILLINOIS    )  
  ) SS  
COUNTY OF COOK     )

I, John R. Nyweide, notary public in and for said county and state aforesaid, do hereby certify that David K. Hill, Chairman of the Board and Chief Executive Officer of Kimball Hill, Inc., and JoAnn Peterson, Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Chairman of the Board and Chief Executive Officer and Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Company, for the uses and purpose therein set forth.

GIVEN under my hand and Notarial Seal this May 15, 2001.

\_\_\_\_\_  
Notary Public

My commission expires: 11/16/01

This instrument was prepared by and should be mailed after recording to:  
John R. Nyweide  
McBride Baker & Coles  
500 W. Madison Street, 40<sup>th</sup> Floor  
Chicago, Illinois 60661-2511  
312. 715.5740  
312. 993.9350 (fax)  
nyweide@mbc.com

Address of Property: Unimproved property  
127<sup>th</sup> Street and Essington Road  
Bolingbrook, Illinois

**PIN NO.:** 01-26-400-002  
01-26-200-001  
01-35-200-005  
01-35-200-009  
01-35-200-010