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Recorder John Sciortino 2008-002404  
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Rec-\$60.00 Aud-\$0.00 RMA-\$1.00 ECM-\$1.00  
Current Transfer Tax Paid: \$0.00



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Prepared by  
And Return to: Deborah L. Petersen, P.L.C. 215 South Main St., P.O. Box 893 Council Bluffs, IA 51502-0893 (712) 328-8808  
Individual's Name Street Address City, State Zip Code Phone  
DEBORAH L. PETERSEN #8314 **SPACE ABOVE THIS LINE FOR RECORDER**

*AMENDED & SUBSTITUTED  
DECLARATION OF RESTRICTIONS AND COVENANTS  
FOR  
THE SEVEN AT FOX RUN LANDING*

This Declaration is made this 13<sup>th</sup> day of February, 2008, by CB Real Estate Development, L.L.C., hereinafter called "Developer".

**THE DEVELOPER HEREBY RESCINDS THE DECLARATION OF RESTRICTIONS AND COVENANTS FOR THE SEVEN AT FOX RUN LANDING DATED APRIL 3, 2006, AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER FOR POTTAWATTAMIE COUNTY, IOWA ON MAY 2, 2006, IN BOOK 101, PAGE 17717, AND IN ITS PLACE, THE DEVELOPER HEREBY ADOPTS THE FOLLOWING DECLARATION OF RESTRICTIONS AND COVENANTS FOR THE SEVEN AT FOX RUN LANDING:**

ARTICLE I

STATEMENT OF INTENT

Developer owns the real estate commonly known as THE SEVEN AT FOX RUN LANDING, a subdivision in Council Bluffs, Pottawattamie County, Iowa, as more specifically identified in the Final Plat of THE SEVEN AT FOX RUN LANDING. Developer desires to provide for the preservation of values in the development of said facilities, and, therefore, desires to subject said real estate to covenants, restrictions, easements, charges, and liens hereinafter set forth which are for the benefit of said property. In connection with the maintenance of certain portions of said real estate, it is the intent and desire of Developer to incorporate THE SEVEN AT FOX RUN LANDING HOMEOWNERS ASSOCIATION, INC., as a not-for-profit corporation, which Association shall have powers of maintaining and administering the common properties and facilities and enforcing the covenants and restrictions and collecting and disbursing assessments and charges.

THEREFORE, the Developer hereby declares that the subject real estate be held, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth, which shall run with the real property and be binding on all parties having any

right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof.

## ARTICLE II

### DEFINITIONS

For the purpose of these Restrictions, the following words shall be defined as follows:

1. "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration and any addition to the residential community known as THE SEVEN AT FOX RUN LANDING which Developer may in its discretion make subject to this Declaration as hereinafter set forth, including Common Areas.

2. "Lot" shall mean and refer to any separately-owned parcel as may be shown by any recorded subdivision plat of the Properties. Where the context indicates or requires, the term "Lot" includes any structure on the Lot. The term "Lot" shall also include ownership of a townhome in the subdivision.

3. "Residence" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

4. "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title, to any Lot situated upon the Properties. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, unless such person or entity has acquired title pursuant to foreclosure or upon proceeding instead of foreclosure. Lot Owner shall include Developer.

5. "Developer" shall mean and refer to CB REAL ESTATE DEVELOPMENT, L.L.C., its successors and assigns.

6. "Common Areas" shall mean all real property used for drainage and adjacent to the City right-of-way and all real property owned by the Developer or the Homes Association for the common use and enjoyment of the Lot Owners, and located on the Properties.

7. "Homes Association" shall mean THE SEVEN AT FOX RUN LANDING HOMEOWNERS ASSOCIATION, INC., the Iowa not-for-profit corporation to be formed by the Developer for the purpose of serving as the Homes Association for the Properties.

8. "Board of Directors" shall mean Board of Directors of the Homes Association as set forth in the Homes Association's Articles of Incorporation and By-Laws.

9. "Exterior Structure" shall mean any structure erected or maintained on a Lot other than the main residential structure or any structural component thereof, including but not limited to any deck, gazebo, animal shelter, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, hot tub, basketball goal, swing set, trampoline, sand box, playhouse, treehouse, or other recreational or play structure.

## ARTICLE III

### RESTRICTIONS AND COVENANTS

1. Each Lot shall be used for residential purposes except for such Lots or parts thereof as may hereafter or previously have been conveyed or dedicated by Developer, for use as a school, park, recreational, clubhouse or other non-profit use.

2. For each dwelling there must be erected an attached garage for two (2) cars.

3. For a period of twenty-five (25) years after the filing of this Declaration, no residence, building, fence, wall, driveway, patio, patio enclosure, mail box (including any post, stand or structure therefore), rock garden, basketball backboard, dog house, tree house, antenna, wind generating equipment, or other external improvement, above or below the ground (herein all referred 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 commence, except for Improvements which have been approved by Developer, as follows:

(a) A Lot Owner desiring to erect an Improvement shall deliver two (2) sets of construction plans, landscaping plans and plot plans to Developer (herein collectively referred to as the "Plans"). Such Plans shall reflect the type of structure, quality and use of exterior materials, exterior design, exterior color or colors, and location of structure proposed for Improvement. Concurrent with submission of the Plans, Lot Owner shall notify the Developer of the Lot Owner's mailing address.

(b) Developer shall review such Plans in relation to the type of exterior Improvements and construction, or approved for construction, on neighboring Lots and in the surrounding area and any general scheme or plans formulated by Developer. In this regard, Developer intends that the Lots shall form a developed residential community with homes constructed of high quality materials. If Developer determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Developer may refuse approval of the proposed Improvement.

(c) Written notice of the approval or rejection of the proposed Improvement shall be mailed to the Lot Owner at the address specified by the Lot Owner upon submission of the Plans. No construction of any Improvement shall commence prior to the issuance of the notice of approval.

(d) The decision to approve or refuse approval of a proposed Improvement shall be exercised by the Developer to protect the values, character and residential quality of all Lots. However, no Lot Owner, or combination of Lot Owners, or other person or persons shall have any right to any action by Developer, or to control, direct or influence the acts of the Developer with respect to any proposed Improvement. No responsibility, liability or obligations shall be assumed by or imposed upon Developer by virtue of any act or failure

to act by Developer with respect to any proposed Improvement.

(e) Approvals and/or consents required by these covenants shall be solely the function of Developer. Developer may, at its option, delegate all or any part of the function of control to the Board of Directors of the Homes Association. If such delegation is made, control shall be the function and obligation of the Board of Directors of the Homes Association, and it may not be delegated to a separate control committee or other similar group. Any such delegation by Developer of all or part of its control function to the Board of Directors shall not be effective unless done in writing and signed by a person authorized to act on behalf of Developer.

(f) The construction plan review process described herein shall be limited to approval only by the Developer herein and shall include the Developer's right to review and approve plans only with a minimum square footage that is appropriate for the development of THE SEVEN AT FOX RUN LANDING.

4. The exposed front foundation walls and any exposed foundation walls facing any street, including any side street, must be constructed of or faced with earthtone brick, stone or other material approved by Developer. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys on Lots other than Lots Adjoining Golf Course (See Article IV) shall be covered with wood or other material approved in writing by Developer. Fireplace chimneys on all homes sides facing any street shall be covered with brick or other material approved in writing by Developer. The roof of all Improvements shall be covered with shingles that are identified as imitation shake or equal quality, of at least 245 pound heavy asphalt (Heritage, Presidential or Timberline in style), at discretion of Developer. Imitation shakes shall be weathered wood in color. Wood, tile and slate roofs will be acceptable with Developer approval. This provision shall be strictly enforced by Developer.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a Lot as "For Sale"; 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. Further, no business activities of any kind whatsoever shall be conducted on any Lot. Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Developer, its agents or assigns, during the construction and sale of the Lots.

6. No exterior television or radio antenna, satellite receiving dish, or exterior solar heating or cooling device of any sort shall be permitted on any Lot unless the device and its location are approved by Developer.

7. No repair of any boats, automobiles, motorcycles, trucks, campers, or similar vehicles 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. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as inconspicuous a manner as possible.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home,

truck, aircraft, camper truck, golf cart, or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure). 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 or excavating equipment, airplanes, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this restriction shall not apply to trucks, tractors, or commercial vehicles which are necessary for the construction of residential dwellings during their period of construction.

9. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted unless completely screened from view, except for pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubble or cutting shall be deposited on any street, road or Lot. No clothes lines shall be permitted outside of any dwelling at any time. Produce or vegetable gardens no larger than 100 square feet may only be planted and maintained in rear yards.

10. Exterior lighting installed on any Lot shall be of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

11. Fences will be allowed on any Lot. All fences must be black wrought iron, vinyl coated black chain link or other approved material, and must be approved by Developer pursuant to the requirements in this Article. Any pet containment fences shall be underground.

12. No above ground swimming pools will be allowed on the Lots.

13. A dwelling on which construction has begun shall be completed within one (1) year from the date the foundation was commenced for such dwelling.

14. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Lot and upon each street side of each corner. The sidewalk shall be placed back of the street curb line in accordance with the Final Plat of THE SEVEN AT FOX RUN LANDING and all City Ordinances and shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Council Bluffs, Iowa.

15. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches or driveways will be permitted. The curb at each drive's entrance to the Lot shall have a curb grind.

16. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot. No dog runs or kennels may be constructed or installed on any Lot. No livestock or agricultural-type animals shall be allowed in THE SEVEN AT FOX RUN LANDING subdivision, including pot-bellied pigs.

17. Any exterior air conditioning condenser unit shall be placed so as not to be visible from public view, and the location shall be approved by the Developer. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve

(12) inches.

18. No structure of a temporary character, carport, detached garage, trailer, basement, tent, storage shed, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structure or dwelling shall be moved from outside THE SEVEN AT FOX RUN LANDING to any Lot without the written approval of Developer.

19. In the use and enjoyment of the Lots, the following shall apply to all owners and their invitees:

(a) No speaker, horn, whistle, siren, bell or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Residence or in any yard.

(b) In the event of vandalism, fire, windstorm or other damage, no Residence or Exterior Structure shall be permitted to remain in a damaged condition for longer than one (1) month.

(c) No exterior Christmas lights and/or decorations may be erected or maintained on any of the Lots hereby restricted, except during a sixty (60) day period beginning November 15<sup>th</sup> of each calendar year.

(d) No animal of any kind shall be kept on any Lot, except that up to two (2) dogs and/or cats may be kept, as long as they are in compliance with the Council Bluffs, Iowa Zoning Ordinances as the same is now enforced or may hereafter be amended. Dogs and cats shall be confined to their Owner's Lot. No dogs or cats shall be allowed to run at large in the Properties. Barking dogs shall be controlled by the Lot Owner or with electronic barking prevention collars.

(e) Each Lot Owner shall keep drainage ditches, culverts and swales located on Owner's Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon Owner's Lot as may be reasonably be required for proper drainage.

(f) Neither the Developer, its designee, nor any Lot Owner shall allow or permit any hunting or the discharge of any firearms within the entire boundaries of THE SEVEN AT FOX RUN LANDING.

(g) No public fishing or public use of the lakes is permitted. No fuel motorized water vehicles, boats, or vessels shall be used in THE SEVEN AT FOX RUN LANDING. All lakes in THE SEVEN AT FOX RUN LANDING shall be treated as "no wake" zones. The lakes shall be for the private use of the Lot Owners and they shall be allowed to use electric trolling motors. No docks shall be installed on the lakes in THE SEVEN AT FOX RUN LANDING. The lakes in THE SEVEN AT FOX RUN LANDING are recreational use property.

20. (a) Landscaping and Lawns. Prior to occupancy, all front and back lawns, including all areas between each Residence and any adjacent street, shall be fully sodded. The Owner of each Lot shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four (4) inches and shall properly maintain and replace all trees and landscaping. Noxious weeds and plants shall be kept reasonably mowed and dead and all unsightly growth shall be removed from all improved Lots.

(b) Trees. Each Lot Owner shall plant, at Lot Owner's expense, at least one (1) tree of at least 2" in diameter in the front yard of the Lot, unless this requirement is specifically waived by

the Developer. The species of trees to be planted and the location of planting shall be approved by the Developer or its designee. The required trees shall be planted as soon after construction of a dwelling as weather permits. The following species are pre-approved:

- Apple Serviceberry - 20' to 25'
- Pagoda Dogwood - 15' to 20'
- Cockspur Hawthorn - 15' (Thornless)
- Washington Hawthorn - 20'
- Flowering Crabapple: Indian Magic 18', Indian Summer 15', Red Barron 15', Royalty 15' to 18', Snowdrift 18' to 20', Spring Snow 18'
- Princess Kay Plum - 15'
- Japanese Tree Lilac - 20' to 25'

(c) Sprinkler System. Each Lot Owner (except Owners of Townhomes) shall install, maintain and repair, at Lot Owner's expense, lawn sprinkler systems on each Lot. The installation of the sprinkler system shall be completed at the time the dwelling construction is complete.

(d) Landscaping Required. All landscaping plans shall be approved by Developer, whether for initial construction or later changes. In addition to the cost and the requirements of the preceding three (3) paragraphs, each Lot Owner shall provide, at Owner's expense, professional landscaping improvements on each Lot. All such required landscaping shall be completed by the Lot Owner prior to occupancy.

(e) Lake Lots. All Lot Owners of Lots adjacent to any Lake in THE SEVEN AT FOX RUN LANDING shall maintain any land between their legal Lot line and the lake shore, to the same standards and conditions as they maintain their Lot.

21. The Lot Owners in THE SEVEN AT FOX RUN LANDING shall have mailboxes as approved by the U.S. Post Office and the Developer. Developer hereby approves and encourages the use of the following mailbox: "The Gentry - Black", model #GC1B, 215-1226, Gentry Blk Mailbox currently available at Menards.

22. Each Lot Owner in THE SEVEN AT FOX RUN LANDING shall be responsible for obtaining their own insurance coverage on the exterior of the structure, including but not limited to the siding and roof. Additionally, each Lot Owner in THE SEVEN AT FOX RUN LANDING shall be responsible for all insurance on the interior of their structure and their personal property and fixtures in the structure. Nothing contained herein shall be construed to place any responsibility on the Homeowners Association to obtain or pay for any insurance of any kind on the structures located in THE SEVEN AT FOX RUN LANDING.

If any structure is damaged in any way, the Lot Owner shall have the obligation to make any and all required repairs, in accordance with these Covenants, in a timely manner, regardless of whether or not they have insurance coverage for such damage. If the damage is not repaired in a timely manner, upon reasonable notice to the Lot Owner, the Homeowners Association shall have the right and the responsibility to make the necessary repairs and to assess the same against the Lot Owner as additional dues. The assessment shall have the same effect as all other dues or assessments under the Covenants.

ARTICLE IV  
RESTRICTIONS  
RELATING TO GOLF COURSE

1. "Lots Adjoining Golf Course" shall mean and refer to all Lots, as defined above, for which one or more of the Lot boundary lines is shared with any boundary line of the Fox Run Golf Course (herein "Golf Course").

2. Developer anticipates that the proximity of the Lots Adjoining Golf Course will enhance the desirability and value of the Lots Adjoining Golf Course to purchasers and their successors and assigns. All Lot owners hereby acknowledge that certain of the Lots may not have an unobstructed view, or may not have any view at all of the Golf Course, and that the right of privacy appurtenant to each residential lot shall be subject to such disruption and invasions, by noise, windblown debris and the like, as is normally associated with Golf Course construction/maintenance, grass mowing and equipment maintenance.

3. The Golf Course is private property. Owners of Lots and their invitees shall comply with all the rules and regulations of the operator of the Golf Course relating to use of and play on the golf course and the use of golf course property.

ARTICLE V  
EASEMENTS

The property in THE SEVEN AT FOX RUN LANDING is subject to any and all easements reserved on the Final Plat, specifically including any drainage ponds that will be maintained by the Homes Association.

ARTICLE VI  
HOMES ASSOCIATION

1. Membership. Every Lot Owner shall be deemed to have a membership in the Homes Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration.

2. Voting. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Lot Owners, with the exception of Developer, CB Real Estate Development, L.L.C., and shall be entitled on all issues to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine and advise the secretary prior to any meeting. In no event shall more than one (1) vote be cast with respect to any Lot. In the absence of agreement by multiple owners of a Lot, that Lot's vote shall be suspended if more than one (1) person seeks to exercise it.

Class B. The Class B member shall be Developer, CB Real Estate Development, L.L.C., its successors and assigns, and shall be entitled to two hundred (200) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:



(a) when the total votes outstanding in the Class A membership equal the total outstanding in the Class B membership; or

(b) the Class B member voluntarily waives its right to Class B voting privileges.

3. Articles of Incorporation and Bylaws. Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Homes Association shall be set forth in its Bylaws. In any event, if any provisions set forth in this Declaration applicable to notice, voting and quorum requirement are in conflict with any provisions of Iowa Law applicable to not-for-profit corporations on the date of this Declaration, or at any time after said date, the applicable provisions of Iowa law shall control.

4. Assessments. (a) The Developer for each Lot owned within the Properties as defined herein, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not regular annual assessments are assessed for the charges for the purposes hereinafter set forth to pay assessments levied by the Association as hereafter provided, which assessments, together with interest costs, and reasonable attorney's fees shall be and constitute, until paid, a continuing charge against and a lien upon such Lot or property against which each such assessment is made.

(b) The assessment levied by the Association shall be used exclusively without any part of the net earnings inuring to the private benefit of its members, to maintain, repair and replace when necessary THE SEVEN AT FOX RUN LANDING Subdivision landscaping, lighting, fencing, signage, lakes, operation and maintenance of the lakes, or any other improvements. The rate of assessment on the Lots in THE SEVEN AT FOX RUN LANDING may also include an additional assessment for any additional exterior maintenance and any other maintenance that the Owners of these Lots agree to provide.

(c) Before each fiscal year, the Board of Directors of the Association shall adopt and fix in reasonably itemized detail an annual budget for the then anticipated fiscal affairs and general operations for the Association for that year, and shall levy and collect annual assessments from each Lot Owner, which shall be sufficient to fund the budget for the fiscal year.

(d) The regular annual assessments provided for herein shall be assessed equally against all Lots, improved or not. The annual assessment for 2008 shall be \$200 per lot due March 31, 2008. The Board of Directors shall fix the amount of the annual assessment against each Lot by November 30 of each year. Immediately following the determination, written notice of the annual assessment shall be sent to every Owner subject thereto. The due date of the assessment shall be March 1 of each year. The Association shall, upon demand, and for a reasonable charge, furnish a certification signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

(e) Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may foreclose the lien against the Lot in the same manner as provided by law for foreclosures of mortgages.

(f) The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due

or from the lien thereof.

(g) **Maximum Regular Annual Assessment.** Unless excess dues have been authorized by the Members, the aggregate assessment which may become due and payable in any one year shall not exceed \$200.00 per Lot for each of the five (5) years following the date of this Declaration.

(h) **Assessments for Extraordinary Costs.** In addition to the regular annual assessments, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Area, including fixtures and personal property related thereto, and related facilities. The aggregate additional assessments in each calendar year shall be limited in amount to Three Hundred and no/100th Dollars (\$300.00) per Lot.

(i) **Excess Assessments.** With the approval of sixty percent (60%) of the Members of the Association, the Board of Directors may establish any assessment in excess of the maximums established in this Declaration.

(j) **Uniform Rate of Assessment.** Assessments and dues shall be fixed at a uniform rate as to all Lots, unless abated.

(k) **Certificate as to Dues and Assessments.** The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

(l) **Developer's Lots.** Notwithstanding the above requirements regarding the payment of assessments, Lots owned by Developer and held for sale shall not be subject to the payment of any assessments until they are sold.

5. **Incorporation and Conflicts.** The Association is a non-profit corporation originally formed by the Developer and its Articles of Incorporation and Bylaws, to the extent not inconsistent with this Declaration, will be incorporated herein by this reference. In the event of any conflict between the Articles and/or Bylaws of the corporation and this Declaration, then this Declaration shall control.

6. **Purposes and Responsibilities.** The Association shall have the powers conferred upon not-for-profit corporations by the Iowa Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board Directors by the Officers, shall include but shall not be limited to the following:

a. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Areas, and the enforcement of the rules and regulations relating to the Common Areas and the lakes located in THE SEVEN AT FOX RUN LANDING.

b. The landscaping, mowing, watering, repair and replacement of medians and islands in cul-de-sacs, outlets and other public property and improvements on public property within or near THE SEVEN AT FOX RUN LANDING.

c. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

d. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Area against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

e. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

f. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

7. Mandatory Duties of Association. The Association shall maintain and repair any entrance landscaping, entrance monuments, and signs that have been installed by Developer in generally good and neat condition and any property or lots which the Association may own.

The Association shall maintain all aspects, including but not limited to, water level, banks, erosion, pumps and general appearance of the Lakes located within THE SEVEN AT FOX RUN LANDING.

## ARTICLE VII

### GENERAL PROVISIONS

1. Property Subject to this Declaration. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration as of the date of this Declaration is that property more specifically identified in the Addendum to this Declaration, and includes all single family residences and townhomes in THE SEVEN AT FOX RUN LANDING. Developer may add any additional property to be subject to this Declaration at any time.

2. Duration. 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 Developer, or its successors and assigns, or by the Lot Owner of any real estate subject to the Declaration, their respective legal representatives, heir, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of five (5) years, unless an instrument signed by the Lot Owners of two-thirds of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless written notice of the proposed Amendment is sent to every Lot Owner at least sixty (60) days in advance of any action taken.

3. Notices. Any notice required to be sent to any member or Lot Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as a member or Lot Owner on the records of the Developer or Homes Association at the time of such mailing.

4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any

covenant or restriction, either to restrain violation or to recover damages or both and against the land to enforce any lien created by these covenants, and failure by the Homes Association or any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

5. Severability. In the event any one of these covenants or restrictions are held invalid by a judgment or court order, this shall in no way effect any other provisions which shall remain in full force and effect.

6. Amendment. Notwithstanding anything to the contrary, this Declaration may be amended by the Developer so long as it owns at least one Lot in THE SEVEN AT FOX RUN LANDING. Thereafter, by written consent of at least seventy percent (70%) of the Lot Owners within the subdivision as then constituted, evidenced by a Declaration duly executed and acknowledged by such Lot Owners and recorded in the Office of the Recorder of Pottawattamie County, Iowa, this instrument may be modified and amended.

7. Developer Approval/Consent. Notwithstanding anything to the contrary, whenever the approval or consent of the Developer, or its designee, is required for any action, such approval or consent shall be in writing and be signed and dated by the Developer or its designee. Any approval or consent not in writing as required herein shall be unenforceable. Developer is granted complete and sole discretion to approve or deny any improvement on any Lot and to enforce this Declaration. No approval or denial by Developer shall be deemed a waiver of any provisions of this Declaration, nor shall such approval or denial be enforceable for any Improvement other than that specifically addressed therein.

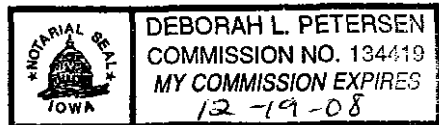
8. Obligations of Developer. No responsibility, liability or obligation shall be assumed by or imposed upon Developer, or its designee, by virtue of the authority granted to Developer in this Declaration, or as a result of any act or failure to act by Developer, or its designee, with respect to any proposed Improvement.

9. Grantee's Acceptance. Each grantee or purchaser of any Lot shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such Lot, accept such deed or contract upon and subject to each and all of the provisions of this Declaration of Restrictions and Covenants and to the jurisdiction, rights, powers, privileges and immunities of Developer and its designee. By such acceptance, such grantee or purchaser shall, for himself/herself, his/her heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with this Declaration and the grantee or purchaser of each other Lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

CB REAL ESTATE DEVELOPMENT, L.L.C.

By *Glen Tieszen*  
GLEN TIESSEN, Manager

Subscribed and sworn to before me by GLEN TIESSEN, Manager of CB REAL ESTATE DEVELOPMENT, L.L.C., this 13<sup>th</sup> day of February, 2008.



*Deborah L. Petersen*  
Notary Public in and for said State.