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**THIRD AMENDMENT TO DECLARATION OF RESTRICTIONS AND COVENANTS FOR FOX
RUN LANDING**

ARTICLE I

STATEMENT OF INTENT

This is the Third Amendment to the Declaration of Restrictions and Covenants of Fox Run Landing. It has been approved by 70% of the lot owners in Fox Run Landing, a subdivision in Council Bluffs, Pottawattamie County, Iowa, and lot owners in lots 35 through 63 of Fox Run Landing Phase III pursuant to an agreement recorded in Book 2016, Page 17991 of the records of the Pottawattamie County Recorder. Lot owners of lots 1 through 34 of Fox Run Landing Phase III and lot owners of lots 1-30 in East Fox Run Subdivision are members of the Fox Run Homeowners Association and subject to Articles VI and VII of these Covenants by virtue of an agreement recorded in Book 2017, Page 59405 and an agreement recorded in Book 2020, Page 05104, both of said agreements having been requested by the developers of those subdivisions. The term "lot owners" or "members" in these covenants includes the lot owners of the lots outside of Fox Run Landing referenced herein.

A partial assignment and delegation of developers' rights was recorded in Book 2010, Page 7712 of the records of the Pottawattamie County Recorder on June 15, 2010. In that partial assignment, the Developer, Western Iowa Land Development, LLC assigned and delegated to the Board of Directors of Fox Run Landing Homeowners Association the right to enforce compliance with the restrictions and

covenants. It however retained its right to maintain architectural control over new construction on vacant lots. Since that time, the Developer has sold all of its remaining lots in Fox Run Landing. Consequently, wherever the term "Developer" appears in the covenants, unless otherwise defined herein, said reference is to the Fox Run Landing Homeowners Association.

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 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 parcels 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. Wherever the term "Developer" appears in these covenants, it shall mean and refer to Fox Run Landing Homeowners Association.
6. "Common Areas shall mean all real property owned by the Developer or the Home Association for the common use and enjoyment of the Lot Owners, and located on the Properties.

7. "Homes Association" shall mean 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 Home Association for the Properties.

8. "Board of Directors" shall mean Board of Directors of the Homes Association as set forth in the Homes Associations 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 of deck, Gazebo, animal shelter, fence, privacy scree, boundary wall, swimming pool, 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 or other non-profit use.

2. For each dwelling there must be erected an attached garage for not less than two (2) cars.

3. For a period of twenty-one (21) years, as provided by Iowa law and as may be continued for additional 21-year periods in a manner provided by Iowa law, after the filing of this Declaration, no residence, building, fence, wall, driveway, patio enclosure, mail box (including any post, stand or structure therefore), rock garden, swimming pool, pool house, tennis court, basketball backboard, dog house, tree house, antenna, solar heating or cooling device, tool shed, wind mill, 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 commenced, except for improvement which have been approved by Developer, as follows:

(a) A Lot Owner desiring to erect an improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Developer (herein collectively referred to as "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 owner's mailing address.

- (b) Developer shall review such Plans in relation to the type of exterior of 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 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 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) All approvals and/or consents required by these covenants shall be solely the function of the Fox Run Landing Homeowners Association. In addition, all improvements or alterations to improvements on any lot must be at all times in full and complete compliance with all ordinances or rules and regulations of the City of Council Bluffs. No improvements or alterations may be undertaken without all necessary permits and approvals from the City of Council Bluffs.

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 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 concreted, 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 home 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. This provision shall be strictly enforced by Developer.

5. No advertising signs, billboards, unsightly objects or nuisance 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"; not shall the premises unreasonably disturbed 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. The only business activities allowed are those permitted by and in full compliance with the City of Council Bluffs Zoning Ordinance where a home occupation permit has been issued.

6. No exterior television or radio antenna, satellite receiving dish in excess of the diameter of 25 inches, or exterior solar heating or cooling devices of any kind shall be permitted on any Lot.

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 store, 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 incinerators or grass 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 may only be planted and maintained in rear yards. There is no limitation as to the size of the garden.

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. Exterior lights should be shaded or tilted downwards so as not to unduly shine across property lines.

11. No fences will be allowed on any Lot adjacent to the Golf Course, any lake, or any Common Area. All other fences must be black wrought iron and must be approved by Developer pursuant to the requirements of 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 on (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 Lot. The sidewalk shall be placed back of the street curb line in accordance with the Final Plat of 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 requirement of the City of Council Bluffs.

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 to 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 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 undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waster materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches. [City Code].

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 of dwelling shall be moved from outside 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 15th of each calendar year.
- (d) 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 and with electronic barking prevention collars.
- (e) Each Lot Owner shall keep drainage ditches, culverts and swales located on his or her Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his or her Lot as may be reasonable required for proper drainage.

No lot owner shall allow or permit any hunting or the discharge of any firearms on any lot, including out lots. Further, no lot owner shall allow the use of slingshots or archery equipment, including bows, crossbows, and arrows on any lots including out lots.

(f) (g) No public fishing or public use of the lakes is permitted. No fuel motorized water vehicles, boats, or vessels shall be used in FOX RUN LANDING. All lakes in 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. The lakes in FOX RUN LANDING are recreational use property.

(g) (h) No Animal of any kind shall be kept on any Lot, except that up to two (3) 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 not enforced or may hereafter be amended.

(h) (i) Fireworks may be discharged only in compliance with local and state law. Fireworks should be discharged so as not to leave debris on other lots.

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 1.5" in diameter in the front yard of the Lot, unless this requirement is specifically waived by the Developer. No trees shall be planted in the rear or side yards of Lots located on the golf course or on the lakes. The species of trees to be planted and location of planting shall be approved by the Developer or its designee. The Fox Run Landing Homeowners Association shall maintain a list of approved trees which may be planted. If a lot owner desires to plant a tree not on the list, the Homeowners Association will give due consideration to approve the other trees on an individual basis.

(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 requirements of the preceding three (3) paragraphs, each Lot Owner shall provide, at his or her expense, professional landscaping improvements on each Lot. All such required landscaping shall be completed by the Lot Owner prior to occupancy.

(e) Replacement Mailboxes. There shall be no specifications or requirements imposed for replacement mailboxes.

ARTICLE IV
EASEMENTS AND 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. All Lot owners hereby acknowledge that certain of the Lots may not have any 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 invasion, by noise, windblown debris and the like, as is normally associated with the Golf Course construction/maintenance, grass mowing and equipment maintenance.

3. Assumption of Golf Course Risks: By acceptance of a deed to a Lot, each Lot Owner acknowledges that owning property in Fox Run Landing is subject to each of the following risks and that the owner assumes each of these risks: (i) the risk of damage to property or injury to persons or animals from golf balls hit on or over an Owner's Lot or other prions of the Development; (ii) the entry by golfers onto Owner's Lot or other portions of the Development to retrieve golf balls; (iii) overspray in connection with watering or fertilizing of the roughs, fairways and greens on the Golf Courses (iv) noise from Golf Course maintenance and operation equipment (including, without limitation, compressors, blowers, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously; (v) the use of fertilizers, pesticides and other chemicals on the Golf

Course; (vi) odors arising from irrigation and fertilization of the turf situated on the Golf Course; and (vii) disturbance and loss or privacy resulting from golf course maintenance, golf car traffic and golfers. Additionally, each Owner acknowledges and understands that pesticides and chemicals may be applied to the Golf Course throughout the year and that reclaimed water, treated waster water or other sources of non-potable water, may be used for irrigation of the Golf Course.

4. **Appearance of Golf Course:** Each Lot Owner acknowledges, understands and agrees that no Lot Owner shall have the right to compel the Golf Course Owner to maintain the Golf Course or any improvements thereon to any particular standard of care and that the appearance of the Golf Course and improvements shall be determined in the sole discretion of the Golf Course Owner.

5. **Golf Course Easements.** There is reserved for the benefit of the Golf Course Owner, and its successors and assigns, a nonexclusive right and easement appurtenant to the Golf Course as the dominant tenement over each Lot as the servient tenement for purposes of overspray in connection with the watering and fertilizing of the roughs, fairways, tees and greens on the Golf Course and for the intrusion of golf balls onto or over the servient tenement from the roughs, fairways, tees and greens of the Golf Course. Any person for whose benefit the right and easement of overspray and intrusion is reserved shall not be liable to any Lot Owner for any damage to person or property occasioned by such overspray or intrusion unless occasioned by the intentional act of such Person. The right and easements reserved by this section shall be for the benefit of the Golf Course Owner, Declarant and the Developer and their successors and assigns and for the benefit of their employees, contractors, agents, guest, invitees, licensees and all persons playing the golf course, (collectively referred to as "Beneficiaries").

6. **Prior to commencement of any construction activities on any Lot Adjoining Golf Course,** a silt fence must be installed in a trench constructed along all boundary lines of such lot which are adjacent to the golf course, so as to prevent any run off of silt or other erosion from such lot onto the golf course property.

7. **The developer hereby reserves an easement over the rear twenty (20) feet of each Lot that abuts the Golf Course in the rear of the Lot, for the purposes of construction and maintaining a golf course.** Lot Owners may not construct any improvements or landscaping, including, without limitation, trees, shrubs, rocks, walkways, flowers, turf grass, prairie grass or wildflower mix, nor gardens in said easement areas without first obtaining the express written permission from the owners of the Golf Course

and Declarant. The "Developer" in this paragraph means Golf LLC which was the original Developer that platted the property and reserved easements.

8. The Developer hereby declares, grants and establishes easements on the Lots in favor of the Grantees (defined below) for: (i) intrusion or errant shots onto the Lots; and (ii) intrusion of noise from mowing and other power equipment during all hours of the day and night. For this purpose, and "errant shot" shall refer to a golf shot which is hit onto any Lot. The "Developer" in this paragraph means Golf LLC which was the original Developer that platted the property and reserved easements.

9. The easements granted in the Article are for the use and benefit of the FOX RUN, L.L.C. and GOLF, L.L.C., its successors and assigns in ownership of the Golf Course, and any lessee, licensee, permittee or invitee of the owner of the Golf Course.

10. No Golf Course Owner shall have any liability, obligation or expense to the Owner of a Lot in respect of any personal injury, bodily injury or property damage occurring as a result of an errant shot which is not: (i) negligently, intentionally or recklessly hit onto a Lot; or (ii) hit in violation of the rules established by an operator of a golf course or driving range on the Golf Course. By accepting title to a Lot, each Lot Owner hereby covenants that it will not sue any Golf Course Owner for property damage, personal injury or bodily injury which results directly or indirectly from such an errant shot, presently or in the future. All Lot Owners, by acceptance of delivery of a deed, assume all risks associated with errant golf balls, and all Lot Owners agree and covenant not to make any claim or institute any action whatsoever against Developer, the Golf Course designer, the Golf Course building, the Golf Course owner, or the builder of the unit arising or resulting from any errant golf balls, any damages that may be caused thereby, or for negligent design of the golf course or siting of the unit. Nothing in this paragraph shall preclude a lot owner from making a claim against an individual on the golf course who damages Plaintiff's improvements. Further, nothing in this paragraph precludes a lot owner from challenging the purported complete release of liability of the golf course owner in the event of a claim.

11. The Golf Course Owner may from time to time change the configuration and layout of the golf courses or driving range on the Golf Course. Such changes may affect the frequency, trajectory and velocity of errant shots which pass onto any individual Lot. Nevertheless, no Lot Owner shall have any right to object to, or in any manner limit changes to the golf course, and the easements granted in this Article shall remain fully effective as to all of the Lots after such changes.

12. 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.

13. Lot Owners residing in FOX RUN LANDING shall have the right to use private golf carts on Fox Run Golf Course provided the golf carts are of the same make, model, and color of those provided for use by Fox Run Golf Course, including options such as cart tops, except that Lot Owners' golf carts may be either electric or gas powered.

14. Lot Owners agree to upgrade their personal cart or carts to conform with the carts being the provided by Fox Run Golf Course, when Fox Run Golf Course changes its fleet of carts. Fox Run Golf Course will notify each registered owner of a golf cart of the change and allow each Owner the opportunity to purchase an acceptable cart as part of the fleet being purchased by Fox Run Golf Course. Each Owner shall be responsible for the purchase, storage, and maintenance of their own cart, however Fox Run Golf Course will allow each Owner the option of having maintenance performed on their cart, by the fleet maintenance provider, at the Owner's expense.

15. Fox Run golf Course will issue annual permits for Owner's cart or carts, which will permit the Owner to use the cart on the golf course subject to the rules of the course. Owners will be assessed a "trail fee" on an annual basis, which fee is personal to the Owner and the cart so registered and not assignable to another person or another cart. The trail fee cost structure will be based on single or double usage and will be determined by Fox run Golf Course.

16. Private cart owners must check in with the golf shop before playing. This includes any partial round of golf, which may or may not begin on any hole other than number one.

17. Fox Run Golf Course is not responsible for any damage to Owner's cart or carts while on Fox Run Golf Course property.

18. Failure of owner to comply with any cart ownership guidelines will result in the loss of the privilege of using the cart on the course for a period of time to be determined by Fox Run Golf Course. Restoration of the privilege of using the cart on the course shall be at the discretion of Fox Run Golf Course.

19. Owners of Lots in Fox Run Landing, will be given preferential tee times by Fox Run Golf Course, which can be made up to ten (10) days in advance of the day of play. All other green fee play will be allowed to make tee times up to seven (7) days in advance.

20. In the event fox Run Golf Course becomes a private club, Lot Owners in Fox Run Landing, at the time the club becomes private, will be given first preference to purchase a membership.

ARTICLE V
EASEMENTS

The property in FOX RUN LANDING is subject to any and all easements reserved on the Final Plat.

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 one class of voting members. The members shall be all lot owners and shall be entitled on all issues to 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.

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 requirements 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 owner of each lot hereby covenants and each owner of any Lot by acceptance of a deed therefore, 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 FOX RUN LANDING subdivision landscaping and lighting and the entry-way islands, landscaping, fencing, lighting and signage, or any other improvements.

(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, which shall be sufficient to fund the budget for the fiscal year. The regular assessments for each unimproved Lot shall be no more than fifty (50%) percent of the regular assessments for each improved Lot. Also, the Board shall also fix the annual assessment for the owners of townhomes for the maintenance of their common areas, as determined by the Townhome Owners Organization.

(d) The regular annual assessment provided for herein shall commence as to all Lots on the first day of the month following the filing of this Declaration. The regular annual assessments provided herein as to an improved Lot shall commence the first day of the month following the month during which the dwelling thereon was substantially completed. The first regular annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual date shall be established by the Board of Directors. 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 (10%) percent per annum. The Association may foreclose the lien against the property 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 transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment 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, printing, 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/100 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 Assessments.** 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.

5. **Incorporation and Conflicts.** Association is a non-profit corporation originally formed by the Declarant 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 of 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.

B. The landscaping, mowing, watering, repair and replacement of parks, medians and islands in cul-de-sacs, outlets and other public property and improvements on parks or public property within or near 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 coverage 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.

8. **Townhome Owner's Organization.** The Owners of Townhomes (person owning townhomes located on Lots 57 through 102 in Fox Run Landing – hereinafter referred to as the Townhome Lots) shall also have an additional vote for each Lot for the sole purpose of determining issues related solely to the Townhomes. In this regard, the Owners of other Lots in Fox Run Landing shall not be entitled to vote. All other provisions of this Declaration, including those relating to assessments, shall also apply to the Owners of Townhomes.

The Owners of Townhomes shall be entitled to Vote in the Determination of the following issues:

- a. The approval of a maintenance contract to provide all necessary minimum maintenance services to townhomes.
- b. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of the Common Facilities for the general use, benefit and enjoyment of the Townhome Owners and the maintenance and repair of the improvements to the Lots as set forth herein. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; common sprinkler systems; dedicated and nondedicated roads, paths, ways and green areas; signs, fencing and entrances for the Townhomes; and any other common improvement or area which primarily benefits the Owners of Townhomes. The Common Facilities may be situated on property owned or leased by the Homes Association or on dedicated property or property subject to Easements accepted by and benefitting the Townhome Owners.
- c. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided that such rules and regulations are uniformly applied to all Townhome Owners. The rules and regulations may regulate, limit and restrict the use of the Common Facilities to Townhome Owners, their families, their guests and others as determined by the Townhome Owners.

- d. The exercise, promotion, enhancement and protection of the privileges and interests of the Townhome Owners; and the protection and maintenance of the residential nature of the Townhome Lots identified above.
- e. The exercise of all of the powers and responsibilities listed in Paragraph 6 of this Article, but only to the extent they affect only the Townhome Owners or the Townhome Lots identified above.
- f. The creation and funding of an account in the Homes Association, including the determination of the amount of any monthly dues to be paid to said account in the Homes Association for the performance of the duties, obligations and responsibilities set forth herein, as well as the determination of any annual assessments for the services needed for the Townhome Lots and the Common Facilities in addition to any annual assessments for all Lot Owners. The funding shall also include funds sufficient to pay for its services under the maintenance contract referred to above in subparagraph (a) of this paragraph. Any such dues to assessments shall be treated as assessments by the Homes Association and shall be governed by all provisions herein, including the lien provisions. The Homes Association shall maintain a separate account for the funds referred to herein, said funds to be collected disbursed only upon vote by the Townhome Owners.

The Homes Association, acting on majority vote of the Townhome Owners shall be responsible for the enforcement of the provisions of this paragraph.

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 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, heirs,

successors and assigns, for a term of twenty-one (21) years from the date this Declaration was originally recorded, after which time said covenants may be extended in the manner provided by law.

3. Notices: Any notice required to be sent to any member of 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 of 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. This enforcement power is in addition to all of the enforcement remedies of the City of Council Bluffs under its various municipal codes, rules, and regulations.

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. This Declaration may only be amended by the Developer at any time so long as it owns at least one Lot in FOX RUN LANDING. Thereafter, by written consent of at least seventy percent (70%) of the Lot Owners of the Properties within the subdivision as then constituted, evidenced by a Declaration duly executed 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 virtues 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 this Declaration.

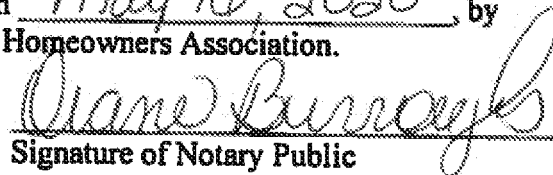
Executed this 16 day of May, 2020 by authority of a vote of the members.



Bradley Point
President, Fox Run Landing Homeowners Association

STATE OF IOWA, COUNTY OF POTTAWATTAMIE

This record was acknowledged before me on May 16, 2020 by
Bradley Point as President of the Fox Run Landing Homeowners Association.



Signature of Notary Public