

Prepared By
and Return To:

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Individual's Name

Address

City/State/Zip Code

Phone

DECLARATION OF RESTRICTIONS AND COVENANTS
FOR
FOX RUN LANDING

This Declaration is made this 12th day of October, 2000, by
GOLF, L.L.C., hereinafter called "Developer".

ARTICLE I

STATEMENT OF INTENT

Developer owns the real estate commonly known as FOX RUN LANDING, a subdivision in Council Bluffs, Pottawattamie County, Iowa, as more specifically identified in the Final Plat of FOX RUN LANDING. This Declaration shall not apply to any property in FOX RUN LANDING which is zoned Commercial or Multi-Family Residential (R-3 or R-4 in the Council Bluffs, Iowa City Ordinances). 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 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 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 GOLF, L.L.C., its successors and assigns.

6. "Common Areas" shall mean 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 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, 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-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, swimming pool, pool house, tennis court, basketball backboard, dog house, tree house, antenna, flag pole, 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 improvements 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 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 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 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 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.

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 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 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. 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, sign 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. 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 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 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 requirements 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 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 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 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 reasonably 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 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 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. No docks shall be installed on the lakes in FOX RUN LANDING. The lakes in FOX RUN LANDING are recreational use property.

(h) 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.

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 4" 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 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.

(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 his or her expense, professional landscaping improvements on each Lot. All such required landscaping shall be completed by the Lot Owner prior to occupancy.

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. 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 invasion, by noise, windblown debris and the like, as is normally associated with 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 portions 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 the watering or fertilizing of the roughs, fairways and greens on the Golf Course; (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 cart 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 waste water or other sources of non-potable water may be used for irrigation of the Golf Course.

Each Lot Owner expressly assumes such detriments and risks and agrees that neither Declarant, any Developer, the Golf Course Owner, or any director, officer, manager, employee or agent thereof, nor any of their successors or assigns shall be liable to the Lot Owner or occupant of any Lot, or any family member, guest, employee or agent, or anyone else claiming any loss or damage, including without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or residence to the Golf Course. Each Lot Owner shall indemnify and hold harmless Declarant, the Developer, and the Golf Course Owner, and their successors and assigns against any and all such claims by Lot Owner's family members, invitee or agents. The Lot Owner's foregoing indemnity obligations shall not exceed the amount of liability insurance maintained by the Lot Owner at the time the event occurred that gave rise to the Lot Owner's indemnity obligations.

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 for 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.

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, an "errant shot" shall refer to a golf shot which is hit onto any Lot.

9. The easements granted in this 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 builder, 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.

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 then 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 car 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 two classes of voting membership:

Class A. Class A members shall be all Lot Owners, with the exception of Developer, GOLF 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, GOLF, 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 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 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 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 assessments 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 assessment shall be sent to every owner subject thereto. The due 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 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/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 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.

(1) 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. 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 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.

8. Townhome Owner's Organization. The Owners of Townhomes (persons owning townhomes located on Lots 57 through 102 in Fox Run Landing - hereinafter referred to as the Townhome Lots) shall also have one 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. The Developer shall be entitled to forty-five (45) votes for each Townhome Lot it owns. All other provisions of this Declaration, including those relating to assessments, shall also apply to the Owners of Townhomes.

The Owners of Townhomes and the Developer (so long as it owns any Townhome Lot) shall be entitled to vote in the determination of the following issues:

- a. The approval of a maintenance contract with Fox Run Properties, L.L.C., and its successors, to provide all necessary minimum maintenance services to the 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 Fox Run Properties, L.L.C., and its successors, for its services under the maintenance contract referred to above in subparagraph (a) of this paragraph. Any such dues or 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 and 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-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 Agreement 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. 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 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 of 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.

GOLF, L.L.C.

By Gregory A. Siaperas
Gregory A. Siaperas,
Its Managing Member

STATE OF IOWA)
COUNTY OF POTTAWATOMIE) ss:

On this 13th day of October, A.D. 2000, before me, a Managing Member in and for said county, personally appeared Gregory A. Siaperas, to me personally known, who being by me duly sworn did say that that person is Managing Member of said GOLF, L.L.C., that no seal has been procured by the said GOLF, L.L.C., and that said instrument was signed on behalf of the said GOLF, L.L.C. by authority of its managers and the said Gregory A. Siaperas acknowledged the execution of said instrument to be the voluntary act and deed of said GOLF, L.L.C. by it voluntarily executed.

DEBORAH L. PETERSEN
MY COMMISSION EXPIRES
12-19-02

Deborah L. Petersen
NOTARY PUBLIC

Preparer Information 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

DECLARATION OF RESTRICTIONS AND COVENANTS
FOR
THE SEVEN AT FOX RUN LANDING

This Declaration is made this 3rd day of April, 2006, by CB Real Estate Development, L.L.C., hereinafter called "Developer".

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 for Lot Owners in THE SEVEN AT FOX RUN LANDING to be members of the FOX RUN LANDING HOMEOWNERS ASSOCIATION, INC., a not-for-profit corporation, which Association has the powers of maintaining and administering the common properties and facilities and enforcing the covenants and restrictions and collecting and disbursing assessments and charges of FOX RUN LANDING, an adjacent subdivision.

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.

The Developer hereby adopts the *DECLARATION OF RESTRICTIONS AND COVENANTS FOR FOX RUN LANDING* which were dated October 12, 2000, and filed on October 16, 2000, in Book 101, Pages 17717 - 17736 of the records of Pottawattamie County, Iowa. Except as otherwise specifically provided herein, the *DECLARATION OF RESTRICTIONS AND COVENANTS OF FOX*

RUN LANDING as filed shall apply to the Lots in THE SEVEN AT FOX RUN LANDING.

ARTICLE II

SPECIFIC MODIFICATION TO
DECLARATION OF RESTRICTIONS AND COVENANTS FOR FOX RUN LANDING

The following modifications are hereby made to *DECLARATION OF RESTRICTIONS AND COVENANTS FOR FOX RUN LANDING*:

ARTICLE III, Section 11 is modified to read as follows: 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, vinyl coated black chain link or other approved material, and must be approved by the Developer pursuant to the requirements of this Article. Any pet containment fences shall be underground.

ARTICLE III, Section 20 is modified to require one (1) tree of at least 2" in diameter.

ARTICLE IV, Sections 13 - 20 are deleted and do not apply to THE SEVEN AT FOX RUN LANDING.

ARTICLE VI, Section 8 is deleted in its entirety. The remainder of ARTICLE VI shall apply to The Seven at Fox Run Landing, except as inconsistent with this Declaration. It is expressly acknowledged that the owners of Lots in The Seven at Fox Run Landing shall be members of the Fox Run Landing Homeowner's Association and shall pay dues and vote as other members. In addition, the Owners of Duplex Lots in The Seven at Fox Run Landing shall also be members of their own organization as noted below.

ARTICLE III

ADDITIONAL PROVISIONS FOR LOTS IN THE SEVEN AT FOX RUN LANDING

1. The construction plan review process described in Article III, Section 3 of the *DECLARATION OF RESTRICTIONS AND COVENANTS FOR FOX RUN LANDING* 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.
2. The Lot Owners of Duplex Lots in The Seven at Fox Run Landing shall have cluster mailboxes as approved by the U.S. Post Office and as approved by the Developer. Other Lot Owners shall have mailboxes as approved by the U.S. Post Office and the Developer.
3. 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.

4. On the Lots in The Seven at Fox Run Landing, Exterior Maintenance shall include all roofs on the residences, all siding on the residences and all exterior paint on the residences. However, the charges for these items of maintenance shall be paid for only by The Seven at Fox Run Landing Homeowners Organization as described below.

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.

ARTICLE IV

DUPLEX HOMES ORGANIZATION IN THE SEVEN AT FOX RUN LANDING

The Owners of Duplex Homes in The Seven at Fox Run Landing (hereinafter referred to as the Duplex Lots) shall also have one additional vote for each Lot for the sole purpose of determining issues related solely to the Duplexes. In this regard, the Owners of other Lots in Fox Run Landing shall not be entitled to vote. The Developer shall be entitled to sixty-two (62) votes for each Duplex Lot it owns. All other provisions of this Declaration, including those relating to assessments, shall also apply to the Owners of Duplex Lots. Further, all Duplex Lots shall be used only for owner-occupied residences.

The Owners of Duplex Lots and the Developer (so long as it owns any Duplex Lot) 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 the Duplex Homes.
- 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 Duplex Lot Owners and the maintenance and repair of the improvements to the Lots as set forth herein. Common Facilities may include recreational facilities, playgrounds and parks; common sprinkler systems; dedicated and nondedicated roads, paths, ways and green areas; signs, fencing and entrances for the Duplex Lots; and any other common improvement or area which primarily benefits the Owners of Duplex Lots. The Common Facilities may be situated on property owned or leased by the Homeowners Association or on dedicated property or property subject to Easements accepted by and benefitting the Duplex Lot 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 Duplex Lot Owners. The rules and regulations may regulate, limit and restrict the use of the Common Facilities to Duplex Lot Owners, their families, their guests and others as determined by the Duplex Owners.

- d. The exercise, promotion, enhancement and protection of the privileges and interests of the Duplex Lot Owners; and the protection and maintenance of the residential nature of the Duplex Lots identified above.
- e. The exercise of all of the powers and responsibilities listed in Article VI of the *DECLARATION OF RESTRICTION AND COVENANTS FOR FOX RUN LANDING*, but only to the extent they affect only the Duplex Lot Owners or the Duplex Lots identified above.
- f. The creation and funding of an account in the Homeowners Association, including the determination of the amount of any monthly dues to be paid to said account in the Homeowners 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 Duplex 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 services under the maintenance contract referred to above in subparagraph (a) of this paragraph. Any such dues or assessments shall be treated as assessments by the Homeowners Association and shall be governed by all provisions herein, including the lien provisions. The Homeowners Association shall maintain a separate account for the funds referred to herein, said funds to be collected and disbursed only upon vote by the Duplex Lot Owners.

The Homeowners Association, acting on majority vote of the Duplex Lot Owners shall be responsible for the enforcement of the provisions of this paragraph.

CB REAL ESTATE DEVELOPMENT, L.L.C.

By *Glenn Tiessen*
GLEN TIESSEN, Member

STATE OF IOWA

COUNTY OF POTTAWATTAMIE

} ss:

On this 3rd day of April, 2006, before me, a Notary Public in and for said County, personally appeared GLEN TIESSEN, to me personally known, who being by me duly sworn did say that he is a Member of CB REAL ESTATE DEVELOPMENT, L.L.C., that no seal has been procured by the said Limited Liability Company, and that said instrument was signed on behalf of

