

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 31<sup>st</sup> 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.

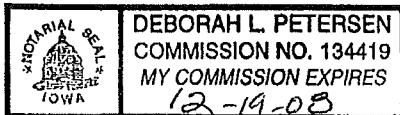
CB REAL ESTATE DEVELOPMENT, L.L.C.

By Glen Tieszen  
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

the said Limited Liability Company by authority of its managers and the said Glen Tiessen acknowledged the execution of said instrument to be the voluntary act and deed of said Limited Liability Company by it voluntarily executed.



*Deborah L. Petersen*  
NOTARY PUBLIC

WESTERN IOWA LAND DEVELOPMENT, L.L.C. hereby acknowledges that it is now the "Developer" under the DECLARATION OF RESTRICTION AND COVENANTS FOR FOX RUN LANDING Subdivision and agrees to the terms of this Declaration and to allow the Owners in THE SEVEN AT FOX RUN LANDING to join the Fox Run Landing Homeowner's Association as described herein.

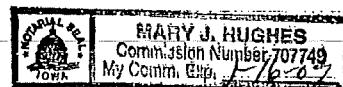
WESTERN IOWA LAND  
DEVELOPMENT, L.L.C.

By *John A. Jarkovich* (PRINT NAME)  
*John A. Jarkovich*  
Is Managing Member

STATE OF IOWA  
COUNTY OF POTTAWATTAMIE }  
 } ss.

On this 4<sup>th</sup> day of April, 2006, before me, a Notary Public in and for said county, personally appeared John A. Jarkovich, to me personally known, who being by me duly sworn did say that he is a Member of WESTERN IOWA LAND 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 the said Limited Liability Company by authority of its managers and the said He acknowledged the execution of said instrument to be the voluntary act and deed of said Limited Liability Company by it voluntarily executed.

*Mary J. Hughes*  
NOTARY PUBLIC



ATTORNEY'S OPINION WITH RESPECT TO  
THE SEVEN AT FOX RUN LANDING SUBDIVISION  
COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA

TO THE COUNTY RECORDER OF POTTAWATTAMIE COUNTY:

This abstract, covering the real estate described on the attachment marked "Legal Description", commences with the United States Government, with Entries #1 through #105, inclusive, being certified to March 27, 2006 at 8 o'clock a.m. by Abstract Guaranty Company, and with Entry #106 only, FILED AS SHOWN and NO SEARCH of any kind made at this date, May 2, 2006 at 8:00 a.m. by Abstract Guaranty Company. Said abstract is in one part containing 106 entries. From my examination I find:

Marketable title to the property under examination is held in part by CB Real Estate Development, L.L.C. is shown at Entries #72, #80, #81 and #82; and in part by Western Iowa Land Development, LLC shown at Entry #89. The Warranty Deed shown at Entry #72 is dated March 31, 2005 and recorded April 12, 2005 in Book 105, Page 18974 and re-recorded to correct legal description on May 4, 2005 in Book 105, Page 20491. The Warranty Deed shown at Entry #80 was dated July 20, 2005 and recorded August 1, 2005 in Book 106, Page 02132. The Parcel Split shown at Entry #81 was approved August 3, 2005 and recorded August 8, 2005 in Book 106, Page 02618. The Corrective Warranty Deed shown at Entry #82 was dated August 12, 2005 and recorded August 18, 2005 in Book 106, Page 03536. The Warranty Deed shown at Entry #89 was dated December 1, 2005 and recorded December 2, 2005 in Book 106, Page 11156 (The legal description was changed in the Auditor's Office - 12/5/2005).

There is an Open-End Mortgage (with future advance clause) shown at Entry #73 in the amount of \$975,000.00 from CB Real Estate Development, LLC, an Iowa Limited Liability Company, et al. to Midstates Bank N.A. dated March 31, 2005 and recorded April 12, 2005 in Book 105, Page 18975, Pottawattamie County, Iowa records. *Re* *106-21812*

There is a Mortgage shown at Entry #90 in the amount of \$1,800,000.00 from Western Iowa Land Development, L.L.C., an Iowa Limited Liability Company, to Security National Bank of Omaha, a National Banking Association, dated December 1, 2005 and recorded December 13, 2005 in Book 106, Page 11842, Pottawattamie County, Iowa records. *lot 3* *7+* *107-918*

There is a lien search shown at Entry #101 on CB Real Estate Development, L.L.C., Western Iowa Land Development, LLC and Golf Real Estate Development, LLC and, except as stated herein, there are no liens shown against said entities.

Entry #104 states that General Taxes for the year 2004 and prior years are shown paid.

There is an Open-End Mortgage (with future advance clause) shown at Entry #106, in the amount of \$1,475,000.00 from CB Real Estate Development, LLC, an Iowa Limited Liability Company, et al to Midstates Bank N.A., dated April 12, 2005 and recorded April 27, 2005 in Book 106, Page 20513, Pottawattamie County, Iowa records.

✓ 106 20513

This opinion is given solely for the purpose of re-platting the property under examination. This opinion contains only the information required in 354.11(3) 2002 Code of Iowa. This opinion should not be relied upon for any other purpose.

This opinion is expressed as of the 2<sup>nd</sup> day of May, 2006.

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