

FIRST AMENDMENT AMENDED AND RESTATED COVENANTS OF PLAT OF FOX CREEK

Recorder's Cover Sheet

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Grantors:

N/A

Grantees:

N/A

Legal Description: Lots 1-73, and Lots A-J, Fox Creek, an Official Plat, Dallas County, Iowa.

Document or instrument number of previously recorded documents: Restrictive Covenants of Plat of Fox Creek, Plat Book 3, Page 378; First Amendment Plat Book 4, Page 40; Second Amendment Book 4, Page 143; Third Amendment Book 7, Page 119; Fourth Amendment Plat Book 7, Page 688; Fifth Amendment Plat Book 8, Page 9; Sixth Amendment Plat Book 8, Page 451; Amendment to Declaration, Book 850, Page 631; Amended and Restated Covenants of Plat of Fox Creek, Book 2011, Page 14820.

NOTE: This cover page is prepared in compliance with Iowa Code Section 331.606B, 2009. This cover page is provided for information purposes only and shall not be construed as part of the within and foregoing instrument to which it is attached.

AMENDED AND RESTATED COVENANTS OF PLAT OF FOX CREEK

THIS DECLARATION (“Declaration”) is made this 7th day of December, 2010 by **FOX CREEK OWNERS ASSOCIATION**, an Iowa not-for-profit corporation (“FCOA”), and those Owners of record who have executed this instrument (“Executing Owners”) (collectively, FCOA and the Executing Owners are referred to as “Declarant”);

WITNESSETH:

WHEREAS, the plat (“Plat”) of Fox Creek was recorded June 20, 1972 in Plat Book 3, Page 378 of the Dallas County, Iowa records; and in connection with such platting proceedings, certain Restrictive Covenants were recorded and amended by the instruments described on Page 1 of this Declaration (the “Original Restrictions”);

WHEREAS, FCOA was formed as a not-for-profit corporation to administer the Declaration of Covenants, Conditions, and Restrictions for Fox Creek (“CC&Rs”), recorded December 21, 1990 in Book 691, Page 844 of the Dallas County, Iowa records; as amended by Amendment recorded in Book 716, Page 532; and further amended by Amendment recorded in Book 850, Page 631;

WHEREAS, Declarant desires to update the Original Restrictions and, to the extent permitted by law, adopt the terms and conditions of the CC&Rs with respect to the following described real estate located in Dallas County, Iowa, to-wit:

Lots 1-73 and Lots A-J, Fox Creek, an Official Plat, Dallas County, Iowa
(the “Property”).

WHEREAS, FCOA certifies that this Declaration has been adopted by at least two-thirds ($2/3^{\text{rds}}$) of the Owners of lots in the Plat.

NOW, THEREFORE, Declarant by the execution and recording of this instrument, hereby declares that to the extent permitted by law, the Property shall be held, occupied, sold, leased, and conveyed subject to the terms and conditions hereof.

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ARTICLE I. DEFINITIONS

Section 1. “*Architectural Control Committee*” (also referred to herein as the “*ACC*”) shall mean the committee appointed by FCOA, which may consist of any combination of Board Members or Owners.

Section 2. “*Association*” or “*FCOA*” shall mean the Fox Creek Owners Association, a not-for-profit corporation organized pursuant to Chapter 504A of the Code of Iowa, as well as any of its successors or assigns. The Articles of Incorporation and the By-Laws of the Association are hereby incorporated by reference in this Declaration.

Section 3. “*Board of Directors*” shall mean the Board of Directors of the Association. The Board of Directors, also referred to as the Board, is the body of members elected by the Association to manage matters of business and to carry out any actions required by the Association.

Section 4. “*Common Areas*” shall consist of the following described real property together with any improvements thereon and subject to any and all easements and restrictions. Lots A, B, C, D, E, F, G, H and J all in Fox Creek, an Official Plat, Dallas County, Iowa (subject to rights of Dallas County in such Lot A and such other property conveyed to and accepted by the Association from time to time).

Section 5. “*County*” shall mean Dallas County, Iowa.

Section 6. “*Declarant*” shall have the meaning set forth in the Preamble to this Declaration.

Section 7. “*Declaration*” shall mean this Declaration of Amended and Restated Covenants of Plat of Fox Creek to which the Property is subject.

Section 8. “*Facilities*” shall mean any entrance features as well as a perimeter farm fence (if any) separating the Property from adjacent land that shall be maintained by the Association as to its share of costs prescribed by the Code of Iowa pertaining to rural partition fences as well as other amenities or improvements that may be added in the future at the option of the Association or Declarant. The Association hereby assumes no obligation to construct, maintain, repair, or replace any such perimeter farm fence now or in the future.

Section 9. “*Lot*” shall mean any platted lot contained in the plat of the Property made and recorded with the Dallas County Auditor in accordance with the subdivision laws of the State of Iowa and ordinances of the County as they presently exist or as they may be amended in the future.

Section 10. “*Living Unit*” shall mean a residential dwelling constructed on a Lot subject to this Declaration.

Section 11. “*Member*” shall mean those persons entitled to membership in the Association as provided in this Declaration and the Articles of Incorporation and By-Laws of the Association.

Section 12. “*Owner*” shall mean the record titleholder, as disclosed by the records of the Dallas County Recorder whether one or more persons or entities, of a fee simple title to any Lot and

shall also include vendees pursuant to an Installment Real Estate Contract, and all persons claiming by, through, or under this, including tenants. This term shall not include those persons having an interest in any Lot as a vendor under an Installment Real Estate contract or those persons having an interest solely for security purposes in the performance of an obligation or debt. The term also excludes those persons having a lien against any Lot by operation of law or otherwise. Furthermore, the term shall not be construed to include the County or any governmental entity as to any Lot or right of way owned by it.

Section 13. *“Property”* shall mean Lots 1 through 73 and Lots A through J, inclusive, in Fox Creek, an Official Plat, now included in and forming a part of Dallas County, Iowa, as well as any land which may be added to this Declaration pursuant to Article VI.

ARTICLE II.
GENERAL USE RESTRICTIONS AND BUILDING SPECIFICATIONS

Lots 1 through 73, and Lots A – J, inclusive, in Fox Creek, an Official Plat, now included in and forming a part of the Dallas County, Iowa (“Property”) shall be held, maintained, occupied, sold and conveyed subject to the following Covenants, Conditions, and Restrictions, as well as those Covenants, Conditions, and Restrictions set forth elsewhere in this Declaration:

A. Single Family Residence.

The use of Lots shall be limited to single family residential use. No multi-family occupancy residences have been constructed on any of the Lots, and therefore the provision of Section 3(d) of the Original Covenants allowing two-family occupancy residences on Lots 28, 29, 37, 54, and 65 are hereby repealed. The term “single family” shall have the same meaning under this Declaration as contained in the Dallas County, Iowa, Zoning Ordinance. Uses of land or structures customarily incidental, accessory, and subordinate to the single-family residential use as permitted by the Dallas County (“County”) Zoning Ordinance are permitted unless prohibited or otherwise regulated by this Declaration.

(i) Single-story Residences:

Each single-story residence shall have ground floor living area of at least 1,500 square feet, except that if a two-car attached garage is included as a part of such building, then the minimum living area shall be 1,400 square feet, except with respect to Lots 27, 30, 35, 36, 42, 64, 69, 70 and 72, in which case the two-car garage minimum shall be 1,200 square feet.

(ii) One and One-half or Two Story Residences:

One and one-half or two-story dwellings shall have a minimum ground floor living area of not less than 1,000 square feet, and shall have an attached two-car garage.

(iii) Exclusions:

Garages, breezeways, porches, and terraces shall not be deemed included in living area, irrespective of whether or not there may be living areas located above such non-living areas.

B. Playhouses and Sheds.

Playhouses, utility buildings, tool sheds, storage sheds, or other similar structures shall be permitted; provided, however, that regardless of whether the appropriate governmental entity is required by its regulations to issue a building permit for such structure, the exterior and the roof must be constructed of materials and having a color and appearance in harmony with the Fox Creek neighborhood and be constructed and maintained in an attractive and workmanlike manner. The structure shall be at least twenty (20) feet away from any Lot line and shall be securely anchored on a suitable foundation. The location of such structures shall be subject to the approval of the ACC. Existing structures shall not be affected by this restriction; provided,

however, that in the event any non-conforming existing structure is damaged or destroyed by any casualty or otherwise demolished or substantially altered or expanded by the Owner; such structure shall be constructed or reconstructed in accordance with this Section.

C. Temporary Structures.

Temporary buildings, partially constructed buildings on which work has stopped for a period in excess of sixty (60) days, mobile homes, modular homes, factory manufactured homes, or campers of any character are not permitted, and garages or other out-buildings cannot be used as residences temporarily or permanently.

D. Construction.

Construction or improvement of any structure shall be completed within one year from the date said construction is begun and excess dirt from the excavation shall be used as a part of the graded landscape plan, placed on an approved area in the Property, designated by the Board of Directors, or hauled away.

E. Fences and Privacy Hedges.

No fences, walls, privacy hedges, or barriers shall be permitted upon Lots or property lines except as follows:

(i) Perimeter fences are prohibited. Fences, walls, or barriers for use in restraining pets or small children shall be permitted with the prior written consent of the Board.

(ii) The fence screening material shall be mounted on the exterior face of the fence posts or fence framing. Fencing materials shall be limited to vinyl clad chain link, wrought iron, or concrete block with suitable stucco finish; provided, however, that privacy fences shall not be allowed at all, and non-perimeter privacy fences shall be allowed only with the prior written approval of the ACC. The ACC shall have the authority, in its sole discretion, to permit alternative fencing materials which would be in harmony with the neighborhood. All fences shall be kept in good repair and attractive appearance. Existing fencing shall not be affected by this restriction; provided, however, that in the event any fence is damaged or destroyed by any casualty or otherwise demolished or substantially altered or expanded by the Owner; such fencing shall be constructed or reconstructed in accordance with this Section. Farm perimeter fences shall be governed by law as set forth by the State of Iowa.

F. Trees.

No cottonwood, elms, or other so-called dirty trees shall be planted on any Lot.

G. Utility Meters.

Utility meters shall be hidden architecturally or through the use of remote reading devices.

H. Mailboxes.

All mailboxes shall comply with U.S. Postal Service regulations.

I. Utilities.

All utilities, including trunk and service lines for telephone, electricity, and cable television, shall be constructed and maintained underground except for that portion which utility companies customarily require to be above ground in the immediate proximity of any exterior utility meter.

J. Security Lighting.

Security or decorative lighting for driveways, parking, and other areas shall be designed, located, and directed in a fashion that will avoid direct lighting onto adjoining Lots.

K. Seeding or Sodding.

All portions of a Lot not occupied by structures, walkways, driveways, parking, or landscaping and which have been disturbed during construction shall be sodded or seeded within ninety (90) days after completion of construction on a Lot unless weather conditions make this requirement impossible to meet, in which event the Board of Directors of the Association shall establish a reasonable period of time for compliance. If the sodding or seeding is not fully successful, the affected area shall be re-sodded or re-seeded.

L. Garbage Cans, Firewood and Equipment.

Items such as garbage cans, firewood, clotheslines, lawn or garden equipment, building materials and other similar items shall be stored out of public view. The foregoing items may be kept in public view only with the Board of Directors' prior written approval. Garbage or trash receptacles may be placed curbside the evening before pick-up and shall be returned to acceptable storage out of public view by the evening of the day of pick-up. The term "out of public view" as used in this paragraph or elsewhere in this Declaration shall mean that the item in question cannot be seen from any street or from any other Lot.; provided, however, with reference to so-called corner Lots (i.e. Lots having frontage on two or more roadways, the item in question shall be deemed to be "out of public view" if the Owner has made efforts to screen or cover the item.

M. Vehicles, Boats and Equipment.

No vehicle, boat, snowmobile, tractor, recreational vehicle, camper, trailer, auto-drawn or mounted trailer of any kind, truck larger than a one ton pick-up, aircraft, camper truck, or similar equipment shall be maintained, stored, or parked on any Lot unless it is stored or parked out of public view, and no such vehicles shall be stored or parked on a Lot for a period exceeding forty-five (45) days in any calendar year, without the prior written approval of the FCOA Board. 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, excavating equipment, commercial vehicles, or semi-tractor/trailers shall be parked, stored, kept, or maintained in any yards, driveways, or street.

N. Architectural Character.

The architectural character of any structure shall be in harmony with, and compatible with, other structures located on the Property as well as the neighboring area and environment and also meet the building standards described in this Article II and shall have been first approved by the ACC as set forth more fully in this Declaration.

O. Exterior Foundations.

Exterior foundations exposed above finish grade that are not faced with brick or stone shall be painted to match the rest of the structure; provided, however, that in no event shall any exterior foundation of newly-constructed improvements (other than walk-out basements) be exposed more than twelve (12) inches above finished grade that is not faced with brick or stone; but in the case of walk-out basements the exposed foundation shall be painted.

P. Roof Material.

Roof materials shall be slate, tile, copper, and medium to thick butt wood shingles or high quality asphalt shingles with a weight rating of at least 300 pounds.

Q. Swimming Pools.

Other than swimming pools and hot tubs currently situated on the Property, all swimming pools and hot tubs are subject to the prior written approval of the Board. The Lot Owner shall be responsible to provide proper security fencing completely surrounding the pool meeting governmental safety requirements.

R. Satellite Dish.

A satellite earth station antenna or parabolic device used to receive television or telecommunication signals from satellites (Satellite Dish) shall be permitted only if it meets the following safety requirements.

- (i) The Satellite Dish shall not be mounted on a trailer or other temporary or portable device, but shall be permanently installed in an acceptable fashion;

(ii) The Satellite Dish shall not exceed one meter in diameter or as measured diagonally;

(iii) The Satellite Dish shall be installed and maintained in accordance with rules and regulations as may be adopted from time to time by the Board of Directors of the Homeowners' Association. In no event, however, shall the regulations of satellite dishes conflict with The Telecommunications Act of 1996, as amended, or other applicable Federal Act as well as any Federal Rules promulgated pursuant thereto. If there is a conflict between Federal law and the terms of this subparagraph U or the terms of any regulations adopted by the Declarant or the Homeowners' Association, the terms of the Federal law shall control.

S. Dog Runs and Houses.

Dog runs shall not be permitted unless they are located at the rear of the house or garage and extended toward the rear of the Lot from that portion of the house or garage which is closest to the rear Lot line. Any dog house shall have an external appearance, color and building material that is in harmony with the neighborhood and shall be constructed and maintained in an attractive and workmanlike manner. No doghouse or dog run shall be located within any setback area required by this Declaration. No commercial kennel shall be allowed on the Property.

T. Towers.

No home amateur ("ham") radio tower or other communication tower, mast, or pole of any kind shall be constructed or maintained on any Lot, provided, however, that a video communication tower or mast may be constructed, and maintained on a house or building if the tower, mast, or antenna does not extend higher than twelve (12) feet above the roof line of the home. If there is a conflict between The Telecommunication Act of 1996, as amended, and the Federal Regulations promulgated pursuant thereto and the terms of this subparagraph T, the terms of the Federal law shall control. Towers or pedestals for wind power units are allowed if permitted by law but only with the prior written approval of the ACC.

U. Noxious Activities; Livestock.

No noxious or offensive activity, sound, vibration, noise, or odors shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance, offensive, or a nuisance either temporarily or permanently.

V. Maintenance of Lot.

The owner or person in possession of any Lot, whether vacant or improved, shall keep the Lot free of trash, litter, and debris and shall keep the sodded or seeded portion of the Lot attractively mowed so that the grass and vegetation do not exceed six (6) inches in height. This mowing requirement, however, shall not apply to areas maintained in their natural state or to areas of the Lot where wildflowers are maintained. All improvements on any Lot shall be well maintained in a manner in harmony with the character of the Property. Each Owner of a Lot agrees that after he or she receives written notice given by certified mail, return receipt requested, or delivered in person by written notice, by the Declarant or the Association, such grass or vegetation shall be

cut, and trash, litter, and debris removed within ten (10) days of receipt of the notice. If the appropriate corrective action is not taken within ten (10) days of receiving notice, the Association or the Declarant shall have the right (but not the duty) and easement to enter upon the premises and mow or cut the grass or vegetation or remove the offending trash, litter, and debris. If the Association elects to mow or remove the trash, litter, and debris from the offending Lot after giving the above-described notice, the Association shall have the right to assess the cost thereof against the offending Lot in the same fashion as other assessments are imposed on Lots by the Association and to establish a monetary penalty for breach of the maintenance requirement set forth in this paragraph. The Board of Directors of the FCOA shall establish reasonable fees for mowing or trash removal services provided under this Section, and the Board shall give written notice to the Owners of the fees so established.

W. Home Business.

A customary home business or profession may be permitted so long as (i) it is conducted wholly within the residence, in compliance with any applicable zoning ordinance or other similar governmental regulation; (ii) it will not cause increased traffic, truck deliveries, or congestion within the Property; (iii) there will be no outward indication, sign, or otherwise, indicating the home business enterprise; and (iv) no illegal, offensive, immoral, or other obnoxious trade or business is conducted upon any Lot or within any improvement on such Lot. The construction of improvements on a Lot shall not be prohibited by this Section if consistent with the other terms and restrictions of this Declaration.

X. Erosion Control.

All Lot Owners as well as their contractors or agents shall be responsible for implementing appropriate erosion control measures before, during and after any construction or excavation on a Lot. Such measures may include temporary sedimentation areas, silt fences, and ground cover. If in the opinion of the Declarant or the Association erosion is not properly controlled, corrective action may be taken by the Declarant or the Association, and an automatic easement is hereby reserved and granted to implement the corrective action, and the actual cost thereof plus an administrative fee, as determined by the Association, shall be assessed against the offending Lot.

Y. Burning Prohibited.

No trash, garbage, freshly mowed grass, or wet vegetation burning shall be permitted on any Lot.

Z. Drainage.

Drainage from an Owner's Lot shall not adversely affect any other Owner, Lot, street, or structure and each Owner shall indemnify and hold harmless all other Owners, the Declarant and the Association from and against any and all damages or liability caused by an Owner's violation of this paragraph regarding drainage. Drainage courses as indicated on the Plat shall not be filled or obstructed in any manner to direct or change the flow of surface waters.

AA. Overland Flowage Easement.

As set forth in the Plat of Fox Creek filed with the Dallas County Recorder, a perpetual easement

has been established over portions of certain Lots in the Property for utility installations and maintenance and also for access and utility maintenance, which Plat and the easements shown thereon are incorporated herein by reference. All Lot Owners and other persons shall comply with the terms of the utility and access easement that encumbers Lots 1-10, inclusive, and Lots 11, 12, 14, 15, 24, and 25.

BB. Noise.

Standard exterior maintenance and construction work shall only be done during reasonable hours, normally between 7:00 A.M. and 9:00 P.M. This does not preclude the use of snow blowers, snow plows or other equipment needed during an emergency (ex: broken water pipe).

CC. Parking.

There shall be no parking of automobiles, motorcycles, or other vehicles of any kind on the streets in the Property except for parking in connection with occasional, irregular social gatherings and construction activities, but not for business or commercial activities conducted on any Lot. Such parking shall be limited to one side of the street, only, and shall always leave room for the passage of cars and other vehicles; but, in no case shall vehicles be parked on both sides of the street, across from each other, unless said vehicles are completely off the road. In no such event shall any vehicles be parked on the streets in the Property for a period of greater than twenty-four (24) hours. No inoperative vehicles shall be parked on any Lot for a period in excess of forty-five (45) days. in any calendar year.

DD. No Change of Grade.

No person shall change the plat of the Property or elevation of any easement area or interfere with any easement area shown on the plat or the Property or by separate instrument, including electric lines and utility easements nor construct any fence or place any obstruction on or over the easement area.

EE. Subdividing Prohibited.

No Lot shall be subdivided, partitioned, replatted, or in any way divided so as to create more than one parcel of real estate. The limited rights of subdivision permitted under Section 3(d) of the Original Restrictions with respect to Lots 28, 29, 37, 54, and 65 are hereby preserved but only if a buildable Lot or Lots in conformance with law and this Declaration would result from the subdivision of any Lot named in this paragraph.

FF. Setbacks.

No improvements shall be made within the fifty (50) foot building setback as indicated on the Plat, and in addition, no improvement of any kind shall be placed within the South sixty (60) feet of Lots 1 through 10 inclusive or in a manner that conflicts with applicable governmental regulations that may supersede these restrictions.

The minimum setbacks as specified in this Declaration shall be measured from the Lot line from which the setback is being measured to the nearest building or structure. No buildings or

structures (except for permitted fences or mailboxes) shall be constructed or maintained within the required minimum setback area. The definition of the terms “Front yard,” “side yard,” “rear yard,” “building,” “structure,” or other similar term relating to setbacks shall be the same as that definition contained in the zoning ordinance of the governmental authority having jurisdiction over the Property.

In addition to the foregoing requirements, all improvements such as unattached garages, sheds, or other structures requiring a building permit from the government authority having jurisdiction shall be subject to the setback requirements and other requirements of said government authority having jurisdiction. As proof of such compliance the Owner of any such improvement shall provide to the Board of Directors a copy of the applicable building permit.

GG. Sewage Facilities.

Lot Owners are required to provide approved and adequate sewage facilities on each Lot when a residence is constructed or as required by governmental subdivisions, having jurisdiction over the Property. These facilities will not be shared with adjacent Lot Owners and will be maintained an approved distance from public water supply facilities. Any discharge of effluent into creeks or ravines on the Property shall be clean water only in compliance with applicable city, state, county and federal regulations.

HH. Water Facilities.

Lot Owners are required to attach on and use water facilities. Private wells are prohibited, except for shallow irrigation wells, which are permitted in accordance with applicable governmental ordinances. A hook-up charge will be made by Fox Creek Water District and a charge for water used, to maintain and operate the system and facilities.

II. Electrical/Telephone Connections.

Owners shall be responsible for any costs in connection with the electrical or telephone services on their lot.

JJ. Liquid Fuel Tanks.

Any liquid fuel tanks (Propane, etc.) must be camouflaged by bushes, decorative fence or some other acceptable means to attempt to hide the view of it from adjacent property owners.

KK. Traffic Rules.

The driveways and roads situated in Fox Creek are privately owned and established for the benefit of the Owners, their guests, licensees, and invitees. Therefore, in order to promote the welfare of such persons and to protect their safety, the Board of Directors of FCOA shall have the right, power, and authority to establish, administer, and enforce traffic rules regulating the private driveways and roads on the Property, and the Board of Directors shall have the authority to establish, administer, and enforce speed limits, stop and yield signs, and other similar regulations governing the safe and reasonable usage of the driveways and roads on the Property, and to post signs for purposes of regulating traffic in such manner. Existing rules adopted by the

Board of Directors are hereby ratified and approved; new rules, amendments to existing rules, or repeal of any rules shall be effective after adoption by the Board of Directors within fourteen (14) days of the publication of such rules by the Board of Directors.

ARTICLE III PROPERTY RIGHTS IN COMMON AREAS

A. Obligations of the Association.

The Association, subject to the rights of the Owners as set forth in the Declaration, shall be responsible for the management and control of the Common Areas conveyed to it and all improvements thereon, and shall keep the same in good condition, order and repair in compliance with the standards of sound property management. The Association's obligations under this Section are for the exclusive benefit of the Owners.

B. Owner's Easements of Enjoyment.

Every Owner shall have a right and easement of enjoyment in and to the Common Areas (subject to any reasonable and nondiscriminatory rules and regulations that may be enacted by the Association) which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (i) the right of the Association to suspend the voting rights of the Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; provided, however, that nothing contained in this paragraph shall be deemed to deny an Owner access to and from his Lot; and
- (ii) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the members entitled to vote has been recorded; and
- (iii) the right and obligation of the Association to maintain underground utilities located within the Property; and
- (iv) the right of the Association to designate, establish, grant, dedicate, install and/or maintain utility and drainage easements within the Common Areas; and
- (v) the Rules and Regulations promulgated and published by the Association's Board of Directors, the Articles of Incorporation and Bylaws; and
- (vi) the right to erect and maintain signs indentifying the Properties and such directional signage as the association deems necessary. No such sign or structure of any type shall be erected unless the adjacent lot Owner gives written approval as to location size and lighting, which approval shall not be unreasonably withheld or delayed.

C. Title to Common Areas.

It is the intent of the Owners that the fee title to the Common Areas be conveyed to the Association, free and clear of all mechanic's liens or any liens or encumbrances whatsoever

except covenants, easements, conditions and restrictions whether or not of record or created by this Declaration or granted to Dallas County.

D. Delegation of Use.

Any Owner may delegate, in accordance with the Bylaws of the Association, the right to enjoy the Common Areas to family members, tenants, contract purchasers, who reside on the property, guests and invitees and to no one else.

E. Use of Common Areas.

The Common Areas shall be used strictly in accordance with the provisions of this Declaration and rules and regulations promulgated by the Association. No Owner shall obstruct or interfere whatever with the rights and privileges of other Owners or the Association in the Common Areas, and nothing shall be planted, altered, constructed upon, or removed from the Common Areas, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the Common Areas to the prior condition and charge and assess the cost thereof against the Owner who violates this section and such cost shall become a special assessment and a lien upon the Lot of such Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of such restoration as provided in Article V for the collection of delinquent assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Areas, the Association or the offended Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorneys' fees as the Court may allow together with all necessary costs and disbursements incurred in connection therewith.

F. Duration.

The Common Areas shall not be changed and shall continue in perpetuity except by approval of two-thirds (2/3) of the membership entitled to vote.

ARTICLE IV. ANIMAL CONTROL

A. Purpose.

The purpose of this Article IV is to regulate and control dogs, cats and other animals within the limits of the Property and to safeguard and protect property and the general public. To provide for a reasonable and complete system of animal control for the Property, it is the act of the Owners, FCOA, and its Board of Directors to adopt the Animal Control Ordinance of the City of West Des Moines, codified in Title 5, Chapter 3 of the City Code of the City of West Des Moines, Iowa, as in effect on the date of adoption of this Declaration (“Animal Control Ordinance”) and as amended by the City from time to time, and this Article IV shall be interpreted in a manner consistent with the Animal Control Ordinance. The provisions of the Animal Control Ordinance are incorporated by reference herein, and this Declaration shall be deemed to be amended at such time as the Animal Control Ordinance is amended by the City of West Des Moines, Iowa. As such, the Animal Control Ordinance as hereby adopted in this Article IV of the Declaration is a private restrictive covenant and is not intended to supersede or replace lawful ordinances adopted by any authority having jurisdiction over the Property.

B. Definitions of Equivalent Terms.

To aid in the interpretation of the Animal Control Ordinance as applied to the Property, the following terms used in the Animal Control Ordinance shall have the meanings set forth hereafter.

Animal Control Officer: A committee of the Board of Directors appointed to handle issues arising under this Article IV and to enforce the provisions hereof (the “Animal Control Board”). The Animal Control Board shall have no power to destroy animals under this Article IV, but it may refer such animals and remand custody thereof to any governmental authority with jurisdiction over the Property.

Chief of Police or Police: The chairperson of the Animal Control Board.

City: FCOA.

City Clerk: The Secretary of the Board of Directors of FCOA.

City Council: The Board of Directors of FCOA.

Hearing Officer: A committee of the Board of Directors of FCOA, separate from the Animal Control Board, authorized and hereby empowered to adjudicate complaints and actions / omissions governed by this Article IV.

C. Penalties.

This Declaration specifically adopts the schedules of penalties set forth in the Animal Control Ordinance, all of which shall be deemed civil penalties and not criminal fines.

D. Rules of Construction.

(i) If the Animal Control Ordinance is amended from time to time by the City, such amendments are deemed to be incorporated into this Article IV without further notice to the Owners.

(ii) If the Animal Control Ordinance is repealed *in toto*, such repeal shall not act as a repeal of this Article IV, which shall remain in full force and effect based on the version of the Animal Control Ordinance in effect immediately prior to such repeal.

E. Filing of Ordinance.

The Secretary of the Board of Directors shall keep and maintain a reasonably current copy of the Animal Control Ordinance in the permanent records of FCOA and shall make the same available for inspection by Owners upon forty-eight (48) hour's prior notice. FCOA shall have no duty to provide other copies of the Animal Control Ordinance to Owners or third parties.

ARTICLE V.
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

A. Membership.

Every Owner of a Lot that is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Ownership of any Lot which is subject to assessment shall be the sole qualification for membership.

B. Voting Rights.

Owners are entitled to one vote for each Lot subject to assessment that they own. When more than one person holds title or ownership in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Lot. In the event of a sale of a Lot by real estate contract, the contract vendee shall be the Owner for purposes of membership in the Association. Any such person or entity that holds an interest in a Lot merely as security for the performance of the obligation shall not be a member and shall not be entitled to a vote. Any Lot which is not subject to assessment shall not entitle its Owner to a vote for that Lot.

C. Board of Directors.

A majority of the Owners entitled to vote shall elect a Board of Directors of the Association as prescribed by the Association's By-laws. The Board of Directors shall manage the affairs of the Association.

D. Suspension of Voting Rights.

The Board of Directors shall suspend the voting rights of a Member for any period during which an assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

E. Notice of Member's Meetings.

Unless the Articles of Incorporation or the By-laws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary, or the officer or persons calling the meetings, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

ARTICLE VI.
COVENANTS FOR MAINTENANCE ASSESSMENTS

A. Creation of the Lien and Personal Obligation of Assessments.

The Owners, for each Lot owned within the Property (whether vacant or improved), hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, and (ii) special assessments for capital improvements and operating deficits; and (iii) special assessments as provided in Article IV.C. below. Such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. The lien for the assessments shall be prior to all other liens on a Lot, except only tax liens on the Lot in favor of any assessing unit and special district, and all sums unpaid on a first mortgage of record. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to his successors in title. **NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ORIGINAL RESTRICTIONS OR THE CC&RS TO THE CONTRARY, A VACANT LOT AND THE OWNER THEREOF SHALL BE SUBJECT TO ANY ASSESSMENTS PROVIDED FOR IN THIS DECLARATION.** A "Vacant Lot" shall mean a Lot upon which no complete or substantially completed house has been constructed. It should be clearly understood that the policy with respect to assessing fees against vacant lots is a change from prior policy, and shall become effective on January 1st of the year immediately following the adoption of this Declaration.

B. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively to promote the health, safety, entertainment, and welfare of the residents in the Property and for the improvement and maintenance of the Common Areas and for other purposes specifically provided herein.

C. Special Assessments for Capital Improvements and Operating Deficits.

In addition to the annual assessments authorized above, the Board of Directors may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, which the Association is required to maintain or for operating deficits which the Association may from time to time incur; provided that any such assessment shall have the assent of a majority of the votes of members entitled to vote, in person or by proxy, at a meeting duly called for this purpose.

Written notice of any meeting called for the purpose of taking any action authorized under this Article V.C. shall be sent to all members not less than five (5) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the

same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

D. Uniform Rate of Assessment.

Both annual and special assessments must be fixed at a uniform rate which is equal for all Lots that are subject to assessment and shall be collected on an annual basis. Each Lot subject to assessment shall be responsible for a fraction of the Association's annual budget, the numerator of which shall be one and the denominator of which shall be the number of Lots which are subject to assessment. Notwithstanding the foregoing, the Board of Directors shall separately determine the costs of maintaining, repairing, and replacing the roadway improvements situated on Lots B, C, D, E, F, G, H, and J, and shall assess no portion of such costs to Lots 1 – 9, Fox Creek, based on the fact that such lots are served only by the county road (Lot A) fronting those lots; provided, further, that all other necessary and proper costs of the Association may be assessed to the Owners of Lots 1 – 9.

E. Date of Commencement of Annual Assessments: Due Dates.

The annual assessments provided for herein shall commence on January 1, 2011. The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a special Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

F. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen percent (15%) per annum. The Board of Directors may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the petition in such action, including reasonable attorney's fees. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Areas or abandonment of his Lot.

G. Subordination of Assessments Liens.

If any Lot subject to a lien created by any provision in this Declaration shall be subject to a lien of a first Mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (ii) the foreclosure of the lien of such Mortgage or the acceptance of a deed in lieu of the foreclosure by the Mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a

sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser and purchasers therefore taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

H. Exempt Property.

The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- (i) All property that is dedicated to and accepted by a public authority; and
- (ii) All Common Areas.

Notwithstanding any provisions herein, no land or improvements devoted to a residential use shall be exempt from said assessments, charges or liens.

ARTICLE VII. MAINTENANCE

A. Maintenance of Common Areas by Association.

The Association shall perform the following maintenance tasks for all portions of the Common Area except Lot A (county road):

- (i) remove snow from the private roadways that form the Common Areas in such a manner as to allow reasonable access to the Lots; and
- (ii) maintain, repair, replace and restore the improvements (roadways) located on the Common Areas; and
- (iii) such other reasonable and necessary maintenance, duties as are required to preserve the high quality of the Property and Common Areas.

B. Maintenance of Common Areas by Owner.

Each owner shall maintain, including mowing, that portion of the Common Areas located between each Lot and the improved portion of the roadways.

C. Responsibility for Willful or Negligent Act.

In the event the need for maintenance or repair to the Common Areas or improvements located thereon is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessments to which such Lot is subject.

**ARTICLE VIII.
EASEMENTS AND ENCROACHMENTS**

A. Easement for Emergency Purposes.

An easement is hereby dedicated and granted to any governmental subdivision having jurisdiction for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Common Areas.

B. Easement for Ingress and Egress.

Each and every owner shall have a right of ingress and egress over the portion of the Common Areas which are designated and improved as roadways. Nothing shall be done by any Owner or the Association which will impair, impede or restrict the right of access over the Common Areas to any Lot (other than temporarily for repair purposes).

C. Easement for Driveway.

Each Owner for the benefit of each Lot is hereby granted an easement over that portion of the Common Areas for the purpose of constructing a driveway from the paved portion of the roadway as located in the Common Areas from time to time to the property line of the Lot. The obligation for maintenance, repair and replacement of the driveway placed in such Common Areas shall be exclusively that of the Owner. Further, such Owner shall have a right to place a mailbox in the Common Areas adjacent to each such lot.

ARTICLE IX. ARCHITECTURAL CONTROL

A. Scope of Architectural Control.

In order to preserve the general design for the whole of Fox Creek as a fine residential country community, no dwelling, Living Unit, or outbuilding or improvement of any kind, and not any addition thereto, shall be erected or undertaken upon any Lot unless the plan, design, building materials, and location thereof shall have first been approved by the ACC. Landscaping projects shall be done in a professional like manner. The Board of Directors of FCOA shall appoint three (3) persons to the ACC, all of whom may be members of the Board. Each committee person shall serve for staggered terms of one-year each, and no member of this committee shall be allowed to serve more than three (3) consecutive terms.

B. Approval of Plan.

No grading of any Lot, no dwelling, Living Unit, no outbuilding of any kind, no Fence, wall or other structure, shall be commenced, erected, altered, or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing by the ACC as to the harmony of the external design in regulation to the surrounding homes and topography. Any change in appearance, other than paint, of any part of the exterior of a dwelling or outbuilding shall be deemed a change thereto and shall require the approval therefore as above provided.

C. Procedure.

In order to obtain the approval of the ACC, an Owner shall submit a complete set of architectural plans, which plans shall show in sufficient detail the following:

- (i) All exterior design elements;
- (ii) All exterior building materials;
- (iii) All exterior colors;
- (iv) Interior square footage and garage space;
- (v) Location of all proposed improvements on the Lot; and
- (vi) All grading details.

No approval of the plans shall be given unless the proposed improvement or construction shall meet all of the expressed provisions of this Declaration and shall be in accordance with the spirit and harmony of this Declaration, to be determined in the sole discretion of the ACC.

ARTICLE X. ENFORCEMENT OF COVENANTS

A. Legal Action.

This Declaration shall be deemed to run with the land to which it applies and all improvements thereon. The Owner of any Lot or portion thereof to which this Declaration applies, the Declarant, or the Association may bring an action in any court of competent jurisdiction to enforce this Declaration and enjoin their violation, mandate their compliance, or to recover damages for the breach thereof, or for any other remedy or combination of remedies recognized at law or in equity.

B. Penalties.

In addition to the remedies described above in Paragraph A or elsewhere in this Declaration, the Board of Directors is hereby authorized to levy against any Lot in violation of this Declaration a civil assessment penalty not to exceed \$50 for the first such violation and \$100 for each repeated occurrence of such a violation. Notice of each such violation shall be given by the Board of Directors to the Owner of said Lot by certified mail, return receipt requested, or delivered in writing in person. If the Owner of the Lot cannot be located after a diligent search or inquiry, or if the Lot Owner refused delivery of notice, the Board of Directors shall publish notice of the violation for two (2) successive weeks in a newspaper of general circulation in Dallas County, Iowa. If the Owner has not fully complied with this Declaration within thirty (30) days of receiving notice, or thirty (30) days after second publication of shall be a lien on the Lot and shall have the same status as any other assessment levied by the Board of Directors. Any Lot Owner objecting to the notice of violation shall have the right within thirty (30) days of receiving notice to request a hearing before the FCOA Board of Directors. Assessment of the penalty shall be stayed pending a hearing and final decision by the FCOA Board of Directors.

C. Delay in Enforcement.

No delay or omission on the part of the Board of Directors, the Declarant, or any Owner of land to which this Declaration apply in exercising any rights, power, or remedy herein allowed shall be construed as a waiver of acquiescence therein. No right, claim, or action shall accrue to and no action or claim shall be brought or maintained by anyone against Declarant, or any officer, employee, or agent thereof or the Association on account of any action or inaction under this Declaration.

D. Conflict with Governmental Regulations.

The property subject to this Declaration shall also be subject to any and all applicable regulations of the County and any other governmental entities having jurisdiction including, but not limited to, zoning ordinances, subdivision ordinances, life safety and building codes, environmental health or sanitation regulations, as well as other such regulations. Whenever there is a conflict between the provisions of this Declaration and the ordinances, statutes, or regulations of the County, State, or other applicable governmental entity having jurisdiction over the Property, or any portion thereof, which provision that is most restrictive shall be binding unless otherwise

prohibited or preempted by law.

E. Rules and Regulations.

The Board of Directors of the Association is hereby authorized to adopt rules and regulations pursuant to this Declaration to clarify any terms hereof, carry out the intent hereof, prescribe rules of conduct within the Property pursuant to this Declaration and to prescribe penalties for the breach of the rules and regulations or breach of this Declaration. The rules and regulations shall become effective upon simple majority vote of Board members present at a Board meeting where a quorum is present.

F. Appeals to Board of Directors.

All actions of the committees of the Board of Directors (including without limitation, the actions of the ACC and the Animal Control Committee) shall be appealable to the Board of Directors, provided written notice of such appeal is given to the Secretary of the Board of Directors not more than twenty (20) days after the final action of the Committee.

**ARTICLE XI.
TERMS OF COVENANTS; SEVERABILITY**

A. Duration.

All of the foregoing covenants, conditions, and restrictions shall continue and remain in full force and effect at all times and as to the Property, regardless of how title was acquired, from the date of filing of this Declaration until the 1st day of December, 2032, unless amended by an affirmative vote of two-thirds (2/3) of the Lots within the Property, (with each Lot entitled to one (1) vote), Unless otherwise so amended to terminate this Declaration this Declaration shall automatically be extended an additional ten (10) years (and extended for successive ten (10) year terms thereafter in the same fashion) unless after the 1st day of December, 2031, two-thirds (2/3) of the Lot Owners with the Property in writing consent to terminate this Declaration or any part thereof, in which event this Declaration, or part thereof, shall be null and void effective as of the date when the consent is filed with the Recorder of Dallas County, Iowa. Any amendment or consent shall be accompanied by an affidavit by any officer of the FCOA certifying that two-thirds (2/3) of the Lot Owners within the Property (excluding Common Areas) have so consented as disclosed by the records of the Association. In determining ownership for purposes of consent, the records of the Association shall be conclusive. The Board of Directors is hereby appointed attorney-in-fact on an irrevocable basis to file any notices or extension of this Declaration which might be required by the Iowa Code beyond the initial term ending the 1st day of December, 2031.

B. Homeowners' Association.

Termination of any or all of the covenants, conditions, or restrictions contained in this Declaration shall not operate in any way to terminate the FCOA and said Association and all functions and duties pertaining thereto shall remain in full force and effect pursuant to the Declaration creating the Association.

C. Severability.

In the event that any one or more of the terms or conditions of this Declaration shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall in no way affect, modify, change, abrogate, or nullify any of the remaining covenants, conditions, or restrictions not so expressly held to be void and the remaining parts of this Declaration shall remain in full force and effect.

D. Reasonable Period of Enforcement.

If any of the terms of this Declaration shall be held by a court of competent jurisdiction to be void or unenforceable by reason of the period of time herein stated for which the Declaration may be effective or amount of any penalty imposed, such terms or penalty shall be reduced to a reasonable period of time or amount which shall not violate the laws of the State of Iowa or other applicable law, all as determined by the court.

E. Corrections.

The Board of Directors shall have the absolute right to make corrections to this Declaration in order to correct any deficiencies or errors; address any oversights; clarify any provision thereof; or to carry out the intent of this Declaration, or to address development issues not contemplated at the date hereof, all without the necessity of obtaining any approval or consent of any Lot Owner, or any other person.

**ARTICLE XII.
NOTICE OF NATURE OF RURAL LIVING**

A. Notice Regarding Rural Living.

By the filing of this Declaration, notice is hereby given that the Property has been platted for and is intended to be used for country residential purposes in a rural setting. This unique rural setting is not like a typical urban subdivision. Consequently, certain urban infrastructures, such as fire hydrants, natural gas mains, as well as sanitary sewers were not planned for the property at the time of its construction, but may be provided at a future date should the Property be annexed. Owners must be prepared to address adequate private sanitary sewer or septic systems on their own lot that meet the requirements of the County or other applicable governmental unit (septic systems with laterals where permitted or peat or sand filter systems but not mechanical system). Owners must also be prepared to make arrangements for propane (L.P.) storage and use in compliance with all applicable governmental regulations.

FOX CREEK OWNERS ASSOCIATION

By: Stephen C. Colwell
Title: President, Fox Creek Owners Association

Signature

Date