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RETURN TO:

WHEN RECORDED RETURN TO:  
 Dustin D. Smith  
 3737 Woodland Avenue, Suite 437  
 West Des Moines, Iowa 50265

**Preparer**

**Information** Dustin D. Smith 3737 Woodland Ave., Ste. 437 West Des Moines, IA (515) 225-3737  
 Individual's Name Street Address City Phone

SPACE ABOVE THIS LINE FOR RECORDER

FALCON RIDGE VILLAGE PLAT 2 TOWNHOMES DECLARATION OF  
 COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Falcon Ridge Village, L.C., an Iowa limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, "Declarant" is the owner of certain property in Altoona, County of Polk, State of Iowa, which is more particularly described as:

Falcon Ridge Village Plat 2, an Official Plat.

NOW, THEREFORE, "Declarant" hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and 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 shall inure to the benefit of each owner thereof.

ARTICLE I. DEFINITIONS

**Section 1.** "Association" shall mean and refer to Falcon Ridge Village Plat 2 Townhomes Owners Association, Inc., its successors and assigns.

**Section 2.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of Falcon Ridge Village Plat 2, except that a vendee in possession under a recorded contract of sale of any Lot shall be considered the owner instead of the contract seller. Those having an interest merely as security for the performance of an obligation shall not be considered an "Owner".

**Section 3.** "Properties" shall mean Falcon Ridge Village Plat 2, except Lots 1 through 62 therein (including the improvements thereon) owned by the Association for the common use and enjoyment of the Owners. The Common Area shall be all portions of the Properties which are not included within a Lot (including paving, sewers and utilities located in the Common Area) and not included within property owned by a municipality or municipal agency. The Common Areas and any improvements thereon, if any, shall be conveyed to the Association simultaneously with the filing of the final plat for Falcon Ridge Village Plat 2 Townhomes. The Common Area shall not be conveyed or transferred by the Association without the prior approval of the City of Altoona, Iowa.

**Section 4.** "Lot" shall mean and refer to the numbered Lots as shown upon any recorded subdivision plat within the Properties. In the event any part of the Properties is replatted and a subsequent subdivision plat is recorded, then "Lot" shall refer to the numbered Lots shown on such replatting and such subsequently recorded subdivision plat. In no event shall "Lot" include any Common Area.

**Section 5.** "Declarant" shall mean and refer to Falcon Ridge Village, L.C., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

**Section 6.** "Association Responsibility Elements" shall mean the following:

- a) The exterior surface of the residential structure upon a Lot, excluding windows and doors;
- b) The structural portion of the residential structure upon a Lot;
- c) The roof and foundations of the residential structure upon a Lot;
- d) Any common wall between residential structures upon Lots, except the interior surfaces thereof;
- e) The yard surrounding the residential structure upon a Lot, except for trees and shrubbery on said Lots; the yard, trees and shrubbery on any Common Area and any watering systems installed on the Common Areas and any Lots; and the sidewalk and property located between a street curb and the abutting lot;
- f) Driveways;
- g) Any fence constructed by the Declarant or Association and owned by the Association;

- h) Conduits, ducts, plumbing, wiring, pipes and other facilities within the Lot but outside a residential structure which are carrying any service to more than one Lot;
- i) Street signs owned by the Association, including such signs located on property owned by the City of Altoona.

## ARTICLE II. PROPERTY RIGHTS AND MAINTENANCE

**Section 1. Owner's Easements of Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by a majority of the members entitled to vote has been recorded.

**Section 2. Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or any guests of either.

**Section 3. Association Responsibility Elements.** No person other than the Owner of a Lot and his invitees shall have the right to enter upon, use, or affect an Association Responsibility Element located within a Lot, except that the Association and its designates may enter upon and within a Lot and the residential structure located thereon at reasonable times for the following purposes:

- a) Installation, repair, maintenance, removal, replacement, or inspection of an Association Responsibility Element;
- b) Enforcement of any provision of this Declaration or the Articles of Incorporation or the Bylaws of the Association;
- c) Mowing and maintenance of grass areas;
- d) Snow removal.

**Section 4. Maintenance.** The Association shall be responsible for maintenance of the Common Area and improvements thereon. Each Owner shall be responsible for maintenance of his Lot and all structures, improvements and equipment thereon, except for the Association Responsibility Elements.

- a) Landscaping. Landscaping will be installed on Falcon Ridge Village Plat 2, except Lots 1 through 62 therein, in accordance with the site plan approved by the City on Altoona (hereinafter referred to as

"Site Plan"). All landscaping areas shall be maintained by the Association. No landscaping elements shall be removed unless diseased or substantially damaged by wind, lightning, or other natural forces without the consent of the City. All diseased or substantially damaged landscaping elements, plantings, or materials shall be promptly replaced with reasonably comparable quality of planting and materials as that shown on the approved Site Plan Replacement of existing trees shall be limited to three of a three-inch caliper. All lawn areas located in said Outlots and all shrubs and trees located thereon, which are installed by the Declarant, its successors and assigns, shall be maintained, mowed and trimmed on a regular basis.

- b) Maintenance of Improvements. All of the structures, fences, walls, and other improvements as set forth in Article I, Section 7, constructed in accordance with the approved Site Plan located on the Outlots, and all fences owned by the Association located on any privately owned Lots shall be maintained, repaired and replaced by the Association. Any lighting installed by Declarant, its successors and assigns shall be maintained in good operating order by the Association. No portion of the improvement shall be removed without the prior written consent of the City.
- c) No Nuisance. The Association shall not allow any of the improvements located on the Outlots area or any fences owned by the Association located on any privately owned Lots to become a nuisance through lack of repair, maintenance, or replacement.

### ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership is mandatory and shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. All Owners shall be entitled to one vote in the Association for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 3. Notwithstanding any other provision of this Declaration, the Declarant, its successors and assigns shall be the sole voting member of the Association until Declarant no longer owns any portion of the Properties, or until Declarant waives, in writing, this right to be the sole voting member, whichever first occurs. While the sole voting member, the Declarant, its successors and assigns shall have the right to elect all directors.

## ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (a) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided and any and all assessments for Falcon Ridge Village Plat 2 Townhomes Owners Association, as more fully set out in Section 11 of this Article. The 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. 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.

**Section 2. Purpose of Assessments.** The assessment levied by and for the Falcon Ridge Village Plat 2 Townhomes Owners Association, Inc., shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and Association Responsibility Elements.

**Section 3. Maximum Annual Falcon Ridge Village Plat 2 Assessment.** Except as provided below, until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Dollars (\$100.00) per Lot, plus a prorata portion of the amount of real estate taxes and special assessments payable by the Association in such year.

- a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than the percentage limitation (set forth in (f) below) above the maximum assessment for the previous year without a vote of the membership;
- b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the percentage limitation (set forth in (f) below) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose;
- c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum;
- d) A Lot shall not be subject to assessment until the first day of the month following the date of occupancy thereof as a residence;

- e) The Declarant shall not be liable for annual or special assessments upon Lots owned by the Declarant unless the unit is occupied as a residence; has been submitted to the Association for maintenance, insurance, or other substantial direct benefit for the Lot or unit; or has had a certificate of occupancy issued concerning such unit by the City of Altoona ;
- f) The percentage limitation specified in sections (a) and (b) above shall be the greater of five percent (5%) or the percentage increase in the CPI for the most recent month for which the CPI has been published over the CPI for the same month in the immediately preceding year. The CPI shall mean the Consumer Price Index published by the Bureau of Labor Statistics of the U.S. Department of Commerce or its successor index. In the event the CPI as above described is modified, revised, or replaced by another Consumer Price Index issued by the Bureau of Labor Statistics, such modification, revision, or replacement shall be used as the CPI. If the CPI shall no longer be published or becomes no longer recognized as an appropriate measure of changes in the cost of living, then another authoritative index shall be substituted as determined by the Board of Directors of the Association.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, or for any Association Responsibility Element, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of members entitled to vote who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members entitled to vote not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members entitled to vote or of proxies entitled to cast 60 percent (60%) of all 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 60 days following the preceding meeting.

**Section 6. Uniform Rate of Assessment.** Except as provided in Sections 3(e) and 11, annual assessments, special assessments for capital improvements and insurance assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**Section 7. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of Common Area to the Association. The first 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 period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 8. Insurance and Insurance Assessment.** In addition to the annual assessments and the special assessments for capital improvements, the Association may levy assessments for insurance purchased by the Association. The Association shall obtain liability and casualty insurance for the Common Area and for the Association Responsibility Elements. Unless otherwise determined by the Board of Directors of the Association, each Owner shall be responsible for obtaining homeowners' liability insurance and casualty insurance for property which is not part of the Association Responsibility Elements; the Board of Directors may require an Owner's casualty insurance to be obtained from the same insurer as the insurer under the Association's casualty insurance for the Association Responsibility Elements. In the event of casualty loss, the Association shall be responsible for repair and restoration of the Common Area and Association Responsibility Elements, and the Owner shall be responsible for repair and restoration of all other portions of the buildings and improvements upon his Lot, except to the extent that the Board of Directors of the Association has determined to obtain casualty insurance for such portions which are not part of the Association Responsibility Elements in which case the Association shall apply any insurance proceeds received for such portions to such repair and restoration of such portions.

**Section 9. 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 12 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

**Section 10. Subordination of the Lien to Mortgages.** 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 mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments 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.

**Section 11. Utilities.** Each Owner shall be responsible for payment of all utility services to his Lot, including but not limited to, electricity, water, gas, telephone and sewer services.

**Section 12 Assessments for City Related Improvements.** Notwithstanding any of the provisions of this Article, the Board of Directors may establish an assessment for the maintenance, improvement, or reconstruction of street signs, fences and sidewalks as necessary to comply with any directive of the City of Altoona, Iowa.

#### ARTICLE V. ARCHITECTURAL CONTROL

No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein (including painting or color change) be made, nor shall any alteration of surface drainage patterns be made until the plans and specifications showing the nature, kind, shape, height materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. This Article shall not apply to construction, improvements, or alterations made by the Declarant.

#### ARTICLE VI. EASEMENTS

Each Lot shall be subject to the following easements in favor of the Association:

- a) Every portion of a structure upon a Lot which contributes to the support of any structure not on the same Lot is burdened with an easement of such support;
- b) Each Lot is burdened with an easement through the Lot of conduits, ducts, plumbing, wiring, pipes, meters and other facilities for the furnishing of utilities and services to other Lots, foundation drains, sanitary sewer and water service facilities;
- c) Each Lot is burdened with an easement of ingress and egress for maintenance, repair and replacement of Association Responsibility Elements by the Association;
- d) Each Lot is burdened with an easement for common driveway usage with other designated Lots where shown on a recorded subdivision plat;

- e) Each Lot is burdened with an easement for surface drainage for the benefit of all Lots and the Common Area;
- f) Each Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting, or inexact location during construction;
- g) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.
- h) Each Lot is burdened with easements for a fence constructed by the Declarant or the Association and maintained by the Association.

## ARTICLE VII. USE RESTRICTIONS

**Section 1. Subjection of the Property to Certain Provisions.** The ownership, use, occupation and enjoyment of each Lot and Common Area shall be subject to the provisions of the Bylaws and Articles of Incorporation of the Association, and this Declaration, all of which provisions irrespective of where set forth or classified, shall have equal status and shall be enforceable and binding as a covenant, condition, restriction, or requirement running with the land and shall be binding on and enforceable against each and all Lots and the Owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

**Section 2. Use of Properties.** The use of the Properties shall be in accordance with and subject to the following provisions:

- a) A Lot shall be used or occupied for single family dwelling purposes only;
- b) A Lot may be rented or leased by the Owner or his lessee provided the entire Lot is rented, and the period of rental is at least one month unless some other period is established in the rules, regulations, or Bylaws of the Association. No lease shall relieve the Owner as against the Association and other Owners from any responsibility or liability;
- c) Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association;
- d) No livestock, poultry, or other animals of any kind shall be raised, bred, or kept in any Lot or in any Common Area, except an Owner shall be permitted to keep no more than an aggregate total of two (2) cats, dogs, or other usual household pets subject to rules and regulations adopted by the Association but in no event any one (1) more than twenty-five (25) pounds. No outside pet facilities of any kind shall be constructed, placed, or utilized on any Lot;

- e) No boat, snowmobile, recreational vehicle, trailer, or other vehicle other than automobiles shall be stored or parked in any driveway. The Association may by regulation or rule limit or prohibit the parking of automobiles on any driveway. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreation vehicle, or other vehicles and assess the Owner of the Lot for the cost of removal and storage;
- f) No activity shall be allowed which unduly interferes with the peaceful possession and use of the Lots by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed;
- g) Nothing shall be done or kept in any Lot or in the Common Area which will increase the rate of insurance on the Common Area or the Association Responsibility Elements, without the prior written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Lot or in the Common Area which will result in the cancellation of Insurance on any Lot or any part of the Common Area or the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners;
- h) All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned;
- i) The Board of Directors of the Association shall be the authority to adopt rules and regulations governing the use of Lots, the Common Area and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns and licensees;
- j) Agents or contractors hired by the Board of Directors of the Association may enter any Lot when necessary in connection with any installation, repair, removal, replacement, or inspection of any Association Responsibility Element or in connection with landscaping or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable;
- k) An Owner shall give notice to the Association of every lien against his Lot other than permitted mortgages, taxes and Association assessments and of any suit or other proceeding which may affect the title to his Lot within ten days after the lien attaches or the Owner receives notice of such suit;

- l) An Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement to the Common Area or the Association Responsibility Elements rendered necessary by his act, neglect, or carelessness, or by that of his family, guests, employees, agents, or lessees, which liability shall include any increase in insurance rates resulting therefrom;
- m) Neither the Owners nor the Association nor the use of the Common Area shall interfere with the completion of the contemplated improvements and the sale of the Lots by the Declarant. The Declarant may make such use of the unsold Lots and the Common Area as may facilitate such completion and sale, including but not limited to, the maintenance of a model home, the showing of the property and the display of signs;
- n) Police, firemen, emergency units, inspectors and any other public officials or law enforcement agencies shall have the same right of entry onto and the same enforcement powers as to the Common Area as they have with respect to public streets and publicly owned parks and area;
- o) No sign shall be placed upon any Lot except a "For Sale" sign of a design approved by the Association;
- p) Trash receptacles shall be kept out of view from any part of the Common Area;
- q) No tower or antennae shall be placed upon any Lot or upon the roof of any structure, except satellite dishes 18 inches or less in diameter attached to a wooden pole or hidden in landscaped areas or with the approval of the Board of Directors or the Architectural Control Committee;
- r) No personal property shall be stored or left upon a Lot except within the residential structure or garage located upon the Lot. Garage doors shall be kept closed except during times of access to the garage or as permitted by the rules of the Association.

**Section 3. No Waiver.** Failure of the Association or any Owner to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto shall not constitute a waiver of the right to enforce the same thereafter.

## ARTICLE VIII. DECLARANT'S RIGHTS

**Section 1. Lots.** Declarant reserves the right to use any of the Townhome Lots as models and to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such Townhome Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees and to show Townhome Lots then unsold. Declarant retains the right to

be considered an Owner of any Townhome Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of Buildings and other improvements. Declarant reserves the right to enter upon and within any Living Unit, Townhome Lot and Common Area in connection with any construction activity.

**Section 2. Common Area.** Declarant reserves the right and is hereby vested with the sole control over all Common Area landscaping, plantings and the like. Declarant shall have the right to change the plantings and other landscaping elements within the Common Area from time to time in its sole discretion.

## ARTICLE IX. COVENANTS WITH CITY

**Section 1. Right of Public Access.** Officers, employees or contracted agents of the City of Altoona, Iowa ("City") shall have the right and authority to enter upon the Common Areas and easements reserved or granted for the benefit of the Association for the administration of general public services including Emergency Fire Protection, Law Enforcement and administration of the Sanitary Sewer and Water Works Rules and Regulations and any applicable agreements for providing sanitary sewer and water service.

**Section 2. Indemnification and Hold Harmless of the City.** The Association, its successors or assigns, agree to defend, indemnify, protect and save harmless the City and its political subdivisions, including any of its elected officials, officers, employees or agents, from and against any judgments, awards, claims or expenses or other things whatsoever, including attorney fees, costs or disbursements, arising out of or in connection with any act or acts of negligence, causes, omissions, fault, misconduct, claims, damages, suits or other actions developed, brought or asserted by any person, firm, corporation, entity or estate, against the said City by reason of, in connection with, related to or growing out of, directly or indirectly, the duties and responsibilities which are imposed upon the Owners of the Association, its successors and assigns, with respect to its duties or obligations under this Declaration, including any rules or regulations in existence pursuant to this Declaration, or related to or growing out of, directly or indirectly, the ownership, maintaining, cleaning out, grading, repairing, construction or reconstruction of the Common Areas, or any part thereof, including but not limited to the existence of flowage or drainage of water in or out of the lakes, dam, silt basins and spillway located adjacent to the Properties, or related to or growing out of, directly or indirectly, the existence of this Declaration and the purposes for which this Declaration is executed of the approval of this Declaration.

Declarant, its successors and assigns, including all subsequent owners in the Properties, hereby covenant not to sue, demand or claim any damages or other remedies against the City, its political subdivisions and its elected officials, officers, employees or agents by reason of, in connection with, related to or growing out of, directly or indirectly, the failure of the City to exercise any rights afforded to it under this Declaration, the approval of this Declaration, the approval of any site plan or Common Areas, the issuance of a building permit for such purposes, any inspection performed

relating to said permit or permits or any certification issued indicating compliance with any City ordinance regulating the issuance of said building permit or approvals.

**Section 3. Liability of City.** Neither the Declarant, owners, Association nor any other person or other entity shall place any reliance upon the approval of this Declaration by the City, the issuance of a Building Permit for such purposes, any inspections performed relating to said Permit or any certification issued indicating compliance with any City ordinance regulating the issuance of said Building Permit or approvals, as indicating the safety or quality of construction of any improvements located on the Common Areas or within the Properties. Neither the issuance of, nor any inspections or certifications made relating to the Building Permit or relating to any City ordinance or approval, including the approval of this Declaration, shall constitute an assumption by the City, or any elected officials, officers, agents or employees thereof, of any duty or responsibility of any person or entity to adequately construct, reconstruct, repair and maintain the Common Areas and improvements located thereon or provide a safe premises or to, in any way, indicate a decrease in the risk associated with the use or existence of the improvements located on the Common Areas. A certification that the Common Areas or other structures or facilities have been inspected, pursuant to any City ordinance regulating the same shall not, in any way, constitute a representation, covenant, warranty or guaranty of the safety or quality of said improvements by the City, of any elected officials, officers, agents or employees thereof. The Declarant, its successors and assigns, hereby expressly release and discharge, and agree to hold harmless, defend and indemnify, the City, its elected officials, officers, agents and employees, from any and all duties, responsibilities, obligations, claims, demands, causes of action or liabilities arising out of or related to the issuance of a Building Permit within the Properties or any inspection performed or certification issued in connection with the Building Permit and approval of the improvements located on the Common Areas and the approval of this Declaration.

**Section 4. Amendment.** This Article shall not be amended without the prior written approval of the City.

**Section 5. Right of Enforcement.** In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, the City shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. City is hereby declared to be a third party beneficiary of the provisions of this Declaration.

## ARTICLE X. GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this

Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than 90 percent (90%) of the Lot Owners and thereafter by an instrument signed by not less than 75 percent (75%) of the Lot Owners; but no amendment shall alter any rights of the Declarant or impose any additional obligations upon the Declarant without the consent of the Declarant. Any amendment must be recorded. During such time as the Declarant is the sole voting member of the Association, this Declaration may be amended in any manner by Declarant. No amendment to these Declarations shall be permitted affecting the specific rights of the City of Altoona set forth in this Declaration without first obtaining the approval of the City of Altoona, Iowa.

**Section 4. Lots Owned by City.** These covenants, restrictions and conditions shall not be applicable to property owned or dedicated to the City of Altoona, Iowa.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 16<sup>th</sup> day of December, 2002.

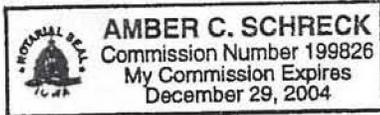
FALCON RIDGE VILLAGE, L.C., an Iowa limited liability company

By: John C. Kline, Inc., an Iowa corporation, Member

By  \_\_\_\_\_  
John C. Kline, President

STATE OF IOWA    )  
                                  )    SS  
COUNTY OF PELK )

On this 10<sup>th</sup> day of December, 2002, before me the undersigned a Notary Public in and for the State of Iowa, personally appeared John C. Kline to me personally know, who being by me duly sworn, did say that he is the President of John C. Kline, Inc., a member of Falcon Ridge Village. L.C., an Iowa limited liability company and that the instrument was signed on behalf of the company by authority of the members and that the members acknowledges the execution of the interest to be the voluntary act and deed of the company by it and by each member voluntarily executed.



Amber C. Schreck  
Notary Public in and for the State of Iowa

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