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**FIRST AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR FALCON POINTE, A SUBDIVISION  
IN SARPY COUNTY, NEBRASKA**

THIS FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR FALCON POINTE (this "Declaration"), is made by CHARLESTON HOMES, LLC, a Nebraska limited liability company ("Declarant") on this 9<sup>th</sup> day of August, 2019.

PRELIMINARY STATEMENT

Declarant is named as Declarant under the Declaration of Covenants, Conditions, Restrictions and Easements for Falcon Pointe recorded on November 5, 2018 as Instrument No. 2018-26276 in the records of the Sarpy County Register of Deeds (the "Original Declaration"). Declarant owns the following lots, all of which are subject to the Original Declaration:

Lots 1 through 72, inclusive, Lots 76-144 inclusive, and Lots 146-228, inclusive in Falcon Pointe, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska, together with Lots 1, 2 and 3, Falcon Pointe Replat 1, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska (the "Lots").

The lots were previously known by the following legal description:

Lots 1 through 144, inclusive, and Lots 146-228, inclusive, in Falcon Pointe, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

Furthermore, the Declarant is the owner of the following property:

Outlots B, C and D in Falcon Pointe, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska, together with Outlot A, Falcon Pointe, Replat 1, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska (the "Outlots").

The original Declaration provides, pursuant to Article IV, Section 2 thereof, provides that the Declaration can be amended by Declarant at its discretion for a period of fifteen (15) years from the date

When recorded return to:  
Mark J. LaPuzza  
Pansing Hogan Ernst & Bachman LLP  
10250 Regency Circle, Ste. 300  
Omaha, NE 68114

of recording thereof.

Declarant has determined that the Original Declaration should be amended as set forth herein, and hereby exercises the authority to make such amendment through execution and recording of an Amended and Restated Declaration.

WHEREFORE, Declarant hereby amends and restates the Original Declaration, to be replaced in its entirety by the restated Declaration as follows:

ARTICLE I.  
RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for single-family, non-transient residential purposes except for such Lots or parts thereof as may hereafter or previously have been conveyed or dedicated by Declarant, for use in connection with a common facility, church, park outlot or other non-profit use.

2. For a period of fifteen (15) years after the filing of this Declaration, no residence, building, fence, wall, driveway, patio, patio enclosure, rock garden, swimming pool, tennis court, dog house, tree house, antenna, satellite receiving station ("dish"), flag pole, solar heating or cooling device, tool shed, wind mill, wind generating equipment, or other external improvement, including landscaping, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, and no building materials, temporary buildings or structures of any kind or character shall be placed or stored upon any Lot, except for Improvements which have been approved by Declarant as follows:

(a) An Owner desiring to erect an Improvement on any Lot shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall reflect the type of structure, quality and use of exterior materials, exterior design, exterior color or colors, and location of structure proposed for such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

(b) Declarant shall review such plans in light of the conditions and restrictions in Article I of this Declaration and in relation to the type and exterior of improvements which have been constructed, or approved for construction, on the Lots. In this regard, Declarant intends that the Lots shall be developed as a residential community with homes constructed of high-quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within the Falcon Pointe subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. By way of illustration, and not of limitation, it is intended that the architecture of the residential structures constructed on Lots shall be consistent with the architecture of the houses constructed in the Falcon Pointe subdivision in Sarpy County, Nebraska. Atypical improvements and home designs, such as dome houses, A-frame houses and log cabins, will not be approved unless the Declarant determines that construction of these improvements will not be materially inconsistent with the scheme of development contemplated by this Declaration. If Declarant determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration, does not conform with the surrounding improvements and topography or will not protect and enhance the integrity and character of all the Lots and neighboring lots, if any, as a quality residential community, Declarant may refuse

approval of the proposed Improvement.

(c) Written notice of any approval of a proposed Improvement shall be mailed or emailed to the owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed or emailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed to be refused by Declarant.

(d) No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

3. The exposed front foundation wall as well as any foundation wall facing a street of all main residential structures must be constructed of or faced with brick or simulated brick or stone or stucco. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with brick, stone or siding. The roof of all improvements shall be covered with asphalt shingles or other material approved in writing by Declarant, provided that hardboard, pressed wood, bonded wood, and the like will not be approved by Declarant for coverage of any roof.

4. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Further, no retail business activities of any kind whatsoever shall be conducted on any Lot. Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, their agents or assigns, during the construction and sale of the Lots, or to model homes approved by Declarant which are maintained by builders.

5. No exterior television or radio antenna or dish of any type shall be permitted on any Lot. Notwithstanding the foregoing, an antenna or dish that is designed to receive over-the-air programming signals, that does not exceed one meter in diameter, and that is attached directly to the residence, shall be permitted, provided that the location and size of the proposed antenna or dish is first approved by the Declarant, or its assigns.

6. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

7. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) except that during the months of May through September vehicles may be parked in the driveway only. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating

equipment, airplanes, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this restriction shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during their period of construction.

8. No outside trash or garbage pile, burner, or incinerator shall be erected, placed or permitted on any Lot. No garbage or trash can or container shall be permitted outside, except for pickup purposes. No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. Lots shall be maintained free of trash and debris. No clothes line shall be permitted outside of any dwelling at any time except one umbrella-type clothes line per residence. No firewood storage shall be maintained on any lot in excess of two (2) cords and only in the rear yard on a flat.

9. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

10. No fence shall be permitted to extend beyond the front line of a main residential structure unless written approval is first obtained from Declarant. All fences must be constructed of wrought iron, wood or white or black vinyl or other type of material approved by Declarant, provided that no fence may be installed without the prior approval of the Declarant, and no fences or walls shall exceed a height of six (6) feet unless otherwise approved by Declarant. No chain link fences shall be permitted on any lot. Any lot with a rear lot boundary that is adjacent to 48<sup>th</sup> Street or Capehart Road shall be required to have and maintain a six (6) foot board-on-board cedar picket fence with a scalped top, including, but not limited to Lots 67-69, 76, 78 and 79, 103-113 and 181-186. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. All produce or vegetable gardens shall be maintained only in rear yards.

11. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement.

12. A public sidewalk shall be constructed of concrete five (5) feet wide by four (4) inches thick in front of each built upon Lot and upon the street side of each built upon corner Lot. The sidewalk shall be placed at least six and one-half (6.5) feet back of the street curb line and shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof.

13. No swimming pool may extend more than one foot above ground level.

14. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except that a dog house constructed for two (2) dogs shall be permitted; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or their assigns. Dog runs and dog houses shall only be allowed at the rear of the building, concealed from public view. No livestock or agricultural-type animals shall be allowed in Falcon Pointe subdivision, including pot-bellied pigs.

15. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards of the Lot. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of eight (8) inches.

16. No temporary structure of any character, and no carport, detached basement, tent, trailer, modular house, outbuilding, or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. Storage or tool sheds are allowed only after securing prior written approval by Declarant. An Owner may erect a swing set, playground equipment, pool house, or other non-prohibited structure on a Lot only after securing the prior written approval of Declarant. No structures, dwellings, or modular housing improvements shall be moved from outside Falcon Pointe to any Lot.

17. Any building materials, temporary buildings or structures which may be permitted to be placed on a Lot shall be stored or placed within the property lines of said Lot and shall not be stored or placed in the streets or between the curb and the property line of said Lot. Any such building materials, temporary buildings or structures shall be used for construction purposes only, and shall not be used for any other purpose, including but not limited to use as a residential or sales office, either during construction of Improvements or thereafter, and any such building materials, temporary buildings or structures shall be removed immediately upon completion of construction of the Improvements.

18. Each Owner shall be responsible for installing and maintaining erosion control measures from the commencement of grading on the Owner's Lot until such time as a lawn or other plantings sufficient to prevent erosion on the Owner's Lot have been established. These measures include, but are not limited to: installation of silt fences, hay/straw bales, ditch checks, street cleaning following precipitation events or tracking of mud on streets by any vehicle leaving the Lot, and sodding and mulching lawn areas. Steep slopes located on a Lot may require installation of stray mat, jute mat, or other materials designed to stabilize steep and highly erodible areas. Any areas where erosion control measures have been compromised by weather, construction or any other event, shall be repaired within seven (7) days of damage. After every rainfall exceeding ½ inch and at least once per week, erosion control measures must be inspected by the Owner or the Owner's contractor, and any necessary maintenance or repairs discovered shall be made in a timely manner. Failure to comply with these requirements may result in sanctions against the Owner or Lot by the Declarant, Association, S.I.D. County, and/or City.

19. All Lots must be fully sodded concurrently with or immediately following completion of construction of the residential structure on the Lot, as weather permits.

## ARTICLE II. HOMEOWNERS ASSOCIATION

1. The Association. Declarant has caused or shall cause the incorporation of the FALCON POINTE HOMEOWNERS ASSOCIATION, a Nebraska not-for-profit corporation (herein referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including:

(a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include Outlots owned by the Association, recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas; and signs and entrances for Falcon Pointe. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to a Sanitary Improvement District.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Falcon Pointe; and the protection and maintenance of the residential character of Falcon Pointe.

2. Storm Water Drainage Improvements Construction and Maintenance. The cost and expense for construction of the storm water drainage and related improvements on the Outlot as contemplated by the Subdivision Agreement for Falcon Pointe will be completed by Declarant. Following construction of such improvements, it is anticipated that Declarant will convey title in the Outlot to the Association or the S.I.D. which shall be responsible for the maintenance of the Outlot and the storm water drainage and related improvements on the Outlots. To the extent not maintained by the S.I.D., all such maintenance shall be completed by the Association in conformance with the Post-Construction Storm Water Maintenance Agreement as contemplated the Subdivision Agreement for Falcon Pointe.

3. Membership and Voting. Falcon Pointe is divided into 222 separate single-family residential lots (referred to as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot. The Owner of each Lot, whether one or more persons and entities, shall be entitled to vote on each matter properly coming before the Members of the Association. The Association shall have two (2) classes of voting membership as follows:

A. Class A. Class A Members shall be all Owners with the exception of the Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned. When more than one person owns an interest in any Lot, all such persons shall be Members, but in no event shall more than one vote be cast with respect to any Lot. The vote of such Lot shall be as precise as determined among the Owners of such Lot.

B. Class B. Class B Members shall be the Declarant, its successors and assigns, and Declarant shall be entitled to twenty (20) votes for each Lot owned. The Class B Membership shall cease and shall be converted to Class A Membership upon either the written direction of the Declarant or fifteen (15) years following date of recording of this Declaration.

4. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

(a) The acquisition, development, maintenance, repair, replacement, operation and

administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

(b) The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks or public property within or near Falcon Pointe.

(c) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

(d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

(e) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

(f) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

(g) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

(h) The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

(i) General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

(j) The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

5. Mandatory Duties of Association. The Association shall perform the maintenance obligations set forth in Article II, Section 2, and shall maintain, repair and replace any fence, signs and landscaping which have been installed and facilitated by the Declarant or developer within Falcon Pointe Subdivision in generally good and neat condition.

6. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

7. Abatement of Dues and Assessments. Notwithstanding any other provision of this

Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant. Lots owned by the Declarant shall not be subject to imposition of dues, assessments or association liens.

8. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

9. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Section 4 of this Article.

10. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 12, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

(a) One Hundred and no/100 Dollars (\$100.00) per Lot; or

(b) In each calendar year beginning on January 1, 2020, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

11. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Two Hundred Fifty and no/100 Dollars (\$250.00) per Lot.

12. Excess Dues and Assessments. With the approval of seventy-five percent (75%) of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

13. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 7, above. Notwithstanding any provision to the contrary herein, no Lots owned by the Declarant shall be subject to levy or assessment of dues and assessments.

14. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.



15. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

16. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

### ARTICLE III. EASEMENTS AND COVENANTS

1. A temporary construction easement is hereby reserved on, over and upon a five (5) foot wide strip of land along the side boundaries of each Lot to permit the passage of equipment, machinery and supplies for construction on adjacent Lots, such easement to be in favor of the Declarant and the builders on the Lots with common side boundaries, provided, however, that such temporary construction easement shall terminate upon the completion of a home and related improvements (including, without limitation, grading, sodding and landscaping) on the adjacent Lot with common side boundaries and owner occupancy of such Lot. In the event that an Owners sod or landscaping is damaged due to an adjacent Lot Owners construction activities, the Lot Owner, or its contractor or agents, causing such damage shall promptly repair any damage to good and equivalent condition.

2. Other easements are provided for in the final plat of Falcon Pointe, which is filed in the Register of Deeds of Sarpy County, Nebraska, Instrument No. 2018-10584.

3. Lot Owners covenant and agree that they will undertake all grading construction activities on the Lots in a commercially reasonable manner, in compliance with the applicable grading permit and in compliance with all federal, state and local laws, rules, regulations and ordinances (the "Governmental Requirements"). The Governmental Requirements may include, without limitation, requirements relating to the maintenance of erosion control devices, silt fences, detention ponds, terracing and street cleaning, concrete disposal as required by the Environmental Protection Agency, the State of Nebraska Department of Environmental Quality, and Sarpy County, Nebraska. Each Lot Owner further covenants and agrees to install and maintain a silt fence and other appropriate erosion control devices. Each Lot Owner shall indemnify and hold harmless the Declarant and its officers, directors and shareholders, from any and all liabilities, costs, expenses, causes of action, attorney fees, fines, penalties or assessments with respect to the Lot Owners construction and grading activities on their Lot, including, without limitation, such Lot Owner's failure to comply with Governmental Requirements during and following construction of Improvements.

### ARTICLE IV.

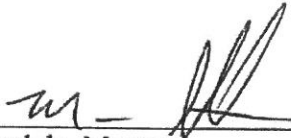
## GENERAL PROVISIONS

1. The Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant 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.
2. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by Declarant or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of fifteen (15) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than sixty percent (60%) of the Lots covered by this Declaration.
3. By written consent of the Declarant, for a period of fifteen (15) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to the Lots may be waived, modified or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver, modification or amendment will have on the Falcon Pointe subdivision and the owner requesting the waiver. Declarant's decision on any request, waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any request for waiver, modification or amendment.
4. The Declarant or its successor or assign, may assign the Declarant status hereunder to another person or entity by execution and recording of an Assignment and Assumption of Declarant status or may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon filing of a Notice of Termination of Status as Declarant, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.
5. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

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SIGNATURE PAGE TO FOLLOW]


IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 9<sup>th</sup> day of August, 2019.

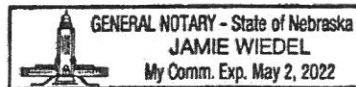
CHARLESTON HOMES, LLC, a Nebraska limited liability company

By:   
Marc Stodola, Manager

STATE OF NEBRASKA    )  
                                  ) ss.:  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of August, 2019, by Marc Stodola, Manager of Charleston Homes, LLC, a Nebraska limited liability company, on behalf of the company.

  
Notary Public



2019-18356

08/14/2019 10:37:01 AM

  
COUNTY CLERK/REGISTER OF DEEDS

COUNTER BJ C.E. BJ  
VERIFY BJ D.E. BJ  
PROOF P  
FEES \$ 46.00  
CHECK # 8487  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
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**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR FALCON POINTE VILLAS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR Falcon Pointe Villas ("Declaration") is made by CHARLESTON HOMES, LLC a Nebraska limited liability company ("Declarant").

**Preliminary Statement**

Declarant owns the real estate in Sarpy County, Nebraska, which is more particularly described as follows:

Lots 1 through 63, inclusive, in Falcon Pointe, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

Such lots are herein collectively referred to as the "Lots" and individually as a "Lot".

Declarant desires to provide for the preservation, protection and enhancement of the values and amenities of the Falcon Pointe Villas Lots, and for the maintenance of the residential character thereof.

NOW, THEREFORE, Declarant hereby declares that all the real estate described above and any other real estate hereinafter made subject to this Declaration shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value and desirability of the properties and the enjoyment of the residents and owners thereof, and which shall run with the real estate and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

When recorded return to:  
Mark J. LaPuzza  
Pansing Hogan Ernst & Bachman, LLP  
10250 Regency Circle, Suite 300  
Omaha, Nebraska 68114

**ARTICLE I**  
**MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership.** Every Owner of a Lot shall be a member of the Falcon Pointe Villas Homeowners Association (the "Association"). Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2. Attendance at Meetings; Continuing Proxy.** In order to ensure that a quorum is present for all meetings of the members, and to allow for orderly management of the Association's affairs, it shall be the duty of each member to attend such meetings or execute and deliver to the Association a continuing proxy prepared by the officers of the Association. This continuing proxy shall operate in lieu of the actual attendance at the meeting by the specific member and shall be void if the member personally attends that meeting to exercise the member's right to vote. An Owner may provide a superseding proxy to be voted by his duly authorized attorney in fact for one specific meeting only. The proxy shall be subject to the terms of the Nebraska Nonprofit Corporation Act concerning revocability and life span of the proxy. Failure to attend personally or by proxy is a violation of this covenant. The continuing proxy shall be voted by the President of the Association in his or her discretion at any meeting. The continuing proxy shall provide on its face that it is valid on a continuous basis for an indefinite period of time (subject to limitations in effect from time to time under the Nebraska Nonprofit Corporation Act) until revoked in writing by the specific Owner. All proxies shall be in writing and filed with the Secretary of the Association. Each proxy shall be freely revocable and shall automatically cease when the member giving such proxy shall cease to be an Owner of a Lot or at such earlier time as shall be specified in the proxy or by operation of law.

**Section 3. Membership Classes.** The Association shall have two classes of voting membership:

**Class A.** The Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote 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 (1) vote be cast with respect to any Lot.

**Class B.** The sole Class B member shall be the Declarant and it shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) the date on which Declarant no longer owns a Lot;
- (b) the date Declarant shall elect, in its sole discretion, that the Class B membership cease and be converted to Class A membership; or
- (c) on December 31, 2024.

**ARTICLE II**  
**COVENANTS FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned, 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 annual assessments or charges, such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and attorney's fees, shall be a charge on the Owner's Lot and shall be a continuing lien upon the Lot against when each such assessment is made. Each such assessment, together with interest, costs, and attorney's fees, shall also be the personal obligation of the person(s) who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire the Association as to the amount of any unpaid assessments or dues.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the expenses, charges, and costs of the operation of the Association and the exterior maintenance services of the Lots situated thereon as described in Article II, Section 9.

**Section 3. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to a person other than Declarant, the maximum annual assessment shall not exceed One Thousand Four Hundred Forty and No/100 Dollars (\$1,440.00) per Lot.

(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 by the Board of Directors of the Association each year without a vote of the members, provided that the amount of the increase does not increase the amount of the annual assessment by fifteen percent (15%) of the total assessment for the previous year.

(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 increase permitted in subparagraph (a) above upon recommendation of the Board of Directors of the Association, followed 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 shall fix the annual assessment at an amount not in excess of the maximum.

**Section 4. Rate of Assessment.** Annual assessments must be fixed, based on the status of each Lot. All Lots which have a villa unit completed and which have been transferred by the builder of the villa unit shall be assessed. Lots on which villa units are under construction,

which have a villa unit used as a model or which have not been sold by the builder to third party purchasers shall not be subject to assessment.

**Section 5. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to Lots on the first day of the month following the date on which they are to be assessed. All assessments shall be collected in advance on an annual or quarterly basis as from time to time determined by the Board of Directors of 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 ten (10) days in advance of each annual assessment period. Written notice of the annual assessment and the due dates shall be sent to every Owner subject thereto. The Association shall, upon demand and for a reasonable charge (not to exceed \$25), 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 6. 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 then maximum legal rate for individuals allowable in the State of Nebraska. 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 maintaining his or her own Lot.

**Section 7. Abatement of Assessments.** Notwithstanding any other provision of this Declaration, (i) the Board of Directors may in its discretion, abate all or any part of the dues or assessments in respect of any Lot; (ii) Lots owned by the Declarant shall not be subject to the imposition of dues, assessments or the lien of any assessments; and (iii) no dues or assessments shall be payable on a Lot until such time as the residential structure has been substantially completed and may be occupied as a residence.

**Section 8. Subordination of the Lien to Mortgages/Trust Deeds.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first Deed of Trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage or trust deed foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer.

**Section 9. Exterior Maintenance Services.** Exterior maintenance services (as defined in this Section 9) of each villa unit and Lot shall be provided by the Association. The Declarant does hereby reserve and each Owner does hereby consent and grant to the Association and its officers, employees, agents, contractors and repairmen, a perpetual and permanent easement over and across such villa unit and Lot at any reasonable time to make inspections and to perform such exterior maintenance services. "Exterior maintenance services" as used herein shall mean only the mowing, fertilization and application of chemicals to lawns, and driveway and sidewalk snow removal. Exterior maintenance services shall be performed in a manner consistent with

and shall at all times comply with the applicable provisions of the Declaration of Covenants, Conditions, Restrictions and Easement for Falcon Pointe, Instrument Number 2018-26276 ("Residential Declaration of Covenants"). Exterior maintenance services shall not include, without limitation, any painting, window cleaning, repairs or maintenance of sanitary sewer, water, gas or electrical lines on Owner's Lot, roof repair or replacement, repair or maintenance of gutters, downspouts, sprinkler systems, landscaping, or any damage to property of any kind normally covered by homeowners insurance policies with extended coverage including but not limited to such items as glass, garage doors, entrance doors and Owner's personal property. All maintenance services that are not the responsibility of the Association shall be the responsibility of each Owner of a villa unit and Lot. In the event that the need for any exterior maintenance services is caused through the negligent acts or omissions of an Owner, or through the negligent acts or omissions of the family, guests, or invitees of an Owner, the cost of such exterior maintenance services by the Association shall be the personal obligation of the Owner of the Lot and shall be in addition to the assessment to which such Lot is subject under this Declaration.

**Section 10. Insurance.** Each villa unit Owner shall provide homeowners insurance with respect to the improvements (villa units) in an amount equal to at least the full replacement value of said improvements or in an amount as may be required by any mortgage holder, whichever is higher, against loss by fire, lightning, windstorm, and other perils covered by standard extended coverage endorsement, and insurance against such other hazards in amounts as are normally carried by owners of like units. Upon request of the Association from time to time, each Owner shall provide written evidence of this insurance coverage.

### **ARTICLE III RESTRICTIONS, EASEMENTS AND MISCELLANEOUS PROVISIONS**

**Section 1. Reservations to Declarant.** Declarant hereby reserves for the benefit of itself, and grants to the Association and all agents, contractors, employees and other designees of Declarant or the Association, an easement for ingress, egress and access to enter upon or over the Lots as necessary or appropriate to provide the exterior maintenance services and any other duties, or obligations of Declarant or Association under this Declaration.

**Section 2. Priority of Residential Declaration of Covenants.** The Lots are restricted by the Residential Declaration of Covenants and the Lots and Owners are subject to the terms thereof and this Declaration shall be supplemental thereto. In the event of any conflict between the terms of the Residential Declaration of Covenants and the terms of this Declaration, the terms of the Residential Declaration of Covenants shall prevail.

### **ARTICLE IV ARCHITECTURAL CONTROL**

**Section 1. General Requirements.** No dwelling, fence (other than fences constructed by Declarant), wall, pathway, driveway, patio, patio cover or enclosure, deck, rock garden, garden, treehouse, swimming pool, television or radio antenna, satellite dish, flag pole, solar



collecting panels or equipment, tool shed, or other external improvements (including landscaping) above or below the surface of the ground shall be built, erected, placed, planted, altered, or otherwise maintained or permitted to remain upon any of the Properties, nor shall any grading, excavation, or tree removal be commenced without compliance with the Residential Declaration of Covenants.

**Section 2. Interference with Exterior Maintenance Services.** The obligation of the Association to provide exterior maintenance services shall not be impaired by any action of the owner or any improvements constructed on any lot. Specifically, in addition to all other obligations related thereto, no fence shall be installed with an opening that is less than forty-eight inches (48") in width, unimpeded when the gate is fully open. Also, the fence shall be installed with six (6) foot white vinyl closed pickets with a one (1) inch gap OR four (4) foot white vinyl closed pickets with a one (1) inch gap with flat post covers. Any lot with a rear lot boundary that is adjacent to 48<sup>th</sup> Street or Capehart Road shall be required to have and maintain a six (6) foot board-on-board cedar picket fence with a scalloped top, including, but not limited to Lots 67-69, 76, 78 and 79, 103-113 and 181-186. An in-ground sprinkler system is required to be installed on all lots. Association dues shall not be abated, in whole or in part, for any Lot upon which the Association is prevented from providing exterior maintenance services by the owner of such Lot.

## **ARTICLE V GENERAL PROVISIONS**

**Section 1. Powers.** Except for the authority and powers specifically granted to the Declarant, the Declarant, the Association, or any owner of a Lot named herein shall have the right, but not the obligation, to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions, and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant, 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. Duration.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date of recording of this Declaration. Thereafter this Declaration may be amended, modified or terminated by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

**Section 3. Changes and Amendments.** By written consent of the Declarant for a period of fifteen (15) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to a Lot may be waived, modified, or amended for any Lot, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver, modification or amendment will have on the Project and the Owner requesting the waiver. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or

obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any requested waiver, modification, or amendment.

**Section 4. Termination of Status.** Declarant, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Declarant may appoint a successor, or in the absence of such appointment the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

**Section 5. Notices.** Any notices required herein to be delivered to an Owner shall be deemed sufficient if personally delivered to an Owner or if deposited in the United States Mail, by certified or registered mail, prepaid and addressed to the Owner at the residential address assigned to the Owners Lot. The effective date of notices shall be the date of delivery if personally delivered or the date of mailing if mailed.

**Section 6. Miscellaneous.** Invalidation of any covenant or provision in this Declaration by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Time is of the essence for purposes of this Declaration.

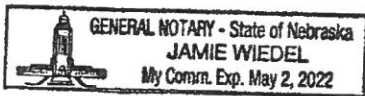
IN WITNESS WHEREOF, the undersigned being the Declarant herein has executed this Declaration effective as of the 9<sup>th</sup> day of August, 2019.

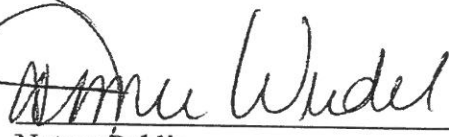
CHARLESTON HOMES, LLC, a Nebraska limited liability company,

By:   
Marc Stodola, Manager

STATE OF NEBRASKA     )  
  ) ss  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of August, 2019, by Marc Stodola, Manager of Charleston Homes, LLC, a Nebraska limited liability company, on behalf of the company.



  
Notary Public