

RESTRICTIVE COVENANTS OF PLAT OF

FOX CREEK

KNOW ALL MEN BY THESE PRESENTS:

The following restrictions and reservations are made a part of the plat known as Fox Creek, a Subdivision Plat, now included in Section 15, Township 78 North, Range 26 West of the 5th P. M., in Dallas County, Iowa, according to the plat thereof recorded in Book 3 Page 378 of the plat records of Dallas County, Iowa, and shall be binding on all present and future owners of each and every lot and parcel of ground in said subdivision according to the terms herein specified as covenants running with the land and with the same force and effect as if contained in each subsequent conveyance of said lots:

1. All numbered lots (one through seventy-three, inclusive) described herein shall be known, described and used, solely as residential lots and the structures shall be one detached single-family dwelling not to exceed two stories in height with only one house per lot and no residential lot shall be re-subdivided, except as set forth in Paragraph 3. (d) hereafter.

2. Prior to construction of any structure or fence, plans must be submitted to Fox Creek, Inc. for approval. Such matters as type and appearance of structure, location of buildings and drives, will be considered to provide harmony with existing or future buildings and to best utilize the natural lay of the land for appearance and privacy. Written approval must be given before any construction commences.

3. (a) Single-Story Residences:

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

(b) One and One-Half or Two-Story Residences:

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

(c) Exclusions:

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

(d) Exceptions:

A two-family occupancy residence may be erected on Lots 28, 29, 37, 54, and 65, if said lots remain unsubdivided; or in the

alternative, said lots may be subdivided once, and in such event the restrictions contained herein shall be fully effective as to the two separate portions of such lot as subdivided, fully as if each subdivided portion were an individual lot.

4. Temporary buildings, mobile homes, or campers of any character are not permitted, and garages or other out buildings cannot be used as residences temporarily or permanently.
5. Construction of any residences shall be completed within one year from the date said construction is begun and excess dirt from the excavation shall be used as a part of a graded landscape plan, placed on an approved area in the project, designated by Fox Creek, Inc., or hauled away.
6. Titleholder of each lot, vacant or improved, shall keep his lot or lots free of weeds and debris and agrees to take all steps necessary to control erosion on his lot or lots. If in the opinion of Fox Creek, Inc. such erosion is not controlled, corrective action may be taken by it and the costs thereof assessed against the property owner.
7. THE FOLLOWING GENERAL RESTRICTIONS SHALL APPLY:
  - (a) No obnoxious or offensive trade shall be carried on upon any lot or within any residence.
  - (b) No action will be done thereon that may be or become an annoyance or nuisance to the neighborhood.
  - (c) No cottonwood or elm trees shall be planted on any lot or other area.
  - (d) No commercial kennels shall be allowed on any lot in subdivision, but household pets are allowed.
  - (e) No livestock shall be kept on any lot or lots.
  - (f) No use will be made of roads for parking at any time, and no inoperative vehicles will be parked on any property for a period exceeding 45 days.
  - (g) No P. A. systems will be operated for either voice or music at a sound level that is disturbing to other property owners.
  - (h) No trees of consequence, such as walnut trees, will be cut down for profit, or for construction or other reasons without the express approval of Fox Creek, Inc.
  - (i) No business of any kind shall be conducted on any lot, except in connection with development and sale of said lots.
  - (j) Mail, trash, and milk delivery containers shall be subject to approval by Fox Creek, Inc. to assure proper appearance and harmony with other such receptacles.

8. A perpetual easement is reserved over the lot areas as indicated on the plat for utility installation and maintenance, and also for public access and utility maintenance with respect to Lots 1 through 10, inclusive, and Lots 11, 12, 14, 15, 24, and 25. Drainage courses as indicated on the plat shall not be filled, or obstructed in any manner to divert or change the flow of surface waters.
9. No improvement shall be made within the 50-foot building setback as indicated on the plat, and in addition, no improvement of any kind shall be placed within the South 60 feet of Lots 1 through 10 inclusive.
10. Titleholders are required to provide approved and adequate sewage facilities on each lot when a residence is constructed. These facilities will not be shared with adjacent property owners and will be maintained an approved distance from public water supply facilities. No sewage lines or laterals will be run into any creeks or ravines.
11. Titleholders are required to attach on and use water facilities. A hook-up charge will be made by the Fox Creek Water District and a quarterly charge for water used, to maintain and operate the system and facilities.
12. A mutual easement shall exist for access, ingress and egress, with respect to Lots A through H, inclusive, and Lot J for street purposes for the benefit of all titleholders and their invitees, and Fox Creek, Inc. reserves the right to convey or grant easements to Dallas County or any other municipal corporation when acceptance of said lots, or any part thereof, by such body has been agreed upon.
13. Owners shall be responsible for any costs in connection with the electrical or telephone services on their lot, if either or both services are brought through underground service to such lots.
14. Should a swimming pool be constructed it will be completely encircled with a 60" fence with a locked gate.
15. Any liquid fuel tanks (Propane, etc.) must be camouflaged by bushes, decorative fence or some other acceptable means to attempt to hide the view of it from adjacent property owners.
16. Recreational vehicles and boats must be parked behind the back line of the residence preferably in an enclosure to obstruct the direct view from the street and adjacent properties.
17. If any titleholder, or his heirs or assigns, shall violate or attempt to violate any of the covenants or restrictions herein before January 1, 1990, it shall be lawful for any other person or persons owning any of the lots in said development or subdivision to prosecute any proceedings at law or in equity against

the person or persons violating or attempting to violate any such covenant or restriction and either to prevent him or them from doing so or to recover damages or other dues for such violation

- 18. The restrictions contained herein shall not pertain to outlets, said outlets to be available for utility services including any structures necessary in connection therewith, nor shall the building setback lines in the plat restrict any such construction or use.
- 19. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

The above and foregoing restrictive covenants and restrictions are for the mutual benefit of all persons who shall acquire any of the lots in Fox Creek, an Official Plat, and are imposed by Fox Creek, Inc., contract vendee.

Fox Creek, Inc.

By Louise E. Paterson  
Louise E. Paterson, President

STATE OF IOWA

SS

COUNTY OF POLK

On this 30 day of June, A. D., 1972, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Louise E. Paterson, to me personally known, who, being by me duly sworn, did say that she is the President of said corporation executing the within and foregoing instrument, that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Louise E. Paterson as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



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Notary Public in and for the  
State of Iowa

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1972 SEP 29 PM 3.42

MARGUERITE GURIN  
CLERK DALLAS CO. RECORDER

FIRST AMENDMENT

TO

RESTRICTIVE COVENANTS OF PLAT OF FOX CREEK

KNOW ALL MEN BY THESE PRESENTS:

That Fox Creek, Inc. as contract vendee of Lots 1 through 10 inclusive, and Lots 11, 12, 14, 15, 24, and 25, in the Plat of FOX CREEK, a Subdivision Plat of part of the Northwest Quarter of Section 15, Township 78 North, Range 26 West of the 5th P. M. Dallas County, Iowa, does hereby amend the restrictions as set forth in the Restrictive Covenants as recorded in Book 3 at Page 378 in the office of the Recorder, Dallas County, Iowa, by adding thereto the following as a part of Paragraph 8 thereof as follows:

Provided, however, that "public access" as referred to in this Paragraph 8 shall not be deemed to refer to access for the benefit of the general public, but rather such term shall be limited to and shall only include the right of all Lot owners in the Plat of Fox Creek to have common access to the access area of said sixteen lots as indicated on the Plat and referred to in this Paragraph 8;

provided, further, that said "public access" shall not include the right of any person to operate motor vehicles, motorcycles, snowmobiles, or any other powered vehicle or conveyance on or across said access area, and all such use is strictly prohibited except as may be necessary for repair, maintenance and upkeep of the access area and utilities located thereon.

This amendment is for the purpose of clarifying and amending the public access restrictions pertaining to the sixteen lots referred to in Paragraph 8 of the Restrictive Covenants, and are binding upon and for the mutual benefit of all persons who shall hereafter acquire an interest in the Plat of Fox Creek.

Dated as of this 14th day of July, 1972.

Fox Creek, Inc.

*4th Amendment filed 8-7-85 Lt. 7 Cy. 688  
5th Amendment filed 5-19-86 Lt. 8 Pg. 9*

*Pg. 117  
Pg. 451*

*(Lot 12)  
Wanting  
Died filed 9-26-80  
By 581 Pg 13  
Amendment filed 6-6-73 Lt. 8*

REFERENCE MADE 1998 FILED  
Book ~~3~~ Page ~~378~~ ~~40~~ BOOK ~~3~~ PAGE ~~378~~ ~~40~~

SECOND AMENDMENT  
TO  
RESTRICTIVE COVENANTS OF PLAT OF FOX CREEK

1973 JUN -6 AM 11:19  
MARGUERITE GOWIN  
DALLAS CO. RECORDER

KNOW ALL MEN BY THESE PRESENTS:

That Fox Creek, Inc. does hereby amend the Restrictions as set forth in the Restrictive Covenants, as recorded in Book 3 at Page 378 in the office of the Recorder, Dallas County, Iowa, and as amended by First Amendment dated July 14, 1972, and filed September 29, 1972, in Book 4 at Page 40, in the office of the Recorder, Dallas County, Iowa, pertaining to Fox Creek, a Subdivision Plat of part of the Northwest Quarter of Section 15, Township 78 North, Range 26 West of the 5th P.M., Dallas County, Iowa, as follows:

3rd Amendment filed 7-13-72  
6th Amendment filed 6-6-88

251  
Warrant

1. By amending subparagraph (b) of Paragraph 3 thereof by deleting the "." at the end of said sentence and adding thereto the following:  
"; provided, however, that with respect to any split level or split foyer residence, such residence shall have ground floor living area of not less than 1300 square feet, and shall have an attached or enclosed two-car garage, and further any such residence shall have so-called "Wing" or extension walls at each side of the front of such residence extending at least eight feet (8') in each direction for a total of sixteen feet (16')."
2. By amending subparagraph (c) of Paragraph 3 thereof by adding after the word "porches", the words "utility rooms".
3. By adding after the first sentence of Paragraph 5 of the Restrictive Covenants the following additional sentence:  
"In no event shall any residence be occupied by any owner or tenants until the exterior surfaces are fully completed and finished, it being the intent hereof to preclude any occupancy pending final painting, staining, brick or other masonry installation, or other final completion and finishing of the exterior surfaces."

Op-688

**BY-LAWS  
OF  
FOX CREEK OWNERS ASSOCIATION**

These are the By-laws of FOX CREEK OWNERS ASSOCIATION (hereinafter referred to as "Association"), a corporation organized to perform the functions described in the Declaration of Covenants, Conditions and Restrictions for Fox Creek dated Nov 14 1996, and recorded \_\_\_\_\_, in Book 691, Page 875, et seq., of the records of the Recorder of Dallas County, Iowa, as amended from time to time (hereinafter referred to as "Declaration") and to provide an entity to own, operate and maintain certain Common Areas situated in Dallas County, Iowa, as that term as defined in the Declaration for and on behalf of the owners of certain real property situated in Dallas County, Iowa, described as:

Lots 1 through 73, inclusive, in Fox Creek, an Official Plat, Dallas County, Iowa (hereinafter referred to as the "Properties")

and to engage in any and all lawful acts.

All of the provisions of the Declaration are hereby incorporated in these By-laws by this reference as if fully set forth herein.

I.

MEMBERS AND VOTING RIGHTS

1. The members of the Association shall be those persons described in the Declaration. The number of votes and voting rights for the members shall be as provided for in the Declaration.
2. An owner of record shall be recognized as a member without further action for so long as he or she owns an ownership interest. If ownership is acquired but not of record, or if acquired other than by way of conveyance or other formal instrument of transfer (such as by death, judicial act or dissolution), the person acquiring or succeeding to ownership shall present to the Association evidence satisfactory to it of facts evidencing lawful ownership status prior to the exercise of any rights as a member of the Association. Failure to provide such evidence shall not, however, relieve any owner of his membership obligations. A fiduciary or other official acting in a representative capacity shall exercise all membership rights and privileges of the owner which he or she represents.
3. If more than one person is an owner of the same property, all such owners shall be members and remain jointly and severally liable for all membership obligations. In such cases, or if more than one fiduciary or other official is acting in the premises, the vote entitled to be cast by the owner of that property shall be cast by the person named for the purpose on a certificate signed by all such owners or fiduciaries or other officials and filed with the Association, and such person shall be deemed to hold votes appurtenant to such unit for the purposes of voting and determine the representation of such property owner at any meeting or for purposes otherwise provided herein. If such certificate is not executed and filed with the Association, such membership shall not be in good standing and the vote or votes appurtenant to that property shall not be considered in determining a quorum or any vote or for any other purpose until this Bylaw is complied with. Such

certificate shall continue enforced until revoked in writing and filed with the Association's secretary.

## II.

### MEMBERS' MEETINGS

1. The annual and any special meeting shall be held at a time and at a place within Polk or Dallas County, Iowa, chosen by the Board of Directors, and all such meetings, annual or special, shall be held at such particular time and place as is set forth in the Notice thereof. The first annual meeting shall be held in calendar year 1990.
2. A special meeting shall be held whenever called by the President, or, in his absence or disability, the Vice President, or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from members entitled to cast 33 1/3% of the votes of the entire membership.
3. The Secretary or his designate shall give written notice to each member of the annual meeting. The person or persons calling a special meeting pursuant to paragraph 2 shall give like written notice of such special meeting. All notices shall set forth the time and place and purpose or purposes for which the meeting will be held. No action shall be taken at a special meeting which is not directly related to the purpose or purposes stated in the notice of meeting for which such meeting is held.
4. Notice of a members' meeting shall be given by mailing or delivering the same not less than five (5), nor more than fifty (50), days prior to the date of the meeting. Notice shall be deemed duly given if mailed by first class mail to the member at the address of his property within the Properties, unless at the time of giving such notice he has given written direction, delivered to an officer or member of the Board of Directors, specifying a different mailing address to be carried on the rolls of the Association. If more than one person is an owner of the same parcel of real property or if more than one fiduciary or other official is acting in the premises, notice shall be deemed given when given in accordance with this paragraph to the person named in the certificate filed with the Association in accordance with paragraph 3 of Article I. Notice of any meeting may be waived in writing by the person entitled thereto. Notice given pursuant hereto shall be sufficient if given to all such owners of record with the Association Secretary as of the date of mailing.
5. A quorum at a members' meeting shall consist of the presence of members or by proxy, entitled to cast sixty percent (60%) of the votes outstanding. The acts carried or approved by a vote of a majority of votes represented at a meeting at which a quorum is present shall constitute the acts of the members unless a different rule is provided herein or by the Articles of Incorporation, or other agreement to which the Association is a party. The President, or, in his absence or disability, the Vice President, shall preside at each members' meeting; if neither the President or the Vice President is available to preside, a chairman shall be elected by the members present at such meeting. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements herein and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided such subsequent meeting shall be held within sixty (60) days following such preceding meeting.
6. At any membership meeting, the presence of an owner and the exercise of the voting rights of an owner or person entitled to cast votes, by proxy shall be permitted and



recognized, provided such proxy must be in writing and signed by the person holding membership or entitled to cast votes and shall set forth the legal description of the property with respect to which such rights are appurtenant, the number of votes appurtenant thereto and the period for which the proxy is to be in force and effect. The decision of the Board of Directors as to the sufficiency of any proxy for recognition shall be final and not subject to appeal to the members.

7. At all meetings the order of business shall consist of the following:

- A. Election of chairman, if required.
- B. Calling roll and certifying of proxies.
- C. Proof of notice of meeting or waiver of notice.
- D. Reading and disposal of unapproved minutes.
- E. Reports of officers, if applicable.
- F. Reports of committees, if applicable.
- G. Election of Directors, if applicable.
- H. Unfinished business.
- I. New business.

### III.

#### BOARD OF DIRECTORS

1. The affairs of the Association shall be managed by a Board of seven (7) directors. <sup>57</sup>  
Only members of the Association who are owner-occupants of a Lot(s) in Fox Creek shall qualify as Directors of the Association. No person serving on the Board of Directors of or as trustee of the Fox Creek Benefitted Water District shall be eligible to serve as a director of the Association.

2. At the first annual members' meeting, three (3) directors shall be elected for three (3) year terms, two directors shall be elected for two (2) year terms and two (2) directors shall be elected for one (1) year term. At the next annual meeting of the members and thereafter, directors shall be elected for 3-year terms, the number of directors elected shall be equal to the number of directors whose terms expire, provided no director shall serve more than two (2) successive terms.

3. Each Director shall be elected by ballot (unless dispensed by unanimous consent) and by a plurality of the votes cast at the annual meeting of the members of the Association. Each person entitled to vote shall be entitled to vote for as many nominees as there are vacancies to be filled by election and each member shall be elected by separate ballot (unless provided otherwise by unanimous consent of the members).

4. Except as provided in Paragraph 5 of this Article, vacancies in the Board of Directors may be filled until the date of the next annual meeting by a vote of a majority of the Directors remaining in office regardless of whether those remaining constitute a quorum.

5. A Director may be removed by concurrence of two-thirds (2/3) of the members of the Association at a special meeting called for that purpose. The vacancy in the Board of Directors so created shall be filled by the persons entitled to vote at the same meeting.
- ✓ 6. The initial Directors, and officers selected by the initial Directors, shall serve without compensation; thereafter, Directors shall receive such <sup>reimbursement</sup> compensation and expenses as is approved by the persons entitled to vote at any annual or special meeting.
7. An organization meeting of a newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the directors at the meeting at which they were elected. No further notice of the organization meeting shall be necessary.
8. A majority of the Board may, by resolution, set the time and place for regular meetings of the Board and no notice thereof shall be required until such resolution is modified or rescinded. Special meeting of the Directors may be called by the President, Vice President, or any two Directors provided not less than two days' notice shall be given, personally or by mail, telephone, or telegraph, which notice shall state the time, place and purpose of the meeting.
9. A quorum, at a Directors' meeting shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting duly called at which a quorum is present shall constitute the acts of the Board of Directors, except where approval by a greater number of Directors is required by Declaration or these By-Laws.
10. The presiding officer of a Directors' meeting shall be the President or in his absence, the Vice President. In the absence of the President and Vice President, the Directors present shall designate one of their number to preside.
11. The Board of Directors, by resolution approved by all members thereof, may designate from among its members such committees as it deems advisable and by resolution provide the extent and manner to which the same may have and exercise the authority of the Board.

#### IV.

#### POWERS AND DUTIES OF THE BOARD-OF DIRECTORS

All of the powers and duties of the Association shall be exercised by the Board of Directors including those existing under the common law and statutes and the Articles of Incorporation, Such powers and duties of the Directors shall include in addition to those elsewhere provided for but shall not be limited to the following:

1. To enforce the terms of and carry out the obligations set forth in the Declaration.
2. To make and collect assessments against members for all common expenses.
3. To use the proceeds of assessments in the exercise of its powers and duties.
4. The maintenance, repair, replacement, and operation of the Common Areas and improvements located thereon and making or providing for payment for all such work and approving or delegating to the officers authority to approve vouchers therefor.

5. The reconstruction, repair, restoration, or rebuilding of the Common Area property after casualty; the construction of new improvements or alterations if authorized; to make and amend regulations respecting the use and occupancy of the Common Area property and to permit or forbid an action or conduct within the discretion committed to them in these By-Laws, and Resolutions of the members.

6. To enforce by legal means the provisions of the Articles of Incorporation, the By-Laws of the Association, the Declaration and the regulations for the use of the common areas; and to take legal action in the name of the Association and on behalf of its members, including the imposition of penalties and fines against members for violations thereof.

7. To employ, designate, and remove personnel to perform the services required for proper operation of the Common Areas.

~~8. To carry insurance upon the Common Area property and insurance for the protection of unit owners, occupants, and the Association.~~

9. To pay the cost of all power, water, sewer, and other utility or other services rendered to the common area.

10. To conduct all votes or determinations by members other than at a membership meeting.

11. To borrow money from any bank, lending institution or agency for the use and benefit of the Association, and to secure the loan or loans by pledge of the assets of the Association, and from time to time to renew such loan and give additional security.

12. To do such other acts as are necessary and proper to effect the purpose of the Association as stated in these By-Laws and Articles of Incorporation provided such acts are not otherwise prohibited.

## V.

### OFFICERS

1. The officers of the Association shall be the President, who shall be a Director, a Vice President, who shall be a Director, a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors and may be pre-emptorily removed and replaced by vote of the Directors at any meeting. The initial officers and their successors until the first annual meeting shall be chosen by the initial Board of Directors and shall serve until the first annual membership meeting. The Board of Directors may from time to time create and fill other offices and designate the powers and duties thereof. Each officer shall have the powers and duties usually vested in such office, and such authority as is committed to the office by the By-Laws or by specific grant from the Board, but subject at all times to the provisions of the By-Laws and to the control of the Board of Directors.

2. The President shall be the chief executive officer of the Association. He shall preside at all membership meetings and meetings of the Board of Directors and shall have power to appoint committees from among the members to assist in the conduct of the affairs of the Association.

3. The Vice President shall preside over membership meetings in the absence or disability of the President, and shall otherwise exercise the powers and duties of the

President in the event of the absence or disability of the President, and shall generally assist the President and exercise such other powers and duties as are prescribed by the Directors.

4. The Secretary shall keep the minutes of all proceedings of membership and meetings and Directors' meetings and shall have custody and control of the minute book of the Association, and shall keep or be in charge and control of the records of the Association except those of the Treasurer.

5. The Treasurer shall have control of the funds and other property of the Association and shall keep the financial books and records thereof.

6. The compensation of all officers and employees shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee, nor the contracting with a Director for the management of the Regime.

7. Any instrument affecting an interest in real estate shall be executed pursuant to the terms of Article IX of the Articles of Incorporation.

## VI.

### FISCAL MANAGEMENT

1. The Board of Directors shall adopt a budget for each calendar year (which shall be the Association's fiscal year for income tax purposes) which shall include the estimated funds required to defray the common expenses and to provide and maintain funds for the following accounting categories according to good accounting practices:

a) Current expenses which shall include all funds and expenditures to be made within the year for which the funds are budgeted, including a reasonable allowance for the contingencies and working funds, except expenditures chargeable to reserves or to additional improvements. The balance of this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year.

b) Reserve for deferred maintenance, which shall include funds for maintenance items which occur less frequently than annually.

c) Reserve for replacement which shall include funds for repair or replacement required because of damage, destruction, depreciation or obsolescence.

2. The Board of Directors shall assess against each property, and the owners thereof only shall be liable for, a share of the items in the budget adopted pursuant to Paragraph 1 which bears the same ratio to the total budget as the number of votes appurtenant to such property bear to the total votes of all members of the Corporation. The rate of assessment shall be in accordance with the provisions of the Declaration. Such share shall be assessed for the fiscal year for which the budget was prepared annually in advance and notice of such assessments shall be mailed or delivered not less than thirty (30) days prior to the first day of such fiscal year. Such assessment shall be due and payable from the respective property owner or owners in installments, no more frequently than monthly, each installment being due and payable the first day of each calendar month, which day falls within such fiscal year. In the event notice of such assessment is not timely given the amount of such assessment shall not change, but the due date for each installment which would otherwise be due and payable less than 30 days from the giving of such notice shall be due and payable on the due date of the first

installment which is due not less than 30 days from the date such notice is mailed or delivered. In the event the annual assessment proves to be insufficient, the budget and assessments therefor, maybe amended at any time by the Board of Directors. The additional amount so budgeted shall be assessed to each owner in the same manner as assessments for the annual budget and shall be prorated along with the remaining installments due and payable in such year.

3. Special assessments for capital improvements and operating deficits shall be made only in accordance with the provisions of Article V, Section 4, of the Declaration, as amended from time to time.

4. The holder of a first mortgage on any property, upon its filing written request with the Association, shall be given written notice from the Association of any default by the mortgagor in the performance of the mortgagor's obligations under these By-Laws, which is not cured within thirty (30) days.

5. All sums assessed but unpaid including, but not limited to, interest shall constitute a lien on such real property prior to all other liens except (1) tax liens on the unit in favor of any assessing unit and special district, and (2) all sums unpaid on the first mortgage of record. Such lien may be foreclosed by the Association in the manner provided for the foreclosure of mortgages contained in the Code of Iowa in which event the unit owner shall be required to pay a reasonable rental for the unit. The Association may sue for money judgment for unpaid assessment and interest or sums due without foreclosing or waiving any lien which it holds.

6. If a mortgagee or purchaser of a property obtains possession as a result of foreclosure of a first mortgage, or deed in lieu of foreclosure, such mortgagee or purchaser, his successors and assigns, shall not be liable for the assessments chargeable to such property due prior to the acquisition of possession and such unpaid assessments shall thereafter be deemed to be common expenses collectible from all owners including the mortgagee or purchaser, his successors and assigns, all without prejudice to the right of the Association to collect the same from the defaulting unit owner personally. The owner pursuant to a voluntary conveyance or by inheritance or devise shall be jointly and severally liable with the grantor or prior owner for all unpaid assessment against the grantor or prior owner but without the prejudice to the right of such grantee or devisee to recover from grantor the amounts paid therefor. The grantee or other successor interest of an individual subject to a levy of assessment on account of default shall be liable for any such special assessment.

7. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the moneys of the Association shall be deposited. Withdrawal of moneys from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

8. An accounting of the Association's books shall be made annually and a copy of the report shall be made available for inspection by each member not later than ninety (90) days after the close of the fiscal year for which the report is made.

## VII.

### AMENDMENT

1. These By-Laws may be amended, altered, repealed or new By-Laws adopted by the members at a regular or special meeting of the members upon the affirmative vote of two-thirds of the votes outstanding.
2. No amendment may be adopted at either a special or regular membership meeting if not included in the notice thereof, except if notice of the proposed amendment has been given, a different amendment relative to the same subject matter may be adopted by those present, in person or by proxy and possessing the requisite percentage of membership and votes, provided further no vote by proxy may be counted unless the proxy expressly provides for such contingency. Notice referred to herein shall be given in the manner prescribed in Article II Section 3 of these By-Laws and shall be given to the persons described in Article II Section 4 and the holder of any first mortgage of record which has notified the Association of his interest. More than one proposed amendment may be included in the notice of a meeting.
3. No modification or amendment of these By-laws shall be effective if the same results in an amendment, modification or change in the terms of the Declaration, unless the Declaration is properly amended in accordance with its terms.
4. No modification or amendment of these By-Laws shall be effective unless set forth in an amendment executed and recorded in the office of the Recorder of Dallas County, Iowa. Upon such recording, the amendment shall be effective against all persons regardless of whether such person had an ownership interest at the time the amendment was adopted.

## IX. CONFLICTS

If the provisions of these Bylaws conflict with the express provisions of the Declaration, the provisions of the Declaration shall control.

## X.

### GENERAL PROVISIONS

1. The invalidity of any portion or provision of these By-Laws shall not affect the validity of the remaining provisions or portions hereof.
2. The association shall not have a corporate seal.
3. The Board of Directors may require fidelity bonds from all directors, officers, or agents handling or responsible for Association funds and the expense of such bonds shall be a common expense of the Association.
4. The Association shall at all times maintain complete and maintain accurate written records of each unit and owner and the address of each, and setting forth the status of all assessments, accounts and funds pertinent to that unit and owner. Any person may rely on a certificate made from such records by an officer or agent of the Association as to the status of all assessments and accounts.

5. Each member shall have the obligations as such member as are imposed upon him by the recorded documents as an owner, and no member shall have any power or authority to incur a mechanic's lien or other lien effective against the common area property.

6. The Board of Directors may in its discretion issue written evidence of membership but the same shall be evidence thereof only and shall in no manner be transferrable or negotiable, and the share of the member in the assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to such assignment, hypothecation, or transfer of the property.

7. No provision or restriction otherwise void by reason of application of the rules against perpetuities or Section 558.68 of the Code of Iowa shall continue for a period longer than the life of the last to survive of the owners, the Declarant and their children in being at the time of the initial recording of the Declaration and twenty-one (21) years thereafter.

These Bylaws are hereby adopted as the Bylaws of FOX CREEK OWNERS ASSOCIATION this \_\_\_\_\_ day of \_\_\_\_\_, 1989, by the Directors of the Corporation.

FOX CREEK OWNERS ASSOCIATION

By \_\_\_\_\_,  
\_\_\_\_\_, Director

By \_\_\_\_\_,  
\_\_\_\_\_, Director

By \_\_\_\_\_,  
\_\_\_\_\_, Director

By \_\_\_\_\_,  
\_\_\_\_\_, Director

By \_\_\_\_\_,  
\_\_\_\_\_, Director

By \_\_\_\_\_,  
\_\_\_\_\_, Director

By \_\_\_\_\_,  
\_\_\_\_\_, Director

STATE OF IOWA                    )  
  ) ss:  
COUNTY OF POLK

On this \_\_\_\_\_ day of \_\_\_\_\_, 1989, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_

\_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the Directors of Fox Creek Owners Association executing the within and foregoing instrument to which this is attached, that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that said persons as such directors acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public for the State of Iowa

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