

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FOX CREEK

THIS DECLARATION, made on the date hereinafter set forth by the undersigned, owners of certain property in Dallas County, Iowa, hereinafter individually referred to as "Owner" and collectively as "Owners".

RECITALS

A. Owners are the owners of certain real property situation in Dallas County, Iowa, which is more particularly described as:

Lots one (1) through seventy-three (73), inclusive, in FOX CREEK, an Official Plat, Dallas County, Iowa (hereinafter referred to as the "Properties")

B. The interior roads located with the plat of Fox Creek are private roads.

C. There is some confusion as to the ownership of the private roads and the responsibility for maintenance of the same. By certain documents and conveyances filed of record, it appears that title to the private roads is vested in the trustees of the Fox Creek Benefited Water District.

D. Owners desire to provide for the ownership, maintenance, repair and replacement of the roads; and to this end, desire to subject the Properties to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the properties and each Owner thereof.

NOW, THEREFORE, Owners hereby declare that all the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Properties and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Fox Creek Owners Association, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa 1989, as amended.

Section 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 3. "Common Areas" shall mean all real property (including the improvements thereto) owned and maintained by the Association for the common use and enjoyment of the Owners.

Section 4. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject.

Section 5. "Lot" shall mean and refer to the numbered Lots shown upon and recorded Plat of Fox Creek recorded in Book 3, page 378 of the Dallas County, Iowa records with the exception of the Common Areas. In the event any part of the Properties is replatted and a subsequent Plat is recorded, then "Lot" shall refer to numbered lots shown on such replatting and such subsequent recorded Plat. In the event a platted lot is divided or split and a portion of such lot is combined with another platted lot or portion thereof so as to form one site under single ownership and upon which is constructed one house, then the portion of the divided platted lot and the other lot shall be deemed one "Lot". In the event a platted lot is divided in such a manner that two building sites result whereon two houses may be constructed and the divided portions are owned by separate persons, then each such portion shall be deemed a "Lot".

Section 6. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 7. "Owner" shall mean refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract vendees, but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the property by provision or operation of law.

Section 8. "Properties" shall mean and refer to that certain real property described in paragraph A above of the Recitals above.

ARTICLE II

PROPERTIES SUBJECTED TO THIS DECLARATION

The Properties, as defined above, shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

ARTICLE III

PROPERTY RIGHTS IN COMMON AREAS

Section 1. Common Areas. The Common Areas shall consist of the following-described real property, together with any improvements thereon and subject to any and all easements and restrictions:

Lots A, B, C, D, E, F, G, H and J, all in Fox Creek, an Official Plat, Dallas County, Iowa, (subject to rights of Dallas County, Iowa in such Lot A)

and such other property conveyed to and accepted by the Association from time to time.

Section 2. Obligations of the Association. The Association, subject to the rights of the Owner's as set forth in the Declaration, shall be responsible for the management and control of the Common Areas conveyed to it and all improvements thereon, and shall keep the same in good condition, order and repair in compliance with the standards of sound property management. The Association's obligations under this Section are for the exclusive benefit of the Owners.

Section 3. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas (subject to any reasonable and nondiscriminatory rules and regulations which may be enacted by the Association) which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

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

location size and lighting, which approval shall not be unreasonably withheld or delayed.

Section 4. Title to Common Areas. It is the intent of the Owners that the fee title to the Common Areas be conveyed to the Association, free and clear of all mechanic's liens or any liens or encumbrances whatsoever except covenants, easements, conditions and restrictions whether or not of record or created by this Declaration or granted to Dallas County.

Section 5. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, the right to enjoy the Common Areas to family members, tenants, contract purchasers, who reside on the property, guests and invitees and to no one else.

Section 6. Use of the Common Areas. The Common Areas shall be used strictly in accordance with the provisions of the Declaration and rules and regulations promulgated by the Association. No Owner shall obstruct or interfere whatever with the rights and privileges of other Owners or the Association in the Common Areas, and nothing shall be planted, altered, constructed upon, or removed from the Common Areas, except by prior written consent of the Association. If an Owner violates this section, the Association shall have the right to restore the Common Areas to the prior condition and charge and assess the cost thereof against the Owner who violates this section and such cost shall become a special assessment and a lien upon the Lot of such Owner and shall become due and payable upon demand. The Association shall have the same rights and powers to collect the cost of such restoration as provided in Article V for the collection of delinquent assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Areas, the Association or the offended Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorneys' fees as the Court may allow together with all necessary costs and disbursements incurred in connection therewith.

Section 6. Duration. The Common Areas as described in this Article III, Section 1, shall not be changed and shall continue in perpetuity except by approval of 2/3 of the membership entitled to vote.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

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

Section 2. Voting Rights. Owners are entitled to one vote for each Lot subject to assessment which they own. When more than one person holds title or ownership in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Lot. In the event of a sale of a Lot by Real Estate Contract, the Contract vendee shall be the Owner for purposes of membership in the Association. Any such person or entity who holds an interest in a Lot merely as security for the performance of the obligation shall not be a member and shall not be entitled to a vote. Any Lot which is not subject to assessment shall not entitle its Owner to a vote for that Lot.

Section 3. Board of Directors. The Owners entitled to vote shall elect a Board of Directors of the Association as prescribed by the Association's By-laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

Section 5. Notice of Member's Meetings. Unless the Articles of Incorporation or the By-laws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary, or the officer or persons calling the meetings, to each member entitled to

vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Owners, for each Lot owned within the Properties, 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: (1) monthly assessments or charges, and (2) special assessments for capital improvements and operating deficits; and (3) special assessments as provided in Article VII below. Such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. The lien for the assessments shall be prior to all other liens on a Lot, except only tax liens on the Lot in favor of any assessing unit and special district, and all sums unpaid on a first mortgage of record. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to his successors in title. **NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, A VACANT LOT AND THE OWNER THEREOF SHALL NOT BE SUBJECT TO ANY ASSESSMENTS PROVIDED FOR IN THIS DECLARATION.** A "Vacant Lot" shall mean a Lot upon which no completed or substantially completed house has been constructed.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Areas and for other purposes specifically provided herein.

Section 3. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, which the Association is required to maintain or for operating deficits which the Association may from time to time incur; provided that any such assessment shall have the assent of a majority of the votes of members entitled to vote, in person or by proxy, at a meeting duly called for this purpose.

Written notice of any meeting called for the purpose of taking any action authorized under this Section 4 shall be sent to all members not less than 5 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 4. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate which is equal for all Lots which are subject to assessment and may be collected on a monthly basis. Each Lot subject to assessment shall be responsible for a fraction of the Association's annual budget, the numerator of which shall be one and the denominator of which shall be the number of Lots which are subject to assessment.

Section 5. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessments provided for herein shall commence on November 1, 1989. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A

properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as OF the date of its issuance.

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 rate of 15% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the petition in such action, including reasonable attorney's fees. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

Section 7. Subordination of Assessments Liens. If any Lot subject to a lien created by any provision in this Declaration shall be subject to the lien of a first Mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (ii) the foreclosure of the lien of such Mortgage or the acceptance of a deed in lieu of the foreclosure by the Mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) All property which is dedicated to and accepted by a public authority; and
- (b) All Common Areas;
- (c) All Vacant Lots as defined above.

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

ARTICLE VI

MAINTENANCE

Section 1. Maintenance of Common Areas by Association. The Association shall perform the following maintenance tasks:

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

Section 2. Maintenance of Common Areas by Owner. Each owner shall maintain, including mowing, that portion of the Common Areas located between each Lot and the improved portion of the roadways.

Section 3. Responsibility for Willful or Negligent Act. In the event the need for maintenance or repair to the Common Areas or improvements located thereon is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such of maintenance or repairs shall be added to and become a part of the monthly assessments to which such Lot is subject.

ARTICLE VII

EASEMENTS AND ENCROACHMENTS

Section 1. Easement for Emergency Purposes. An easement is hereby dedicated and granted to any governmental subdivision having jurisdiction for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Common Areas.

Section 2. Easement for Ingress and Egress. Each and every owner shall have a right of ingress and egress over the portion of the Common Areas which are designated and improved as roadways. Nothing shall be done by any Owner or the Association which will impair, impede or restrict the right of access over the Common Areas to any Lot (other than temporarily for repair purposes).

Section 3. Easement for Driveway. Each Owner for the benefit of each Lot is hereby granted an easement over that portion of the Common Areas for the purpose of constructing a driveway from the paved portion of the roadway as located in the Common Areas from time to time to the property line of the Lot. The obligation for maintenance, repair and replacement of the driveway placed in such Common Areas shall be exclusively that of the Owner. Further, such Owner shall have a right to place a mailbox in the Common Areas adjacent to each such lot.

ARTICLE VIII

OTHER COVENANTS

This Declaration shall be in furtherance of and not in any way intended to repeal, replace or terminate the Restrictive Covenants of Plat of Fox Creek recorded in Book 3 at page 378 in the office of the recorder of Dallas County, Iowa as amended from time to time by amendments recorded in the office of the Dallas County, Iowa records, except as amended herein. Except for those matters as specifically addressed in this Declaration, the restrictive covenants shall remain in full force and effect. In the event of any contradiction between the restrictive covenants and this Declaration, the provisions of this Declaration shall control. The provisions of the Restrictive Covenants of Plat of Fox Creek relating to violations and enforcement rights before January 1, 1990 are hereby amended by deleting such date, and to provide that enforcement rights under the Restrictive Covenants shall remain in force so long as said Restrictive Covenants are legally binding.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, the Association, the Owners, the persons in ownership from time to time of the Lots and all parties claiming under them, shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder of Dallas County, Iowa, signed or approved in writing by a 2/3rds majority of the then Owners entitled to vote.

Section 3. Binding Effect. The Declaration shall run with the land and shall be binding upon all parties claiming under them. Invalidation of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.