

DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS

THIS DECLARATION, made this 17th day of April, 1985, by NFC Partners, a limited partnership organized and existing under the laws of the State of Illinois, 55 East Monroe, Room 3417, Chicago, Illinois 60603, hereinafter referred to as "Declarant,"

W I T N E S S E T H:

WHEREAS, Declarant has filed a plat of certain real property situated in the County of Beaverhead, State of Montana, generally referred to herein as the Foxley Minor Subdivision, in the office of the Clerk & Recorder of Beaverhead County, Montana, in Plat Book _____, at Pages _____; and

WHEREAS, Declarant is the owner of all of the real property described within the Foxley Minor Subdivision and desires to place covenants, conditions, and restrictions for the use and benefit of Declarant, as the present owner, and for all future Owners thereof,

NOW, THEREFORE, Declarant hereby declares that all of the real property within the Foxley Minor Subdivision

shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of said real property. These easements, covenants, conditions, and restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in any part of the Foxley Minor Subdivision and shall inure to the benefit of each Owner thereof.

ARTICLE I: DEFINITIONS

Section 1. "Association" shall mean and refer to the Foxley Home Owners' Association, a nonprofit, unincorporated legal entity, its successors and assigns.

Section 2. "Lot" shall mean and refer to any one of the four Lots described on the plat of the Foxley Minor Subdivision.

Section 3. "Member" shall mean and refer to every person or entity who is a member of the Association.

Section 4. "Owner" shall mean and refer to the record or equitable owner, whether one or more persons or entities, of any Lot which is a part of the Foxley Minor

Subdivision, including buyers under a contract for deed, but excluding those having interests in any Lots as security for the performance of an obligation such as sellers under contracts for deeds and mortgages.

Section 5. "Declarant" shall mean and refer to NFC Partners, a limited partnership organized and existing under the laws of the State of Illinois.

Section 6. "Water System" shall mean and refer to the well casing, pump, motor, pipes, valves, pressure tanks, gauges, electrical wiring, electrical panels, and any other devices comprising the means of serving the Lots with water.

Section 7. "Sewer System" shall mean and refer to sewer pipes, septic tanks, lift stations and pumps, existing and replacement drainfields, and any other devices comprising the means of serving the Lots with sewage disposal.

Section 8. "Common Improvements" shall mean and refer to Carmel Street, all fences, except lot boundary fences, if any, street lighting, and the park area described within the plat of the Foxley Minor Subdivision.

ARTICLE II: MEMBERSHIP

Every person or entity who is an Owner of any Lot of the Foxley Minor Subdivision shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of a Lot.

ARTICLE III: VOTING

Section 1. Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, the vote for such Lot shall be cast as such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot on any one issue.

Section 2. A quorum for the transaction of any business of the Association shall be those members comprising at least three votes. Meetings of the members shall be preceded by written notice mailed to each member at his most recent known address not less than five (5) days prior to the time appointed for a meeting; notice of any meeting may be waived by a Member provided the waiver is in writing. A written record of any meeting shall be maintained by the Association. Any issue affecting the

rights of the members shall be submitted to a vote, and the majority of those voting on any issue shall prevail.

ARTICLE IV: PROPERTY RIGHTS

Section 1. Every Member shall have a right and easement of enjoyment in and to the Water System, Sewer System, and Common Improvements, and such right and easement shall be appurtenant to and shall pass with the title to each Lot, subject to:

(a) The right of the Association to provide reasonable restrictions for the overall benefit of the Members;

(b) The right of the Association to borrow money for the purpose of installing, maintaining, or improving the Water System, the Sewer System, or the Common Improvements and in furtherance thereof to grant such security interests therein as shall not be inconsistent with the rights of the Members;

(c) The right of the Association to suspend the voting rights and the rights and easements of a Member for any period during which any assessment against his Lot remains delinquent;

(d) The right of the Association, by resolution signed by a majority of the Members, to grant easements burdening any area within the Common Improvements to any public agency, authority, or utility, and to dedicate or transfer all or any part of the area within the Common Improvements to any public agency or authority, provided such dedication or transfer is not inconsistent with restrictions or grants presently encumbering the real property within the Foxley Minor Subdivision; and

(e) The right of the Association, or its successors, to drill water wells for the benefit of the Members on any area within the Common Improvements.

Section 2. Any Member may delegate his right of enjoyment described above to any persons who reside on his Lot.

Section 3. Declarant hereby covenants that it will convey title to the Water System, the Sewer System, the area within the Common Improvements, and the existing drainfield easement to the Association free and clear of all encumbrances and liens prior to conveyance of title of any Lot. The Lots are hereby subjected to the burden

of the Water System and the Sewer System as the same presently exist or as they may be improved.

ARTICLE V: SERVICES

Section 1. There is an existing Water System serving Lots 1, 2, 3, and 4 of the Foxley Minor Subdivision. After transfer of the Water System to the Association, it shall be responsible for all maintenance and improvement of the Water System for the benefit of the Members.

Section 2. There is an existing Sewer System by which Lots 1, 2, and 3 of the Foxley Minor Subdivision are served in common, and by which Lot 4 is served separately. After transfer of the Sewer System to the Association, it shall be responsible for all maintenance and improvement of the Sewer System for the benefit of the Members.

Section 3. Within the Common Improvements Carmel Street is partially paved, and there exist a perimeter fence, street lighting, an undeveloped park, and an existing sewage drainfield. After transfer or conveyance of the Common Improvements to the Association, it shall be responsible for all maintenance and improvements of the Common Improvements.

Section 4. The Association shall establish an assessment schedule for providing the services mentioned in Article V. Such schedule may include the assessment of fees for any or all of the following:

- (a) Charges for the availability of any of the services even if not used by the Member;
- (b) Charges for hook-ups, use, or excess use;
- (c) Charges based on either a flat rate or metered use;
- (d) Special assessments for capital investments; and
- (e) Such other charges or assessments as may be required to maintain and operate the services.

Section 5. The Association shall adopt rules for administration and operation of the services mentioned in Article V, including rules for suspension of services for nonpayment of assessments, or for abuse of services.

Section 6. The Association may provide additional services only following assent of a majority of the Members and may provide such services for all or a portion of the property within the Foxley Minor Subdivision provided the costs thereof or assessments therefor

are apportioned among those Members who benefit from such additional services.

ARTICLE VII: ASSESSMENTS

Section 1. Declarant covenants, and by acceptance of a deed conveying, or by contracting to purchase, a Lot each Owner covenants, whether or not expressed in any such deed or other conveyance, to be a Member of the Association and to be subject to the terms and conditions of this Declaration, particularly with respect to the assessments of the Association. All assessments of the Association, together with interest thereon at the rate of ten percent (10%) per annum from the date of assessment until paid, and costs of collection, including a reasonable attorney's fee, shall be a charge on the land and shall constitute a lien upon the Lot against which the assessment is made. Such lien shall be deemed perfected upon filing with the Beaverhead County Clerk & Recorder an account of the assessments due, together with a correct description of the Lot to be charged with such lien, verified by affidavit; but any error or mistake in the account or description shall not affect the validity of the lien if the property can

be identified by the description. The priority of such lien shall be determined as of the time of filing with the Clerk & Recorder, and it shall be deemed subordinate to all previously recorded or filed interests. Each such assessment, together with interest thereon and all costs of collection, as mentioned above, shall also be the personal obligation of the Owner of such Lot at the time when such assessment became due. Delinquent personal obligations shall not pass to successors in title unless expressly assumed by them. The Association may establish additional rules concerning the collection of assessments.

Section 2. Assessments shall be used for the purpose of providing the services mentioned in Article V, and for payment of the Association's real property taxes, liability insurance, and any other expenses authorized by the members.

Section 3. Assessments for services shall be based on either a flat rate or on usage. Assessments for capital improvements, repairs, taxes, insurance, or other expenses, shall be fixed at a uniform rate per Lot.

Section 4. All Lots shall be subject to assessments by the Association.

Section 5. The Association shall commence initial assessments at such time as it determines appropriate. On demand a Member shall be entitled to written notice of the assessments against all Lots and the due dates of all assessments.

Section 6. Any assessment which is not paid when due shall be delinquent. The Association may bring any appropriate action to collect the amount of a delinquent assessment, interest, and the costs of collection. The lien of an assessment may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property.

ARTICLE VIII: PROTECTIVE COVENANTS

The following protective covenants are designed to provide a uniform plan for the development of Foxley Minor Subdivision. They shall constitute a covenant running with the land for each Lot.

Section 1. Each Lot shall be used only for a one-family residential home.

Section 2. No buildings shall exceed two (2) stories in height, exclusive of any basement area. All homes shall have a minimum of 1,500 square feet. All homes shall have an attached garage with a door.

Section 3. No outside toilets or privies shall be permitted. All toilet facilities must be part of the residence or garage and shall be of modern flush type and connected with a proper septic tank system.

Section 4. Sewage shall be disposed of only by and through a septic system of adequate dimensions and capacity and of a type approved by the Board of Health of the State of Montana. No sewage, waste water, trash, garbage or debris shall be permitted to drain into any body of water in or adjacent to the subdivision.

Section 5. No commercial business or trade shall be carried on upon a Lot, nor shall anything be done thereon which shall become an annoyance or nuisance in the neighborhood.

Section 6. Each Lot shall at all times be kept clean, sightly and in a wholesome condition, and no trash, litter, or junk shall be permitted to remain exposed therein.

Section 7. Houses are to be kept looking substantially the same as they now exist. All refurbishing or refurbishing, including but not limited to painting or siding, of the exterior of houses or fences shall be done in earthtones.

Section 8. All rights, privileges, interests, and obligations in favor of or resting upon the Owners by reason of this instrument shall inure to the benefit of their successors and assigns.

Section 9. Buyers recognize and take said property subject to all easements of sight and of record and particularly recognize there are reserved easements for power, telephone, water and other utilities.

ARTICLE IX: ENFORCEMENT

Section 1. The Association or any Owner shall have the option and right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration. The method of enforcement may include proceedings to enjoin the violation, to recover damages, or both. Failure by the Associa-

tion or by any Owner to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Should any lawsuit or other legal proceeding be instituted by the Association against an Owner who is alleged to have violated one or more of the provisions of this Declaration, and should the Association be wholly or partially successful in such proceeding, the offending Owner shall be obligated to pay the costs of such proceeding, including a reasonable attorney's fee.

Section 3. Invalidation of any one of the covenants or Article VIII shall in no way affect any other provision hereof, all of which shall remain in full force and effect.

ARTICLE X: TERM

The provisions of this Declaration shall be binding for a term of twenty (20) years from the date of this Declaration, after which time the Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the

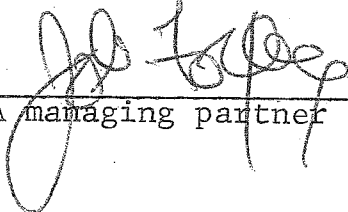
Owners of two-thirds (2/3) of the Lots has been recorded agreeing to terminate this Declaration.

ARTICLE XI: AMENDMENT

Any provision of this Declaration may be modified or amended by an instrument signed by a majority of the Members recorded in the office of the Clerk & Recorder of Beaverhead County, Montana.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first above written.

NEC Partners, a limited partnership,

By 
A managing partner

THE STATE OF ^{ILLINOIS}~~MONTANA~~)
^{COOK} : ss.
County of ~~Beaverhead~~)

On this 17 day of APRIL, 1985, before me, the undersigned, a Notary Public for the State of ~~Montana~~^{ILLINOIS}, personally appeared JOHN FOXLEY, known to me to be a Managing Partner of Foxley Minor Subdivision, the partnership that executed the within instrument,

and acknowledged to me that HE executed the same as a
Managing Partner thereof.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my Notarial Seal the day and year in this cer-
tificate first above written.

Cathy E. Fortuna
Notary Public for State of Illinois
Residing at Chicago
My Commission expires 11/22/87