

*M. Milton B. Brown  
645 Kylesmore Ct.  
Spokane, WA 99207*

COVENANTS & RESTRICTIONS

FOX RUN, FIRST SECTION

The undersigned, Donald L. Applegate and Elizabeth J. Applegate, husband and wife, Gerald S. Montgomery and Wanda K. Montgomery, husband and wife, and William H. Smith and Shirley A. Smith, husband and wife, as tenants in common, of the attached described real estate, hereby lay off, plat and subdivide said real estate described in the attached, in accordance with the plat and certificate.

All lots in this subdivision by present and future owners or occupants shall be subject to the following conditions and restrictions, which shall run with the land.

This subdivision shall be known and designated as "Fox Run, First Section".

The streets as designated on the plat and not heretofore dedicated, are hereby dedicated to the Boone County Commissioners for public use.

GENERAL CONDITIONS AND RESTRICTIONS

1. No lot in Fox Run as recorded shall be further subdivided to create additional building sites.
2. No lot shall be used except for single family residential purposes.
3. No dwelling shall be permitted on any lot unless the ground floor area of the main structure, exclusive of one story open porches and garages, shall be not less than 2200 square feet for a one story dwelling, nor less than 1700 square feet for a dwelling of more than one story, exclusive of open porches and garages; two story dwellings shall contain at least a total of 2200 square feet on both floors.
4. No building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum building setback line shown on the plat. No building shall be located nearer than 20 feet to a side yard line, nor nearer than 25 feet from the rear yard line, except that no building shall be located within any easement as shown on the plat.
5. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
6. No oil drillings, oil development operations, oil refining, quarries or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.
7. No lot shall be used or maintained as a dumping ground for rubbish, trash or garbage.
8. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any lot at any time as residence--either temporarily or permanently.

4085

JUN 29 10 15 AM '88

RECORDED IN THE COUNTY OF BOONE, INDIANA 46052  
INDEXED IN THE COUNTY OF BOONE, INDIANA 46052  
BOOK 108 PAGE 2889

9. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. Any household pets must be fenced, leashed or otherwise contained and restrained so as not to be a nuisance to the neighborhood.

10. No individual sewage disposal system shall be permitted on any lot without prior written approval of the Boone County Health Department and will be located and constructed in accordance with requirements, standards, and recommendations of the Indiana State Board of Health. No well or private water supply system shall be located nearer to a lot line than 25 feet. Separation of wells and septic systems shall meet State Board of Health standards and shall be approved by the Boone County Health Department prior to installation.

11. No fence, wall, hedge or shrub planting which obstructs the sight lines at elevations between two and six feet above roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street property lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway pavement. No driveway shall be located within 40 feet of the intersection of two street lines.

12. Each lot in the subdivision shall be required to install a dusk to dawn light in the front yard of home. Each such lighting fixture shall have a bulb of maximum wattage approved by the developer to insure uniform illumination on each lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day.

13. No camper, recreation vehicle, boat, construction equipment or materials shall be stored outside the main dwelling or garage on any lot in the subdivision.

14. The storage and repair of inoperative motor vehicles, boats, campers etc. nor the material alteration of such vehicles, shall be permitted on any lot within this subdivision unless located entirely within a garage constructed within the requirements of these covenants.

15. Driveways on each lot within the subdivision shall be paved with a concrete or asphalt surface.

16. The use of open-loop ground water heating and cooling systems employing the pumping and discharge of ground water shall not be installed on any lot within the subdivision.

#### DRAINAGE CONDITIONS AND RESTRICTIONS

17. There are strips of ground marked "Drainage Strips" shown on the plat which are hereby reserved for public, sewers, drains, and surface drainage swales. Purchasers of lots in this subdivision shall take their titles subject to the easements hereby created and subject at all times to the rights of proper authorities to service the drainage facilities and the easements hereby created, and no permanent structure of any kind, and no part thereof, except fences, shall be built, erected or maintained on said "Drainage Strips".

18. All lots within the Fox Run subdivision are included in the Fox Run Legal Drain which was established by the Boone County Drainage Board on ~~Nov. 11th 1988~~ . Each lot in the Fox Run subdivision is subject to an assessment for the costs of maintaining the storm sewers, surface drainage knoles, surface drainage swales and subsurface drainage tiles located within the boundaries of the Fox Run development. The assessment is payable with the property owner's semi-annual property tax payment and is a lien against the lot.

19. Perimeter foundations drains, sump pump drains, downspout drains and perimeter drains around septic systems shall be outletted into the 4 inch drainage exist provided to each lot by the developer. At no time shall such drains be outletted into roadside ditches if existing, or to the street right-of-way or pavement area. Underground drainage tile encountered during installation of a septic system, water line, sewage line, electrical or gas service shall be reinstated by immediately repairing the drainage tile to its original condition. Each owner of a lot in Fox Run shall be responsible for the cost of repairs to drainage tile located on the lot.

20. Drainage swales, open ravines, or natural streams, shall not be filled, dug out, cut or be otherwise altered without the permission of the Boone County Drainage Board. Property owners shall retain these areas in a natural or pre-existing condition. A property owner found to be altering a subdivision drain or swale without such written approval shall be subject to legal action initiated by the Drainage Board attorney.

21. In the event that storm water drainage from any lot or lots flows across another lot, provision shall be made by the owner of such lot to permit such drainage to continue without restriction or reduction, across the downstream lot and into the natural drainage channel or course, although no specific drainage easement for such flow may be provided on the plat of Fox Run subdivision. To the extent not maintained by the Boone County Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the owner of the lot upon which such easements are located such that water from any adjacent lot shall have adequate drainage along such swale.

#### ARCHITECTURAL CONTROL COMMITTEE

22. The Architectural Control Committee is composed of \_\_\_\_\_ members, appointed by the developer. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.

23. The Architectural Control Committee approval or disapproval as required in these covenants shall be in writing. In the event the Committee or its designated representative fails to approve or disapprove within ten (10) days after plans and specifications including exterior colors and finishes have been submitted to it, or in any event, if no suit to enjoin the construction has commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

24. No building shall be erected, placed or altered on any lot until the construction plan and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevations. No fence or wall or mail box and post shall be erected, placed, or altered on any lot unless approved by the Architectural Control Committee.

25. No building shall be erected, altered or placed on any lot, other than one detached single family dwelling. Unless otherwise approved by the Architectural Control Committee as to use, location and harmonious design, no attached or detached garage, storage building, basketball backboard, other fixed game, play structure or any recreational facility shall be erected on any lot. In no case shall open or open-sided carports be permitted.

26. Swimming pools and privacy fences shall be approved by the Architectural Control Committee as to design appearance and location. In no case shall a pool be located nearer the street than the rear line of the main dwelling. Pools located entirely above ground shall not be permitted.

27. No satellite receiving stations or downlink shall be permitted on any lot. Antennas, towers or masts shall not be permitted outside the main dwelling unless first approved by the Architectural Control Committee.

28. Storage tanks located either above or below ground nor outside trash burners shall not be permitted on any lot.

#### HOMEOWNERS ASSOCIATION

29. At such time as 90 percent of the lots are sold, the developer shall form or cause to be formed a Fox Run Homeowners Association consisting of 100 percent of the then recorded owners of the lots. In the event that the developer fails to comply with this covenant, the then owners of the lots shall form this association and shall take title to the land with this responsibility. The purpose of this association shall be to annually elect a board consisting of three lot owners within Fox Run. Each lot within Fox Run shall have one vote in this election. The responsibility of the board shall be:

- A. To perform the functions of the Architectural Control Committee, which shall be dissolved,
- B. Assess annual fees to each lot for, and cause the Boulevard Entrance to the subdivision to be maintained in an attractive appearance.
- C. See to the general well being of the subdivision.
- D. Conduct the annual election of the board and assess annual fees to each lot to cover expenses incurred.

ENFORCEMENT

30. All costs and fees of litigation resulting from violation of these covenants shall be the financial responsibility of the lot owner or owners found to be in violation.

31. These restrictions are hereby declared to be covenants running with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded after which time said covenants shall be automatically extended for successive periods of ten years, unless at any time after 15 years following the date of recordation, an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.

32. Enforcement shall be by proceeding at law or in equity against the person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages. Invalidation of any one of these covenants by judgement or court order shall in no way affect any of the other provisions which shall remain in full force and effect. Failure to enforce any specific requirement of the covenants shall not be considered as a waiver of the right to enforce any covenant herein, thereafter.