

**FOREST CREEK GOLF CLUB
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by Forest Creek Holding Company, L. L. C., a North Carolina limited liability company, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of all of certain real property in the County of Moore, State of North Carolina, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Declarant is developing the above-described Property for single-family residential use as a portion of multi-use development to be know as Forest Creek and in connection therewith Declarant wishes to ensure the proper use, development and improvement of such Property so as to Protect the Owners and Occupants of Lots therein by restricting the use of all Lots for purposes consistent with the overall development of Forest Creek in an attractive and desirable harmonious and appropriately located permanent improvements.

NOW, THEREFORE, Declarant hereby declares that all of the Property described above 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 real property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to the FOREST CREEK PROPERTY OWNERS ASSOCIATION, INC., its successors and assigns. The Association shall be a not-for-profit corporation formed under the laws of the State of North Carolina by or at the direction of Declarant and having such by-laws as may be determined by Declarant to be appropriate to carry out the purposes of the Association consistent with the requirements of this Declaration. Until such time as the Association is formed, the Declarant shall carry out the functions of the Association as set forth in this Declaration.

Section 2. "Building" shall mean and include, but shall not be limited to, both the main portion of a structure built for permanent use and all projections of or extensions thereof, including, but not limited to, swimming pools, patios, garages, outside platforms, canopies, decks, porches and outbuildings.

Section 3. "By-Laws" shall mean the by-laws of the Association as they now or may hereafter exist.

Section 4. "Common Area" shall mean all real property located within the Property owned or maintained or to be owned or maintained by the Association and specifically designated by Declarant as "Common Area," including but not limited to areas shown on any recorded plat of the Property as "Common Area" or as beautification easements, together with such facilities and improvements as may be constructed thereon, for the common use and enjoyment of the members of the Association. The initial portions of the Common Area to be owned by the Association may be conveyed to the Association by Declarant as such time as the Association is able to maintain them but in no event prior to January 1, 1997. The Common Area also shall be deemed to include such additional property as Declarant may from time to time designate by filing a declaration to such effect in the public records of Moore County, North Carolina and, if appropriate, by conveying the same to the Association. Further, the Common Area shall include other real or personal property acquired by the Association in accordance with its bylaws

if the same is designated as a part of the Common Area. Common Area may include any real property, with facilities and improvements constructed thereon, which is located within the Forest Creek development and which benefits the Property.

Section 5. “Declarant” shall mean and refer to Forest Creek Holding Company, L. L. C., its successors and assigns.

Section 6. “Improvement” shall mean any structure or construction of any kind that alters the physical appearance of a Lot, including but not limited to, buildings, outbuildings, roads and driveways (other than those dedicated to public use), parking areas, fences, screening walls, retaining walls, loading areas, signs, utilities, lawns, landscaping and walkways located on Lots, together with any construction work or treatment done or applied to a Lot in connection therewith.

Section 7. “Lot” shall mean and refer to any numbered plot of land shown upon any recorded subdivision plat or development plan of the Property.

Section 8. “Member” shall mean and refer to every person or entity who holds membership with voting rights in the Association.

Section 9. “Occupant” shall mean any person or entity who occupies, or who has the right to occupy, all or a part of any Lot which is a part of the Property, whether such occupancy or right of occupancy is based on ownership, lease, license or easement.

Section 10. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, or any portion thereof, which is a part of the Property, but excluding those having such interest merely as security for the performance of any obligation.

Section 11. “Property” shall mean and refer to that certain real property described in Exhibit A, as well as any property added under the provisions of Article XI, Section 5.

Section 12. "Red-Cockaded Woodpecker" shall mean the Red-Cockaded Woodpecker (Picooides Borealis) which is an endangered species protected by federal law and which inhabits the property.

Section 13. "Village Association" shall mean and refer to the FOREST CREEK VILLAGE HOME OWNERS ASSOCIATION, INC., its successors and assigns. The Village Association shall be a not-for-profit corporation formed under the laws of the State of North Carolina by or at the direction of Declarant and having such by-laws as may be determined by Declarant to be appropriate to carry out the purposes of the Association consistent with the requirements of this Declaration. Until such time as the Village Association is formed, the Declarant shall carry out the function of the Association as set forth in this Declaration.

Section 14. "Village Home Lot" shall mean and refer to any numbered lot so designated upon any recorded subdivision plot or development plan of the Property.

ARTICLE II PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment.

Every owner shall have a right and easement of enjoyment in and to those portions of the Common Area owned by the Association which shall be appurtenant to and shall pass with the title to every Lot, whether or not referred to in any deed conveying title to any Lot, subject to the following provisions:

- (a) The right of the Association to suspend the voting rights of an Owner or Occupant for any period during which any assessment against his lot remains unpaid.
- (b) The right of the Association to grant easements and rights of way across or beneath all or any part of the Common Area to any public agency, authority or utility.
- (c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and to mortgage, pledge or

otherwise hypothecate any or all of its real or personal property as security for any such money borrowed.

Section 2. **Leases.**

Any permitted lease agreement between an Owner and a lessee for the lease of such Owner's lot shall provide that the term of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, as well as the Articles of Incorporation and By-laws of the Association, and that any failure by the Lessee to comply with the terms of such document shall be a default under the terms of the Lease.

Leases of Village Home Lots shall be in writing and shall be in conformance with such Rules and Regulations as may be established by the Association. Leases of Lots other than Village Home Lots shall be in writing, shall be for a term of not less than six (6) months, and shall not provide for the lease of less than the entire lot and all improvements located thereon. A copy of all such leases shall be delivered to the Association immediately following execution by the parties.

Section 3. **Delegation of Use.**

Any Owner may delegate, in accordance with the applicable by-laws of the Association, his rights of enjoyment of the Common Area and facilities to the members of his family, guests, tenants, or contract purchasers, provided that every such delegee shall reside upon the property or be accompanied by the Owner.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

A. **Forest Creek Property Owners Association, Inc.**

Section 1. Every Owner of a Lot which is subject to a lien for assessments shall be a Member of the Association. An Owner may assign in writing his membership and voting rights to an Occupant upon such terms as the Association may prescribe. Otherwise, membership and voting rights shall be appurtenant to, and may not be separated from,

ownership of any Lot which is subject to assessment; provided, however, that no such assignment shall affect the obligation of the Owner to pay the assessment described in Article IV hereof.

Each Owner of a Lot shall be entitled to voting rights consisting of one vote for each Lot, except as set forth below. When more than one person holds an interest in any Lot, all such persons shall be members. The vote or votes for such Lot shall be exercised as they among themselves determine, but in no event shall multiple Owners of a Lot be entitled to collectively cast more than the one vote for that Lot.

The Association shall have two classes of voting membership: Class A members shall be all Owners other than the Declarant, which shall be a Class B member. The Class B member shall be entitled to one vote for each lot owned by it, plus one vote for each vote held by a Class A member. The total vote of the Association's members shall consist of the sum of the votes of all Class A members and the votes of the Class B member, with each Class A vote being equivalent to one Class B vote. Class B membership may, at the option of the Class B member, be converted at any time to Class A membership.

Section 2. **Board of Directors.**

The business and affairs of the Association shall be managed by a Board of Directors of not less than three (3) directors, such of whom shall be elected by a majority vote of the Members of the Association in accordance with its By-Laws. Directors may be but shall not be required to be members of the Association. No Director shall incur any liability whatsoever to any member, owner or occupant for any actions taken by such Director in good faith and within the scope of his or her authority in implementing or enforcing any provision of this Declaration. At such time as the Declarant no longer controls the majority of the votes of the Association, the Board of the Association shall thereafter have representatives from both Village Home lots and those lots not designated as Village Home lots.

B. Forest Creek Village Home Owners Association, Inc.

Section 1. Every Owner of a Village Home Lot shall be a Member of the Forest Creek Village Home Owners Association, Inc. (referred to below as the Village Association). An Owner may assign in writing his membership and voting rights to an Occupant upon such terms as the Village Association may prescribe. Otherwise, membership and voting rights shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment; provided, however, that no such assignment shall affect the obligation of the Owner to pay the assessment described in Article IV hereof.

Each Owner of a Village Home Lot shall be entitled to voting rights consisting of one vote for each Lot, except as set forth below. When more than one person holds an interest in any Lot, all such persons shall be members. The vote or votes for such Lot shall be exercised as they among themselves determine, but in no event shall multiple Owners of a Village Home Lot be entitled to collectively cast more than the one vote for that Lot.

The Village Association shall have two classes of voting membership: Class A members shall be all Owners other than the Declarant, which shall be a Class B member. The Class B member shall be entitled to one vote for each Village Home Lot owned by it, plus one vote for each vote held by a Class A member. The total vote of the Village Association's Members shall consist of the sum of the votes of all Class A Members and the votes of the Class B member, with each Class A vote being equivalent to one Class B vote. Class B membership may, at the option of the Class B member, be converted at any time to Class A membership.

Section 2. **Board of Directors.**

The business and affairs of the Village Association shall be managed by a Board of Directors of not less than three (3) directors, each of whom shall be elected by a majority vote of the Members of the Village Association in accordance with its By-Laws. Directors may be but shall not be required to be

members of the Village Association. No Director shall incur any liability whatsoever to any member, owner or occupant for any actions taken by such Director in good faith and within the scope of his or her authority in implementing or enforcing any provision of this Declaration.

ARTICLE IV COVENANT FOR MAINTENANCE AND ASSESSMENTS

A. Forest Creek Property Owners Association, Inc.

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established as necessary and collected as hereinafter provided. The annual 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. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fee is due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Lots owned by the Declarant shall be subject to a lien for assessments, but the total amount of the assessments which Declarant shall be obligated to pay annually shall be the lesser of (1) the number of Lots owned by the Declarant times the total assessments due for each Lot owned by an Owner other than Declarant; or (2) the difference between the total assessments paid by all Owners other than Declarant and the total amount of funds to be expended annually, as determined by the Board of Directors of the Association, to carry out the purposes for which assessments are to be levied and collected pursuant to this Declaration.

The Declarant, pursuant to the plan of development for the subdivisions, shall construct, or cause to be constructed, and, if deemed appropriate or necessary by Declarant, dedicated to public use, necessary streets and roads to the Lots and shall provide, or cause to be provided, either in the streets abutting a Lot or in reserved utility easements, water, sewer, electric, and telephone service to each Lot. The initial construction of such streets and the initial providing of such utility services to Lots shall be accomplished without cost or expense to the Association and shall not be subject to the lien and assessments rights described herein.

Section 2. **Purpose of Assessments.**

(a) The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners and Occupants of the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose or for maintenance of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, maintenance of streets, entrance areas and beautification easements which are part of the Common Area, the maintenance of water and/or sewer lines in and upon the Common Area, the procurement and maintenance of insurance in accordance with the by-laws, the payment of charges for any street lights located on the Property, the employment of attorneys and accountants to represent the Association when necessary, and such other needs as may arise.

(b) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the by-laws of the Association. As monies for any assessment are paid unto the Association by any Lot Owner, the same may be commingled with monies paid to the Association by the other Lot owners. Although all funds and

common surplus, including other assets of the Association, and any increments thereto or profits derived there from shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When a Lot Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Property.

Section 3. Annual and Special Assessments.

(a) The maximum annual assessment for the calendar year 1997 shall not exceed \$240 for each unimproved Lot and \$600 for each improved Lot.

(b) The maximum annual assessment for the calendar year commencing January 1, 1998 and for each calendar year thereafter shall be established by the Board of Directors may be increased by the Board of Directors without approval by the membership by an amount not to exceed fifteen (15%) percent of the maximum annual assessment of the previous year.

(c) The maximum annual assessment for the calendar year commencing January 1, 1998 and for each calendar year thereafter may be increased without limit by a vote of two-thirds (2/3) of the vote by the Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) In addition the annual assessments authorized above, the Association may levy, at any time during any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction, reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal

property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes cast by the Members who are voting in person or by proxy at a meeting duly called for this purpose, in accordance with the procedure set forth in Section 4 below.

Section 4. **Notice and Quorum for any Action authorized under Section 3.**

Written notice of any meeting called for the Purpose of taking any action authorized under this Article shall be sent to all Members not less than seven (7) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty (50%) percent of the votes of the 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 thirty (30) days following the preceding meeting.

Section 5. **Date and Commencement of Annual Assessments: Due Dates.**

The annual assessments provided for herein shall be collected on an annual basis and shall commence as to each Lot on the first day of the first month following the conveyance of that Lot to an Owner by Declarant, with the assessment for the first year of ownership to be prorated according to the portion of the year during which the Lot is owned by the Owner. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment to every Owner subject thereto. The due date shall be established by the Board of Directors.

Section 6. **Effect of Nonpayment of Assessments Remedies of the Association.**

Any annual or special assessment not paid within thirty (30) days after the due date shall bear interest from the due date at an annual rate of eight (8%) percent. The Association

may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of Deeds of Trust, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by abandonment of the Lot, nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

Section 7. **Subordination of the Lien to Mortgages.**

The liens provided for herein on any Lot shall be subordinate to the lien of any first mortgage or deed of trust on such Lot, but only as to assessments due and payable prior to a Foreclosure sale. Sale or transfer of any Lot shall not affect the assessment lien or liens provided herein.

B. **Forest Creek Village Homeowners Association, Inc.**

Section 1. **Creation of the Lien and Personal Obligation of Assessments.**

Each Owner of any improved Village Home Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Village Home Owners Association, Inc. (referred to below as the Village Association) an annual assessment or charge.

Section 2. **Purpose of Assessments.**

(a) The assessments levied by the Village Association shall be used exclusively for maintenance of grounds and landscaping of improved Village Home Lots.

(b) All monies collected by the Village Association shall be treated as the separate property of the Village Association. As monies for any assessment are paid to the Village

Association by any Lot Owner, the same may be commingled with monies paid to the Village Association by the other Lot Owners. Although all funds and common surplus, including other assets of the Village Association, and any increments thereto or profits derived there from shall be held for the benefit of the Members of the Village Association, no Member of the Village Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When a Lot Owner shall cease to be a Member of the Village Association by reason of his divestment of ownership of his Lot, by whatever means, the Village Association shall not be required to account to such Owner for any share of the fund or assets of the Village Association which may have been paid to the Village Association by such Owner, as all monies which any Owner has paid to the Village Association shall be and constitute an asset of the Village Association which may be used in the operation and management of the Property.

Section 3. **Annual and Special Assessments.**

(a) The maximum annual assessment for the calendar year 1997 shall not exceed \$1200.

(b) The maximum annual assessment for the calendar year commencing January 1, 1998 and for each calendar year thereafter shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed fifteen (15%) percent of the maximum annual assessment of the previous year.

(c) The maximum annual assessment for the calendar year commencing January 1, 1998 and for each calendar year thereafter may be increased without limit by a vote of two-thirds (2/3) of the vote by the Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) The Assessments provided for herein are in addition to those to be paid by each Village Home Lot Owner to the Forest Creek Property Owners Association, Inc., as provided previously herein.

Section 4. **Date and Commencement of Annual Assessments: Due Dates.**

The annual assessments provided for herein shall be collected on an annual basis and shall commence as to each Lot on the first day of the first month following the conveyance of that Lot to an Owner by Declarant, with the assessment for the first year of ownership to be prorated according to the portion of the year during which the Lot is owned by the Owner. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment to every Owner subject thereto. The due date shall be established by the Board of Directors.

Section 5. **Effect of Nonpayment of Assessments Remedies of the Village Association.**

Any annual or special assessment not paid within thirty (30) days after the due date shall bear interest from the due date at an annual rate of eight (8%) percent. The Village Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of Deeds of Trust, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by abandonment of the Lot, nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

Section 6. **Subordination of the Lien to Mortgages.**

The liens provided for herein on any Lot shall be subordinate to the lien of any first mortgage or deed of trust on such Lot, but only as to assessments due and payable prior to a Foreclosure sale. Sale or transfer of any Lot shall not affect the assessment lien or liens provided herein.

ARTICLE V
ARCHITECTURAL CONTROL

Section 1. **Purpose.**

The external design, appearance, use, locating and maintenance of the Property and of improvements thereon shall be regulated in the manner hereafter described so as to preserve the enhanced values and to maintain a harmonious relationship among structures and the natural vegetation and topography of the Property.

Section 2. **Conditions**

No improvements, alterations, repairs, change of paint colors, plantings, excavations, changes in grade or other work which in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state shall be made or done without the prior written approval of the Architectural Committee established pursuant to this Article. No improvements or other structure shall be commenced, erected, maintained, altered or removed without the prior written approval of the Architectural Committee. The Architectural Committee may adopt and make available to owners a set of regulations relating to Improvements, and such regulations shall be deemed to be a part of these Restrictions.

Section 3. **Architectural Committee.**

The Association shall designate three or more persons to serve as an Architectural Committee, for the express purpose of insuring compliance with the provisions of this Article. In the event any member of the Committee should, in the Association's opinion, for any reason cease to be able to perform his or her duties properly, a replacement shall be selected by the Association.

Section 4. **Design Approval Process.**

(a) The written approval required by Section 2 above shall be obtained by submitting to the Architectural Committee, in the manner hereinafter set forth, building plans,

specifications and plot plan showing the proposed type of construction, exterior design and location of such residence (or other improvement) for review and approval as to compatibility, conformity and harmony of external design and consistency of plan with existing residence (and improvements) other lots in the subdivisions and as to the location of the structure with respect to topography and finished ground elevation. In addition, a landscape development plan or recreational development plan must likewise be submitted and approved by the Architectural Committee, and shall show the location of proposed recreational facilities, fences, boundary or patio walls, hedges, shrubbery, walkways, driveways, parking areas (which must provide for covered parking for not less than two automobiles) and important trees. The plans and drawings submitted shall have been prepared in a 1/8th scale or larger, and shall contain, at a minimum:

- (1) front, rear and side elevations
- (2) floor plan
- (3) the area of heated floor space
- (4) exterior building material to include manufacturer, color and texture
- (5) exterior trim color
- (6) roofing material and color
- (7) site plan showing (on a scale of one to fifty or larger) foundation of all structures, walks, driveways, fences and drainage plans
- (8) landscaping plan of front yard, side yards and rear yards
- (9) estimated completion dates of all construction and improvements
- (10) special treatment required to alleviate problems anticipated due to changes in topography.

(b) In order to prevent duplication of buildings or improvements to be constructed in this subdivision and to carry out the intent of this Declaration, the Committee is vested with full authority to approve or disapprove plans for the construction of any building or improvement with its major features so similar to any existing building or improvements as to be considered a substantial duplication thereof, in the

discretion of the Committee. The Architectural Committee shall further have the right to refuse to approve any plans or landscape or recreational plans, taking into consideration such factors as it may deem appropriate, including but not limited to the suitability of the proposed building or other improvements, the materials of which it is to be built, whether or not it is in the harmony with the surroundings, what effect it will have on other residences already constructed and what effect it will have on the outlook from adjacent or neighboring property.

(c) In the event that the Committee fails to approve or disapprove plans which comply with the requirements of subsection (a) above within forty-five (45) days after they have been submitted to it, approval of the Architectural Committee will be conclusively presumed, and this covenant will be deemed to have been fully complied with. The term "building or improvement" shall be deemed to include, though not be limited to, the erection, placement or alteration of any wall, fence, driveway, parking area, mailbox, light or recreational amenity, including but not limited to swimming pools.

(d) Application for approval as required herein shall be made to the Committee at the principal office of Forest Creek Holding Company, L. L. C., c/o Executive Secretary, 200 Meyer Farm Drive, Pinehurst, NC , 28374, or such other address as Declarant or the Committee may hereafter designate, and at the time such application is made, the building plans, specifications, plot plans and landscape or recreational plans shall be submitted in duplicate, with a nonrefundable review fee to be established from time to time by the Committee. During any year, the Committee may increase the review fee by no more than 10% of the amount of the fee charged during the previous year if it finds it necessary in its reasonable discretion to do so. One copy of such plans and specifications will be retained by the Committee and the other copy will be returned to the applicant with approval or disapproval plainly noted thereon.

(e) Upon the approval by the Committee of any proposed construction or alteration, the Committee shall issue to the applicant a written permit. No construction or alteration shall be carried on until and unless such permit is obtained.

(f) The Architectural Committee is authorized, upon a unanimous vote of all its members, to approve or ratify in the construction or alteration of any building or improvement minor violations of any provisions of these restrictions relating to set-back requirements, location, size of improvements or similar matters if in the opinion of all the members of the Committee, such approval or ratification shall be necessary to prevent undue hardship, and to waive or vary the provisions of this declaration relating to use of the Property if, in the opinion of all the members of the Architectural Committee, such waiver of variance would not be inconsistent with the intent and purpose of this Declaration. The approval or ratification by the Committee in accordance with this paragraph shall be in recordable form and shall be binding on all persons.

(g) All residence buildings must be completed in a workmanlike manner and the construction site must be kept clean and free of debris at all times. Damage to any street, curve, gutter or sidewalk occurring during construction of any improvement on a lot shall be promptly repaired by the Owner or his builder or contractor. Should the Owner fail to promptly repair or have repaired any such damage, the Association shall have the right to do so, and the cost of such repairs may be immediately assessed against and collected from the Owner in the same manner as other assessments allowed under this Declaration.

(h) In the event construction of any building or improvement is commenced on any Lot in this subdivision and work is abandoned for a period of thirty (30) days or longer, without just cause shown, or should any building or improvement remain unfinished for a period of one (1) year from the date construction began, without just cause shown, then and in either event the Architectural Committee shall have (1) the authority to complete the structure at the expense of the Owner and shall have a lien against the Lot and all improvements to the extent of any monies expended for said completion, but said lien shall at all times be subordinate to the lien of any prior recorded mortgage or mechanic's lien (but the Committee shall have the right to contest the validity and amount of such liens) or (2) the authority to remove the improvements from the Lot, and the expense of said removal

shall constitute a lien against the Lot, which lien shall be subordinate to the lien of any prior recorded mortgage or mechanic's lien. Said liens shall be foreclosed in the same manner as the procedure set forth in Article IV for the foreclosure of liens for assessments. No action shall be taken under this paragraph without notice to the holder of any Deed of Trust on the property or any other lien holder of the proposed action to be taken and giving ten (10) days in which to allow the Owner to show cause, if any he can, why the Architectural Committee should not take action under this paragraph.

(i) Each Lot Owner and his contractor, subcontractor, and other agents shall take full responsibility for controlling surface water run-off and sediment, which may adversely affect any other property. Plans to control said run-off and sediment must be submitted to the Architectural Committee, along with other required plans. Notwithstanding any plans which may be submitted, the Architectural Committee may make additional reasonable requirements of Lot Owners to prevent or control excess run-off or sediment during construction or thereafter. However, responsibility for the surface water run-off will be that of the Lot Owner and not that of the Architectural Committee.

(j) Each Lot owner shall be responsible for furnishing to his general contractor any rules and regulations adopted by the Association relating to security gates, speed limits, weekly site clean-up requirements and other similar matters.

ARTICLE VI USE AND IMPROVEMENTS RESTRICTIONS

Section 1. Use of Property.

Each Lot and the residence and improvements thereon and the Common Area and facilities shall be for the following uses and subject to the following restrictions.

(a) All buildings and the Common Area and facilities shall be used for residential and related common purposes. Each Lot may not be subdivided and shall be used as a single-family residence and for no other purpose, except that the

Declarant and others approved and designated by Declarant may use one or more Lots or residences for offices and/or model residences for sales purposes. All Village Homes constructed shall contain a minimum of 1800 square feet of enclosed heated living space for one-story residences and a minimum of 2000 square feet of heated living space for two-story residences. All other residences constructed shall contain a minimum of 2200 square feet of enclosed heated living space for one-story residences and a minimum of 2400 square feet of enclosed heated living space for two-story residences. All residences shall be set back from the front, side and rear property lines at least the minimum number of feet required by the set back lines shown on the recorded subdivision plat of the Property and/or as required by applicable zoning laws or subdivision regulations.

(b) Nothing shall be kept and no activity shall be carried on in any building or residence or within the Common Area and facilities, which will increase the rate of insurance, applicable to residential use, for the property or the contents thereof. No Owner shall do or keep anything nor cause or allow anything to be done or kept in his residence or within the Common Area and facilities which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Area and facilities.

(c) No immoral, improper, offensive or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

(d) Nothing shall be done in or to any residence or in, to, or upon any of the Common Area and the facilities which will impair the structural integrity of any building, residence, or portion of the Common Area and facilities or which would

impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

(e) No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any part of the Property, except that the Declarant or those designated by Declarant may use any Lot or residence for sales or display purposes.

(f) No Owner shall display nor cause or allow to be displayed to public view any sign, placard, poster, billboard, or identifying name or number upon any residence, building or any portion of the Common Area and facilities, except as may be allowed by the Architectural Committee of the Association.

(g) No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area and facilities except at the direction or and with the express written consent of the Association.

(h) The Common Area and facilities shall be used only for the purposes which they are intended and reasonably suited and which are incident to the use and occupancy of the residences, subject to any rules or regulations that may be adopted by the Association pursuant to its by-laws.

(i) Any camper, boat, or trailer or any vehicle or item not in daily use placed upon any Lot by the Owner must be stored at all times behind the closed doors of the garage for such Owner's residence no such item(s) shall be placed elsewhere on any Lot on which there shall not be a garage except for brief periods reasonably necessary to load or unload them, and no repairs to such items shall be conducted upon any Lot except in the garage.

(j) Any and every container used to store garbage, refuse and debris until collected by public or private waste disposal service shall be stored on each lot so that it shall be out of sight from all streets.

(k) All fuel oil and natural gas tanks or containers shall be buried underground in a manner consistent with normal safety precautions and environmental regulations.

(l) No animals shall be kept, maintained or quartered on any Lot or any portion of the Property except that cats, dogs, rabbits, hamsters, or caged birds may be kept in reasonable numbers as pets for the pleasure of the occupants. The Architectural Committee is authorized (but not required) to issue reasonable rules for the protection of all Owners relating to the number of pets, which may be kept on any numbered Lot. All pets shall be kept in fenced areas or on leashes, and each Owner shall be responsible for the prompt disposal of all excrement or debris of any kind resulting from any pet owned or maintained by such Owner on his property.

(m) Property Owners will be required to keep tall shrubbery or hedges trimmed to reasonable limits so that air circulation or views from surrounding property will not be adversely affected and so traffic hazards will not be created. Further, all Owners shall be required to maintain their Lots and any improvements thereon at all times in a neat, attractive and presentable manner so as not to detract from the overall appearance of the subdivision or the surrounding Property. Vegetable or ornamental gardens and sandboxes or other children's play equipment shall be located only in the rear of any Lot.

(n) Provisions must be made by the property owners for off-street parking of their own cars and those belonging to guests, invitees and employees, as the parking of such cars on street rights-of-way for long periods of time during the day or night will not be permitted.

(o) No motorcycles, motorbikes, minibikes, go-carts or other similar vehicles shall be operated on any Lot or on any Common Area. This prohibition does not apply to golf carts.

(p) No mailboxes shall be placed upon the lots in the development, but arrangements will be made for a pick-up and delivery site at the guardhouse until the Clubhouse is completed, at which time the pick-up and delivery will be at the Clubhouse.

(q) No outside antennae and no satellite dishes larger than eighteen (18) inches in diameter shall be allowed on any Lot. The owner must construct an enclosure for any such satellite dish, so as to screen it from view from all streets and golf courses, and the Architectural Committee must approve both the position and the encloement of the satellite dish.

(r) No tree having a trunk diameter of six (6) inches or more shall be removed or relocated on any Lot without prior written approval of the Architectural Committee.

(s) No tennis courts shall be constructed on any Lot subject to this Declaration.

(t) No chain link fences shall be constructed on any Lot subject to this Declaration.

Section 2. **Quiet Enjoyment.**

No obnoxious or offensive activity, including activity, which creates loud or offensive noises, shall be carried on upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to residents within the Property.

Section 3. **General Exterior of Improvements.**

Architectural styles of the improvements are not restricted, but the plans must illustrate superior design and require quality materials and workmanship. Inferior design and materials will not be approved. The Architectural Committee, in its sole discretion, shall determine whether or not a particular design or materials choice is in keeping with the purposes referred to in Article V above.

**ARTICLE VII
SPECIAL RESTRICTIONS REGARDING
WOODPECKERS**

Section 1. All Property subject to this Declaration is hereby declared to be a bird sanctuary for the Red-Cockaded Woodpecker.

Section 2. The Red-Cockaded Woodpecker is an endangered species protected by federal law. It lives in mature pine forest and required bloom pine trees one hundred years or older for cavity sites which are used for nesting and roosting. Active cavity trees located on the Property may not be destroyed or damaged. Permission to remove an inactive cavity tree must be obtained from the Division of Law Enforcement, U.S. Fish and Wildlife Service, Raleigh, North Carolina. Dead cavity trees may not be removed from the Property for at least six months following the death of such trees. Declarant is advised that all trees located on the Property serving as cavity trees for the Red-Cockaded Woodpecker have been marked with numbered aluminum tags and metal signs stating "Endangered Species Site, Red-Cockaded Woodpecker; Do Not Cut Tree", but it is the responsibility of the lot owner to determine if cavity trees are located on his or her lot.

Section 3. All driveways and residences shall be constructed and located so as to minimize the loss of pine trees over ten inches in diameter at breast height and flat topped pines where possible. Other pine trees over four inches in diameter at breast height and over thirty years old will not be cut without the prior written approval of the Declarant.

Section 4. All cavity trees and potential cavity trees will be protected during construction of residences and driveways by means of erecting temporary fences. Such fences will extend at least to the radius of the crown of individual trees. The soil located within the radius of the crown of the tree will not be disturbed, and soil disturbance elsewhere on the Lot in general will be minimized to the extent possible.

Section 5. A radius of not less than fifty feet around each cavity tree shall be maintained so that it will be kept free of all vegetation of more than three feet in height except for pine trees more than thirty years old. Bird feeders, birdhouses and birdbaths shall not be placed within fifty feet of a cavity tree. If so requested by the Declarant or if required by the Division of Law Enforcement, U.S. Fish and Wildlife Service, a Lot Owner will allow the placement of cavity

restrictors on cavity trees so as to prevent access to, or modification of, cavities by competing species.

Section 6. Cavity trees shall not be sprayed with pesticides without the prior approval of a state or federal endangered species biologist.

ARTICLE VIII EASEMENTS

Section 1. **Walks, Drives, Parking Areas, and Utilities.**

All Common Areas shall be subject to a perpetual non-exclusive easement or easements in favor of all Owners of Lots for their use and the use of their immediate families, guests, invitees, tenants or lessees for all proper and normal purposes and for ingress and egress and regress to and from such easements for driveways, walkways, parking areas, water lines, sewer lines, storm drainage facilities, gas lines, telephone and electric power lines, television cable or antenna lines, and other public utilities established either before or after the subjecting of the property to this Declaration by the Declarant or its predecessors in title and for the use of the Owners, their families, guests and tenants. The Declarant hereby expressly reserves the right to grant and/or create any such easement subsequent to the date hereof in the event the necessity of such shall subsequently become apparent due to the development of the Property. The Association shall have the power and authority to grant and to establish in, over, upon and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property. Further, both Declarant and the Association shall have the right at any time to enter upon any landscape, utility or other easement as shown on any recorded subdivision plat of the Property and/or established pursuant to this Declaration for the purpose of maintaining the same and to cross such other portions of the Property as may be reasonably necessary to carry out such maintenance.

Section 2. Golf Course.

Easements to permit the doing of every act necessary and proper to the playing of golf on the golf course adjacent to the Lots (which term shall also be deemed to include the Common Area), which are subject to those restrictions, are hereby granted and established over these Lots. These acts shall include, but not be limited to, the recovery of golf balls from such Lots, the flight of golf balls over and upon such Lots, the use of necessary and usual equipment upon such golf course, the usual and common noise level created by the playing of the game of golf, together with all other common and usual activity associated with the game of golf and with all the normal and usual activity associated with the operation of a golf club. Registered players or their caddies shall not be entitled to enter on such Lots with a golf cart or other vehicle, spend unreasonable time on such Lots, enter into and upon any structure thereon or in any way commit a nuisance while on such Lots. Nothing herein contained shall relieve any person from liability for property damage or injury done as a result of the use of the golf course by that person. All Owners of Lots shall be obligated to refrain from any action, which would detract from the playing qualities of the golf course or the development of an attractive overall landscaping plan for the entire golf course area. Such prohibitive actions shall include, but are not limited to, such activities as entering upon the golf course for any purpose other than the playing of golf pursuant to the rules and regulations of the golf club, burning of trash on a Lot when smoke would cross into the fairway, the maintenance of dogs or other pets on a Lot under conditions interfering with play due to their loud barking, running on the fairway, picking upon balls, or other like interference with play.

Section 3. Encroachments.

All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as driveways and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of

any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected lot or lots to as near the original condition as practicable.

Section 4. **Emergencies.**

Every Lot and residence shall be subject to an easement for entry by the Association for the purpose of correcting, repair, or alleviating any emergency condition which arises upon any Lot or within any residence and that endangers any building or portion of the Common Area.

**ARTICLE IX
COVENANTS OF OWNERS AND ASSOCIATION TO
MAINTAIN INSURANCE AGAINST LOSS AND TO
REBUILD**

Section 1. The Declarant covenants with the Association on behalf of itself and on behalf of each subsequent Owner of a Lot within the Property, and each Owner of any Lot within the Property, by acceptance of a deed therefore, whether or not it shall be so expressed in said deed, is deemed to covenant:

(a) The Association shall obtain a general all-peril public liability policy and a blanket insurance policy equal to the full replacement value of any and all/or all improvements constructed upon the Common Area. Said policy shall contain a replacement cost endorsement providing for replacement of a structure from insurance loan proceeds, and said policy shall be consistent with the requirements of any mortgages or financing agreements to which the Common Area and any improvements thereon may be subject.

(b) The Association shall apply the full amount of any insurance proceeds to the rebuilding or repair of any said improvement, subject to the concurrence of any mortgage or lien holder having a right to control the application of such proceeds.

(c) Premiums for the group or blanket hazard insurance policy and the general public liability policy shall be a common expense and shall be collectible in the same manner and to the same extent as provided for annual and special assessments in Article IV.

(d) Any Owner shall, at his own expense, carry adequate hazard and homeowners insurance policies insuring the residence and other improvements on his Lot.

(e) In the event a dwelling is damaged or destroyed, and the Owner does not begin repair or reconstruction within thirty (30) days following the damage or destruction, he or she shall remove or cause to be removed, at his or her expense, all debris from the Lot, so that it shall be placed in a neat, clean and safe condition; and if owner fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the dwelling until paid by the Owner and may be foreclosed in the same manner set forth in Article IV for liens for assessments.

(f) Any dwelling which has been destroyed in whole or in part by fire or other casualty and is subsequently restored or reconstructed shall be subject to the provisions of this Declaration.

ARTICLE X RIGHT OF FIRST REFUSAL

A. Offer.

In the event the Owner of any Lot shall desire to sell or convey his lot, then and in that event Declarant, its successors and assigns, shall have the right and privilege to purchase the said lot at the highest bona fide price offered therefore, and upon the same terms and conditions of such offer or proposal. Notice of said bona fide offer of sale or

conveyance, or said proposal of sale or conveyance, shall be given by the lot owner to Declarant in writing by certified mail addressed to Executive Secretary, 200 Meyer Farm Drive, Pinehurst, NC 28374, or at such other address as Declarant, its successors or assigns shall designate, and Declarant shall have thirty (30) days from and after the receipt of said notice in which to exercise the option to purchase. In the event said option is not exercised within this time, the Lot owner shall be free to sell the same, but not at a lower price nor at more favorable terms than the price and terms communicated to Declarant, and not at a later time than one (1) year after the failure of Declarant to exercise the option given it.

B. Inter-family Transfers.

Any lot owner may sell or convey his lot to his spouse, to his lineal descendant, or to a corporation, all classes of stock of which are more than eighty (80%) percent owned by such owner, his spouse and his lineal descendants, without first offering said lot for sale to Declarant as provided above.

C. Mortgage.

Any lot owner may convey his lot by mortgage or deed of trust for the purpose of obtaining a bona fide loan to be secured by such lot without first offering said lot for sale to Declarant as provided above; provided, however, that in the event of a foreclosure of such mortgage or deed of trust by the holder thereof, a copy of the notice of sale shall be delivered to Declarant at least twenty (20) days prior to the date of the sale.

**ARTICLE XI
GENERAL PROVISIONS**

Section 1. Enforcement.

The Association, and any Owner or Occupant, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. If the Association or an Owner or Occupant is successful in any such proceeding brought to enforce the

provisions of this Declaration or any lien provided for herein, such successful party shall be entitled to recover from the defendant or defendants all costs and attorneys' fees reasonably incurred in such proceeding. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request law enforcement, public safety and animal control officers come on the property to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

Section 2. **Severability.**

Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. **Minor Violations.**

Declarant may, without joinder of any Owner, waive in whole or in part any minor violations of any of the restrictions herein contained.

Section 4. **Term, Amendments.**

The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first five (5) year period by an instrument signed by Declarant, provided no amendment shall be made as to Article IV (Covenant for Maintenance and Assessments) without the signatures of Members holding not less than ninety (90%) percent of the then outstanding votes in the Association. Thereafter, amendments shall be by an instrument signed by Members holding not less than seventy-five (75%) percent of the then outstanding votes in the Association. No amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded.

Section 5. **Extension of Covenants to include Additional Property.**

Declarant may at any time make subject to this Declaration other properties now or hereafter owned by Declarant or the Association by executing an instrument in writing applying this Declaration to such other properties and by recording the same in the Register of Deeds Office for Moore County. Upon such recordation (1) This Declaration shall run with the Property already subject thereto and with such additional property as if such Declaration had always applied to all of said land from the date of its inception; and (2) whenever thereafter in construing this Declaration, reference is made to the "Property," said term shall mean and include not only the property described in Exhibit A hereto but also such additional properties as may be made subject to this Declaration. When extending this Declaration to cover additional properties, Declarant may specifically alter or amend any provision of this Declaration with respect to such additional properties if, in Declarant's sole judgment, such alteration or amendment is necessary for the proper use and development of the additional properties and consistent with the overall intent and purpose of this Declaration.

IN WITNESS WHEREOF, Forest Creek Development Corporation, Operating Manager of Forest Creek Holding Company, LLC has caused this instrument to be executed in its corporate name by its _____ President and attested by its _____ Secretary, and its corporate seal to be hereto affixed, all by the authority of its Board of Directors first duly given.