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WAKE COUNTY, NC 295  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
07/21/2011 AT 15:18:03

**DECLARATION**

BOOK:014409 PAGE:01109 - 01156

**OF**

**COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

**FOR**

**FOREST SPRINGS**

*Prepared by and Hold for:*

James H. Pardue, Attorney at Law #149  
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**NOTE FOR TITLE EXAMINER: ARTICLE XVI OF THIS DECLARATION REQUIRES AN INITIATION FEE TO BE PAID BY EVERY PURCHASER OF A LOT OTHER THAN A BUILDER.**

**THIS DOCUMENT REGULATES OR  
PROHIBITS THE DISPLAY OF POLITICAL  
SIGNS**

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
FOREST SPRINGS**

This **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR FOREST SPRINGS** is made as of the 18th day of July, 2011, by BMV, LLC, a North Carolina limited liability company ("BMV, LLC").

WITNESSETH:

WHEREAS, BMV, LLC is the owner of the real property described on Exhibit "A;" and

WHEREAS, BMV, LLC desires to subject the real property described on Exhibit "A," and possibly other property, to the provisions of this Declaration to create a residential community.

NOW THEREFORE, BMV, LLC hereby declares that the real property described on Exhibit "A" of this Declaration, including any improvements which may be (but are not required to be) constructed on that property, is subjected to the provisions of this Declaration. Such real property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, contained in this Declaration. The provisions of this Declaration shall run with the title to the property now or hereafter subjected to this Declaration. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**ARTICLE I.  
DEFINITIONS**

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

"Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act, as the same may be amended from time to time.

“Area of Common Responsibility” shall mean the Common Property, together with such other areas, if any, for which the Association has responsibility pursuant to this Declaration, any recorded plat, other covenants, contracts, or agreements.

“Additional Covenants” shall mean and refer to any covenants, conditions or restrictions now or hereafter recorded and imposed on portions of the Properties by or with the consent and joinder of the Declarant, and shall include any instrument recorded pursuant to Section 4.18.

“Association” shall mean Forest Springs Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

“Board of Directors” or “Board” of the Association shall be the appointed or elected body, as applicable, having its normal meaning under North Carolina law.

“Builder” shall mean and refer to any Person acquiring one or more Lots from Declarant for the express purpose of constructing a dwelling on the Lot and selling the improved Lot.

“Bylaws” shall refer to the Bylaws of the Association.

“Common Property” shall mean, if any, the real property, interests in real property, and personal property, easements, and other interests, together with improvements located on that property (if any) which are now or are hereafter owned by the Association for the common use and enjoyment of some or all of the Owners.

“Community” and/or “Property” shall mean the real property and interests described on Exhibit “A” and such additions to that property as may be made by Declarant or by the Association pursuant to this Declaration.

“Community Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination must be consistent with the Community Standard originally established by the Declarant.

“Declarant” shall mean and refer to BMV, LLC, a North Carolina limited liability company, as well as its successors and assigns pursuant to an express assignment or conveyance of any special Declarant rights hereunder to such successor or assign, all of which rights, including Declarant’s voting, easement and development rights, shall be assignable and may be apportioned on a lot-by-lot basis. Any such assignment shall be recorded in the office of the Register of Deeds of the county in which the Community is located.

“Declarant’s Control Period” shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Register of Deeds for the County in which the

Community is located, and continuing until the later of: (i) one (1) year after Declarant shall cease to own any property within the Community; or (ii) for so long as Declarant shall have the unilateral right to subject additional property to this Declaration, unless Declarant relinquishes or transfers all its Special Declarant Rights as provided in §47F-3-104 of the Act.

“Declaration” shall include this Declaration of Covenants, Conditions, Restrictions and Easements for Forest Springs, as the same may be supplemented or amended pursuant to any Supplementary Declaration or any amendment to this Declaration in accordance with its terms.

“Lot” shall mean and refer to any separately numbered portion of the Property shown on any now or subsequently recorded subdivision plat of the Property intended for use or used as a site for a any single-family attached or detached dwelling, patio (zero lot line) home, townhome or condominium unit and shall include any improvements constructed thereon and “Lots” shall refer to all such lots collectively. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of any other Owner or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or an Affiliate, as the case may be, and to thereby create additional Lots, eliminate existing Lots or create additional Common Property. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a “Lot” as defined in this Declaration and each newly configured lot shown on the revised plat shall be a “Lot” as defined in this Declaration.

“Mortgage” means any mortgage, security deed, deed of trust, or similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

“Mortgagee” shall mean the holder of a Mortgage.

“Occupant” shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

“Owner” shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community; excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation.

“Person” means a natural person, corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

“Secondary Association” shall mean and refer to any homeowners association other than the Association, including, without limitation, any townhome or condominium owners

association, formed pursuant to Additional Covenants imposed by Declarant on portions of the Property for the purpose of providing for the further administration, protection, maintenance and control of the Lots subject to such Additional Covenants and any related property to be maintained for the benefit of the Owners of such Lots.

“Secondary Association Common Property” shall mean and refer to any portion of the Properties identified as common property” or “common elements” or otherwise identified as property to be held and/or maintained by the Secondary Association.

“Street Trees” shall mean and refer to trees within the street tree easement, if applicable, as required by the Town of Holly Springs.

“Supplementary Declaration” means an amendment and/or supplement to this Declaration which subjects the land described therein to additional restrictions and obligations.

“Total Association Vote” means all of the votes attributable to members of the Association. If the Total Association Vote is taken during a time while Declarant has the right to appoint members of the Board of Directors, a Total Association Vote approving some item or proposition must contain the affirmative vote of Declarant or the item or proposition will be deemed not to have been approved.

**ARTICLE II.  
PROPERTY SUBJECT TO THIS DECLARATION**

2.1. Property Subjected To This Declaration. The real property which is subject to the covenants and restrictions contained in this Declaration is the real property described in Exhibit “A.”

2.2. Other Property. Only the real property described in Section 2.1 is made subject to this Declaration. However, Declarant may subject all or portions of the additional real property described in Section 9.1 by recording one or more Supplementary Declarations.

**ARTICLE III.  
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

3.1. Membership. Every Owner shall be deemed to have a membership in the Association. If a Lot is owned by more than one Person, there shall be only one (1) membership per Lot, and the votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member’s spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

3.2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be two classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. No fractional voting shall be allowed. Lots owned by Class A Members shall be "Class A Lots."

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to nine votes for each Lot that it owns. Lots owned by Class B Members shall be "Class B Lots." Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns.

3.3. Declarant's Right to Appoint Directors and Officers of the Association. The Declarant shall have the right to appoint or remove any member or members of the Board or any officer or officers of the Association until such time as the first of the following events shall occur: (a) twenty (20) years from the date the Declaration was recorded; (b) the date on which 75% of the lots developed or to be developed as part of the Community (including all present and future phases) pursuant to development plans maintained by the Declarant, as such plans may be revised and amended from time-to-time, have been conveyed to Persons other than Builders; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors selected by the Declarant need not be Owners or residents in the Community.

#### **ARTICLE IV. ASSESSMENTS**

4.1. Purpose of Assessment. The assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, as may be authorized from time to time by the Board, and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to such purposes and related to the use and enjoyment of the Common Property or the Lots, including but not limited to, the expenses of operating, maintaining, repairing and replacing any recreational facilities (including pool, bathhouse, play areas, viewing areas and the like), the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision; the maintenance of open spaces, street trees and streets which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-way within the Property), drives

and parking areas within the Common Property; the procurement and maintenance of insurance in accordance with this Declaration; the maintenance of stormwater drainage facilities, dams and ponds, including retention or detention ponds, or other bodies of water, if any, located within the Common Property; the erection, maintenance and/or repair of signs, entranceways, landscaping, perimeter wall, irrigation and lighting within the Common Property, road medians and islands; the cost of operating, maintaining and repairing any street lights erected by the Association or the Declarant within the Common Property or in the rights-of-way of streets (whether public or private) or in any other easement provided therefor within the Property; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Property; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, stormwater facilities, street trees, and any other major expense for which the Association is responsible; and such other needs as may arise.

4.2. Creation of the Lien and Personal Obligation for Assessments. Each Owner agrees to timely pay to the Association: (a) annual assessments or charges; (b) special assessments; (c) specific assessments and (d) all other assessments or charges levied against any particular Lot, which are established and levied pursuant to the terms of this Declaration. Each Owner also agrees to pay reasonable fines as may be imposed in accordance with the terms of this Declaration.

4.3. Maximum Annual Assessment. Until December 31, 2011, the Maximum Annual Assessment shall be \$480.00 for each Class A Lot. Beginning on January 1 of each year thereafter, the Maximum Annual Assessment shall automatically increase by ten percent over the maximum Annual Assessment for the previous year.

The provisions of this subsection shall not apply to, or shall they be a limitation upon, any change in the annual assessment or the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

4.4. Personal Liability. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for the assessments which are due at the time of conveyance; however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings.

4.5. Certificate of Payment. The Association shall, within ten (10) business days after receiving a written request, furnish a certificate signed by an officer of the Association setting forth whether the assessments, other charges, and fines on a specified Lot have been paid. A properly executed certificate shall be binding upon the Association, the Board, and the Owner as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this certificate.

4.6. Annual Assessments. Annual assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board. The Board may allow annual assessments to be paid through periodic payments, and the Board shall have the right to accelerate any unpaid annual installments in the event an Owner is delinquent. Unless otherwise provided by the Board, the assessment shall be paid in quarterly installments.

4.7. Computation of Annual Assessments. The Board shall prepare a proposed budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than thirty (30) days after the mailing of the notice. The Board shall cause the proposed budget, the assessments, and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum, to be mailed or delivered to each member at least thirty (30) days prior to the end of the current fiscal year. Quorum need not be present at the meeting. The budget and the assessment shall become effective unless disapproved at such meeting by the Owners entitled to cast at least fifty percent (50%) of the votes of the Association. In the event the membership disapproves the proposed budget, or the Board fails to establish a budget for the succeeding year, the budget in effect for the then current year shall continue for the succeeding year until changed by the Board. In the event the Board's budget is disallowed, the Board shall have the right to make a new budget retroactive to the start of the fiscal year. The initial annual assessment shall be \$ 360.00.

4.8. Special Assessments. In addition to the other assessments authorized by this Declaration, the Association may levy special assessments from time to time. Special assessments must be approved at a meeting by at least two-thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.9. Lien for Assessment. All assessments and charges provided for herein, together with interest, and late fees, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made when a claim of lien is filed of record in the Office of the Clerk of Superior Court, Wake County, North Carolina.

4.10. Personal Obligation. Each such assessment and charge, together with interest, any late fees, fines, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner(s) of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

4.11. Effect of Nonpayment of Assessment. Any assessments (or installments) which are not paid when due shall be delinquent. Any assessment (or installment) which is



delinquent for a period of more than ten (10) days shall incur a late charge in an amount set by the Board. If the Assessment is not paid within thirty (30) days, a lien shall attach upon filing a claim of lien in the office of the Clerk of Superior Court in the county in which the Lot is located. The lien shall set forth the name and address of the Association, the name of the Owner of the Lot, a description of the Lot, and cover all assessments then due or which come due until the lien is canceled of record, and any other amounts provided in this Declaration or permitted by law. In the event that the assessment remains unpaid after thirty (30) days, the Association may institute suit to collect such amounts and foreclose its lien. The Association shall have the right to foreclose its lien by any method allowed by law. The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

4.12. No Setoff or Deduction. No Owner subject to assessment may waive or otherwise exempt himself from liability for the assessments provided for in this Declaration. No setoff, diminution, or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action, for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff.

4.13. Application of Payments. All payments shall be applied first to costs, then to late charges, then to interest, and then to delinquent assessments.

4.14. Date of Commencement of Assessments. As to each Lot subject to assessment, assessments shall start on the first day of the month after the Lots is subjected to this Declaration. The first annual assessment shall be prorated according to the number of months then remaining in that fiscal year.

4.15. Declarant and Builder Assessment. Builders purchasing Lots shall pay twenty five percent (25%) of the regular assessment. The Declarant shall pay not dues.

4.16. Late Charges. All assessments and other charges established and levied pursuant to the terms of this Declaration shall accrue late charges, interest (not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due), and costs, including without limitation, reasonable attorneys' fees actually incurred. The assessments and charges shall be a continuing lien upon the Lot against which each assessment is made, and shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due.

4.17. Specific Assessment. Pursuant to this Section, the Board shall have the power to specifically assess as it shall deem appropriate, in its sole discretion. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right

to exercise its authority under this Section in the future. The Board may also specifically assess Owners for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility):

- a. Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received; and
- b. Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

4.18. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may (but shall not be required to):

- a. Advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association and the sum of the annual, special, and specific assessments collected by the Association in any fiscal year. Such advances shall, upon request of Declarant, be evidenced by promissory notes from the Association in favor of the Declarant. The failure of Declarant to obtain a promissory note shall not invalidate the debt; or
- b. Cause the Association to borrow such amount, or a general borrowing, from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan; or
- c. Acquire property for, or provide services to, the Association or the Common Property. Declarant shall designate the value of the property or the services provided and such amounts, at the request of the Declarant, shall be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

4.19. Property Subject to Additional Covenants. Declarant, in its sole discretion, may subject portions of the Properties to Additional Covenants. Any such Additional Covenants may provide for the creation of a Secondary Association and may provide that such Secondary Association, with the consent of the Executive Board of the Association, may collect on behalf of the Association and thereafter remit to the Association, the assessments levied hereunder with respect to that portion of the Properties subject to such Additional Covenants. In addition, any such Additional Covenants may provide that, at the request of the Association, in the sole discretion of its Executive Board, the Secondary Association may enforce the lien of the Association securing the Association's assessments;

provided, however, no such Additional Covenants shall in any way modify, diminish, annul or cancel the personal liability of any Owner for the payment of assessments hereunder or the Association's lien against each Lot which secures such payment.

**ARTICLE V.  
MAINTENANCE & CONVEYANCE OF COMMON PROPERTY  
TO ASSOCIATION**

5.1. Association's Responsibility. The Association shall maintain in good repair all Areas of Common Responsibility, including (without limitation), maintenance, repair, and replacement of all landscaping and improvements situated on the Common Property. The Association shall also maintain all lakes and associated dams in or serving the Community, to the extent maintenance of such lake is required and the lake is not otherwise maintained by a governmental entity or third party.

a. The Association shall also maintain all entry features, and common areas, operate and maintain street lights (if not maintained and operated by a governmental entity) for the Community including the expenses for water and electricity, if any, provided to all such entry features; all stormwater detention facilities and easements serving the Community (to the extent such facilities and easements are not maintained by a governmental entity or third party). The Association will maintain the street tree easement located within the Common Property or within the Lots, and street trees located within the easement. The Association will maintain any buffer plantings located within the Lots.

b. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, within the Community, where the Board has determined that such maintenance would benefit the Owners. In order to maintain a uniform appearance, the Association shall have the right, but not the obligation, to maintain all or a portion of the lawns of Lots visible from the Common Green as depicted on the recorded map.

c. In the event that the Association determines that the need for maintenance, repair, or replacement of property described in (a) or (b) above is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance maintained by or on behalf of the Association, in whole or in part, then the Association may perform such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs thereof shall be an assessment against such Owner and such Owner's Lot subject to the Association's lien and collection rights provided for in this Declaration; provided, however, during Declarant's Control Period, any such action by the Association shall require the Declarant's prior written consent. Such Owner may request a hearing by the Board of Directors, or an adjudicatory panel appointed by the Board, to determine responsibility for the damages if the monetary amounts involved are less than or equal to the jurisdictional amount established for small

claims under North Carolina law. The hearing shall afford notice of the charge to the Owner, an opportunity for the Owner to be heard and to present evidence, and a notice of decision by the Board. The Board of Directors or its appointees may not assess liability in an amount in excess of the jurisdictional amount established for small claims under North Carolina law.

d. The maintenance shall be performed consistent with the Community Standard.

5.2. Owner's Responsibility. Except as provided in Section 5.1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community Standard and this Declaration. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association may perform such maintenance, repair, or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be an assessment levied against the Owner and a lien on such Owner's Lot in accordance with the provisions of Article IV hereof. The provisions of this Section shall continue to control even if the obligation to maintain any Lot or group of Lots is assigned to a Secondary Association. Although covenants of record may provide that a Secondary Association is responsible for such maintenance, the Owner of each Lot is ultimately responsible for the maintenance of such Owner's Lot in accordance with the provisions of hereof.

5.3. Conveyance of Common Property by Declarant to Association. The Declarant may convey to the Association any personal property, any improved or unimproved real property, leasehold, easement, or other property interest located within or adjacent to the Community. Such conveyance shall be accepted by the Association, in perpetuity, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. Declarant in recording any plat of the Property may identify thereon certain areas of land as "Open Space," "Common Area," "Common Property," or similar designation. Such designated properties, unless otherwise expressly provided, are expressly

not dedicated to the public, but are intended to be conveyed by Declarant to the Association as Common Property. Declarant, however, reserves the right to reconfigure, in accordance with any applicable local governmental ordinances and regulations, all or any portion of such areas and all or any one or more of the Lots shown on any recorded subdivision plat at any time prior to the conveyance of such property by recording a revised subdivision plat of the property and thereby increase or decrease the area of any "Open Space," "Common Area," "Common Property," or similarly designated property and/or increase or decrease the number or size of the Lots shown thereon. Any "Open Space," "Common Area," "Common Property," or similarly designated property conveyed to the Association shall be conveyed subject to all easements and restrictions then of record, including all easements and restrictions herein reserved and established, and the recording of a plat showing such areas shall not limit the rights of Declarant to further restrict such property and to grant and convey easements on, over or upon such property, prior to its conveyance to the Association, or otherwise in accordance with the terms of this Declaration.

#### **ARTICLE VI. USE RESTRICTIONS AND RULES**

6.1. **General.** This Section sets out certain use restrictions that must be complied with by all Owners and Occupants. These use restrictions may only be amended as provided in this Declaration.

6.2. **Residential Use.** Except as otherwise herein provided with respect to the use of Lots as sales offices, construction offices and model homes, all Lots shall be used for residential purposes exclusively, provided, however, a home office or business may be maintained on a Lot so long as the principal use of the Lot is for single-family residential purposes and such ancillary use of the Lot for a home office or business is permitted by applicable local governmental ordinances, laws and regulations and otherwise is determined by the Association not to create a nuisance and conforms to all rules and regulations from time to time promulgated by the Association concerning same. However, the Board may permit a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or Bylaws, does not create a disturbance and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities. Notwithstanding the foregoing restrictions, the Declarant shall have the right to operate a sales office and a construction office from one or more Lots within the Community. In addition, except as otherwise herein provided with respect to use of the Property as sales offices, construction offices and models, no portion of the Property shall be used except for residential purposes and uses ancillary thereto, including recreational, park and skeet purposes. Garage sales, yard sales and similar activities shall be conducted only in accordance with all applicable federal, state and local laws and ordinances and the rules and regulations, if any, adopted by the Board.

6.3. Architectural Standards. No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. Except as provided above, no exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee to be established by the Board.

a. The Architectural Review Committee may be established such that it is divided into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction.

b. The Board may employ architects, engineers, or other persons as it deems necessary to enable the Architectural Review Committee to perform its review.

c. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

d. Written design guidelines and procedures shall be promulgated for the exercise of this review, which guidelines may provide for a review fee.

e. During Declarant's Control Period, the Declarant shall have the right to appoint all members of the Architectural Review Committee. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the Architectural Review Committee.

f. If the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction commenced in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictions

have been violated and such Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in this Declaration, record in the appropriate land records a notice of violation naming the violating Owner.

g. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

h. Signs. Except as otherwise required by the Town of Holly Springs, no sign, including a political sign, of any kind shall be displayed to the public view on any Lot except for signs used to advertise Lots for sale during the development, construction and sales period, one sign of not more than ten square feet advertising the property for sale or rent, and signs of not more than ten square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty days before such election and shall be removed within seven days after such election. No sign of any kind shall be displayed in or on the Common Property without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Property in connection with the development and sale of the Property. All signs maintained on any portion of the Property must comply with all applicable federal, state and local laws and ordinances. No sign shall be nailed or otherwise attached to trees, street light poles or street signs.

i. Vehicles. The term “vehicles,” as used herein, shall include, without limitation, motorhomes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles.

The following activities are prohibited within the Community unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

i. Parking of any vehicles on streets or thoroughfares within the Community, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, damaged, rusty, unkempt, unsightly, stored or inoperable vehicles in places other than enclosed garages; provided, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas;

ii. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage;

iii. Any boat, motorhome, trailer, or recreational vehicle left upon any portion of the Community for longer than three consecutive days is subject to removal upon written notice from the Association to the Owners of such boat, motorhome, trailer, or recreational vehicle, and the costs of such removal shall be an assessment against such Owner.

iv. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

j. Off Road. No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

k. Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of at least twelve (12) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's Lot in accordance with the provisions of Article IV.



l. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions, or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied and assessed against the Owner and secured with a lien against such Owner's Lot in accordance with the provisions of Article IV.

m. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board, provided such pets are kept in accordance with applicable local governmental ordinances, rules and regulations. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall be kept on a leash when outside of an Owner's residence. No pet which has caused any damage or injury shall be walked in the community, whether on a leash or otherwise. All pets shall be registered, licensed, and vaccinated as required by law. Pets which endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or Occupants must be removed by their owner upon request of the Board.

n. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier, or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARC, shall be located, installed, or maintained upon the exterior of any Lot unless required by law.

o. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly,

unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

p. Antennas. No satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained within the Community, except that Declarant and the Association shall have the right, without the obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Community, and (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices") shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Lot (generally being the rear of the Lot) at which an acceptable quality signal can be received and is not visible from the street, Common Area, or neighboring property or is screened from the view of adjacent Lots in a manner consistent with the Community Standard and any design guidelines.

q. Tree Removal. No trees that are more than four (4) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the Architectural Review Committee. However, no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed without the prior written consent of the Architectural Review Committee. Notwithstanding all of the above, no consent or approval is required for the removal of any trees, except street trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, septic field, sidewalk, residence, driveway, or the line formed by the highest normal pool elevation of any lake.

r. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct, or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

s. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

t. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, hot tubs, spas, and related equipment, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant reserves the right to dump and bury rocks on property within the

Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks removed from a building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except that Declarant may maintain a "burn pit" during development and construction of the Community.

u. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Review Committee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant's right to replat any Lot shall include the right to change the configuration of streets and otherwise make changes on the final plat for the Community as to how the streets and common areas in the Community are laid out.

v. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes rifles, pistols, "BB" guns, pellet guns, and small firearms of all types.

w. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Declarant as a model home. The Board of Directors shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Property.

x. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction, lines installed by or at the request of Declarant, existing lines and lines installed pursuant to any Carolina Power & Light Company/Progress Energy Carolinas easements.

y. Air Conditioning Units. No window air conditioning units may be installed.

z. Lighting. Except as may be permitted by the Architectural Review Committee, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) one (1) decorative post light, (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; or (e) front house illumination of model homes.

aa. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior

sculpture, fountains, flags (other than flags of the United States of America and the State of North Carolina) and similar items must be approved by the Architectural Review Committee.

bb. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Committee.

cc. Swimming Pools and Hot Tubs. No swimming pool, hot tubs or portable spas shall be permitted without the prior written consent of the Architectural Review Committee and then only if enclosed by an approved fence.

dd. Gardens and Play Equipment. No vegetable garden or play equipment (including, without limitation, basketball goals) shall be erected on any Lot without the prior written consent of the Architectural Review Committee, and any such items must be located between the rear dwelling line and the rear lot line. Without limiting the foregoing, basketball goals may be installed providing they are constructed of black poles, permanently mounted, not visible from the street, and the Architectural Review Committee approves the location, height, and type of goal and post.

ee. Mailboxes. All mailboxes located on Lots shall be of a similar style approved by the Architectural Review Committee. Replacement mailboxes may be installed after the type has been approved in writing by the Architectural Review Committee.

ff. Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the Architectural Review Committee.

gg. Clothesline. No exterior clotheslines of any type shall be permitted upon any Lot.

hh. Exterior Security Devices. No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs less than 6" by 6" placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

ii. Entry Features. Owners shall not alter, remove, or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the Architectural Review Committee.

jj. Storage Sheds and Garages. Construction, installation, or placement of a storage shed, tree house, play house, detached garage, or a building separate from the main house on the Lot is not permitted on any Lot, except that such a structure may be constructed and maintained on a Lot used as a site for a single-family detached dwelling, if the construction of such improvement has been approved in writing by the Architectural Review Committee, in its sole discretion. All plans (which must include the length, width, height, materials, colors, and location) must be submitted to the Architectural Review Committee for written approval prior to obtaining building permits or starting construction. The structure must be constructed, installed, or placed in a location inconspicuous as much as possible from public view. No two-story structures of this nature are permitted on any Lot within the Community. All materials used in the construction of such buildings must match the main dwelling located on the Lot.

kk. Sewer System. As long as reasonably adequate sanitary sewer service is supplied to a Lot by applicable governmental authorities, no private sewage system shall be permitted on that Lot.

ll. Wetlands. Portions of the Property may have been determined to meet the requirements for designation at a regulatory wetland. Notwithstanding anything to the contrary that may appear herein or in any other restrictive covenants applicable to such portions of the Property, any subsequent fill or alteration of any portion of the Property that has been determined to be a regulatory wetland under applicable laws of the United States or the state of North Carolina shall conform to the requirement of applicable wetland rules adopted by the United States or the state of North Carolina and in force at the time of the proposed alteration. The intent of this Section is to prevent additional wetland fill except as allowed under applicable federal, state and local laws and ordinances, so the Owner of any such portion of the Property should not assume that a future application for fill or alteration of a wetland will be approved. The Owner of any portion of the property subject to any such future application shall report the name of the development (in this case, Forest Springs), together with the name of the particular phase, section or subdivision within the Property, if any, in any application pertaining to wetland rules. The provisions of this Section are intended to ensure continued compliance with wetland rules adopted by the United States or state of North Carolina and this covenant may be enforced the United States or state of North Carolina. The provisions of this Section shall run with the Property and be binding on all Owners of any part of the Property and all persons claiming under them.

mm. The Board may, from time to time, without consent of the members, promulgate, modify, or delete additional use restrictions, consistent with the restrictions herein contained, and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all

Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a majority of the Total Association Vote; provided, however, during Declarant's Control Period, any such use restrictions and rules must receive the prior written approval of Declarant.

Owners shall have no riparian rights with respect to the waters in any lake or stream within the Community and shall not be permitted to withdraw water from any lake or stream as may exist in the Community or as are made available for the use of all Owners and Occupants within the Community without the prior written consent of the Board or its designee. During Declarant's Control Period, Declarant may authorize and grant easements to withdraw water from such lakes or streams without the consent of the Association.

Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, basketball goals or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls, or any other structure or thing which, in the sole discretion of the Board or its designee, tends to detract from the appearance of the Community, and especially any lake, shall be permitted on any Lot which abuts or is appurtenant to any lake within the Community or any lake made available for the use of all Owners and Occupants within the Community, without the prior written consent of the Architecture Review Committee or its designee.

#### **ARTICLE VII. INSURANCE AND CASUALTY LOSSES**

7.1. Insurance on Common Property. The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain insurance for all insurable improvements whether or not located on the Common Property which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

7.2. Liability Insurance. The Board shall obtain a general commercial liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million dollars (\$1,000,000.00). If available, the Board is authorized to obtain directors' and officers' liability insurance coverage.

7.3. Declarant. The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof. The Board shall not be required to comply with the provisions of this Section if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

7.4. Premiums. Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

7.5. Miscellaneous. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefitted parties, as further identified below. Such insurance shall comply with these provisions:

a. All policies shall be written with a company authorized to do business in North Carolina.

b. Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

c. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

d. All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually.

e. The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

i. A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

ii. A waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

iii. That no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

iv. That no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

v. That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

vi. That no policy may be canceled, subjected to nonrenewal, or substantially modified without at least thirty (30) days prior written notice to the Association.

f. In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be equal to at least three (3) months' assessments plus reserves on hand. As an alternative to an Association fidelity bond, the Board may use the management company's fidelity bond and be named as an additional insured or loss payee on their fidelity bond. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to nonrenewal, or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the U.S. Department of Veterans Affairs, or the U.S. Department of Housing and Urban Development.

7.6. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If "all-risk" coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The losses under policies obtained by



an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association acquires insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner as a specific assessment and shall be a lien on such Owner's Lot.

7.7. Damage and Destruction -- Insured by Association.

a. In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Board shall have the enforcement powers specified in this Declaration necessary to enforce this provision.

b. Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least eighty percent (80%) of the Total Association Vote otherwise agree; provided, however, during Declarant's Control Period, Declarant must also agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

c. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

d. In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

7.8. Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in this Declaration.

#### **ARTICLE VIII. CONDEMNATION**

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of this Declaration applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

#### **ARTICLE IX. ANNEXATION OF ADDITIONAL PROPERTY**

9.1. Unilateral Annexation By Declarant.

a. The Declarant shall have the unilateral right, privilege, and option from time to time until ten (10) years after the recording of this Declaration to subject to the provisions of this Declaration the following property ("Annexation"):

- I. All or any portion of the real property described in Exhibit "B;"
- ii. Any property which is adjacent to the property described on Exhibit "A;" and
- iii. Any tract of land, of which any portion is located within a five (5) mile radius of the property described in Exhibit "A."

For the purpose of determining whether property is "adjacent," the rights of way of public or private roads or utilities, as well as rivers and streams, and the like shall be deemed not to separate otherwise adjacent property. Annexation may be accomplished by filing for record, in the county in which the property to be annexed is located, a Supplementary Declaration describing the property being subjected.

Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein.

Declarant shall have the right, in connection with the annexation of other property, to modify the terms of this Declaration as it may apply to the annexed property.

As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

b. The rights reserved unto Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

9.2. Other Annexation. Subject to the consent of the owner(s) thereof and the consent of the Declarant (during Declarant's Control Period), upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration describing the property to be annexed and filed for recording in the land records of the county in which the Community is located. A Supplementary Declaration shall be signed by the President of the Association whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

#### **ARTICLE X. MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Section apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

10.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the legal description of the encumbered Lot, therefore becoming an "eligible holder"), will be entitled to timely written notice of :

- a. Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- b. Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided that, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and
- c. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

10.2. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

10.3. Applicability of Section. Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Section.

10.4. Amendments by Board. Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or VA subsequently delete any of their respective requirements which necessitate the provisions of this Section or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Section to be recorded to reflect such changes.

## **ARTICLE XI. EASEMENTS**

11.1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at

such point. In no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

11.2. Easements for Use and Enjoyment.

a. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:

i. The right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;

ii. The right of the Association to suspend the voting rights of a Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

iii. The right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided that, the lien and encumbrance of any such Mortgage given by the Association shall be: 1) in accordance with all applicable Federal, State and local law, rules and regulations; and 2) subject and subordinate to any rights, interests, options, easements, and privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community. Any such Mortgage on the Common Property shall be subject to approval by at least eighty percent (80%) of the Total Association Vote (excluding votes held by the Declarant) and by the Declarant during Declarant's Control Period. Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements, or privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of

when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community;

iv. The right of the Association to dedicate or grant licenses, permits, or easements over, under, and through the Common Property to governmental entities for public purposes;

v. The right of the Association, acting through the Board without Member, Mortgagee or agency approvals, to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Property which are not inconsistent with and do not unreasonably interfere with the intended use of the Common Property and otherwise for such purposes and subject to such conditions as may be agreed to by the Association's Board; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded in the Register of Deeds for the County in which the Community is located;

vi. The right of the Association to dedicate or transfer any real property interest in all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association subject to Paragraph 5.3. No such dedication or transfer shall be effective unless approved by the express written consent of the Town of Holly Springs and an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of at least eighty percent (80%) of the Total Association Vote (excluding votes held by the Declarant) and by Declarant during Declarant's Control Period, and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Property or cause any Lot or any remaining Common Property to fail to comply with applicable laws, regulations or ordinances;

vii. The right of the Association, acting through the Board, to impose rules and regulations for the use and enjoyment of the Common Property and improvements thereon, which regulations may further restrict the use of the Common Property, and specifically including the right to establish rules and regulations concerning parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Community, which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Board; and

vi. The easements, conditions and restrictions herein reserved and established for the benefit of the Declarant, the Association and others.

b. Delegation. Any Lot Owner may delegate such Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot, if leased.

11.3. Easements for Access, Utilities and Other Purposes. There is hereby reserved and established in favor of the Declarant and the Association blanket non-exclusive easements upon, across, above, and under all property within the Community, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving all or any portion of the Community or any portion or any portion of the additional property specifically described on Exhibit B hereto (whether or not such additional property is added to the Community), and for such other purposes that are not inconsistent with and do not unreasonably interfere with the intended use of such property. This easement shall include, without limitation, access, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service the Community or any portion of the additional property specifically described on Exhibit B hereto (whether or not such additional property is added to the Community). It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables, and other equipment related to the providing of any such access, utility or service. Should any party furnishing or receiving any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement.

11.4. Easement for Drainage. Declarant hereby reserves a perpetual easement across the Community for the purpose of altering drainage and water flow across the Community. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Lot or any property in the Community. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

11.5. Easement for Entry. In addition to the other rights reserved and established in favor of Declarant and the Association, the Declarant and the Association each shall have the right (but not the obligation) to enter upon any property or Lot within the Community for emergency, security, and safety reasons. This right may be exercised by the Declarant, the Association their respective designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall

only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard or condition in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

11.6. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant or the Association across such portions of the Community, determined in the sole discretion of the Declarant and the Association, as are necessary to allow for the maintenance required by this Declaration or any Secondary Covenants. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

11.7. Easement for Entry Features and Street Trees and Street Tree Easement. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction, landscaping, and maintenance of entry features, street trees and the street tree easement, if applicable, and similar streetscapes for the Community, over and upon each Lot as more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove, and plant trees, shrubbery, flowers, and other vegetation around such entry features, street trees and street tree easement and the right to grade the land under and around such entry features.

11.8. Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, during Declarant's Control Period, Declarant reserves an easement across such portions of the Community as Declarant may reasonably deem necessary for any or all of the purposes hereinafter set forth. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:

- a. The right of access, ingress, and egress for vehicular and pedestrian traffic, and construction activities over, under, on, or in any portion of the Community as well as any Lot in the Community;
- b. The right to tie into any portion of the Community with driveways, parking areas, and walkways;
- c. The right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services;



d. The right (but not the obligation) to construct recreational facilities on Common Property;

e. The right to carry on sales and promotional activities in the Community;

f. The right to place direction and marketing signs on any portion of the Community, including any Lot or Common Property;

g. The right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development, and sales activities; and

h. Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

11.9. Irrigation Easements. There is hereby reserved to the Declarant and the Association a blanket easement to pump water from ponds, lakes, and other bodies of water located within the Community for irrigation purposes.

11.10. Fence Easement. Declarant hereby reserves an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

## **ARTICLE XII. GENERAL PROVISIONS**

12.1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, and the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and any such restrictions which may be placed in the deed to such Owner's Lot, if any. In the event of a conflict between the provisions of this Declaration and the Bylaws, the Declaration shall prevail. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws, or the rules and regulations shall be

grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or in a proper case, by an aggrieved Owner. To determine fines and sanctions against Owners, a hearing shall be held before the Board of Directors or an adjudicatory panel appointed by the Board. The Owner shall be given notice of the charge, an opportunity to be heard and to present evidence, and a notice of decision by the Board. If a fine is imposed it may not exceed one hundred dollars (\$100.00) for the violation and for each day more than five days after the notice of decision that the violation continues. Such fines shall be assessments secured by a lien. If a sanction is imposed it may continue without further hearing until the violation is cured. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of lien, a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines, and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

12.2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Community to abate or remove, using such force as may be reasonably necessary, any structure, thing, or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

12.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by Declarant, the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law. If North Carolina law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provision shall be automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of two-thirds (2/3) of the Lots and the Declarant (during Declarant's Control Period) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period.

12.4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional

or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage Loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose; provided that, any such amendment shall not materially adversely affect the substantive rights of any Lot Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended:

I. During Declarant's Control Period, with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots; and

ii. Following the expiration of Declarant's Control Period, upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots.

12.5. Partition. The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

12.6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

12.7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

12.8. Captions. The captions are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

12.9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

12.10. Indemnification. To the fullest extent allowed by applicable North Carolina law, the Association shall indemnify every officer of the Association and director of the Association against any and all expenses, including, without limitation, attorneys' fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. This indemnification shall also include attorneys' fees and expenses incurred in enforcing this indemnification. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

12.11. Books and Records.

a. Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by Declarant or any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

b. Rules for Inspection. The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the work when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents.

c. Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

12.12. Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board may decide; however, after having received the Board's financial statements, by a majority of the Total Association Vote, the Owners may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

12.13. Notice of Sale, Lease, or Acquisition. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

12.14. Agreements. Subject to the prior approval of Declarant (during Declarant's Control Period), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

12.15. Implied Rights. The Association may exercise any right or privilege given to it expressly by the Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

12.16. Electronic Transactions. The Association may conduct any transaction or transactions by electronic means, and this provision shall constitute the agreement by the Association, its members and directors to the conduct of transactions by electronic means.

### **ARTICLE XIII. USE OF RECREATIONAL FACILITIES**

Declarant may, but shall not be required to, construct recreational facilities on portions of the Common Property. These facilities may take the form of playground, tennis

courts, a pool, bathhouse, play areas, viewing areas, and the like. In the event Declarant constructs such recreational facilities, the following shall apply:

a. During Declarant's Control Period, Declarant shall have the right to grant to persons who are not members of the Association the right to use the recreational facilities. The extent and duration of nonmember use and the fee to be charged shall be determined solely by Declarant. The Declarant may grant nonmember use rights to Persons as an easement appurtenant to such Person's residential real property so that such use rights shall automatically inure to the benefit of such Persons and their heirs and assigns.

b. Any use right granted to nonmembers which extends beyond the time period specified in (a) above shall be valid and may not be terminated by the Association so long as the terms and conditions imposed upon nonmember use by the Declarant are complied with by the nonmember user.

c. Declarant hereby reserves unto itself, its successors and assigns, a non-exclusive, perpetual right and privilege, and easement with respect to the Community for the benefit of Declarant, its successors, assigns, and the above nonmember users, without obligation or charge. These rights shall include, without limitation, an easement for travel across all Common Property in the Community.

d. Declarant shall have the sole right to grant nonmembers access during the time period specified in (a) above.

e. Declarant may annex and subject other properties to the provisions of this Declaration for the purpose of enjoying the recreational facilities. Any properties not within the area described in Exhibit "B" shall not be subject to the use restrictions and rules within Article VI, the insurance and casualty loss provisions within Article VII and the easement provisions within Article XI. However, the Owners of such properties acknowledge the provision in paragraph 4.12 stating that "No Owner may waive or otherwise exempt himself from liability for the assessments provided in this Declaration."

f. Any annexations as provided in subsection (e) above shall be limited to provide for no more than 400 total Members.

g. After Declarant's Control Period, the Association shall have the right and option to grant the right to use the recreational facilities to persons and entities other than an Owner. Such non-owner membership shall be upon such terms and conditions, including length of membership and amount of dues, as determined and promulgated by the Association.

h. The Association will be paid \$1,000.00 for each nonmember who is granted a use right and for each Member annexed as provided in subsection e. The Declarant shall not be responsible for any fees to be paid by such nonmember.

**ARTICLE XIV.  
VARIANCES**

Notwithstanding anything to the contrary contained herein, the Declarant and the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws, and any rule, regulation, or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

**ARTICLE XV.  
LITIGATION**

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in this Declaration, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

**ARTICLE XVI.  
CAPITALIZATION OF ASSOCIATION**

Upon acquisition of record title to a Lot by each Owner other than Declarant or a Builder, a contribution in an amount equal to two/twelfths (2/12) of the amount of the then current annual assessment levied by the Association pursuant to this Declaration ("Initiation Fee") shall be made by or on behalf of the purchaser to the Association as set forth below. The Initiation Fee shall be in addition to, not in lieu of, any annual or special assessments. The Initiation Fee shall be payable at closing, shall not be prorated, and the Association shall have all rights under the Declaration for enforcement of assessments if it is not paid. The Initiation Fee shall be deposited into an account of the Association and disbursed from that account (a) up to two-thirds (2/3) of the Initiation Fee may be disbursed to pay expenses and costs of the Association in accordance with the Declaration and Bylaws, as amended, and (b) one-third (1/3) of the Initiation Fee shall be held by the Association as a long term "Maintenance Reserve" to be disbursed by the Association for maintenance of any property which the Association is required or permitted to maintain, in its sole discretion. The Initiation Fee referred to in this paragraph is payable upon each subsequent transfer, sale or other conveyance of the Lot. **The Initiation Fee will be charged to subsequent purchasers of a Lot.**

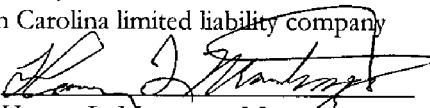
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IN WITNESS WHEREOF, the Declarant herein, hereby executes this instrument under seal this the 18th day of July, 2011.

DECLARANT:

**BMV, LLC,**  
a North Carolina limited liability company

By:

  
Harvey L. Montague, Manager



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, do hereby certify that Harvey L. Montgue personally appeared before me this day and acknowledged that he is a manager of BMV, LLC, a North Carolina Limited Liability Company and further acknowledged the due execution of this instrument on behalf of the Limited Liability Company.

Witness my hand and official seal, this the 18<sup>th</sup> day of July, 2011.

Vickie P. Hepler  
Notary Public

My commission expires: 8/12/2012

[NOTARY SEAL]

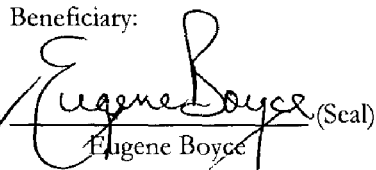


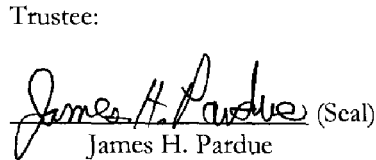
Consent and Subordination to Declaration

Declarant has executed to James H. Pardue , as trustee for Eugene Boyce, a deed of trust dated February 25, 2011, recorded in Book 14346, Page 1907, Wake County Registry.

Eugene Boyce and James H. Pardue hereby consent to the Declaration and consent to the execution, delivery and recording of the Declaration, and agree that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration and that the deed of trust, the lien created thereby, and the respective beneficiary's and trustee's interest in the property described therein, by virtue of the deed of trust are, and shall be, subject and subordinate to the Declaration and the provisions therein, except and provided that the lien of assessments provided for in the Declaration shall be subordinate to the lien of the deeds of trust.

IN WITNESS WHEREOF, the undersigned have duly executed these presents under seal as of this 18<sup>th</sup> day of July, 2011.

Beneficiary:  
 (Seal)  
Eugene Boyce

Trustee:  
 (Seal)  
James H. Pardue

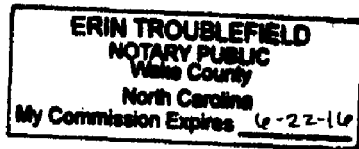
State of North Carolina - County of Wake

I, a Notary Public of the County and State aforesaid, certify that Eugene Boyce personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 18 day of July

My commission expires: 6-22-16

*Erin Troublefield*  
Notary Public



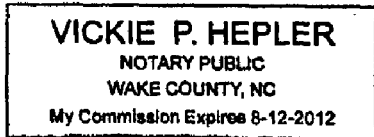
State of North Carolina - County of Wake

I, a Notary Public of the County and State aforesaid, certify that James H. Pardue , Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 18<sup>th</sup> day of July, 2011..

My commission expires: 8/12/2012

*Vickie P. Hepler*  
Notary Public



BK014409PG01152

NORTH CAROLINA

ANNEXATION BY LOT OWNER

WAKE COUNTY

This Annexation by Low Owner is made and entered into this the 20th day of July, 2011 by BMV, LLC ("Declarant") and Royal Oaks Building Group, LLC ("Owner").

WITNESSETH

Declarant recorded a Declaration of Covenants, Conditions, Restrictions and Easements for Forest Springs in Book 14409, Page 1109, Wake County Registry (the "Declaration")

Declarant wishes to annex additional land, as described herein, to the Declaration. Owner joins in to subject the real property to the Declaration.

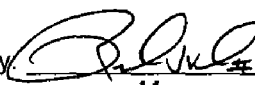
NOW, THEREFORE, Declarant and Owner hereby declare that the real property described herein located in Wake County, North Carolina, and being a portion of Parker Pointe is and shall be held, transferred, sold and conveyed subject to and together with the Declaration of Covenants, Conditions, Restrictions and Easements for Forest Springs, as amended:

Being all of Lots 102, 109, 110, 173, 175, 176, 177, 178, 179, 180 and 181  
Phase 1  
Forest Springs Subdivision  
As shown on map recorded in Book of Maps 2008, Pages 1011 through 1012,  
Wake County Registry.

IN WITNESS WHEREOF, Owner has caused this instrument to be executed as of the day and year first above written.

BK014409PG01153

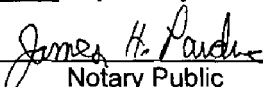
Royal Oaks Building Group, LLC

By  (SEAL)  
Manager

North Carolina  
Wake County

I, a Notary Public of the County and State aforesaid, do hereby certify that Richard L. Van Tassel II personally appeared before me this day and acknowledged that he is the manager of Royal Oaks Building Group, LLC, a North Carolina Limited Liability Company and further acknowledged the due execution of this instrument on behalf of the Limited Liability Company.

Witness my hand and official seal, this 20th day of July, 2011.

  
Notary Public  
My commission expires:

JAMES H. PARDUE  
NOTARY PUBLIC  
WAKE COUNTY, N.C.  
My Commission Expires 2-9-2012.

BK014409PG01154



**EXHIBIT "A"**

Being all of Phase 1  
Forest Springs Subdivision  
As shown on map recorded in Book of Maps 2008, Pages 1011 through 1012,  
Wake County Registry.

BK014409PG01155

**EXHIBIT "B"**

Being all of the property described in deed to BMV, LLC recorded in Book 14274, Page 1767, Wake County Registry.



BOOK:014409 PAGE:01109 - 01156

Yellow probate sheet is a vital part of your recorded document.  
Please retain with original document and submit for rerecording.



**Wake County Register of Deeds**  
**Laura M. Riddick**  
**Register of Deeds**

**This Customer Group**  
\_\_\_\_\_ # of Time Stamps Needed

**This Document**  
\_\_\_\_\_ New Time Stamp  
\_\_\_\_\_ # of Pages

48  
B



Page 17 of 17

Article XI, Section 11.1 shall read as follows:

11.1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang, including the right of the Owner to enter for the purpose of necessary repair and maintenance, as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration). The easements are limited to the original construction of the townhomes in order to provide for and accommodate the inexactness of construction.

IN WITNESS WHEREOF, Declarant and Builder have caused this Amendment to be executed as of the day and year first above written.

- Can be Front/Back/Sides
- No maximum Foot Encroachment (Got Plan. Total 5' max)

BMV, LLC

By: [Signature] (SEAL)  
Manager

Royal Oaks Building Group, LLC

By: [Signature]  
Manager

BK014979PG00372

WAKE COUNTY, NC 294  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
10/19/2012 AT 14:13:03

BOOK:014979 PAGE:00372 - 00374

Prepared by and Hold for:  
James H. Pardue #149

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NORTH CAROLINA

SUPPLEMENTAL DECLARATION FOR FOREST SPRINGS

WAKE COUNTY

This Supplemental Declaration is made and entered into this the 18th day of October, 2012 by BMV, LLC ("Declarant") and Royal Oaks Building Group, LLC ("Owner").

WITNESSETH

Declarant recorded a Declaration of Covenants, Conditions, Restrictions and Easements for Forest Springs in Book 14409, Page 1109, Wake County Registry (the "Declaration")

Declarant wishes to annex additional land, as described herein, to the Declaration. Owner joins in to subject the real property to the Declaration.

NOW, THEREFORE, Declarant and Owner hereby declare that the real property described herein located in Wake County, North Carolina, and being a portion of Forest Springs is and shall be held, transferred, sold and conveyed subject to and together with the Declaration of Covenants, Conditions, Restrictions and Easements for Forest Springs, as amended:

Being all of Phase MF-1  
Multi-Family Section  
Forest Springs Subdivision  
As shown on map recorded in Book of Maps 2012, Pages 24 and 25,  
Wake County Registry.

BK014979PG00373

IN WITNESS WHEREOF, Declarant and Owner have caused this instrument to be executed as of the day and year first above written.

BMV, LLC

By: [Signature] (SEAL)  
Manager

Royal Oaks Building Group, LLC

By: [Signature] (SEAL)  
Manager

North Carolina  
Wake County

I, a Notary Public of the County and State aforesaid, do hereby certify that Richard L. Van Tassel II personally appeared before me this day and acknowledged that he is the manager of BMV Associates, LLC, a North Carolina Limited Liability Company and further acknowledged the due execution of this instrument on behalf of the Limited Liability Company.

Witness my hand and official seal, this 18th day of October, 2012.

JAMES H. PARDUE  
NOTARY PUBLIC  
WAKE COUNTY, N.C.  
My Commission Expires 2-9-2017.

[Signature]  
Notary Public  
My commission expires:

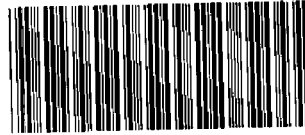
North Carolina  
Wake County

I, a Notary Public of the County and State aforesaid, do hereby certify that Richard L. Van Tassel II personally appeared before me this day and acknowledged that he is the manager of Royal Oaks Building Group, LLC, a North Carolina Limited Liability Company and further acknowledged the due execution of this instrument on behalf of the Limited Liability Company.

Witness my hand and official seal, this 18th day of October, 2012.

JAMES H. PARDUE  
NOTARY PUBLIC  
WAKE COUNTY, N.C.  
My Commission Expires 2-9-2017.

[Signature]  
Notary Public  
My commission expires:



BOOK:014979 PAGE:00372 - 00374

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**Yellow probate sheet is a vital part of your recorded document.  
Please retain with original document and submit for rerecording.**

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**Wake County Register of Deeds  
Laura M. Riddick  
Register of Deeds**

**This Customer Group**  
\_\_\_\_\_ # of Time Stamps Needed

**This Document**  
\_\_\_\_\_ New Time Stamp  
\_\_\_\_\_ # of Pages  
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*TL*

# **Forest Springs Homeowners Association, Inc. Architectural Guidelines and Rules & Regulations**

**The Declaration for Forest Springs Article VI, Section 6.3 mm states: “The Board may, from time to time, without consent of the members, promulgate, modify, or delete additional use restrictions, consistent with the restrictions herein contained, and rules and regulations applicable to the Community.”**

The ARC shall meet as necessary to review Applications received and present their findings within sixty (60) days of receipt.

## **INTRODUCTION**

All residents benefit from the planning and design that has been an important part of the development of Forest Springs. The intent of the Architectural Guidelines is to assure the residents that the standards of design and quality will be maintained. This, in turn, protects the property values and-enhances the overall environment of Forest Springs.

An essential element of Architectural Control is the recognition by all homeowners of the importance of maintaining the ambiance of the Community.

## **PURPOSE**

The Protective Covenants establishes and describes the Forest Springs (Association), and assures each Owner that the quality of Forest Springs design will be maintained. The Association is responsible for administering these Covenants and providing administrative support to the Architectural Review Committee (ARC).

The Declaration for Forest Springs states: “...no exterior construction, alternation, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee to be established by the Board.” altered or allowed to remain, until the “Architectural Review Committee” has approved in writing”

## **MEETINGS**

The ARC shall meet as necessary to review Applications received and present their findings within sixty (60) days of receipt.

## **RESPONSIBILITIES**

On behalf of the Association, the ARC or Board of Directors is empowered to adopt, promulgate, amend, revoke, and enforce

Design Requirements for the purpose of:

1. Governing the form and content of plans and specifications to be submitted to the ARC for approval or disapproval.
2. Governing the procedure for submission of plans and specifications; and
3. Establishing guidelines with respect to the approval or disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of any structure, landscaping, and all other matters that require approval by the ARC.

### **LIMITATION OF RESPONSIBILITIES**

The ARC approval is based only on the aesthetic features of the approved modification. The ARC assumes no liability with regard to the structural integrity of any requests. The ARC makes no representation as to their expertise regarding either the structural adequacy, capacity or safety features of the proposed improvement or structure as shown on the submitted plans or on the ultimate construction of the approved modification. The ARC does not assume the responsibility for the performance or quality of work of any contractor.

### **ARCHITECTURAL CONTROL COMMITTEE POLICIES**

The ARC does not seek to restrict individual taste or preferences. In general, its aim is to avoid harsh concepts in the landscape and architectural themes of Forest Springs and to foster thoughtful design so that there is harmony between neighboring residences. The ARC intends to be completely fair and objective in the architectural review process and to maintain sensitivity to the individual aspects of design. The approval of the ARC of plans or specifications submitted for approval, shall not be deemed to be a waiver by the ARC of the right to object to any of the features or elements if and when the same features and elements are included in any subsequent, plans and specifications submitted for approval for use on other Units.

### **APPROVAL NECESSARY**

No building, outbuilding, garage, fence, wall, retaining wall, landscaping, (as set forth in Section 7 of the Architectural Controls, Guidelines, Standards and Procedures), pool, spa, porch, or other structure or improvement of any kind shall be erected, constructed placed or maintained on any properties, nor after construction of a dwelling or other exterior improvements upon a Unit shall any landscaping, dwelling or other improvements on each Unit or color scheme thereof, be altered, changed repaired or modified unless the same shall be approved in writing by the Architectural Control Committee. The foregoing prior approval is intended to specifically apply to the painting of the exterior of a dwelling, the installation of a pool or spa, or any other maintenance, repair or modification which changes the exterior appearance of a dwelling or other improvements on a Unit or a Lot.

## **TIME LIMITATIONS**

After approval by the ARC, all improvements shall be completed within one hundred twenty (120) days from commencement of the improvement. Projects that remain uncompleted for long periods of time are visually objectionable and can be a nuisance and a safety hazard for neighbors and the Community. The ARC may establish a more specific time for completion as a condition of its approval.

In the event the ARC fails to approve or disapprove plans and specifications within sixty (60) days after they were received in writing to the ARC in acceptable form, including all information necessary for their consideration and review, approval by the ARC shall be deemed to have been granted. The ARC shall have the right to request additional information if in its opinion, the information submitted is incomplete or insufficient.

## **INSPECTIONS**

Periodic inspections may be made by the ARC while construction is in progress to determine compliance with the approved plans and specifications and provisions of the Declaration. Any inspections must be at the permission of the homeowner.

## **JOB SITE CONDITIONS**

All job sites shall be kept in a neat and orderly condition and all trash must be contained. Construction hours are subject to rules and regulations as established by the ARC and/or the Association from time to time, or the local ordinances, whichever is more restrictive. All construction operations must be performed in Accordance with local governmental ordinances.

## **APPROVAL**

Upon approval by the ARC, a copy of the applicant's plans and specifications bearing such written approval shall be returned to the applicant. Approval of any application shall be final and the approval may not be thereafter reviewed or rescinded provided that there has been compliance to all conditions of approval. If the request for approval is disapproved by the ARC due to aspects of the request that can be remedied by the applicant, the recommended changes can be made to the request and returned to the ARC for approval.

## **VIOLATIONS**

If any alteration or modification is made without the required prior written consent of the ARC, the alteration has been undertaken in violation of the Protective Covenants. All unapproved alterations or modifications may be required to be removed until ARC approval is granted. In no event may any alteration or modification be allowed to remain if in violation of any of the Covenants and Restrictions contained in the Declaration, or in violation of any zoning or building ordinance or regulation.

The ARC is empowered to enforce its policies, as set forth in the Covenants and this Manual, by means specified in the Covenants, including an action in a court of law, to insure compliance. The Association

also has the right to levy a fine on Owners for modifications made without the written request and approval from the ARC.

## **KEY ARCHITECTURAL GUIDELINES**

The ARC evaluates all submissions based on the individual merits of the application. Besides evaluation of the particular design proposal, this includes consideration of the characteristics of the individual site and lot size, since what may be an acceptable design on an exterior in one instance may not be for another. The following criterion is general in nature and applies to all of the dwelling units in Forest Springs.

### **Relation to Forest Springs Open Space**

Factors such as removal of trees, disruption of the natural topography and changes in rate or direction of storm water run-off may also adversely affect Forest Springs open space common.

### **Conformance with Covenants**

All applications are reviewed to conform that the request is in conformance to all applicable Covenants and Restrictions affecting Forest Springs as recorded in the records of Wake County.

### **Validity of Concept**

The basic idea of the proposed alteration requested must be sound and appropriate to its surroundings.

### **Design Compatibility**

The proposed alteration must be compatible with the architectural characteristics of the applicant's house, adjoining houses and the neighborhood setting. Compatibility is defined as similarity in architectural style, quality of workmanship, similar use of materials color and construction details.

### **Location and Impact on Neighbors**

The proposed alteration should relate favorably to the landscape, the existing structure and the neighborhood. The primary concerns are access, view, sunlight and drainage. For example, fences or landscaping may obstruct views, or access to neighboring properties; decks or larger additions may infringe on a neighbor's privacy.

### **Scale**

The size of the proposed alteration should relate well to the adjacent structures and its surroundings. For example, a large addition to a small house may be inappropriate.

### **Color**

Color may be used to soften or intensify visual impact. Parts of an addition that are similar to the existing house such as roofs and trim should be matching in color. No permission or approval is required to repaint in accordance with the originally approved color scheme.

### **Materials**

Continuity is established by use of the same or compatible materials as were used in the original house. For instance, an addition with vinyl siding may not be compatible with a stucco house.



### **Workmanship**

Workmanship is another standard, which applies to all exterior alterations. The quality of work should be equal to or better than that of the surrounding area. Poor practices, besides causing the owner problems, can be visually objectionable to others.

### **Wetland/Preserve Areas**

Certain areas within and contiguous to Forest Springs are designated as wetland and/or preserve areas for which the Association has the ultimate maintenance responsibility. Such areas are protected by various regulatory agencies, and as such, may not be disturbed by residents and/or the Association. .

## **ARCHITECTURAL CONTROL APPLICATION PROCEDURE**

**STEP 1.** Prior to any alteration, addition or improvement the property owner (not contractors or other parties) requests an Architectural Application from Management Company or obtain from the community website.

**STEP 2.** Application is completed with all supporting documents and returned to:

**Forest Springs HOA  
c/o Resource Property Management  
P.O. Box 1866  
Pittsboro, NC 27312  
(919) 240-4045 – fax (919) 651-1387  
abrown@rpmproprtypros.com**

**STEP 3.** The management company dates application upon receipt, thus starting the 60-day approval/disapproval time frame, copies and distributes dated application to Architectural Review Committee or Board members, as appropriate.

**STEP 4.** Committee or Board members receive copies of the dated application, review and approve/disapprove within 60 days from the date of receipt and return signed applications to the Management Company.

**STEP 5.** The management company receives approved/disapproved applications from the Committee or Board and returns a copy of the original to the homeowner with a stamped "Approved" or "Disapproved" within the sixty (60) -day time limit from the original day of receipt. (In the case of "Disapproval", the reasons and/or requirements will be typed on the application, stamped and returned. Should the property owner want to resubmit another application or forward additional information required, the sixty (60) day process starts again with each submittal.) The Architectural Review Committee or Board members names will not appear on the original application but will become part of the Association's permanent records by attachment to the original application.

**STEP 6.** Property owner receives authorization and starts project within 60 days from the approval date, or receives Disapproval and either, submits additional information or appeals for reconsideration (thus starting the sixty (60) day approval process once again), or abandons the project.

**STEP 7.** In the case an application is not satisfactorily agreed upon by the Committee and the applicant, the applicant may appeal to the Board of Directors for reconsideration within sixty (60) days and final approval or disapproval.

## **SUMMARY OF PROCEDURES**

### **HOW TO PREPARE AN APPLICATION FOR ARCHITECTURAL COMMITTEE REVIEW**

Completed applications should be delivered or sent to the Management Company.

A sample application form is attached.

#### **SITE PLAN**

A site plan or property survey should be included with the application showing the location of existing structures and the boundaries of the Property. Proposed changes or additions should be indicated including dimensions and distances from the home and adjacent properties. Please include one (1) copy of each of these documents.

#### **MATERIALS AND COLOR**

Samples of the materials and colors to be used and an indication of existing colors and materials should be provided. In most cases, a statement that the proposed wall, for example, is to be painted to match the existing house trim or house color is sufficient. Where materials and/or colors are compatible but different from those of the existing structures, samples or color chips should be submitted for clarity.

#### **DRAWINGS AND PHOTOGRAPHS/ELEVATION**

A graphic description of the request should be provided. This may be in the form of manufacturer's literature or photographs as well as freehand or mechanical drawings. The amount of detail should be consistent with the complexity of the proposal

#### **WAKE COUNTY**

After receiving approval from the ARC, a permit may be required from Wake County or other governmental authorities. The Applicant must determine whether this requirement applies to the requested modification.

#### **THIRD PARTY COMMENTS**

Written comments from neighbors and other residents concerning proposed changes must be furnished to the ARC. These comments will be considered during the review process. The ARC however, shall make its decisions based on standards set forth in the Covenants and further described in this Manual, which may be updated from time to time.

**Forest Springs HOA  
c/o Resource Property Management  
P.O. Box 1866  
Pittsboro, NC 27312  
(919) 240-4045 - fax (919) 651-1387  
abrown@rpmpropertypros.com**

**FOREST SPRINGS HOMEOWNERS ASSOCIATION, INC. ARCHITECTURAL  
STANDARDS, CRITERIA AND DESIGN REQUIREMENTS**

**SUPPLEMENT TO THE DECLARATION OF  
RESTRICTIONS AND COVENANTS**

The following are ARC approved standards that are not specifically outlined in the Forest Springs Protective Covenants. No assumptions should be made that the restrictions included in the Protective Covenants and not listed here have been waived by the Association.

**1. WINDOWS, DOORS, SCREENED ENCLOSURES AND PATIOS**

- a. Bright-finished or bright plated (other than white) metal exterior doors, windows, window screens, louvers, exterior trim or structural members shall not be permitted. The use of black or white anodized aluminum to match the original trim is the preferred material.
- b. The use of reflective tinting or mirror finishes on windows and doors is prohibited.
- c. Security bars on windows or doors are prohibited.
- d. Only proper window treatments and blinds are allowed in the windows. Any broken blinds must be replaced.
- e. Screened enclosures (attached and detached) shall not be permitted on the front or sides of dwelling units without approval of the ARC.
- f. All screen enclosures must have a hip, gable or mansard roof.

**2. SOLAR PANELS**

- a. Solar heating panels shall be reviewed on an individual basis, and if approved by the ARC must be installed so as to present the least obtrusive condition.

**3. EXTERIOR WALL FINISHINGS**

- a. The use of the following materials is appropriate:
  1. Stone (natural or synthetic)
  2. Vinyl Siding
  3. Brick
  4. Hardiplank (cement board)
  5. Masonite Siding
- b. The use of the following materials is not allowed:
  1. Rough Sawn Siding
  2. T-111 Siding
  3. Aluminum siding
- c. Anything not specifically stated would be subject to approval by the ARC. In general, colors should be muted. Most paint manufacturers have "traditional" or "Williamsburg" color charts from which selections should be made. All exterior colors and materials must be approved by the ARC.
- d. Exterior colors that, in the opinion of the ARC would be inharmonious, discordant and/or incongruous to the Forest Springs shall not be permitted.

#### **4. ROOFS**

- a. Roof colors shall be an integral part of the exterior color scheme of the building. Roofs shall be either black or dark gray in color
- b. No change in color of existing roofing material shall be permitted without the approval of the ARC. Roofing material must be either asphalt or fiberglass shingles, with a minimum 20-year warranty.
- c. Flat roofs are not permitted except as described in paragraph c. below. All roof pitches shall be a minimum of 5:12 ratio.
- d. Flat deck first floor patio roofs, which also serve as second floor balconies, may be approved by the ARC. The second story balcony must be accessible from a second story door and must have a continuous railing at its perimeter. The first floor roof structure/second story floor must match as close as possible the existing house roof in materials and design.

#### **5. GARAGES, SHEDS, DRIVEWAYS, WALKWAYS AND EXTERIOR LIGHTING**

- a. Only one (1) outbuilding per lot is permitted.
- b. Any change from the existing garage door must be approved by the ARC.
- c. No curbside parking areas are to be created by altering existing curb or street paving.
- d. All proposed exterior lighting should be detailed on the request for architectural modification. No exterior lighting shall be permitted which, in the opinion of the ARC, would create a nuisance to the adjoining property owners
- e. Driveways and walkways shall be constructed of concrete and have a concrete pipe and graveled surface installed prior to the digging and pouring of the footings. No asphalt drives or walkways will be permitted.
- f. Driveway aprons must be concrete and may not be widened without the approval of the ARC.
- g. Any proposed walkway must be approved by the ARC prior to installation. This includes concrete walkways, stepping-stones or paver bricks.
- h. All holiday lights and decorations must not be installed before 30 days of the holiday and must be removed no later than 30 days after the holiday.

#### **6. AWNINGS AND SHUTTERS**

- a. Metal fold-down awnings and canopies do not meet the standards of the community with respect to conformity and harmony of external design and shall not be permitted or affixed to the exterior of any residence.
- b. Permanent fixed and operational shutters are permitted. Design and color of shutters must be coordinated with the house and be approved by the ARC.

#### **7. LANDSCAPING**

- a. All major improvements of landscaping must first be submitted to the ARC with a survey prior to installation. Proposed landscaping must be shown on a lot survey, which includes the house, all impervious surfaces and existing landscaping.

- b. Landscape of a minor nature such as naturalizing an area of the yard or adding low growing shrubs or bedding flowers need not be submitted for approval, provided they do not encroach upon neighboring properties.
- c. All Landscaping installed with approval by the ARC must be maintained to the standards as set forth by the Association.
- d. No private landscaping may be planted within any utility easement or within the designated slope easements. The HOA reserves the right to landscape within the slope easements.

## **8. FENCES**

- a. All fencing shall be either wood with pressure-treated lumber of grade 2 or better. Masonry walls or wooden fences, not to exceed six (6) feet in height, may be permitted.
- b. Black wrought iron fencing, at a height ranging between four (4) feet and six (6) feet is acceptable in the community.
- c. White picket fencing at a maximum height of six (6) feet is acceptable.
- d. Vinyl fencing at a height of six (6) feet may be permitted.
- e. Chain link, chicken-wire, and wooden split rail are prohibited.
- f. No fencing shall be placed on Forest Springs HOA property. No fencing shall be installed within any utility easements without prior written consent of the utility company.
- g. Fencing may not start before the front corners of the house.
- h. There must be five (5) feet between an existing fence to allow room for maintenance of the vegetation and the fence, or with the neighbor's approval, fences may be connected.
- i. All fences must have finished sides facing outward. Rough sides, posts, etc. must face the interior of the fenced area.
- j. If there are any types of easements on your property, there may be additional fence restrictions from the Town of Fuquay. Please check with the Town directly prior to submitting your request.

## **9. BASKETBALL GOALS**

- a. Portable goals are allowed but must be removed from view immediately when not in use.
- b. Permanent goals will be considered providing they are constructed of black poles, permanently mounted, not visible from the street, and the ARC approves the location, height, and type of goal and post.
- c. Permanent goals mounted on the house will not be allowed.
- d. Lights for night basketball play will not be permitted. Use shall be restricted to daylight hours.
- e. All play equipment must be kept in good condition.

## **10. SWIMMING POOLS**

- a. Proposed pool, decking, screen enclosure and landscaping plans with survey must be submitted to the ARC for review.
- b. Above ground swimming pools shall not be permitted, other than toddler or wading pools.
- c. Swimming pools shall not be permitted on the street side of the residence without the approval of the ARC.
- d. All pool equipment and heaters must be screened from view with landscaping from adjacent properties and roadways.

- e. No decking, screening or landscaping may be installed on any portion of any HOA property.
- f. Spas or hot tubs will be permitted only when their placement does not interfere with the neighboring homes and will not create a nuisance. They do require ARC approval.
- g. Any pool, spa or hot tub that is permitted must also conform to all local zoning ordinances regarding this type of installation.
- h. All pools, spas and hot tubs will only be approved if enclosed by an approved fence.

## **11. ANTENNAS, SATELLITE DISHES, FLAGPOLES, SIGNS AND MAILBOXES**

- a. No exterior television or radio masts, towers, poles, antennas or aerials may be erected.
- b. Placement and landscape buffering requirements must be determined by the ARC as a condition of approval for satellite dishes. All satellite dishes must be maintained on a regular basis to include proper industry standard mounting and damages.
- c. A flagpole for display will be permitted with prior approval from the ARC. Flagpoles shall not be used as an antenna.
- d. One "For Sale" or "For Rent" sign shall be allowed to be erected or displayed on a Lot without written permission of the ARC.
- e. One political sign shall be allowed to be erected or displayed on a Lot without written permission of the ARC. Such sign shall not be placed on the Lot earlier than 60 days before an election and must be removed within 7 days after the election.
- f. No sign shall exceed 10 square feet. No sign shall be nailed or attached to a tree.
- g. The ARC shall determine form, size, color, content, time of placement and location of any other sign. This prohibition of signs, flags and banners does not apply to the Declarant or assigns.
- h. Mailboxes have been designed and installed for the Neighborhood by the Builder and shall be provided by the builder. If said mailbox is damaged after the closing of any lot, the homeowner must replace the mailbox at his own expense with an identical mailbox. Mailboxes and mailbox posts must be kept in good condition to include cleaning, painting and replacing if needed.

## **12. PLAY EQUIPMENT, GARDENS AND DECORATIVE OBJECTS**

- a. All playground equipment or playhouses shall be placed to the rear of the property and only with approval of the ARC. Location on the Lot and screening requirements may be a condition of ARC approval.
- b. Trampolines are permitted but owner must receive approval from the ARC. Trampolines must be in working condition and kept in a neat manner in the rear of the property.
- c. Vegetable gardens require approval from the ARC and must be located to the rear of the property. Large vegetation such as corn may be prohibited.
- d. No clotheslines or similar structures shall be permitted on any portion of an Owner's property.
- e. No decorative objects such as sculpture, birdbaths, fountains and the like shall be placed or installed on the street side of any Lot without approval from the ARC.
- f. Window air conditioning units are prohibited.
- g. Above-ground and sub-surface fuel tanks are prohibited.
- h. Holiday decorations may not be displayed earlier than 30 days before the holiday and must be removed within 30 days after the holiday.

### **13. PETS, PET HOUSES AND PENS**

- a. No poultry, fowl, horse, cow, sheep, goat, pig, or animal other than household pets shall be kept, harbored, or bred on any of the said lots or within any home situated thereon.
- b. Household pets are herein described to be cats, dogs, parakeets, and other small domestic animals with the exception of pigs. Household pets may not be kept, bred, or maintained for any commercial purpose. All dogs shall be contained in an enclosed rear fence or decorative privacy fence. No chain link permitted unless in a fully enclosed structure in the rear yard.
- c. All dog houses must be approved prior to installation.
- d. Doggie doors are allowed but must be approved prior to installation.
- e. All dogs shall be kept on a hand leash and must not be allowed to become a nuisance by barking or otherwise disturbing neighbors.
- f. Tying a dog will not be permitted.
- g. Owners must clean up after their pets.

### **14. VENTILATORS, SKYLIGHTS, GUTTERS AND DOWNSPOUTS**

- a. Attic ventilators or other apparatus requiring penetration of the roof should be as small in size as functionally possible and should be painted to match the roof color. They should be located generally on the least visible side of the roof and not extend above the ridgeline. Approval of any ventilators must be obtained from the ARC prior to installation.
- b. Gutters and downspouts must match the trim on the house and be as inconspicuous as possible. Run-off must not adversely affect the drainage on adjacent properties. Installation of gutters and downspouts must have ARC approval.

### **15. PATIO, PATIO ENCLOSURES, AND DECKS**

- a. Patio enclosures are an extension of the home and have a significant impact on its appearance. All enclosures should be designed to conform to the contours of the house color and materials should be compatible with the existing home and surrounding homes. All patio enclosures must have ARC approval prior to the commencement of construction.
- b. The roof of the patio enclosure should conform to the roof on the home as closely as possible. Insulated aluminum roofs will not be permitted.
- c. All patios, patio slabs and courtyards must be approved by the ARC prior to installation.
- d. All decks shall be constructed on the rear or side of the house. Material shall be pressure treated lumber of grade 2 or better.

### **16. PERMANENT BARBECUES**

- a. Permanent barbecues may be permitted in rear yards but should not be a dominant feature on the landscape and should be located so they will blend as much as possible with the surrounding area. Supplemental planting should be provided to soften the visual impact of the barbecue, particularly when little or no natural background or screening is available.
- b. No permanent barbecue shall be installed until approval is received by the ARC.
- c. Non-permanent barbecues must be stored in the back of the house when not in use.

## **17. MAJOR EXTERIOR ALTERATIONS**

- a. The design of major alterations should be compatible in scale, materials, and color with the applicant's house and adjacent houses.
- b. The location of major alterations should not impair the views or amount of sunlight and natural ventilation on adjacent properties.
- c. Roof pitch should match the type used in the applicant's house.
- d. New windows and doors should match the type used in the applicant's house and should be located in a manner which will relate well with the location of exterior openings in the existing house.
- e. If changes in grade or other conditions, which will affect drainage, are anticipated they must be indicated. Generally approval will be denied if adjoining properties are adversely affected by changes in drainage.
- f. Construction materials should be stored so that impairment of views from neighboring properties is minimized. Excess material and debris should be immediately removed after completion of construction.

## **18. HOME AND YARD MAINTENANCE**

The following items must be maintained on a regular basis:

- a. Lawns must be mowed
- b. Flower beds must be weeded
- c. Driveways, streets, sidewalks and fence line must be edged
- d. Juniper hills must be weeded and maintained
- e. Furniture, trash, tools, construction materials, etc. are not to be stored on a property at any time.
- f. Trash and recycle bins must be stored out of sight or screened from view from the street. Any fencing or landscaping installed to cover trash/recycle bins must be approved by the ARC prior to installation.
- g. All exterior portions of the home must be kept in a state of good repair.
- h. Mold and mildew must not be allowed to collect and grow on the exterior of the home.
- i. Siding and trim around the windows, doors and garages must be kept in a good state of repair including painting and power washing as needed.

## **19. VEHICLES AND PARKING**

- a. Parking of any vehicles (including but not limited to motorhomes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans and automobiles) on streets, thoroughfares, sidewalks, walkways or grass is prohibited.
- b. Parking of commercial vehicles, mobile homes, recreational vehicles, boats and other watercraft, trailers, damaged, rusty, unkempt, unsightly, stored or inoperable vehicles in places other than enclosed garages is prohibited.
- c. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage.



**BYLAWS**  
**OF**  
**FOREST SPRINGS HOMEOWNERS ASSOCIATION, INC.**

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BYLAWS  
OF  
FOREST SPRINGS HOMEOWNERS ASSOCIATION, INC.

**ARTICLE I.  
NAME, MEMBERSHIP, APPLICABILITY, AND DEFINITIONS**

1.1. Name. The name of the Association shall be Forest Springs Homeowners Association, Inc. (“Association”).

1.2. Membership. The Association shall have two classes of membership, as is more fully set forth in that Declaration of Covenants, Conditions, Restrictions and Easements for Forest Springs recorded or to be recorded in the Office of the Register of Deeds of Wake County, North Carolina, as amended from time to time (“Declaration”), the terms of which pertaining to membership are specifically incorporated by reference herein.

1.3. Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

**ARTICLE II.  
ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES**

2.1. Place of Meetings. Meetings of the Association shall be held at the Association’s principal office or at such other suitable place convenient to the members as may be designated by the Board, either in the Community or as convenient thereto as possible and practical.

2.2. First Meeting and Annual Meetings. An annual or special meeting shall be held within one year from the date the Declaration is recorded. Annual meetings shall be set by the Board.

2.3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or upon a petition signed by at least 10% of the Total Association Vote (the consent of the Declarant shall not be required). The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

2.4. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Lot (at the address as shown in the records of the Association) a notice of each annual or special meeting of the Association stating the time and place where it is to be held, the agenda for such meeting, and in the notice of a special meeting, the purpose thereof. If an Owner wishes notice to be given at an address other than the Lot, the Owner shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than 10 nor more than 60 days before a meeting.

2.5. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

2.6. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.7. Voting. The voting rights of the members shall be as set forth in the Articles of Incorporation and the Declaration, and such voting rights are specifically incorporated herein.

2.8. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of such member's Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of 11 months from the date of the proxy.

2.9. Quorum. Unless otherwise expressly provided, the presence, in person or by proxy, of 10% of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the declaration or the bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

2.10. Action Without a Formal Meeting. Any action to be taken at a meeting of the members, or which may be taken at a meeting of the members, may be taken without a meeting if one or more written consents setting forth the action so taken shall be signed by members holding at least 80% of the Total Association Vote. Action taken without a meeting shall be effective on the date that the last consent is executed, and consented to by the Declarant, if required, unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of members filed in the Association's permanent records.

2.11. Action by Written Ballot. Any action to be taken at any annual, regular, or special meeting of members may be taken without a meeting if approved by written ballot as provided

herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the Association's permanent records.

2.12. Members List. The record date for determining members entitled to notice shall be the close of business of the day preceding the date notices are given. The record date for determining members entitled to vote at a meeting shall be the close of business of the business day preceding the date of the meeting. The Association shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. Additionally, the Association shall prepare on a current basis through the time of the membership meeting a list of members who are entitled to vote but not entitled to notice. This list shall be made available for any member for the purpose of communication concerning the meeting and shall make the list available at the meeting and any member, member's agent, or member's attorney is entitled to inspect the list at any time during the meeting.

### **ARTICLE III. BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS**

#### **A. Composition and Selection.**

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 3.2, the directors must reside in the Community and shall be members or spouses of such members, who are in good standing and current on their dues; provided, however, no person and his or her spouse may serve on the Board at the same time.

3.2. Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board or any officer or officers of the Association until such time as the first of the following events shall occur: (a) twenty years from the date the Declaration was recorded; (b) the date on which 75% of the lots developed or to be developed as part of the Community (including all present and future phases) pursuant to development plans maintained by the Declarant, as such plans may be revised and amended from time-to-time, have been conveyed to Persons other than Builders; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors selected by the Declarant need not be Owners or residents in the Community.

3.3. Number of Directors. The initial Board shall consist of two members. After the Declarant's right to appoint directors and officers terminates, the Board shall consist of at least three directors, but may expand the number of directors to five or seven members, which shall be filled by a vote of the members in accordance with Section 3.5(b).

3.4. Nomination of Directors. Elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

3.5. Election and Term of Office. Owner-elected directors shall be elected and hold office as follows:

(a) After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting to be held at which Owners shall elect three directors.

(b) Thereafter, directors shall be elected at the Association's annual meeting. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected.

At the special meeting in which the Owners initially elect directors, two directors shall be elected to two-year terms and one director shall be elected to a one-year term. At the expiration of the initial term of office of each respective Owner-elected director, a successor shall be elected to serve for a term of two years. The directors shall hold office until their respective successors shall have been elected by the Association.

3.6. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed, with or without cause, by a majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least ten days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than 30 days may be removed by a majority vote of the remaining directors at a meeting. This Section shall not apply to directors appointed by Declarant.

3.7. Vacancies. Vacancies in the Board caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board. Each person so selected shall serve the unexpired portion of the term.

## **B. Meetings.**

3.8. Organization Meetings. The first Board meeting following each annual meeting of the membership shall be held at such time and place as shall be fixed by the Board.

3.9. Regular Meetings. Regular Board meetings may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.10. Special Meetings. Special meetings of the Board shall be held when requested by the President, Vice President, or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; (d) electronic message, fiber optic, or telecommunication to the director; or (e) by commercial delivery service to such director's home or office. All such notices shall be given or sent to the director's address, telephone number, or other place of delivery as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least four days before the time set for the meeting. Notices given by personal delivery, telephone, or telecommunication shall be given at least 48 hours before the time set for the meeting.

3.11. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12. Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board.

3.13. Compensation. No director shall receive any compensation from the Association for acting as such.

3.14. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

3.15. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

3.16. Action Without a Formal Meeting. Unless prohibited by North Carolina law, any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.



3.17. Telephonic or Electronic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or other communication or electronic equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

**C. Powers and Duties.**

3.18. Powers. The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the common expenses;
- (b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;
- (c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending use restrictions and rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and

(l) contracting with any Person for the performance of various duties and functions.

3.19. Management Agent. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Declarant or an affiliate of the Declarant may be employed as managing agent or Manager. The term of any management agreement shall not exceed two years and shall be subject to termination by either party, without cause and without penalty, upon not more than 90 days' written notice.

3.20. Borrowing. The Board shall have the power to borrow money without the approval of the members of the Association; provided, however, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, or the total amount of such borrowing exceeds or would exceed ten thousand dollars (\$10,000.00) outstanding debt at any one time.

3.21 Fining or Suspension Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) or suspend a member's right to use any part of the Common Property unless and until the following procedure is followed:

(a) Notice. Written notice shall be served upon the violator by first-class or certified mail sent to the last address of the member shown on the Association's records, specifying:

(i) the nature of the violation, the fine or suspension to be imposed and the date, not less than 15 days from the date of the notice, that the fine or suspension will take effect;

(ii) that the violator shall have a hearing regarding the fine or suspension imposed;

(iii) the name, address, and telephone numbers of a person to contact to challenge the fine or suspension;

(iv) that any statements, evidence, and witnesses may be produced by the violator at the hearing.

(b) Hearing. The hearing may, in the sole discretion of the Board, be held before the Board in executive session. At the hearing, the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

(c) Enforcement. In any action or proceeding to enforce the Declaration, these Bylaws, the rules and regulations of the Association, or decision of the Board, the

Association shall be entitled to recover all expenses from the violator, including all attorney's fees, thus incurred.

#### **ARTICLE IV. OFFICERS**

4.1. Officers. The officers of the Association shall be a President, Secretary, and Treasurer. Any two or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board. The Board may appoint such other officers, including one or more Vice Presidents, Assistant Secretaries, or Assistant Treasurers, as it shall deem desirable.

4.2. Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association under Section 3.2, the officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

4.3. Removal. Any officer may be removed by the Board whenever, in its judgment, the best interests of the Association will be served thereby.

4.4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all the general powers and duties that are incident to the office of the president of a corporation organized under the North Carolina Nonprofit Corporation Code.

4.5. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

4.6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board, shall prepare, execute, certify, and record any amendments to the Declaration on behalf of the Association, and shall have charge of such books and papers as the Board may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with North Carolina law.

4.7. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board.

4.8. Resignation. Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**ARTICLE V.  
COMMITTEES**

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board.

**ARTICLE VI.  
MISCELLANEOUS**

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by resolution of the Board.

6.2. Parliamentary Rules. *Robert's Rules of Order* (current edition) shall govern the conduct of all Association proceedings, when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, these Bylaws, or a ruling made by the person presiding over the proceeding.

6.3. Conflicts. If there are conflicts or inconsistencies between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

6.4. Amendment. These Bylaws may be amended by the Board if such amendment is necessary: (a) to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) to meet the requirements of an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to the Declaration; or (d) to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration.

Further, so long as Declarant has the right unilaterally to subject additional property to the Declaration, Declarant may unilaterally amend these Bylaws for any other purpose; provided, however, such amendment shall not adversely affect the substantive rights or title of any Lot Owner without the consent of the affected Lot Owner.

In addition, these Bylaws may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the Total Association Vote; provided, however, during Declarant's Development Period, any such amendment must also be approved by Declarant.

6.5. Taxes. The Association shall be responsible for the payment of any taxes or special assessments levied against the Common Property and any such payments by the Association shall constitute a common expense of the Association. Any provisions in these Bylaws or the Declaration to the contrary notwithstanding, if the Association believes that any tax

assessed against the Association is invalid, excessive or unenforceable in whole or in, part, the Association may protest against and contest the validity, amount or enforceability of any such tax.

6.6 Electronic Transactions. The Association may conduct any transaction or transactions by electronic means, and this provision shall constitute the agreement by the Association, its members and directors to the conduct of transactions by electronic means.

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Forest Springs Homeowners Association, Inc., a North Carolina nonprofit corporation;

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 22nd day of July, 2011.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 22nd day of July, 2011.

\_\_\_\_\_ [SEAL]

Secretary



# NORTH CAROLINA

## Department of the Secretary of State

To all whom these presents shall come, Greetings:

I, Elaine F. Marshall, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

### ARTICLES OF INCORPORATION

OF

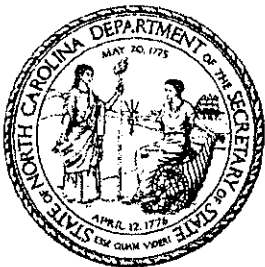
### FOREST SPRINGS HOMEOWNERS ASSOCIATION, INC.

the original of which was filed in this office on the 18th day of July, 2011.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 18th day of July, 2011.

*Elaine F. Marshall*

Secretary of State



**ARTICLES OF INCORPORATION**  
**OF**  
**FOREST SPRINGS HOMEOWNERS ASSOCIATION, INC.**

These Articles of Incorporation are made and acknowledged for Forest Springs Homeowners Association, Inc. and shall govern a nonprofit corporation under and by virtue of the laws of the State of North Carolina.

Article 1. Name and Address. The name of the corporation is Forest Springs Homeowners Association, Inc. For convenience, the corporation shall be referred to in this instrument as the "Association."

The initial principal office of the Association is:

1210 Trinity Road, Suite 102  
Raleigh, North Carolina 27607  
Wake County

Article 2. Duration. The Association shall have perpetual duration.

Article 3. Applicable Statute. The Association is organized pursuant to the provisions of the North Carolina Nonprofit Corporation Act.

Article 4. Definitions. All capitalized terms used herein which are not defined shall have the meaning set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Forest Springs recorded or to be recorded in the office of the Wake County Register of Deeds, North Carolina, as amended from time to time (the "Declaration").

Article 5. Purposes. The Association does not contemplate pecuniary gain or benefit, direct or indirect, to its members. By way of expansion and not of limitation, the purposes for which it is formed are:

- a. To be and constitute the Association to which reference is made in the Declaration, to perform all obligations and duties of the Association, and to exercise all rights and



powers of the Association, as set forth in the Declaration, the Bylaws, and as provided by law; and

b. To provide an entity for the furtherance of the interests of the Owners of property subject to the Declaration.

Article 6. Powers. In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Declaration or Bylaws of the Association, may be exercised by the Board of Directors:

a. all of the powers conferred upon nonprofit corporations by common law and the North Carolina statutes in effect from time to time;

b. all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the Bylaws and the Declaration, including, without limitation, the following:

1. To fix, levy, collect and enforce payment of all charges or assessments authorized by the Declaration by any lawful means; to pay all expenses in connection therewith and all administrative and other expenses incident to the conduct of the business of the Association including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

2. To manage, control, operate, maintain, repair and improve the common areas and facilities, and any property subsequently acquired by the Association, or any property owned by another for which the Association, by rule, regulation, declaration or contract, has a right or duty to provide such services;

3. To enforce covenants, conditions or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration;

4. To engage in activities which will actively foster, promote and advance the common interests of all Owners of property subject to the Declaration;

5. To buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association;

Richard L. Van Tassel II  
1210 Trinity Road, Suite 102  
Raleigh, North Carolina 27607

Paige C. Lowder  
1210 Trinity Road, Suite 102  
Raleigh, North Carolina 27607

Article 9. Liability of Directors. No person who is serving or who has served as a director of the Association shall be personally liable to the Association or any of its members for monetary damages for breach of duty as a director, except for liability with respect to (a) acts or omissions that the director at the time of such breach knew or believed were clearly in conflict with the best interest of the Association, (b) any transaction from which the director derived an improper personal benefit or (c) acts or omissions with respect to which the North Carolina Nonprofit Corporation Act does not permit the limitation of liability. As used herein, the term "improper personal benefit" does not include a director's reasonable compensation or other reasonable incidental benefit for or on account of his service as a director, officer, employee, independent contractor, attorney, or consultant of the Association. No amendment or repeal of this Article, nor the adoption of any provision to these Articles of Incorporation inconsistent with this Article, shall eliminate or reduce the protection granted herein with respect to any matter that occurred prior to such amendment, repeal or adoption.

Article 10. Dissolution. The Association may be dissolved only as provided in the Declaration, the Bylaws and by the laws of the state of North Carolina. If the Association is dissolved, the net assets of the Association shall be dedicated to a public body or conveyed to another nonprofit organization with a purpose similar to that of the Association.

Article 11. Merger and Consolidation. The Association may merge or consolidate only upon a resolution duly adopted by the Board of Directors and the affirmative vote of not less than two-thirds (2/3) of the Total Association Vote; provided, however, during Declarant's Development Period, Declarant must also consent to such merger or consolidation.

Article 12. Amendments. These articles may be amended by the approval of at least two-thirds (2/3) of the total Association Vote, provided that (i) no amendment shall be in conflict with the Declaration, (ii) during Declarant's Development period, any amendment to these Articles must also be approved by Declarant, and (iii) provided further that no amendment shall be effective to impair or dilute any rights of members that are governed by the Declaration. In additions, these Articles may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) if such

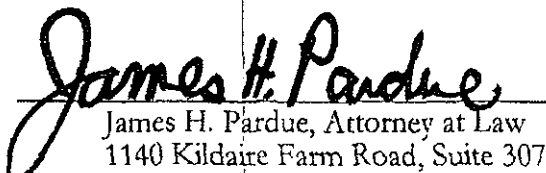
amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or Federal Home Loans Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage Loans on the Lots subject to the Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage Loans on the Lots subject to the Declaration; provided, however, any such amendment shall not adversely affect the the title to any owner's Lot unless any such Lot Owner shall consent in writing.

Article 13. Registered Agent and Office. The initial registered agent of the Association is Richard L. Van Tassel II and the initial registered office of the Association is 1210 Trinity Road, Suite 102, Raleigh, Wake County, North Carolina 27607.

Article 14. Incorporator. The incorporator of the Association is James H. Pardue, 1140 Kildaire Farm Road, Suite 307, Cary, North Carolina 27511.

Article 15. Electronic Transactions. The Association may conduct any transaction or transactions by electronic means, and this provision shall constitute the agreement by the Association, its members and directors to the conduct of transactions by electronic means.

IN WITNESS WHEREOF, the undersigned Incorporator has executed these Articles of Incorporation.

  
James H. Pardue, Attorney at Law  
1140 Kildaire Farm Road, Suite 307  
Cary, North Carolina 27511