

# **FCHOA COVENANTS AND RESTRICTIONS**

## **DECLARATION**

### **OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made as of the date hereinafter set forth by FOREST CREEK DEVELOPMENT CORPORATION, a Florida Corporation, hereinafter referred to as “Declarant” or as “Developer”.

### **WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in the County of Brevard, State of Florida, which is more particularly described in Exhibit A hereof and which is platted as

#### **FOREST CREEK SUBDIVISION-PHASE I**

According to the plat thereof recorded in Plat Book 44 Page(s) 9 Public Records of Brevard County, Florida.

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

### **DEFINITIONS**

“Association” and “Homeowners Association” shall both mean and refer to FOREST CREEK SUBDIVISION HOMEOWNERS ASSOCIATION, INC.”, a not-for-profit corporation organized under the laws of the State of Florida, its successors and assigns, and the terms may be used interchangeable from time to time herein.

“Builder” shall mean an owner of one or more developed but unimproved lots purchased for the purpose of the construction of a single family residential dwelling unit for sale, and who holds a license for such construction.

“Common Area(s)” for the purposes of this Declaration shall mean those portions of the Subdivision named as Tracts A, B, C, C-1, D, E, F, H, I, L and N on the plat of Forest Creek as recorded in the Public Records of Brevard County, Florida, which are intended for the common use and benefit of all Owners of the Association. Additional parcels may be added to the Common Areas in the future.

“Declarant” and “Developer” shall mean and refer to FOREST CREEK DEVELOPMENT CORPORATION, its successors and assigns.

“Landscape Buffer” shall mean all subdivision walls, fences, gates and landscaping

erected by the developer, his successor(s) in interest or the Association, (including the improvements thereto).

“Lot”, whether or not capitalized, shall mean each lot platted as such in the Subdivision, the total number of which may increase if subsequent phases are platted and added to the Subdivision.

“Owner” shall mean each person or entity who owns record title to a Lot, excluding those having such title merely as security for performance of an obligation as described in Chapter 697, Florida Statutes.

“Subdivision” shall mean that property platted as Forest Creek Subdivision, Phase 1, the legal description of which is attached hereto as Exhibit “A”, and such other property as may be brought within the jurisdiction of the Association and as may be submitted to this Declaration.

“Surface Water or Stormwater Management System” means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C.

**ARTICLE I**  
**MEMBERSHIP AND VOTING RIGHT IN THE ASSOCIATION**

**Section 1. General Purposes of the Association.**

The Association is organized for the purpose of providing common services to the Lot Owners; owning and maintaining landscaping and lighting on the Common Areas; maintaining the drainage easements, Common Areas, surface water and/or stormwater management systems; providing enforcement of these covenants and restrictions; and engaging in activities for the mutual benefit of the Owners. In order to pay for these services, the Association will charge assessments against Lots and their Owners. A Lot may be subject to a lien for any unpaid assessments, but additionally each Owner is personally obligated for assessments coming due during the time such Owner owns the Lot. The functions of the Association shall be performed by A Board of Directors. provisions relating to the Association and the Board of Directors are also contained in the Articles of Incorporation and By-Laws of the Association.

**Section 2. Lot Owner Membership.**

Every Owner of a platted Lot shall be a member of the Association upon acquiring title to the Lot. There shall be a one time initiation fee of \$200.00 per Lot, payable to the Association at the time a Lot is conveyed to its initial Owner. A Lot acquired by a Builder from Declarant shall be subject to the initiation fee at the time of acquisition. The Association may spend some or all of the initiation fee for inspection of the Lot after completion of the improvements to certify compliance with the terms and provisions of this Declaration as provided in Article III, Section 5.

Membership shall be appurtenant to and may not be separated from ownership of any Lot. The initiation fee may be increased from year to year after December 31, 1998 in the same manner and amount as annual assessments may be increased pursuant to Article V, Section 5.

**Section 3. Classification of Membership.**

The Homeowners Association shall have two classes of voting membership:

**Class A.** Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owner. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. Class A members shall also include all owners, with the exception of the Declarant, of lots in additional phases if additional phases are subjected to these restrictions as elsewhere provided in the Declaration.

**Class B.** The Class B members shall be the Declarant or successor developer and shall be entitled to ten (10) votes for each Lot owned (to include each owned lot in additional phases if additional phases are subjected to these restrictions as elsewhere provided in the Declaration). The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) 3 months after 90% of the residential lots in all phases of the subdivision that will ultimately be operated by the Association have been conveyed by the developer (or successor developer) to members (excluding conveyances to builders, contractors, or others who purchase a parcel for the purpose of construction improvements thereon, for resale), or

- (b) Upon the election of the Declarant or successor Developer or
- (c) January 1, 2005

**Section 4.**        **Membership Vote.**

Voting will be allowed by certified written mailed-in ballot on all issues that require a vote by the full Association. The maximum number of votes that may be cast in the sum of all votes held by qualified Class A members and the Class B member either present in person or by written proxy at the time the vote is taken at a meeting, or by actual recorded ownership of platted lots if by certified written ballot. The number of votes needed for a quorum on any vote in person or by certified written ballot of the Association shall be a minimum of 30% of the sum of all the votes held by qualified Class A members and Class B members for any ballot to be valid. All matters to be voted on by the Association shall require a quorum and shall be decided by a majority of those votes cast by owners represented by a quorum. Voting shall also be permitted by general or limited proxy at any meeting of the Association.

**Section 5.**        **Voting Qualifications.**

To be qualified to vote, a Class A member must be current in payment of all assessments and any liens which have been levied against that member or any Lot owned by that member as of the date of the vote. Any person designated in writing by the Declarant shall be qualified to cast the votes for each Lot owned by the Class B member.

**ARTICLE II**  
**ARCHITECTURAL AND AESTHETIC REQUIREMENTS**

**Section 1. Architectural Control Review Committee.**

(a) There shall exist an Architectural Control Committee (hereinafter referred to as "Committee") which shall consist of three (3) or more members. So long as there is a Class B membership of the Association, control of the Committee and approval of all plans and specifications and other functions herein shall be vested in the Declarant, who shall appoint all Committee Members. Appointive Committee members need not be Owners, and shall serve indefinitely, at Declarant's pleasure.

(b) After Declarant's Class B membership in the Association converts to Class A membership, a minimum of five (5) Committee members shall be elected by a majority vote of the Board of Directors of the Association at its annual meeting. Members may include members of the Board of Directors and Association Managers. Five (5) elected Committee members must be Owners, and shall serve until their successors are elected at the next annual meeting. Committee Members may be re-elected.

(c) A quorum of the Committee shall consist of a majority of its members; it shall take the affirmative vote of a majority of the members at the meeting at which a quorum is present to approve or perform any action. The Committee shall keep written records of its actions. The Committee shall meet from time to time as necessary.

**Section 2. Builder and Construction Plan Review.**

(a) No dwelling, building or structure of any kind shall be constructed, erected, or altered on any Lot or in any part of the Subdivision, nor shall any exterior additions, changes or alterations therein be made until the plans and specifications showing the nature, kind, color, shape, height, materials, and location thereof shall have first been submitted to and approved by the Committee. Developer hereby reserves right to approve all builders or contractors prior to commencement of construction of any residences within the Subdivision. Such approval shall be in Developer's sole and absolute discretion.

(b) Two sets of construction plans and specifications shall be submitted to the Committee showing all intended construction and alterations on the subject Lot, including but not limited to site plan, tree survey, landscape plan, sidewalk construction, exterior elevations, paint colors, shingle samples, exterior materials samples, and other descriptions necessary to describe project. An administrative fee of \$25.00 shall be paid to the Association for processing the house plans, payable at the time of submission. Plans and specifications in regards to topography and finished grade elevation must be submitted for approval by the Committee prior to the commencement of any excavation work or activity which will alter the existing topography of the Lot. The Committee shall notify the Lot Owner, in writing, within thirty (30) days of receipt of all required evidence, of the Committee's approval or disapproval of any project. Said written notice may be signed by any one member of the Committee.

(c) Builders who have contracted with the Developer to purchase 5 or more lots may submit plans of their models and landscape designs for general approval by the Committee but shall still notify the Committee in writing as provided herein as to which model, colors, landscaping, etc. are to be used on each specific lot. The administrative fee may be waived by the Committee for a specific lot so long as one of the generally approved models and landscape Design is being used.

(d) The plans, specifications, and location of all contemplated construction shall be in

accordance with the terms hereof and with all applicable codes and ordinances of the local governing agency issuing permits for construction or land alteration in effect at the time of such proposed construction or alteration. The Committee shall have the right, in its sole discretion based upon these Covenants and Restrictions, to approve or disapprove any Lot improvement, including but not limited to building, fence, wall, screened enclosure, grading, floor elevation, drainage plan, mailbox, solar energy device, posts, antennas, fountains, decorative building features, landscape plan, landscape device or object, yard decorations, or other improvement, whether as new construction or additions, modifications or alterations to Lots.

(e) In the event any required approvals are not obtained prior to commencement of improvements, or in the event improvements are made which vary from those approved, it shall be deemed that no approvals were given and that a violation and/or breach of this Declaration has occurred. A fine of \$50.00 per occurrence shall be assessed against the Lot and shall accrue with interest as provided in Article VI until the fine is paid and approval is obtained or improvements corrected to comply with an approval given. If after 60 (sixty) days from the date the first fine is assessed and the non-compliance has not been corrected, the Committee may re-assess the \$50.00 fine as a second occurrence of the same violation and may continue to do so every 120 days until the violation has been corrected.

### **Section 3. Clearing.**

No clearing of trees within the island preserve of Tract "B", the private stormwater/preservation tract "F", or any common area is permitted without prior approval of the Committee and the City of Melbourne, with the exception of dead or diseased trees which are a hazard to residents. It is the intent of the subdivision to preserve hardwood trees on individual homesites whenever possible. For any Lot fronting a lake, the Owner of same shall also be responsible for sodding and maintaining areas between his property line and the water's edge, if any.

If any unauthorized clearing takes place on any Lot or Common Areas, restoration of said Lot or Common Areas to their original condition must be made. The restoration plans as to location of plant material, size and type must be submitted to the Committee for approval. If the Owner of any Lot (or his contractors, agent or invitees) that has been cleared without written authorization of the Committee fails to restore said Lot or Common Area damaged by the Owner (or his contractors, agent or invitees) within (30) days of receipt of written notice from the Committee, then the Committee may make such restoration, the cost of which shall be a lien against the Lot and a debt of Owner which may be enforced in the same manner as enforcement of Assessments as set forth herein.

### **Section 4. Grading, Drainage, and Floor Elevations.**

i.) Each Lot shall be filled and graded to elevations as defined in this document and as designed by Lee Engineering, Inc. and as approved by the City of Melbourne. Drainage of each Lot shall be accomplished by grading Lots so runoff from one Lot does not drain onto another Lot. Grading of each lot shall comply with the grading plan approved by the City of Melbourne.

ii.) Sidewalks for each Lot shall be constructed at the time of home construction and shall be graded so as not to impound water in the Lot or on the sidewalk as it shall be slanted toward the street to assure proper drainage. The property line side of the sidewalk shall be two inches higher than the back of the curb elevation and blend in smoothly with the finished sodded yard of each lot.

iii.) Finish floor elevations must comply with the City of Melbourne requirement and shall be a minimum of 18 inches and a maximum of 24 inches above the centerline of the road as measured from the center of the lot or greater if required by the City of Melbourne or other government agency.

**Section 5. Landscaping.**

(a) All landscaping must conform to all codes and requirements of the local governing agencies. A typical or several master landscape plan(s) may be submitted to the committee for approval by Builders in accordance with above Sections 2 and 3. This plan may be altered to accommodate existing vegetation on individual lots. All areas of the yard of each Lot not left in this natural vegetated condition shall be replanted with trees, shrubs and flowers, or sodded including all easements and right of ways directly in front and rear of all lots.

(b) No existing living tree eighteen (18) or more inches in caliper, measured at breast Height, shall be removed from a Lot unless said tree is diseased or interferes with erecting or Placing the house or other permanent structures on said Lot and grading for proper drainage.

(c) For all lots, a minimum of four (4) trees, which must be live or laurel oak, are required for each residence. Three (3) of those trees must be in the front setback area of each residence. These trees shall be a minimum of 10' in height, have a drip line of a minimum of 4', and be a minimum of 2" in diameter measured 4' above the finished grade. The trees shall remain perpetually on each lot.. Notwithstanding, the foregoing, trees must conform to any stricter standards required by any applicable governmental entity. In the event any of the trees die either by disease or neglect, they shall be replanted with the same or other approved type of tree to comply with these minimum requirements. Upon notification by the Association and/or the local governing agency, each homeowner shall have thirty (30) days to replant/replace said trees required under these restrictions.

(d) A minimum of fourteen (14) 3 gallon shrubs must be planted in the front and side yard of each residence. This requirement shall meet or exceed the City of Melbourne landscape code, whichever is greater.

(e) Each Lot shall be entirely sodded including all easements and right-of-ways directly in the front and rear of all Lots with floritam sod. All Lots that have lot frontage on a lake must sod and irrigate down to the existing waterline. Each resident shall have an automatic sprinkler irrigation system with automatic timers for the proper maintenance and watering of all shrubs and landscaping including areas in firth-of-ways and easement areas adjacent to each lot.



Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 2 #Names: 2  
Trust: 1.50 Rec: 17.00 Serv: 0.00  
Excise: 0.00  
Mtg: 0.00 nt Tax: 0.00

CFN 2006047088 02-16-2006 03:20 pm  
OR Book/Page: 5605 / 4956

Prepared by and return to:  
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P.O. Box 100130  
Palm Bay, FL 32910-0130

XC

AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
FOREST CREEK SUBDIVISION

THIS FIRST AMENDMENT To Declaration of Covenants, Conditions and Restrictions for Forest Creek Subdivision (hereinafter referred to as "Amendment") is dated as of the 9th day of January 2006, by the undersigned, Forest Creek Homeowners Association.

RECITALS

Pursuant to Article VIII, Section 2 of the Declaration as recorded in Official Records Book 3859 Page 1997 of the Public Records of Brevard County, Florida, the Declaration may be amended upon the consent and affirmative vote of two-thirds (2/3rds) of the Owners/Members.

The Association desires to amend the declaration to amend Article II, Sec 5(c)

The Association, having obtained the written consent of more than 2/3rds of the Members/Owners desires to amend the Declaration pursuant to this Amendment.

AMENDMENT

NOW, THEREFORE, the above Recitals are true and correct and are expressly incorporated into this Amendment by this reference and the Declaration is amended as follows:

1. Article II, Section 5(c) is hereby replaced in its entirety with the following for the purpose of describing additional permitted trees and required tree locations:

A minimum of four (4) trees, which must be Live Oak, Laurel Oak, Red Maple, Bald Cypress, Sycamore, Magnolia, Shumard Oak, Sweet Gum, Florida Elm, Carolina Ash, River Birch, Drake Elm, Southern Red Cedar, Ligustrum Lucidu, American Holley, Cabbage Palm, Parotis Palm or Queen Palm are required to be planted for each residence. One of the trees planted in the front set back area or the road right of way between the sidewalk and the curb must be a Live Oak or Laurel Oak. Additional trees may not be planted in the road right of way between the sidewalk and the curb from the date set forth above. **Trees shall be planted in accordance with the City of Melbourne City Code Section 33.3 (b) (2) (a) "A minimum of four (4) trees must exist or be planted on each lot. Trees planted must be of a variety which is compatible with the existing soil and drainage condition and must be provided with adequate water and food materials to encourage growth. Trees shall be planted in locations so as not to cause danger or interference with existing structures at the time of maturity." (ie house, sidewalks, curbs, roads, drainage, or utilities at the time of maturity).**

**Section 6. Roof, Shingle Material and Exterior Elevations.**

No primary portion of a straight gable or hip roofs may be built with a pitch lower than 5/12. All roofs shall be pitched except for those areas over porches and patios.

The Committee must approve the type, color, and style of all shingle and roof covering materials. Shingles must be fungus-resistant 240 lb. Architectural grade dimensional shingles, or higher quality. The Committee may reject any exterior elevation based on the roof line, shingle type or exterior elevation appearance that in its judgement is not within character in keeping up with the standards of the subdivision.

**Section 7. Exterior Covering, Siding and Paint.**

There shall be no artificial brick, stone, stucco, aluminum, vinyl, T-11 or other siding materials used on the exterior of the buildings or other structures without first receiving written approval of the Committee as to type, color, and texture of the material.

All paint used on the exterior body of any residence shall be subdued in its tone. Colors should be selected to harmonize with the natural environment of the subdivision and should be soft and unobtrusive. No colors should be loud or bright. No more than one paint color (may be used) for the body of each residence and no more than two accent trim colors. Paint colors must be submitted for approval prior to being applied to any residence. A written approval listing the manufacturer and paint sample number of all paint colors including body and trim paint must be obtained for each residence from the Committee.

**Section 8. Overhead Garage Doors.**

All overhead garage doors shall be decorative in design and should complement the exterior elevation of each individual residence. Under no circumstances may fiberglass or plastic type garage doors be used. Garage doors should remain closed when not in use.

**Section 9. Dwelling Size:**

The ground floor of the main structure exclusive of any open porches, patios (enclosed or otherwise), breeze-ways and garages, shall not be less than 1,700 square feet for a one-story dwelling and not less than 1,100 square feet for the ground floor of a dwelling of one and one-half of two stories. Lots 143 through 156 (outside of the security gates) shall have a minimum living area of 1,400 square feet. Each residence shall have an enclosed garage for a minimum of two cars. No carports shall be permitted.

**Section 10. Building Location:**

No building, other than that allowed by City Code, shall be located on any Lot nearer than 20 feet to the front Lot line or nearer than 20 feet to any side street line. No building shall be located nearer than 7.5 feet to an interior Lot line, or nearer than 25 feet to the rear Lot line. For the purpose of this covenant, eaves, concrete slabs, steps and open porches shall not be considered as part of the building on a Lot to encroach upon another Lot or easement. If there is any conflict between this covenant and zoning regulations of the proper governing authority said zoning regulations shall apply.

**Section 11. Post Lights:**

Each residence constructed shall be required to install and maintain an exterior post light in the front set back area prior to occupancy. Said post lights shall be black in color and uniform in design and in a standard location on each lot. The exact type, and location of the post light shall be determined by the Declarant. All post lights are required to be installed by the builder prior to the occupancy of the residence. (Detail sketch and description to be provided by Developer.

**Section 12. Street Address Numbers and Mail Boxes:**

All street address numbers are to be installed prior to the completion of each residence. The location of street address numbers shall be as uniform as possible on each residence. All mail boxes shall be uniform as to type, color and design. The location, color, size and type of mail boxes and street address numbers shall be determined by the Declarant. All mail boxes and street address numbers are required to be installed by the builder prior to the occupancy of the residence. (Detail sketch and description to be provided by Developer).

### **ARTICLES III** **GENERAL RESTRICTIONS – USE AND OCCUPANCY**

#### **Section 1. General Prohibition.**

No residential dwelling, garage, outbuilding, structure or appurtenance of any kind, including additions or substantial alterations thereto, shall be erected, placed or maintained on the Properties or any portion thereof that does not conform to the standards, requirements, prohibitions and provisions of this Declaration and applicable governmental regulations, as same may exist or be changed from time to time. All such construction shall be performed, completed, erected, placed and maintained only in accordance with the plans and specifications required herein as approved by the Committee and governmental building code requirements.

#### **Section 2. Only Residential Purposes.**

No Lot shall be used in whole or in part for anything other than residential purposes, except for model residential dwelling units which may be maintained by the builder or developer only for purposes of the sale of residential dwellings within the subdivision, and except such construction and sales trailers as may be permitted by Developer and any applicable governmental entity. Other than conducting the sale of residential dwellings, no trade, traffic of business of any kind, whether professional, commercial, industrial, manufacturing or other non-residential use shall be engaged in or carried on within the subdivision or any part thereof, nor any other activities which may be or which may become an annoyance or a nuisance to any Lot, Owner or property adjacent to the subdivision.

#### **Section 3. Single-Family Residential Use.**

No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single-family residential dwelling, nor may any dwelling be occupied by more than one family.

#### **Section 4. Subdivision.**

No Lot shall be subdivided or split by any means what so ever into any greater number of residential lots nor into any residential plat or plats of smaller size.

#### **Section 5. Occupancy Before Completion.**

No building or structure upon the Properties shall be occupied until the same is approved for by such governmental agency which is responsible for regulation of building construction and until it complies with the terms and provisions of these covenants and restrictions. Upon completion, the Committee shall inspect the Lot and improvements and issue the Lot Builder a certificate of compliance acknowledging that said terms and provisions have been met or itemizing any non-compliance. The certificate of compliance shall be delivered to the Owner upon the transfer of title or prior to occupancy.

**Section 6. Maintenance and Repair.**

All improvements placed or maintained on a Lot shall at all times be maintained in good Condition and repair.

**Section 7. Completion of Construction.**

All construction and landscaping approved by the Committee shall be completed within six (6) months from the date of written approval. The Committee may grant a greater period of time to complete said construction or may grant an extension of said six-month period.

**Section 8. No Temporary Buildings.**

No tent, shack, trailer, house trailer, garage, or other space shall at any time be used on any Lot as a residence temporarily or permanently. No building or dwelling of a temporary character shall be permitted, except that: buildings necessary for construction or sales taking place in the Subdivision and not intended to be used for living accommodations may be erected and maintained only during the course of construction and sales and after receipt of written approval from the Declarant.

**Section 9. Ground Maintenance.**

(a) Grass, hedges, shrubs, vines, trees, and mass plantings of any type on each Lot shall be kept trimmed and shall at regular intervals be mowed, trimmed and cut so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines and plants which die shall be promptly removed and replaced.

(b) No weeds, vegetation, rubbish, debris, garbage, objects, waste, or materials of any kind what so ever shall be placed or permitted to accumulate upon any portion of a Lot which would render it unsanitary, unsightly, offensive, or detrimental to the Subdivision or to the occupants of any property in the vicinity.

(c) No building material of any kind or character shall be placed or stored upon any Lot so as to be open to view by the public or neighbors, unless such material will be used and is used for the initial construction of the residence upon the Lot on which the material is stored.

(d) All Lot Owners owning Lots adjoining Common Areas shall be required to install grass or to landscape to the edge of the water or vegetation located in that Common Area, and to maintain such grass or landscaping, regardless of where the exact boundary line lies between the Lot and the Common Area.

(e) All Lot Owners owning Lots which have a rear swale for storm water conveyance are required to sod and mow the swale area.

**Section 10. Fences, Walls, Hedges, Mass Planting of Any Type.**

(a) Fences, walls, hedges or mass planting of any type shall not exceed a height of six (6) feet above the finished graded surface of the grounds upon which it is located and shall not be constructed, planted, placed, or maintained upon any Lot without the written consent and approval of the Homeowners Association's Architectural Control Review Committee.

(b) No hedge or mass planting of any type, exceeding three (3) feet above the finished graded surface of the ground upon which is located shall be constructed, planted, placed or maintained between the street and the front setback line of any Lot without the written consent and approval of the Homeowners Association's Architectural Control Review Committee.

(c) No fences, walls, hedges or mass planting of any type shall be built further forward on a Lot than ten (10) feet behind the front building line of any residence, and shall not exceed six (6) feet in height, except as otherwise provided herein. All fences built on the street side of any corner Lot shall have a minimum setback requirement equal to the side setback of the residence. As to any Lot which adjoins a lake or retention area, any fence or wall or portion thereof constructed behind the rear building setback line of the residence may not exceed four (4) feet in height. All fences must be in conformance with all governmental regulatory codes and setback requirements. No fence shall be constructed without the written approval and consent of the Committee.

(d) No fence may be constructed of wire, chain link or cyclone style of fencing on any Lot.

(e) All fences to be constructed in the Subdivision shall be of uniform design and finish. The type and style shall be decided by the Committee. Prior to construction of a fence or wall on any Lot, the Owner must submit a detailed sketch showing the type and location, and confirming the use of the pre-approved style and color of the proposed fence or wall to the Committee for approval.

**Section 11. Animals, Birds and Fowl.**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. No kennel or other commercial animal operations shall be maintained on any Lot. No pet shall be allowed to run loose and uncontrolled within the Subdivision. All pets shall be maintained in a quiet and orderly fashion so as not to disturb other Lot Owners. Pet Owners shall comply with all governmental regulations concerning the proper care, maintenance, licensing, and control of their individual pets.

**Section 12. Laundry.**

No cloths, sheets, blankets or other articles shall be hung out to dry in the side or front yards of any Lot except in a service yard or yard enclosed by a lattice, fence, wall or other screening device. Nothing contained in these deed restrictions shall be in conflict with Florida Statutes 163.94 Renewable Energy Sources.

**Section 13. Exterior Light Fixtures.**

No exterior lighting fixtures shall be installed on any Lot or residential dwelling without adequate and proper shielding of the fixture. No lighting fixture shall be installed that is an annoyance or a nuisance to the residents of adjacent Lot or Lots.

**Section 14. Parking.**

The parking of commercial vehicles, which description shall include trucks (larger than a pick-up truck), tractor-trailers, semi-trailers, and commercial trailers, at any time on driveways, otherwise on said premises, on common areas, or on the streets of said subdivision, is prohibited except for loading and unloading purposes or when parked entirely within a closed garage permitted to be build under the provisions of these restrictions.. Boats, motor homes, watercraft, campers, travel trailers and similar recreational vehicles may only be placed and kept or stored upon a Lot containing a residence, placed no further forward than 10' behind the front building line of the residence, with landscape or with (6') foot fence screening so as to make same not visible from the street (including side street in the case of a corner Lot or adjoining Lot), or in a closed garage. Inoperable vehicles or vehicles under repair may only be placed and kept on a Lot in a closed garage.

**Section 15. Drainage Easements, Easements and Common Areas.**

(a) Easements for installation and maintenance of utilities and drainage facilities are shown on the plat, or are of record, and the same are reserved for such use. Within these easements, or on any Lot, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements, or which may otherwise disturb the surface water or stormwater system. It is important that banks, swales and drainage areas located within the Subdivision remain undisturbed and properly maintained in order to perform their function. Where any portion of such berms, swales, banks lie within a Lot, the owner of that Lot shall maintain the same continuously and shall not disturb, damage or otherwise interfere with the berm, swale, drainage canal or other portion of said lake, drainage canal or system which is located on or adjoins said Owner's Lot. Lot swales/berms which are required to be located on certain Lots in the Subdivision, pursuant to the Subdivision construction plans and the St. John's River Water Management District permit, shall be constructed, maintained and repaired by the respective Lot Owners in accordance with said plans and permit. The initial construction of the Lot swales/berms shall be completed prior to the issuance of a certificate of occupancy for any residence to be constructed on said Lot; provided, however, initial construction of said berms and swales must be completed no later than the mandatory completion date established pursuant to the St. John's River Water Management District permit, even if a residence has not been constructed on the Lot(s).

(b) All Lot Owners who adjoin a Common Area shall assist the Association in maintaining that Common Area. No Lot Owners shall disturb or damage any wetland plantings or Common Areas. In the event an Owner does damage wetland plants or Common Areas, the Owner shall be responsible for the replacement and replanting of all damaged or destroyed plants and restoration of disturbed areas within thirty (30) days of written notification by the Declarant or the Homeowners Association.

(c) Easements for ingress, egress and access are hereby reserved in favor of the Developer and the Association over and across the platted utility and drainage easements encumbering all Lots adjacent to Common Areas for the purpose of access to said Common Areas for repair and maintenance. The Developer and Association may, without incurring any liability to the Lot Owner for trespass or damages, remove any impediments to these access rights, and may levy a special assessment as provided in Article V for the cost of such removal.

(d) Each Lot owner shall have the right to use the Common Property only in accordance with the terms of the rules initially made by the Declarant and revised from time to time by the Association. The rules may restrict the time of use, provide for the reservation of certain recreational facilities, provide limitations on use of the Common Property by a member's guests and lessees. The rules will be kept at the offices of the Association and copies will be made available without charge to any member requesting the same.

**Section 16. Excavations.**

No excavations for stone, gravel, dirt or earth shall be made on any portion of the Properties; except for the construction of dwellings, walls, foundations, swimming pools, structures and other appurtenances. The plans and specifications for such excavations must be approved by the Committee in writing prior to construction.

**Section 17. Signs.**

Except for signs permitted by the Declarant and except for signs utilized by the Developer and Builders to advertise the sale of lots or dwelling units for sale and except as otherwise permitted by the Homeowners Association's Board of Directors, no sign of any character shall be displayed or placed upon any Lot or living unit except "for rent" or "for sale" signs, which signs may refer only to the particular premises on which displayed. Said signs shall not exceed the normal and customary standard size for the local Real Estate Industry, shall not exceed more than four (4) above the ground, and shall be limited to one (1) sign per Lot or living unit, and displayed only upon the Lot sought to be rented or sold. No signs may be attached in any manner to a tree.

**Section 18. Refuse.**

No trash, garbage, rubbish, debris, waste or other materials or other refuse shall be deposited or allowed to accumulate or remain on any Lot. Unless otherwise approved by the Committee.

**Section 19. Nuisances.**

No noxious or offensive trade or activity shall be permitted on any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**Section 20. Preservation of Common Area.**

No person shall reconstruct, damage or destroy, clear, open, reduce, remove, alter modify or install any thing or improvement within, over or upon any Common Area, easement or preservation area without first obtaining written approval from the Committee. No construction or excavation in the proximity of any preservation area, canal, bank slope or swale, shall be permitted which may substantially impair the stability of the character or drainage in said area.

**Section 21. Wells and Irrigation.**

No water wells shall be dug on any Lot or on the properties except for the purposes of irrigation of landscaping.

**Section 22. Open Burning.**

Open burning to reduce solid waste on any Lot is not permitted.

**Section 23. Swimming Pools.**

A Swimming Pool may be constructed on a Lot within the appropriate setbacks and with the approval of the location and material by the Committee. Access to a pool from the boundaries of the lot must be controlled from all directions by fencing and the residential structure. If pools are protected by screens, such screens and their structures shall be approved by the Committee. Swimming pools shall be only inground type and shall be constructed of fiberglass, concrete, or concrete materials. The pool deck shall be no higher than two (2") inches below the grade level of the first floor house pad.

**Section 24. Right to Inspect.**

The Homeowners Association's Board of Directors may at any reasonable time or times during periods of construction or alteration and within thirty (30) days thereafter enter upon and inspect any Lot and improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction or alteration of structures thereon are in compliance with the provisions hereof, and neither said Board nor any of its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**Section 25. Antennae, Aerials and Satellite Dishes.**

All exterior antennas or aerials shall be placed in the rear yard of the Lot and in such a manner so as to be as unobtrusive as possible, and in no event shall exceed a height greater than twelve (12) feet above the highest point of roof. Any earth satellite signal reception equipment shall not be visible from any street and shall be screened from other property within the Subdivision.

**Section 26. Games and Play Apparatus.**

All games and play apparatus remaining outdoors for more than three days shall be located at the rear or side of the dwelling, so as not to be visible from any street. The Committee may make exceptions and permit basketball backboards or similar play apparatus that is visible from the street. Any permitted basketball standards must be approved in writing by the Committee and shall be constructed of uniform black enamel pole and white backboard and shall be a minimum of 25' from any paved public street.

**Section 27. Oil and Mining Operations.**

No oil or gas drilling, oil or gas development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

**Section 28. Water Supply.**

No individual water supply systems for drinking purposes or household use shall be permitted on any Lot unless approved by the Committee. This provision, however, shall not preclude the installation of any individual water systems for irrigation purposes, provided that such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the applicable governmental agencies.

**Section 29. Sewage Disposal.**

No individual sewage disposal systems shall be permitted on any Lot.

**Section 30. Air Conditioning.**

No window or wall air-conditioning units shall be permitted in any improvements located within the Subdivision. All air conditioning units shall be placed no further forward than 10 feet behind the front building line of the residence with landscape or fence screening so as to make same not visible from the street (including side street in case of a corner lot).

**Section 31. Tanks.**

No permanent above ground oil tanks or bottled gas tanks may be placed on any Lots.



**ARTICLES IV**  
**PROPERTY RIGHTS AND REQUIREMENTS**

**Section 1. Owner's Easements of Enjoyment.**

Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

(a) The right of the Association to dedicate or transfer all or any parts of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association, provided, no such dedication or transfer shall be effective unless: (i) such dedication or transfer is approved by Declarant, so long as Declarant owns a Lot, or if Declarant no longer owns a Lot, then by a vote of two-thirds (2/3) of the Class A Members; and (ii) the approval of such dedication or transfer has been properly recorded.

(b) Notwithstanding any terms and conditions contained in this Article, Article VIII or any other articles of this Declaration, Common Areas may be added, conveyed and/or maintained pursuant to that certain Drainage and Retention Agreement dated August 19, 1997 by and between Developer, the City of Melbourne and Brevard County; that certain Storm/Surface Water Easement and Access Agreement dated August 28, 1997 and recorded in Official Records Book 3706, Page 624, Public Records of Brevard County, Florida; that certain Sidewalk Easement Agreement dated August 28, 1997 and recorded in Official Records Book 3706, Page 651, Public Records of Brevard County, Florida; that certain Easement between Developer and Brevard County dated November 25, 1997 and recorded in Official Records Book 3794, Page 458, Public Records of Brevard County, Florida; and those certain plat notes set forth in the plat of Forest Creek Subdivision – Phase I as filed in the public records of Brevard County, Florida (collectively the “Agreements”). All such conveyances, acceptances, dedications, grants and maintenance obligations as contemplated by and contained within the Agreements shall be deemed approved and permitted without any further meeting, voting or approvals from the respective parties thereto or the Association or its members.

**Section 2. Owner's Use of Lot.**

An Owner's use of his or her Lot shall be limited to residential purposes, but nothing herein shall be deemed to prevent a Owner from leasing his or her residence to a single family for the purpose of a residence, subject to these covenants and restrictions. All Owners leasing or renting their Lots or Homes shall be required to incorporate the following provision in their lease

or rental agreements, substantially in the following form:

The Lease Premises are a part of a Subdivision, All person occupying property in Forest Creek are required to observe the Covenants and Restrictions of the Forest Creek Homeowners Association, Inc.  
Copies of all Covenants and Restrictions are to be obtained from the Landlord.

In addition, all Owners leasing their Lots or Homes are required to provide the Association with a copy of the lease or the names and addresses of the Landlord and the Tenant that are contained in the lease or rental agreement.

**Section 3. Notice of Conveyance.**

At any time an Owner conveys his Lot, he and the transferee shall be jointly obligated to notify the Association of the transferee's name, mailing address and date of transfer. A notice will be provided by the Association upon the transfer of any Lot provided the current written status of the Association dues.

**Section 4. Others' Use.**

Any Owner may share his right or enjoyment to the Common Area and facilities with the members of his family, his tenants, or visiting guests so long as same observe and abide by these covenants and restrictions.

**Section 5. Damage by Lot Owners Including Builders.**

The Owner of a Lot including Builders shall be responsible for any expense incurred by the Association or the Developer to repair or replace Common Area improvements, vegetation, topography, right-of-ways, swales, drainage facilities and utility lines when such repair or replacement is necessary as a result of the negligent or intentional errors or omissions of the Owner, his family, tenants, guests, agents or invitees. This shall specifically include repairs or replacements resulting from the actions of the owner's contractor in constructing any improvements on the Owner's Lot. Any such expense if not paid upon demand shall be added to the Assessment to which the Owner's Lot is subject and shall be due and payable in the same manner as the Assessments provided in these covenants.

**Section 6. Lake Use Restriction.**

Only man-powered, wind propelled or electric operated boats may be used on any lakes or retention areas situated in the subdivision. Swimming is strictly prohibited in said lakes and retention areas. Furthermore, all fishing in said lakes and retention areas shall be "catch and release" only with all fish promptly returned to the water after catching. Finally, no docks, wharfs, piers or other such improvements may be constructed in the Common Areas or any lakes or retention areas.

**Section 7. Maintenance and Operation of Recreational and Stormwater Facilities Located on Tract "F"**

Tract "F" is designed to be a community recreation area and also to serve as a stormwater retention pond during heavy rainfall periods. During heavy rainfall periods, each resident must use due care and caution before accessing this area. Tract "F" will be dry most days, however, during heavy rainfall periods, it will retain water and will not be suitable for use by the residents or their guests. Use of said area, during the "wet" period is prohibited.

The Association shall be responsible for the maintenance, operation and repair of the recreational and stormwater facilities located on Tract "F". The Association shall maintain the

area to a reasonable standard for the health, safety and attractive appearance for the residents. The Association may repair, reconstruct or modify the facilities to meet the needs and expectations of the members of the Association. Access to and use of this is intended for the private use of the members of the Association and their invited guests. The Association may establish rules of operation governing the use of this facility. These rules shall be posted at the facility and shall be given to each resident including any modifications or amendments thereof. Each member of the Association agrees to abide by the rules of operation governing the facilities and may be restricted from the use of these facilities for violations thereof. The Association shall be responsible for carrying general liability insurance covering the members of the Association for the use of the facility and other common areas within the subdivision.

**Section 8. Maintenance of Operation of Surface Water or Stormwater Management System.**

The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. John's River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or Stormwater management system shall be as permitted, or if modified as approved by the St. John's River Water Management District.

The St. John's River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Declaration which relate to the maintenance, operation and repair of the surface water or Stormwater management system.

**Section 9. Maintenance of Drainage Easements.**

It shall be the duty of the Association to maintain the drainage easements if said duty is not assumed by any governmental agency pursuant to any dedication agreement. Said duty shall include the obligation to cut grass, cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar actions reasonably necessary to maintain reasonable standards of health, safety and appearance. Drainage flow shall not be obstructed or diverted from drainage easements. The Association is responsible for the maintenance, repair and, as required, modification of the stormwater management system, including pipes, structures, ponds, and swales (some of which may be located off-site and may also service non-Subdivision adjacent properties, pursuant to the Agreements described in Section 1(b)).

The Homeowners Association does not have the right to enter into the country mitigation area for Recreational or other purposes.

**Section 10. Private Streets and Roads.**

All Streets, roads, drives, courts, ways and cul-de-sacs shown on the plat of the Subdivision and designated as Tract "C" and "C-1" are for the private use to be owned and maintained by the Association. Said roadways shall be subject to an easement granted to Brevard County, the City of Melbourne, All other applicable governmental entities, and all utility providers for the purpose of access for installation, maintenance and operation of utilities, as well as emergency vehicle access. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage, or which are or might be prohibited by the public or private authority to whom said easement is given. All fences, gates, paving, curbs, pavers, and other improvements, facilities and appurtenances located within said roadways, including street lights shall be maintained by the Association except for maintenance and installation of sidewalks, sodding and irrigation adjacent to a residential lot

which will be installed and maintained by the adjacent lot owner as set forth in other provisions hereof.

**Section 11. Lift Station Fence.**

Developer has or will convey to the applicable governmental entity a lift station designated as Tract "G". Developer or the Association intend to erect a fence surrounding said lift station site, which fence shall be maintained by the Association to meet the requirements of the City of Melbourne. No Lot Owner shall modify, paint, stain or otherwise alter the condition or placement of said fence without the specific written consent of the Developer or the Association. Furthermore, the Developer and the Association are hereby granted an easement and license over and across any Lots adjacent to said lift station site and fence for the purpose of accessing and maintaining the fence.

**Section 12. Maintenance of Tracts.**

The Association shall be responsible for the maintenance, operation and repair of all improvements, Landscape Buffer and property located in Tracts A, B, C, C-1 E, F, H, I, L and N except as otherwise provided in the Agreements referenced in Section 1 (b) hereof. Where an individual lot owner adjoins one of the above tracts their responsibility for the maintenance, operation and repair within these tracts is as called for within this Declaration.

**Section 13. Maintenance of Insurance Policy.**

The Association shall be responsible for the insurance and maintenance of a general liability insurance policy covering all of the subdivision improvements. This liability policy will cover all of the improvements that are the property of the Association and general liability regarding their use. In addition, the Homeowners Association shall maintain an Officers and Directors policy for those members of the Association who are members of the Board of Directors. Such policy shall be reviewed on an annual basis to assure that they meet current governmental rules and standards, and generally acceptable insurance practices. At no time shall coverage be less than a one million dollar general liability policy. The insurance must be purchased from an insurance company that is certified to be business in the State of Florida and is in good standing with the Department of Insurance.

**Section 14. Tracts G, J, K, H and I.**

Tracts G, J and K will be deeded to the City of Melbourne for ownership and maintenance. Ownership of Tracts H and I will be retained by the Homeowners Association as Common Area Landscape Tracts.

**ARTICLES V**  
**COVENANT FOR ASSESSMENTS**

**Section 1.**      **Assessments.**

(a) All Lots shall be subject to annual and special assessments as herein provided in order to fund the costs of fulfilling the purposes of the Association. In the event of a conveyance, the grantee is jointly and severally liable with the grantor for all assessments outstanding against the grantor and subject Lot, without prejudice to any right the grantee may have to recover from the grantor any amounts paid by the grantee. Each Lot Owner is deemed to covenant and agree by acceptance of the deed to a Lot to pay all assessments and no Lot Owner may waive or avoid responsibility for payment of any assessment by not using his Lot or the Common Areas or by disputing the purpose of the assessment or for any other reason; provided however, that no Lot while owned by the Developer shall be subject to either annual or special assessments. The Developer hereby obligates itself to pay any operating expenses that exceed assessments received from the members and other income sources of the Association. This obligation shall terminate when the Developer no longer controls the Association. This payment of operating expenses by the Developer will be in the form of a loan to the Association from the Developer for which he will be repaid.

(b) Both annual and special assessments must be fixed at a uniform rate per Lot subject to assessments except as otherwise provided herein, and may be collected monthly, quarterly or annually as determined by the Board of Directors. As to any individual Lot or Lot Owner who has not paid an assessment when due or is in violation of these Covenants and Restrictions, however, the amount of the assessment outstanding shall be increased by interest, late charges, costs, fines, damages and attorneys fees, as referenced throughout this Declaration.

(c) Assessments shall be used for the maintenance and repair of the surface water or storm water management systems including, but not limited to, work within retention areas, drainage structures and drainage easements.

**Section 2.**      **Annual Assessments.**

The Association shall fix the amount and the due date of the annual assessment. Initially, annual assessments shall be payable in one annual installment, payable when the Owner takes title and prorated from that date to the end of the fiscal year. The title company shall forward the proceeds of the prorated annual assessment to the Homeowners Association. The Association shall notify the Owners of each Lot of the amount, the date on which the assessments are payable, and the place of payment.

**Section 3. Date of Commencement of Annual Assessments.**

The annual assessments for each Lot shall be payable upon conveyance of that Lot to a Class A Member, and at the beginning of each fiscal year of the Association thereafter. Builders may become liable for annual or special assessments prior to receiving conveyance of a Lot, as may be provided by contract between Developer and the Builders.

**Section 4. Special Assessments.**

The Association may levy a special assessment to pay in whole or in part for the cost of any shortfall in the annual budgeted operating revenues, or for any repair or replacement of an existing capital improvement, or for the construction/acquisition of a new capital improvement, without concurrence of the Owners unless the cost of such repair/ replacement/ acquisition/ construction is major. "Major" as referenced herein shall be defined to mean that the amount of the proposed special assessment per Owner, plus any other special assessments levied during that same fiscal year exceeds 50% of the then current year's annual assessment. Major capital improvements shall require the special assessment to be approved by a majority of a minimum of 30% of the membership. The Association may also levy special assessments without limitations or the concurrence of any Owner to pay for the cost of maintenance or enforcement of these covenants and restrictions with regard to specific lots; any such assessment shall be levied against the Owner of such lot. Special assessments shall be payable at such time and place determined by the Association and stated in the assessment notice.

**Section 5. Maximum Annual Assessment.**

Until January 1, 1998, the annual assessment shall be \$250.00 per Lot.

(a) From and after January 1, 1998, the annual assessment shall be set by the Association and may be increased each year by up to ten (10%) percent above the maximum allowable assessment for the previous year without a vote of membership. "Maximum allowable assessments" as referred to herein shall be calculated by assuming a cumulative 10% increase per year from and after the year 1998.

(b) From and after January 1, 1998, the maximum annual assessment may be increased by more than said ten (10%) percent only by a majority vote of those needed for a quorum of 30% of each class of members who are voting. The vote should be by certified written ballot mailed to each owner 30 days after their receipt of written notification that a vote will be taken on the proposed increase in assessment.

(c) Lots 143 through 156, which are located outside of the gate system for Forest Creek shall be charged a reduced rate of annual assessment, equating to 25% of the annual lot Assessment charged for the remaining lots within the subdivision.

**ARTICLES VI**  
**ENFORCEMENT PROVISIONS**

**Section 1.           Creation of Lien for Assessments.**

(a) Assessments, including any increases in same due to interest, late charges, costs, fines, damages and attorney fees, shall be a charge upon each Lot and a continuing lien thereon until paid. The lien will become effective from the after recording a Claim of Lien in the Public Records of Brevard County, Florida, stating the Lot description, the name of the record Owner, the amount due, and the due date. The lien will remain in effect until all sums due to the Association have been fully paid and the Association is hereby authorized to take any and all actions provided in law or equity to collect such sums. Any payment received by the Association from that payor shall first be applied to any interest accrued, any outstanding penalties and costs, reasonable attorney's fees incurred in collection, and then to the outstanding assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

(b) All Lots shall be sold subject to the terms and provisions of the continuing lien described in this paragraph. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. A properly executed Certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 2.           Effect of Non-Payment of Assessment: Remedies of the Association.**

Any assessment not paid within 39 days after the due date shall accrue an administrative late charge of \$25.00 or 5% of the amount due, whichever is greater, plus interest beginning 30 days from the due date at the rate of 12% per annum until paid. The Association may bring an action against the Owner of the Lot personally for payment of the assessment and may enforce its lien for the assessment by foreclosure or any other means available under the law. The Association may waive payment of late charges and interest on any assessment, but may not waive payment of the assessment. All assessments, together with any late fees, interest, costs of collection when delinquent, including reasonable attorney fees (at trial or on appeal) whether or not a lawsuit is brought, shall be the personal obligation of the Owner at the time the assessment was levied, and of each subsequent owner, and shall constitute a lien upon the Owner's lot.

**Section 3.           Violation and Enforcement of Restriction and Covenants.**

(a) The Association and each lot owner shall have the right to enforce, by any

proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall be in no event be deemed a waiver of the rights to do so thereafter. In any action for enforcement brought hereunder, the prevailing party shall be entitled to reasonable attorneys fees including attorneys fees through appellate proceedings.

(b) Upon learning of a violation, the Association shall issue the Owner a written notice either by certified return receipt mail or posting on the property requesting the Owner to cure the violation and advising the Owner that a fine will begin to accrue if the violation is not cured within 30 days of receipt of the notice and that the Owner's Lot may be subject to a lien for such fine together with any costs expended by the Association for notice, investigation, attorney's fees and costs, and curative actions, the Association may take, including but not limited to demolition and/or storage costs for any construction or items placed on a Lot in violation of this Declaration.

(c) Should the violation not be cured within said 30 days receipt of said written violation, a fine shall automatically begin to accrue and continue until the violation is cured. The amount of the fine at the time of filing this Declaration is \$50.00 per day, but said amount may be increased from time to time by the Board of Directors without vote of the Association or amendment of this Declaration.

(d) The Association shall have the authority but is not obligated to cure any violation through whatever action it deems reasonable and the expenses thereof shall be chargeable to the Owner of the Lot or Lots on which or in connection with the violation has occurred. Said expense shall be payable forthwith and upon demand. In the event the Association has expended funds in connection with curing such violation, then and in such event the funds so expended shall become an assessment upon the Lot or Lots enforceable as provided herein for unpaid assessments.

**Section 4. Subordination of the Lien to Mortgages.**

The lien of the assessments and fines provided herein shall be subordinate to the lien of and recorded mortgage. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Failure to pay Assessments does not constitute a default under the terms of a federally insured mortgage. Nothing contained herein shall require mortgagees to collect Assessments.

**Section 5. St. John's River Water Management District.**

The St. John's River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Covenants and Restrictions which relate t the maintenance, operation and repair of the surface water or stormwater management system.



**ARTICLES VII**  
**RIGHTS RESERVED BY DEVELOPER**

**Section 1.**        **Eminent Domain.**

If all or part of any Common Area, private right-of-way, or private easement for access, is taken by eminent domain, Developer shall be entitled to the proceeds therefor and no claim shall be made by the Association or any owner other than Developer for any portion of any award.

**Section 2.**        **Easements for Utilities.**

The Developer reserves a perpetual easement on, over and under all easements within the Subdivision and Common Areas shown on the subdivision plat for construction and maintenance of electric and telephone poles, wires, cables, conduits, water mains, drainage lines or drainage ditches, sewers, irrigation lines, roadways, natural gas, cable television, and other conveniences or utilities. To the extent permitted by law, the Developer may grant an exclusive easement over each Lot for the installation and maintenance of radio and television cables within the Subdivision. The Owners of Lots subject to the easements reserved in this paragraph shall acquire no right or interest in utility or cable television equipment placed on, over or under the portions of the Subdivision which are subject to said easements.

All easements reserved by Developer are and shall remain private easements and the sole and exclusive property of the Developer, to be held or else conveyed in Developer's discretion to utility companies, the Association, or appropriate government agency.

**Section 3.**        **Drainage.**

Drainage flow shall not be altered, obstructed or diverted from drainage easements and storm water retention tracts, without prior approval from the St. John's River Water Management District and the City of Melbourne. Except as provided in this Section, existing drainage shall not be altered so as to divert the flow of water onto an adjacent Lot or into sanitary sewer lines.

**Section 4.**        **Maintenance Easement.**

The Developer and the Association reserves an easement within all designated drainage and utility easements in, on, over, and upon each Lot for the sole purpose of preserving, maintaining or improving the Common Areas.

**Section 5.**        **Developer Rights Regarding Temporary Structures, Etc.**

Developer reserves the right to erect and maintain temporary dwelling, models houses, and/or other structures upon Lots owned by Developer or Developer's assignee and to erect and maintain such commercial and display signs and devices as Developer, in its sole discretion, deems advisable. Developer reserves the right to do all acts necessary in connection with the construction of such improvements on the Lots. Nothing contained in these covenants and restrictions shall be construed to restrict the foregoing rights of the Developer.

**Section 6. Further Restrictions, Conditions and Dedications.**

Developer reserves the right to impose further restrictions and to grant to dedicate additional easements and rights-of-way on any Lot in the Subdivision owned by Developer and on the Common Areas, so long as the easements granted by Developer shall not materially or adversely affect any improvements or unreasonably interfere with use of the Common Areas.

**ARTICLES VIII**  
**GENERAL PROVISIONS**

**Section 1. Severability and Interpretation.**

Invalidation of any of these covenants or restrictions by judgement or court order shall in no way effect any other provisions hereof, which shall remain in full force and effect. Should any conflict in interpretation arise between the provisions of this Declaration and of the Articles of Incorporation, the provisions of this Declaration shall prevail.

**Section 2. Duration, Modification and Amendment.**

Except as the same may be changed, modified or amended as provided for hereafter, the covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of this Declaration is recorded, at which time they shall be automatically extended for two (2) successive periods of ten (10) years, unless modified or terminated by a duly recorded written instrument executed in conformance with the requirements described below.

**Amendments while Developer Holds Two-Thirds 2/3 of Total Membership Votes.** At any time Developer holds two-thirds (2/3) of the total membership votes (Class A and Class B combined for all phases of the Subdivision that will ultimately be operated by the Association), this Declaration may be amended by the majority vote of the Board of Directors.

**Amendments while Developer does not Hold Two-Thirds (2/3) of Total Membership Votes.** When the Developer no longer holds two-thirds (2/3) of the total membership votes (Class A and Class B combined for all phases of the Subdivision that will ultimately be operated by the Association), amendments to this Declaration may be made upon notice to all members of the Association and with the approval of Developer and two-thirds (2/3) of the total membership vote. Such action may be taken at any annual or special meeting of the Association, or by certified written ballot, so long as written notice of such proposed action or amendment is given thirty (30) days prior to the meeting or scheduled vote. At such meeting, if the Developer maintains a Class B membership, the amendment or amendments proposed may be approved by the Developer and an affirmative vote of the members holding at least a two-thirds (2/3) vote of the total number of members of the Association entitled to vote thereon in order for such amendment or amendments to this Declaration to be transcribed and certified by the President and Secretary of the Association as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Public Records of Brevard County, Florida. No such amendment shall become effective until a properly executed instrument in writing shall be recorded in the Public

Records of Brevard County, Florida. If the Developer no longer maintains a Class B membership, the amendment or amendments proposed must be approved solely by an affirmative vote of members holding at least a two-thirds (2/3) vote of the total number of members of the Association entitled to vote thereon, and the above-referenced procedure for certification and Recording shall be followed.

Notwithstanding the foregoing, the Developer specifically reserves the absolute and unconditional right, as long as Developer owns any Lot, to amend this Declaration without the consent of joinder of any party to: (i) conform to the requirements of the St. John's River Water Management District, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, Department of Housing and Urban Development, or any other generally recognized institution involved in the purchase and sale of home loan mortgages, or pursuant to any requirement of any federal, state or local government entity, agency or authority; (ii) conform to the requirements of mortgage lenders or title insurance companies; or (iii) perfect, clarify, or make internally consistent the provisions herein. Notwithstanding any other terms and conditions contained herein, no amendment may be made to this Declaration amending or terminating the rights of the Developer without the prior written consent of the Developer.

The foregoing notwithstanding, any amendments to the covenants and restrictions which alter the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portion of the Common Areas, must have the prior approval of the St. John's Water Management District.

**Section 3. Federal Housing Administration (FHA) or Veterans Administration (VA) Approvals.**

So long as there is a Class B membership the following actions shall require the prior approval of the FHA or VA agencies: annexation of additional properties outside the boundaries of the Subdivision, dedication of Common Areas to other than the Association, encumbrance of a Common Area, or amendment of this Declaration of the Articles of Incorporation of the association, provided such approval is not unreasonably withheld by the FHA or VA.

**Section 4. Mortgage or Conveyance of Common Areas:**

In addition to any approvals required of the St. John's River Water Management District, the FHA or VA, any mortgage or conveyance of a Common Area or any portion thereof shall require the approval of at least two-thirds of the Lot Owners excluding the Developer.

**Section 5. Future Development Within the Project.**

The Declarant reserves to itself the sole and absolute right to determine the timing, method of ownership, and manner of development of any and all phases of the Subdivision and the addition of other property to the Subdivision. In no event shall any provision of this Declaration be construed as imposing upon the Declarant any obligation whatsoever to submit to the jurisdiction of the Association or vote of the members or provisions of this Declaration any additional property, improvements or lots other than those herein described. No consent of the Lot Owners shall be required to add any lands, improvements or portions of additional property to the jurisdiction or ownership of the Association or to subject the same to provisions of this Declaration.

**Section 6. Expandable Association.**

(a) Upon the recordation of this Declaration of Covenants and Restrictions for Forest Creek Subdivision, the Association shall have as members all Owners of Lots in that portion of the Subdivision to which this Declaration has been made applicable, and said portion shall be

subject to the jurisdiction of the said Association, the provisions of this Declaration of Covenants and Restrictions, and the terms of the Articles of Incorporation and By-Laws of the Association, as amended from time to time.

(b) If the Declarant elects to submit additional phases of the Subdivision to this Declaration and to the jurisdiction of the Association, the owners of lots included therein shall also be Members of the Association, and shall enjoy the use of and contribute toward the costs of maintenance, repair and operation of the Common Areas on an equal basis with all other Owners except as otherwise provided herein.

(c) Any additions of portions of the Subdivision which Declarant elects to submit to this Declaration shall be made by filing of record a supplementary declaration of covenants and restrictions with respect to the additional property, which if applicable shall extend these covenants and restrictions to such property, and provided if applicable that the FHA and VA have determined that the annexation is in accord with the general plan heretofore approved by them.

(d) Such supplementary declaration may contain such complementary additions, deletions, changes to this Declaration as may be required to reflect the different character, if any, of the added properties. In no event, however, shall such supplementary declaration revoke, or otherwise modify the covenants and restrictions established by this Declaration upon the existing subject properties unless properly amended in accordance with the amendment procedures set forth herein.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has caused these presents to be executed in its name by its duly authorized officer, as of the \_\_\_\_\_ day of \_\_\_\_\_, 1998.

Signed, sealed and delivered FOREST CREEK DEVELOPMENT CORPORATION  
in the presence of:

\_\_\_\_\_  
Witness

BY: \_\_\_\_\_  
Roy J. Pence

\_\_\_\_\_  
Witness

STATE OF FLORIDA  
COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me an officer duly authorized in the State and in the County aforesaid to take acknowledgements, personally appeared **ROY J. PENCE**, as President of **FOREST CREEK DEVELOPMENT CORPORATION**, a Florida Corporation, to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same. The said person was not under oath.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Notary