

Forest Creek Homeowners Association, Inc.

Covenants

6/2009

1. **Corner Lots.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) or six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines or in the case of a rounded corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.
2. **Drainage.** It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plat as approved for this plat by the Department of Public Works of the City of Indianapolis and the requirements of all drainage permits for the plat as issued by said Department. It shall be the duty of every owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair.
3. **Utility Easements.** There are strips of property as shown on the recorded plat which are hereby designated and reserved for use of public utilities for the installation and maintenance of utilities and drainage facilities (hereinafter referred to as Utility Easements.) No permanent or other structure or obstruction shall be created or maintained on such Utility Easement but each owner shall take title to that part of the Utility Easement comprising a part of his lot, subject to the rights of such public utility for ingress and egress in and along, across, through, and over the Utility Easement.
4. **Minimum Living Space Areas.** The minimum square footage of living space of dwellings constructed on various residential lots in the Development exclusive of porches, terraces, garages, carports, accessory buildings or basements below ground level shall contain no less than 1500 square feet of ground floor living area for a one-story structure or 1000 square feet of ground floor area if higher than one-story, provided that higher than one-story structures shall have a minimum of 1800 square feet total living area and each dwelling shall have a two or three car attached garage.
5. **Architectural Design.** No building, fence, walls or other structure shall be erected, placed or altered on any building lot in this subdivision until the building plans, specifications and plot plan showing the location of such structure have been approved as to the conformity and harmony of external

- design with existing structure herein and as to the building with respect to topography and finished ground elevations by Architectural Control Committee. The destruction of trees and vegetation and any other matter as may affect the environment and ecology of this subdivision shall be the proper concern of the committee. The Architectural Control Committee shall be comprised of 3 homeowners for a 3-year term, appointed by the directors.
6. **Building Location.** Front building lines are established as shown on the plat, between which lines and the right-of-way lines of the street, no structure shall be created or maintained. The additional requirement of D-2 Zoning Classification call for no building or structure to be created or maintained closer to any side lot line o any lot that seven (7) feet, with each lot having an aggregate side yard requirement of nineteen (19) feet. Whenever a dimension is referred to in this item, it is strictly for convenience and information, and in no instance is to be or be construed as a plat covenant and/o restriction.
 7. **Residential Use Only.** All lots in this subdivision shall be used solely for residential purposes except for residences used as model homes during the sale and development of this subdivision. No motor home, trailer, tent, shack, boat, garage, basement, or other outbuilding shall be used for temporary or permanent residential purposes on nay lot in the subdivision. No dog kennel, junkyard, or commercial business of any kind will be permitted in this subdivision.
 8. **Limitation on Time.** All residential construction on any lot must be completed within one (1) year after the starting date, including final grading.
 9. **Driveways.** All driveways shall be paved with concrete, asphalt, or other all-weather surface materials the owner or its assigns. No gravel or stone driveways will be permitted. No additional parking will be permitted on a lot other than the existing driveway. Lot #38 and #39 driveways must enter on Fallen Oar Drive.
 10. **Parking Limitations.** No inoperative or unlicensed vehicles shall be parked on or repaired on any lot or on the driveway thereof. No camper, trailer, mobile home, boat, truck, school bus or other vehicle of any kind may be parked in the Development unless such vehicle is kept in the garage, except for personal automobiles, vans and pick-up trucks.
 11. **Nuisances.** No noxious or offensive trade shall be permitted upon any lot in this subdivision nor shall anything be done thereon which may be a nuisance or annoyance to the neighborhood. No refuse will be maintained on the lot. Garbage and trash will be kept in approved containers which are not visible from the street, except on collection date or the evening before.
 12. **Outbuildings.** Outbuilding and their location must be approved by the Architectural Committee. Outbuildings shall be constructed or new materials and be similar in appearance with the residence on the lot on which building is being built. Outbuildings not located on a permanent foundation shall not be permitted. Metal outbuildings shall not be permitted in any event.
 13. **Antennas.** No communication tower/antennal shall be allowed. Any satellite dish will not be larger than 39" in diameter and must be affixed to the house.

14. Solar Technology. Devices for solar technology must be architecturally integrated within the primary residence and must be approved by the Architectural Control Committee.
15. Swimming Pools. All swimming pools must be placed behind the residence below ground. No above ground pools permitted.
16. Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats and other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes. Any animal so kept will not be permitted to roam at large within the subdivision and shall be confined to the owner's premises.
17. Fencing. Fence shall be approved by the Architectural Control Committee. Fencing shall not exceed six (6) feet in height and no fence shall be placed closer to the front lot line than the rear of the primary residence. Chain link fencing must be of the dark vinyl coated type. All fencing must be maintained in good condition.
18. Mailboxes. The Architectural Control Committee shall require a standardized mailbox for each residence and shall establish a design, material, and paint specification for a mailbox which shall be standard for all mailboxes in this subdivision.
19. Homeowners Association. Each lot owner shall be required to join the Homeowners Association for the purposes outlined in the Homeowners Association By-Laws.
20. Duration of Covenants. The foregoing covenants, conditions and restrictions are to run with land and shall be binding on all parties and all persons claiming under them January 1, 2009, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of five (5) years, unless changed in whole or in part by vote of these persons who are then the owners of the majority of the numbered lots in the development.
21. Severability. Every one of the restrictions is hereby declared to be independent of any severable from the rest of the restrictions and of and from every other one of the restrictions, and of and from every combination of the restrictions. Therefore, if any of the restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect on the validity, enforceability or running quality of any other one of the restrictions.
22. Zoning. The additional requirements of zoning classification D-2 are also a part of the Covenants and Restrictions and are incorporated herein by reference.
23. Entrances. Entrances to the subdivision which are known as Block A, B and D on the plat shall be maintained as outlined in the Homeowners Association By-Laws.
24. Park. The park area at the rear of the subdivision which is known as Block C on the plat will be a private park for use of the owners and their guests only. Any changes or alterations to the park must be approved by the

Homeowners Association and the Architectural Control Committee. The park shall be maintained as outlined in the Homeowners Association By-Laws.

25. The Metropolitan Development Commission. The Metropolitan Development Commission, its successors or assigns, shall have no right, power or authority to enforce any covenants, commitments, restrictions, or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein can be constructed to prevent the Metropolitan Development Commission from enforcing any provisions of the subdivision control ordinance 58-AD-3 as amended, or any other conditions attached to approval of this plat by the Plat Committee.

BY - LAWS

OF

FOREST CREEK HOME OWNERS ASSOCIATION, INC.

ARTICLE I

IDENTIFICATION AND APPLICABILITY

SECTION 1.01. Identification and Adoption. These By-Laws are adopted to govern the administration of the Forest Creek Home Owners Association created to govern the use of common areas, and partly to govern the use of lots, in a residential subdivision located in Marion County, Indiana, known as Forest Creek.

The Articles of Incorporation of the Association are incorporated herein by reference, and all of the covenants, rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The Provisions of these By-Laws shall apply to the administration and conduct of the affairs of the Association.

SECTION 1.02. Individual Application. All of the Lot owners, future owners, mortgages, tenants, future tenants, or their guests and invitees, and any other person who may use or occupy a Lot or any common areas in the subdivision, shall be subject to the terms and conditions of all documents affecting such Lot and the common areas, as well as by the Articles of Incorporation of the Association, these By-Laws, and any Rules and Regulations adopted by the Association.

SECTION 1.03. Effect of Becoming An Owner. The owners of any lot in Forest Creek, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such lot, shall accept such deed and execute such contract subject to the provisions contained in these By-Laws. By acceptance of such deed or execution of such contract the Owner acknowledges the rights and powers of Developer with respect to these By-Laws, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to and with Developer and to and with the Owner and subsequent Owners of each of the lots affected by these By-Laws to keep, observe, comply with the terms and conditions of these By-Laws.

SECTION 1.04. Rules Governing Building On Several Contiguous Lots Having One Owner. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such Owner shall desire to use two or more of said lots as a site for a single dwelling, he shall apply in writing to the Architectural Control Committee as hereinafter described for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single dwelling shall be treated as a single lot for the purpose of applying these By-Laws to said lots, so long as the lots remain improved with one single dwelling.

ARTICLE II

MEETING OF ASSOCIATION

SECTION 2.01. Meetings. At least annually and at such other times as may be necessary, a meeting of the Lot Owners shall be held for the purpose of electing the Board of Directors, approving the Annual Budget, and for such other purposes as may be appropriate or required.

SECTION 2.02. Annual Meetings. The Annual Meeting of the Lot Owners shall be held on the first Monday on or after March 15 in each calendar year or as soon thereafter as is practicable. The Board of Directors may change the date for the Annual Meeting, but it shall give written notice to Owners of any change in the date of the Annual Meeting. At the Annual Meeting, the Lot Owners shall elect the Board of Directors of the Association in accordance with the provisions of these By-Laws, shall consider the Annual Budget, and shall transact such other business as may properly come before the meeting.

SECTION 2.03. Special Meetings. A special meeting of the lot owners may be called by the president, by request of two (2) directors, or upon a written request of not less than (15%) of the lot owners. The request shall be presented to the president or secretary of the association and shall state the purpose for which the meeting is to be called and such purposes shall be stated in the notice thereof, which is sent to the lot owners no less than 10 calendar days before the meeting. No business shall be transacted at a special meeting except as stated in the notice of the meeting, unless a majority of the lot owners are present.

SECTION 2.04. Notice and Place of Meetings. Any meetings of the lot owners may be held at any suitable place, as may be designated by the Board of Directors. Written notice stating the date, time and place of any meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is being called shall be delivered or mailed by the secretary of the association to each owner. The notice shall be mailed or delivered 10 days in advance to the lot owners at their address as appears on the records of the association. Attendance at any meeting by a lot owner or their authorized representative, in person or by proxy, shall constitute waiver of notice of such meeting.

SECTION 2.05. Number of Votes (a) To facilitate the orderly conduct of the meeting, each lot owner shall be a class A member of the association, and shall be entitled to cast one vote on each matter coming before the meeting. The class B membership shall cease and be converted to a class A membership on the happening of either of the following events, whichever occurs earlier:

ARTICLE III BOARD OF DIRECTORS

SECTION 3.01. Numbers and duties. The affairs of the association shall be governed and managed by the board of directors (herein collectively called the "Board" or "Directors" and individually called "Director"). The board of directors shall be composed of three (3) persons. No person shall be eligible to serve as a director unless he is a lot owner, Also, any lot owner who is 30 days or more in areas in his annual or special assessments, will not be eligible to serve or to continue to serve as a director.

SECTION 3.02. Additional Qualification. Where an owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Lot Owner, or an office or trustee, shall be eligible to

serve on the Board of Directors. No Lot Owner other than the Developer may be represented on the Board of Directors by more than one person at a time.

SECTION 3.03. Term of Office and Vacancy. The Board of Directors shall be elected at each annual meeting of the Association. At the first annual meeting of the Board, one Director shall be elected for one (1) year, one Director for two (2) years and one Director for three (3) years. At each subsequent annual meeting one Director shall be elected for a term of three (3) years (since the term of one of the Directors will be expiring), and any other vacancies in the Board of Directors shall be filled by electing a Director to serve for the remainder of the term of the Director who did not serve for his whole term of office.

Any vacancy of vacancies occurring in the Board of Directors shall be filled until the annual meeting of the members by a vote of a majority of the remaining Directors or by vote of the Lot Owners if a Director is removed in accordance with Section 3.04 of this Article III.

SECTION 3.04. Removal of Director. A Director or Directors, except the initial Directors, may be removed with or without cause by majority vote of the Lot Owners at a meeting duly called and constituted. In such case, a successor Director shall be elected at the same meeting from eligible Lot Owners. A Director so elected shall serve until the next Annual Meeting of the Lot Owners or until his successor is duly elected and qualified. An initial Director may be removed and replaced at the discretion of the Developer.

SECTION 3.05. Duties of the Board of Directors. The Board of Directors shall provide for the management, administration, operation, maintenance, repair, upkeep and replacement of the Common Areas in Forest Creek, and the collection and disbursement of the common expenses. These duties include, but are not limited to:

- (a) Management, maintenance, repair and replacements of the common areas;
- (b) Procuring of utilities used in connection with the common facilities, removal of garbage and waste, and snow removal from the common areas, and if the Board of Directors deems prudent from public streets in the subdivision;
- (c) Landscaping, painting, decorating, and furnishing of the common areas;
- (d) Surfacing, paving and maintaining streets, parking areas, and sidewalks;
- (e) Assessment and collection from the Owners of their pro rata share of the common expenses;
- (f) Preparation of annual budget;
- (g) Preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each owner as soon as possible after the end of each fiscal year;
- (h) Keeping a current, accurate and detailed record of receipts and expenditures affecting the property, specifying and itemizing the common expenses. All records and vouchers shall be available for

examination by an owner upon reasonable notice during normal business hours; and

- (i) To procure fire and extended coverage insurance covering any improvements on or to the common areas to the full replacement value thereof and to procure public liability and property damage insurance and workmen's compensation insurance, if necessary, for the benefit of the Lot Owners and the Association.

SECTION 3.06. Powers of the Board of Directors. The Board of Directors shall have all powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to:

- (a) To employ a managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties;
- (b) To purchase for the benefit of the Association such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
- (c) To employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (d) To include the costs of all of the above and foregoing as a common expense;
- (e) To open and maintain one or more bank accounts in the name of the Association;
- (f) To determine rules and procedures for hiring and firing of personnel necessary for the maintenance, repair and replacement of common areas and for approving the payment of vouchers, invoices and the like;
- (g) To adopt, revise, amend and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the common areas and facilities;
- (h) To grant easements and other rights over common areas;
- (i) To impose non-discriminatory fines upon any Lot Owner or Lot Owners if they, or any members of their family, guests, or invitees, shall violate any rules or regulations adopted by the Association and such fine shall be collectible by the Association in the same manner as payment of the annual assessment is collectible, and shall be secured by a lien on the Owner's Lot and subject to late charges and interest to the same extent as a late payment of the annual assessment; and
- (j) To do such other acts and things as are in the best interest of the majority of Lot Owners and which are not contrary to law.

SECTION 3.07. Limitation on Board Action. The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of the Lot Owners at a meeting thereof, except in the following cases:

- (a) Contracts for replacing or restoring portions of the common areas damaged or destroyed by fire or other casualty unless all the building are totally destroyed;
- (b) Proposed contracts and proposed expenditures expressly set forth as provided for in the annual budges as approved by the Lot Owners at the annual meeting, which shall include but no be limited to the compensation of the managing agent, ongoing contracts of all kinds, maintenance contracts, contracts for improvements which have been approved by the Lot Owners and contributions to reserve accounts;

Items within the budget need not be approved separately. The Board may also reallocate items in the budges, if the total budget will not be increased.

SECTION 3.08. Compensation. No Director shall receive any compensating for his services unless a majority of the Lot Owners shall approve paying such compensation. Each Director shall be reimbursed for his reasonable costs and expenses incurred for the benefit of the association.

SECTION 3.09. Meetings. Regular meeting of the Board of Directors may be held as such time and place as shall be determined from time to time by the President. The Secretary shall give notice of the regular meetings of the Board to each Director personally or mailed by United States Mail at least three (3) days prior to the date of such meeting.

Special meetings of the Board of Directors may be called by the President or any two (2) members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called.

SECTION 3.10. Waiver of Notice. Any Director may, in writing, waive notice of a meeting and such waiver shall be deemed equivalent to the receipt of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place and purpose thereof. If all Directors are present at the meeting f the Board, or if those no present shall waive notice of the meeting or shall consent to the actions taken at the meeting, notice shall not be required and any business may be transacted at such meeting.

SECTION 3.11. Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which quorum is present shall be the decision of the Board

SECTION 3.12. Non-Liability of Directors. The Directors shall not be liable to the Lot Owners or any other persons for any error or mistake in judgment exercised in carrying out their duties and responsibilities as Director, except for their own individual willful misconduct, bad faith or gross negligence. The association may indemnify and hold harmless each of the Directors against any and all liabilities to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of law. The Association shall if reasonably available carry liability insurance for the Board of Directors. The cost of such insurance shall be included as part of the common

expenses. It is intended that the Directors shall have no personal liability with respect to any contract made by them in good faith on behalf of the Association. The Lot Owners shall be subject to special assessment for sums necessary for the Association to pay the aforesaid indemnity in favor of the Directors. Every contract made by the Board or the Managing Agent on behalf of the Association shall be in the name of the Association.

SECTION 3.13. Additional Indemnity of Directors and Officers. The Association may indemnify any person, his heirs, assigns and personal representative, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or an officer of the Association, against the reasonable expenses, including attorneys fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereon, except as otherwise specifically provided therein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such person is liable for gross negligence or willful misconduct in the performance of his duties. The Association the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority of the Lot Owners that such Director or Officer was not guilty of gross negligence or willful misconduct. IN making such finding and notwithstanding the adjudication in any action, suit, or proceeding against a Director or an Officer, no Director or Officer shall be considered or deemed to be guilty of or liable for negligence or willful misconduct in the performance of his duties where, acting in good faith, such Director or Officer relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent or any Officer or employee thereof, or any Accountant, Attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director or Officer be deemed guilty of or liable for negligence or willful misconduct solely by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

SECTION 3.14. Books and Records. The Board of Directors shall itself, or through the Managing Agent, make available to Lot Owners and lenders, and to holders, insurers or guarantors for any first mortgage, current copies of the Covenants in the recorded subdivision plats, there By-Laws, any rules and regulations concerning Forest Creek, and the books records and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

ARTICLE IV OFFICERS

SECTION 4.01. Officers of the Association. The principal Officers of the Association shall be the President, Vice President, Secretary, and Treasurer, all of whom shall be elected by the Board. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

SECTION 4.02. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the initial meeting of each new Board. Upon an affirmative vote of a majority of all members of the Board, any Officer may be

removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

SECTION 4.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. He shall preside as Chairman at all meetings of the Association and of the Board, shall have and discharge all of the general powers and duties usually vested in the office of President or Chief Executive officer of an Association or a Stock Corporation organized under the laws of Indiana, including, but not limited to the power to appoint committees from the Lot Owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

SECTION 4.04. The Vice President. A Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. In the absence of the President the Vice President shall preside at all meetings of the Lot Owners and of the Board of Directors. The Vice President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be delegated to him by the Board or by the President.

SECTION 4.05. the Secretary. The Secretary need not be elected from among the Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meeting, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association of the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

SECTION 4.06. The Treasurer. The Board shall elect a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of the Treasurer. He shall be the Legal Custodian of all monies, notes, securities and other valuables which may from time to time come into the possession of the Association. She shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association. The Treasurer need not be a Lot Owner.

SECTION 4.07. Additional Officers. The Board of Directors may, from time to time, designate and elect additional Officers, including but not limited to Vice Presidents and as Assistant Secretary and Assistant Treasurer who shall have such powers and duties as are set forth herein for such offices. The Assistant Secretary and Assistant Treasurer shall have such powers and duties as the Officer whom they are elected to assist shall delegate to them, and such other powers and duties as they By-Laws or the Board of Directors may prescribe.

SECTION 4.08. Delegation to Management Agent. The duties of the Secretary and/or Treasurer may be delegated to a Managing Agent if one is then serving.

ARTICLE V

ACCOUNTING, BUDGETS, AND ASSESSMENTS

SECTION 5.01. Annual Accounting. Annually, as soon as practicable after the close of each fiscal year, the Board shall cause to be prepared and furnished to each Lot Owner a financial statement prepared by an independent Public Accountant, which

statement shall show all receipts and expenses received, incurred and paid during the preceding calendar year. The Association shall furnish such financial statement for the preceding fiscal year free of charge to any holder, insurer or guarantor of a first mortgage who shall so request in writing.

SECTION 5.02. Proposed Budget. Annually, on or before the date of the Annual Meeting of the Association, the Board of Directors shall cause to be prepared a proposed Annual Budget for the ensuing or current fiscal year estimating the total amount of the common expenses for such fiscal year. The Board of Directors shall furnish a copy of such proposed Annual Budget to each Lot Owner prior to or at the Annual Meeting of the Association for adoption, and, if so adopted, shall be the basis for the Annual Assessment for the following fiscal year. At the Annual Meeting of the Lot Owners, the Budget may be approved in whole or in part or may be amended in whole or in part, by a majority vote of those persons voting in person or by proxy; provided, however, that the Board of Directors may adopt a tentative Annual Budget for each year until an Annual Budget is approved by the Lot Owners.

SECTION 5.03. Annual and Special Assessments. Common expenses shall be assessed to the Lot Owners, either as an Annual Assessment, or as a special Assessment, equally with respect to each Lot which is subject to assessment, all as set forth below:

- (a) An annual assessment shall be made for each fiscal year of the Association for all anticipated ongoing operating expenses of the Association, including reserves. The annual assessment shall be due and payable in advance on the first day of the month of February each year. The amount of the aggregate annual assessments shall be equal to the total amount of expenses provided for in the Annual Budget, including reserve items.
- (b) Special Assessments may be made for any unusual and/or extraordinary items, including capital expenditures, and any unanticipated items. Special assessments shall be payable in such amounts and at such times as may be provided in the resolution or other formal proposal setting forth the terms of such Special assessments.
- (c) The annual assessment and all a special assessments, together with interest, late charges, costs and reasonable attorney's fees, shall be a continuing lien on the lot upon which each such assessment is made as each installment thereof becomes payable. Each such assessment, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time of the assessment was payable.

SECTION 5.04. Vote for Special Assessments. No Special Assessment shall be adopted unless voted by sixty-six and two thirds percent (66 2/3%) of the votes of the Association at a meeting called for this purpose. However, Special Assessments required because of an insufficiency of insurance shall not be subject to any vote by the Lot Owners.

SECTION 5.05. Notice of meetings for assessments. Written notice of any meeting other than the annual meeting which is called for the purpose of approving the annual budget and annual assessment, shall be given or sent to all

members 10 calendar days in advance and such notice shall state the annual budget and or a special assessment will be considered at such meeting.

SECTION 5.06. Commencement of Assessments. The Annual Assessments provided for herein shall be made for each fiscal year of the Association. The Annual Assessment shall be set for each fiscal year of the Association. If the Annual Assessment has not been set by the first day of the fiscal year, then the payments due on the Annual Assessment shall be based upon a Tentative Annual Budget set by the Board of Directors, and if none is set then the Assessment shall be based on the prior year's Assessment until the Annual Budget and Annual Assessment for such fiscal year is approved. The Annual Assessment payable after the Annual Budget is approved shall be adjusted to compensate for any prior payments which were too high or too low. If more than one lot is conveyed or rented with a home, then each Lot, or part Lot, shall be subject to the Annual Assessment. A part Lot shall be subject to a pro rata share of such assessment. The Annual Assessment for the fiscal year in which occurs the conveyance of the first Lot to a Lot Owner other than a builder shall be established by the Developer. No Lot shall be liable for payment of the Annual Assessment until after a home on the lot is substantially completed and is then conveyed by the builder of the home to a purchaser, or when the home is rented. At the time of the first conveyance of the home, the purchaser shall pay a prorated assessment for the balance of the quarter in which the Lot is conveyed. The Purchaser of each Lot shall be responsible to notify the Association of his acquisition of the Lot and to give to the Association his name and address for mailing purposes and satisfactory evidence of his ownership.

SECTION 5.07. Delinquent Assessment. Any payment of an Assessment which is not paid within fourteen (14) days of the date due shall automatically be subject to a late charge of \$25.00. Late charges may continue to be assessed for each quarter a payment remains outstanding. The Board of Directors shall have the right to change the amount of the late charge, the time period before such charge is imposed, and to make other provisions for late charges and/or for imposing interest on late payments. The Association may bring an action of law against the Lot Owner personally obligated to pay the same; it may foreclose its lien against the Owner's Lot; or it may assert both rights and/or any other remedy available to it in law or in equity.

SECTION 5.08. Lien of Assessments. All sums assessed by the Association, but unpaid, including installments of the Annual Assessment and Special Assessments, and any fines duly imposed by the Association, together with late charges, interest, attorney's fees and the costs of collection thereof, shall constitute a lien on the Owner's Lot prior to all other liens, except only:

- (a) Tax liens on the lot in favor of any assessing unit or special district; and
- (b) All sums unpaid on a first mortgage of record.

The sale or transfer of any Lot by foreclosure or by deed in lieu of foreclosure (but not any other transfer), shall extinguish the Assessment lien for payments which become due prior to the date of such sale or transfer, but shall not extinguish the personal liability of the Lot Owner for such assessments. No such

sale or transfer shall relieve the Lot Owner from liability for any assessments thereafter becoming due or from the lien thereof. The line for sums assessed may be foreclosed by a suit by the Association or the managing Agent on its behalf in like manner as a mortgage of such property. In any such foreclosure the Lot Owner shall be required to pay a reasonable rental for the use and occupancy of the Lot. The Association, upon the affirmative vote of 90% of all the Lot Owners (so authorizing and setting up a special assessment to pay for the same), shall have the power to bid on the Lot at any foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

SECTION 5.9. Liability of Grantee. In a voluntary conveyance of a Lot other than a deed in lieu of a foreclosure, the grantee of the Lot shall be jointly and severally liable the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses or for special assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. Upon the request of any Lot Owner, purchaser or Mortgagee, the Secretary or other authorized Officer of the Association or the Managing Agent shall provide within seven (7) days of the request, against a particular Lot. The Association may charge a reasonable charge for such statement if permitted by law and it may require the Lot Owner to confirm that the person requesting the statement is a Mortgagee or purchaser of or from the Lot Owner. Once having been furnished with such a statement, such person (other than the delinquent Lot Owner) shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth, plus costs of collection of such sums, if applicable.

ARTICLE VI

ARCHITECTURAL CONTROL COMMITTEE

SECTION 6.1. Creation. There shall be, and hereby is, created and established an architectural control committee to perform the functions provided for herein. The architectural control committee shall be comprised of (3) homeowners for a (3) term, appointed by the directors.

SECTION 6.2. Purposes and powers of committee. The committee shall regulate the external design, appearance and location of residences, buildings, structures or other improvements placed on any Lot in such a manner as to preserve and enhance the value and desirability of the real estate for the benefit of each owner and to maintain a harmonious relationship among structures and the natural vegetation and topography.

- (i) In general. No residence, building, structure or improvement of any type of kind shall be constructed or placed on any Lot without the prior written approval of the committee. Such approval shall be obtained only after written application has been made to the committee by the owner of the Lot requesting authorization from the committee. Such written application shall be in the manner and form prescribed from time to time by the committee and, in the case of construction or placement of any improvement, shall be

accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plan showing the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the composition of all exterior materials proposed to be used together with any other material or information which the committee may require. All plans and drawings submitted to the committee shall be drawn to a scale of 1" equals 10' or one quarter or one-eighth inch equals one foot; or to such other scale as the committee may require. When required by the committee, plot plans shall be prepared by either a registered Land Surveyor, Engineer or Architect. Plot plans submitted for the improvement location permit shall bear the stamp or signature of the committee acknowledging the approval thereof.

(ii) Power of disapproval. The committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions in this declaration or any subdivision plat of the real estate recorded in the office of the recorder in Marion County, Indiana;
- (b) The design of a proposed improvement is not in harmony with the general surrounding of the lot or with adjacent buildings or structures; or
- (c) The proposed improvement, or any part thereof, would, in the opinion of the committee, be contrary to the interests, welfare or rights of any other owner.

(iii) Rules and Regulations. The committee may, from time to time, make, amend and modify such additional rules and regulations as it may deem necessary or desirable to guide owners as to the requirements of the committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in these By-Laws and the subdivision plat of the real estate recorded in the office of the Recorder of Marion County, Indiana, as long as the same are not inconsistent with said documents.

SECTION 6.3. Duties of Committee. The committee shall approve or disapprove proposed repainting, construction or improvements within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

SECTION 6.4. Liability of Committee. Neither the committee, developer, and the Association nor any agent of any of the foregoing shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

SECTION 6.5. Inspections. The committee may inspect work being performed to assure compliance with this declaration and the materials submitted to it pursuant to this article VI.

ARTICLE VII AMENDMENT TO BY-LAWS

SECTION 7.01. These By-Laws may be amended by a majority vote of the Lot Owners voting in person or by proxy at a duly constituted meeting called for such purpose, or at an annual meeting.

ARTICLE VIII NOTICES

SECTION 8.01. Notice to Mortgages. Any Lot Owner who places a first mortgage lien upon his lot may notify the Secretary or the Association or the Managing Agent and provide the name and address of the Mortgagee, or the Mortgagee may do so, with a statement as to whether notices are to be sent to the Mortgagee. A record of such Mortgagee and its name and address shall be maintained by the Secretary or the managing Agent and any notice required to be given to the Mortgagee pursuant to the terms of these By-Laws shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided, or as to which the Association is later notified in writing. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary or the Managing Agent, either by the owner or the Mortgager, no notice to the Mortgagee as may otherwise be required by these By-Laws shall be required.

SECTION 8.02. Notice to Lot Owners. Each Lot Owner shall have the duty to notify the Association of his address for notice purposes and all notices duly mailed or delivered to that address shall be proper notice hereunder. The Association shall have no duty to send notice to any Lot Owner, to any other address or to whom the Association has no address.

ARTICLE IX DEFINITIONS

SECTION 9.01. All terms used herein shall have the same meaning as defined in the covenants in the Forest Creek Subdivision Plats filed as Instrument No. 900007551 in the office of the Recorder of Marion County, Indiana. A "Director" as used herein is any member of the Board of Directors, and the term "Board" refers to the Board of Directors. The term "Annual Budget" refers to the Board of Directors. The term "Annual Budget" shall mean the Budget adopted, or in context proposed for adoption, pursuant to Article V of these By-Laws. The masculine pronoun shall be construed to include and/or mean the feminine and neuter gender as the case may be and the singular shall where applicable include the plural. The term "Member" means a Lot Owner in his capacity as a member of the Association. The term "Developer" means R & F Development, Inc. and its successors and assigns who succeed as the Developer of Forest Creek or any

part thereof but shall not include persons who merely build homes on any of the Lots. The term "Subdivision" means the Forest Creek Subdivision, Section 1 and 2.