

Recorded \_\_\_\_\_ at 3:00 P.M.  
Request of Commercial Security  
E.L. DIXON  
Lake County, Utah  
Cheryl Warrington Deputy

3232021

Ref. 79 do - State SEC

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOREST COVE

THIS DECLARATION is made on the 9th day of January 1979, by ALTON R. LARSEN, JR. and COLA DAWN LARSEN, his wife, hereinafter referred to as "Declarant."

RECITALS

1. Declarant is the owner of real property, hereinafter referred to as the "Development Property," located in Salt Lake County, Utah, particularly described as follows:

BEGINNING at the Southeast corner of the Crestview Estates Subdivision at a point  $\angle$  988.80' and E 229.05'. From the E 1/4 Corner of Section 28, T 2 S, Range 1 E, Salt Lake Base and Meridian and running thence along the S Boundary of said Crestview Estates Subdivision for two courses as follows:

S 84°25'00"W 412.91'; thence N 60°15'26"W 566.45'; thence leaving the subdivision boundary 502°15'24"E 595.96'; thence 577°40'00" E 182.81'; thence 516°34'00"W 54.38'; thence 544°19'00"E 93.86'; thence 507°10'00"E 53.15'; thence 574°49'00"E 734.97'; thence 530°36'00"E 212.19'; thence 542°42'00"E 356.98' to the W Right of Way line of 2000 E Street; thence along said Right of Way line for four courses as follows: Along the Arc of a 523.69' radius curve to the left 271.721' (The chord bears N15 30'07" W 268.683'); thence N 30°21'58"W 161.00'; thence along the Arc of a 1005.370' radius curve to the right 254.432' (The chord bears N 23°06'58"W 253.753'); thence N 15°51'58"W 594.65' to the point of BEGINNING.

Contains 16.03 Acres.

2. Declarant intends to develop that portion of said property which is described on plat B, attached hereto as Exhibit B and by this reference incorporated herein, which he intends to propose for approval by the Salt Lake County Planning Commission. The portion described as ~~parcel A on Exhibit B is to be and will hereinafter be referred to as~~ the "Common Area," ~~which~~ will be conveyed to the Forest Cove Homeowners Association prior to or concurrently with the conveyance of a lot in said Project Property to an owner other than Declarant. ~~Such Common Area includes certain limited Common Areas as is more particularly described on Exhibit B.~~ If said approval of the Salt Lake County Planning Commission is not obtained Declarant intends to develop that portion of said

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property which is described on plat A, attached hereto as Exhibit A and by this reference incorporated herein, as heretofore proposed to and approved by the Salt Lake County Planning Commission. The portion described as ~~parcel A~~ on Exhibit A ~~is to be and will hereinafter be referred to~~ as the "Common Area," ~~which~~ <sup>which</sup> will be conveyed to the Forest Cove Homeowners Association / ~~Such Common Area includes certain~~ <sup>prior to or concurrently with the conveyance</sup> of a lot in said Project Property ~~to an owner other than Declarant.~~ ~~Limited Common Areas as is more particularly described on~~ ~~Exhibit A.~~

3. Declarant has deemed it desirable for efficient preservation of the value, desirability and attractiveness of said tract to create a corporation to which should be delegated and as-

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signed the powers of maintaining and administering the Common Area, and administering and enforcing these Covenants, Conditions and Restrictions and collecting and disbursing funds pursuant to the assessment and charges hereinafter created and referred to.

4. Forest Cove Homeowners Association, a non-profit corporation, will be incorporated under the laws of the State of Utah for the purpose of exercising the powers set forth in Recital 3 above.

#### DECLARATION

Declarant hereby declares that the Project Property (as that term is hereafter defined) is, and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement, protection, maintenance and sale of said Property and are established and agreed upon for the purpose of enhancing and perfecting the value and attractiveness of said Property and every part thereof. All of the limitations, restrictions, easements, conditions, liens, charges, covenants and remedies contained herein shall run with the land, and each estate herein, and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall be for the benefit of each owner of any portion of the Property or any interest therein and shall inure to the benefit of and binding upon each successor in interest of the owner thereof.

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#### ARTICLE I DEFINITIONS

(1) "Articles" shall mean the Articles of Incorporation of the Association as said Articles are amended from time to time.

(2) "Association" shall mean and refer to Forest Cove Homeowners Association, a Utah non-profit corporation, its suc-

cessors and assigns.

(3) "Board" shall mean the Board of Directors of the Association.

(4) "By-laws" shall mean the By-laws of the Association as such By-laws may be amended from time to time.

(5) "Common Area" shall mean that portion of the Project Property shown on the final recorded plat of the Project Property which is owned by the Association for the common use and enjoyment of the members of the Association. The Common Area is to be conveyed to the Association prior to or concurrently with the first conveyance of a lot in the Project Property to an owner other than Declarant/<sup>and K</sup> ~~is described as parcel A~~ in Exhibits A. and B.

(6) "Declarant" shall mean and refer to ALTON R. LARSEN, and COLA DAWN LARSEN, his wife, and their successors and assigns.

(7) "Development" shall mean and refer to all of the development property as hereinafter defined, including all structures and other improvements located or constructed thereon.

(8) "Development Property" shall mean and refer to all of the real property, the legal description of which is set forth in Recital 1 above.

(9) ~~"Limited Common Area" shall mean and refer to that portion of the Common Area reserved for the use of specific lot owners, which areas and the lots for whose use they are set aside are shown on Exhibit A.~~

(10) "Lot" shall mean and refer to any plot of land shown upon the recorded Tract Map of the Property with the exception of the Common Area and any other areas that may be dedicated to and accepted by any state or local public authority.

(11) "Member" shall mean and refer to every person or entity who holds membership in the Association.

(12) "Mortgage-Mortgagee-Mortgagor." Reference in this Declaration to a mortgage shall be deemed to include a deed of trust; reference to a mortgagee shall be deemed to include the

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beneficiary of the deed of trust; reference to a mortgagor shall be deemed to include the trustor of the deed of trust.

(13) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

(14) "Private Streets" shall mean and refer to all those portions of the Common Area, ~~except Limited Common Area~~, providing vehicular access to and from the lots.

(15) "Project" shall mean and refer to all of the Project Property hereinafter defined including all structures and other improvements located or constructed thereon.

(16) "The Project Property" shall mean and refer to the real property described in Exhibits A and B in Recital 2 above.

ARTICLE I A  
DEVELOPMENT OF LOT IN ADDITIONAL PHASE

(1) While these declarations are made with reference to the Project Property, Declarant has an interest in a larger parcel referred to and described herein as the Development Property. Declarant intends to, or may want to, develop that portion of the Development Property not included in the Project Property in an additional phase. The property in such additional phase will be subject to all of the terms and conditions of these Covenants, Conditions and Restrictions. The person or persons obtaining a lot in such additional phase shall have a right to participate in and enjoy the Common Areas described herein and the owners in the Project Property shall have a right to participate in and enjoy the Common Areas of the Property in such additional phase. Declarant shall have an easement pending

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the completion of construction and development of the Development Property in and to the common Area of the Project Property to cross over and use the streets, walks and other rights-of-way in the Project Property in connection with construction upon and development of such Development Property and to connect to and use water, sewer drainage, power and other utility lines and systems in the Project Property in connection with such construction and development, provided such connection and use does not overload or exceed the capacity of such utility lines or systems in the Project Property. Declarant reserves the right to annex the property in such additional phase to the Project Property in the same way as if said property was originally included in the Project Property and included herein, except that the assessments charged to lot owners of such subsequent parcels shall not begin and accrue until such time as the property in such additional phase is annexed hereto by the filing and recording of the plats thereof with Salt Lake County and by the execution and declaration of supplemental Declaration of Covenants, Conditions and Restrictions and with respect thereto and until the Common Area, if any, of the property in such phase is conveyed to the Association. Such reservation of the right to annex property in such additional phase shall not extend to land outside of the Development Property. Land outside of the Development Property shall not be brought within the jurisdiction of the Association except by an amendment as provided herein at Article XIV hereof. The right of Declarant to develop property in additional phase as herein provided shall not extend beyond 1983. The maximum number of lots that may be developed in the Development Property which is not included in the Project Property shall not exceed one lot.

ARTICLE II  
PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

(1) Members' Easement of Enjoyment. Every member of the Association shall have a right and non-exclusive easement of enjoyment in and to the Common Area. Their right of ingress, egress and support over and through the dedicated street will be deter-

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mined by Salt Lake County as a part of the County road system. The easements of enjoyment in the Common Areas shall be appurtenant to and pass with the title to every lot, subject to the following restrictions:

(a) The right of the Association to limit the number of guests and to adopt Association rules regulating the use and enjoyment of the Common Area.

(b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and recreational areas therein, to mortgage said property, and the rights of such mortgagee in said property shall be subordinate to the right of the owners hereunder.

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(d) The right of the Association to dedicate or transfer all or any part 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 members. No such dedication or transfer shall be effective unless an instrument has been approved by three-fourths (3/4) of the entire Class A membership and three-fourths (3/4) of the entire Class B membership.

(2) Delegation of Use. Any member may delegate his rights of enjoyment to the Common Area and the private streets to the members of his family who reside on his lot, to contract purchasers, to any of his tenants who reside thereon under a leasehold interest for a term of one (1) month or more, and to his guests; subject, however, to the By-laws and the Association rules and regulations. Such member shall notify the Secretary in writing of the name of such person and of the relationship of the member to such person. The rights and privileges of such person are subject to suspension in the same manner as the members of the Association as more fully provided in this Declaration.

(3) Parking Rights. The use of undesignated parking spaces located in the Common Area, exclusive of Limited Common Area, shall be subject to and governed by the Association rules, as the same are in effect from time to time, and shall be assigned by the Association on the basis of need.

(4) Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each lot and such portion of portions of the Common Area adjacent thereto or as between adjacent lots due to the unwillful placement or settling or shifting of the improvements constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. Said easements of encroachment shall be valid so long as they exist, and the rights and obligations of owners shall not be altered in any way by said encroachments settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created

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in favor of an owner or owners if said encroachment occurred due to the willful act or acts of said owner or owners. In the event a structure on any lot is partially or totally destroyed, and then repaired or rebuilt, the owners of each lot agree that minor encroachments over adjoining lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

(5) Drainage and Utility Easement. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all easements hereto, before or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are necessary for the development of the property. The Association shall assume and perform all of the duties and obligations undertaken by Declarant in Salt Lake County respecting the use of drainage systems in and upon the property for flood control purposes and shall be entitled to enter into reasonable agreements with Salt Lake County whereby it agrees to use and maintain such drainage systems in and upon the property in connection with flood control programs of Salt Lake County and to make provision for the disposition of water in such drainage systems.

(6) Sewer and Water Easement. The rights and duties of the owners of the lots within the property with respect to sanitary sewers and water facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections or water house connections are installed within the property, which connections or any portions thereof lie in or upon lots owned by other than the owners of the lot served by said connections, the owners of the lot served by said connections shall have the right and are hereby granted an easement to the full extent necessary therefore, to enter upon the lots or to have their agents enter upon the lots within the property in or upon which said connections or any portion thereof lie, to repair, replace and generally

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maintain said connections as and when the same may be necessary.

(b) Whenever sanitary sewer house connections and/or water house connections are installed within the property which connections serve more than one lot, the lower of each lot served by said connections shall be entitled to full use and enjoyment of such portions of said connections as service his lot.

(c) In the event of a dispute between owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then upon written request of one of such owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute and make an assessment against any or all of the owners involved, which assessment shall be collected and enforced in the manner provided by this Declaration.

ARTICLE III  
RESIDENCE AND USE RESTRICTIONS

(1) Single Family Use. Each lot shall be used for single family residential purposes only, provided, however, that lots owned by Declarant or its nominee may be used as models and sales offices and construction offices for the purpose of selling the lots in the project until all of the lots thereon are sold by Declarant or its nominee.

(2) Density Restrictions. There shall not be constructed or maintained upon any lot more than one (1) single family residence with a garage.

(3) Maintainence. The grounds of each lot (whether vacant or occupied) shall be maintained in a neat and attractive condition. Upon the failure of any owner to maintain his lot (whether vacant or occupied) in a neat and attractive condition, the Association or its authorized agents or successors and assigns may, after ten (10) days notice to such owner, enter upon such lot and have the grass, woods, and other vegetation cut,

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debris removed, when, and as often as, the same is necessary in its judgement, and may have dead trees, shrubs and other plants removed therefrom. Such owner shall be personally liable to the Association for the cost of any cutting, removing of debris, clearing and maintenance described above and the liability for amounts expended for such cutting, clearing and maintenance shall be a permanent charge and lien upon such lot, enforceable by the Association provided for herein or by any proceeding at law or in equity. All costs incurred by the Association on behalf of such owner shall be reasonable. Although notice given as hereinabove provided shall be sufficient to give the Association or its designated committee, or its successors and assigns, the right to enter upon any such lot and perform the work required. Entry for the purpose of performing the work required shall be only between the hours of 7:00 A.M. and 6:00 P.M. on any day except Sunday.

(4) Minimum Size, Materials and Aesthetic Requirements.

(a) Minimum Size Restrictions. No single family detached residential building shall be located on said lot unless said building shall have at least two thousand (2,000) square feet of heated living space. Any such building which exceeds one (1) story in height shall have not less than one thousand (1,000) square feet on the ground floor. No such building shall exceed three (3) stories in height but nothing herein contained shall be construed as preventing the location on said property of residential buildings designed as "split level", such building being ones in which floor levels of habitable spaces are separated so that ground levels are in differing elevations, and part of said dwelling is three (3) stories in height. In the case of split level buildings there shall be not less than one thousand (1,000) square feet of heated living space on the two (2) ground floor elevations.

A detached building not exceeding two (2) stories in height may also be placed on said lots to be used as a garage for not more than four (4) automobiles and such building may, in addition, contain servants' quarters.

(b) Outside Materials. Roof colors and material shall be approved by the Architectural Control Committee, herein provided. Roof vents and flashing shall be the same color as the roof, and the vents should be installed on the back side of the roof behind the ridges.

Whenever any construction is in whole or in part of concrete, concrete blocks, cinder blocks, or other fabricated masonry block units, the entire surface of such blocks exposed above finish grade shall be veneered with brick, natural stone, stucco approved by Architectural Control Committee, or other material approved by the Architectural Control Committee.

Hard surface drives are required.

(c) Outside Aesthetic Requirements. No carports facing the street shall be permitted and the installation of doors on all garage openings facing the street is required.

The erection, location and design of all mailbox and newspaper receptacles shall be approved by the Architectural Control Committee. Garbage and trash containers shall be installed underground or enclosed with a fence and gate which must be approved by the Architectural Control Committee.

Any yard fencing shall also be submitted to the Architectural Control Committee for approval.

The use and location of a construction trailer and/or shed by a builder and/or owner must be approved by the Architectural Control Committee.

(5) Approval of Plans and Inspection.

(a) Approval of Plans. One set of complete prints of the home as well as the proposed lot selection must be submitted to the Architectural Control Committee for approval. Prints

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must include foundation plan, floor plan, all exterior elevations, location and width of driveway, and projected finish grades following backfilling and landscaping.

In addition, actual samples and/or descriptive information on materials such as brick, stone, siding and roofing, as well as exterior color schemes must be submitted. Construction may not be started until the builder and/or owner receives a letter of approval from the Architectural Control Committee; one (1) copy of which will be signed by the builder and/or owner and retained by the Architectural Control Committee along with the complete set of prints. Any change of any kind made following approval must be submitted to the Architectural Control Committee for reapproval.

(b) Construction and Inspection. Following receipt of written approval by the Architectural Control Committee for a home on a particular site, the builder shall be permitted to stake the house and driveway location. The Architectural Control Committee shall then inspect and approve the home site before any tree cutting or grading takes place.

During all phases of clearing, grading and construction, builders' and suppliers' vehicles must enter and leave the home site on the intended driveway. There shall be no subcontractor signs, and no signs nailed to trees. Builders' signs and permits shall be professionally lettered and fastened to four inch by four inch (4' x 4') dark-brown-stained posts. Real estate agency signs must be of a design and location approved by the Architectural Control Committee.

All construction debris, stumps, trees, etc., must be periodically removed from each lot by the builder and/or owner and such debris shall not be dumped in any area within the project unless approved in writing by the Architectural Control Committee. Following construction and until the house is sold and/or occupied the builder and/or owner shall keep the home clean and the yard landscaped.

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If during or after construction the Architectural Control Committee finds that the construction does not comply with the approved plans, it reserves the right to require conforming changes to be made. The cost of said changes shall be borne by the builder and/or owner.

(c) Landscape Plans. Landscape plans shall be submitted to the Architectural Control Committee for approval and the design of that portion of the yard facing the street must be approved by the Architectural Control Committee before the home is occupied.

(6) Offensive Conduct; Nuisances. No noxious or offensive activities, including but not limited to outdoor repair of automobiles or other motorized vehicles, shall be carried on upon the property; nor shall anything be done thereon which may be or become an annoyance or nuisance to the residents of the project, or which shall in any way interfere with the quiet enjoyment of the owners of their respective lots.

(7) Parking Restrictions; Use of Garages. No vehicle which shall not be in operating condition shall be parked or left on any private street or on the property subject to this Declaration other than inside a garage. No automobile, boat, trailer, recreation vehicle, camper, truck or other vehicular machine shall be parked or left on any private street or any part of the property. The garages shall be used for the parking of vehicles on and shall not be converted for living or recreational activities.

(8) Signs and Posters. No signs, posters, or display shall be shown or displayed from any lot excepting one sign of customary design and dimensions which states that the premises are for rent or for sale. Upon written consent of the Association, the owner of a lot may maintain one additional sign on a Common Area oriented to the nearest adjacent street. Directional signs shall be maintained by the Association. Anything contained herein to the contrary notwithstanding, all signs used by the Declarant,

its successors or assigns to advertise the property shall be exempt so long as the Declarant owns the lot upon which such signs are placed.

(9) Installation and Maintenance of Air Conditioners, Television Antennae. No outside television or radio pole, antenna or clothesline (other than a community antenna erected by the Declarant or the Association) shall be constructed, erected or maintained on any building or on any part of the Common Area. No wiring or insulation, no air conditioning or other machine, other than those installed by Declarant during construction of the project, shall be installed on the exterior of a building or be allowed to protrude through the walls or roof of a building within the project.

(10) Fences, Etc. No fences, awnings, ornamental screens, screen doors, sunshades, or walls shall be erected or maintained around any portion of the building except such as are installed in accordance with the original construction of the project unless approval for the erection of said article is approved by the Architectural Control Committee.

(11) Commercial Activities; Pets. No business or commercial activities shall be maintained or conducted on any lot; no animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept on any lot except that domestic dogs, cats, fish and birds inside bird cages, may be kept as household pets upon any lot, provided that they are not kept, bred or raised therein for commercial purposes, or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall be deemed to limit the number of dogs, cats, and birds to two(2) each. The Association shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Directors of the Association, a nuisance to any other lot owner. Each owner shall be absolutely liable to each and all other owners, their families, guests and invitees, for any damage to persons or property caused by any pet

brought upon or kept upon said premises by said owner or by member of his family, guests or invitees.

(12) Restricted Use of Recreation Vehicles, Etc. No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living area while located on the property subject to this Declaration; however, trailers or temporary structures for use incidental to the initial construction of the improvements on the property may be maintained thereon, but shall be promptly removed upon completion of the construction.

(13) Trash Disposal. Trash, garbage or other waste shall be kept only in sanitary containers. No owner of a lot shall permit or cause any trash refuse to be disposed of on any portion of the property subject to this Declaration.

(14) Exterior Alterations. No owner shall at his expense or otherwise make any alterations or modifications to the exterior of the buildings, fences, railing or walls situated on said property, or to any part of the Common Area, without the prior written consent of the Association and the holder of the mortgage or deed of trust then of record, whose interest may thereby be affected.

(15) Compliance with Laws, Etc. Nothing shall be done or kept on a lot or the Common Area, which might increase the rate of insurance on the project, without the prior written consent of the Association. No owner shall permit anything to be done or kept on his lot or in the Common Area which might result in the cancellation of the insurance on the project or in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. If by reason of the occupancy or uses of such premises by the owner, the rate of insurance for the premises shall be increased, the said owner shall become liable for the additional insurance premiums.

(16) Failure to Enforce, Not Waiver. The failure of the Association to insist on any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements herein contained shall not be construed as a waiver or a



relinquishment in the future of the enforcement of any such term, covenants, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by the Association.

(17) Relation to Zoning. Zoning regulations applicable to property subject to this declaration shall be observed. In the event of any conflict between any provision of such zoning restrictions and the restrictions of this declaration, the more restrictive provisions shall apply.

(18) Enforcement by other Owners. Each owner shall be liable to the remaining owners for any damage to the Common Area which may be sustained by reason of the negligence of said owner or of his guests or invitees, to the extent that any such damages shall not be covered by insurance. Each owner does further, by acceptance of his deed, agree to indemnify each and every other owner, and to hold him or her harmless from any claim of any person or persons for personal injury or property damage occurring upon the lot of the indemnifying owner, unless said injury or damage shall occur by reason of the negligence of any other owner temporarily visiting said lot. Each owner further agrees to defend, at his expense, all remaining owners who may be sued by any person on a claim for personal injury or property damage alleged to have been sustained upon the lot of the owner responsible to defend.

If anyone bound to observe and comply with these protective covenants shall violate or attempt to violate any covenant while the same is in force, it shall be lawful for any other person owning an interest in land subject to these covenants to prosecute any proceeding at law, or in equity, against such violator to prevent or to recover damages for such attempt or violation.

(19) Owners' Obligation for Taxes. Each owner shall be obligated to pay any real and personal property taxes, assessed against his respective lot and the utility charges for said lot.

ARTICLE IV  
THE ASSOCIATION

(1) Formation. The Association shall be incorporated under the name of Forest Cove Homeowners Association as a non-profit corporation under the laws of the State of Utah and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, and the By-laws and this Declaration. Neither the Articles nor the By-laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail.

(2) Membership.

(a) Qualifications. Each record owner of a lot, including Declarant, shall be a member of the Association and shall be entitled to one membership for each lot owned. Ownership of a lot shall be the sole qualification for membership in the Association. Each owner shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. The foregoing is not intended to include persons or entities who hold an interest merely as security for performance of an obligation.

(b) Members' Rights and Duties. Each member shall have the rights, duties and obligations set forth in this Declaration, the Articles of Incorporation, the By-laws and the Association Rules and the Architectural Control Committee rules, as the same may from time to time be amended.

(c) Transfer of Membership. The Association membership of each owner (including Declarant) shall be appurtenant to the lot giving rights to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon a transfer of title to said lot, and then only to the transferee of title to said lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a lot shall operate

automatically to transfer the membership in the Association appurtenant thereto to the new owner thereof.

(3) Voting.

(a) Number of Votes. The Association shall have two (2) classes of voting membership:

Class A - Class A members shall be all the owners with the exception of Declarant and shall be entitled to one (1) vote for each lot owned. When more than one (1) person is the owner of a 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 (1) vote be cast with respect to any one lot.

Class B - The Class B member shall be the Declarant and shall be entitled to three (3) votes for each lot owned. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i). When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(ii) On December 31, 198 2.

(b) Joint Owner Votes. The vote for each such lot must be cast as a unit and fractional votes shall not be allowed. In the event that the joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any owner or owners cast a vote representing a certain lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other owners of the same lot. In the event more than one (1) vote is cast with respect to a particular lot, none of said votes shall be counted and said votes shall be deemed void.

(c) Cumulative Voting. Cumulative voting procedures for the election of members to the Board of Directors shall be

required and shall be set forth in the By-laws.

(d) Mortgagee Voting Rights. In the event of a default by any owner in the payment due upon a promissory note secured by a trust deed to his individual lot, the beneficiary of said trust deed shall have the right, upon giving written notice to said defaulting owner and placing on record a notice of default, to exercise the vote of such owner at all meetings of owners or to execute the written approvals of owners during such time as said default may continue. When the beneficiary of such deed of trust shall have complied with such conditions, upon his written request, the Association shall notify him of all action to be taken by such owner so long as such default remains.

(4) Board of Directors and Officers. The affairs of the Association shall be conducted by the Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and the By-laws as the same may be amended from time to time. The initial Board of Directors of the Association shall be appointed by the incorporators or their successors and shall hold office until the first annual meeting, at which time a new Board of Directors shall be elected in accordance with the provisions set forth in the By-laws.

(5) Powers and Duties of the Association.

(a) Powers. The Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Utah, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the By-laws and this Declaration. It shall have the power to do any and all lawful things which may be authorized or required or permitted to be done by the Association under this Declaration, the Articles and the By-laws, and to do and perform any and all acts which may be necessary or proper for, or incidental to the proper management and operation of the project, including without limitation:

(i) Assessments. The power to levy assessments on the owners of lots and to force payment of such assessments, all in accordance with the provisions of this Declaration.

(ii) Right of Enforcement. The power and authority from time to time in its own name, on its own behalf or in behalf of any owner or owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or By-laws, including the Association rules adopted pursuant to this Declaration, and to enforce by mandatory injunction or otherwise, all provisions hereof. In addition to the foregoing remedies, the Association shall have the right to suspend the voting privileges, suspend the use privileges of the recreational or Common Area, or assess monetary penalties against any owner by reason of any violation by an owner or member of the owner's family or lessee or sublessee or guest, of the Articles, By-laws, Declaration or Association rules, adopted thereunder, provided, however, that:

A. Any such suspension may not exceed a period of thirty (30) days for any one violation; and

B. Any such monetary penalty shall not exceed Twenty-Five Dollars (\$25.00) for any one violation.

Each suspended or fined owner shall have the right to appeal the action of the Board by filing with the Board written notice of his intention to appeal to the owners. The action by the Board imposing the fine or suspension shall thereupon become ineffective until the suspension shall thereafter be approved by a majority of the owners at a duly called and held regular or special meeting and the owner to be fined or suspended shall have the right to appeal and to be heard at such regular or special meeting.

(iii) Delegation of Powers. The authority to delegate its powers and duties to committees, officers, employees,

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or to any person, firm or corporation to act as manager. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.

(iv) Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable (The Association rules). The Association rules shall govern the use of the Common Area, including but not limited to, the recreational facilities and the private streets, by the owners, by the families of the owners, or by an invitee, licensee, lessee, or contract purchaser of an owner; provided, however, that the Association rules may not discriminate among owners and shall not be inconsistent with this Declaration, the Articles or By-laws. A copy of the Association rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each owner. Upon such mailing or delivery, said Association rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between any such Association rules and any other provisions of this Declaration, or the Articles or By-laws, the provisions of the Association rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the By-laws to the extent of any such inconsistency.

(v) Emergency Powers. The Association or any person authorized by the Association may enter upon any lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the owners as practicable and any damage caused thereby shall be repaired by the Association.

(vi) Licenses, Easements, and Rights-of-Way. The power to grant and convey to any third party such licenses,

easements and rights-of-way, in, on, or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Common Area and for the preservation of the health, safety, convenience and welfare of the owners, for the purpose of constructing, erecting, operating or maintaining:

A. Overhead or underground lines, cables, wires, conduits or other devices for the transmission of electricity for lighting, heating, power, telephone and other purposes;

B. Public sewers, storm water drains, and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and

C. Any similar public or quasipublic improvements or facilities.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association and may be granted at any time prior to twenty-one (21) years after the death of the individuals executing this Declaration, and their issue who are in being as of the date hereof.

(vii) Conveyance or Encumbrances of the Common Area.

The power, upon written approval of 75% of the Class A members of the Association, and 75% of the Class B members of the Association (if any) to grant, convey, hypothecate, encumber, mortgage, abandon, partition, subdivide, or transfer the Common Area; provided, however, that the Association must obtain the prior approval of all holders of first mortgages of record on lots within the project.

The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area shall not be claimed a transfer within the meaning of this Subparagraph (vii).

(b) Duties of the Association. In addition to powers delegated to it by its Articles, without limiting the general-

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ity thereof, the Association or its agent, if any, shall have the obligation to conduct all business affairs of common interest to all owners, and to perform each of the following duties:

(i) Operation and Maintenance of Common Area. Operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area and all facilities, improvements and landscaping thereon, including drainage systems and all other property acquired by the Association. In this connection, the Association may enter into contracts for services or materials for the benefit of the Association or Common Area; provided, however, that the term of any such service contract shall not exceed one (1) year unless approved by the vote or written consent of a majority of Class A members of the Association; and a majority of the Class B members of the Association. Notwithstanding the preceding sentence, the Association shall be entitled to enter into the following contracts for terms of longer than one (1) year without said voter approval or written consent:

A. A contract with a public utility provided the rates charged for the materials or services are regulated by the Public Service Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

B. Prepaid casualty and/or liability insurance policies of not to exceed three (3) years' duration, provided that the policy permits short rate cancellation by the insured.

(ii) Additional Maintenance Obligations. In addition to the operation, maintenance and management duties of the Association set forth in Paragraph (b) (i) of this section, the Association shall maintain, repair and care for, or provide for

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the maintenance, care and repair of the sprinkler system and landscaping located within the Project Property. If the need for maintenance and repair of the landscaping or sprinkler system as required by this paragraph is caused by the willful or negligent conduct or act of an owner, his family, guests, invitees or other person using or occupying his lot with his express or implied permission, the cost of such repair and maintenance shall be assessed to such owner and shall be due and payable thirty (30) days from the date of notice thereof.

(iii) Taxes and Assessments. Pay all real and personal property taxes and assessments separately levied against the Common Area or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, Federal, State or local, including income or corporate taxes levied against the Association in the event that the Association is denied the status of a tax exempt corporation.

(iv) Water and Other Utilities. Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary utility services for the Common Area.

(v) Insurance. Obtain, from reputable insurance companies qualified to do business in the State of Utah, and maintain in effect the following policies of insurance:

A. For the Common Area:

1. Fire and extended coverage insurance covering all improvements, equipment, fixtures and furnishings which are located in the Common Area, in an amount not less than 90% of the full insurable value thereof (based on cur-

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rent replacement cost). The proceeds of said insurance shall be applied as provided in Article X.

2. Comprehensive public liability insurance insuring the Board, the Association and the members of the Association, including Declarant during the time Declarant is a member of the Association, whether Class A or Class B, against liability to, and claims of, the public, the members of the Association and any other person, firm or entity occurring in or upon the Common Area, or based upon, incident to or arising out of (i) the use of the Common Area, or (ii) the activities of the Association. Limits of liability on such coverage shall be as follows: not less than \$300,000.00 per person and \$300,000.00 per occurrence with respect to bodily injury or death; not less than \$50,000.00 per occurrence with respect to property damage.

3. Such other insurance including Workmen's Compensation insurance to the extent necessary to comply with any applicable law and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty or any employee or other person charged with the management or possession of any Association funds or other property.

(vi) Professional Management. Provide at all times during the term hereof, for the management of the Project and notify the holders of all first mortgage liens of record on lots thirty (30) days in advance of any change in such management. The Declarant or an agent selected by the Declarant shall manage the Project until the first annual meeting of the owners at which time the owners, by a majority vote, shall determine whether to continue such management arrangements. The Association may contract with a management company as agent for the performance of maintenance and repair and for the performance of other activities on behalf of the Association, provided that the term of any such contract will not exceed one year, renewable by agreement of the parties for successive one year periods; and provided further that such contract

shall be terminable by the Association for cause upon thirty (30) days written notice.

(vii) Rule Making. Make, establish, promulgate, amend and repeal the Association rules.

(viii) Architectural Control Committee.

Appoint and remove members of the Architectural Control Committee all subject to the provisions of this Declaration.

(ix) Enforcement of Restrictions and Rules,  
Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonable necessary to enforce any of the provisions of this Declaration and the Association rules.

(6) Personal Liability. No member of the Board, or any committee of the Association, or any officer of the Association or the Declarant, or the manager, if any, shall be personally liable to any owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association, the Declarant or the Architectural Control Committee, or any other committee, or any officer of the Association, or the Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.

(7) Annual Meeting and Notice. The Association shall hold an annual meeting and the first annual meeting of the Association shall be held not later than six (6) months after the closing of the sale of the first lot. Thereafter the annual meetings shall be held on the first Tuesday of the month of June, or in the event that that day is a legal holiday, on the next day thereafter, which is not a legal holiday, on each succeeding year. Special meetings may be called as provided for in the By-laws. Notice for all owners' meetings, annual or special, shall be given by regular mail or telegram

and shall be given not less than ten (10) days nor more than thirty (30) days prior to the time of said meeting and shall set forth the place, date and hour of the meeting, and the nature of the business to be undertaken. All meetings shall be held within the Project or as close thereto as practicable at a reasonable place selected by the Board of Directors. The presence at any meeting in person or by proxy of owners entitled to cast more than fifty (50) per cent of the total voting power of the Association shall constitute a quorum. If any meeting cannot be held, because a quorum is not present, the owners present, either in person or by proxy, may as otherwise provided by law, adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, provided that the quorum requirement for such an adjournment meeting shall be no less than twenty-five (25) per cent of the total voting power of the Association.

(8) Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and copies shall be distributed to each member of the Association as follows:

(a) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than sixty (60) days before the beginning of the fiscal year.

(b) A balance sheet -- as of an accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of a lot--and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the lot number and the name of the person or entity assessed.

(c) Within thirty (30) days after the close of

each fiscal year, the Association, or their agent, shall cause an independent audit of the accounts of the Association by a certified public accountant, and upon completion of the audit cause to be prepared and delivered to each owner and holder of a first mortgage of record within thirty (30) days after completion, a true and correct copy thereof. In addition, the Association shall prepare or cause to be prepared, an annual operating statement reflecting the income and expenditures of the Association for its fiscal year and a copy of said statement shall be distributed to each member and holder of a first mortgage of record within ninety (90) days after the end of each fiscal year.

ARTICLE V  
COVENANT FOR MAINTENANCE ASSESSMENT

(1) Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each lot owned by it within the project, hereby covenants and each purchaser of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, for each lot owned, to pay the Association:

- (a) Regular annual assessments or charges; and
- (b) Special assessments, such assessment to be established, made and collected as hereinafter provided.

The regular and special assessments together with interest thereon and the cost of collection thereof, (including reasonable attorney's fees), shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with such interest, costs and attorney's fees, shall also be the personal obligation of each person, firm, or entity who was an owner of such lot at the time when such assessment became due and payable. The personal obligation for delinquent assessments shall not pass to an owner's successors in interest unless expressly assumed by them. Such assumption will not relieve the original obligor of such obligation unless agreed

upon in writing by the Association.

(2) Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the members of the Association, the improvement, operation and maintenance of the Common Area, and the performance of the duties of the Association as more fully set forth in this Declaration.

(3) Regular and Special Assessments. Regular assessments against all lots shall commence on the first day of the month following the closing of the first sale of a lot to a purchaser thereof ("Initiation Date"). From and after the Initiation Date, there shall be assessed against each lot a regular assessment which shall be paid by all lot owners, including Declarant for each lot owned by Declarant, in accordance with the provisions of this Declaration. Not less than thirty (30) nor more than sixty (60) days prior to the beginning of each calendar year following the Initiation Date, the Board shall estimate the total amount of funds necessary to defray the common expenses of the Association, including provision for replacement reserves, for the next calendar year and shall assess the record owner of each lot in December of each year for the following year.

(c) Special Assessments.

(i) In the event that the Board shall determine that the regular assessment for a given calendar year is, or will become inadequate to meet the expenses of the Association for any reason, including, but not limited to, costs of construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Area, the Board shall determine the approximate amount necessary to defray such expenses and levy a special assessment. The Board may, at its discretion, pro-rate such special assessment over the remaining months of the calendar year or levy such assessment immediately against each lot. The

foregoing notwithstanding, in any fiscal year, the Board may not, without the vote or written assent of a majority of each class of members of the Association, levy any such special assessments which in the aggregate exceed five (5) per cent of the budgeted gross expenses of the Association for that fiscal year.

(ii) Every special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments.

(iii) The above provisions with respect to special assessments do not apply in the case where the special assessment against a member is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the member and his lot into compliance with provisions of the governing instruments for the Project.

(4) Assessment Period. The regular assessment period shall commence on January 1 of each year and terminate December 31 of such year; provided, however, the initial regular assessment period shall commence on the Initiation Date as defined in Section (3) of this Article V and terminate on December 31 of the year in which the Initiation Date occurs. The first regular assessment and all special assessments shall be adjusted according to the number of months remaining in the calendar year and shall be payable in equal monthly installments unless the Board adopts some other basis for collection.

(5) Notice and Assessment Due Date. Ten (10) days prior written notice of regular assessments shall be sent to the owner of every lot subject thereto. The due dates for regular assessments and special assessments shall be the first day of each month unless some other due date is established by the Board. Each monthly installment of the regular assessment or special assessment shall become delinquent if not paid within ten (10) days after the levy thereof. There shall accrue with each delinquent monthly installment and special assessment, a late charge of Five Dollars (\$5.00) together with interest at the maximum rate permitted by law calculated

from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against his lot as more fully provided herein. Each owner is personally liable for said assessments and no owner of a lot may exempt himself from liability for his contribution by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his lot.

(6) Increase in Assessments. The Board may, after January 1 of the calendar year following the Initiation Date, increase the regular assessments effective January 1 of each year by an amount not in excess of twenty (20) percent above the maximum annual assessment per lot for the previous year, without the vote or consent of the members of the Association. Increases in regular assessments to amounts in excess of said limitation may be made by the Board only upon the vote or written consent of fifty-one (51) per cent of each class of members of the Association present in person or by proxy and entitled to vote at a meeting of the members of the Association called for such purpose at which a quorum is present.

(7) Exempt Property. The following property subject to this Declaration shall be exempt from assessments herein:

- (a) The Common Area;
- (b) The dedicated county road running through said property, any property or easement dedicated to and accepted by a local public agency or authority; and
- (c) All properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah; provided, however, no land or improvements devoted to dwelling use shall be exempt from said assessment.

(8) Estoppel Certificate. The Association, upon not less than twenty (20) days prior written request, shall execute,



acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association a particular lot owner is in default under the provisions of this Declaration and further stating the dates to which assessments, regular or special, have been paid by said owner, it being intended that any such certificate delivered pursuant to this section may be relief upon any prospective purchaser or mortgagee of said owner's lot, but reliance on such certificate may not extend to any default as to which the signer shall have had no actual knowledge.

ARTICLE VI  
ENFORCEMENT OF ASSESSMENTS; LIENS

(1) Right to Enforce. The right to collect and enforce the assessments created hereby is vested in the Association. Each owner of a lot upon becoming an owner of such lot is and shall be deemed to covenant and agree to pay the Association each and every assessment provided for in this Declaration and agrees to the enforcement of all such assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each owner agrees to pay reasonable attorney's fees or any other relief or remedy obtained against said owner. The Board or its authorized representative, may enforce the obligations of the owners to pay the assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity or the Board may exercise the power of sale pursuant to Section (2) of this Article VI, to enforce the liens created hereby. A suit to recover a money judgment for an unpaid assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided for

(2) Assessment Liens.

(a) Creation. There is hereby created a claim of

lien on each and every lot to secure payment to the Association of any and all assessments levied against any and all lots in the Project pursuant to this Declaration, together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective lots upon recordation of a claim of lien with the county recorder. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any lot and assessments on any lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

(b) Claim of Lien. Upon default of any owner in the payment of any regular or special assessment required hereunder, the Association may cause to be recorded in the office of the County Recorder in the county in which the project is situated a claim of lien. Said claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the lot against which the same has been assessed, and the name of the record owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and relief of such delinquent sums and charges. The Association may demand and receive the cost of recordation of such release before recording the same. Any purchaser or encumbrancer, acting in good faith and for value, may rely upon such notice of satisfaction and relief as

conclusive evidence of the full satisfaction of the sums paid in the notice of delinquent sums.

(c) Method of Foreclosure. Such lien, may be foreclosed by appropriate action in court.

(d) Rental During Foreclosure Proceedings.

In any such foreclosure, the lot owner shall be required to pay reasonable rental for the lot and the Plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Association acting on behalf of the lot owners, shall have the power to bid on the lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. A suit to recover a money judgment for unpaid regular or special assessments shall be maintainable without foreclosing or waiving the lien securing the same.

(e) Required Notice. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the owner of the lot described in such notice of delinquency and claim of lien, and a copy thereof is recorded by the association in the office of the County Recorder in the county in which the project is located.

(3) Subordination to Certain Trust Deeds. The lien for the assessments provided for herein in connection with a given lot shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a deed of trust or mortgage given and made in good faith and for value that is of record as an encumbrance against such given lot prior to the recordation of a claim of lien for the assessments provided for in this Declaration against such given lot. The sale or transfer of any lot shall not affect the assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien on account of assessments becoming due whether

prior to, on, or after the date of such sale or transfer nor shall such sale or transfer diminish or defeat the personal obligation of any owner for delinquent assessments as provided for in this Declaration, provided, however, that the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish a lien of such assessment as to payments which become due prior to such sale or transfer.

(4) Mortgage Protection Clause. Notwithstanding any provision of this Declaration to the contrary:

(a) Priority of Mortgage. No breach of the covenants, conditions, or restrictions herein contained, nor the enforcement of any lien provisions herein shall defeat or render invalid the lien of any prior mortgage or deed of trust of record made in good faith and for value, but all of said covenants, conditions, and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or trust deed sale or otherwise; provided, however, any holder of a mortgage or any purchaser at a foreclosure sale, which comes into possession of a lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged lot which accrue prior to the time such holder comes into possession of the lot.

(b) Notice of Amendments. The holder of a mortgage of record on a lot within the Project Property shall be given written notification from the Association thirty (30) days prior to the effective date of any change in this Declaration, any Supplementary Declaration, and the Articles and By-laws of the Association.

(c) No Restrictions on Sale. Any holder of a mortgage of record which comes into the possession of any lot pursuant to the remedies provided in the mortgage, or deed (or assign-

ment) in lieu of foreclosure, shall be exempt from any restriction on the sale or rental of the mortgaged lot including, but not limited to, restrictions on the posting of signs stating that the premises are for rent or sale.

(d) Notice of Meetings. Any holder of a first mortgage shall, upon request, be entitled to written notice of all meetings of the members of the Association, and may send a representative to attend such meetings.

(e) Notice of Damage to Project. The Association shall promptly notify, in writing, the holders of all first mortgages of record in the case of substantial damage to or destruction of the Common Area, and shall promptly notify the holders of concerned first mortgages in the case of substantial damage to or destruction of a lot or lots. No owner or other person shall have priority over a first mortgagee of record with respect to distribution of insurance proceeds; provided, however, that the foregoing shall not entitle a first mortgagee to prevent payment of proceeds to the Association for use in rebuilding, repair or restoration.

(f) Notice of Condemnation. The Association shall promptly notify, in writing, the holders of all first mortgages of record in the case of the commencement of any condemnation action affecting all or part of the Common Area. In the case of a condemnation action affecting only a lot or lots, the Association shall give such notice to the holders of all concerned first mortgages.

(g) Notice of Default. The Association will give written notification to the holders of all first mortgage liens of record of any default by the mortgagor of any lot in the performance of such mortgagor's obligations under this Declaration, or the Articles and By-laws of the Forest Cove Homeowners Association which is not cured within sixty (60) days.

(h) Taxes and Insurance. Holders of first mortgages

may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against the Common Area and may pay overdue premiums on hazard insurance or secure new hazard insurance coverage on the lapse of a policy for the Common Area. Upon making said payments, the holders of first mortgages shall be owed immediate reimbursement therefor from the Association.

ARTICLE VII  
INSPECTION OF ASSOCIATION'S BOOKS AND RECORDS

(1) The membership register, books of account and minutes of meetings of the members of the Board and of committees of the Association shall be made available for inspection and copying by any member of the Association or by a holder of a first mortgage or by their duly appointed representatives --at any reasonable time and for a purpose reasonably related to his interest as a member or as a first mortgagor at the office of the Association or at such other place within the project as the Board shall prescribe.

(2) The Board shall establish reasonable rules with respect to:

(i) Notice to be given to the custodian of the records by the persons desiring to make the inspection.

(ii) Hours and days of the week when such an inspection may be made.

(iii) Payment of the cost of reproducing copies of documents requested pursuant to this Article.

(3) Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

ARTICLE VIII  
ARCHITECTURAL CONTROL COMMITTEE

(1) Committee Composition. The Architectural Control Committee shall consist of three (3) persons. The Declarant may,

thereafter, appoint two (2) members to the Architectural Control Committee and the Board shall appoint the remaining member until such time as ninety (90) per cent of the lots of the Project have been sold and closed escrow or until December 31, 1983, whichever first occurs, at which time the Board shall have the right to appoint all members. Prior to the time that the Board is vested with the authority to appoint all members of the Architectural Control Committee, Declarant shall have the power to remove persons from the Committee and the power to fill vacancies, provided, however Declarant shall have no such rights with respect to any position on the Architectural Control Committee with respect to which the Board has the authority to appoint. From and after such time as the Board acquires the right to appoint, remove and replace all members of the Architectural Control Committee, the Board may, at its discretion from time to time, increase or decrease the size of the Architectural Control Committee; provided, however, that in no event shall the size of the Architectural Control Committee be less than three (3) or more than five (5). Members of the Architectural Control Committee shall be appointed by and serve at the pleasure of the Board. Members appointed to the Architectural Control Committee by the Board shall be members of the Association. Members appointed to the Committee by the Declarant need not be members of the Association, nor shall they be required to be an architect, or to meet any other particular qualification.

(2) Duties. It shall be the duty of the Architectural Control Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to insure that the improvements constructed on the property by anyone other than Declarant conform to the plans approved by the Architectural Control Committee rules and to carry out all other duties imposed on it by this Declaration.

(3) Plans and Approval. No construction, replacement,

addition or alteration of a building, structure, fence, drainage facilities, common landscaping, or common planting shall be effected on any lot, other than by Declarant, until the plans, specifications and plot plans shall have been submitted to and approved by the Architectural Control Committee. Plans and resubmittals thereof shall be approved and/or disapproved within thirty (30) days. Failure of the Architectural Control Committee to respond to submittal or resubmittal of plans within such period shall be deemed to be an approval of such plans as submitted or resubmitted.

(4) Meetings and Compensation. The Architectural Control Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the members, at a meeting or otherwise shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any provision of this Declaration. The Committee shall keep and maintain a written record of all action taken by it in such meetings or otherwise. Members of the Architectural Control Committee shall not receive any compensation for services rendered.

(5) Architectural Control Committee Rules. The Architectural Control Committee, may from time to time, in its sole and absolute discretion, adopt, amend and repeal by unanimous vote or written consent, rules and regulations, to be known as "Architectural Control Committee Rules." Said rules shall interpret and implement this Declaration by setting forth standards and procedures for Architectural Control Committee review and the guidelines for architectural design, replacements and buildings, landscaping, color schemes, exterior finishes and materials and other similar features which are recommended for use within the Project.

ARTICLE IX  
MAINTENANCE AND REPAIRS

(1) Duty to Maintain.

(a) Common Area. The Association shall have full



power and control and it shall be its duty to maintain, repair and make necessary improvements in the Common Area and the improvements thereon, including, but not limited to, recreational buildings, facilities and improvements; all common landscaping, all metered utilities in the Common Area; all private roadways streets, parking areas, walks and other means of ingress and egress within the project

(2) Right to Inspect and Enforcement. The Association shall be empowered with the right and duty to periodically inspect the Common Area and exterior portions of lots in order that minimum standards of repair, design color and landscaping shall be maintained for beauty, harmony and conservation within the entire project. In the event the Association determines that any owner, his family, guests or invitees have damaged, or modified any improvement, item of landscaping, or portion of the Common Area, without the proper approval of the Association, or the Association determines that a lot owner has violated any provision of this Declaration, so as to cause a need for the improvement, repair, restoration, or painting of the Common Area, or to cause the landscaping to require repair or restoration, then the Association shall give written notice to the lot owner of the condition or violation complained of. Unless the Association has approved in writing corrected plans proposed by the lot owner to remedy the condition complained of within such period of time as may be determined reasonable by the Association after said written notice is first given, and unless such corrective work so approved is completed thereafter within the time allotted by the Association, the Association shall undertake to remedy such condition or violation complained of and the cost thereof shall be charged to such lot owner, and such cost shall be deemed to be a special assessment to such lot owner, and subject to levy, enforcement and collection by the Association in accordance with the assessment lien procedure provided for in this Declaration.

Nothing in this Article shall in any manner limit the

right of the lot owner to exclusive control over the interior of his dwelling unit, provided, however, that an owner shall grant the right of entry to the Association or any other person authorized by the Association in the case of emergency originating in or threatening his lot or dwelling unit, whether the owner is present or not; provided, further, that an owner shall permit the other owners, or their representatives when so required, to enter his lot or dwelling unit for the purpose of performing installation, alterations, or repair to the mechanical or electrical service, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner whose dwelling unit is to be entered. In case of an emergency, such right of entry shall be immediate.

(3) Easement for Maintenance Purposes. An easement is hereby reserved to the Association for its representatives to have rights of ingress and egress in and upon all Common Areas and exteriors of all lots subject to this Declaration, to the extent entry is necessary to carry out the maintenance duties imposed by this Article IX. Such right of entry shall be exercised in such manner so as not to unreasonably interfere with the possession and enjoyment of the occupants of such lot, and shall be preceded by reasonable notice whenever the circumstances permit.

ARTICLE X  
DAMAGE AND DESTRUCTION

(1) Damage and Destruction Affecting the Common Area. Subject to the provisions of Section (2) of this Article X, in the event that any portion of the Common Area, including the improvement thereon, is damaged or destroyed by fire or other casualty, the following provisions shall apply:

(a) If the available proceeds of the insurance maintained pursuant to Article IV (5) (b) (vi) of this Declaration are sufficient to cover not less than eighty-five (85) per cent of the estimated cost of repair or reconstruction thereof, it shall be the duty of the Association, subject to the provisions of Article V (3) (b) hereof, to restore and repair the damaged area as soon as

practicable. In such event, the Association shall levy a special assessment against each owner to provide the funds to pay that portion of the repair costs not covered by available insurance proceeds. Such special assessment shall be allocated equally among the lot owners and shall be enforceable against each lot owner under the lien provisions contained in Article VI hereof.

The foregoing notwithstanding, in the event of a partial destruction where the estimated cost of repair and restoration does not exceed Twenty Thousand Dollars (\$20,000.00), the Association shall have the right to restore and repair such damage irrespective of the amount of available insurance proceeds.

(b) If the estimated cost of repair is greater than Twenty Thousand Dollars (\$20,000.00) and the available proceeds of insurance maintained pursuant to Article IV (5) (b) (vi) of this Declaration are less than eighty-five (85) per cent of the estimated costs of repair or restoration thereof, the owners by the vote of not less than seventy-five (75) per cent of the Class A members and seventy-five (75) per cent of the Class B members in person or by proxy, at a duly constituted meeting of the Association shall determine whether or not to repair and rebuild the damaged portions of the Common Area. If a vote of 75% of said Class A and Class B members is not obtained after notice, said decision may be made by a vote of not less than sixty-five (65) per cent of said members in each class after a second notice. Thereafter the minimum percentage requirement may be reduced by ten (10) per cent, after each failure after appropriate notice, until a decision is reached. In the event of a determination not to rebuild, the Board shall proceed in accordance with Section (1) (c) hereof. In the event of a determination to rebuild, the Board shall cause the necessary plans and specifications to be prepared and obtain bids from at least two (2) reputable contractors for the planned reconstruction and award the contract to the lowest responsible bidder. The Board shall then

levy a special assessment (which shall be equally apportioned among the lot owners and which shall be enforceable under the lien provisions contained in Article VI thereof) to cover the costs of reconstruction not covered by available insurance proceeds.

All reconstruction and repair of the Common Area pursuant to this section shall be undertaken in accordance with the original plans and specifications for the project, provided, however, that changes and modifications in said plans may be affected upon approval in writing of seventy-five (75) per cent of all owners and seventy-five (75) per cent of all first mortgagees of record.

(c) In the event that the owners determine that a reconstruction of the Project shall not take place, the Board shall

(i) Execute, acknowledge and record, within six (6) months from the date of the destruction of the project, a certificate setting forth the determination of the owners not to rebuild.

(ii) Cause all appropriate maps and documents to be prepared and placed of record to evidence the conversion of the Project to the status of unimproved land.

(iii) Sell the property, at the highest and best price obtainable, either in its damaged condition or after the damaged structure has been razed.

(iv) Distribute all sale proceeds obtained pursuant to Paragraph (iii) above and any insurance proceeds among the owners and mortgagees of record as their respective interests may appear. Such proceeds shall be divided into one share for each lot and the amount of each share shall be determined by dividing the net proceeds by the total number of lots in the properties. The share attributable to each lot shall be disbursed first to holders of valid encumbrances of record in order of their priority as to each lot and the balance to the owners of record.

(2) Arbitration. In the event of a dispute among the owners respecting the provisions of this Article, any owner may

cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to the members of the Board and all other owners as promptly as possible after the reference to arbitration is made, giving all owners an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive upon all of the owners. The arbitrator may include in his decision an award for costs and/or attorney's fees against any one or more parties to the arbitration.

ARTICLE XI  
CONDEMNATION

(1) Partial Taking Without Direct Affect On Lots. If a part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Common Areas, exclusive of compensation for consequential damages to certain affected lots, shall be payable to the Association as trustee for all owners and mortgagees according to the loss or damages to their respective interest in the Common Areas. The Association, acting through the Board of Directors, shall have the right to act on behalf of the owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Areas, without limitation of the right of the owners to represent their own interests. Upon receiving the award, the Board shall act as follows:

(a) In the event the award is not less than eighty-five (85) per cent of the estimated cost of restoration and repair, or greater, the Association shall use such proceeds promptly to restore and replace improvements so taken on the remaining property and shall levy an equal special assessment against each owner to cover that portion of the repair costs not covered by the award.

Such special assessment shall be enforced under the lien provisions contained in this Declaration. All such replacements shall comply as closely as practicably possible to the original plans, specifications and elevations of the improvements taken by eminent domain.

(b) In the event that the award is less than eighty-five (85) per cent of the estimated costs of such repairs and restoration, the owners by the vote of not less than seventy-five (75) per cent of the Class A members and seventy-five (75) per cent of the Class B members in person or by proxy, at a duly constituted meeting of the Association, shall determine whether or not such repairs and rebuilding shall be undertaken. If a vote of 75% of said Class A and Class B members is not obtained after notice, said decision may be made by a vote of not less than sixty-five (65) per cent of said members in each class after a second notice. Thereafter the minimum percentage requirement may be reduced by ten (10) per cent, after each failure after appropriate notice, until a decision is reached. If the determination not to rebuild is made, the award shall be distributed to the owners and first mortgagees of record as the interests may appear.

In the event that the Association determines to rebuild, the Board shall levy a special assessment to cover all reconstruction costs not covered by the award in accordance with Paragraph (a) above.

(c) In the event there is an award in excess of the amount necessary to so substantially restore the Common Area, it shall be distributed by the Board to Owners, each lot receiving an equal amount.

(d) In the event that the condemnation award does not allocate consequential damages to the specific lots but includes an award for reduction of value of the lots without such allocation, the Board, within thirty (30) days after such award, shall determine the allocation of the award between the affected lots and the Common Area damages. Such decision by the Board shall be binding on the

affected owners unless within thirty (30) days after notification of such decision, fifty-one (51) per cent of the affected owners give the Board written notice that the allocation is unacceptable. In such event, the owners or the Board may cause the matter to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration notice thereof shall be given to the members of the Board and all other owners as promptly as possible after the reference to arbitration is made, giving all owners an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive upon all of the owners. The arbitrator may include in his decision an award for costs and/or attorney's fees against any one or more parties to the arbitration.

Nothing herein is to prevent owners whose lots are especially affected by the taking or condemnation for joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to the loss of values of the affected units, or the personal improvements therein, exclusive of damages relating to the Common Area.

(2) Partial or Total Taking Directly Affecting Lots.

If part or all of the lots shall be taken or condemned by any authority having the power of eminent domain, such that any lot or a part thereof is taken, the Association shall have the right to act on behalf of the owners with respect to the Common Areas as outlined in Section (1) of this Article and the proceeds shall be payable as outlined therein. The owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective lots.

ARTICLE XII  
DURATION AND AMENDMENT

(1) Duration. This Declaration shall continue in full force and effect for a term of fifty (50) years from the date hereof

after which time the same shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of owners, has been recorded, agreeing to change said Declaration in whole or in part.

(2) Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which the proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by a lot owner at a meeting of the members of the Association. The resolution shall be adopted by not less than seventy-five (75) per cent of the Class A members and seventy-five (75) per cent of the Class B members. A copy of each amendment shall be certified by at least two (2) officers of the Association and the amendment shall be effective when recorded in the public records of Salt Lake County. The foregoing notwithstanding, no amendment shall be adopted affecting the terms of Sections (3) and (4) of Article VI of this Declaration without the prior written approval of the owners of all first mortgage liens. No amendments shall be adopted affecting the term of this Declaration except as set forth in Section (1) of this Article XII.

ARTICLE XIV  
MISCELLANEOUS

(1) Legal Proceedings. Failure to comply with any of the terms of this Declaration, or the Articles and By-laws of the Forest Cove Homeowners Association (including the regulations adopted pursuant thereto) shall be grounds for relief which may include, without limiting same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought by the Association, or if appropriate, by an aggrieved lot owner. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Project. Failure to enforce any provision hereof shall not constitute a waiver



of the right to enforce said provision, or any other provisions hereof. Any lot owner not at the time in default hereunder, or any member of the Association, shall be entitled to bring an action for damages against any defaulting lot owner and in addition, may enjoin any violation of this Declaration. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney fees in such amount as the court may deem reasonable, in favor of the prevailing party.

(2) Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provisions hereof.

(3) Binding Effect of Association Agreements. All agreements and determinations lawfully made by the Association in accordance with the voting rights established in this Declaration or in the By-laws, shall be deemed to be binding on all owners of lots, their successors and assigns.

(4) Notification of Sale of Lot. Concurrently with the consummation of the sale of any lot, or within five (5) business days thereafter, the transferee of such lot shall notify the Association in writing of the sale. Such notification shall set forth:

- (a) The name of the transferee and his transferor.
- (b) The lot number and street address of the lot purchased.
- (c) The mailing address of the transferee, and
- (d) The date of sale.

Prior to receipt of such notice by the Association, all notices required or permitted to be given by the Association shall be deemed to be duly and timely made to the transferor of the transferee.

(5) Lease of Lot. Any lease agreement between the

owner of any lot and a lessee thereof shall be in writing, a copy of which shall be furnished to the Association within five (5) days after the execution thereof. Such lease shall provide that it is in all respects subject to the Declaration, Articles of Incorporation and By-laws of the Association, and any failure of the lessee to comply with the terms of said documents shall be a default under the lease.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 9th day of January, 1979.

By: *Alton R. Larsen, Jr.*  
ALTON R. LARSEN, JR.

By: *Cola Dawn Larsen*  
COLA DAWN LARSEN

STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE)

On this 9th day of January, 1979, before me a Notary Public for the State of Utah, personally appeared ALTON R. LARSEN, JR. and COLA DAWN LARSEN, the above named parties (Declarants) who each duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.



My Commission Expires:  
April 17, 1980

*John Haglund*  
NOTARY PUBLIC  
Residing at Salt Lake City, Utah

BOOK 4808  
PAGE 1312



FOREST CREEK COVE  
PLANNED UNIT DEVELOPMENT  
A PART OF SECTION 28, T2S, R1E, S1B3M

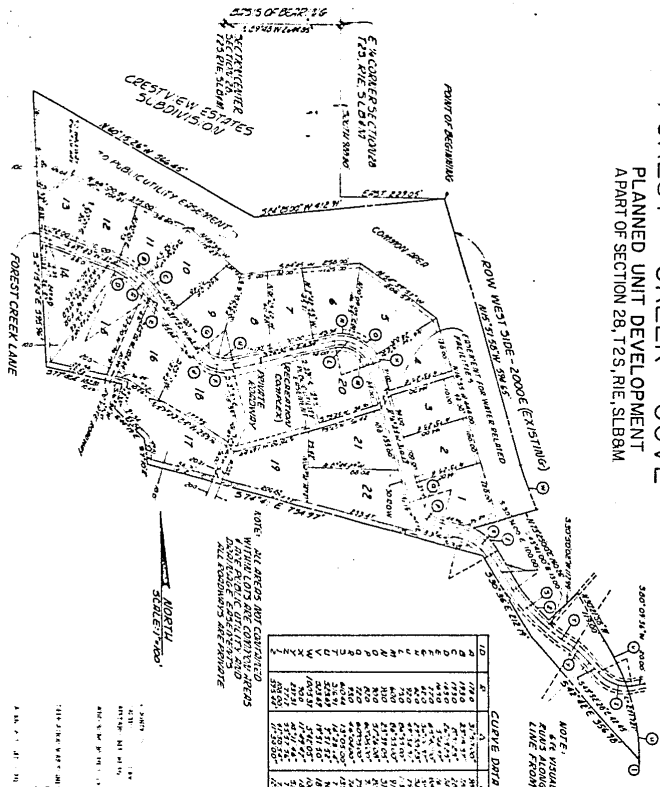


Table with 4 columns: Station, Curve Data, Station, Station. Contains numerical data for curve calculations.

NOTE: VISUAL BARRIER FENCE  
LINES ALONG SOUTH PROPERTY  
LINE FROM POINT 7 TO POINT 8.

NOTE: ALL AREAS NOT COVERED  
BY THIS PLAN ARE TO REMAIN  
AS SHOWN ON THE PREVIOUS  
PLANS AND ARE NOT TO BE  
ALTERED.

STATE OF ILLINOIS  
COUNTY OF DECATUR  
NOTARY PUBLIC  
My Comm. Expires 12/31/2024

PLANNED UNIT DEVELOPMENT  
A PART OF SECTION 28, T2S, R1E, S1B3M  
FOREST CREEK COVE  
PLANNED UNIT DEVELOPMENT  
A PART OF SECTION 28, T2S, R1E, S1B3M

RICHARD ROBINSON  
COUNTY CLERK  
I, Richard Robinson, County Clerk of Decatur County, Illinois, do hereby certify that the foregoing is a true and correct copy of the original as filed in my office on this 14th day of August, 2024.

STATE OF ILLINOIS  
COUNTY OF DECATUR  
NOTARY PUBLIC  
My Comm. Expires 12/31/2024

Plat B