

Declaration of Covenants and Restrictions for Forest Heights

THIS DECLARATION, made this 23<sup>rd</sup> day of May, 1996, by FOREST HEIGHTS INC., a corporation, hereinafter called Developer.

WITNESSETH

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to put thereon a residential community which may include parks of playgrounds, open spaces, roads, streets, drainage easements, and other common facilities for the benefit of said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of any said parks or playgrounds, open spaces, roads, streets, and other common facilities, described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of West Virginia, as a non-profit corporation, FOREST HEIGHTS HOMEOWNERS ASSOCIATION INC., for the purposes of exercising the functions aforesaid,

NOW, THEREFORE, THE DEVELOPER DECLARES THAT THE REAL PROPERTY DESCRIBED IN ARTICLE II AND SUCH ADDITIONS THERETO AS MAY HEREAFTER BE MADE PURSUANT TO ARTICLE II HEREOF, IS AND SHALL BE HELD TRANSFERRED, SOLD, CONVEYED, AND OCCUPIED SUBJECT TO THE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS (SOMETIMES REFERRED TO AS "COVENANTS AND RESTRICTIONS") HEREINAFTER SET FORTH.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration or any Supplemental Declaration (unless the contact shall prohibit), shall have the following meanings.

- (a) "Association" shall mean and refer to the Forest Heights Homeowners Association Inc

- (b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II, hereof.
- (c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of the owners of The Properties.
- (d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.
- (e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the free simple title to any Lot situated upon The Properties but, notwithstanding applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (f) "Member" shall mean and refer to all of those Owners who are members of the Association, as provided in Article III, Section 1, hereof.

## ARTICLE II

### PROPERTIES SUBJECT TO THIS

#### DECLARATION: ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be, held transferred, sold, conveyed, and occupied subject to this Declaration is located in Berkeley County, West Virginia, and is more particularly described as follows"

Lots 1-8 Section1 Forest Heights as shown on Plat of said subdivision prepared by Daniel Shannon dated the \_\_\_ of \_\_\_, 199\_, and recorded in the office of the Clerk of the County Court of Berkeley County, West Virginia immediately preceding this Declaration in Plat Cabinet No. 6 at Slide 150."

AND BEING a part of the Land Conveyed to Forest Heights by Deed dated November 20, 1995, recorded with the clerk of the county Court of Berkeley County, West Virginia, in deed Book No 555, at Page 132.

all of which real property shall hereafter be referred to as "Existing Property".

NO PROPERTY OTHER THAN THAT DESCRIBED ABOVE SHALL BE DEEMED SUBJECT TO THIS DECLARATION, UNLESS AN UNTIL SPECIFICALLY MADE SUBJECT THERETO. THE DEVELOPER MAY WITHOUT CONSENT, FROM TIME TO TIME, AND IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION, SUBJECT ADDITIONAL REAL PROPRTY TO THE CONDITIONS, RESTRCITONS, COVENANTS, RESEVATIONS, LIENS, AND CHARGES HEREIN SET FORTH BY APPROPRIATE REFERENCE HERETO.

Section 2: additions to Existing Property: Additional land may become subject to this Declaration.

- (a) SUPPLEMENTAL DECLARATION: The Developer and its assigns reserves the right to add lots and property to the Existing Property by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of Covenants and Restrictions of this Declaration to such property. Additional roadways may be added to this declaration and will then become owned by the Association and maintained by the expanded Association. Such Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added Properties. The developer may change the covenants and restrictions including but not limited to the minimum square footage of houses, potential sale of townhouses, and lot setbacks in future sections. In no event, however, shall such Supplementary Declaration revoke, modify, or add to the Covenants established by this Declaration within the Existing Section.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

##### IN THE ASSOCIATION

Section 1: Membership: Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by Covenants of record to assessment to the Association, shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

Section 2: Voting Rights: The Association shall have two (2) classes of voting membership.

CLASS A. Class a Members shall be all those Owners as defined in Section 1, with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1. When more than one (1) person holds such an interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they amongst themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

CLASS B. Class B Members shall be the Developer. The Class B Member shall be entitled to ten (10) votes for each Lot in which it holds the interest required for membership by Section 1; provided that the Class B membership shall cease and become converted to Class A membership in the happening of any of the following events, whichever occurs earlier.

- (a) When seventy-five percent (75%) of the total Lots within the Properties are sold, or
  - (b) Within ten (10) years from the date of the first sale in the Subdivision. (Date of the first sale shall be the date that the first Settlement is held for a Lot in The Properties)
- From and after the happening of these events, whichever occurs earlier, Class B

Members shall be deemed to be Class A member entitled to one (1) vote for each Lot in which it holds the interest required for membership under Section 1.

ARTICLE IV  
PROPERTY RIGHTS IN  
THE COMMON PROPERTIES

Section 1: Provision for Maintenance and Operation. The Developer hereby dedicates and shall by future deed convey to The Forest Heights Homeowners Association Inc all common areas and all responsibilities to operate and maintain the roads and any other common facilities. The Developer reserves the exclusive right to use the common area to the right of the main entrance for a Sales Trailer for the duration of the development not to exceed ten (10) years from date of this document. Developer hereby reserves for itself, its successors and assigns the right to also use the roadways and access for utilities within said subdivision, and specifically intends to sell additional lots which will be located in future sections, which will have full use and access of the roads and utilities.

Section 2: Member's Easements of Enjoyment: subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 3: Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

ARTICLE V  
COVENANT FOR  
MAINTENANCE ASSESSMENT

Section 1: Creation of the Lien and Personal Obligation of Assessments: Each Owner (Except the Developer) of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, be deemed, covenanted and agrees to pay to the Association:

- (1) Annual assessments of charges, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual assessments together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof, as hereafter provided, shall also be the personal obligation of

the person who was the owner of such Property at the time when the assessment fell due.

Section 2: Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in The Properties and in particular for the improvement and maintenance of the properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon The Properties, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereto, including snow removal, road and storm water maintenance, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3: Basis of Maximum of Annual Assessments: Until otherwise established by the Association, the annual assessment for all matters covered by this Article, shall be born equally by all lot owners of record (except those of the Developer) at a rate of ONE HUNDRED (\$100) per Lot. Lots owned by the Developer are exempt from the annual assessment until sold to a lot owner notwithstanding any other provisions of this document.

THE ANNUAL average common expense liability of all units restricted to residential purposes exclusive of optional user fees and any insurance premiums paid by the association may not exceed \$300 as adjusted pursuant to the provisions to West Virginia Code 36B-1-114 and 36B-1-203.

Grantor shall be exempt from any and all assessments. It is the expressed intention that this subdivision is considered a limited expense liability planned community pursuant to 36B-1-203 of West Virginia Code Annotated.

The Board of Directors of the Association may, after consideration of the current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount, and the officers and Board of Directors of the Association shall at all times maintain and operate the Association on a non-profit basis.

Section 4: Quorum for Any Action Authorized Under Section 3: The quorum required for any action authorized by Section 3 hereof shall be as follows:

At the first meeting called, as provided in Section 5 hereof, the presence at the meeting of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meetings shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5: Date of Commencement of Annual Assessments. Due Dates: The annual assessments provided for herein shall commence on the date (which shall be the first date of a month) fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessment shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year after the first year, shall become due and payable on the first day of January of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bears to twelve (12). The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to The Properties no subject to assessment at a time other than the beginning of any assessment period.

Section 8: Duties of the Board of Directors: The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period of at least thirty (30) days in advance of such date of period and shall, at that time, prepare a roster of The Properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Further notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a Certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such Certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9: Effect of Non-Payment of Assessment. The Personal Obligation of the Owner, The Lien, The Remedies of the Association: If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, and assigns. The personal obligation for statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, or in the event the maximum legal interest rate permitted by law, and the Association may bring an action at law, against the Owner personally obligated to pay the same and there shall be added to the amount of such assessment, the costs of preparing and filing the Complaint in such action, if permitted by law, and in the event a Judgment is obtained, such Judgment shall include interest on the assessment as above provided and, if permitted by law, a reasonable attorney's fee to be fixed by the Court together with the cost of the action.

Section 10: Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any mortgages or deeds of trust to the extent the assessment is for an obligation accruing after the recordation of said mortgage or deed of trust.

Section 11: Exempt Property: The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

- (a) All properties to the extent of any easement of other interest therein dedicated and excepted by the local public authority and devoted to public user;
- (b) All Common Properties as defined in Article I, Section 1, hereof;
- (c) All properties exempted from taxation by the Laws of the State of West Virginia, upon the terms and to the extent of such legal exemption, provided, however, that property exempted from taxation by reason of the Homestead Exemption or because of a charitable designation or status, shall not be exempt from the assessments, charges, and lien created herein
- (d) Properties owned by the Developer until sold to homeowner.

#### ARTICLE VI

All lots in Section 1 of the Subdivision shall be designated residential and shall not be used except for residential purposes. This does not preclude the Developer from maintaining Real Estate Offices or authorizing Model homes or Sales Trailer. Developer must approve all home plans for consistency in development. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) single-family dwelling and a private garage to the dwelling, and an outbuilding that is approved by the Developer. Any Fence must be approved by Developer for architectural consistency. Ground-floor area of all single-family, split foyer, and tri-level homes or residences shall contain a minimum area of One Thousand (1000) square feet in the foundation, exclusive of garage and porches, and the living area of a standard two-story single-family residence shall contain a minimum area of Twelve Hundred (1200) square feet, exclusive of garages and porches.

Neither this restriction nor any other restrictions contained in this Declaration of Covenants and Restrictions shall prevent or prohibit or be construed to prevent or prohibit the Developer or any other owner or builder, for either use as their personal residence or for purposes of profit and sale, from erecting, constructing, and building any structure permitted by these restrictions on any lot in the Subdivision, nor prevent nor prohibit the Developer from erecting, constructing, or building any roads or other common amenities within the Subdivision.

#### ARTICLE VII

No building or any part thereof shall be erected on any Lot nearer or closer to the front Lot line than twenty (20) feet or nearer or closer to any side or rear Lot line or boundary line than ten (10),

unless otherwise noted on the plats of said subdivision and the Developer may grant exceptions as long as they comply with the Berkeley County Development Regulations.

#### ARTICLE VIII

No noxious or offensive activity, including barking dogs, shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

#### ARTICLE IX

No structure or a temporary character, trailer, mobile home, hose trailer, mobile double wides, basement, tent, shack, garage, bar, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently, except that Developer reserves the right to authorize a sales/construction trailer until the Subdivision is completed.

#### ARTICLE X

No animals, livestock, or poultry or any kind shall be raised, bred, or kept on any Lot, except dogs, cats, or other household pets which may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. All animals must be kept on the owner's lot by fence and only allowed on other property owner's permission and in common areas when controlled by a leash.

#### ARTICLE XI

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. Household items, building surplus, etc. shall be kept inside and kept from view of neighbors. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All Lots shall be kept free and clear of trash and rubbish at all times and shall be kept mowed.



## ARTICLE XII

Any residence erected upon any Lot must be completed within six (6) months from the date that the excavation of the Lot is commenced.

## ARTICLE XIII

No junk motor vehicles nor unregistered motor vehicles nor motor vehicles not in running condition shall be permitted on any of the Lots. No vehicles may be parked on the roads in said subdivision. Visitors shall not obstruct any mail boxes during temporary visits.

## ARTICLE XIV

All improvements must be connected to any available water system and maintain their individual system according to Berkeley County Health Department Guidelines.

## ARTICLE XV

In order to permit the practical and economical installation of utilities, including sewer lines, easements for installation and maintenance of utilities, including, but not being limited to telephone or electric light poles, conduits, equipment, sewer, gas, and water lines, over or under a strip of land twenty (20) feet from road boundaries and ten (10) feet wide at any point along the rear, or side lines of all of the Lots in this Subdivision, are reserved unto the grantor or Developer, his successors and assigns, including the homeowner's association, together with the right of ingress and egress for the purpose of erecting and maintaining said utilities. In addition, easements for the installation and maintenance of said utilities are reserved as shown on the recorded plat. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of the utilities. The easement area of each Lot and all improvements in it, except as hereinafter provided, shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company, or the homeowner's association is responsible. The association shall be responsible for the maintenance of drainage easements, and individual Owners shall be responsible for the maintenance of proper storm water management control as a result of any grading they may do as well as maintenance of any strips of land for the property which lies between each Owner's front Lot lie and the paved surfaces of the streets.

#### ARTICLE XVI

No signs, billboards, or advertising of any nature shall be erected, placed, or maintained on the Lots or common area in said Subdivision, nor upon any building erected thereon, except address identification signs and normal and reasonable "For Sale" signs, placed only on the lot for sale, except that Developer reserves the right to authorize a large sign or signs for the Subdivision until all lots are sold.

#### ARTICLE XVII

No dump trucks, commercial road trucks, tractors, or rigs normally used for pulling or hauling trailers, box trailers, tank trailers, lowboys, flatbeds, or other similar vehicles, heavy trucks, truck-type tractors, or other similar vehicles, with or without trailers, box trailers, tank trailers, lowboys, flatbeds, or other similar vehicles no matter how propelled, or any pickup trucks, van trucks, or other similar vehicles having a carrying capacity in excess of one (1) ton, or any construction machinery shall be placed, parked, stored, or permitted to remain upon any Lot or road in The Properties, except for temporary use during construction or repair of any residence or appurtenant structures, streets, utilities, or other common amenities or while actually being used in such construction or repair of for such temporary uses as making or making deliveries. The parking of Motor Homes or Camper Trailers must be approved by Developer. This does not preclude the Developer to have equipment used for building or development as necessary on the site.

#### ARTICLE XVIII

No satellite dishes over 36" in diameter, or large antennas of any kind, unless specifically approved by Developer. No fences in the front yard unless specifically approved by Developer. The Developer must approve all fences. Roofs must have a 4/12 pitch or better. Houses must have aluminum, vinyl or masonry siding unless specifically approved by Developer. All driveways must be kept in good repair by the lot owner.

#### ARTICLE XIX

#### AIRPORT NOTICE

Sec. 1 of Forest Heights is in the flight path of the Eastern West Virginia Regional Airport and is subject to the sound of low flying aircraft.

## ARTICLE XX

### EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the even that the need for maintenance or repair of a lot of the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such lost is subject.

## ARTICLE XXI

### GENERAL PROVISIONS

Section 1: Duration: The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifteen (15) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of two-thirds (2/3) of the Lots has been recorded agreeing to change said covenants and restrictions, in whole or in part.

Section 2: Notices: Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

Section 3: Enforcement: Enforcement of these covenants and restrictions shall be, by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by the covenants; and failure by the Association or any Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so there after.

Section 4: Severability: Invalidation of any one of these covenants or restrictions by judgement or Court Order shall in no wise affect any other provisions which shall remain in full force and effect.