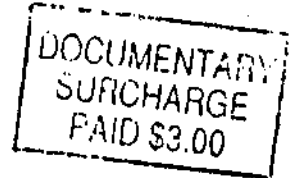


"F" Real Estate/Forest.new

## DECLARATION OF RESTRICTIONS



788-1

THIS DECLARATION OF RESTRICTIONS (this "Declaration") is made this 20th day of July, 1989, by FOREST CREEK DEVELOPMENT, INC., a Delaware corporation (the "Declarant").

## WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple title of:

ALL THAT CERTAIN lot, piece or parcel of land comprising 31.02 acres of land, more or less, situate in White Clay Creek, New Castle County and State of Delaware, (the "Property") being more particularly described by a Record Major Subdivision Plan of Timber Farms ("Timber Farms"), prepared by Karins & Associates, Inc., recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, in Microfilm No. 9827 (as the same may be amended, supplemented, superseded or resubdivided hereafter from time to time) [the "Record Plan"], which is incorporated herein by reference; and

WHEREAS, the Declarant intends to develop the Property as individual dwelling lots and individual dwelling units, with appurtenant landscaping, open space, streets and other common facilities; and

WHEREAS, the Declarant desires to declare and set forth restrictive covenants and deed restrictions respecting the use of the Property, and to further provide for the maintenance and repair of common areas and roads thereon; and

WHEREAS, the Declarant did execute a Maintenance Declaration recorded May 10, 1989 in the Office as aforesaid, in Deed Book 874, Page 218 (the "Maintenance Agreement") for the maintenance of the open space identified therein (the "Open Space"); and

WHEREAS, the Declarant has incorporated or intends to incorporate under the laws of the State of Delaware a nonprofit maintenance corporation known as Timber Farms Maintenance Corporation (the "Corporation"), for the purpose of exercising the functions set forth in the Maintenance Agreement and as supplemented herein;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That the Declarant does covenant and declare that it shall hold and stand seized of the Property under and subject to the following restrictions, covenants, and agreements which shall be covenants running with the land and which shall be binding upon the Declarant, its successors and assigns, for the benefit of each lot or parcel of land as set forth on said Record Plan.

#### ARTICLE I

##### DEFINITIONS

The following definitions shall be applicable to the words defined as used herein:

- (1) The "Corporation" shall mean and refer to Timber Farms Maintenance Corporation, as identified above, and its successors and assigns.
- (2) The "Property" shall mean and refer to all properties, including Lots, existing or future dwellings thereon and Open Space, which are included in the Record Plan in Exhibit A.
- (3) "Lot" shall mean and refer to any plot of land intended for private individual residential use as shown on any Record Plan of the Property.
- (4) "Owner" shall mean and refer to the record title owner, whether one or more persons or entities, of fee simple title to any Lot, but shall not include a mortgagee who has not obtained fee simple title.
- (5) "Member" shall mean and refer to members of the Corporation.

(6) The "Declarant" shall mean and refer to Forest Creek Development, Inc., a corporation of the State of Delaware, its successors and its assigns as provided in this Declaration.

(7) The "Record Plan" shall mean and refer to the aforesaid Record Major Subdivision Plan, as hereafter amended, supplemented, superseded or resubdivided from time to time.

## ARTICLE II

### MAINTENANCE CORPORATION

(1) In order that the Open Space shall be maintained and pursuant to the Maintenance Agreement there shall be organized a nonprofit maintenance corporation which is the Corporation. The Members of the Corporation shall be all the Owners of Lots as shown on the Record Plan.

(2) The purchaser of any Lot by acceptance of a deed to the Lot, agrees, obligates, and binds himself, his heirs, successors and assigns, to become a Member of the Corporation and to be bound by all of its rules and regulations, and to be subject to all of the duties and obligations imposed by membership in the Corporation.

(3) Each Owner of a Lot, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Corporation when due (a) annual assessments or charges, and (b) special assessments established and collected from time to time as hereinafter provided, such assessments to be fixed at a uniform rate for all Lots, and used for the purposes set forth in the Maintenance Agreement and herein.

(4) An annual assessment and/or special assessment if necessary, shall be set by majority vote of the Board of Directors as set forth in the Bylaws for the Corporation.

(5) The Corporation shall have two classes of Members:

Class A

Class A Members shall be all Owners excepting the Declarant and excepting any other person or entity which acquires title to all or a substantial portion of the Property for the purpose of developing thereon a residential community. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B

The Class B Member shall be the Declarant, its successors and assigns. The Class B membership shall be entitled to one vote for each Lot in which it holds the interest required for membership, provided that upon the happening of either of the following events, whichever first occurs, the Class B membership shall cease and be converted to Class A membership:

(a) When, in its discretion, the Declarant so determines, or

(b) When a purchaser of an individual Lot takes title thereto from the Declarant, at which time the purchaser becomes a Class A Member and the membership of the Declarant with respect to such Lot shall cease.

From and after any of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each lot in which it holds the interest required for membership.

(6) Each Owner of any Lot by acceptance of the deed therefor shall be deemed to covenant and agree that the annual and special assessments, together with such interest

thereon and cost of collection thereof including reasonable attorney's fees which shall become a part of the assessment, 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 thereon and cost of collection thereof shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due and shall remain his personal obligation and shall not pass to successors in title unless expressly assumed. It is expressly agreed that the assessments referred to above shall be a lien or encumbrance on the land in respect to which said assessments are made and it is expressly stated that by acceptance of title to any of the land included in the Property the Owner from the time of acquiring title thereto shall be held to have covenanted and agreed to pay said assessments to the Corporation. By his acceptance of title, each Owner shall be held to vest in the Corporation the right and power in its own name, to take and prosecute all actions or suites, legal, equitable, or otherwise, which may be, in the opinion of the Corporation, necessary or advisable for the collection of such assessments, and shall be held to agree that no Owner may waive or otherwise avoid liability for the assessments herein provided for the nonuse of the Open Space or abandonment of his Lot. If any assessment is not paid when due, after the due date, it shall be deemed delinquent, and if not paid within thirty (30) days after the due date, shall bear interest at the legal rate of interest then in effect. Without limiting the rights and remedies of the Corporation for the collection of assessments, each Owner, by acceptance of a deed, assigns to the Corporation all rents due and payable for leases and rental agreements for that Owner's Lot as collateral for all assessment obligations; provided, however, that each Owner shall have a license to collect such rents unless and until there has occurred a default by the Owner hereunder.

(7) The assessments levied by the Corporation shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in Timber Farms and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Open Space, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof. Such purposes shall include, but not be limited to landscaping, grass cutting, snow plowing of all vehicular areas, maintenance of the storm water management area and other similar purposes.

(8) The lien of all assessments shall be subordinate in lien to the lien of any mortgage or mortgages on any property which is subject to such charges regardless of when said mortgage or mortgages were created or when such charges accrued; provided that such subordination shall apply only to charges that shall have become payable prior to the passing of title under foreclosure of such mortgage or mortgages (or under deed in lieu thereof), and the transferees shall not be liable for payment of any assessment accruing prior to said foreclosure (or deed in lieu thereof) but nothing herein shall be held to affect the rights herein given to enforce the collection of such charges accruing after sale under foreclosure of such mortgage or mortgages (or under deed in lieu thereof); and provided, further, that such charges accruing after sale shall also be subordinate in lien to the lien of any further mortgage or mortgages which are placed on property subject to such charges, with the intent that no such charges shall at any time be prior in lien of any mortgage or mortgages whatsoever on such property.

(9) The following properties subject to this Declaration shall be excepted from the assessments, charges

and liens created herein: (1) all properties dedicated to and accepted by a governmental body, agency or authority, and devoted to public use; (2) all Open Space; (3) any portions of the Property in the name of the Declarant and not constituting Lots (e.g., streets dedicated but not yet accepted as such). Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be excepted from said assessments, charges or liens.

(10) The annual assessments provided for herein shall commence on the conveyance of the first Lot to an Owner by the Declarant and shall be due and payable in advance on the first day of each calendar month thereafter.

(11) The Corporation shall keep an Assessment Lien Docket (the "Docket") at the registered office of the Corporation or at such other location as the Corporation may determine. Immediately upon an assessment's becoming delinquent as hereinabove provided, the Treasurer of the Corporation shall cause an entry thereof to be made in the Docket, which entry shall disclose the date the entry is made, the names of the Owners of the Lot as shown in the Corporation's records, the number of the Lot, the amount of the delinquent assessment, the due date and the assessment period of the delinquent assessment.

Upon written inquiry of any Owner or any attorney-at-law who certifies to the Corporation that he represents either an Owner of a Lot or a prospective purchaser thereof, the Treasurer, upon receipt of a reasonable service charge (as established by the Corporation from time to time), shall certify to the inquiring Owner or attorney-at-law as to the assessment status of the Lot which is the subject of the inquiry, stating:

(a) Whether the current assessment is paid;  
and/or

(b) If there are any delinquent assessments, all of the information entered in the Docket with respect to

the Lot which is the subject of the inquiry, together with the per diem interest thereon, to be computed on each delinquent assessment from its respective due date to the date of receipt by the Corporation of payment thereof in full.

The certificate of the Corporation shall be binding on the Corporation. In the event a certificate, postage paid and addressed to the inquiring party at its mailing address provided by him, is not deposited in the United States mails by the Corporation within ten (10) business days after receipt of written inquiry and service charge, all assessments affecting the Lot which is the subject of the inquiry shall be deemed to have been paid in full.

Upon receipt by the Corporation of payment of any delinquent assessment, with interest and costs, if applicable, as hereinabove provided, the Treasurer shall enter in the Docket the date and amount of the payment received, together with the notation "Paid in Full."

(12) The Corporation may, in its By-Laws, provide for reserves and for special working capital funding to be collected from Owners at the time of the first conveyance of a Lot by the Declarant.

(13) The foregoing provisions are intended to supplement the provisions of the Maintenance Agreement. In the event of any conflict between the provisions of the Maintenance Agreement and the provisions herein, the provisions of the Maintenance Agreement shall control.

### ARTICLE III

#### PROPERTY RIGHTS IN OPEN SPACES

(1) Subject to the provisions of paragraph 2 of this Article, every member shall have a right and easement of enjoyment in and to the Open Space and such easement shall be appurtenant to and shall pass with the title to every Lot.



(2) Subject to the Maintenance Agreement, the Declarant may retain the legal title to the Open Space until such time as, in the opinion of the Declarant, the Corporation is able to maintain the Open Space. Subject to the Maintenance Agreement and unless previously dedicated to an appropriate governmental authority, Declarant will convey by special warranty deed fee title to the Open Space to the Corporation free and clear of all encumbrances and liens, except those created by or pursuant to this Declaration and any construction mortgage; subject, however, to the following covenant which shall be deemed to run with the land and shall be binding upon the Corporation, its successors and assigns:

In order to preserve and enhance the property values and amenities of the community, the Open Space and all facilities now or hereinafter built or installed thereon shall at all times be maintained in good repair and condition.

(3) The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the rights of the Corporation, in accordance with its Certificate of Incorporation and By-laws, to borrow money for the purpose of improving the Open Space, and, in aid thereof, to mortgage said properties; and the rights of such mortgage in said properties shall be subordinate to the right of the Owners hereunder;

(b) the right of the Corporation to take such steps as are reasonably necessary to protect the above described properties against foreclosures;

(c) the right of the Corporation, as provided in its Certificate of Incorporation and By-laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, as the same may be amended from time to time;

(d) the right of the Declarant to dedicate or transfer all or any part of the Open Space as provided by the

Maintenance Agreement, and the right of the Corporation to dedicate or transfer all or any part of the Open Space to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by two-thirds of the Members has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the action is sent to every Member at least sixty (60) days in advance of any action taken:

(e) the right of the Declarant, and of the Corporation, to grant and reserve easements and rights-of-way through, under, over and across the Open Space, for ingress egress and egress and for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil and other utilities;

(f) the right of the Corporation to make such reasonable rules and regulations as to use of the Open Space as in its discretion will be for the mutual benefit of all of the Owners;

(g) the right of the Declarant to grant and reserve rights and easements of enjoyment in and to the Open Space for the benefit of the owners and occupants of any Additional Tracts.

#### ARTICLE IV

##### ARCHITECTURAL CONTROL

(1) No building, fence, wall or other structure as built shall be altered, extended, added to or modified, nor shall any additional structures of any nature be erected, nor shall any exterior change or alteration be made (including, but not limited to, exterior facade color changes or change in grade or drainage) unless the Declarant shall determine that any such action is necessary for the mutual benefit of

the Owners. In the event that repair, replacement or other work on existing structures is necessary, or the erection of any additional structures is necessary, any such work must, to the extent practicable, be performed such that the condition and appearance is equal to and identical to the condition and appearance of the structure as originally constructed, or with respect to additional structures, the construction and appearance is in architectural harmony with the property as originally built and developed. No work as above described shall be performed until plans and specifications as to the nature, kind, appearance, materials and location of the work to be performed has been submitted to the Declarant and approved by the Declarant, or its designated committee, in writing as to compliance with the above requirements, as follows:

(a) Plans and specifications with illustrations showing the nature, kind, shape, color, height, materials and proposed location of the addition, alteration or change shall be submitted to and approved in writing by the Declarant. In the event the Declarant, or its successors or assigns, fails to approve or disapprove such architectural change request within thirty (30) days after said plans and specifications have been submitted to it, approval thereof will be deemed to have been given by the Declarant.

(b) The Declarant, its successors or assigns, in connection with the review of said plans, specifications and illustrations, shall consider them in terms of: the harmony of the proposed change, addition, construction or alteration with the structures on surrounding properties and the outlook therefrom onto the subject property; the effect it will have on the reasonable passage of light and air to the surrounding properties; the consistency and harmony of the architectural design, color, height, size, shape, proposed location and materials with the subject property and with the surrounding structures; and with respect to the

physical impact thereof, including, but not limited to drainage on surrounding properties.

(c) For the purpose of this Declaration, the Declarant shall have the sole right to determine which Lot lines and/or street lines shall be "front" or "side" lines.

(d) Requests for architectural change which have been rejected hereunder may be appealed by the applicant in writing and upon the receipt of same, the Declarant, or its successor or assignee, shall schedule a special meeting with the applicant to review applicant's appeal, which meeting shall be held within two (2) weeks after receipt of notice. The decision upon review shall be communicated in writing to the applicant within thirty (30) days after the review meeting and the failure of the Declarant, or its successor or assignee, to give written notice of such decision within said thirty (30) days shall be construed as a rescission of the initial rejection.

(e) The Declarant may appoint an Ad Hoc Architectural Control Committee to assist the Declarant in architectural control matters. The Ad Hoc Architectural Control Committee will automatically be dissolved upon assignment of the architectural control responsibilities to the Corporation.

#### ARTICLE V

##### USE OF PROPERTY

(1) No Lot shall be used except for residential purposes. No dwelling or any part thereof shall be used for any purpose except as a private dwelling for one family. No dwelling, garage, porch or other structure shall be erected, altered, added to, or the appearance altered in any manner by Owner unless otherwise permitted by these covenants and restrictions and approved by the Corporation in the manner described in Article IV.

(2) The Property shall only be subdivided or partitioned in compliance with the Record Plan.

(3) No trade or business, nor any building designed or intended for such purpose or for industrial or manufacturing purpose, except storage with prior approval of the Corporation, nor for any dangerous or offensive trade or business whatsoever, shall be erected, permitted, maintained or operated on any of the Property, nor any noxious or offensive activity shall be carried on upon the Property nor shall anything be done thereon which may be or result in an annoyance or nuisance to the neighborhood.

(4) No buildings presently located on the Property shall be voluntarily demolished or removed, other than as may be required by governmental authority or as may become necessary to remove unsafe structures following casualty damage or destruction. Nothing herein shall prevent alterations of any of the buildings or changes in use of buildings provided that the same must be consistent with the provisions of this Declaration and with all applicable zoning and other legal requirements.

(5) No animals, livestock or poultry of any kind shall be raised, bred or kept in any dwelling or on any part of the Property except that dogs, cats or other common domesticated household pets may be kept inside the dwelling provided that they are not kept, bred or maintained for any commercial purpose and provided that no more than two such pets in the aggregate may be kept with respect to each dwelling.

(6) No sign or other object shall be displayed on any wall or rooftop without the Declarant's written approval. No sign of any kind shall be displayed to public view on any dwelling, Lot, or Open Spaces except: (a) a post office street number sign being uniform in appearance and placement, such appearance and placement to be determined by the Corporation; (b) temporary signs not more than five (5)

square feet advertising the sale of the property on which the sign is located, such signs to be removed property) after settlement; (c) such signs as the Corporation may deem necessary, in its sole discretion, to fulfill its purposes.

(7) Garbage, rubbish or any other material of any nature to be abandoned or disposed of shall not be placed or allowed to remain on any Lot nor shall it be placed, left or allowed to fall upon any of the Open Space, but may be placed at street side on the day of collection if required by the collecting agency.

(8) No trailer, travel trailer, mobile home, tent, shack, shed, garage or other outbuilding, temporary or semipermanent or permanent structure or shelter of any kind other than the dwelling house shall be erected, shall be placed or shall be utilized as a residence, either temporarily or permanently, on any Lot or Open Space.

(9) No unusual vehicles, including trucks (except "pick-up" trucks), boats, aircraft, trailers of any kind including boat, hauling or travel trailers, mobile homes, commercial vans, mowers, rototillers, tractors, buses or vehicles immobilized for any reason, shall be permitted by any person to remain on the Property, including Lot lawns, Open Space, the public streets or rights of way. All motor vehicles owned and operated by residents of Timber Farms must be parked over-night in their driveways. No such vehicle may be parked elsewhere on any Lot, or on the streets, except for temporary parking. For purposes of this paragraph, "temporary parking" shall mean the parking of such motor vehicles on an intermittent and nonrecurring basis during the period between dawn and the following midnight.

(10) Laundry lines and poles outside houses are prohibited.

(11) All Lot lawns and shrubs shall be maintained in a neat and presentable condition.

(12) No radio, television or communications tower, aerial, "dish" or other reception or signal sending device shall be erected or placed on any Lot or Open Space or be attached to the exterior of any structure, nor may any device, apparatus or decoration be permanently or temporarily attached to the exterior of the structure without prior written approval by the Corporation in accordance with Article IV. Christmas lights are specifically permitted but must be removed no later than January 15th of any year. No solar panels shall be erected or maintained on any structure.

(13) No vegetable or similar nonflower gardens may be maintained in front, side or rear yards of Lots. Statues, bird feeders, fountains and all other lawn decorative devices are prohibited. Inground swimming pools are prohibited. Inground swimming pools are permitted only upon written approval in accordance with Article IV and provided they are installed and maintained in accordance with applicable law. No fence shall be erected on any Lot closer to the front line than the rear face of the dwelling on said Lot. No fences shall be of a height more than four (4) feet; all such fences shall be constructed only of wood, except as required by law around inground swimming pools; and fences may only be constructed with written approval of the Corporation in accordance with Article IV. No hedges or other bulk landscaping screens (in contrast with isolated trees or shrub-beries) shall be planted forward of the building setback line for any Lot.

(14) If any portion of a dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner with due diligence to rebuild, repair or reconstruct in a manner substantially restoring the structure to its original appearance and condition immediately prior to the casualty. Reconstruction shall be commenced within four (4) months and pursued with due diligence to completion unless prohibited by causes beyond the control of the Owner.

(15) No change in the elevation, grade or surface composition of any Lot as properly established by Declarant when each home thereon was constructed shall be made which adversely affects surface water drainage to or from any other Lots or Open Spaces.

(16) Easements and rights-of-way are hereby reserved to Declarants, its successors or assigns, over, under and along the side and rear boundary lines of each Lot being twelve (12) feet in width centered on such boundary lines so that the outmost six (6) feet of each Lot along its side yard and rear yard boundary lines shall be subject to such reserved easements and rights-of-way. Easements and rights-of-way shown or noted on the Record Plan are also reserved, and shall not be limited to or by the foregoing. The purpose of such easements and rights-of-way shall be for:

(i) the construction and maintenance of storm water drainage and management systems as required by New Castle County or otherwise installed or authorized by Declarant;

(ii) the construction and maintenance of public and private sanitary sewer lines; and

(iii) the construction, installation and maintenance of utility lines, pipes, conduits and cables for electricity, telephone, television, water, gas, fuel oil, heat and for any other public or quasi-public utility or function serving the Lots and conducted, furnished or maintained by any method on, in, below or above the surface of the ground.

No Lot Owner, utility, public agency or other party shall make use of the easements herein created without the express, separate written consent of the Declarant. All parties rightfully using such easements may from time to time and at any time enter upon said above-reserved easements and rights-of-way, for any of the purposes for which same have been reserved, and as necessary may remove or trim without



replacement any growing or other thing thereon. During the time that any work is rightfully being performed within any easement or right-of-way area, the party performing such work shall also have a temporary easement to either side of the easement area for purposes of conveniently performing the work in question, without harm to structures or plantings.

The Owners of the Lots shall at all times maintain and occupy their Lots so as not to interfere with the purposes for which said easements and rights-of-way have been created and are used. All conveyances of Lots by the Declarant or others shall be subject to the said easements and rights-of-way without necessity of any further reservation being mentioned therein.

(15) All Lot Owners, occupants and other interested persons shall at all times permit the Declarant, its successors, assignees, agents and designees, the right to go upon any and all Lot or Lots, streets and Open Space to accomplish and to complete grading or landscaping in accordance with the approved plans or required by New Castle County or the State of Delaware, or any department or agency thereof.

(16) In the event that any dwelling is leased or rented to any third party by its Owner, such Owner shall promptly furnish a copy of the lease to the Corporation, and shall promptly furnish a copy of this Declaration to the tenant. If, during such tenancy, the dwelling is not being maintained to the highest standards elsewhere evident in Timber Farms, or if this Declaration is being violated by the tenant, the Corporation shall so notify the tenant and the Owner in writing, by certified mail, return receipt requested, sent to their last known address. Thereafter, unless such lack of maintenance or tenant's violation has been rectified within thirty (30) days and does not reoccur for at least ninety (90) days, the Corporation may, at the Owner's expense, accomplish such maintenance as it deems reasonably necessary to preserve Timber Farms' highest

standards of appearance and care, and/or terminate the lease and evict the tenant, as applicable. Any violation of this Declaration or the rules and regulations shall be deemed a breach of the lease and shall entitle the Corporation, as agent for the Owner, to proceed accordingly against the tenant.

ARTICLE VI

ADDITIONAL TRACTS

The Declarant reserves the absolute right without the joinder of any Owners to supplement this Declaration for the purpose of extending its provisions over lands and premises adjacent to the Property or adjacent to such adjacent lands and premises over which the Declaration is or has been extended (the "Additional Tracts"), whether owned by the Declarant or not, for the purposes of creating uniform restrictive covenants for the Property and such Additional Tracts and employing the Corporation as the single maintenance corporation for the Property and such Additional Tracts. Any such supplement must provide for reciprocal easement rights by Owners and the owners of portions of the Additional Tracts over the Open Space or any open space or common facilities in the Additional Tracts and for a proportionate sharing of the maintenance costs of each.

ARTICLE VII

MISCELLANEOUS

(1) Neither the Corporation nor any of its directors, officers and members shall have liability to any Lot Owner, tenant, occupant, invitee or other person for any failure to perform any duty herein created, or for any negligent performance, nor shall the Corporation or its directors, officers or members have any liability for failure to enforce this Declaration, or for any other alleged negligent act or omission.

(2) The Declarant hereby expressly reserves the right at any time and from time to time, with the consent of the Owners of fifty percent (50%) or more of the Lots (other than Lots owned by the Declarant) to waive, extinguish or reduce the requirements of all or any of the foregoing declarations, covenants, restrictions, conditions, agreements and/or provisions; provided, however, that any such waiver, extinguishment or reduction shall be applicable to all the Lots, and provided, further, that Declarant shall not modify or change the requirement that all Lots be used for single family residential purposes.

(3) The Declarant reserves the right to waive or modify any requirement as to any individual Lots necessary to avoid hardship resulting from unintentional noncompliance with this Declaration, provided the Board of Adjustment for New Castle County shall have granted a variance for such noncompliance if same also violates the applicable Zoning Code.

(4) This Declaration shall be regarded as consisting of real covenants running with and binding upon all Lots in Timber Farms. It shall be binding upon the Declarant, its successors, assigns and grantees (while it or they hold title to any such Lot) until the first day of January, 2009, and thereafter shall automatically continue in full and likewise binding force and effect for successive ten (10) year periods, unless and until at least two (2) years before January 1, 2009, and until at least two (2) years before the expiration of any subsequent ten (10) year period, the Owners of sixty percent (60%) or more of the Lots, and the Declarant (or its successors or assigns) shall execute and acknowledge a declaration or declarations releasing, after such time period or periods, all or any part of the land affected hereby from all or any of the provisions herein contained, and shall record such declaration or declarations in the aforesaid Office where this Declaration lies of record.

(5) This Declaration shall be construed to effectuate its purposes, under and in accordance with the laws of the State of Delaware; but the invalidation of any part or portion hereof shall in no wise affect or invalidate the remaining parts or portions. In no event shall any provision be construed more strongly against or less strongly in favor of the Declarant as the author hereof. The singular and the plural, the masculine, feminine and neuter, and the tense of verbs shall be interchangeable as the context may require.

(6) The Declarant shall have the right, power and authority at any time and from time to time, without notice to, action by, or consent of any other Lot Owner or Owners, to assign all or any part of its rights, powers, privileges and authorities hereunder to the Corporation and/or to any other party or parties by written document specifically reciting the intent so to assign which shall be executed and acknowledged by such other party or parties, and recorded in the aforesaid Office where this Declaration lies recorded. In no event shall Declarant's conveyance of any Lot be deemed to include any such assignment, but such assignment must be by a separate instrument to be effective.

(7) Notwithstanding any other provision in this Declaration to the contrary, no restriction, limitation, covenant or other provision in this Declaration or promulgated pursuant hereto, shall be so applied, construed or enforced as to interfere with the construction and sale of homes in Timber Farms by the Declarant. Without limiting the foregoing, the presence of construction vehicles, materials, equipment, trailers, portable toilets and temporary sheds, the existence of noise, dust, dirt and other inconveniences of construction, the pursuit of construction and sales activities utilizing on-site sales offices and signs, and the showing for sale and/or temporary rental of homes, shall not be deemed violative of this Declaration.

(8) Each Lot Owner, by accepting a deed to his or her Lot, and each occupant of any Lot or dwelling thereon, is thereby deemed to have agreed that breach of this Declaration (other than by Declarant for construction purposes as permitted above) will result in irreparable harm to the other Lot Owners, may be enjoined, that specific performance hereof may be awarded, and that any Lot Owner (other than Declarant) found to have breached this Declaration shall be liable for attorney's fees and court costs incurred in its enforcement. Each Lot Owner further empowers the Corporation, as agent for all Lot Owners, to bring any action to enforce this Declaration.

(9) The Declarant, so long as it is the owner of any Lots, shall have the absolute right to amend this Declaration without the joinder of any Owners by executing and recording amendments in the Office aforesaid if such amendments are:

(a) required by Federal, State, County or local law, ordinance, rule or regulations; or

(b) required by any mortgagee of improved Lots and dwelling houses in the Property; or

(c) required by any title insurance company issuing title insurance to Owners and/or mortgagees of same; or

(d) required by the Federal Housing Administration, Department of Housing and Urban Development, Veterans Administration, Farmers Home Administration, Delaware State Housing Authority, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, GNMA or by any like public or private institution acquiring, guaranteeing or insuring mortgages or providing any type of financial assistance with respect to dwelling units in the Property; or

(e) required to correct errors or technical deficiencies or imperfections or to clarify ambiguities; or

(f) required to supplement this Declaration in order to extend its provision over any Additional Tracts.

So long as the Declarant is an Owner of any Lots, Open Space or any other portion of the Property, this Declaration may not be amended without the written approval of the Declarant.

(10) Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

(11) Nothing herein contained shall prevent dedication of all or part of the Open Space to any appropriate governmental body or authority having jurisdiction which agrees to maintain and improve said Open Space, subject to the written approval of two-thirds (2/3) of the Class A Members of the Corporation having a right to vote and the entire Class B membership.

(12) All reference herein to the masculine shall be deemed to include the feminine or neuter genders, and vice versa, as appropriate. All reference herein to the singular shall be deemed to include the plural, and vice versa, as appropriate.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused its seal to be affixed and these presents to be signed by its officer thereunto duly authorized the day and year first above written.

FOREST CREEK DEVELOPMENT, INC.

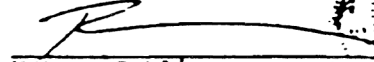
By: Thomas P. Capano  
Thomas P. Capano,  
Vice President

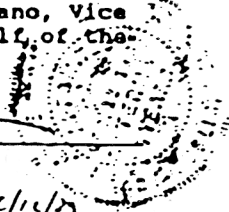
Attest: Teri A. Strayella  
Assistant Secretary



STATE OF DELAWARE )  
                          ) SS  
NEW CASTLE COUNTY )

This instrument was acknowledged before me on the 20<sup>th</sup> day of July, 1989, by Thomas J. Capano, Vice President of Forest Creek Development, Inc. on behalf of the Corporation.

  
\_\_\_\_\_  
Notary Public  
Commission expires: 10/1/92



RECORDED 02 1989 3:30

Recorder