

PREPARED BY AND RETURN TO:  
KAUPIN TAYLOR ELLIS & ADAMS,  
P. O. DRAWER 19764, RALEIGH, N.C. 27619

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE FOREST AT PARKWAY RECORDED IN  
BOOK OF MAPS 1988, PAGES 1732 AND 1733, WAKE COUNTY REGISTRY

NORTH CAROLINA  
WAKE COUNTY

THIS DECLARATION, made on the date hereinafter set forth by  
THE NEW FORTIS CORPORATION, a North Carolina corporation, hereinafter  
referred to as the "Declarant;"

WITNESSETH: THAT WHEREAS, the Declarant is the owner  
of certain property lying within the Town of Cary, Wake County, North Carolina,  
which is more particularly described as The Forest, Phase I, Section One, as  
shown on a map recorded in Book of Maps 1988, Page 1732, Wake County  
Registry and The Forest, Phase I, Section Two, as shown on a map recorded in  
Book of Maps 1988, Page 1733, Wake County Registry.

WHEREAS, said properties have been subjected to a Declaration  
of Covenants, Conditions and Restrictions of the Parkway Community  
Association, Inc. recorded in Book 4158, page 268, Wake County Registry, as  
amended in Book 4166, page 275, Wake County Registry,

WHEREAS, Declarant will convey the said properties, subject to  
certain additional protective covenants, conditions, restrictions, reservations,  
liens and charges as hereinafter set forth;

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

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ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to THE FOREST AT PARKWAY HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association, unless a contrary intent is evident.

Section 3. "Buffer Area" shall mean any area designated as such on a recorded map of the Property.

Section 4. "Building" shall mean and refer to a single-family detached residential structure, constructed or erected on the Property.

Section 5. "Common Area" shall mean all real property, including private streets, if any, and amenities, if any, owned by the Association for the common use and enjoyment of members of the Association. At the time of recording of this Declaration, it is not contemplated that the Association will own any Common Area.

Section 6. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses of administration, maintenance, repair, or replacement of the property which the Association is obligated to maintain by the provisions of this Declaration;
- (c) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (d) Expenses agreed by the members to be common expenses of the Association; and

Section 7. "Declarant" shall mean and refer to THE NEW FORTIS CORPORATION, and its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section 8. "Declaration" shall mean and refer to this Declaration of Protective Covenants, Conditions and Restrictions for The Forest at Parkway, a part of the Parkway Planned Unit Development, and all subsequent valid amendments thereto.

Section 9. "Lot" shall mean and refer to any plot of land for use as a site for a single-family detached residence shown upon any recorded map of a portion of the Properties.

Section 10. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 11. "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 Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 12. "Parkway Association" shall mean and refer to The Parkway Community Association, Inc., its successors and assigns.

Section 13. "Parkway Declaration" shall mean and refer to that Declaration of Covenants and Restrictions of the Parkway Community Association, Inc., recorded in Book 4158, page 268, Wake County Registry and all subsequent valid amendments thereto.

Section 14. "Parkway Planned Unit Development" shall mean that property shown on the Land Use Concept Plan entitled "Parkway Planned Unit Development" filed with the Town of Cary as amended.

Section 15. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 16. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

## ARTICLE II ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members Except as provided in §2 of this Article, annexation of additional Property shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any.

Section 2. Annexation by Declarant If, within 5 years of the date of incorporation of this Association, the Declarant should develop additional lands within the boundaries of the property described on Exhibit "A" attached hereto or within a one mile radius of the property described on the attached Exhibit "A", such additional lands may be annexed to said Properties without the assent of the Class A members:

Section 3. Method of Annexation Annexation of additional Properties shall be accomplished by recording in the Wake County Registry a Declaration of Annexation, duly executed by the Declarant, if the Declarant has the right to annex pursuant to Section 2 above (and by the Association if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except the Town of Cary, if required by its ordinances.

### ARTICLE III MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to the Declaration, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation; however, any creditor of an Owner of a Lot who acquires title to the Property or any portion thereof pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure shall be a member of the Association. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot.

Each member of the Association shall also be a member of the Parkway Association and shall pay dues to the Association as provided herein and to the Parkway Association as provided in the Parkway Declaration.

### ARTICLE IV VOTING RIGHTS

Section 1. Voting Classes The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lot, all such

persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot and no fractional vote may be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article III, provided, that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, such additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article II, Section 2 above, or

(b) on December 31, 1994.

Section 2. Suspension of Voting Rights The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations.

## ARTICLE V COVENANT FOR ASSESSMENTS

### Section 1. Creation of the Lien and Personal Obligation of Assessments

The Declarant, for each Lot owned within the Property, hereby covenants, and every other owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges which are common expenses; and

(b) Special assessments for capital improvements. Notwithstanding any provision herein to the contrary, the assessment for each Lot owned by Declarant shall be twenty-five percent (25%) of the assessment which would have otherwise been due.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon, costs of collection and reasonable attorney fees shall be a charge on the land and shall be a continuing lien upon the Lot and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the Lot at the time the assessment



fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments shall be shared equally by the owners of each Lot, except as otherwise provided in this section.

The obligation to pay assessments to the Parkway Association shall be as provided in the Parkway Declaration.

Section 2. Purpose of Assessments The annual assessment shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents of the Properties; enforcing these covenants and the rules of the Association; and maintenance of buffer areas and landscape easement areas located on Lots as provided in Article VII, Sections 3 and 4 of this Declaration; and paying all Common Expenses.

Section 3. Amount of Annual Assessment

(a) Initial Annual Assessment. To and including December 31, 1989, the initial annual assessment shall not be in excess of \$48.00 per Lot, the exact amount of which shall be determined from time to time as provided in Subsection (d) of this Section 3. (This amount does not include any assessment paid to the Parkway Association as provided by the terms of the Parkway Declaration).

(b) Increase by Association. From and after December 31, 1989, the annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, to an amount which may not exceed the previous year's assessment (or the previous year's revised assessment determined pursuant to subparagraph (c) below) plus Ten (10%) percent.

(c) Increase by members. From and after December 31, 1989, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. The limitations herein set forth in subparagraphs (b) and (c) shall not apply to an increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation or to an increase in assessments necessary to cover the cost of hazard and/or liability insurance in the event the Association is required to obtain such insurance on the areas it maintains.

(d) Criteria for Establishing Annual Assessment. The Association is required to set the annual assessment high enough to enable the Association to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the areas the Association is obligated to maintain. The reserve fund shall be maintained out of the annual assessments for Common Expenses as provided for in this article. In establishing the annual assessment for any assessment year, the Board of Directors shall set

the annual assessment high enough to cover all current costs and expenses of the Association, any accrued debts, and reserves for future needs.

(e) Decrease of Annual Assessment. The Board of Directors may decrease the annual assessment from time to time if, in its opinion, such decrease is prudent.

Section 4. Special Assessments for Capital Improvements In addition to the annual assessments authorized above, the Association, may levy, in any assessment year, a special assessment applicable to that year only for the purposes of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the property maintained by the Association, including the necessary fixtures and personal property related thereto, and to provide for facilities and equipment necessary to offer the services authorized herein. Any such special assessment proposed by the Association shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. The amount of the proposed assessment need not be stated.

Section 5. Uniform Rate of Assessment Both the annual assessment and special assessments must be fixed at a uniform rate for all Lots, on a per Lot basis, and may be collected on a monthly or quarterly basis as determined by the Board of Directors.

Section 6. Quorum for Any Action Authorized Under Sections 3 and 4 At the first meeting called, as provided in Section 3 and 4 of this Article, 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, subsequent meetings may be called, subject to the notice requirement set forth in sections 3 and 4 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the next preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the next preceding meeting.

Section 7. Date of Commencement of Annual Assessments Due Dates. The payment of the annual assessment shall commence upon the sale of the first Lot subject to this Declaration. Assessments shall commence as to any Lot made subject to this Declaration pursuant to Article II herein upon recording the Declaration of Annexation which subjects such Lot to this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year or the Association's fiscal year as the Board deems appropriate. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to

every owner subject thereto. The due dates shall be established by the Board of Directors. The Association, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments Remedies of the Association. Any assessment or portion thereof which is not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of nine percent (9%). The Association may bring an action against the owner personally obligated to pay the same, and interest, costs, late payment charges and attorney's fees actually incurred shall be added to the amount of such assessment. If any law permits the filing of a lien and the foreclosure of such lien, or other similar action, as a method of enforcement of the Association's right to collect assessments, the Association may use such remedy. No owner may waive or otherwise escape liability for the assessment provided for herein by abandonment of his Lot.

Section 9. Subordination of Lien to Mortgages The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. A sale or any transfer of any Lot shall not affect the assessment liens; provided, however, that the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. Any delinquent assessments which were extinguished pursuant to a foreclosure of a first mortgage or any proceeding in lieu of foreclosures may be reallocated and assessed equally to all of the Lots as a Common Expense. No sale or transfer shall relieve such Lot from the liability for any assessment thereafter becoming due or from the lien thereof. This section may not be amended without the prior written approval of any first mortgagees and insurers of first mortgages.

Section 10. Two Months Assessments to be Collected at Closing At the closing of each sale of a Lot, a sum shall be collected from the purchaser equal to the total assessment for such Lot for the succeeding two months and such sum shall be contributed to the working capital fund of the Association to be used by the Association to meet unforeseen expenditures. This contribution shall not be considered an advance against assessments to become due or a refundable deposit.

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ARTICLE VI  
MAINTENANCE OF PROPERTIES

Section 1. Maintenance of Lots If in the opinion of the Board, an Owner fails to maintain his Lot, buffer areas, or landscape easement areas located on a Lot as shown on a recorded map, in a neat and orderly condition or otherwise neglects his property and allows unsightly conditions to develop, the Board, after 30 days written notice to the Owner, may, but is not obligated to, take steps to remedy the problem. Such remedy may include, but shall not be limited to; the removal of debris or junked cars, the mowing of grass or cutting of brush and the painting or repair of structures located on the property. The Board may bill such Owner for all expenses incurred in correcting the problem. Every Owner by acceptance of a deed covenants to pay said bill. Failure to pay said bill shall allow the Board to file an action to collect the unpaid amount and such action may result in a lien against the Lot.

Section 2. Buffer Areas The buffer areas located on Lots shown on recorded maps shall remain in an undisturbed, natural state, provided that, with the written approval of (i) the Town of Cary and (ii) the Board or the architectural committee of the Association or the Declarant during the period the Declarant has voting control of the Association, an Owner may erect a fence in the buffer area on his Lot. The erection of any fence shall be governed by the provisions of Article VII of the Declaration on architectural control. The Association and the owner of any Lot on which a buffer area is located may, but is not obligated to, plant trees and shrubs in the buffer areas. All lots on which buffer areas are located are subject to an easement in favor of the Association and the Parkway Association for ingress and egress, to plant trees and shrubs and to enforce the provisions of the Declaration and the Parkway Declaration as to the buffer areas. The cost of such maintenance shall be a Common Expense, which shall be paid from funds supplied from the annual assessment.

Section 3. Landscape Easement Areas Certain Lots in the Properties are subject to a landscape easement as shown on recorded maps. Such landscape easement is in favor of the Association for ingress and egress over such Lot and for planting and maintenance of the areas. The cost of such maintenance shall be a Common Expense, which shall be paid from funds supplied from the annual assessment. The Owner of a Lot subject to the landscape easement may plant trees or shrubs or install fences in the landscape easement area only with prior written approval of the Association or an architectural committee.

Section 4. Entrance Signs Certain Lots in the Properties are subject to an easement for an entrance sign as shown on recorded maps. Any Lot subject to a sign easement is also subject to an easement in favor of the Association for ingress, egress and maintenance of the sign. The entrance sign shall be the property of the Association. The cost of maintenance of the entrance sign shall

be a Common Expense and funds for such maintenance shall be supplied from the annual assessment.

Section 5. Medians Medians located on public streets will not be owned by the Association; however, the maintenance of the medians shall be supervised by the Association. The cost of such maintenance shall be a common expense, which shall be paid from funds supplied from the annual assessment.

## ARTICLE VII ARCHITECTURAL CONTROL & INSPECTION

Except for initial improvements by Declarant, no construction, erection, or installation of any improvements, including, but not limited to, residences, outbuildings, fences, walls, exterior television antennas and other structures, shall be undertaken upon the Properties unless the plans and specifications therefore, showing the nature, kind, shape, height, color, materials and location of the proposed improvements shall have been submitted to the Declarant or its agent and expressly approved in writing. No subsequent alteration or modification of any existing improvements nor construction, erection, or installation of additional improvements may be undertaken on any of the Properties without prior review and express written approval of the Board of Directors of the Association, or by an architectural committee.

In general, no exterior alterations, including painting and additions to buildings or garages, shall be considered for approval unless such alterations or additions are in harmony with existing structures, as to style, shape, color and size. However, this section shall not be construed to mean that the Architectural committee or Board shall have to approve a proposed alteration or addition that meets the above criteria.

Generally, approval or disapproval should be issued within thirty days. In the event that the Declarant or the Association, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within sixty (60) days after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Association if they contain erroneous data or fail to present adequate information upon which the Declarant or the Association, as the case may be, can arrive at a decision.

The Declarant and/or the Association (as applicable) shall have the right, at its election, but shall not be required, to enter upon any of the Properties during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE VIII  
RULES AND REGULATIONS

The Board of Directors of the Association shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the Lots. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in the Association's corporate minute book which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

ARTICLE IX  
PROTECTIVE COVENANTS

Section 1. Lot Size Lot shall have a width at the minimum building set back line and an area that meets the minimum requirements of the ordinances of the Town of Cary.

Section 2. Land Use No Lot shall be used except for residential purposes; provided, however, that nothing herein shall prevent the conversion of portions of Lots to public or private streets. Except as provided in Section 4 of this Article, no Building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling, detached or attached garages and accessory storage buildings. Storage buildings are permitted in the rear yard of a Lot provided prior written approval is obtained pursuant to Article VII of this Declaration. Prefabricated and metal storage buildings are expressly prohibited.

Section 3. Building Location All Buildings, including, without limitation, storage buildings, shall be located a minimum of 25 feet from any road right-of-way.

All Buildings, including, without limitation, storage buildings, shall be located a minimum of 8 feet from any side line.

All Buildings, including, without limitation, storage buildings, shall be located a minimum of 20 feet from any rear yard line.

The Declarant, or the Association as the case may be, may waive a violation of the setback requirements contained herein by a written instrument recorded in the Wake County Register of Deeds Office.

Section 4. Temporary Structure No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 5. Animals No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept, subject to the rules and regulations of the Association, provided that they are not kept, bred or maintained for any commercial purpose. If dogs, cats or other household pets are kept outdoors, such animals shall be kept in the rear yard, enclosed by a fence approved by the Declarant or the Association.

Section 6. Mail Box Posts All mail box support posts shall be of material and design as approved by Declarant or architectural committee.

Section 7. Signs No sign of any kind, except an owner and street number identification, shall be displayed to the public's view on any Lot except one professional sign of not more than 5 square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale period. The Declarant or the Association shall have the right to enter any Lot and summarily remove any sign which violates this provision if the violation has not been removed after 5 days, written notice to the Lot Owner.

Section 8. Prohibition of Satellite Dishes and Clotheslines Satellite dishes are prohibited on the Property. Outdoor clotheslines are prohibited on the Property unless approved in writing by the Association or an architectural committee.

Section 9. Fences No fence of any kind may be erected in the buffer area on any Lot unless the Owner secures the approvals required by the Declaration (Article VI, Section 2) and the Town of Cary. Fences of a type specified and approved in writing by the Declarant, the Board or an architectural committee of the Association may be erected in the rear yard or side yard of Lots; no fence shall be allowed in front yard of Lots.

Section 10. Parking Parking of all vehicles of any type on Lots shall be governed by the Rules and Regulations established by the Association as provided in Article VIII of this Declaration.

Section 11. Vehicles Unlicensed or disabled vehicles shall be parked only within an enclosed garage. Boats, trailers and campers shall be parked only within an enclosed garage or on parking pads approved by the Declarant or the Association in the side or rear yards of Lots.

Section 12. Burning Burning of trash on any lot is prohibited.

Section 13. Buffer Areas Subject to the provisions of the Parkway Declaration and the Declaration areas designated as buffer areas on recorded maps shall be left in their undisturbed, natural state. No improvements may be placed, erected or constructed on the buffer areas, except that Owners may erect

fences in the buffer area on their Lot if they secure the necessary approvals required by the Declaration (Article VI, Section 2) and the Town of Cary.

Section 14. Landscape Easement Areas No improvements may be placed, erected or constructed in areas designated as "landscape easement" areas on recorded maps other than those constructed by the Declarant or approved in writing by the Declarant or the Association.

Section 15. Nuisances No noxious or offensive activity shall be carried on upon any Lot, nor shall any activity be conducted on any Lot which is or may become an annoyance to the neighborhood. \*

Section 16. Tree Removal No trees or other vegetation except weeds, deadwood, underbrush, or grass may be cut or removed by an Owner other than the Declarant from any Lot prior to or during the initial construction of improvements on a Lot without the prior written approval of the Declarant. Subsequent to the initial construction of improvements on a Lot, no tree having a trunk diameter exceeding six (6) inches, four (4) feet above ground level, shall be removed without the prior written approval of the Declarant or the Association. This section shall not require the prior written approval of the Declarant or the Association for the removal of any tree which is dead, diseased or poses an imminent threat or danger to persons or property.

## ARTICLE X

### RIGHTS OF FIRST MORTGAGEES AND INSURERS OF FIRST MORTGAGES

Any institutional holder of a first mortgage on a Lot will, upon request in writing to the Association, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings (c) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage, (d) receive written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage, (e) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (f) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, (i) be furnished with a copy of any insurance policy owned by the Association and (j) receive an audited financial statement for the preceding fiscal year. The Association may require the payment of expenses incurred in preparing copies and mailing of documents furnished to first mortgage holders pursuant to this Article.



## ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenant, reservations, liens, and charters now or hereafter imposed by the provisions of this Declaration, and the Parkway Declaration as it applies to the Properties. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Insurance In the event the Association becomes the owner of any buildings or other improvements or personal property the Board of Directors shall obtain hazard insurance in an amount equal to the maximum insurable replacement value as determined by the Board of Directors in conformance with the requirements of the Federal National Mortgage Association Lending Guide, Chapter 3, Part 5, " Insurance Requirements. " In the event the Association becomes the owner of any real property, the Board of Directors of the Association shall obtain liability insurance coverage on the Common Area in the amount of \$1,000,000 for bodily injury and property damage for any single occurrence or if such coverage is not reasonably available, in an amount deemed appropriate by the Board of Directors in conformance with the requirements of the Federal National Mortgage Association Lending Guide, Chapter 3, Part 5, "insurance Requirements". Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Association as a Common Expense from the annual assessment.

The Association shall maintain blanket fidelity bonds for all officers, directors and all other persons handling or responsible for funds of or administered by the Association. The fidelity bonds shall name the Association as the obligee and the premiums should be paid as a common expense by the Association. The fidelity bond should cover the maximum funds that will be in the custody of the Association at any given time during the term of the bond. In any event, the fidelity bond must at least equal the sum of three months assessments on all lots plus reserve funds.

The Board may secure Officers and Directors insurance in such amounts as the Board deems appropriate. Premiums shall be paid by the Association as a Common Expense from of the annual assessment.

Section 3. Severability Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. FHA/VA Approval Notwithstanding any provisions in this instrument to the contrary, as long as there is a Class B membership, and if Declarant desires to qualify sections of this subdivision for Federal Housing Administration or Veterans Administration approval (but not otherwise), the following actions will require the prior approval of Federal Housing Administration or the Veterans Administration, if approval is required by these agencies: Annexation of additional properties, amendment of this Declaration of Covenants, Conditions and Restrictions, merger and consolidations and dissolution.

Section 5. Amendment The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for an unlimited number of successive periods of ten (10) years each. This Declaration may be amended by an instrument signed by the owners of not less than sixty six and two thirds percent (66 2/3%) of the Lots that have been made subject to this Declaration.

Furthermore, the Declarant, for so long as it controls the Board, and thereafter, the Board of Directors, may amend this Declaration without the consent of the owners and hereby reserves the right to act on behalf of the owners to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots therein for mortgage or improvement loans made, guaranteed or insured by a governmental agency, including, without limitation, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, Housing and Urban Development and Federal Home Loan Mortgage Corporation, or to comply with the requirements of law or regulations of any governmental corporation or agency regarding purchase of mortgage interests in Lots by such agency. A letter from any such agency stating that a change is desired or necessary in order to qualify the Property or any Lots for loans eligible to be guaranteed by, insured by or purchased by such agency, shall be sufficient authority for the amendment of this Declaration.

Such amendment shall be executed in the name of the Association by the President (or Vice-President) and by the Secretary (or Assistant Secretary) of the Association and recorded in the Office of the Register of Deeds of Wake County.

Section 6. Certification of Amendment If any amendment to these covenants, conditions and restrictions is executed, each such amendment shall be delivered to the Board of Directors of the Association. Thereupon, the Board of Directors, shall, within thirty (30) days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined);

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO  
COVENANTS, CONDITIONS AND  
RESTRICTIONS OF THE FOREST AT PARKWAY

By authority of its Board of Directors, The Forest at Parkway Homeowners Association hereby certifies that the foregoing instrument has been duly executed by the Owners of \_\_\_\_\_ percent of the Lots in The Forest at Parkway and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of The Forest at Parkway.

THE FOREST AT PARKWAY  
HOMEOWNERS  
ASSOCIATION, INC.

BY: \_\_\_\_\_  
President

ATTEST: \_\_\_\_\_  
Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry, provided, however, that no such amendment shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots the Properties.

Section 7. Restrictions Against Association Entering Into Contracts

Furthermore, the Association, shall not enter into contracts or leases (including a management contract) either directly or indirectly unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time upon not more than 90 days notice to the other party thereto and, if the contract is a professional management contract, such contract may not extend beyond a term of one year.

Section 8. Conflict of Declarations In the event of a conflict between the provisions of this Declaration and matters intended to be dealt with by the Parkway Declaration, the provisions of the Parkway Declaration shall take precedence and be controlling.

Section 9. Books and Records Current copies of the Declaration, Bylaws, rules and regulations and books of the Association shall be available

during normal business hours for inspection and copying by Lot owners and mortgage holders.

## ARTICLE XII EASEMENTS

Section 1. Walks, Drives, Parking Areas and Utilities All of the Property shall be subject to such easements for driveways, walkways, parking areas, water lines, irrigation systems, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, cable television and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declarant. The Declarant may subject any portion of the Property to additional easements prior to the conveyance of such Property. The Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Area conveyed to it, if any, such further easements as are requisite for the convenient use, enjoyment, maintenance or operation of the Property.

The Declarant reserves the right to subject the real property covered by this Declaration to a contract with a power and light company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to the power and light company by the owner of each Lot.

Section 2. Drainage and Utilities Easements for installation and maintenance of utilities and drainage facilities are reserved over the rear ten feet and side five feet of each lot. In the event that the Owner of any Lot shall acquire land adjacent to and in the rear of such Lot, such Lot Owner may relocate the easement herein established over the rear line to conform to the increase in the size of his Lot, provided that alteration in drainage does not thereby adversely affect the drainage of any other Lot or interfere with the rights of other Owners of the Property to services rendered by the easement herein created. Such relocated easement shall be the same width as the original easement.

Section 3. Emergencies Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any Building.

Section 4. Easement for Governmental Agencies An easement is hereby established over the Lots for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 5. Buffer Areas Landscape Easements, Sign Easements. All Lots are subject to easements in favor of the Association for ingress and egress for purposes of planting and maintaining buffer areas, landscape easement areas and sign easement areas as shown on recorded maps and as provided in Article VII of this Declaration.

Section 6. Encroachment All Lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any Building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 7. Easement for Construction Purposes. The Declarant reserves an easement for ingress and egress over Lots for purposes of constructing Buildings on adjacent Lots and performing activities related to the construction of Buildings on adjacent Lots.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument this the 6th day of January 1989.

THE NEW FORTIS CORPORATION