

RESTRICTIONS AND COVENANTS
FOR
FOREST GATE SUBDIVISION
EL PASO COUNTY, COLORADO

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RESTRICTIONS AND COVENANTS FOR FOREST GATE SUBDIVISION

FOREST GATE HOLDINGS, LLC, a Colorado Limited Liability Company (“Developer”) and BOWLING BLACK FOREST COMPANY, a Colorado Limited Liability Company, being the owners of the real estate described as Lots 1 to 50, inclusive, located within the boundaries of the Forest Gate Subdivision in Black Forest, El Paso County, Colorado (which lots are referred to herein individually as a “Lot” and collectively as the “Lots”) for the purpose of preserving the value of the Lots as an exclusive, high quality residential area of lasting value, does declare and provide that all of said Lots in said subdivision shall be used only for the purposes and in the manner set forth hereinafter, and shall be subject to the following restrictions, covenants, and conditions, for the term and time hereinafter specified.

ARCHITECTURAL REQUIREMENTS

1. LAND USE AND BUILDING TYPE. No Lot in said subdivision shall be used except for residential purposes, including gardens, and where expressly permitted herein, for no more than two horses. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family residential dwelling unit not to exceed three stories in height, garages and any other outbuilding specifically approved by the Architectural Committee as provided herein. No mobile homes or pre-manufactured homes of any type will be permitted upon the property.

2. ARCHITECTURAL CONTROL. No structure, whether residence, accessory building, swimming pool, play house, antenna (whether located on a structure or on a Lot), flag pole, wall, sign, landscaping or other improvements shall be erected or placed, nor any landscaping commenced on any Lot until the plans, specifications, plot plan, landscaping plan and elevations showing the location of such building (and its elevation relative to the street) have been approved in writing by the Architectural Committee as to the exterior design, including exterior colors and materials to be applied to said structures, quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography, finish grade elevations and exterior property lines. Furthermore, no alteration in the exterior appearance of any then-existing buildings, including, without limitation, exterior remodeling and the construction of patios, decks and swimming pools, shall be allowed without the prior written approval of the Architectural Committee.

3. MINIMUM FLOOR AREA. No house shall be erected on any Lot with less than the following square footages:

- a. For single-family, single-story houses (including raised ranches), not less than 2,000 square feet on the main floor.

- b. For single-family, split-level, bi-level or tri-level houses, not less than 2,500 square feet on the main two floors.
- c. For single-family, two-story houses, not less than a combined area of 2,500 square feet on the main and upper floors.

The above minimum square footage requirements may be waived by the Architectural Committee if the proposed architecture of the house is such that, in the opinion of the Architectural Committee, it is appealing and compatible with other houses in the Subdivision. For the purpose of determining floor area, stair openings shall be included, but open porches, attached garages or basements (even if finished) shall not be included.

4. GARAGES. Each house shall have a garage containing not less than two automobile garage stalls. Garages may be attached to or detached from the main residential building. Garages doors shall be located to minimize the visibility thereof from the front of any home and from the street fronting such lot.

5. OUTBUILDINGS. One additional ancillary building, keeping with the architecture of the existing home, shall be permitted at the sole discretion of the Architectural Committee.

6. BUILDING LOCATION. No structure shall be commenced or built on any lot unless the Architectural Committee has approved a plot plan showing the planned location of all improvements contemplated upon the lot and the existing location of all improvements on the lot. The Architectural Committee may refuse to approve a proposed plot plan if, in the opinion of the Architectural Committee, the proposed site location will unduly interfere with adjoining lots as to the view, proximity of construction, natural growth or terrain, aesthetic effect or otherwise.

7. SETBACKS. Except as provided below, no structure of any kind shall be located on any lot nearer than 100 feet to the front lot line nor nearer than 50 feet to any rear or side lot line. Eaves, steps and open porches shall be considered as part of the structure.

8. REDUCTION OF FRONT SETBACK. Where it is established to the satisfaction of the Architectural Committee that the layout or design of a residence or outbuilding would be enhanced, and the adjoining properties would not be detrimentally affected, by a reducing the front setback to less than 100 feet, the Architectural Committee may approve a reduced front setback, but no front setback may be reduced to less than 75 feet. Any such exceptions must be approved by the Architectural Committee in writing.

9. REDUCTION OF SIDE SETBACK. Where it is established to the satisfaction of the Architectural Committee that the layout or design of a residence or outbuilding would be enhanced, and the adjoining properties would not be detrimentally

affected, by a reducing a side setback to less than 50 feet, the Architectural Committee may approve a reduced side setback, but no side setback may be reduced to less than 25 feet, and a reduced side setback shall only be approved if the Architectural Committee is satisfied that such a reduction will not result in structures on adjoining lots being closer than 100 feet. Any such exceptions must be approved by the Architectural Committee in writing.

10. CORNER AND DOUBLE FRONTING LOTS. The boundary of any lot adjoining Burgess Road and/or Vollmer Road shall not be considered a front lot line. On a corner lot the long side shall be a side yard.

11. PUD SETBACKS. The planned urban development plan for Forest Gate which comprises part of the zoning ordinance for Forest Gate provides minimum side and rear yard setbacks for some lots which exceed the minimums provided herein, and in such cases the PUD setbacks shall take precedence.

12. FENCES. No fence shall be erected on any Lot without approval of the Architectural Committee, which shall retain complete discretion to refuse approval of any fence material it regards as inappropriate. No fencing may be closer than 75' to any front lot lines. No fence shall be closer than 50 feet to a side yard or rear yard adjoining another lot in Forest Gate unless the person who owns such adjoining lot when the fence is erected consents to such location. Chain link fences are prohibited, except that they may be used for dog runs and similar enclosures provided the chain link fence is not visible from any street, adjacent lot or the front yard of the residence upon which such chain link fence is located.

13. COMPLETION OF CONSTRUCTION. Construction of all buildings shall be completed within twelve months after issuance of a building permit for the prospective building, or such longer or extended period as is approved by the Architectural Committee in writing. No building material of any kind or character shall be stored upon any Lot except in connection with construction approved by the Architectural Committee. Construction shall be promptly commenced and diligently pursued as soon as any building materials are placed on any Lot. If any such structure is abandoned, the Developer and/or the Architectural Committee shall have the authority to remove all or portions of such structures so as to prevent it being unsightly and a detriment to the area. Notice of intent to remove will be posted on the lot ten (10) days prior to such action, and if such removal becomes necessary, the owner of the Lot shall be liable for all reasonable costs of such work.

14. DESIGN STANDARDS. The following standard shall be adhered to in all design and construction, provided however that the Architectural Committee may make such exceptions as it, in its sole discretion, deems reasonable and consistent with the intent and purpose of these Restrictions.

- a. No house plan may be built within 4 Lots of a house with a similar exterior elevation. Exterior elevations and colors shall be varied throughout.
- b. Color schemes will be compatible with the natural environment of the subdivision. Subdued, unobtrusive natural or earth colors will normally be required, and color samples must be submitted with plans.
- c. All chimneys and all exterior flues shall be fully enclosed. Spark arrestors shall be required on all chimneys, and open fires will not be permitted.
- d. All roof pitches to be a minimum rise of 6 inches per foot. Hip roofs and multiple roof planes are recommended, except where the style of the house requires a gable end roof.
- e. Roof materials and color shall be consistent with the architecture, color, and exterior wall material of the house. Tiles, slate, high quality metal or architectural grade composition shingles will normally be required; however, the Architectural Committee may allow other materials where such materials are of equal quality and appropriate to the design and appearance of the structure.
- f. All eaves to have a minimum overhang of 18 inches on eave ends.
- g. All fascias shall be a minimum size of 8 inch.
- h. Primary exterior finish to be:
 - i. Wood or concrete plank siding;
 - ii. Stucco;
 - iii. Brick; or
 - iv. Stone.
- i. No exterior finish shall be:
 - i. Exposed concrete block; or
 - ii. Composition sheeting or plywood board.
- j. All materials used in the construction, alteration or remodeling of any building shall be new and of good quality and design, except that used materials of good quality may be used, provided they are first approved in writing by the Architectural Committee. Samples of all exterior materials shall be submitted to the Architectural Committee for approval.

- k. All houses shall have sufficient trim and/or decoration finished in a color different from the primary exterior finish.
- l. No part of any concrete wall shall be visible from the front or rear of structure at a height greater than 12 inches above finished ground level unless finished with stucco, brick, stone or other material approved by the Architectural Committee.
- m. Each house shall have a mail box of a size and style prescribed by the Architectural Committee.
- n. It is intended to coordinate trim, siding and roofing colors to provide the most aesthetic combination for a particular building as well as for the overall development of the Lots. The overall color scheme must be submitted with the building plans for approval. No changes or deviations in or from such plans and specifications as approved shall be made without the prior written consent of the Architectural Committee.

In reviewing all plans, the Architectural Committee will pay particular attention to exterior elevations, location of chimneys, roof pitch and roofing materials, soffits, fascia, siding, landscaping, quality of materials and workmanship, harmony of exterior design including exterior colors, size, location with respect to topography and finish grade elevation in relation to the street elevation and the finished grade of adjacent structures and Lots.

15. APPROVAL OF CONTRACTORS. No building may be erected or placed on any Lot unless the prime contractor or builder undertaking such construction has been approved by the Architectural Committee prior to the commencement of construction. The approval of the Architectural Committee shall not be unreasonably withheld. Such approval may be withheld for reasons which might be relied upon by a reasonably prudent business person then developing a neighborhood of quality residential homes, including, without limitation, the proposed builder's or contractor's financial status, business history and building reputation.

16. DRIVEWAYS. In addition to obtaining approval from the Architectural Committee, purchasers must contact the El Paso County Department of Transportation for sizing of culverts prior to the installation of any driveways on or to any Lots.

17. UTILITIES. All utility lines, including service lines of whatsoever kind or nature, shall be underground to all Lots within Forest Gate, excepting existing poles and lines on Burgess Road and Vollmer Road. Each Lot owner shall be responsible for all service to their individual Lot from that point of access provided by Developer. All such service lines shall be underground.

USE RESTRICTIONS

18. USE. No Lot shall be used other than for residential purposes as provided in paragraph 1 herein.

19. TEMPORARY RESIDENCES: No structure of a temporary character, camper, trailer, basement, tent or accessory building shall be used on any lot as a residence, temporarily or permanently, either before or after construction of the main residence.

20. EXISTING VEGETATION. Except for dead trees or the control of infestation or disease, trees of a diameter of 6 inches or greater shall not be destroyed or removed except as approved in writing by the Architectural Committee. In the event such vegetation is removed or destroyed without approval, the Architectural Committee may require the replanting or the replacement of same, the cost thereof to be borne by the Lot owner. The owner of each Lot is responsible for immediately removing any diseased trees which might contaminate or spread to adjacent trees and lots, and to meet any other Colorado State Forest Service recommendations or requirements pertaining to thinning of trees, or removal or treatment of pine beetle infested trees.

21. PRESERVATION. Houses shall be located on Lots so as to minimize damage to existing foliage and natural growth. The Lots shall be maintained in their natural state as nearly as possible, except that a reasonably sized lawn and garden not to exceed six thousand (6,000) square feet may be installed around the house. NO CLEARING OR CUTTING OF TREES FOR A DRIVEWAY OR HOME SITE MAY BE COMMENCED PRIOR TO OBTAINING WRITTEN APPROVAL FROM THE ARCHITECTURAL COMMITTEE.

22. LOT ELEVATIONS. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of the surrounding Lots. Violation of the grading plan as submitted shall allow either the Architectural Committee or the owner of any adjacent Lot a cause of action against the person violating such grading plan. No earth, rock, gravel or clay shall be excavated or removed without the approval of the Architectural Committee.

23. EASEMENTS. No structure, planting or other materials shall be placed or permitted to remain within any easement of record which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easement. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

24. GRADES. No established street grade shall be disturbed or encroached upon.

25. VEHICLES AND/OR EQUIPMENT STORAGE. The outside storage of vehicles of any nature, boats, trailers, travel trailers, campers and recreational vehicles is prohibited, except that such vehicles may be stored in the rear of a home if screened so as not to be visible from any street, adjacent lot or the front yard of the Lot, and the screening has been approved by the Architectural Committee. The temporary storage of such vehicles in the front yard for the purpose of loading or unloading for a period not to exceed twelve hours is permitted. No commercial vehicles, including trucks, semi-trailers or trailers, may be stored or parked overnight in the subdivision except in an enclosed garage.

26. NUISANCES. No noxious or offensive activity 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.

27. FIREARMS: No hunting of any kind or the discharge of firearms will be permitted in Forest Gate.

28. NOXIOUS VEHICLES AND NOISE: No trail bikes, mini-bikes, motorcycles, all terrain vehicles, snowmobiles or other such noise polluting vehicles will be operated within the Forest Gate subdivision other than on county roads and going to and from residences. No activity shall be permitted which will generate a noise level sufficient to interfere with the reasonable quiet enjoyment of the persons on any adjoining or nearby Lots.

29. DRILLING: No oil or natural gas drilling, development operations, refining, quarry or mining operations of any kind shall be permitted on or in any Lot, nor shall oil or natural gas wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

30. SIGNS. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one square foot, one sign of not more than six square feet advertising the Lot for sale or rent, or signs without regard to size used by the Developer, a builder or licensed real estate broker to advertise the subdivision during the construction and sales period or to identify the subdivision and/or its Developer. Developer, its successors and assigns, reserve the right to erect and maintain at the entryways to the Subdivision signs and other structures, posts, walls, both to permanently identify Forest Gate Subdivision and for sales purposes.

31. ANIMALS. Except to the extent keeping of horses is expressly permitted herein, 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, not exceeding 4 in total, may be kept,

provided that they are not kept, bred, or maintained for any commercial purpose. No animal enclosure, house, pen or fence or similar device shall be placed in the front yard of any Lot. No animals kept on a Lot by an owner may be allowed to run loose off of the Lot. Kennels for the commercial raising, breeding and boarding of animals are prohibited.

32. HORSES. Horses shall be prohibited on all Lots except Lots 27 to 34, inclusive. On Lots 27, 28, 29, 30, 31, 32, 33, and 34 no more than two horses may be kept on each lot. Horses may be kept only for recreational purposes of the residents of each Lot and no horses may be kept for commercial purposes or boarded for payment. Horses shall only be kept within enclosures (corral, stable or barn and horse exercise runs) at all times when not being used for riding. Open grazing of horses outside such enclosures is prohibited. No stables, barns, corrals, exercise runs, or any other structure for the housing or feeding of horses or storage of hay or feed shall be located or placed closer than 100 feet to a home or any side lot line, or closer than 300 to the front lot line. Exceptions to the side yard setback may be permitted by the Architectural Committee if consented to by the owner of the adjacent affected Lot. In all such cases, however, the location of such facilities relative to other lots and appearance from other lots and public roads will be a major consideration to the Architectural Committee. County regulations, which may be placed upon location and maintenance of stable facilities, if more stringent, will pertain. Corrals, stables, barns and horse exercise runs are all structures requiring approval of the Architectural Committee. Corrals, stables, barns and horse exercise runs shall be constructed of sturdy and permanent materials, and complementary to the design, color, construction and location of the house. Such improvements may not be placed on any Lot prior to the construction of a house except in cases of multiple contiguous lot ownership wherein a house has first been constructed on one of the several Lots. On any Lot, stables, barns, corrals and horse exercise runs will not exceed a total of 35,000 square feet in size. If corral rails are staggered, rails must be at least twelve (12) feet in length, with at least sixteen (16) feet recommended. Corrals must have three (3) or more rails, or be constructed of sturdy fencing to insure retention of horses. The top rail of a corral must be a minimum of four and one half feet above the surface of the ground. All stables, corrals, or any structure for the housing, enclosure or feeding of horses shall be maintained in compliance with all lawful sanitary regulations.

33. GARBAGE AND REFUSE DISPOSAL. 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 and all garbage or trash containers must be underground or placed in walled-in areas designed to blend with the house so that they shall not be visible from other Lots or from public streets. Containers may temporarily be placed at the end of a driveway for pick-up by a trash removal service, but only for a short period of time to avoid animals disturbing the containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No trash, litter, junk, equipment boxes and other such items shall be permitted to remain exposed upon the premises and visible from public streets or from other properties within the subdivision.

34. SIGHT DISTANCE AT INTERSECTIONS. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within 10 feet from the intersection or a street property line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

35. ANTENNAE AND WIND POWERED ELECTRIC GENERATORS. No wind powered electric generators, exterior television, radio receiving, or transmission antennae, satellite signal receiving station or dish shall be placed or maintained upon any portion of a Lot without prior written approval of the Architectural Committee. Any antenna or satellite signal receiving dish shall be located so as to minimize visibility thereof from all streets and adjoining lots.

36. CLOTHESLINES. No clotheslines or other clothes drying apparatus shall be permitted in any yard on a permanent basis.

37. FIREWOOD STORAGE. No firewood or wood pile shall be kept outside a structure unless it is neatly stacked, placed in a rear or non-street side yard and screened from street view by plantings or a fence approved by the Architectural Committee.

38. SOLAR COLLECTORS. No active solar collector or apparatus may be installed on any Lot unless such installation is first approved in writing by the Architectural Committee which shall consider the aesthetic and sun reflection effects on neighboring structures. Solar collectors or apparatus installed flat against or parallel to the plane of the roof shall be preferred.

39. LIGHTING. Exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity that such lighting will not disturb the residents of adjacent Lots.

40. SWIMMING POOLS. No above-ground swimming pool shall be permitted.

41. MAINTENANCE. The structures, grounds, lawns and landscaping of each Lot shall be kept and maintained in a neat and attractive manner. Except for wooded Lots or parts thereof left in natural state, all areas of Lots not used as a building site or under cultivation as a garden shall have lawn so cultivated or tended as to keep it free from noxious weeds.

42. SUBDIVISION OF LOTS. Further subdivision of any Lots is prohibited unless approved by the Architectural Committee and subject to compliance with all applicable El Paso County regulations. This restriction shall not be construed to prevent the adjustment of Lot lines between adjacent Lots or the use of one Lot and part of all of another Lot or Lots as one building site, provided that the Committee approves of such use.

ARCHITECTURAL COMMITTEE

43. MEMBERSHIP. While the Developer owns any Lot subject to these Restrictions and Covenants, the Architectural Committee shall consist of the Developer. The Developer may appoint an agent to act in its place as the Architectural Committee. When the Developer no longer owns any Lot subject to these Restrictions and Covenants, the Architectural Committee shall be the board of directors of the Association.

44. POWERS. The Architectural Committee is empowered to approve or disapprove, in writing, all plans for construction, site locations, clearing, landscaping, fencing and any other changes in the natural environment of Lots in Forest Gate. Disapproval of a submission by the Architectural Committee may be based on any ground, including purely aesthetic grounds. If a submission is disapproved, the Architectural Committee shall give written reason for said disapproval to the applicant, which may include recommendations for submission of additional plans, specifications, and material samples, and such changes as it deems necessary to conform to the overall intent as herein expressed. The Architectural Committee may require an applicant to alter site locations as shown on a submitted plot plan, or deny construction if, in the opinion of the Architectural Committee, the proposed site locations will unduly interfere with adjoining lots as to view, sanitation, proximity or type of construction, actual or proposed, or unduly damage the natural growth and terrain. The Architectural Committee may prohibit construction of fences, houses, barns or any other improvements to any Lot, and to order their removal if: i) written application to the Architectural Committee was not made by the owner in advance of construction; ii) approval by the Architectural Committee was not granted in accordance with these Restrictions and Covenants, or iii) actual construction is different from the plans approved by the Architectural Committee.

45. VOTING: A decision by the Architectural Committee requires a simple majority of its members.

46. PLANS. Any person requesting approval from the Architectural Committee shall submit to the Architectural Committee two sets of complete plans, specifications and a plot plan of the proposed improvement. The submission shall show the exterior design, height, building material and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, plans for required landscaping, and a grading plan together with color swatches and samples of exterior finishing materials.

47. PROCEDURE. The Committee's approval or disapproval shall be in writing. In the event the Committee fails to approve or disapprove within thirty (30) days after plans and specifications or any other matters requiring its approval have been submitted, the applicant may deliver a notice to the Committee (hand-delivered or sent by registered or certified mail, return receipt requested) of the applicant's intention to proceed without Committee approval. If the Committee has not provided its written approval or disapproval within ten (10) days following receipt of such notice, then the plans will be deemed approved by the Architectural Committee.

48. RECORDS. The Architectural Committee shall maintain written records of all applications submitted and of all actions taken by it, and a copy of all plans, specifications and plot plans as finally approved shall be retained by the Architectural Committee.

49. ARCHITECTURAL COMMITTEE LIABILITY. Neither the Developer, the Association, the Architectural Committee nor any member, manager, employee or representative thereof shall be liable for damages to any person submitting a request for approval of plans, or to any owner of any Lot by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such request. By approval of plans submitted to the Architectural Committee, the Developer, the Association, and the Architectural Committee shall not be responsible for obtaining any governmental approvals of El Paso County or any other governmental agency having jurisdiction. The Developer, the Association and the Architectural Committee gives no opinion nor makes any representation that the improvement constructed pursuant to plans approved by the Architectural Committee will be structurally sound, or that the plans meet any applicable building codes, zoning ordinances, or other governmental regulations, and it shall be the responsibility of the owner or applicant to comply with all codes, ordinances and regulations. The Developer, the Association and the Architectural Committee shall not have any liability to any builder or Lot owner with respect to the construction of and materials used in any improvement on a Lot. It shall be the builder and the owner's sole responsibility to obtain all permits for the construction of any improvements on a Lot.

50. VARIANCE. The Architectural Committee shall have the power and absolute discretion to authorize a variance from any of the requirements of these Restrictions and Covenants if it finds that the strict application thereof would, in its opinion, result in peculiar or exceptional practical difficulties or undue hardship to the Lot owner without commensurate benefit to the owners of neighboring Lots.

51. FEES AND COMPENSATION. No fees shall be payable by an applicant to the Architectural Committee or the Association for submission of plans to the Architectural Committee. However, if the Committee determines, in its judgment, that an engineer or other licensed professional should review the plans, then the applicant agrees to pay the cost for such professional review. Members of the Architectural Committee shall not be entitled to any compensation for services performed, although members may receive

reimbursement of reasonable out-of-pocket expenses incurred in the performance of their duties.

52. PENALTY. Written application for approval of plans will be made and signed by the owner of the Lot, and the owner will be held responsible for any violations of the covenants which are committed by a builder or other persons engaged by the owner. If any excavation, cutting of trees or construction is commenced by an owner or by a builder commissioned by owner prior to receipt of written approval of plans by the Architectural Committee, then the owner shall pay to the Architectural Committee the amount of \$1,000.00, plus all actual expenses incurred by the Architectural Committee relating to such violation of these covenants, which will utilize said funds to further enforce the Forest Gate covenants as necessary. If legal action is necessary to enforce the covenants against an owner alleged to be in violation, the owner further agrees to pay all legal expenses incurred by the Architectural Committee in collection of said fee. Payment of such a fee does not preclude further action by the Architectural Committee to disapprove such areas in which clearing or construction has begun. The Architectural Committee may, in its sole discretion, waive or agree to reduce payment of any such amount.

53. REPAIR. Upon the failure of an owner to maintain the grounds, lawns or landscaping of their Lot in a reasonably neat and attractive manner, the Architectural Committee may, at its sole option, upon giving thirty (30) days written notice to the owner at the owner's last known address, have grass, weeds and vegetation cut and removed as often as in its judgment such work is necessary, and have dead trees, shrubs, plants, vehicles and refuse removed from such Lot. Upon failure of an owner to maintain the exterior of any structure in good repair and appearance, the Architectural Committee may, at its sole option, upon giving ninety (90) days written notice to the owner, make repairs and improve the appearance of such structure in a reasonable and workmanlike manner. The cost of all such work performed by or on behalf of the Architectural Committee shall be assessed against the Lot upon which such work is performed and shall be paid by the Lot owner upon demand by the Architectural Committee. The cost of such work shall constitute a lien against the Lot and may be enforced by foreclosure in like manner as a mortgage on real property. In that event, the owner shall be liable for the amount due and owing, plus interest, collection costs and expenses and reasonable attorney fees. For the purpose of carrying out such work the Architectural Committee, and its authorized agents and contractors shall have the right to enter upon such Lot at reasonable hours on any business day.

FOREST GATE HOME OWNERS ASSOCIATION

54. MEMBERSHIP. The owner of a Lot shall automatically become a member of the Forest Gate Home Owners Association, Inc., a non-profit, non-stock corporation organized under the laws of the State of Colorado (the "Association"). By acceptance of the deed or other instrument of conveyance, the owner or owners of each Lot consent to such owner's or owners' membership in the Association. Membership in the Association

is appurtenant to each Lot. Each owner of a Lot shall automatically be entitled to the benefits and subject to the burdens relating to such membership in the Association. Membership in the Association shall be limited to the fee simple owners of the Lots, except that in case of an installment land contract where the seller holds title until fully paid, the purchaser, and not the seller, shall be a member

55. VOTING OF OWNERS. Subject to the terms, conditions and limitations contained in the Articles of Incorporation and Bylaws of the Association, the owner or owners of each Lot shall be entitled to one vote as members of the Association for each such Lot owned. An election for members of the Board of Directors of the Association shall be held at such time as twenty-eight (28) Lots have been sold by Developer.

56. JOINT OR COMMON OWNERSHIP. If any Lot is owned by more than one person, the vote to which such Lot is entitled shall also be held jointly or in common in the same manner as title to the Lot. However, the vote for such Lot shall be cast, if at all, as an undivided unit, and neither fractional votes nor split votes shall be allowed. If the common or joint Owners are unable to agree among themselves as to how their vote shall be cast as an undivided unit, they shall lose their right to cast their vote on the matter in question. If only one of the joint or common owners is present at an Association meeting, that owner shall be entitled to cast the vote belonging to the joint or common owners, unless another joint or common owner shall have delivered to the secretary of the Association prior to the meeting a written statement to the effect that the owner wishing to cast the vote has not been authorized to do so by the other joint or common owner or owners.

57. PROXY VOTING. Any member, including Developer, may give a dated, revocable written proxy to any person authorizing the latter to cast the member's votes on any matter or a particular matter. Such written proxy shall be executed by the member or a duly authorized attorney-in-fact. A proxy may be revoked by giving notice to the Association's board or by the member's physical presence at the meeting.

58. PURPOSES. The purposes of the Association shall be to act as the Architectural Committee (after Developer no longer owns any Lot within Forest Gate), to control, operate and maintain the Trail Easement; to maintain drainage facilities within Forest Gate Subdivision and to maintain the two stock ponds, constructed embankment and outlet structure on the property immediately south of Forest Gate pursuant to an agreement made between the Association and the owner of such property, to maintain the fire cisterns within Forest Gate, and to create any other committees of the Association as it may deem necessary for the efficient operation of the Association (including, without limitation, committees for governance, maintenance and improvement of properties, administration of the water augmentation plan, recreational enjoyment, development of services and facilities, or enforcement of these Restrictions and Covenants). All owners agree to be subject to such assessments as may be fixed by the Association Board of Directors. One specific purpose of the Association shall be to operate, maintain, and enforce, to the extent applicable, all the requirements of that plan for augmentation decreed in the Consolidated

Case Nos. 03-CW-302 and 03-CW-078 by the Water Court, Water Division No. 2, State of Colorado, on March 3, 2004. The responsibility to operate, maintain, and enforce the Water Decree cannot be abrogated by the Association. The obligations of the Association regarding the operation of, and compliance with, the Water Decree may not be altered except by Order of the Water Court, which may amend, modify or change such provisions by judicial order.

59. ARTICLES OF INCORPORATION AND BYLAWS. The purposes and powers of the Association and the rights and obligations with respect to the members thereof shall be governed by the Articles of Incorporation and Bylaws of the Association; provided that, , such Articles of Incorporation and Bylaws shall be subject to, and shall not contravene, the terms, conditions, benefits and burdens set forth in these Restrictions and Covenants.

60. ASSESSMENTS. The owner of any Lot shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fees, fines and other sums which are described in these Restrictions and Covenants (hereinafter collectively called the "Assessments") which shall be both a personal obligation of the Owner and a lien against the owner's Lot as provided herein. Each owner of a Lot shall be jointly and severally liable to the Association for the payment of all Assessments. Assessments levied by the Association shall be used exclusively for the improvement and maintenance of the Forest Gate Subdivision as more specifically provided herein. In addition to fees, fines and other sums generally described as Assessments herein, each Lot is subject to Annual Assessments and may be subject to Special Assessments in accordance with the conditions stated below.

A. Annual Assessments may specifically include, but shall not be limited to, expenses and management of the Association and its activities; payment of taxes upon the Association's real and personal property, if any; premiums for all insurance which the Association is required by law to maintain, or all insurance authorized by the Association, and all other expenses connected with such insurance; the creation of adequate reserve funds for maintenance, repair and replacement of those elements of common property or maintenance that must be done or replaced on a periodic basis; maintenance of common fencing; maintenance of cisterns and maintenance or operation of the Trail Easement, and any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the owners of the Lots under or by reason of the these Restrictions and Covenants. Annual Assessments shall be payable in an annual amount and shall commence when the first Lot is conveyed to a purchaser by the Developer.

B. Special Assessments may be levied by the Association Board to raise funds to construct or reconstruct, repair or replace improvements upon properties owned or maintained by the Association; to provide for necessary facilities and equipment; to correct any Association deficit or cost overrun; or to repay any loan made to the Association to enable it

to perform the duties and functions authorized in these Restrictions and Covenants. No Special Assessment may be assessed until it has been approved by a majority of owners. The Association Board shall notify owners in writing of the amount of any Special Assessment and of the manner in which any Special Assessment is payable. If, in the sole opinion of the Board, a Special Assessment will benefit less than all of the Lots, the Special Assessment may be levied on the benefited Lots only.

61. MAXIMUM ASSESSMENT. The Association is a “limited common expense” community under Section 38-33.3-116, C.R.S. of the Colorado Common Interest Ownership Act (the “Act”), as may be amended, and consequently, is only subject to the provisions of Sections 38-33.3-105, 38-33.3-106 and 38-33.3-107 of the Act. The maximum average Assessment against each Lot, exclusive of i) optional user fees; and ii) any insurance premiums paid by the Association, may not exceed four hundred dollars (\$400.00) annually. The \$400.00 limitation may be adjusted annually at the beginning of the fiscal year of the Association in accordance with any increase in the United States Department of Labor Bureau of Labor Statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year.

Following the recording of these Restrictions and Covenants, the Association Board shall set the total Annual Assessment for 2004 at \$50.00 per year, based upon an estimated budget for the Association for that year. The first Annual Assessment will be payable in full at the closing on a Lot by a purchaser and thereafter, on January 1 of each year, unless the Association’s Board gives notice to members of another due date. No later than sixty (60) days before the beginning of each year thereafter, the Board shall set the total Annual Assessment based upon an advanced budget of the Association’s requirements for the following Assessment year. The Association’s Board may fix the Annual Assessment in an amount not in excess of the maximum stated above and shall provide such notice and procedure for budgeting and collection as the Board deems appropriate.

62. Enforcement of Assessments. The Association shall furnish to the owner of a Lot, upon written request delivered to the Association, a written statement setting forth the amount of any unpaid Assessments levied against a Lot and the statement may be relied upon by all persons acting in good faith thereon as conclusive evidence of the payment of such Assessment. Any Assessment which is not paid when due shall be delinquent, and the Association may impose a late charge for each month any Assessment is delinquent, and may also collect reasonable attorney’s fees, interest, costs and expenses of any collection. In addition, any such unpaid Assessment, together with all expenses of collection and attorneys fees shall be a continuing lien upon the Lot against which such assessment was made. The Association may enforce such lien by recording a statement of lien in the records of El Paso County with respect to said Lot, setting forth such information as the Association may deem appropriate. Said lien shall run with the land and shall additionally secure all Assessments and expenses which become due after its filing. Said Lien may be foreclosed by the Association in the manner provided for foreclosures of mortgages under the laws of Colorado. Said Lien may be released by

recording an appropriate document executed by an officer or agent of the Association. Such lien is in addition to any statutory lien or remedy allowed to the Association by law.

TRAIL EASEMENT

63. **TRAIL EASEMENT** The plat of the Forest Gate Subdivision has thereon easements for a non-motorized trail owned and maintained by the Association (the “Trail Easement”). No Lot owner shall enclose, place fences on, excavate, or in any other way encumber or restrict the use of any such trail without the written authorization of the Association, but an owner may prevent the use thereof by any motorized vehicle.

64. **USE AND RULES.** The Trail Easement shall be for the perpetual use as a non-motorized pedestrian, bicycle and equestrian trail for all owners of Lots, their households, guests and invitees, and for the use of such other persons as are designated, either individually or by class, by the Association. The Association may make and enforce rules and regulations for the reasonable use of the Trail Easement, and may by majority vote of the members of the Association restrict or prohibit the use thereof by any person or group.

65. **USE BY LOCAL RESIDENTS.** The Trail Easement is intended to be part of a local trail system, which includes or will include trails through lands outside of the Forest Gate, which trail system is intended to be used by residents of the Black Forest area for pedestrian, bicycle and equestrian use. Residents of the Black Forest area and their guests and invitees are hereby granted permission to make use of the Trail Easement for non-motorized passage on foot, bicycles and horses, subject to such rules and regulations as may be made by the Association. The rights granted by this provision may be restricted, altered, amended or withdrawn by majority vote of the members of the Association.

WATER SUPPLY PLAN

66. Each Lot owner will be conveyed 0.60 acre-feet per year of Dawson aquifer groundwater to be withdrawn over a period of 300 years, and to be permitted pursuant to the Decree of the Colorado District Court, Water Division 2, dated March 3, 2004 in Case No. 03-CW-078.

67. Each Lot owner will be responsible for obtaining a well permit for the drilling of an individual Dawson aquifer well to serve their individual Lot. The wells must be constructed to withdraw water from only the Dawson aquifer, and said wells shall not exceed a depth of approximately 680 below ground surface or the base of the Dawson aquifer, whichever comes first. Every Dawson aquifer well must have plain, non-perforated casing installed and sealed from the ground surface to at least 100 feet below the ground.

68. Each individual well shall be limited to an annual amount of 0.60 acre-feet for residential use in one single family dwelling, irrigation of no more than 8,000 square feet of lawn and garden, and the watering of up to 2 horses. Each Lot must have a non-evaporative septic system installed.

69. Each well shall be marked by the Lot owner, with their permit number and the name of the producing aquifer (Dawson) displayed at the well head.

70. A totalizing flow meter shall be installed on each well and maintained in good working order by the Lot owner. Annual withdrawal records shall be maintained by all Lot owners and submitted to the Association by January 15th of each year, indicating the amounts withdrawn within the previous calendar year. Failure to provide said accounting by Lot owners may result in penalties, the levy of Assessments by the Association or curtailment of the use of the well.

71. The Association shall be responsible for the accounting and replacement requirements under the replacement plan as described in the Augmentation Plan portion of the Water Court decree referenced above. Said requirements include maintaining records showing the metered withdrawals from all Dawson aquifer wells on an annual basis, on the accounting form required by the Water Division District 2 Engineer, submitting the form to the Water Division 2 Engineer annually.

72. The Association shall be conveyed 108 acre-feet per year, or a total of 10,800 acre-feet of nontributary ground water owned by the Developer. This ground water shall be reserved and shall be the source of replacement of modeled stream depletions that occur after well pumping permanently ceases. At such time, the Association may be required to construct wells into the Arapahoe and/or the Laramie-Fox Hills aquifers to withdraw such reserved nontributary ground water for such purpose.

GENERAL PROVISIONS

73. **EXISTING IMPROVEMENTS.** The structures and improvements existing on Lot 40 as of the date of these Restrictions and Covenants will not be required to be altered to be brought into conformance with the provisions hereof, and repairs and minor alterations to the existing structures and improvements will not be required to conform to the provisions hereof, but any replacement and/or new structures, improvements and substantial additions to the existing structures shall be subject to all the requirements hereof.

74. **DEVELOPER.** As used herein, the term "Developer" shall refer to Forest Gate Holdings LLC, or any party designated by Forest Gate Holdings LLC as the assignee of its rights as "Developer" hereunder pursuant to a written instrument recorded with in the records of El Paso County, Colorado. At such time as Forest Gate Holdings LLC and any

party designated by Forest Gate Holdings LLC as the assignee of its rights of "Developer" hereunder ceases to own any Lot, then there shall be no Developer.

75. ACTION IN WRITING: Notices, approval, consents, applications and other action provided for or contemplated by these Restrictions and Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, applications or other action.

76. NOTICES: Any writing described in these Restrictions and Covenants, including but not limited to any communication between the Architectural Committee and a Lot owner, shall be sufficiently served and delivered by mail or otherwise: (a) to the address furnished by the owner to the Architectural Committee or Association, and if the owner has not furnished an address, then to the most recent address of which the Architectural Committee or Association has a record. Notices to the Architectural Committee (until such time as the Developer no longer owns a Lot within Forest Gate) shall be sent to the address of the Developer shown below. Owners, the Architectural Committee, and the Association may change their mailing address by written notice.

77. AMENDMENT. These Restrictions and Covenants may be amended, modified or added to at any time upon the approval, in writing, of the Developer, if it still owns any Lot, or, if it does not, with the approval of two-thirds of the owners, provided that no amendment may repeal any government-imposed requirements for Forest Gate. All amendments shall be recorded in the records of El Paso County, Colorado.

78. TERM. These Restrictions and Covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these Restrictions and Covenants are recorded, after which time it shall be extended automatically for successive periods of five (5) years each unless a document signed by a two-thirds majority of the then-owners of the Lots has been recorded, agreeing to change said covenants in whole or in part or to terminate the same. Notwithstanding the above, the covenants and restrictions regarding water in paragraphs 66-72 shall not terminate unless the requirements of the Water Decree are also terminated by order of the appropriate Water Court. The covenants and restrictions in paragraphs 66-72 may be amended in the manner provided for amendments to other covenants and restrictions, provided that the amendments are consistent with the requirements of the Water Decree or any Water Court approved amendments thereto and further provided that prior written approval of the proposed amendment is obtained from the Board of County Commissioners of El Paso County.

79. ENFORCEMENT. If any owner violates or attempts to violate any provision of these Restrictions and Covenants, then any other owner, the Architectural Committee or the Association shall have standing to bring proceedings at law or in equity against the owner violating or attempting to violate any such provision, and the prevailing party shall be awarded reasonable attorneys' fees and costs. The Architectural Committee

and the Association have the right, but not the obligation, to enforce provisions contained in these Restrictions and Covenants. Property owners in Forest Gate expressly agree to abide by injunctions without necessity of bond, in order to simplify judicial proceedings to remedy covenant violations. In addition, if a judicial action is necessary to prohibit a covenant violation and a violation is established, the violator(s) shall pay all costs of the enforcement proceeding, including reasonable attorney fees. The failure to enforce any right, reservation, restriction, or condition contained herein however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto shall not bar or affect its enforcement. The invalidation by any court of any restriction herein contained shall not in any way affect any of the other restrictions but they shall remain in full force and effect.

80. SEVERABILITY. Invalidation of any of these covenants or any severable part of any covenant by judgment or Court order shall in no way affect any of the other provisions which shall remain in full force and effect.

81. APPLICABLE LAWS. All Lots are subject to all applicable zoning laws, ordinances and building codes. If these Restrictions and Covenants contain a provision more restrictive than any such law, ordinance, or code, then such provision shall apply in addition to such law, ordinance, or code.

82. LIMITATION ON LIABILITY. The Association, the Board, the Architectural Committee and Developer, and any agent or employee of any of the same, shall not be liable to any person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

83. INTERPRETATIVE AUTHORITY RESOLVES QUESTIONS OF CONSTRUCTION. If any doubt or question should arise concerning the true intent or meaning of any of the provisions contained herein, the Developer, during such time as it acts as the Architectural Committee, and thereafter, the Association Board (the "Interpretive Authority"), shall determine the proper construction of the provision in question and shall set forth the meaning, effect, and application of the provision in a written document duly acknowledged by the Interpretive Authority. This determination will thereafter be binding on all parties so long as it is not arbitrary or capricious.

