

# CENTURY 21

Black Bear Realty

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## NOTICE REGARDING COVENANTS AND/OR RESTRICTIONS

The following Covenants and/or Restrictions are added to this record as a courtesy only and are NOT WARRANTED by the property owner, their broker or agent as to completeness, accuracy, currency, or enforceability. Any interested buyer prospect is urged as part of their due diligence to contact the relevant Community Association or developer to determine for themselves what covenants and/or restrictions currently apply, how long they may remain in force, and if any changes or amendments may be currently under consideration. Additionally, or alternatively, one may wish to consider hiring an attorney to conduct this search for them and provide advice as needed.

Century 21 Black Bear Realty

to Covenants.  
See Bl. 209, pg. 214 for Second Amendment.

DECLARATION OF PROTECTIVE COVENANTS

FOR

FIRES CREEK SUBDIVISION

THIS DECLARATION made the 10 day of July, 1997, by FIRES CREEK LAND CO., LLC, a North Carolina limited liability company, herein referred to as "Declarant".

WITNESSETH

THAT, WHEREAS, Declarant is the owner of those certain parcels of land described in that certain deed recorded in Book 201, Pages 135 and 136, Clay County Registry; and

WHEREAS, Declarant intends to sell and convey subdivided lots of the aforesaid tract of land owned by Declarant, and, prior to doing so, desires to impose upon said tract certain mutual and beneficial restrictions, covenants, equitable servitudes and charges under the general plan or scheme of development, for the benefit of all of said subdivided lots and parcels and the present and future owners thereof; and

WHEREAS, Declarant has caused to be incorporated a North Carolina non-profit corporation, for the purpose of maintaining and improving the roadways, water system and other common areas and administering the provisions of the Declaration;

NOW, THEREFORE, Declarant hereby declares that all of the property described in the above-referenced deed recorded in Book 201, Pages 135 and 136, Clay County Registry, shall be held, transferred, sold, conveyed, encumbered, leased, used, improved and occupied subject to the following covenants, conditions, restrictions and easements all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. These covenants, conditions, restrictions and easements shall run with the land and shall be binding upon all persons having or acquiring any right, title or interest in the above-described property or any part thereof, and shall inure to the benefit of each owner thereof.

I. DEFINITIONS

For the purpose of this Declaration the following definitions shall control.

Section 1. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of FIRES CREEK PROPERTY OWNERS ASSOCIATION, INC., and all exhibits which are attached thereto and made a part thereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof. Said Articles of Incorporation are attached as Exhibit "A" hereto and incorporated herein by reference.

Section 2. "Association" shall mean and refer to FIRES CREEK PROPERTY OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation.

Section 3. "Bylaws" shall mean and refer to the Bylaws of FIRES CREEK PROPERTY OWNERS ASSOCIATION, INC., and all exhibits which are attached thereto and made a part thereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof. Said Bylaws are attached as Exhibit "B" hereto and incorporated herein by reference.

Section 4. "Common Areas" are parcels of Declaration Property which have been conveyed by the Declarant to the Association for the benefit of the members.

Section 5. "Declaration" shall mean this instrument, together with those exhibits which are attached hereto and made a part hereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms hereof.

Section 6. "Declaration Property", "Development" and "Subdivision" shall mean and refer to that certain real property described in the deeds recorded in Book 201, Pages 135 and 136, Clay County Registry, to which reference is specifically made, and to such additional lands, if any, as

(5)

may hereafter be annexed thereto and declared to be subject to the provisions of this Declaration by Declarant.

Section 7. "Member" shall mean and refer to each owner of a lot in the Declaration Property.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any lot.

Section 9. "Plat" shall mean any map of Declaration Property, or any portion thereof, which is on record in the Clay County Registry.

Section 10. "Single family dwelling" shall mean a residential dwelling for one or more persons, each related to the other by blood, marriage, legal adoption or, alternately, a group of not more than four (4) persons not so related who shall maintain a common household in such dwelling.

Section 11. "Supplemental Declaration" means any document made and executed by Declarant which annexes any additional lands as Declaration Property and submits same to the terms and provisions of this Declaration or an amendment hereto.

II. PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. Property Subject to This Declaration.

The property described in the deeds recorded in Book 201, Pages 135 and 136, Clay County Registry, to which reference is specifically made, is the property hereby declared to be held, transferred, sold, conveyed, encumbered, leased, used, improved and occupied subject to this Declaration.

Section 2. Additions Thereto.

Declarant shall have the right in its sole discretion from time to time to commit to development and to submit to the terms and conditions of this Declaration additional contiguous lands, but nothing contained in this Article or this Declaration shall obligate Declarant to so do. No lands other than the Declaration Property, as defined hereinabove, shall be burdened with the terms and conditions of this Declaration unless and until such lands are formally annexed as Declaration Property and submitted to the terms and conditions hereof in accordance with the provisions of Article VIII, Section B, hereinbelow.

III. ROADS

Section 1. Declarant's Authority to Retain Rights in Roads.

Declarant shall have the right to retain as to any roads in Fires Creek, such rights thereto, including but not limited to the use thereof and the right to improve, modify and maintain said roads, as is necessary in Declarant's sole opinion for the possible development and sale of other adjacent lands, and rights-of-way for ingress and egress thereto and use and enjoyment thereof by Declarant, its successors and assigns.

Section 2. Owner's Right and Easements of Enjoyment.

Every owner shall have a right and easement of enjoyment in and to said roads in common with all other owners, subject to:

(a) All rules and regulations governing the use and enjoyment of the roads by the Association;

(b) The right of the Declarant and the Association to establish easements over the roads for service to or in favor of any private or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers, storm drainage water

pipes, cable television lines or hook-ups or any other utility services serving any lots within the Declaration Property.

(c) The right of Declarant and the Association to grant easements over the roads for the purpose of ingress and egress to owners of properties adjacent and/or contiguous to Declaration property provided said easements require the Grantee to pay the sum paid by members of the Association for road maintenance, said sum to include all of the assessments described in Article IV hereinbelow. Unless granted an easement by the Declarant or Association as provided herein, owners of adjacent or contiguous properties are expressly prohibited from using subdivision roads.

(d) All provisions of this Declaration not enumerated above, and all restrictions and provisions contained on the plats of the Declaration Property.

### Section 3. Declarant's Right to Maintain.

The non-exclusive right to use all roadways within the Declaration Property shall be an appurtenance to each lot within said property, subject to the reserved right of Declarant and his assigns to use, maintain, improve, and/or replace the roadways, ditches, slopes and culverts, and to install, maintain and replace public and private utilities within the right-of-way of all roads within Declaration Property, for the benefit of Declaration Property and of such other lands as may be from time to time, designated by Declarant.

## IV. ADMINISTRATION, MAINTENANCE AND IMPROVING OF ROADS; AND COMMON AREAS; FINANCIAL RESPONSIBILITY OF OWNERS THEREFOR; AGREEMENT FOR ASSESSMENTS AND ENFORCEMENT THEREOF

### Section 1. Administration, Maintenance and Improvement.

The Association shall be responsible for the administration, maintenance and improvement of the roads, and other common areas in Fires Creek Subdivision.

### Section 2. Financial Responsibility of Owners; Assessments by Association.

The owners are responsible for providing funds necessary to the Association to carry out the above purpose. The Association shall assess each owner as provided herein for its prorata share of such expenses.

### Section 3. Assessments; Personal Obligations of Owners; Creation of Lien.

The Declarant, for each lot owned by it within the property, hereby covenants, and each 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 (which covenant shall run with the land and be binding on every owner) and agree to pay to the Association:

- (1) An initiation fee in the amount of \$120.00 at the time of purchasing a lot in Fires Creek Subdivision.
- (2) Annual assessments for administration and maintenance which initially are \$120.00 per year.
- (3) Annual assessment for capital improvements.
- (4) Special assessments for administration, maintenance and capital improvements.
- (5) An "impact" assessment for abnormal road usage during the construction of improvements, to be due and payable at the time a building permit is issued for construction on any lot.
- (6) A "damage" assessment for injury to or destruction of Association property by a member or guest of an Association Member, said injury and destruction not to include ordinary wear and tear.

Section 4. Rate of Assessment.

All annual and special assessments shall be fixed at a uniform rate for all lots.

The Board of Directors shall fix the amount of the annual assessment and the "impact" assessment at least 30 days in advance of each annual assessment period. Written notice of annual and special assessments shall be sent to every owner. The due dates shall be established by the Board of Directors.

Section 5. Effect of Non-Payment of Assessments; Remedies of The Association; The Personal Obligation of Owner; The Lien.

Any assessment not paid within 30 days after the due date shall be deemed delinquent and shall bear interest from the due date at the rate of 18% or the maximum interest rate allowed by law, whichever is less. The Association's lien is effective from and after recording a claim of lien in the office of the Clerk of Court, Clay County, North Carolina. The services rendered by the Association for the benefit of such lot and for which an assessment is levied shall be deemed to have been performed on the due date of such assessment and to "improve" the subject lands and/or create an "improvement" thereon as defined in Chapter 44A, Article 2, Part 1 of the General Statutes of North Carolina; the lien arising therefrom shall constitute a "lien of mechanics, laborers, and materialmen dealing with the Owner", and such lien may be perfected and enforced pursuant to the provisions of said Part 1. The claim of lien includes only assessments which are due when the claim is recorded. The claim must be signed and acknowledged by an officer or agent of the Association and upon payment, the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action at law against the owner personally obligated to pay the same or enforce the lien against the lot in the manner provided by law. Any action to enforce said lien may, at the Association's option, include a prayer for collection of assessments levied against the lot since the filing date of the Claim of Lien. The Association may purchase the property at any sale thereof contemplated under Section 44-A-14 of the General Statutes of North Carolina.

If any delinquent assessment is not paid with thirty (30) days from the date of the notice of assessment and is placed in the hands of an attorney for collection, there shall be added to the amount due all costs of collection including reasonable attorney's fees.

The lien shall include the amount of all interest which accrues and continues to accrue upon the assessment, and shall include the aforementioned costs of collection and attorney's fees.

All assessments, interest, costs, and attorney's fees shall be and constitute the personal joint and several obligation of each owner as of the date of the notice of assessment. The Association may, in addition or in the alternative to enforcing its lien, bring an action against an owner to seek a money judgment for the amount of the assessment, interest, and costs of collection and attorney's fees.

Section 6. Owner May Not Escape Liability by Non-use of Roads, and/or Common Areas.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the roads and/or common areas or abandonment of his lot.

Section 7. Suspension of Owner's Rights While Delinquent.

The Association shall not be required to allow the exercise of any rights or privileges of membership on account thereof to any owner or to any persons claiming under such owner until all assessments and charges have been paid in full.

V. RESTRICTIONS ON USE

Section 1. Use of Lots Restricted to Residential Purposes.

No lot or portion thereof subdivided in accordance with Section 10 of this Article V shall be used except for one single family residential dwelling, a guest house for bona fide, non-paying

guests, and out buildings approved by the Association. There shall be no commercial activity on any lot; however, the use of a portion of a dwelling as an office or as an area for the creation of works of art by an occupant of such dwelling shall not be construed as commercial activity if such use does not result in an increase of vehicular traffic over the roads of the subdivision.

Section 2. Site Location.

Residences and permitted vehicles shall be reasonably located on each lot in a manner which shall not encroach on the privacy of the adjacent lots or roads. Such locations must be approved by the Association, which shall be the sole determiner of the above criteria.

Section 3. Minimum Square Footage Requirements.

No single-family dwelling shall have less than 800 square feet to finished, enclosed, heatable living space. The minimum dwelling size may be reduced by the Association under the variance powers provided for herein where it appears that a smaller size house will be more suitable for a particular lot and not detrimental to adjoining lots.

Section 4. Set-backs.

The Association will use the following setbacks as general guidelines for the approval of the site location referenced in Section 2 of this Article V:

1. Thirty (30) feet from the front lot line;
2. Thirty (30) feet from the rear lot line; and
3. Thirty (30) feet from the side lot lines.

Section 5. Maintenance of Lots and Improvements.

All lots and all improvements, if any, placed thereon shall at all times be maintained in such a manner as to prevent their becoming unsightly, unsanitary, or a hazard to health. Unimproved lots shall be cleared of undergrowth for a distance of 30 feet from the margin of the road. If not so maintained, the Association shall have the right to rectify such offensive situations, and the costs of such undertakings shall be a special assessment against the lot owner and the lot. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from its actions to so rectify any offensive situations.

Section 6. Burning of Garbage, Trash or Rubbish Prohibited.

No owner shall burn any trash, garbage or refuse on Declaration Property without the approval of the Association and without a permit issued by the appropriate governmental agency.

Section 7. Storage of Garbage, Trash or Rubbish.

No owner shall accumulate on his lot any junk vehicles, or any litter or garbage except in receptacles provided by owner for such purposes. All rubbish, garbage, and trash receptacles shall be buried, covered, or screened in a manner so as not to be visible from any roadway or from adjacent property. All fuel tanks shall be buried.

Section 8. Nuisances.

Owner(s) shall neither cause nor permit any offensive activity to be carried on upon the lands and premises above described, nor cause or permit anything to be done thereon which may be or become an annoyance or a nuisance to the neighborhood. For the purposes of these restrictive covenants, the discharging of firearms, the operation of radio, television, stereo, tape recorder, or other such devices, in a manner such that the resulting sound or noise adversely affects the peaceful enjoyment of other owners, shall be considered offensive activities, but this specification shall not exclude other offensive activities.

Section 9. Portable Structures Prohibited.

No travel trailer, mobile home, modular home, manufactured home, relocated dwelling, tent, lean-to or other temporary structure may be placed or erected on any lot except that temporary structures, trailers or the like may be permitted by the Association when used in the process of erection of improvements thereto. In such event, the location, type and time of existence must be approved by the Association.

Section 10. Resubdivision of a Lot.

Original lots, other than creek-front lots, may be re-subdivided provided that no such subdivision is less than one (1) acre in size. All re-subdivided lots shall be subject to the terms of this Declaration of Protective Covenants. This provision shall not apply to Declarant, which shall have the right to subdivide lots, both creek-front and non-creek-front, in its sole discretion.

Section 11. Animals.

No animal not usually considered to be a household pet may be kept or maintained on any lot. All pets shall be kept reasonably confined and controlled so as not to become a nuisance. Horses shall be permitted on all lots except creek front lots.

Section 12. Access to Lots.

There shall be no access to any lot within Declaration Property other than by roads shown on the plat of said property. There shall be no access from within Declaration Property to any other lands, other than the easements described in or referred to in the above-referenced deeds which describe the Declaration Property. No owner may grant a right-of-way through his lot for the purpose of affording access to property not within the Declaration Property, to include land annexed pursuant to Article VIII, hereof.

Section 13. Signs.

No signs other than the owner's name or identification of the owner's property shall be permitted on any lots; provided, however that the Association shall have the right to determine the kind, size and location of all permitted signs. This provision shall not apply to Declarant.

Section 14. Storage of Vehicles

No inoperable, unlicensed, wrecked or disabled vehicle shall be allowed on any road, lot or further development thereof, provided, however that said vehicle may be stored completely out of view in a garage or other structure.

Section 15. Recreational Vehicles, Boats and Trailers.

No recreational vehicle (RV), unless garaged, shall be permitted to park on Declaration Property for longer than one (1) week. (For purposes of this section, a recreation vehicle is defined as a motorized vehicle having sleeping, cooking and/or restroom facilities, or a motorized vehicle exceeding 19 feet in length.)

Section 16. Removal of Trees.

No trees measuring 24" or more in circumference at three (3) feet above ground level may be removed from any lot without the prior written consent of the Association. There shall be no clear-cutting of any trees on any lot.

VI. EASEMENTS

Section 1. Reservations of Easements.

The following easements over each lot and the right of ingress and egress to the extent reasonably necessary to exercise such easements are reserved to Declarant, its successors and assigns.

(a) Utilities. A ten (10) foot wide strip running along the inside of all lot lines (except those lot lines coincident with street rights-of-way lines) for the installation, maintenance and operation of utilities including radio and television transmission cables or to cut, trim or remove trees and plantings wherever necessary upon such lots in connection with such installation, maintenance and operation.

(b) Roadways. Rights-of-way shall be sixty (60) feet in width, the centerline of which is the existing road system in Fires Creek Subdivision or the width as shown on recorded plats of the Declaration Property.

(c) Other Easements. Any other easements shown on the plat.

Section 2. Use of Maintenance by Owners.

The areas of any lots affected by the easements reserved herein shall be maintained continuously by the owner of such lot with the exception of the actual roadways, which shall be maintained by the Association. No structures, plantings or other materials shall be placed or permitting to remain, or other activities undertaken, thereon which may damage or interfere with the use of said easements for the purposes herein set forth. Improvements within such areas shall be maintained by the owner except those for which a public authority or utility company is responsible.

Section 3. Limitation on Liability for Use of Easement.

No owner shall have any claim or cause of action against Declarant or its licensees arising out of exercise or non-exercise of any easement reserved hereunder or shown on the plat.

VII. CONTROL OF IMPROVEMENTS BY THE ASSOCIATION

The Board of Directors of the Association or a committee appointed by the Board shall perform the following duties and those others required of it by this Declaration.

Section 1. Improvements Prohibited Without Approval.

No prefabricated or modular constructed homes shall be constructed unless plans have been approved by the Association. Once Association approval has been received, a building permit issued by the appropriate Clay County department will need to be obtained.

Section 2. Approvals Required by Association.

Where the approval of the Association is required in matters other than the above by this Declaration, requests for such approval shall be submitted in writing to the Association in the manner and form prescribed by it. The application shall show in sufficient detail those factors necessary for the association to render a decision on the request.

Section 3. Grounds for Disapproval.

The Association may disapprove any applications if, in the sole judgment of the Association:

- (a) The proposed request fails to meet the criteria set forth in this Declaration.
- (b) The proposed improvements would not be harmonious with the improvements erected on other lots.

Section 4. Rules and Regulations.

The Association shall, from time to time, adopt written rules and regulations or general application governing its procedures which shall include, among other things, provisions for the form and content of applications; required number of copies of plats and specifications; provisions for notice of approval or disapproval, including a thirty (30) day time period after approval becomes automatic by reason of failure to disapprove.

Section 5. Variances.

The Association may grant reasonable variances or adjustments from the provisions in this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to owners of other lots.

Section 6. Certification of Compliance.

At any time prior to completion of construction of an improvement, the Association may require a certification, upon such forms as it shall furnish, from the contractor, owner, or a licensed surveyor that such improvement does not violate any set-back, ordinance, or statute nor encroach upon any easement or right-of-way of record.

Section 7. Liability.

Notwithstanding the approval by the Association of plans and specifications or its inspection of the work in progress, neither it, Declarant, the Association, nor any person acting in behalf of any of them shall be responsible in any way for any defects in any plans or specifications or other material submitted to the Association, nor for any defects in any work done pursuant thereto. Each person submitting such plans for specification shall be solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto.

Section 8. Appeals.

Any applicant shall have the right to appeal to the Board of Directors of the Association any decision of the Committee within thirty (30) days after entry of such decision.

Section 9. Committee Membership.

Initially, the Association Committee responsible for making the determinations set forth herein shall be composed of one or more persons designated by the Declarant. Committee members shall be subject to removal by Declarant. The power to appoint or remove Committee members shall be transferred to the Association no later than 30 days after the conveyance of all lots within Declaration Property to third parties, at which time, the Committee shall be composed of three persons appointed by the Board of Directors.

VIII. ANNEXATION AND SUBMISSION OF ADDITIONAL PROPERTIES TO THE DECLARATION

A. Property to be Annexed.

Declarant may from time to time in its sole discretion annex additional lands which are contiguous to the Declaration Property and submit said lands to the terms and conditions of this Declaration and/or to amendments hereto.

B. Manner of Annexation.

Declarant shall effect such annexation by recording a Supplemental Declaration which shall:

1. Describe the real property being annexed and designate the permissible use thereof.
2. Set forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restrictive uses of roads;
3. Declare that such annexed property shall be held, transferred, sold, conveyed, encumbered, leased, used, occupied and improved subject to the provisions of this Declaration and to the aforesaid modified restrictions and/or covenants, if any.

C. Results of Annexation.

Upon the recording of the Supplemental Declaration, the annexed area shall become a part of the Declaration Property subject to all provisions of this Declaration as supplemented or modified by said Supplemental Declaration.

D. Revision of Plats by Declarant.

Notwithstanding the provisions and conditions herein contained, Declarant intends to prepare and record plats of Fires Creek Subdivision, and does hereby reserve unto itself, its successors and assigns, the right to relocate, open, or close streets or roads shown on said plats, and to revise, resubdivide and change the size, shape, dimensions and locations of lots in said subdivision. Upon such relocation, opening or closing of street or revision, resubdivision or changing of size, shape, dimensions and locations of lots, the covenants, conditions, restrictions and reservations hereby imposed shall be applicable to the resulting lots in lieu of the lots as originally shown on said plat prior to such revision, relocation or change. However, lots sold prior to such revision, relocation or change shall not be deprived of that portion of the street or streets on which it bounds nor of access to such lot from the streets or roads in the Development.

## IX. THE ASSOCIATION

Section 1. General. The Association is a North Carolina non-profit corporation organized to further and promote the common interests of property owners in the Development. The Association shall have such powers in the furtherance of its purposes as are set forth in its Articles and Bylaws.

Section 2. Membership. Every owner shall be a member of the Association. The Declarant shall be a member of the Association.

Section 3. A. Classes of Members. Class "A" members shall be all those owners of lots in the Declaration Property, with the exception of the Declarant. The Class "B" members shall be the Declarant.

B. Votes. Each Class "A" member shall be entitled to one (1) vote for each lot it owns. Each Class "B" member shall have seven (7) votes for each lot it owns.

Section 4. Board of Directors. The affairs of the Association shall be governed by the Board of Directors. Initially, the Board will be composed of three persons designated by the Declarant, none of whom need be owners of lots. The Declarant shall have the sole and absolute right to appoint the Board of Directors until either: The conveyance of all of the property then subjected to this Declaration or at such time as Declarant in its sole discretion elects.

## X. GENERAL PROVISIONS

Section 1. Covenants, Conditions, Restriction and Easements Run with Land.

All covenants, conditions, restrictions and easements contained in this Declaration shall constitute covenants running with land.

Section 2. Grantee's Acceptance

Each owner, by accepting title to a lot or by executing a contract for the purchase thereof, shall accept such title or contract subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges, and immunities of Declarant and of the Association. Such owner or contracting party, for himself, his heirs, assigns, and successors, covenants, consents and agrees to and with the Declarant, the Association and the owner of each other lot to keep, observe, comply, and perform the covenants, conditions and restrictions contained in this Declaration.

## XI. REMEDIES

### Section 1. Enforcement.

The Declarant, Association and each person to whose benefit this Declaration inures, may proceed at law or in equity to prevent the occurrence, continuance, or violation of any provisions of this Declaration, and the court in such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorneys' fees.

### Section 2. Cumulative Rights.

Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity.

No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provisions of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

### Section 3. Effect of Waiver of Violation.

No waiver of a breach or violation of any of the covenants, conditions, restrictions and easements in this Declaration shall be construed as a waiver of any succeeding breach of the same covenant, conditions, restriction and waiver.

## XII. SEVERABILITY

Each provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

## XIII. TERM AND AMENDMENT

The provisions of this Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in Declaration Property until January 1, 2017, A.D., after which time they shall be automatically extended for successive periods of ten (10) years unless the affirmative vote of sixty-seven per cent (67%) of the votes eligible to be cast by Association members entitled to vote decides to the contrary.

The Declaration may be amended by a vote of sixty-seven per cent (67%) of votes eligible to be cast by Association members entitled to vote and by the subsequent recordation of an amendment to this Declaration duly executed by the Association, and such amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of such owners to effect such amendment, certified by the Secretary of the corporation. Notwithstanding the above, during the time period that the Declarant has the sole and absolute right to appoint members of the board of Directors of the Association (Article IX, Section 3, above) all amendments made to this Declaration by the Association must have the express, written approval of the Declarant.

## XIV. GENDER

Wherever the context so requires, the use of any gender shall be deemed to include all genders and the use of the singular shall include the plural and the plural shall include the singular.

AMENDMENT TO THE DECLARATION OF PROTECTIVE

COVENANTS FOR FIRES CREEK SUBDIVISION

This Declaration of Amendment made and entered into this 18 day of December, 1997,  
by:

FIRES CREEK LAND CO., LLC, a North Carolina limited liability company, hereinafter  
termed "Declarants"

WITNESSETH:

WHEREAS, Declarants entered into certain Protective Covenants for Fires Creek  
Subdivision dated the 10th day of July, 1997, as recorded in Deed Book 201, page 137, Clay  
County, North Carolina Registry, reference to which is made hereby for incorporation herein;  
and

WHEREAS, said instrument provides for amendment by a vote of sixty-seven (67%)  
percent of votes eligible to be cast by Association members entitled to vote; and

WHEREAS, the Declarants are owners of sixty-seven (67%) percent or more of the total  
lots of Fires Creek Subdivision and represent all of the current owners of lots in said  
subdivision; and

WHEREAS, Declarants desire to amend a portion of said document as hereinafter  
provided;

NOW, THEREFORE, Declarants declare that the following amendments shall be made to  
said instrument:

1.

The name of the subdivision shall be changed from "Fires Creek Subdivision" to "Fires  
Creek Cove".

2.

Paragraph V, Section 11. Animals, on page 6, the last sentence shall be amended by  
deleting the words "except creek front lots" and shall read as follows: "Horses shall be permitted  
on all lots." Section 11 shall be amended and changed to read as set forth but Section 11 in all  
other respects shall remain the same except as amended herein.

3.

Paragraph V, Section 12. Access to Lots, on page 6, shall be amended as follows:

There shall be no access to any lot within Declaration Property other than  
by roads shown on the plat of said property. However, an owner of a larger lot,  
upon the subdividing of that larger lot, may grant access from the  
subdivision roads to the newly formed interior lots. However, the said new  
right-of-way may not extend beyond the original boundary lines of the  
original lot. There shall be no access from within Declaration Property to any  
other lands, other than the easements described in or referred to in the above-  
referenced deeds which describe the Declaration Property. No owner may grant a  
right-or-way through his lot for the purpose of affording access to property not  
with the Declaration Property, to include land annexed pursuant to Article VIII,  
hereof.

Section 12 shall be amended and changed to read as set forth but Section 12 in all other respects  
shall remain the same except as amended herein.

Paragraph V, Section 15. Recreational Vehicles, Boats and Trailers, shall be deleted in its entirety and shall read as follows:

No recreational vehicle (RV) shall be permitted to park on Declaration Property unless it is screened in any manner which prevents it from being visible from any subdivision road. All RV's parked on Declaration Property shall at all times be maintained in an operational condition.

All terms and conditions as set forth in the Declaration of Protective Covenants for Fires Creek Subdivision, dated the 10th day of July, 1997, except the above amendments, shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarants have hereunto placed their hands and seals the day and year first above written.

FIRES CREEK LAND CO., LLC., a North Carolina Limited Liability Company

By: [Signature] (SEAL)  
MALCOLM E. KIRSCHENBAUM, Member/Manager

By: Kathleen B. Nied (SEAL)  
KATHLEEN B. NIED, Member/Manager

By: Phyllis A. Story (SEAL)  
PHYLLIS A. STORY, Member/Manager

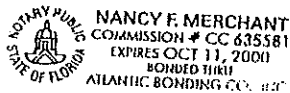
\*\*\*\*\*  
STATE OF Florida \*\*\*\*\*

COUNTY OF Brevard

I, Nancy E. Merchant, a Notary Public of the County and State aforesaid, certify that MALCOLM E. KIRSCHENBAUM, a member/manager of Fires Creek Land Co., LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument as member/manager on behalf of and as the act of the company referred to in this acknowledgment.

WITNESS my hand and official stamp or seal, this 16 day of December, 1998.

My Commission Expires: Nancy E. Merchant  
Notary Public



STATE OF Pennsylvania

COUNTY OF Northampton

I, Heather Bogan, a Notary Public of the County and State aforesaid, certify that KATHLEEN B. NIED, a member/manager of Fires Creek Land Co., LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument as member/manager on behalf of and as the act of the company referred to in this acknowledgment.

WITNESS my hand and official stamp or seal, this 18<sup>th</sup> day of December 1997

My Commission Expires: **NOTARIAL SEAL**  
**Heather Bogan, Notary Public**  
**Easton, Northampton Co., PA**  
**My Commission Expires Mar. 5, 2001**

Heather Bogan (NOTARY SEAL)  
Notary Public

STATE OF Florida

COUNTY OF Brevard

I, SERENA FAIRCCHILD, a Notary Public of the County and State aforesaid, certify that PHYLLIS A. STORY, a member/manager of Fires Creek Land Co., LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument as member/manager on behalf of and as the act of the company referred to in this acknowledgment.

WITNESS my hand and official stamp or seal, this 17 day of Dec., 1996 / 1997

My Commission Expires: Serena Fairchild

**OFFICIAL NOTARY SEAL**  
**SERENA FAIRCCHILD**  
**NOTARY PUBLIC STATE OF FLORIDA**  
**COMMISSION NO. CC591042**  
**MY COMMISSION EXP. OCT. 21, 2000**

Notary Public

The foregoing Certificates of Nancy F. Merchant, Heather Bogan, Serena Fairchild are certified to be correct. 1997  
This instrument and certificate are duly registered on this the 31 day of December 1996, at 2:02 o'clock, P. M., in Book 205, at Page 174.

Melissa B. Roach  
Register of Deeds for Clay County

By: Kelley Rogers, Dep  
Deputy / Assistant - Register of Clay County

SECOND AMENDMENT TO THE DECLARATION OF  
PROTECTIVE COVENANTS FOR FIRES CREEK SUBDIVISION

This Declaration of Amendment made and entered into this 21<sup>st</sup> day of May, 1998, by:

FIRES CREEK PROPERTY OWNERS ASSOCIATIONS, INC., a North Carolina Non-profit corporation, hereinafter termed "Owners"

WITNESSETH:

WHEREAS, FIRES CREEK LAND CO., LLC, a North Carolina limited liability company entered into certain Protective Covenants for Fires Creek Subdivision dated the 10th day of July, 1997, as recorded in Deed Book 201, page 137, Clay County, North Carolina Registry, and as amended in the Amendment to the Declaration of Protective covenants for Fires Creek Subdivisions dated the 18th day of December, 1997 and recorded in Deed Book 205, page 174, Clay County, North Carolina Registry, reference to which made hereby for incorporation herein; and

WHEREAS, said instrument provides for amendment by a vote of sixty-seven (67%) percent of votes eligible to be cast by Association members entitled to vote; and

WHEREAS, a Notice of a Special Called Meeting of the Members of the Fires Creek Property Owners Association was sent to each lot owner via Certified Delivery, Return Receipt Requested on March 19, 1998 for a meeting to be held April 30, 1998.

WHEREAS, at the Special Called Meeting of the Members of the Fires Creek Property Owners Association all lot owners voted in favor of the proposed changes, as evidenced by the Minutes of Special Called Meeting by the Board of Initial Directors of Fires Creek Property Owners Association, Inc, a copy of which is attached hereto; and

WHEREAS, the Owners desire to amend a portion of said document as hereinafter provided;

NOW, THEREFORE, the Owners declare that the following amendments shall be made to said instrument:

1.

Paragraph IV, Section 3. Assessments; Personal Obligations of Owners; Creation of Lien., on page 3, the first paragraph shall be amended by deleting the words "The Declarant, for each lot owned by it within the property, hereby covenants, and" and shall read as follows: "Each owner of any lot, excluding the Declarant, 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 (which covenant shall run with the land and be binding on every owner) and agree to pay to the Association:". Section 3 shall be amended and changed to read as set forth but Section 3 in all other respects shall remain the same except as amended herein.

2.

Paragraph V, Section 3. Minimum Square Footage Requirements., on page 5, the first sentence shall be amended by deleting the words "800 square feet" and shall read as follows: "No single-family dwelling shall have less than 1,250 square feet to finished enclosed, heatable living space." Section 3 shall be amended and changed to read as set forth but Section 3 in all other respects shall remain the same except as amended herein.

Paragraph V, Section 4. Set-backs, shall be deleted in its entirety and shall read as follows:

The Association will use the following setbacks as general guidelines for the approval of the site location referenced in Section 2 of this Article V:

- 1. Twenty (20) feet from the front lot line;
- 2. Ten (10) feet from the rear lot line; and
- 3. Ten (10) feet from the side lot lines.

Paragraph VI, Section 1(b). Reservations of Easements, Roadways, shall be deleted in its entirety and shall read as follows:

(b) Roadways. Rights of way, at the Declarants discretion, shall be no less than thirty (30) feet in width, or no more than sixty (60) feet in width, the centerline of which is the existing road system in Fires Creek Cove or the width as shown on the recorded plats of the Declaration Property.

All terms and conditions as set forth in the Declaration of Protective Covenants for Fires Creek Subdivision, dated the 10th day of July, 1997, and the subsequent amendment dated December 18, 1997, except the above amendments, shall remain in full force and effect.

IN WITNESS WHEREOF, the Owners have hereunto placed their hands and seals the day and year first above written.

FIRES CREEK PROPERTY OWNERS ASSOCIATION, a North Carolina Non-profit Corporation

By: [Signature] (SEAL)  
MALCOLM E. KIRSCHENBAUM, Initial Director

By: [Signature] (SEAL)  
PHYLLIS A. STORY, Initial Director

By: [Signature] (SEAL)  
JAMES D. HALLORAN, Initial Director

\*\*\*\*\*

STATE OF Florida

COUNTY OF Trevard

I, Joan L. Sottoriva, a Notary Public of the County and State aforesaid, certify that MALCOLM E. KIRSCHENBAUM, an Initial Director of Fires Creek Property Owners Association, a North Carolina Non-profit corporation, personally appeared before me this day and acknowledged the execution of the foregoing instrument as an initial director on behalf of and as the act of the non-profit corporation referred to in this acknowledgment.

WITNESS my hand and official stamp or seal, this 21 day of MAY, 1998.

My Commission Expires: 9-29-2001

[Signature]  
Notary Public



STATE OF Florida

COUNTY OF Brevard

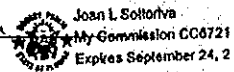
I, Joan L. Sottoriva, a Notary Public of the County and State aforesaid, certify that PHYLLIS A. STORY, an Initial Director of Fires Creek Property Owners Association, a North Carolina Non-profit corporation, personally appeared before me this day and acknowledged the execution of the foregoing instrument as an Initial Director on behalf of and as the act of the Non-profit corporation referred to in this acknowledgment.

WITNESS my hand and official stamp or seal, this 21 day of May, 1998.

My Commission Expires:

9-29-2001

Joan L. Sottoriva  
Notary Public



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STATE OF NORTH CAROLINA

COUNTY OF CLAY

Cherokee

I, John H. Macfarlan, a Notary Public of the County and State aforesaid, certify that JAMES D. HALLORAN, an Initial Director of Fires Creek Property Owners Association, a North Carolina Non-profit corporation, personally appeared before me this day and acknowledged the execution of the foregoing instrument as an Initial Director on behalf of and as the act of the Non-profit corporation referred to in this acknowledgment.

WITNESS my hand and official stamp or seal, this 12<sup>th</sup> day of June, 1998.

My Commission Expires:  
(NOTARY SEAL)

May 30, 2000

John H. Macfarlan  
Notary Public

The foregoing Certificates of Joan L. Sottoriva & John H. Macfarlan are certified to be correct.

This instrument and certificate are duly registered on this the 15<sup>th</sup> day of June, 1998, at 11:20 o'clock, A. M., in Book 209, at Page 214.

Melissa B. Roach  
Melissa B. Roach  
Register of Deeds for Clay County

By: \_\_\_\_\_  
Deputy / Assistant - Register of Clay County

THIRD AMENDMENT TO THE DECLARATION OF  
PROTECTIVE COVENANTS FOR FIRES CREEK COVE

This Declaration of Amendment made and entered into this 31st day of July, 1998, by:

FIRES CREEK PROPERTY OWNERS ASSOCIATION, INC.,  
a North Carolina Non-profit corporation, hereinafter termed "the Association"

WITNESSETH:

WHEREAS, the developer of Fires Creek Cove subdivision is Fires Creek Land Co., LLC; and

WHEREAS, Fires Creek Land Co., LLC, as the developer, made and recorded the original restrictive covenants binding said subdivision entitled: "*Declaration of Protective Covenants for Fires Creek Subdivision*" (the name of said subdivision having been since changed to "Fires Creek Cove"), dated 10 July 1997 and recorded in Deed Book 201, at Page 137, Clay County, North Carolina Registry; and

WHEREAS, Article XIII of said restrictive covenants sets forth the amendment procedure for amending said *Declaration of Protective Covenants for Fires Creek Subdivision* and provides that all amendments shall be executed by the Fires Creek Property Owners Association, Inc.; and

WHEREAS, a (First) *Amendment to the Declaration of Protective Covenants for Fires Creek Subdivision*, dated 18 December 1997, was recorded in Deed Book 205, at Page 174, Clay County, North Carolina Registry on 31 December 1997; and

WHEREAS, a *Second Amendment to the Declaration of Protective Covenants for Fires Creek Subdivision*, dated 21 May 1998, was recorded in Deed Book 209, at Page 214, Clay County, North Carolina Registry; and

WHEREAS, Article XIII of said restrictive covenants provides that all amendments be adopted by a vote of 67% of the votes eligible to be cast by members and for the amendment to be accompanied by a resolution of the Board of Directors of the Association attesting to due authorization and adoption of amendments in accord with the requirements of said Article XIII; and

WHEREAS, pursuant to Article IV, Section 3, of the Bylaws of the Association, a Notice of a Special Meeting of the Members of the Corporation was sent to the Members of the Corporation via Certified Delivery, Return Receipt Requested on 30 June 1998 for a meeting to be held 31 July 1998; and

WHEREAS, said Notice of Special Meeting specifically stated the purpose of the special meeting was to consider and approve certain amendments to the restrictive covenants; and

WHEREAS, said proposed amendments were specifically set forth in said Notice; and

WHEREAS, at the Special Called Meeting of the Members of the Association on 31 July 1998, said *Third Amendment to the Declaration of Protective Covenants For Fires Creek Subdivision* was adopted by a vote *greater than* 67% of the votes eligible to be cast by the Members of the Association, as evidenced by the Certificate of the Secretary of the Corporation, a copy of which is attached hereto, which contains an excerpt of the minutes of the Board of Directors of the Association containing a resolution by the Board of Directors in accordance with the requirements of said Article XIII which reflects the said vote by the Members; and

WHEREAS, the Corporation was duly organized on 1 December 1997 and, at said organizational meeting, Bylaws were adopted and the following officers were elected, as follows:

President:	James D. Halloran
Vice-President:	Malcolm E. Kirschenbaum
Secretary:	Phyllis A. Story
Treasurer:	Phyllis A. Story

NOW, THEREFORE, the Corporation declares that the following amendments shall be made to its Protective Covenants:

Paragraph V, Section 10. Resubdivision of a Lot., on page 6, the first sentence shall be amended by deleting the words "...other than creek-front lots..." and shall read as follows: "Original lots may be re-subdivided provided that no such subdivision is less than one (1) acre in size.". The first sentence of Paragraph V, Section 10 shall be amended and changed to read as set forth but Section 10 in all other respects shall remain the same except as amended herein.

All terms and conditions as set forth in the Declaration of Protective Covenants for Fires Creek Subdivision, dated the 10 July 1997, and the subsequent amendments dated 18 December 1997 and 21 May 1998, shall remain in full force and effect.

IN WITNESS WHEREOF, the Corporation has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

FIRES CREEK PROPERTY OWNERS ASSOCIATION, INC.  
a North Carolina Non-profit Corporation

By: [Signature] (SEAL)  
James D. Halloran, President

ATTEST:

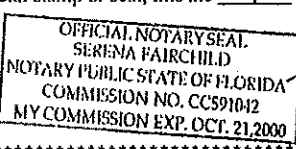
[Signature] (SEAL)  
Phyllis A. Story, Secretary

STATE OF FLORIDA  
COUNTY OF BREVARD

I, Serena Fairchild, a Notary Public of the County and State aforesaid, certify that Phyllis A. Story personally came before me this day and acknowledged that she is Secretary of Fires Creek Property Owners Association, Inc., a North Carolina corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by Phyllis A. Story its Secretary.

Witness my hand and official stamp or seal, this the 6 day of August, 1998.

My Commission Expires:  
10/21/00



[Signature]  
Notary Public

The foregoing Certificate of \_\_\_\_\_ is certified to be correct. This instrument and certificate are duly registered on this the \_\_\_\_\_ day of August, 1998, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M., in Book \_\_\_\_\_, at Page \_\_\_\_\_.

Melissa B. Roach  
Register of Deeds for Clay County

By: \_\_\_\_\_  
Deputy / Assistant - Register of Clay County

MINUTES OF SPECIAL CALLED MEETING  
BY THE BOARD OF INITIAL DIRECTORS

OF

FIRES CREEK PROPERTY OWNERS ASSOCIATION, INC.

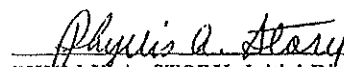
A special called meeting of the Board of Initial Directors was held at 10:15 o'clock A.M. on the 30th day of April, 1998, at 137 Tusquitee Street, in Hayesville, North Carolina for the purpose of verifying the votes of the Members as to the proposed amendment to the Declaration of Protective Covenants for Fires Creek Subdivision.

The Board of Initial Directors discussed the amendment to the Declaration of Protective Covenants for Fires Creek Subdivision. Upon motion duly made and seconded, the initial directors adopted the following:

RESOLVED, that the board of initial directors of the corporation have reviewed the procedure followed to amend the Declaration of Protective Covenants for Fires Creek Subdivision and have determined that all necessary steps have been followed, to wit: that all members of the Association were notified of the special called meeting of the Association to be held on April 30, 1998 at 10:00 a.m. at 137 Tusquitee Street, Hayesville, North Carolina, by certified mail on March 19, 1998 and that all members returned their votes to John H. Macfarlan, their appointed proxy, who counted the votes and determined that all members had voted in favor of amending the Declaration of Protective Covenants for Fires Creek Subdivision and hereby declare that said Declaration should be amended.

This the 1<sup>st</sup> day of May, 1998.

  
MALCOLM E. KIRSCHENBAUM, Initial Director

  
PHYLLIS A. STORY, Initial Director

  
JAMES D. HALLORAN, Initial Director