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DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRUSH CREEK PROPERTIES

This Declaration, made this the 12th day of March, 1998, by BRUSH CREEK PROPERTIES, INC., a Florida corporation, ("Declarant").

Declarant is the owner of the real property in Nantahala Township, Swain County, North Carolina, consisting of 362.823 acres, more or less, known as Brush Creek Properties ("the Development"), as described in Deed Book 212 at page 181 in the office of the Register of Deeds for Swain County, North Carolina, which is by reference incorporated in and made a part of this Declaration.

Declarant hereby declares that the Development shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions that are for the purpose of protecting the value and desirability of, and that will run with, the Development and be binding on all parties having any right, title, or interest in the Development or any part thereof, their heirs, successors and assigns, and that shall inure to the benefit of each owner thereof. The provisions of this declaration shall create mutual and equitable servitudes, reciprocal rights, and privity of contract and estate upon each lot and lot owner in the Development in favor of all other lots and lot owners.

ARTICLE I
DEFINITIONS

1. "Association" means Brush Creek Properties Homeowners Association, Inc., its successors and assigns.
2. "Board" means the Board of Directors of the Association.
3. "Bylaws" means the bylaws of the Association.
4. "Common Areas" means all roadways, easements for public and private utilities, pedestrian and recreation easements, and any other property (real, personal or mixed) or interest therein that Declarant declares to be a common area or that the Association acquires and accepts as same.
5. "Lot" means any plot of land shown upon the recorded plat of the Development.
6. "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to a lot, including contract sellers, but excluding those having any interest merely as security for the performance of an obligation.

ARTICLE II
PROTECTIVE COVENANTS

1. Setbacks. No structure shall be placed or erected upon any lot that shall lie within ten (10) feet of any line of the lot.
2. Minimum Dwelling Size. No single family dwelling shall have less than six hundred square feet of enclosed heated space (exclusive of any basement area, whether the same be enclosed and heated.
3. Construction. No buildings shall be moved on to any lot, and all construction shall be new construction. A motor home or a travel trailer will be allowed on the property while a home is under construction.
4. Vehicles. Motor vehicles not carrying a current license tag, mobile homes, and house trailers shall not be permitted with the Development. No trucks, boats, trailers, automobiles or other

vehicles shall be parked on any road or other non-lot area within the Development.

5. Nuisances. An owner, his family, or lessees, shall not do or keep and shall not cause anything to be done or kept on his lot that will constitute a nuisance under the laws of the State of North Carolina or that will obstruct or interfere with the rights of other owners or the Association or among other owners by unreasonable noises, odors, or otherwise; nor shall any owners, his family, or lessees, commit or permit any nuisance, immoral, or illegal act within the Development.

6. Garbage; Litter. No owner shall burn trash, garbage, or other like household refuse without a permit from the Association. Storage, collection, and disposal of trash shall be in compliance with the rules set from time to time by the Association. No owner shall accumulate on his lot any form of junk, inoperable vehicle, litter, refuse, or other garbage (except in receptacles provided for that purpose).

ARTICLE III THE ASSOCIATION

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 the powers in furtherance of its purposes that are set forth in its articles and bylaws.

2. Membership. Every owner of a lot in the Development shall be a member of the Association. Membership shall be appurtenant to and not separated from ownership that is subject to assessment.

3. Rights, Privileges, and Obligations of Members. The rights, duties, privileges, and obligations of membership in the Association are as set forth in its articles and bylaws.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

1. General. Pursuant to the powers granted to the Association in its articles and bylaws, the Association is expressly authorized and empowered to levy assessments against all lots in the Development. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Development and for the improvement and maintenance of roads, common areas, recreational facilities, and the like.

2. Creation and Collection of Lien. The Declarant, for each lot owned within the Development, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it is so expressed in the deed, is deemed to covenant and agree to pay to the Association: (a) an initiation fee of \$50.00 per lot, immediately upon acquiring ownership of the lot, and (b) annual assessments or charges, \$150.00 per year for improved lots and \$100.00 per year for unimproved lots, and (c) special assessments for capital improvements. In addition, an impact fee of \$200.00 shall be due upon completion of construction in order to repair damages caused by heavy equipment and trucks during the construction process. The fee and assessments (hereafter referred to simply as "assessments"), together with interest at the rate set by the Association, costs, and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the lot against which the assessment is made. If any assessment is not paid within thirty days after the due date, the Association may file a notice of the lien with the Clerk of Superior Court in the county in which the land lies (and the notice shall be filed not later than one hundred twenty days from the due date of the assessment. In such instance, the services rendered by the Association for the benefit of the lot for which an assessment is levied shall be deemed to have been performed on the due date of

the assessment and to "improve" the lot or create an "improvement" to the lot 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 the lien may be perfected and enforced pursuant to the provisions of Part 1. the lien created hereby shall not, however, be superior to any institutional mortgage or deed of trust recorded prior to the filing of the notice of claim of lien or any statutory lien having priority or otherwise provided by law. Any action to enforce the lien may, at the Association's option, include a prayer for collection of assessments levied against the lot after the filing date of the notice of claim of lien. The Association may purchase the property at any sale thereof contemplated under Chapter 44A-14 of the General Statutes of North Carolina. The Association may, at its election, simultaneously pursue each and every other remedy that it may have available to it for the enforcement and collection of any delinquent assessments.

3. Estoppel and Proof of Payment. Upon request, the Association shall furnish to any member a written statement certifying the amount of assessments levied against the member's lot and the balance of assessments then due. The written statement shall estop the Association from making any contrary claims against any person or entity (other than the requesting member) who takes affirmative action and detrimental reliance upon the statement.

4. Suspension. The Association shall not be required to transfer membership on its books, or to allow the exercise of any rights or privileges of membership on account thereof to any owner or to any persons claiming under an owner unless all fees and assessments to which they are subject have been paid in full.

5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement, but any such assessment must have the assent of two-thirds of the vote of the members of the Association (exclusive of any votes that may be cast by Declarant) who vote in person or by proxy at a meeting duly called for that purpose.

ARTICLE V EASEMENTS

1. Utility Easements. Declarant reserves perpetual, nonexclusive (a) 20 foot wide easements running along the inside of all lot lines (except those lot lines coincident with street rights of way) and (b) easements over all roadways for the installation, maintenance, and operation of utilities, including electric lines, water lines, and radio and television transmission cables, and the ancillary right to locate guy wires, braces, or anchors, and to cut, trim or remove trees and plantings, if necessary in connection with the installation, maintenance, and operation.

2. Conveyance to the Association. Declarant may convey the reserved utility easements and an appropriate utility company, or companies, or to the Association.

3. Use and Maintenance by Owners. Areas of a lot affected by reserved easements shall be maintained by the lot owner, except as provided in Article 4, Paragraph 5 herein, but no structures, plantings, or other materials shall be placed or permitted to remain, or other activities undertaken thereon, that may damage or interfere with the use of the easements for the purposes set forth above.

4. Liability for Use of Easements. No owner shall have any claim or other cause of action against Declarant or its licensees arising out of the exercise or non-exercise of any reserved

easement, except in cases of willful or wanton misconduct.

ARTICLE VI REMEDIES

1. Enforcement. Declarant and each person to whose benefit this declaration inures, including the Association, may proceed at law or in equity to prevent the occurrence, continuance, or violation of any of the provisions of this declaration, and the court in that action may award the successful party reasonable expenses in prosecuting the action, including attorney's fees.

2. Suspension of Privileges. The Association may suspend all voting rights, if any, of any owner, and all rights of the owner to use the Association's common areas, water system and roadways, for any period during which the Association's assessment against the owner remains unpaid, or during the period of any continuing violation of the provisions of this declaration by an owner after the existence thereof has been declared by the Association.

3. 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 of 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 provision of this declaration shall be held to be a waiver of that party of any right available to him upon the reoccurrence or continuation of the violation or the occurrence of a different violation.

ARTICLE VII SEVERABILITY

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

ARTICLE VIII CAPTIONS

Paragraph captions in this declaration are for convenience only and do not in any way limit or amplify the terms of provisions hereof.

ARTICLE IX

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 the Development until January 1, 2008, A.D., after which time the same shall be extended for successive period of ten years each upon the affirmative vote of a majority of the voting members of the Association.

ARTICLE X AMENDMENT

This declaration may be amended by the affirmative vote of a majority of the owners of all lots in the Development entitled to vote and by the subsequent recordation of an amendment to this declaration duly executed by (a) the requisite number of the owners required to effect the amendment or (b) by the Association, in which the amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of the owners to effect the amendment, certified by the secretary of the Association. The Declarant reserves the right to amend these restrictions at any time during the period in which it owns 50% of the property governed by this instrument.

IN WITNESS WHEREOF, Declarant has executed this declaration on the day and date first above written.

BRUSH CREEK PROPERTIES, INC.

BY: Richard R. Zedman
PRESIDENT



ATTEST:

Anne E. Williams
Secretary

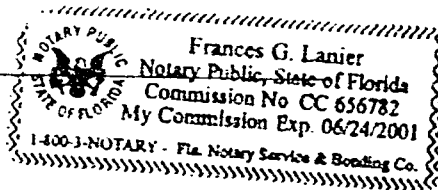
STATE OF FLORIDA
COUNTY OF PASCO

I, a Notary Public of the aforesaid County and State, do hereby certify that ANNE E. WILLIAMS personally came before me this day and acknowledged that she is secretary of BRUSH CREEK PROPERTIES, INC., a Florida corporation, authorized to do business in North Carolina, 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 her as its secretary.

WITNESS my hand and Notarial Seal, this the 12th day of March, 1998.

Frances G. Lanier
Notary Public

My commission expires:



NORTH CAROLINA
SWAIN COUNTY

The foregoing certificate(s) of Frances G. Lanier Notary(ies) Public, is/are certified to be correct. This instrument was presented for registration and recorded in this office in Book 214 at page 702.

This the 27 day of May, 1998, at 4:17²⁰ o'clock P.M.

Manaw Kurland, Asst
REGISTER OF DEEDS