

FILED  
SWAIN COUNTY NC  
DIANA WILLIAMSON KIRKLAND  
REGISTER OF DEEDS

FILED	Mar 15, 2012
AT	01:03:25 pm
BOOK	00400
START PAGE	0434
END PAGE	0438
INSTRUMENT #	00439
EXCISE TAX	(None)

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Please return to BCPHOA, 4632 Buckline Drive, Dunwoody, Ga. 30338

STATE OF NORTH CAROLINA  
COUNTY OF SWAIN

Ref: Deed Book 214, Page 702  
Deed Book 228, Page 583  
Deed Book 335, Page 168

THIRD AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BRUSH CREEK PROPERTIES

This *Third Amendment to Declaration of Covenants, Conditions and Restrictions For Brush Creek Properties* is made this the 15<sup>th</sup> day of March, 2012 by Brush Creek Properties Owners Association, Inc., a North Carolina Nonprofit Corporation.

**WITNESSETH:**

WHEREAS, the planned community of Brush Creek Properties was created by that *Declaration of Covenants, Conditions and Restrictions For Brush Creek Properties*, (hereinafter referred to as "the Original Declaration", recorded in Deed Book 214, at Page 702 in the Swain County, North Carolina Registry, which is hereby incorporated by reference; and

WHEREAS, Brush Creek Properties Association, Inc., a North Carolina Nonprofit Corporation, (hereinafter referred to as the Association), is comprised of every Owner of a Lot in Brush Creek Properties and is the Association designated by the Original Declaration to promote and carry out the common interests of the Owners of Brush Creek Properties; and

WHEREAS, the Original Declaration has been previously amended by that *First Amendment to Restrictive Covenants, Terms and Conditions Governing Brush Creek Properties*, (hereinafter referred to as "the First Amendment"), recorded in Book 228, at Page 583 in the Swain County, North Carolina Registry, which is hereby incorporated by reference; and

WHEREAS, the Original Declaration has also been previously amended by that *Second Amendment to Restrictive Covenants, Terms and Conditions Governing Brush Creek Properties*, (hereinafter referred to as "the Second Amendment"), recorded in Book 335 at Page 168 in the Swain County, North Carolina Registry, which is hereby incorporated by reference; and

WHEREAS, pursuant to Article X of the Original Declaration, (said Article not having been changed by the First or Second Amendments), the Original 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 such an amendment by the Association, in which case, the amendment shall have attached to it a copy of the resolution of the Board of Directors of the Association attesting to the affirmative action of the requisite number of the owners to effect the amendment, certified by the Secretary of the Association; and

WHEREAS, at a duly held meeting of the membership of the Association, the affirmative vote of a majority of the Owners of all Lots in the Development entitled to vote were cast in favor of this *Third Amendment to Declaration of Covenants, Conditions and Restrictions For Brush Creek Properties*.

NOW THEREFORE, the Original Declaration, as amended by the First and Second Amendments, is amended as follows:

Article 11, Paragraph 2, entitled "Minimum Dwelling Size" is hereby stricken in its entirety and replaced with the following new Article 11, Paragraph 2;

"2. Minimum Dwelling Size, Construction Type and Appurtenant Structures

2.1 No structure shall be placed or erected upon any lot that shall lie within ten (10) feet of any property or easement line of the lot.

2.2 No dwelling shall have less than twelve hundred square feet of enclosed heated space (exclusive of any basement area), whether the same be enclosed and heated.



2.3 No dwelling type other than a single family residence is allowed. Duplex or multi-family dwellings, or commercial buildings of any type are prohibited.

2.4 No appurtenant structure or outbuilding of any type shall be constructed on any lot prior to the construction of the permanent dwelling. Said structures are defined as any shed, garage, barn, workshop, lean-to, or any other type of structure not meeting the requirements of 2.2 above.

Article II, Protective Covenants, new Paragraphs 7 and 8, are hereby added as follows:

"7. Only those areas of the lot as needed for the reasonable construction of the dwelling, driveway, septic area, and appurtenant structures are to be cleared of trees. No logging or clear cutting of any lot is permitted.

"8. Light pollution is to kept to a reasonable minimum. No pole mounted street type lighting is allowed.

The following new Article is hereby added:

#### Article II.5 Leasing or Rental of Lots

"1. No more than twenty-five percent (25%) of the improved lots are permitted to be leased at any time. Requests for leasing approval must be submitted in writing by the Owner to the Board of Directors. The Board shall determine the number of Lots leased at that time and shall not approve any lease request which causes the number of Lots to exceed the maximum percentage allowed. The Board, however, shall have the option, in its sole discretion, to allow exceptions exceeding the 25% maximum should the Board determine that not allowing said exception would impose undue hardship on the Owner.

"2. Those Lots that are currently approved by the Board for leasing as of the date of the recordation of this Third Amendment to Declaration of Covenants, Conditions and Restrictions, are considered grandfathered under the above provision, in that the privilege to lease said property shall convey with an exchange of title. However, any such new Owner shall submit to the Board within thirty (30) days of closing, a written request to the Board to maintain the rental or leasing status of that Lot.

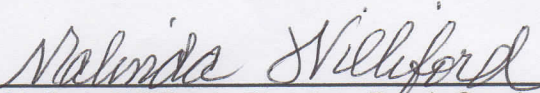
"3. All leases and lessees are subject to the provisions of the Declaration, By-Laws, and Rules and Regulations. The Lot Owner must make available to the tenant copies of said documents.


**RESOLUTION OF THE BOARD OF DIRECTORS**

We, the undersigned Directors of Brush Creek Property Owners Association, Inc. hereby attest that a duly held meeting of the membership of the Association the affirmative vote of a majority of the Owners of all Lots in the Development entitled to vote were cast in favor of this *Third Amendment to Declaration of Covenants, Conditions and Restrictions For Brush Creek Properties*.

BY:

  
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Keith Brooks - Director - Brush Creek Property Owners Association, Inc.

  
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Malinda Williford - Director - Brush Creek Property Owners Association, Inc.

  
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Joseph Winstead - Director - Brush Creek Property Owners Association, Inc.

(CORPORATE SEAL)



ATTEST:

  
\_\_\_\_\_  
Elizabeth Ann Brooks - Secretary - Brush Creek Property Owners Association, Inc.



STATE OF GeorgiaCOUNTY OF Cobb

I, ROSIE GRANATO, a Notary Public for said County and State,  
certify that Elizabeth Ann Brooks personally came before me this day and acknowledged  
that she  
is Secretary of Brush Creek Property Association, Inc. and that by authority duly given  
and as the act of the Corporation, the foregoing instrument was signed in its name by  
its Board of Directors, sealed with its corporate seal, and attested by herself as its  
Secretary.

Witness my hand and official seal, this 31st day of January, 2012.

(Seal)

Notary Public:

Rosie Granato

My Commission Expires:

3-25-13