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REGISTER OF DEEDS
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PT DEPUTY REGISTER OF DEEDS

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**RESTATED SYLVAN HABITAT DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

Prepared by: Donald E. Jordan

THIS RESTATED DECLARATION, is adopted September 9, 2011 by the members of the Sylvan Habitat Property Owners Association, Inc. (referred to as "Association").

WITNESSETH:

WHEREAS, Sylvan Resources, LLC as Declarant was the sole owner of certain property in Transylvania County, State of North Carolina, which is more particularly described on Exhibit A, and adopted Covenants recorded in Document Book 72, as were later amended by instrument recorded in Document Book 363, Page 644.

WHEREAS, Declarant and the Association desire to provide for the orderly development of the land described on Exhibit A ("Development") so as to assure high quality standards for the enjoyment of the Development and to promote the quality of life for the residents of the Development. The purpose of these restrictions is to ensure the use of the Development for attractive single-family residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the Development, to maintain the desired standards of the community, and thereby to secure to all Owners the full benefit and enjoyment of their Dwellings with no greater restrictions on the free and undisturbed use of the Lots than is necessary to ensure the same advantages to the other Owners. The intent of all of these restrictive covenants is to ensure the perpetual preservation of the natural beauty and tranquility of this unique mountain community. In carrying out and interpreting these covenants it is incumbent upon the Association to always keep foremost in mind the preservation of this rural mountain community.

WHEREAS, Declarant created Sylvan Habitat Property Owners' Association, Inc., a North Carolina not-for-profit corporation ("Association"). The Association (through its Board of Directors) shall own, operate, maintain and administer all the Common Property, and shall administer and enforce the covenants, conditions, restrictions and

limitations set forth herein. The Association shall enforce the easements created herein and collect and disburse the assessments hereinafter created.

NOW, THEREFORE, the Association, by the affirmative vote of more than three-fourths of its Members, restates and amends the Declarant's declaration that all of the Development described on Exhibit A shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall 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 shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

Section 1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association.

Section 1.2 "Association" shall mean and refer to Sylvan Habitat Property Owners Association, Inc., a not-for-profit North Carolina corporation, and its successors and assigns.

Section 1.3 "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

Section 1.4 "Board of Directors" shall refer to the board of directors of Sylvan Habitat Property Owners Association, Inc.

Section 1.5 "Common Expenses" shall mean and refer to those items of expense for which the Association is or may be responsible under this Declaration and those additional items of expense approved by the Board of Directors in the manner set forth in the Declaration, the Articles or the Bylaws.

Section 1.6 "Common Property" shall mean and refer to those tracts of land that are deeded to the Association and such improvements thereon as are specifically conveyed to the Association, including, without limitation, the recreational parcels, if developed, green space, conservation easement areas, and entrance features. The term "Common Property" shall also include any personal property acquired by the Association, as well as certain areas designed for maintenance responsibility which the Association is herein obligated to maintain notwithstanding that it may not own the underlying fee simple title, as well as certain easements conveyed to the Association. All Common Property is to be devoted to and intended for the common use and enjoyment of the Owners and their guests, lessees or invitees subject to any operating rules adopted by the Association.

Section 1.7 "County" shall mean and refer to Transylvania County, North Carolina.

Section 1.8 "Declarant" shall mean and refer to Sylvan Resources, LLC, a North Carolina limited liability company, qualified to do business in North Carolina, its successors and assigns, provided that such rights of the Declarant are specifically assigned to the successor or assign and such successor or assign shall specifically assume the obligations of Declarant under the Declaration, Articles and Bylaws.

Section 1.9 "Declaration" shall mean and refer to this Sylvan Habitat Declaration of Covenants, Conditions, Restrictions and Easements applicable to the Development.

Section 1.10 "Dwelling" shall mean and refer to any single-family residential dwelling constructed or to be constructed on or within a Lot, whether a primary or secondary residence.

Section 1.11 "Lot" shall mean and refer to any plot of land together with the Dwelling or other improvements thereon shown upon any recorded subdivision plat of the Development or a parcel of land conveyed to an Owner and described in the conveyance to be a "Lot".

Section 1.12 "Member" shall mean and refer to those persons entitled to membership in the Association as provided in the Declaration and Bylaws.

Section 1.13 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, which is a part of the Development, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.14 "Development" shall mean and refer to that certain real property described on Exhibit A together with improvements thereon, the additional contiguous property designated as Parcel 2 on the referenced Plat, the conservation parcels connecting the Development to Cascade Lake Road, and the contiguous tracts at the entrance subjected to these Covenants by Deeds, and as shown on the Plat recorded in Plat File 9, Slide 200.

ARTICLE II COMMON PROPERTY RIGHTS

Section 2.1 Owners' Common Property Easements. Subject to the provisions of the Declaration, the rules and regulations of the Association, every Owner(s), their successors and assigns and their families and every guest, tenant, and invitee of such Owner(s) is hereby granted a right and easement of ingress and egress and enjoyment in and to Common Property which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for any infraction of its published rules and regulations. In no event may the

Association deny an Owner the use of the Common Roads, if any, so as to prohibit ingress and egress to his Lot.

(b) The right of the Association without further consent from Owners or their Mortgagees, to dedicate, transfer or grant an easement over all or any part of the Common Property to any public agency, authority or utility company for the purpose of providing utility or cable television service to the Development and the right of the Association to acquire, extend, terminate or abandon such easement.

(c) The right of the Board of Directors of the Association to adopt reasonable rules and regulations pertaining to the use of the Common Property.

(d) The right of the Board of Directors of the Association to authorize other persons to enter upon or use the Common Property for uses not inconsistent with the Owners' rights therein.

(e) The right of the Association to mortgage any or all of the Common Property for the purpose of improvement or repair of the Common Property on such terms and conditions as are approved by a two-thirds (2/3) vote of the Board of Directors of the Association.

Section 2.2 **Conveyance of Common Property.** The Declarant has conveyed the Common Property to the Association, subject to easements and restrictions of record and taxes for the year of conveyance. The Declarant has reserved rights to itself for use of the Common Property and Common Roads. Such Common Property shall be held for the benefit of the Association. The Declarant has placed conservation easements on two tracts of the common property prior to their conveyance to the Association. The conservation tracts shall be subject to the protections and restrictions in those easements, but shall not be subject to the architectural and use restrictions of Articles V and VI.

ARTICLE III
STRUCTURE, POWERS, AND DUTIES
OF MEMBERSHIP AND VOTING RIGHTS
IN THE ASSOCIATION

Section 3.1 **Association.** The Association is a not-for-profit corporation charged with the duties and vested with the powers set forth in the North Carolina General Statutes for not-for-profit corporations, the Articles of Incorporation, the Bylaws and this Declaration. A Board of Directors of the Association, and officers, elected as provided in the Articles and Bylaws, shall conduct the affairs of the Association in accordance with the Declaration, Articles and Bylaws.

Section 3.2 **Qualifications for Membership.** Every Owner of a Lot subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 3.3 Classes of Membership and Voting Rights. The Association shall have one class of voting membership. Members shall be all Owners of Lots and there shall be one vote for each Lot.

Section 3.4 Approval By Voting. Whenever in this Declaration a proposed action or issue must be approved by a specified percentage of the vote of the Members of the Association, such approval may be obtained by:

- (a) The specified percentage of Members casting their respective votes to approve such action or issue in person or by proxy at a duly noticed and constituted meeting of the Members at which a quorum is present, or
- (b) The specified percentage of Members holding all votes giving the approval by written consent to approve the action or issue.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot (except the Declarant) by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association:

- (a) Annual Assessments are those funds regularly collected from owners of Lots for the improvement, maintenance and repair of the Common Property, for the operation and administration of the Association, for the establishment of a maintenance, repair and reserve account for the payment of taxes and insurance on the Common Property and for such other purposes and obligations of the Association as are required hereunder or permitted in this Declaration, the Articles or the Bylaws.
- (b) Special Assessments are those funds which are established and assessed from Owners for expenses incurred which affect all Owners on a limited or special basis or may be assessed against specified Owner(s) for failure to comply with the terms and conditions of this Declaration.

The Annual and Special Assessments, (sometimes jointly referred to herein as "Assessments") together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall be the joint obligation of the grantor and grantee under a deed, without affecting the grantee's right to recover the grantor's share from the grantor. There shall be no reduction or abatement of an Assessment based on an alleged failure of the Association to perform some function required of it, or any

alleged negligent or wrongful acts of the Association, its officers, agents or employees, or based upon an Owner's abandonment or non-use of the Lot or Common Property.

Section 4.2 Annual Assessments. The Board of Directors shall have the right, power and authority, during any fiscal year to set or increase the Annual Assessment for the purpose of meeting the Common Expenses on a current basis.

Section 4.3 The current annual assessment is \$500.00 per year, and remains subject to being changed by the Association.

Section 4.4 Special Assessments.

(a) In addition to the Annual Assessments authorized above, the Association, by a two thirds (2/3) vote of its Board of Directors, 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 upon the Common Property, including fixtures and personal property related thereto, and for making up any budget deficit.

(b) In the event that an Owner fails to maintain his Lot and any appurtenant improvements as required herein, the Association shall give written notice specifying such failure to the Owner and if the Owner fails to correct such unperformed maintenance within ten (10) days from the Association's written notice, the Association may perform such maintenance and the cost of such shall constitute a Special Assessment for which a claim of lien may be filed and enforced.

Section 4.5 Uniform Rate of Assessment. Both Annual Assessments and Special Assessments, except those for failure to maintain as set forth in Subsection 4.4(b), must be fixed at a uniform rate for all improved and unimproved lots.

Section 4.6 Date of Commencement of Annual Assessments; Due Dates. A Lot shall be deemed substantially complete and subject to Assessments when the Common Roads necessary to provide access to a particular Lot have been constructed, and when it has been sold, and is no longer owned by the Declarant. However, unsold Lots owned by the Declarant are not subject to Annual assessment. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. The Annual Assessment shall be payable in full no later than April 30 of each calendar year.

Section 4.7 Effect of Nonpayment of Assessments; Remedies of the Association; the Personal Obligation of the Owner; the Lien.

(a) Any assessments or fines, which are not paid when due, shall be delinquent. If the assessment or fine is not paid within thirty (30) days after the due date, a late fee of \$50 shall be due. In addition, the assessment or fine shall bear interest from the date of delinquency at the then prevailing maximum legal rates of interest under North Carolina law, and the Association, acting through its Board of Directors, may bring an action at law against the Owner personally

obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment or fine. No Owner may waive or otherwise escape liability for the assessments or fines provided for herein by non-use of the Common Areas or road or abandonment of his lot.

(b) If the assessment or fine is not paid within thirty (30) days after it becomes due, then the Association shall have a continuing lien on the delinquent parcel, which lien shall continue until the delinquent assessment or fine is paid. Each Owner of any parcel, by acceptance of a deed therefore, 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, that such lien does exist and is, and shall be, superior to all other charges or liens against the property except the lien of a first mortgagee. Such lien may be perfected by the filing of an instrument with the Clerk of Superior Court of Transylvania County indicating the amount of such lien and the obligation for interest and attorney's fees and costs of collection. Such lien shall be foreclosed in the same manner in which mortgages or deeds of trust are enforced and foreclosed. The Association, by and through its authorized officers, shall from time to time, upon the request of an Owner or mortgagee, issue a certificate, in recordable form, stating the amount of any assessments or fines due with respect to such parcels or stating that all assessments or fines are current with respect to such parcels, and any third party may rely on such certificate, and the Association shall be bound thereby.

Section 4.8 Budget.

(a) The fiscal year for the Association shall end June 30 each year.

(b) Each budget year, the Board of Directors shall adopt a recommended budget for the next fiscal year based upon the actual expenditures of the Association in the previous fiscal years including, without limitation, expenses for wages, employee benefits, materials, insurance premiums, services, supplies and for the reserves as set forth below. Upon adoption by the Members, such budget shall be in effect for the fiscal year and each Owner shall pay its pro rata share of the Annual Assessment as set forth in such budget. Provided, however, no budget which results in Annual Assessments for each Lot that exceeds one hundred and twenty five percent (125%) of the prior year's Annual Assessment shall be adopted unless approved by two thirds of the members of the Board of Directors.

(d) The Board of Directors has the power to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Property and a reserve for working capital and contingencies. This reserve fund shall constitute a portion of the annual budget. In addition, the Board of Directors may establish reserve funds from the Annual Assessments to be held in reserve in an interest bearing account for:

(i) major rehabilitation or major repairs,

- (ii) for emergency and other repairs required as a result of storm, fire, disaster or other casualty loss and,
 - (iii) initial cost of any new service to be performed by the Association.
- (e) The failure or delay of the Board to prepare or adopt the annual budget for any fiscal year or to send written notice of the budget shall not constitute a waiver or release in any manner of the Owner's obligation to pay any Assessment as herein provided, whenever the same shall be determined or notice sent. In the absence of any annual budget or written notice, each Owner shall continue to pay the Assessment as established for the previous year.

ARTICLE V ARCHITECTURAL CONTROL

Section 5.1 General Provisions. No clearing, grading, construction, modification or alteration or any improvement shall be made on any Lot, and no Dwelling, shall be constructed, commenced, erected or maintained within the Development, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as being in harmony with respect to external design and location in relation to surrounding structures and topography by the Architectural Control Committee (ACC). Improvements or modifications which are specifically subject to architectural approval include without limitation, construction of driveways and drainage, initial structures on a Lot; exterior painting or alteration of a Dwelling (including doors, windows, roof); landscaping; installation of solar panels or other devices; construction of fountains, swimming pools, outdoor Jacuzzis; construction of privacy walls or fences; and exterior lighting, statues or other outdoor ornamentation (collectively referred to as 'Proposed Improvements'). All plans for the laying of the foundation of any homes or other structures must meet the approval of the ACC, including any excavation and grading. The factors to be considered are erosion, aesthetics and preservation of native vegetation.

Section 5.2 Architectural Control Committee ('ACC')

- (a) Composition of the ACC. The architectural review and control functions set forth in this Declaration shall be administered and performed by the ACC, which shall consist of at least three (3) members who need not be Members of the Association. Members of the ACC shall be appointed by, and shall serve at the pleasure of, the Board of Directors of the Association. A majority of the ACC shall constitute a quorum to transact business at any meeting of the ACC, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ACC. A meeting of The ACC may be conducted in person or by telephone.

(b) Powers and Duties of the ACC. The ACC shall have the following powers and duties:

(i) To draft Architectural Planning Criteria. The initial Architectural Planning Criteria are set forth in Section 5.3. In addition, the Association has established additional rules, regulations and policies which are set forth in a separate publication available from the ACC. Any modification or amendment to the Architectural Planning Criteria shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association. No amendment to the Architectural Planning Criteria need be recorded in the public records of the County.

(ii) To require submission to the ACC of two (2) complete sets of plans and specifications for any Proposed Improvement to be constructed by any person or entity, the construction or placement of which is proposed upon any Lot. This includes submission of site plan for dwelling, driveway, lawns or pastures, and any and all additional structures. The ACC may also require submission of samples of building materials and colors proposed for use in the Proposed Improvement and may require such additional information as reasonably may be necessary for the ACC to completely evaluate the Proposed Improvement in accordance with this Declaration and the Architectural Planning Criteria. One set of the plans shall be retained by the ACC, the other shall be returned to the Owner signed by the ACC.

(iii) To approve or disapprove, at its sole discretion, except as described below in this paragraph, any Proposed Improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Lot. This includes submission of site plan for dwelling, driveway, and additional structures. The ACC shall approve or disapprove the application for a Proposed Improvement within thirty (30) days after it has been submitted to the ACC in proper form together with all supporting information. If the application is neither approved nor disapproved in such period, it shall be deemed approved. Any party aggrieved by a decision of the ACC shall have the right to make a written request to the Board of Directors within thirty (30) days of a decision of disapproval, for a review thereof. The Determination of the Board of Directors upon reviewing any such decision shall be final and dispositive.

In connection with its approval or disapproval of a Proposed Improvement, the ACC shall evaluate each application for the total effect. This evaluation relates to matters of judgment and taste, which cannot be reduced to a simple list of measurable criteria. It is possible, therefore, that a Proposed Improvement might meet individual criteria delineated in this Article and the Architectural Planning Criteria and still not receive approval, if in the sole judgment of the ACC, its overall aesthetic impact is unacceptable. The approval of an application for one Proposed

Improvement shall not be construed as creating any obligation on the part of the ACC to approve applications involving similar designs for Proposed Improvements pertaining to different Lots.

(iv) To inspect a Lot and/or Dwelling to assure compliance with the approval. Following the approval of any Proposed Improvement, the ACC has the right during reasonable hours to enter upon and inspect any Proposed Improvement with respect to which construction is underway to determine whether or not the plans and specifications therefore have been approved and are being complied with. If the ACC determines that the Proposed Improvement has not been approved or are not being constructed in compliance with the approved plans and specifications, the ACC is entitled to enjoin further construction and to require the removal or correction of any work in place which is not in compliance with the approved plans and specifications.

(v) If any Proposed Improvement as aforesaid shall be changed, modified or altered without prior approval of the ACC of such change, modification or alteration, and the plans and specifications therefore, if any, then the Owner shall, upon demand, cause the Proposed Improvement to be restored to comply with the original plans and specifications, or the plans and specifications originally approved by the ACC, and shall bear all costs and expenses of such restoration, including costs and reasonable attorneys' fees of the ACC.

Section 5.3 Architectural Planning Criteria. The following Architectural Planning Criteria shall govern the development of improvements to the Development:

(a) The Development shall be used exclusively for single-family residential purposes.

(b) All Dwellings shall be used for single-family residential purposes only and no duplexes or apartment houses shall be constructed within the Development. Guest cottages may be allowed with ACC written approval; however, under no circumstances shall there be more than one (1) guest cottage per Lot. Guest cottages shall conform to all the same standards as the main dwelling, except square footage.

(c) All single-family dwellings constructed on any Lot shall have at least 2,000 square feet of heated floor space, exclusive of any and all garages, balconies, porches and basements. Guest cottages must be at least 750 square feet of heated floor space, but no more than 1500 feet of heated floor space.

(d) Setbacks. A Dwelling may be located upon a single platted Lot or a combination of platted Lots and in such event the side set back lines shall apply to the outermost Lot lines. The ACC shall have the right to impose additional set back requirements for all Lot lines to preserve line of sight of neighboring

properties. Unless a specified waiver is obtained from the ACC principal Dwellings must be set back from the Lot boundary lines as follows:

Front or roadside: 75 feet

Side: 20 feet for Lots less than 10 acres, 70 feet for Lots of 10 acres or more.

Rear: 70 feet

Guest Cottages, barns, and all other structures shall comply with the foregoing set back lines unless changes are specifically approved by the ACC.

(e) Sedimentation Control. During construction of any structure on any Lot, Owners shall ensure against soil erosion and sedimentation by the installation of such sedimentation and erosion control devices and practices (including, but not limited to, siltation screens) as are sufficient to retain sediment generated by land disturbing activities within the boundary of the subject Lot. Disturbed areas on the subject Lot shall be seeded and grassed, or afforded other appropriate cover, as soon as practicable, during the construction period, having regard for the exigencies of building construction, and in any event such cover shall be in place and sufficient to retain sedimentation run-off prior to removal of the aforementioned sedimentation and erosion control devices.

(f) Maximum height of home. Homes located on a ridgeline shall be no greater than 30 feet in height. No home shall be higher than 35 feet. Height shall be measured from the highest point of the roof ridge to the lowest point of the foundation visible above ground.

(g) Driveways. All owners must first submit their proposed layout of driveways along with a site plan for the residence, and other structures to the ACC, which shall take into consideration the following factors in approving the request or in making modifications thereto:

- (i). Drainage
- (ii). Safety
- (iii). Erosion control
- (iv). Aesthetics

(h) Games and Play Structures. All basketball back boards, tennis courts and play structures shall be located at the rear of the Dwelling, or on the inside portion of a corner Lot within the setback lines. No platform, doghouse, tennis court, playhouse or structure of a similar kind or nature shall be constructed on any part of a Lot located in front of the rear line of the Dwelling constructed thereon and shall be constructed so as to not adversely affect the adjacent Lots or the use thereof. Any such structure must have prior approval of the ACC.

(i) Architectural style of homes. The homes within the development are to be of high quality design and materials. All plans for construction must first be submitted to the ACC for approval prior to beginning construction. The ACC shall consider the style and design of other homes in the development, as well as the materials used in making a decision on approval of plans. While no specific style is required, traditional styles are encouraged.

(j) Outside lighting. Light pollution is a significant issue in an outdoor oriented mountain community. All plans for outside lighting shall first be brought before the ACC and shall either be approved or denied with ordered changes. The architectural committee shall take into account the following factors in considering such requests:

- (i) Aesthetics.
- (ii) Peace and tranquility of neighbors.
- (iii) Outdoor lighting that is on all night should be shielded so as to direct light downward, and reduce stray upward and lateral light. "Streetlight" type outdoor lighting is not permitted.

(k) Excavation. All plans for the laying of the foundation of any homes or other structures must meet the approval of the ACC, including any excavation and grading. The factors to be considered are the erosion of soil, the topography, aesthetics of the land and the preservation of native vegetation.

(l) Foundation Finish. Foundations will be finished with brick, stone, or stucco, or be built of split-face block that has the appearance of natural stone. All finishes used on the foundation of homes must meet the approval of the ACC.

(m) Color schemes. Exterior color schemes of all buildings in the development must be submitted to and approved by the ACC prior to implementation. The architectural committee shall attempt to keep exterior color schemes in harmony with the natural surroundings, and thus keep a strong emphasis on earth tones.

(n) Exterior siding. All exterior siding and trim of homes and other buildings must consist of natural materials and no vinyl, or metal siding is permitted. Exterior siding and trim are to be constructed of stone, wood shakes or shingles, board and batten, lapboard, or other natural wood building material. Exterior walls may be left natural, or stained, or painted with earth tone colors. The ACC, at its discretion, may permit other types of high-quality exterior materials otherwise in keeping with the appearance of the materials listed above.

(o) Stone. All exterior stone shall be natural or high quality cultured stone approved by the ACC.

(p) Brick. Owners may use brick for architectural accents, chimneys, and foundation veneer only. Brick may not be used as the primary exterior material on buildings within the development.

- (q) Roofing. Roofing materials must be one of the following:
- (i). Architectural quality asphalt shingles.
 - (ii). Slate
 - (iii). Wood shakes.
 - (iv). Cement shingles.

The roof shall be of a natural color to conform to the surrounding natural environment. Flat roofs shall not be permitted unless approved by the ACC. Minimum pitch of main structure roof will be 4/12. Metal roofs are not permitted.

(r) Garages. Garages are to be constructed where possible so that the entryway for vehicles does not face the street, unless such entry way cannot be viewed from the street. Garages are limited to a maximum of 3 one-car bays, and shall not exceed 900 square feet. Construction materials of garages must conform to the same rules as those enumerated and described above for Dwellings. Garages should conform to the design of the house. No metal garages are permitted.

(s) Fencing. No fencing may be erected within the development unless approved by the ACC. Fencing should be wood split rail or similar type, with natural finish, of earth tone color, and should conform to similar fencing which maybe be erected in Common Areas by Declarant. Other types of fencing must be approved by the ACC.

(t) Horse fencing. Horse fencing should consist of welded or woven wire attached to wooden posts, split rail as above, or standard wood board horse fencing. One or more electrified wires or tape designed and maintained in the standard fashion for the restraint of animals may be attached to a fence which otherwise conforms to the above standard. Other types of horse fencing must be specifically approved by the ACC. Arenas and round pens must be constructed of materials, which conform to the fencing as described in this paragraph. Arenas and round pens constructed of metal pipes or panels are not permitted.

(u) Retaining walls. Retaining walls will be constructed of brick, stone, stucco, or split-face blocks, and should conform to the design of the house and the foundation finish.

(v) Swimming Pools. Any swimming pool to be constructed on any Lot shall be subject to requirements as set forth at the discretion of the ACC, which include, but are not limited to the following:

- (i) Composition to be of material thoroughly tested and accepted by the industry for such construction; Above ground pools are not permitted.
- (ii) If visible from the nearest street, pools must be constructed behind the dwelling

- (iii) If visible from the nearest street, no screening of pool areas may extend beyond a line extended and aligned with the sidewalks of the Dwelling unless approved by the ACC.
- (iv) Pool screening may not be visible from the street in front of the Dwelling unless approved by the ACC.
- (v) Any lighting of a pool or other recreation area shall be designed and shielded so as to minimize stray lighting onto adjacent Lots.
- (vi) Pools must be enclosed by a fence compatible with the house, and consistent with the description of allowed fencing as in paragraph (s) above.

(w) Equestrian Lots and Horses. Because of constraints imposed by mountain topography and limited pasture, certain Lots have been designated by the Declarant as "Equestrian Lots". The Board will further designate such lots as appropriate for a maximum number of horses depending on the amount of land available for pasture on the Lot. Such Lots appear to have sufficient acreage and appropriate slope and soil type to warrant development of permanent pasture. However, no warranty is made or implied as to their suitability for equestrian purposes. Horses shall not be allowed on non-equestrian lots. No additional Equestrian Lots shall be designated without an affirmative vote of at least three-fourths of the Owners present (in person or by proxy) at a meeting held with prior notice to all Owners.

(x) Establishment of Pastures, and Dry Lots. Equestrian Lot owners may establish pastures and dry lots upon written approval of site plan including clearing, fencing, establishment, and maintenance, by ACC. The maximum amount of pasture allowed on a given lot will be determined solely at the discretion of the ACC, which will take into account such factors as slope, proximity of streams and wetland, and soil conditions. Plan for construction of dry lots will be submitted to ACC prior to construction. All heavily used equestrian areas around barns, sheds, and the like will be constructed with sufficient subsoil drainage and other appropriate design features to minimize erosion. Lot owners shall maintain vegetative cover of pasture areas at all times. Overgrazing, and wet conditions pose serious erosion hazards in mountainous areas, and owners will monitor conditions, and maintain pastures and other areas at all times, so as to preserve full vegetative covers. Pastures must be completely fenced using materials as described above in paragraph (t). No pastures may be constructed, and no land disturbance of any kind is permitted within 50 feet of streams, and wetlands; provided, however, that there may be circumstances necessitating disturbance or construction within this 50 foot buffer. Such disturbance must be approved by the ACC prior to commencement of activity, and must be in compliance with all applicable Federal, State, and Local regulations.

(y) Utility Connections. Building connections for all utilities, including but not limited to, water, electricity, telephone shall be run underground from the proper connecting points to the Dwelling in such a manner to be acceptable to the governing utility authority.

(z) Wells. All wells installed on the Development shall be constructed and maintained in accordance with all applicable federal, state and local regulations, and shall be screened from surrounding dwellings.

(aa) Sight Distance at Intersection. No fence, wall, hedge or shrub planting which obstructs sight lines and elevations between two (2) and six (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 twenty-five (25) feet from the intersection of the street line.

(bb) Fuel Storage Tanks. Any fuel storage tank including but not limited to propane tanks shall be buried beneath the ground in compliance with applicable federal, state, and local rules and regulations.

(cc) Barns, Hay sheds, and other Outbuildings. Barns and other outbuildings must conform to the same exterior building guidelines as the main dwelling. Exterior materials should match or be compatible with those chosen for the main dwelling. No metal or vinyl veneer, or metal roofs are permitted. Maximum size of barns and other outbuildings is 2000 square feet of interior space, and the maximum height is 30 feet, unless otherwise approved by the ACC.

(dd) Log Homes. Log homes should be constructed of hewn squared logs with chinking, or other type specifically approved by ACC prior to construction. "Lincoln log" homes are discouraged.

(ee) Historical Buildings. Reconstruction of historical buildings moved from another site, such as log cabins, barns, and houses, is encouraged. External appearance of reconstructed dwelling should be compatible with its original appearance. Plan for such must be submitted and approved by the ACC prior beginning such project. ACC reserves the right to reject structures which it deems incompatible.

(ff) Clearing of Viewsheds. Plans for clearing viewsheds on Lots must be approved in writing prior to beginning work. Viewsheds may not be cleared on Common Property without the express written permission of the Board.

(gg) Samples of Materials. Samples of appropriate exterior building materials including siding, stone, roofing and fencing will be submitted to ACC prior to construction.

(hh) Wetlands and Stream Buffers. No alteration, clearing or fill is permitted within 50 feet of any stream or wetland that exists on any lot; provided, however, that there may be circumstances necessitating disturbance or construction within this 50 foot buffer. Such disturbance must be approved by the ACC prior to commencement of activity, and must be in compliance with all applicable Federal, State, and Local regulations. In addition, a portion of lots 3,5,12,13, and 24, and enclaves 3,4,5,8,9,11,12, and 13 have been determined to meet the requirements for designation as a regulatory wetland. Any subsequent fill or

alteration of the wetland of these lots shall conform to the requirements of the federal and state wetland rules adopted by the State of North Carolina in force at the time of the proposed alteration. The intent of this provision is to prevent additional unauthorized wetland fill, so the property owner should not assume that a future application for fill would be approved. The property owner shall report the name of the subdivision in any application pertaining to said wetland rules. This covenant is intended to ensure continued compliance with wetland rules adopted by the Federal Government and the State of North Carolina and, therefore, benefits may be enforced by the State of North Carolina. This covenant is to run with the land and shall be binding on all Parties and all persons claiming under them.

(ii) Waiver of Architectural Planning Criteria. The Architectural Planning Criteria set forth herein are intended as guidelines to which adherence shall be required by each Owner within the Development, provided, however, the ACC shall have the express authority to waive or modify any requirement set forth herein if, in its professional opinion, it deems such waiver in the best interest of the Development and the deviation requested is compatible with the character of the Development. Waivers shall not be provided until notice of the request has been provided to adjoining and adjacent neighbors and posted to any Association internet website. A waiver shall be evidenced by an instrument signed and executed by the ACC upon approval by a majority of its members, with a copy provided to the owner.

Section 5.4 ACC Liabilities. Neither the ACC, the Association, the Declarant nor any of their representatives shall be liable in damages to anyone submitting plans for approval or to any Owner or occupant of the Development by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of any plans or the failure to approve any plans. Any Owner making or causing to be made any Proposed Improvement or additions on any Lot, agrees and shall be deemed to have agreed, for such Owner and his heirs, personal representatives, successors and assigns, to hold the ACC, the Association, the Declarant and all other Owners harmless from any liability, damage to the Development and from expenses arising from the construction and installation of any Proposed Improvement and such Owner shall be solely responsible for the maintenance, repair and insurance of any alteration, modification or change and for assuring that the Proposed Improvement meets with all applicable governmental approvals, rules and regulations.

No approval as provided herein shall be deemed to represent or imply that the Proposed Improvement, if constructed in accordance with the approved plans and specifications will result in properly designed improvements or will meet all applicable building codes, applicable governmental permits or other governmental requirements.

ARTICLE VI USE RESTRICTIONS

In order to provide for congenial occupancy of the Development and for the protection of the value of the Lots and Dwellings, the use of the Development, Lots and Dwellings shall be in accordance with the following provisions so long as the Development, Lots and Dwellings are subject to this Declaration.

Section 6.1 Residential Uses. All dwellings and any improvements on Lots shall be used for residential living units and certain appurtenant purposes such as storage facilities, guest cottages, garages, barns and for no other purpose, and no business or commercial building which requires additional traffic may be erected on any Lot in the Development. The leasing of a Dwelling shall not relieve the Owner as well as the tenant of the necessity of compliance with this Declaration, the Articles and the Bylaws.

Section 6.2 Accessory Outbuildings. Without the approval of the Board of Directors, no accessory outbuilding shall be erected on any parcel prior to the erection thereon of a dwelling. In no event shall any such accessory outbuildings, any partially completed or temporary structures, ever be used for human occupancy or habitation.

Section 6.3 Completion of Construction. Construction of any improvements, once commenced, shall be completed within 24 months. An improvement not so completed, or upon which construction has ceased for 90 consecutive days, or which have been partially or materially damaged and reconstruction is not begun for a period of six (6) months shall be deemed nuisances. The Association may remove any such nuisance, repair or complete the same at the cost of the owner. The Association may grant extensions of time.

Section 6.4 Maintenance of Lots. All lots, whether occupied or not occupied, and all improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health.

Section 6.5 Signs. No signs shall be displayed for public view on any portion of the Development except as described in this section. One "For Sale" or contractor's sign, no greater than five square feet in area is permitted. Lot owners may also place one sign identifying their families or their residence within public view. However, such signs must be 1.5 square feet or less in size, and should be made of wood or other natural material compatible with the Development, and are subject to approval by the ACC. Declarant or Association, its successors and assigns, shall be permitted to post directional, informational, or warning signs as it deems necessary, as well as signs which are appropriate to its sales efforts.

Section 6.6 Hunting and Firearms. No hunting is permitted within the Development. No firearms shall be discharged.

Section 6.7 No temporary structures shall be placed upon the Development at any time; provided, however, this prohibition shall not apply to temporary equipment shelters used by a contractor or lot owner during construction, it being understood that such temporary shelters may not be placed upon the lot until a permit has been issued for the construction of a permanent residence. The temporary structure must be removed as soon as the construction of the residence is complete.

Section 6.8 No mobile home, manufactured home, or house trailer, or similar building or structure shall be placed on the Development. Modular, panelized or other forms of construction where portions of the structure are constructed off-site are permitted, but will be subject to particularly strict architectural control scrutiny, and must otherwise fully comply with the materials requirements, design guidelines, and other Architectural Planning Criteria.

Section 6.09 Trails. This development features a multiuse greenway and trail system. Trails may be designated and marked by the Association as to their suitability for pedestrian, bicycle, or equestrian use. Use is limited to lot owners, families, and invited guests. The Association may promulgate additional trail usage rules at their discretion, and lot owners and guests agree to be bound by these rules.

Section 6.10 Tree Removal and Privacy Zones. Trees with a trunk diameter of twelve (12) inches at chest height shall not be removed without approval of the ACC unless necessary to construct a Dwelling, driveway or other approved structure or because the tree constitutes a danger due to overhang, death, or disease. Trees and vegetation will not be removed within the side setback zones without approval from the ACC. This is to maximize the natural vegetative barrier between adjacent residences.

Section 6.11 (a) Subdivision of Lots. No Lot may be subdivided into smaller lots without the permission of seventy-five percent of all owners. Provided, however, that lots which were originally platted as separate lots and which have been consolidated with other lots (such as Lots 3 and 5) may be re-subdivided upon approval of the Board of the Association, and upon payment of the annual assessments which would have accrued on the second lot during the time the lots were consolidated. The Sylvan Habitat Master plan anticipated five lots adjoining Sassafras Lane (Lots 14, 15, 16 and 17, plus stable lot), and Sylvan Resources, LLC and its successors shall retain the right to file subdivision plats or to revise existing plats for those lots (or to consolidate them into larger parcels) without Board or Owners' approval, as long as the total number of lots does not exceed five.

(b) Consolidation of Lots. Adjoining lots can be consolidated into single parcels with the permission of the Board of Directors, with the sole exception of Camps 11 and 12, where consolidation has already been approved. Re-subdivision would require Board approval and payment of assessments which would have accrued on the second lot during the period of consolidation. The Sylvan Habitat Master plan anticipated five lots adjoining Sassafras Lane (Lots 14, 15, 16 and 17, plus stable lot), and Sylvan Resources, LLC and its successors shall retain the right to file subdivision plats or to revise existing plats for those lots (or to consolidate them into larger parcels) without Board or Owners' approval, as long as the total number of lots does not exceed five.

Sections 6.12 Off-Road motorized vehicles. Use of off-road motorized vehicles, including but not limited to go-carts, recreational all-terrain vehicles, and dirt bikes, is expressly forbidden everywhere in the Development. Tractors, golf carts, and farm utility vehicles are acceptable, but are prohibited on trails, unless specifically authorized by the Association for purposes of trail maintenance.

Sections 6.13 Dogs will be constrained at all times by leashes, chains, or fences. No commercial dog breeding is permitted.

Sections 6.14 Horses. No livestock other than horses is permitted. Horses are permitted on designated Equestrian Lots only as described in Section 5.3(x). All horse owners are required to maintain and produce on demand by the Association, records of current negative Coggins Test (or other test which may supplant the Coggins Test in the future) for all their horses, including those belonging to invited guests, which are on the Development. The Association is empowered to promulgate additional equine health requirements, including reasonable vaccination and prophylactic medication requirements. However, the Association assumes no liability for failure to enforce these requirements.

Sections 6.15 Commercial Boarding Facilities. Commercial boarding facilities, including dog kennels, and horse boarding facilities, for individuals who are not Lot owners, are not permitted.

Sections 6.16 Motor Homes, Travelers and Campers. Trailers and Campers parked for more than one week must be out of view of the road, and will be screened by landscaping, or other appropriate and attractive screen.

Section 6.17 Additional Use Restrictions. The Board of Directors of the Association may adopt rules or regulations, applicable to all or any portion or portions of the Development which the Board, in its sole discretion, deems appropriate.

Section 6.18 Enforcement Procedure. Every Owner and Occupant of any Lot shall comply with the provisions of this Declaration as set forth herein, and any and all rules and regulations made pursuant to this Declaration, Bylaws and Articles of Incorporation of the Association, as amended from time to time. Failure of an Owner or occupant to so comply shall be grounds for action, which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof.

ARTICLE VII

Section 7.1 Damage to or Condemnation of the Lots or Dwellings. In the event of damage or destruction to any portion of the improvements on a Lot due to casualty, natural events, condemnation or conveyance in lieu thereof, the improvements shall be repaired or restored by the Owner. In the event that the damage, destruction or condemnation renders the improvements uninhabitable or the damage is so substantial that the Owner determines not to rebuild the improvements on the Lot, the Owner shall clear the debris and have the building site leveled within 60 days from the date of

destruction or damage and shall thereafter maintain the Lot in a clean and sanitary condition.

Section 7.2 Damage to Common Property Due to Owner Negligence. In the event that the Common Property is damaged as a result of the willful or negligent acts of the Owner, his tenants, family, guests or invitees, such damage shall be repaired by the Association and the cost thereof shall be a Special Assessment against such owner as described in Article IV, Section 4.1.

Section 7.3 Insurance. The Association shall have the power but not the obligation to obtain and maintain insurance policies insuring the interests of the Association. The policy of property insurance may cover any improvements to the Common Property and any liability coverage deemed appropriated by the association.

ARTICLE VIII EASEMENTS

Section 8.1 Road Easements. Each Lot may be subject to a roadway easement. Access to and from the Lots may be over such roadway easements. All portions of the roadway providing ingress and egress from the Lots to the Cherrywood Lane are hereby referred to as 'Common Roads'.

The Association owns and shall have the obligation to maintain the Common Roads.

The Association shall have (a) the right to adopt reasonable rules and regulations pertaining to the use of the Common Roads, (b) the right, but no obligation, from time to time, to control and regulate all types of traffic on the Common Roads, including the installation of gatehouses and gate systems, if the Association so elects. The Association shall have the right but no obligation to control speeding and impose speeding fines to be collected by the Association in the manner provided for assessments and to prohibit use of the Common Roads by traffic or types of vehicles (including without limitation, 'go-carts', and all terrain vehicles), which in the opinion of the Association would or might result in damage to the Common Roads or create a nuisance for the residents, (c) the right, but no obligation, to control and prohibit parking on all or any part of the Common Roads, and (d) the right, but no obligation, to remove or require the removal of any fence, wall, hedge, shrub, bush, tree or other thing, natural or structure which is placed or located on the Property, if the location of the same will in the opinion of the Association obstruct the vision of a motorist.

Section 8.2 Association's Easement of Correct Drainage. The Association shall have a blanket easement on, over and under the ground within the Development to maintain and correct drainage of surface waters and establish other erosion controls as necessary.

ARTICLE IX MAINTENANCE

Section 9.1 Association Responsibility. In addition to specific obligations set forth herein, the Association shall maintain, repair and restore all the Common Property, including, without limitation, maintenance, repair and replacement of all landscaping, structures, Common Roads, trails, rights-of-way and any and all improvements set thereupon. The Association may assume the maintenance responsibilities set forth in any amendment or supplemental declaration affecting all or part of the Development.

Section 9.2 Owner Maintenance Required and Failure to Maintain. The Owner shall maintain the exterior of all buildings and improvements on his Lot and his Dwelling in good condition. During construction of a Dwelling or other Proposed Improvement, each Owner will be required to maintain his Lot in a reasonably clean condition, providing for trash and rubbish receptacles and disposal. Construction debris shall not be permitted to remain upon any Lot or about any Dwelling.

ARTICLE X DISCLAIMER OF LIABILITY

Section 10.1 General Provisions. Notwithstanding anything contained herein, in the Articles, Bylaws or rules and regulations of the Association or any other document governing or binding the Association (jointly referred to herein as 'Association Documents'), neither the Declarant nor the Association shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Development, including, without limitation, Owners, residents, their families, guests, invitees, agents, servants, contractors or subcontractors, nor for any property of such persons.

Section 10.2 Specific Provisions. Without limiting the generality of the foregoing:

(a) It is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the Development have been written and are to be interpreted and enforced for the sole purpose of enhancing and maintaining the enjoyment of the Development and the value thereof.

(b) Neither the Declarant nor the Association is empowered nor have they been created to act as an entity that enforces or insures compliance with the laws of the United States, the State of North Carolina, the County of Transylvania, and/or any other jurisdiction or prevents tortuous activities.

(c) The provisions of the Association Documents, setting forth the uses of Assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of such funds and not as creating a duty of the Association, or the Declarant, to protect or further the health, safety or welfare of any persons, even if such funds are used for such purposes.

Section 10.3 Owner Covenant. Each Owner, his heirs, successors and assigns (by virtue of his acceptance of title to his Lot) and each other person or entity having an interest in or lien upon or making use of, any portion of the Development (by virtue of accepting such interest or lien or making use thereof) shall be bound by this Declaration and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this Declaration.

Section 10.4 Any reservation or right of Declarant, which is stated in or implied from these Restrictions, shall not give rise to any affirmative obligation or duty on the part of the Declarant unless expressly stated in these Restrictions.

Section 10.5 Limitation of Liability for Equestrian Activities. Pursuant to N.C.G.S. 99E-2, neither the Declarant nor the Association nor any lot owner is liable for any injury or death of a horseback rider resulting from the inherent risks of equine activities. Declarant, Lot owners, and Association will hold each other harmless from any liability whatever resulting from use of trails, and from any injury resulting from equestrian activities. Lot owners should post equine liability limitation notices at their individual equine facilities. Lot owners assume liability for their guests who may ride on equestrian trails. Declarant, and Association may, at its option, require visitors using trails to sign a release prior to participation.

Section 10.6 Limitation of Liability for Trails and other Common Facilities. All trails pose inherent risks and dangers. Therefore, all trail users, including Lot owners, invited guests, family members, Declarant, and Association, agree to hold each other harmless from any liability whatsoever, which results from use of trails and other common facilities which may be constructed within the Development.

ARTICLE XI GENERAL PROVISIONS

Section 11.1 Enforcement. The Association, the Declarant, or any Owner, all have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Provided, however, the foregoing shall not be construed to limit the ACC's rights to retain Architectural Control of the Development as provided therein. Failure by the Association, the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The association shall have the authority to levy fines for covenant violations in accordance with Chapter 47A of the North Carolina statutes.

Section 11.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

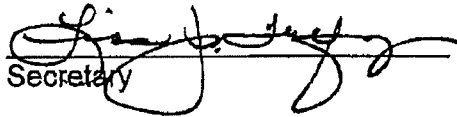
Section 11.3 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 11.4 Amendment. This Declaration may be amended by the affirmative vote of seventy-five (75%) percent of the property owners.

Section 11.5 Attorney's fees. In the event of any litigation arising under these covenants, (including assessment or fine collection), the prevailing party shall recover from the other party reasonable attorneys' fees, determined without regard to the amount in controversy.

IN WITNESS WHEREOF, the Secretary of the Association has affixed her hand and seal this 11 day of September, 2011, certifying that this Restated Declaration was adopted by an affirmative vote of more than 75% of the property owners.

Sylvan Habitat Property Owners Association, Inc.


Secretary

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, a Notary Public of the County and State aforesaid, certify that Lisa Trefz personally appeared before me this day and acknowledged that she is Secretary of Sylvan Habitat Property Owners Association, Inc. and that by authority duly given and as an act of the Association, the foregoing instrument was signed in its name by its Secretary.

Witness my hand and official stamp or seal, this 11 day of September, 2011.


Notary Public

My Commission expires: Aug. 30, 2014

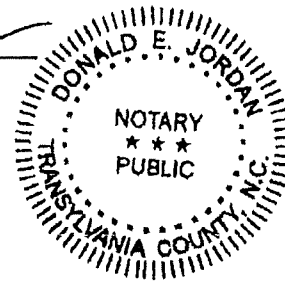


EXHIBIT A
Legal Description for Sylvan Habitat

All of the 419.2330 acres shown as Parcel 1 on the Survey by Gene Parker recorded in Plat File 8, Slide 1103 in the records of Plats at the office of the Register of Deeds for Transylvania County.

This parcel includes as an appurtenance the right of way recorded in Book 419, Page 301, as well as a right of way for non-vehicular travel on Parcel 2 shown on the referenced Plat.