


2005010057


 TRANSYLVANIA CO, NC FEE \$83.00
 PRESENTED & RECORDED:
 04-14-2005 01:20:35 PM
 CINDY M OWNBEY
 REGISTER OF DEEDS
 BY: D REE MCCALL
 DEPUTY REGISTER OF DEEDS
 BK: DOC 282
 PG: 263-286

SYLVAN HEIGHTS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION, made on the date set forth below by Sylvan Resources LLC, a North Carolina limited liability company (referred to as "Declarant").

BACKGROUND:

A. Declarant is the owner of certain property in Transylvania County, State of North Carolina, which is more particularly described on Exhibit A.

B. Declarant desires 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.

C. Declarant deems it desirable to create Sylvan Heights Property Owners' Association, Inc., a North Carolina not-for-profit corporation ("Association"). The Association 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, Declarant hereby declares 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 this Declaration.

Section 1.2 "Association" shall mean and refer to Sylvan Heights Property Owners Association, Inc., a not-for-profit North Carolina corporation to be formed, 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 Heights Property Owners Association.

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 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 and subject to any use rights made or reserved by Declarant prior to conveyance of such Common Property or the granting of the easements. Walnut Hills Drive shall be included as common property, but shall be subject to the obligation of the Walnut Hills Property Owners Association to pay an equitable share of the cost of its maintenance.

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 Heights 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 Articles.

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, and any additional contiguous property later designated by Declarant.

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 a period, not to exceed 60 days, 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 Declarant (or 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 Declarant (or the Association) to acquire, extend, terminate or abandon such easement.
- (c) The right of the Declarant (or 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 Declarant or 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 may convey the Common Property to the Association at any time the Declarant determines but no later than when 50 lots are sold. Such conveyance shall be subject to easements and restrictions of record and taxes for the year of conveyance. The Declarant may reserve rights to itself for use of the Common Property and Common Roads. Upon conveyance of the Common Property to the Association, such Common Property shall be held for the benefit of the Association. The Declarant reserves the right to place a conservation easement on any or all of the common property prior to its conveyance to the Association.

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

Section 3.1 Declarant shall have the sole right to levy and collect assessments, amend these covenants, and enforce these covenants until such time as it has sold 50 of the lots in the development or has voluntarily relinquished these rights to the Association.

Section 3.2 Association. The Association will be 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. The Association will be formed as soon as required by law, and no later than when 50 lots are sold. However, Declarant, may, at its exclusive option, form the Association, and relinquish its right to the Association, at any sooner time.

Section 3.3 Qualifications for Membership. Every Owner of a Lot, which is 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, which is subject to this Declaration.

Section 3.4 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 3.5 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 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, or the Declarant, until such time as the Declarant relinquished it authority to the Association:

- (a) Annual Assessments which are herein defined as 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, which are herein defined as 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 (except the Declarant) 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 initial annual assessment shall be \$350.00 per calendar year until the Association takes over the obligations of the Declarant, after which it shall remain at the same rate until duly changed by the Association. Any new property owner shall pay the pro rata assessment to the end of the year at closing except that if the closing is in the last quarter of the year then the property owner shall pay a pro rata share of the last quarter's assessment along with the following years' assessment at closing.

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. The Declarant also has the authority to levy such special assessment until it relinquishes its authority to the Association, but only for purposes of reconstruction, repair, and or replacement, if necessary, of existing capital improvements, not to fund new capital improvements.

(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 June 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, 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 Declarant, or 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 among the Register of Deeds 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 be the calendar year commencing on January 1 of each year.

(b) The initial budget shall be established by the Declarant and shall be based upon estimates the Declarant can establish using the financial data for similar properties.

(c) Commencing approximately one month before the expiration of each budget year, the Board of Directors shall adopt a 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 Board 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 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.

Section 4.9 Declarant Establishes Account for Assessments: The Declarant shall establish a separate account, in which it shall deposit all regular and special assessments, if any, until it relinquishes authority to the Association, at which time any balance will be transferred in full to the Association. Interest, if any, will accrue to the benefit of the account. Declarant may use funds from this account only for purposes of maintenance, reconstruction, repair, and or replacement, as necessary, of existing capital improvements, not to fund new capital improvements.

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, other than those erected by the Declarant, 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 in harmony of 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, mailboxes, statues, entrance columns or similar structures, 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 include erosion, aesthetics, compatibility with surrounding development, 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. The Declarant or its agents and assigns, shall, until such time as Declarant relinquishes control to the Association, itself serve as the ACC, and will make ACC decisions at its discretion. After relinquishment of control by Declarant to homeowner's Association, the ACC shall consist of at least three (3) members (who need not be Members of the Association,) who are appointed by, and serve at the pleasure of, the Board of Directors of the Association. After relinquishment of control to 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 have been adopted by the Declarant and are set forth in Section 5.3. The Declarant shall have the sole power and right to amend such Architectural Planning Criteria for so long as it serves as the ACC. In addition, the Declarant may establish such additional rules, regulations and policies as it may determine reasonable or convenient which may be set forth in a separate publication available at Declarant's office so long as such rules, regulations and policies are consistent with the Architectural Planning Criteria set forth herein. Any modification or amendment to the Architectural Planning Criteria after Declarant relinquishes control of the ACC, 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 one complete sets of plans and specifications for any Proposed Improvement to be constructed by any person or entity other than the Declarant, the construction or placement of which is proposed upon any Lot. This includes submission of site plan for dwelling, driveway, lawns or meadows, 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.

(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 submitted application is neither approved nor disapproved within 30 days, it shall be deemed approved. Subsequent to the transfer of control of the ACC by the Declarant, 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 dispositive; provided, however, during the time the Declarant itself is acting as ACC, determination, its decision shall be final.

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 or functional 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 or its agents have 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 unless specifically waived by the ACC.

(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 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.

(c) All single-family dwellings constructed on any Lot shall have at least 1800 square feet of heated floor space, exclusive of any and all garages, balconies, porches and unfinished 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. Unless a specified waiver is obtained from the ACC principal Dwellings must be set back as follows:

Front or roadside: 75 feet from road centerline.

Side: 20 feet for Lots less than 10 acres, 40 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.

(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 and mountain craftsman styles are encouraged.

(j) Exterior lighting. Light pollution is a significant issue in an outdoor oriented mountain community. All plans for exterior lighting shall first be brought before the ACC and shall either be approved or denied with ordered changes. Outdoor lighting should be shielded so as to direct light downward, and reduce stray upward and lateral light. "Streetlight" type outdoor lighting is not permitted unless it is part of a neighborhood streetlight system designed, approved, and installed by Declarant or Association or their authorized agents.

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

(l) Foundation Finish. Foundations will be finished with brick, stone, or stucco, or be constructed 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. Exterior color schemes shall be compatible with natural surroundings, and earth tones will be favored.

(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 building material. Exterior walls may be left natural, stained, or painted with earth tone or similar 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 including fiber cement siding that simulates wood shingles or lapboard.

(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 material must be approved by the ACC prior to installation. Roofing materials must consist of one of the following:

- (i). Architectural quality asphalt shingles.
- (ii). Slate, natural or synthetic
- (iii). Wood shakes.
- (iv). Fiber Cement shingles.

The roof shall be of a natural color to conform to the surrounding natural environment. Flat roofs are 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 may be erected in Common Areas by Declarant. Other types of fencing must be approved by the ACC.

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

(u) 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 sidewalls 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.

(v) 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 a manner acceptable to the governing utility authority.

(aa) 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.

(bb) 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.

(cc) 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.

(dd) Outbuildings. 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.

(ee) Log Homes. Log homes shall be constructed of natural logs with chinking, or other type specifically approved by ACC prior to construction. Manufactured or fabricated log products are discouraged, and require specific ACC approval prior to construction.

(ff) 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 reserved the right to reject structures, which it deems incompatible.

(gg) Mailboxes and other Roadside structures. The site improvements subject to ACC approval shall include mailboxes, newspaper boxes, columns or other driveway entrance surrounds and structures, and other descriptive or ornamental items along the roadways. The ACC shall have the power to require a uniform style of boxes, subject to postal regulation and the requirements of the newspaper circulation departments. The ACC may also require that certain or all boxes be identical or that several mailboxes are mounted to a single structure, particularly for owners on any roads in the Development where the postal carrier will not travel.

(hh) 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 ACC and/or Declarant.

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

(jj) Wetlands and Stream Buffers. No alteration, clearing or fill is generally 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, any portion of lots shown on a recorded survey to contain wetlands will 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.

(kk) 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 judgment, it deems such waiver in the best interest of the Development and the deviation requested is compatible with the character of the Development. A waiver shall be evidenced by an instrument signed and executed by the ACC.

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, 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 nor the tenant of the necessity of compliance with this Declaration, the Articles and the Bylaws.

Section 6.2 Accessory outbuildings. Without the approval of Declarant, 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. Declarant may remove any such nuisance, repair or complete the same at the cost of the owner. Declarant 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" 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.

Section 6.9. ACC shall have the right (but not the obligation) to control and to decide the precise site and location of any home, building, or other structure, and driveway access within the Development. The location shall be determined only after reasonable opportunity is afforded the Lot owner to recommend a specific site.

Section 6.10 Trails. This development may include a multiuse park and trail system. Trails may be designated and marked by Declarant and/or Association as to their suitability for pedestrian, or bicycle use. Use is limited to lot owners, families, and invited guests. However, other individuals may use the trails at the discretion of the Declarant or Association. The Association and or Declarant may promulgate additional trail usage rules at their discretion, and lot owners and guests agree to be bound by these rules.

Section 6.11 Sales and Construction Activities. Notwithstanding any other provisions herein, the Declarant and its agents, successors, assigns and designees may maintain such facilities and undertake such activities as may be reasonably required to sell the Lots, Dwellings or the Development and to construct improvements thereon.

Section 6.12 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 6.13 Subdivision of Lots. No Lot shall be subdivided into smaller lots by any Owner without the permission of the Declarant. This provision shall not be construed to prohibit corrective deeds or similar corrective instruments. The Declarant shall have the sole and exclusive right, without the consent of any Owner, to subdivide or permit subdivision of Lots. After permitted subdivision, the resulting lots shall be treated the same as any other lots. Lot owners (including the Declarant) shall have the right to consolidate two or more adjoining lots into a single lot. After such a consolidation, the resulting lot shall be treated for all purposes as a single lot, and may not later be re-subdivided without Declarant (or Association) approval.

Sections 6.14 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 utility vehicles are acceptable, but are prohibited on trails, unless specifically authorized by the Declarant and/or Association for purposes of trail inspection or maintenance.

Sections 6.15 Dogs will be constrained at all times by leashes, chains, or fences. No commercial dog breeding is permitted.

Sections 6.16 Livestock. No livestock is permitted.

Sections 6.17 Commercial Animal Boarding Facilities. Commercial boarding facilities, including but not limited to dog kennels, are not permitted.

Sections 6.18 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 6.19 Additional Use Restrictions. The Board of Directors of the Association may adopt such additional use restrictions, rules or regulations, applicable to all or any portion or portions of the Development and to waive or modify application of the foregoing use restrictions with respect to any Lot(s), which the Board, in its sole discretion, deems appropriate.

Section 6.19 Enforcement Procedure. Every Owner and Occupant of any Lot shall comply with the provisions of this Declaration as set forth herein, any and all rules and regulations made pursuant to this Declaration, By-Laws 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 of 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 Lot 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 conveyed by Declarant may include in its legal description thereof a portion of which shall 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 directly or indirectly to Walnut Hollow Road are hereby referred to as 'Common Roads'.

Notwithstanding the ownership of fee simple title to the roadways, the Declarant shall construct the Common Roads and the Association shall have the obligation to maintain the Common Roads.

The Declarant and 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 Declarant or Association so elects. The Declarant and 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 Declarant or 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 Declarant or the Association obstruct the vision of a motorist.

Section 8.2 Declarant's Easement of Correct Drainage. Declarant and Association hereby reserve 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. 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 here in, 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 or Declarant arising from or connected with any matter for which the liability of the Association or Declarant 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 10.6 Limitation of Liability for Trails and other Common Facilities. All trails and common facilities pose inherent risks and dangers. Therefore, all trail users and users of common facilities, including Lot owners, invited guests, family members, Declarant, and Homeowners 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 for in perpetuity.

Section 11.4 Amendment. After Declarant's rights under Paragraph 3.1 terminate, these restrictions 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 of 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 undersigned, being the Declarant herein, has hereunto set its hand and seal this 25 day of March, 2005.

Sylvan Resources, LLC
A North Carolina Limited Liability Company

By: Paul S. Fekete
Paul S. Fekete, Manager

STATE OF Georgia
COUNTY OF Walton

I, a Notary Public of the County and State aforesaid, certify that Paul S. Fekete personally appeared before me this day and acknowledged that he is Manager of

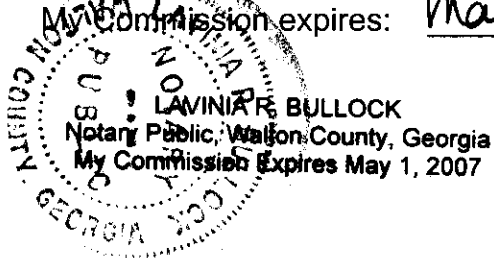
Sylvan Resources, LLC, a North Carolina Limited Liability Company, and that by authority duly given and as an act of the LLC, the foregoing instrument was signed in its name by its Manager

Witness my hand and official stamp or seal, this 25th day of March, 2005.

Lavinia R Bullock

Notary Public

My Commission expires: May 1, 2007



The foregoing certificate of Lavinia R. Bullock is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Cindy M. Ownbey

Register of Deeds for Transylvania County

By: D'Lee McCall,
Deputy

EXHIBIT A

Lying in Dunn's Rock Township, Transylvania County, North Carolina, and being the same real property described in that deed from Wanda M. Stephan to Michael L. Steinberg and wife Miriam F. Steinberg dated January 2, 2001, which is recorded in Transylvania County Book 42 at page 255; the property described in that deed from Wanda M. Stephan to Prestige Properties, Inc. and Michael L. Steinberg and wife Miriam F. Steinberg which is dated November 28, 2001 and recorded in Transylvania County Book 91 at page 170 and the property described in that deed from Prestige Properties, Inc. to Michael L. Steinberg and wife Miriam F. Steinberg dated February 19, 2002 and recorded in Transylvania County Book 91 at page 171.

and

Lying in Dunn's Rock Township, Transylvania County, North Carolina, and being the same identical real property described in that deed from Wanda M. Stephan to Prestige Properties, Inc. dated January 2, 2001 and recorded in Transylvania County Book 42 at page 252, less and excepting therefrom that portion thereof which is described in that deed from Prestige Properties, Inc. to Michael L. Steinberg and wife Miriam F. Steinberg dated February 19, 2002 and recorded in Transylvania County Book 91 at page 171. Also included herein are all the rights of the Grantor under that deed from Wanda M. Stephan to Prestige Properties, Inc. and Michael L. Steinberg and wife Miriam F. Steinberg dated November 28, 2001 and recorded in Transylvania County Book 91 at page 170.