

2005017122

TRANSLYVANIA CO, NC FEE \$71.00
PRESENTED & RECORDED:
12-07-2005 03:24:24 PM
CINDY M OWNBEY
REGISTER OF DEEDS
BY: TERESA D MORTON
DEPUTY REGISTER OF DEEDS
BK:DOC 322
PG:510-529

**DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND
RESTRICTIONS FOR THE PLAT OF
ROUND MOUNTAIN FALLS**

This Declaration of Easements, Covenants, Conditions and Restrictions (the "Declaration") is made on the date hereinafter set forth by the McKeough Land Company, Inc., an Illinois corporation, of 208 Franklin Street, Grand Haven, MI 49417, hereinafter referred to as the "Developer."

WITNESSETH

WHEREAS, the Developer, being the owner in fee simple of all real property and all buildings and improvements thereon in the Plat of Round Mountain Falls, recorded in Plat File 11, Slides 481 & 482 at the Registry of Deeds of Transylvania County, North Carolina and incorporated herein by reference (hereinafter referred to as "the Development"); and

WHEREAS, Declarant desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property located within Round Mountain Falls, the Development is made subject to this Declaration in accordance with the North Carolina Planned Community Act, as amended (the "Act"), for the purpose of protecting the value and desirability of the property, and to provide a flexible and reasonable procedure for the overall development of the Development, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such properties as are now or may hereafter be subject to this Declaration, and in order to implement said objectives, to convey the Development pursuant and subject to those certain covenants, conditions, restrictions, reservations, liens, agreements and charges hereinafter set forth; and

WHEREAS, Declarant hereby declares that all the property described on the Plat of Round Mountain Falls, and any additional property as may by subsequent amendment be added to and subjected to this Declaration shall be held , sold and conveyed subject to the following easements, covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described property or any part thereof , their heirs, successors, successors-in-title and assigns and shall inure to the benefit of each owner thereof; and

WHEREAS, in addition to Lots, the Developer wishes to make provisions for commonly owned lands, and improvements located thereupon, as a component of the Development for the use and enjoyment of the owners of Lots; and

WHEREAS, the Developer is contemplating the platting of additional Lots in the future, which will be part of the Development; and

WHEREAS, the Developer wishes to permit the development of the Development into a planned community suitable for family and recreational living and, at the same time, wishes to maintain insofar as possible, the natural character of this beautiful property; and

WHEREAS, it is essential to the value of the Lots that the Development be perpetually maintained in a manner consistent with high environmental, aesthetic and residential standards; and

WHEREAS, to accomplish the foregoing, the Developer desires to impose certain easements, covenants, conditions and building and use restrictions, as herein contained, upon and for the benefit of said Lots and the Development as a whole; and

WHEREAS, the Developer is willing to sell the Lots and all buyers and subsequent owners hereby accept such Lots subject to the easements, covenants, conditions and restrictions set forth herein; and

NOW THEREFORE, the Developer declares that all of the Lots in the Development, together with any Common Lands, are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said Lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of said Lots in favor of each and all other Lots; to create reciprocal rights between the respective owners of all such Lots; to create privity of contract and estate between the owners of such Lots, their heirs, successors and assigns; and shall, as to the owner of each such Lot, such owner's heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other such Lots in the Development and their respective owners, present and future.

ARTICLE I
DEFINITIONS

- 1.1 “Association” shall mean The Round Mountain Falls Property Owners Association, as established hereinafter in Article 7.
- 1.2 “Architectural Review Committee” or “Committee” or “ARC” shall mean the Architectural Review Committee as established hereinafter in Article 8.
- 1.3 “Common Land” and “Common Lands” means and includes all real property and all tangible personal property now or hereafter owned by the Association or otherwise held for the common use and enjoyment of the owners including all tangible personal property required for the maintenance and operation of other property owned, maintained or operated by the Association excluding the Lots.
- 1.4 “Developer” or “Declarant” shall mean the McKeough Land Company, Inc., the current owner of the Development, or its successors or any person or entity to whom or to which it may, in a document recorded with the Office of the Register of Deeds of Transylvania County, expressly assign one or more of its rights hereunder or delegate its authority hereunder.
- 1.5 “Development” shall mean any and all property described on the Plat of Round Mountain Falls, or property added to the Development by subsequent amendment to this Declaration, together with any and all appurtenances and improvements located thereupon, subject to any easements, licenses, permits, restrictions and conditions.
- 1.6 “Lot” shall mean any portion of the Development, other than Common Lands, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the plats of survey filed with this Declaration or subsequent amendments thereto. Where the context indicates or requires, the term “Lot” includes any structure on the Lot.
- 1.7 “Owner” and “Lot Owner” shall mean one or more persons or entities, who hold the record title to any Lot which is part of the Development, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If the Lot is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the Owner.
- 1.8 “Mobile Home” shall mean any dwelling, transportable in one or more sections, which is built on a permanent chassis.
- 1.9 “Modular Home” shall mean any dwelling constructed off-site from the Development in 3-dimensional modules, which modules are then transported to the site for assembly and integration to form the dwelling unit and which modules do not have as part of their integral construction a permanent chassis for transporting said modules.

ARTICLE 2
SUBDIVISION OF LOTS

- 2.1 No Lot may be further subdivided unless all the resultant parcels created by the subdivision are deeded to an adjacent Lot Owner(s) to increase the size of another Lot and such division satisfies the requirements of applicable zoning ordinances and all other governmental regulations.

ARTICLE 3
CARE AND APPEARANCE OF PREMISES

- 3.1 Lot Owners shall maintain the exterior of all improvements on any Lot and the Lot itself in a neat and attractive manner and in good condition and repair.
- 3.2 All Common Lands shall be maintained by the Association in a neat and attractive manner and in good condition and repair.

ARTICLE 4
PERMITTED AND PROHIBITED USES

- 4.1 No Lot, Common Lands or any part of the Development shall be used, nor shall any structure be erected thereon or moved thereupon, unless the use thereof and location thereon satisfies the requirements of applicable zoning ordinances and other governmental regulations, if any, which are in effect at the time of the contemplated use or the construction of any structure, or unless approval thereof is obtained from the appropriate zoning or regulatory authority.
- 4.2 Except as otherwise specifically provided herein, Lots shall be used for the construction of one single-family residence, and recreational uses incidental thereto, only.
- 4.3 Home businesses are permitted if operated entirely within the dwelling, employ not more than one (1) non-family member, and excessive traffic and parking requirements are not generated. No exterior signage relating to home businesses shall be permitted.
- 4.4 No unregistered or non-operational vehicle (unless garaged), trash, refuse pile or unsightly or objectionable object or materials shall be permitted or maintained upon the Development. All garbage and refuse shall be promptly disposed of so that it will not be objectionable to neighboring Lot Owners. All rubbish, garbage, and trash receptacles shall be covered or screened in a manner so as not to be visible from any roadway or from other Lots. No dumping of refuse or storage of materials is permitted upon the Common Lands. No garbage receptacle shall be left curbside for

- more than a twenty-four (24) hour period preceding and following scheduled garbage pick up times.
- 4.5 At such time as construction of a dwelling has commenced upon a Lot, a Lot Owner may park one (1) properly registered recreational vehicle, including, but not limited to boats, trailers, campers, ATVs, personal watercraft (PWC) and other such vehicles on a Lot outside of an enclosed building for not longer than 36 hours, unless substantially screened from view from beyond the Lot. As to PWC, ATVs and other such vehicles, a trailer accommodating up to two (2) such recreational vehicles is herein to be construed as one (1) such recreational vehicle. No such storage of any vehicles of any kind is permitted upon the Common Lands.
 - 4.6 No noxious or offensive trade or activity and no activity which is in violation of any law, ordinance, statute or governmental regulation shall be conducted in the Development, nor shall anything be done which may be or become an annoyance or nuisance to the other Lot Owners in the Development.
 - 4.7 Unless otherwise restricted by applicable zoning laws or other governmental regulations, if any, primitive camping is permitted only in area(s) designated by Developer. Any and all rubbish and debris associated with camping activities in such designated areas shall be removed upon departure. The forgoing restrictions regulating camping on a Lot shall not be construed to regulate the typical “backyard camping” activity of children.
 - 4.8 Propane gas tanks shall either be located underground upon the Lot or shall be located in such areas of the Lot so as to be as inconspicuous as possible and screened from direct view from beyond the Lot with shrubbery or other vegetative materials.
 - 4.9 Any discharge of firearms for hunting or other such recreational firearm use is prohibited on the Development.
 - 4.10 Until such time as Developer has sold all Lots in the Development, or earlier at the discretion of the Developer, no signs or other advertising devices shall be displayed upon Lots, including “For Sale” signs, except those signs placed by the Developer and except for “For Sale” signs on Lots upon which the construction of a dwelling has commenced or has been completed.
 - 4.11 No animals shall be kept on any Lot except common, indoor, household pets. No Owner shall have more than three (3) permanent household pets. Such pets may not be kept nor bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary conditions. No savage or dangerous animal shall be kept anywhere upon the Development. No Lot Owner shall permit his pet(s) to run unsupervised outside of his Lot.

- 4.12 Only satellite dishes of thirty-six (36) inches or less in diameter are permitted and must be attached to the principal dwelling in a location that is as inconspicuous as reasonably possible. In the event that a satellite dish is unable to function properly when attached to the principal dwelling, then the alternative location of the satellite dish must be specifically approved by the Committee, along with possible additional screening measures therefor.
- 4.13 No Lot Owner may be permitted to construct and/or use and operate any external radio and/or television antenna for broadcasting or reception purposes without the approval of the Committee.
- 4.14 Above-ground swimming pools shall not be permitted, unless said pool is engineered and constructed in such a fashion as to blend into the plan for the development of the Lot and in such a manner so as to be aesthetically and architecturally pleasing and using a masonry or stone retaining wall on the exposed vertical portion of the pool. Any such construction of an above-ground pool contemplated shall first have the approval of the Committee before construction commences.
- 4.15 Lot Owners shall be permitted to rent the dwelling upon their Lot, but no rental period shall be shorter than three (3) months in duration.

ARTICLE 5
COMMON LANDS - USES PERMITTED AND PROHIBITED

The Developer has planned for a variety of proposed amenities throughout the Development. These proposed amenities include, but are not limited to, a community pavilion, hiking trails, trout pond, picnic areas, camping area(s), viewing areas, lookout platform and open spaces. These common areas and amenities will be owned by the Association.

CAMPING AREA

- 5.1 Only tent-type camping is permitted within the camping area(s) designated by the Developer and such tent camping shall be in accordance with rules and regulations promulgated by the Association. Said rules and regulations shall be equitable in accommodating recreational opportunity for Lot Owners for camping.

COMMUNITY PAVILION

- 5.2 The Developer has provided an area upon the Common Lands for the construction of a community pavilion for the exclusive use of Lot Owners and their guests. No activity which is in violation of any law, ordinance, statute or governmental regulation shall be conducted in the pavilion area, nor shall anything be done which may be or become an annoyance or nuisance to the other Lot Owners in the Development.
- 5.3 Camping is prohibited within the pavilion area.

TRAILS AND OPEN SPACES - Those Common Lands located throughout the Development, depicted as such on plat(s) of surveys of the Development, now existing or hereafter established upon Common Lands.

- 5.4 No motorized vehicles are permitted upon the Common Lands other than the Development's roadways, except for normal maintenance and repair activities. All trails located within the Development are specifically not intended for motorized vehicle use other than uses in conjunction with maintenance and repair activities.

ARTICLE 6 **CHARACTER OF BUILDINGS AND CONSTRUCTION**

- 6.1 The Developer recognizes that there can be an infinite number of concepts and ideas for the development of the Lots. The Developer wishes to encourage the formulation of new and/or innovative concepts and ideas. Nevertheless, for the protection of all Lot Owners, and for the preservation of the Developer's concept for the Development, the Developer wishes to make certain that any development of a Lot will maintain the natural beauty of the Development and blend man-made structures into the natural environment to the extent reasonably possible.
- 6.2 The completion of any structure or improvement being constructed upon a Lot shall be completed within one (1) year from the date upon which construction was commenced. Exceptions may be granted by the Committee where such completion is impossible because of reasons beyond the control of an Owner or builder or when continuation would result in great hardship to the Owner and/or builder, as determined by the Committee. If an extension to complete construction is needed, the Owner or builder shall submit to the ARC a written petition for such extension and the reasons therefor. Occupancy of a dwelling shall only occur after completion of construction. Accumulations of refuse and debris from construction activity upon a Lot shall be permitted, but such accumulations shall be permitted only in construction dumpsters and filled dumpsters shall be removed from the Development on not less than a bi-weekly schedule. A portable toilet shall be required for each dwelling construction site and shall be situated on the Lot so as not to unreasonably visually impact adjacent Lot owners and visitors to the Development.

- 6.3 No building shall be erected on any Lot except a single, private dwelling to be occupied by not more than one (1) family for residential purposes, and recreational uses incidental thereto, only. All attached, and detached garages if any, and any outbuilding must be architecturally related to and must match the overall color scheme of the dwelling and must be constructed only of materials permitted for the construction of residences. All dwellings shall have a minimum total of fourteen hundred (1,400) square feet of finished living area on the first floor, wholly above grade, excluding any garage, basement and porch.
- 6.4 All exteriors shall be composed of natural wood (e.g. redwood, cedar or logs), brick, stone, architectural block, stucco, masonry shake, cement board products whose quality and appearance are equal to or exceed that of HardiPlank®, and other high-quality exterior materials that may be approved by the ARC. Lot Owners shall complete the exterior of any dwelling in natural hues with flat finishes. No gaudy or garish colors are permitted. Exterior colors which, in the sole judgment of the Committee, stand in stark contrast to the land and vegetation on the Development are prohibited. No aluminum or vinyl siding will be allowed, except for such uses as gutters and soffits and such gutters and soffits shall be painted to match the trim of the dwelling. Modest amounts of vinyl shake in detail areas, such as on gables, may be permitted by the ARC.
- 6.5 No exposed concrete or concrete blocks shall be permitted on any exterior, except for foundation walls, which may be exposed to a maximum height of eighteen inches (18") above the ground level (grade). Any concrete or concrete block wall which exceeds eighteen inches (18") in height above finished grade must be covered with an exterior finish material approved by the ARC.
- 6.6 All drainage shall be controlled so as to avoid damage or erosion to adjacent Lots and/or Common Lands. A rock/gravel entrance to the Lot shall be established at the time of initial site clearing and grading and maintained until a permanent drive is installed. All disturbed areas must be permanently seeded and stabilized within ten (10) days of establishing final grade around the dwelling and the Owner or contractor shall install temporary seeding and mulching on all disturbed areas during construction. Silt fencing shall be installed on the lower elevation portions of disturbed areas.
- 6.7 The principal roof components on all structures shall have a pitch of at least 7:12. All roofing materials used on structures shall be of dark colors or of a weathered, natural appearance and, in the case of asphaltic materials be, at a minimum, 25-year rated architectural-grade laminated shingles that have a raised-relief surface. In the particular case of metal roofs, those shall be permitted in darker shades of red, brown and green or other colors, all at the discretion of the ARC.
- 6.8 Modular Homes or Mobile Homes shall not be permitted. Campers, basement homes, tents, shacks, garages, barns or other outbuildings shall not be used as a temporary or

permanent residence. A-frame, earthberm, underground and dome homes are prohibited.

- 6.9 All construction materials utilized shall satisfy all applicable building code requirements.
- 6.10 Lot Owners are required to connect their respective driveways to the paved roadways and their respective utility lines to the utility leads located within the easement areas provided therefor. All utility service lines constructed by Lot Owners within the Development shall be located underground.
- 6.11 All driveways shall be constructed as a paved (asphalt and/or concrete), brick, fixed-stone surface, or other high quality materials with prior approval of the Committee, and have an improved travel path of at least twelve (12) feet in width. Culverts shall be installed where necessary and must be, at a minimum, twelve (12) inches in diameter, fourteen (14) feet in length and with a dry-stacked stone wall at each end.
- 6.12 No structure, other than decorative fencing, landscaping elements and mailboxes, shall be located closer than thirty (30) feet from the right-of-way line of the roadways in the Development, unless topographical conditions upon the Lot, as determined by the ARC, would constrain structure positioning upon the Lot such that structures would be required to be located within said thirty (30) foot area from right-of-way line. No part of any building shall be placed within thirty (30) feet of any rear Lot line and no part of any building shall be located closer than twenty-five (25) feet from any side Lot line.
- 6.13 Located throughout the Development are many intermittent and perennial streams that are classified as "trout waters". The North Carolina Department of Environment and Natural Resources (DENR) has established a riparian buffer zone adjacent to said streams which extend landward from the edge of the streams to twenty-five (25) feet in width from the top of bank of the stream. In conjunction therewith, DENR has promulgated regulations designed to protect the quality and integrity of these valuable natural resources. Said regulations are hereby incorporated by reference into the Declaration. Lot Owners are permitted to clear vegetation in their riparian buffer zone not to exceed ten (10) percent of the lineal footage of stream frontage upon their Lot.
- 6.14 Decorative, split-rail fencing of the standard two-rail variety (or an equivalent type of fencing that by virtue of material, aesthetics, color, height and opacity provides the same natural appearance) shall be permitted. Metal and chain link fencing is specifically prohibited. Safety fencing surrounding in-ground swimming pools must be of wood, stone, wrought iron (and its synthetic imitations) and other natural material construction, but in no case may such fence be taller than the minimum required by code, if any. All other types of fencing shall be prohibited anywhere on the Development other than "invisible" fencing for pet control.

- 6.15 Each Lot Owner shall be responsible for any damage to the Common Lands which occurs as a result of construction on the Owner's Lot and all such damage shall be repaired within thirty (30) days of occurrence at the expense of the responsible Lot Owner.
- 6.16 The size, color, style, location and other attributes of the mailbox and/or newspaper receptacle for any residence shall be as specified by the Developer and/or ARC.
- 6.17 Each dwelling shall have, at a minimum, one (1) attached, two (2) car garage. Attached garages shall not exceed fifty (50) percent of the square footage of living area of the dwelling located on the first floor wholly above grade. In such instances where constructing an attached garage would cause undue hardship to a Lot Owner due to topographical features on the Lot, the ARC may grant a variance to a Lot Owner for the construction of a detached garage. A Lot Owner may construct not more than one outbuilding upon a Lot and any detached garage shall be deemed the equivalent of an outbuilding. No permitted outbuilding shall have a building footprint greater than nine-hundred (900) square feet.
- 6.18 All contracted construction work must be performed by properly licensed contractors.
- 6.19 No Owner shall burn any trash, garbage or similar refuse on the Development. Lot Owners are permitted to periodically burn leaves and other such vegetative materials upon their Lot, but prior to burning Lot Owners must obtain a burning permit from the United States Forest Service.
- 6.20 No petroleum-based products or other potentially hazardous or toxic substance may be disposed of on the Development.

ARTICLE 7

THE ROUND MOUNTAIN FALLS PROPERTY OWNERS ASSOCIATION

- 7.1 Lot Owners shall automatically, by virtue thereof, become a member of the Round Mountain Falls Property Owners Association, a North Carolina non-profit corporation organized to further and promote the common interests of Owners in the Development. The Association is entitled to carry on such business as is customary of such an Association and in such manner as prescribed by its Bylaws, and all in accordance with the Act.
- 7.2 As a member of the Association, each Lot Owner agrees for himself or herself, and his or her heirs, successors and assigns, to pay to the Association any dues, assessments for maintenance charges and costs or fines (collectively, the "Dues") as may from time to time be levied by the Association for maintenance, repairs, improvements, insurance, license fees or for any other lawful purpose. The Dues shall run with the land.

- 7.3 Dues may be assessed annually and from time to time to meet the needs and commitments of the Association. Initially, the Dues shall be \$500.00 per Lot per year for each Lot Owner. Dues shall be billed semi-annually (\$250.00 per half year) to Lot Owners on January 1 and June 1 of each year, except for year 2006, when the first assessment shall not be billed until June 1, 2006, and shall be payable in full to the Association by January 31 and June 31 of each year.
- 7.4 In the initial purchases of Lots from the Developer, purchasers shall pay to the Association, at the closing of their purchase, a working capital deposit. This contribution to the Association's account will be \$1,000.00 per Lot.
- 7.5 Notice of the amount of any Dues, other than those specified in Section 7.4 above as being due at closing, shall be given to the Lot Owner by first-class mail addressed to his or her last known address as it appears on the rolls of the Association.
- 7.6 Any Dues not paid on or before the due date established by the Association shall be considered as being in default and shall bear interest at the highest rate then permitted by law or such lesser rate as the Association may establish. Such interest and all costs incurred by the Association in connection with the collection of any such charges, including, without limitation, reasonable attorney fees, shall be collectible by the Association and shall constitute a continuing lien upon any Lot within the Development owned by the Lot Owner responsible therefor. The Association shall have the right to proceed at law or in equity to foreclose such lien. All such charges shall also be the personal obligation of the Lot Owner against whom they were assessed.
- 7.7 Each Lot Owner (and in this specific context a Lot Owner does not mean a lessee) shall have one vote in the voting affairs of the Association for each Lot owned. That is to mean "one Lot, one vote".
- 7.8 Upon the sale of his Lot to another party, the "seller" Lot Owner shall provide the Association with the name and mailing address of the "buyer" Lot Owner.
- 7.9 Insurance shall be obtained and maintained for:
- (a) A policy of property casualty insurance covering any and all improvements within the Common Areas in an amount determined by the Developer or Association; and
 - (b) A policy of commercial liability insurance, covering each of the members of the Board of Directors of the Association of not less than one million dollars (\$1,000,000). The Association shall set and review limits annually.

ARTICLE 8
ARCHITECTURAL REVIEW COMMITTEE

DEVELOPMENT/CONSTRUCTION

8.1 Site Development/Architectural Review Committee.

(a) An Architectural Review Committee (the "Committee", or ARC) shall be established by the Association's Board of Directors and shall at all times consist of the Developer and no less than three nor more than five persons appointed by the Board, until such time as Developer elects not to serve, at which time the Board shall appoint that member of the Committee as well. All members appointed by the Board shall be Lot Owners or an outside consultant approved by the Developer or Board of Directors. The Architectural Review Committee shall assist Lot Owners in complying with the development restrictions set forth in this document or other standards and guidelines that the ARC may set forth. Any new standards or guidelines shall not be of lesser quality or lower standards than the ones set forth initially in this Declaration.

(b) Except as otherwise provided herein, a majority of the members of the Committee shall have the power to act on behalf of the Committee without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may act only by written instrument setting forth the action taken and signed by the members of the Committee consenting to such action, provided further, however, that the Developer's consent shall be required for all Committee action until such time as the Developer elects not to serve on the Committee.

(c) If the Committee shall cease to exist or for any reason shall fail to function, the Board of Directors of the Association shall serve as the Committee, and in the absence of such a Board, the Committee shall be selected by a majority of Lot Owners.

(d) The Committee shall have no affirmative obligation to be certain that all of the restrictions contained in this Declaration are fully complied with and no member of the Committee shall have any liability, responsibility or obligation, whatsoever, for any decision or lack thereof, in the carrying out of duties as a member of such Committee. Such Committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this Declaration shall rest with the Lot Owner. Each Lot Owner agrees to save, defend and hold harmless the Committee and each of its members on account of any activities of the Committee relating to such Lot Owner's Lot or improvements to be constructed on such Lot.

(e) The Committee, if it observes deviations from or lack of compliance with the provisions of this Declaration, shall report such deviations or lack of compliance to the Board of Directors of the Association for appropriate action.

8.2 Architectural Review Committee Approval.

(a) No Lot Owner shall construct, alter, or maintain any improvements on a Lot until all of the following have been completed:

1. The Lot Owner has submitted to the Committee four (4) complete sets of preliminary sketches showing floor plans, exterior elevations and an outline of specifications for materials and finishes;
2. The Committee has approved the preliminary sketches; and
3. Upon approval of preliminary sketches, the Lot Owner has submitted to the Committee four (4) copies of complete site plans and specifications therefor, in a form satisfactory to the Committee, showing insofar as is appropriate:
 - i. The size, dimensions and style of the improvements, including, by way of illustration and not limitation, the dwelling, garage and any outbuilding;
 - ii. The exterior design and building materials;
 - iii. The exterior color scheme;
 - iv. The approximate location of the improvements on the Lot, including, by way of illustration and not limitation, the dwelling, garage and outbuildings, if any;
 - v. The approximate location of the driveways, parking areas and landscaping (including location and construction of all fences or walls, recreational facilities, and utilities) and the types of materials to be used therefor; and
 - vi. The vegetation proposed to be removed or altered in order to accommodate construction, complete landscaping and enhance views.
4. Such plans and specifications have been approved in writing by the Committee.
5. An acknowledgment form is signed by both the Lot Owner and their contractor wherein each acknowledges that they have read and understand the provisions of the restrictions set forth in this Declaration.

(b) Approval for any plans that comply with the restrictions embodied in this Declaration will not be unreasonably withheld, however, approval of the preliminary sketches and detailed site plans and specifications described above may be withheld, not only because of the noncompliance with any of the restrictions and conditions contained herein (including the submission of an incomplete site plan), but also because of the reasonable dissatisfaction of the Committee as to the location of the structure(s) on the Lot, color scheme of said structure(s), finish, design, proportions, shape, height, type or appropriateness of the proposed improvement or alteration, the

materials used therein, the kind, shape or type of roof proposed to be placed thereon, or because of its reasonable dissatisfaction with any matters or things which, in the reasonable judgment of the Committee, would render the proposed improvement inharmonious or out of keeping with the objectives of the Developer or the improvements erected in the immediate vicinity of the Lot. The Committee may exercise reasonable discretion to grant a variance to the restrictions and conditions contained herein, when in the reasonable judgment of the Committee, the granting of a variance would not render the proposed improvement inharmonious or out of keeping with the objectives of the Developer or the improvements erected in the immediate vicinity of the Lot.

(c) Any building, structure or improvement, including subsequent alterations or modifications, shall be erected or constructed in substantial conformity with the site plans and specifications approved by the Committee.

(d) If, at any time, a Lot Owner shall have submitted to the Committee site plans and specifications in accordance with this section for a structure or alteration, and the Committee has neither approved such plans and specifications within twenty one (21) days from the date of submission nor notified the Lot Owner of its objection within such 21-day period, then such site plans and specifications shall be deemed to have been approved by the Committee, provided that the plans conform to, or are in harmony with, these restrictions, the applicable zoning ordinance or other governmental regulation, if any, and the existing structures in the Development, and further provided that no suit to enjoin the construction has been commenced prior to the completion of any improvements to the Lot.

(e) In the event that a Lot Owner shall file revised site plans and specifications for a structure or alteration with the Committee after receiving objections from the Committee with respect to original site plans and specifications, and the Committee has neither approved them nor notified the Lot Owner of further objections within fourteen (14) days from the date of submission, then such revised site plans and specifications shall be deemed to have been approved by the Committee. The date of submission is herein defined as the date upon which any member of the Committee has received said site plans and specifications.

ARTICLE 9

LANDSCAPING AND GRADE

- 9.1 It is the intent of the Developer that the Development retain a more, rather than less, “wooded” aesthetic. Trees and vegetation may be completely removed from the area of the actual “footprint” of the dwelling on a Lot and an area consisting of a twenty (20) foot perimeter around said “footprint”, along with necessary clearing for driveway access, septic systems and other normal appurtenances (together such areas are referred to as the “Home Site Area”). Reasonable additional vegetation clearing outside of the Home Site Area is permitted in compliance with all governmental

regulations and with the approval of the ARC, which permission shall not be unreasonably withheld, in order to enhance views. Vegetation that is dead, damaged or that poses a safety hazard may be removed from any Lot without the prior approval of the ARC. In general, unless otherwise permitted by the ARC in writing, no Lot Owner may clear more than twenty-five (25) percent of trees upon a Lot which are eight (8) inches or more in diameter measured at breast height. Furthermore, "limbing up" of trees, rather than the felling of trees, in order to create views shall be the standard used for clearing limitations by the ARC, and in respect of the natural ground cover of shrubs (Wild Azalea, Rhododendron, Mountain Laurel, etc.) upon the Lots, "thinning", rather than wholesale clearing shall be the standard used for clearing limitations by the ARC.

- 9.2 The grade of the Lots shall be maintained in harmony with the topography of the Development and with respect to adjoining Lots.
- 9.3 In the interest of preserving the existing condition of natural slopes, Lot Owners shall maintain groundcover to prevent water and wind erosion on their Lot. Natural groundcover, woodchips or other natural plantings indigenous to the wooded area are encouraged.
- 9.4 The location of all improvements shall be designed and located so as to be compatible with the natural surroundings and with other Lots.
- 9.5 All land cuts caused by driveway installation and home construction must be stabilized upon commencement of construction with appropriate erosion control materials and in accordance with applicable permits.
- 9.6 All stumps, trees and brush cut or cleared during construction on any Lot must be removed from the Development, except timber cut and saved for firewood.
- 9.7 All foundation landscaping must be completed according to the site plan approved by the Committee within six (6) months upon completion of the dwelling and all disturbed areas shall be stabilized or seeded and/or sodded within three (3) months upon completion of the dwelling and properly maintained thereafter in order to prevent erosion and any unsightly condition.
- 9.8 Silt fencing shall be installed in appropriate areas prior to site excavation, driveway construction, landscaping activity and where exposed soil may be subject to runoff and erosion. Said silt fences shall be maintained until the landscaping necessary to prevent erosion of soil is completed.
- 9.9 No lawn ornaments, sculptures or statues shall be placed or permitted to remain on any Lot without the prior written approval of the Committee.
- 9.10 No outdoor property night light of any kind shall be permitted to cast its direct rays

beyond any of the boundary Lot lines of the Lot on which it is installed or maintained. Holiday lighting and decoration schemes are expressly permitted during the period from November 15th through January 5th of each year.

ARTICLE 10
EASEMENTS, RESERVATIONS AND DEDICATIONS

- 10.1 No Lot Owner shall be permitted to grant any right-of-way or easement across their Lot, except to another Lot Owner or to benefit a Lot governed hereby. A Lot Owner may not use all or any portion of his Lot to establish a road access to property not included in the Development.
- 10.2 Any type of permanent construction or improvement within designated easement areas, other than those provided for herein (and including the construction of driveways and placement of mailboxes), is prohibited, unless approval is first obtained from the ARC.
- 10.3 Easements for installation and maintenance of the utilities serving the Development are hereby reserved within all road right of ways and other Common Lands within the Development and, furthermore, Developer hereby reserves the right to make minor encroachments upon Lots, in instances where topographical, soil or other limiting conditions occur, to install underground utilities and drainage structures benefiting the Development. Within these easements, no structure, planting or other material shall be placed or permitted to remain, which may interfere with the installation and maintenance of said utilities. Exception shall be made for the construction of driveways required for normal access to each Lot and as approved by all regulating bodies.
- 10.4 The Developer hereby reserves all minerals in the Development and, except as otherwise provided herein, mineral exploration of any kind is expressly prohibited upon the surface of the Development. Exploration and removal of minerals is permitted by the Developer or its assigns or successors in title, but only if no surface-disruptive activity or reduction of vertical support of the surface will occur.
- 10.5 In efforts to develop future phases of Round Mountain Falls, the Developer hereby reserves the right to make minor and reasonable changes to those boundaries between Common Lands and future phases of the Development.
- 10.6 The Developer hereby reserves the right unto itself and its assigns the right to expand the Development by creating additional Lots on lands now owned or acquired in the future by the Developer, and to extend and construct roadways and utilities, and any and all appurtenant structures normally associated therewith, across, under and through Common Lands, in order to access and develop lands abutting the Development, and to do anything necessary and proper in the furtherance of its development aims in respect of such lands, all in accordance with the Act. Any such

future expansion of the Development will be in keeping with the nature of the Development and any Lots created through such development shall become Lots in the Development and be governed by this Declaration.

ARTICLE 11
RULES AND REGULATIONS

The Association may promulgate rules and regulations specifically authorized hereunder and such other rules and regulations as may be reasonably necessary or helpful to achieve the quality of living in the Development desired by the Association. All Lot Owners and their guests and invitees shall abide by such rules and regulations, and the Association may establish and levy fines for any failure to comply with the same.

ARTICLE 12
ASSIGNMENT OF RIGHTS

Except as specifically provided for elsewhere in this Declaration, all rights hereunder granted to Lot Owners shall not be further assignable except as an appurtenance to and in conjunction with the sale of their Lot.

ARTICLE 13
VIOLATION OF PROVISIONS

- 13.1 In the event that any Lot Owner violates the terms of this Declaration, the Developer or the Association, not earlier than thirty (30) days after it has delivered written notice to a Lot Owner of a violation of one or more of the provisions hereof, may enter upon the violating Lot Owner's Lot and correct the violation and alter, repair or change any building, structure or thing which may be upon the Lot in violation thereof, so as to make such improvement or thing conform to such provisions.
- 13.2 The Developer or the Association may charge the Lot Owner in violation for the entire cost of the work done pursuant to the provisions of this Section, which shall become a lien against the Lot Owner's Lot.

ARTICLE 14
ENFORCEMENT

- 14.1 In addition to any rights set forth in Article 13 for a violation or breach of any of the provisions hereof, the Developer, the Association, any Lot Owner(s) or any municipal governing authority shall have the right to proceed at law or in equity to prevent the violation or breach of the provisions of this Declaration or to recover damages for such violation and to foreclose any lien granted hereunder.
- 14.2 In any action or suit to enforce the provisions hereof, the prevailing party shall be entitled to recover its reasonable attorney fees and other legal costs.

ARTICLE 15
DURATION AND EFFECT

The provisions hereof shall run with the Development and shall be binding upon all Lot Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by the requisite number of Lot Owners set forth in Article 16 hereof, has been recorded agreeing to cancel, amend or change, in whole or in part, this Declaration.

ARTICLE 16
AMENDMENT

- 16.1 The Developer, so long as it owns any Lot in the Development, hereby reserves the right to amend these covenants and restrictions without the consent of the Lot Owners for any purpose, if the amendment does not materially alter or change the rights of a Lot Owner.
- 16.2 These restrictions may be rescinded or amended, in whole or in part, by an appropriate recorded written instrument executed and acknowledged by not less than three-fourths (3/4) of the Lot Owners; provided, however, that any such rescission or amendment must be acknowledged by all of the Lot Owners if:
- (a) it changes the single-family nature of the Development; or
 - (b) it expands the rights of a Lot Owner to subdivide a Lot or to place more than one house on a Lot; or
- 16.3 Any amendments shall become effective upon recordation of the amendment in the Transylvania County Registry of Deeds. Notwithstanding the foregoing provisions of

this Section, certain rights reserved herein by the Developer shall not be terminated by any amendment without the consent of the Developer.

ARTICLE 17
SEVERABILITY

- 17.1 The invalidation of any one or more of the reservations and restrictions provided herein, by judgment or court order, or the amendment of any one or more of the restrictions as hereinabove provided, shall in no way affect any of the other provisions herein, which shall remain in full force and effect.
- 17.2 In the event that there exist now or in the future regulations, federal, State, local or otherwise, that are more restrictive than those contained herein, the more restrictive regulation shall apply.
- 17.3 In the event this Declaration conflicts with the provisions of the Act, the Articles of Incorporation or Bylaws of the Association, the hierarchy of control shall be the Act, this Declaration, the Articles of Incorporation and the Bylaws of the Association, in that order.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed the 7th day of December, 2005.

McKEOUGH LAND COMPANY, INC.

By: [Signature]
Leo Kalinowski, Jr.
General Manager

STATE OF NORTH CAROLINA)
 }
COUNTY OF BUNCOMBE)

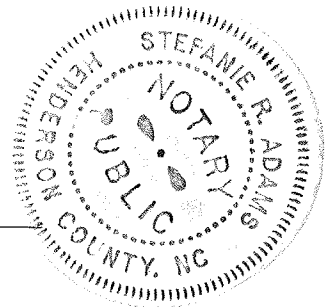
Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared Leo Kalinowski, Jr., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged himself upon oath to be the General Manager of McKEOUGH LAND COMPANY, INC., an Illinois corporation, and that he as such General Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained and expressed, by signing the name of the said corporation as such General Manager.

WITNESS my hand and official seal at office in said County this 7th day of December, 2005.

[Signature]
NOTARY PUBLIC

My commission expires:

9/1/09



PREPARED BY AND RETURN TO:

McKeough Land Company, Inc.
140 Airport Road,
Suite Q
Arden, North Carolina 28704

2006002625

TRANSYLVANIA CO, NC FEE \$17.00
PRESENTED & RECORDED:
03-27-2006 03:19:03 PM
CINDY M OWNBEY
REGISTER OF DEEDS
BY: TERESA D MORTON
DEPUTY REGISTER OF DEEDS
BK: DOC 340
PG: 621-622

**SUPPLEMENTAL DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS OF ROUND MOUNTAIN FALLS**

This Supplemental Declaration is made this 10th day of March, 2006, by McKEOUGH LAND COMPANY, INC., an Illinois corporation, hereinafter referred to as "Developer."

W I T N E S S E T H :

THAT WHEREAS, Developer has recorded on the 7th day of December, 2005, in the office of the Register of Deeds for Transylvania County in Document Book 322, page 510, a certain Declaration of Easements, Covenants, Conditions and Restrictions for the Development known as Round Mountain Falls, hereinafter referred to as the "Development," which subjects the Development to the provisions thereof pursuant to an incremental plan of development and improvements; and

WHEREAS, Developer desires to subject the land hereinafter described to the terms of said Declaration of Easements, Covenants, Conditions and Restrictions and to include said land within the Development.

NOW, THEREFORE, Developer declares that:

1. The Development includes all of the real property which is more particularly described as follows:

Being all of Lots 22 through 46 of Phase 1-B of Round Mountain Falls as shown on a plat thereof recorded in Plat File 11, Slides 653-654, Records of Plats for Transylvania County.

2. Lots 40 and 42 of Phase 1-B of Round Mountain Falls are subject to the right-of-way of the 45 foot wide private driveway easement shown on the recorded plat hereinabove referred to which extends 22½ feet on each side of their common boundary line in the location shown on said plat. The Association shall be responsible for the repair and maintenance of said driveway and shall bear all of the costs thereof. Said right-of-way shall be for the use of the owners of said lots

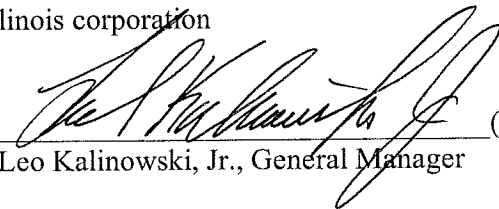
and their guests and invitees, but may also used by the agents and employees of the Association when engaged in the performance of the Association's repair and maintenance obligations.

3. All of the real property hereinabove described is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the provisions of the Declaration of Easements, Covenants, Conditions and Restrictions hereinabove referred to, the provisions of said Declaration of Easements, Covenants, Conditions and Restrictions being incorporated herein by reference as fully as if written out verbatim herein.

4. This Supplemental Declaration shall be construed to constitute an amendment to the Declaration which adds additional property to the Development and subjects such property to the Declaration as authorized and provided for in the Declaration.

IN WITNESS WHEREOF, Developer has executed this Supplemental Declaration, this the day and year first above written.

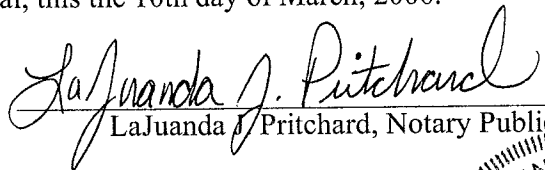
McKEOUGH LAND COMPANY, INC.
an Illinois corporation

By:  (SEAL)
Leo Kalinowski, Jr., General Manager

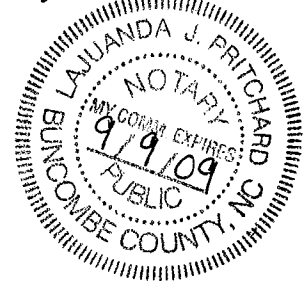
STATE OF NORTH CAROLINA,
COUNTY OF BUNCOMBE

I, a Notary Public, certify that Leo Kalinowski, Jr., personally came before me this day and acknowledged that he is the General Manager of McKEOUGH LAND COMPANY, INC., an Illinois corporation, and that he as General Manager, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and Notarial Seal, this the 10th day of March, 2006.


LaJuanda J. Pritchard, Notary Public

My commission expires: 9-9-2009



2007008491

TRANSYLVANIA CO, NC FEE \$23.00
PRESENTED & RECORDED:
11-02-2007 10:06:35 AM
CINDY M OWBIEY
REGISTER OF DEEDS
BY: D REE MCCALL
DEPUTY REGISTER OF DEEDS
BK: DOC 434
PG: 318-321

**SUPPLEMENTAL DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS OF ROUND MOUNTAIN FALLS**

GEL
This Supplemental Declaration is made this 2nd day of November, 2007, by McKEOUGH LAND COMPANY, INC., an Illinois corporation, hereinafter referred to as "Developer."

WITNESSETH:

THAT WHEREAS, Developer has recorded on the 7th day of December, 2005, in the office of the Register of Deeds for Transylvania County in Document Book 322, page 510, a certain Declaration of Easements, Covenants, Conditions and Restrictions for the Development known as Round Mountain Falls, hereinafter referred to as the "Development," which subjects the Development to the provisions thereof pursuant to an incremental plan of development and improvements; and

WHEREAS, Developer desires to subject the land hereinafter described to the terms of said Declaration of Easements, Covenants, Conditions and Restrictions and to include said land within the Development.

NOW, THEREFORE, Developer declares that:

1. The Development includes all of the real property which is more particularly described as follows:

Being all of Lots 47 through 100 of Phase 2 of Round Mountain Falls as shown on a plat thereof recorded in Plat File 12, Slides 422-425, Records of Plats for Transylvania County.

2. Lots 93 and 95 of Phase 2 of Round Mountain Falls are subject to the right-of-way of the 45 foot wide private driveway easement shown on the recorded plat hereinabove referred to which extends 22½ feet on each side of their common boundary line in the location shown on said plat. The Association shall be responsible for the repair and maintenance of said driveway and

shall bear all of the costs thereof. Said right-of-way shall be for the use of the owners of Lots 93 and 94 and their guests and invitees, but may also be used by the agents and employees of the Association when engaged in the performance of the Association's repair and maintenance obligations.

3. Those portions of the lots hereinabove described which are located within fifty (50) feet from the top of any perennial stream banks or twenty-five (25) feet from the top of intermittent stream banks and other natural water courses which may be located on such lots are hereby designated as a restricted area which must be maintained in its natural, scenic and open condition and restricted from any development or use that would impair or interfere with the conservation purposes of the special restrictions being placed herein on said restricted area. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted on the restricted area:

A. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the restricted area or any introduction of non-native plants and /or animal species is prohibited.

B. Construction. There shall be no construction or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock or any other temporary or permanent structure or facility on or above the restricted area except for the allowance of a primitive walking path from said lot through the protected buffer to access the stream and up to a 10' by 10' area adjacent to the stream for a park bench or similar seating.

C. Industrial, Commercial and Residential Use. Industrial, residential and/or commercial activities, including any right of passage for such purposes are prohibited.

D. Agricultural, Grazing and Horticultural Use. Agricultural, grazing, animal husbandry, and horticultural use of the restricted area is prohibited.

E. Vegetation. There shall be no removal, burning, destruction, harming, cutting or mowing of trees, shrubs, or other vegetation on the restricted area except for the allowance of a primitive walking path from said lot through the protected buffer to access the stream and up to a 10' by 10' area adjacent to the stream for a park bench or similar seating.

F. Roads and Trails. There shall be no construction of roads, trails or walkways on the restricted area except for the allowance of a primitive walking path from said lot through the protected buffer to access the stream and up to a 10' by 10' area adjacent to the stream for a park bench or similar seating.

G. Signage. No signs shall be permitted on or over the restricted area except the posting of "no trespassing" signs, signs identifying the conservation values of the restricted area,

signs giving directions or proscribing rules and regulations for the use of the restricted area and/or signs identifying the Developer as owner of the restricted area.

H. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or hazardous substances, toxic or hazardous waste, or any placement of underground or above-ground storage tanks or other materials on the restricted area is prohibited.

I. Excavation, Dredging or Mineral Use. There shall be no grading, filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other material, and no change in the topography of the land in any manner on the restricted area, except to restore natural topography or drainage patterns.

J. Water Quality and Drainage Pattern. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

K. Vehicles. The operation of mechanized vehicles, including but not limited to motorcycles, dirt bikes, all-terrain vehicles, cars and trucks, is prohibited.


L. Other Prohibitions. Any other use of or activity on the restricted area which is or may become inconsistent with the preservation of the restricted area substantially in its natural condition or the protection of its environmental systems is prohibited.

4. All of the real property hereinabove described is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the provisions of this Supplemental Declaration and the provisions of the Declaration of Easements, Covenants, Conditions and Restrictions hereinabove referred to, the provisions of said Declaration of Easements, Covenants, Conditions and Restrictions being incorporated herein by reference as fully as if written out verbatim herein.

5. This Supplemental Declaration shall be construed to constitute an amendment to the Declaration which adds additional property to the Development and subjects such property to the Declaration as authorized and provided for in the Declaration.

IN WITNESS WHEREOF, Developer has executed this Supplemental Declaration, this the day and year first above written.


McKEOUGH LAND COMPANY, INC.
an Illinois corporation

By:  (SEAL)
Andrew C. Baker, General Manager

STATE OF NORTH CAROLINA,
COUNTY OF TRANSYLVANIA

I, a Notary Public, certify that Andrew C. Baker personally came before me this day and acknowledged that he is the General Manager of McKEOUGH LAND COMPANY, INC., an Illinois corporation, and that he as General Manager, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and Notarial Seal, this the 2nd day of November, 2007.


Suzanne Gore, Notary Public

My commission expires: 10-17-2011

