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DECLARATION OF  
RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR CHIMNEY CREEK CONSERVATION ESTATES

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Prepared by: Gayle E. Ramsey

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KNOW ALL MEN BY THESE PRESENTS, that CHIMNEY CREEK PARTNERS, LLC (hereinafter referred to as "Developer" or "Declarant"), is the owner and developer of that certain property (hereinafter referred to as "the Development") which is situate, lying and being in Brevard Township, Transylvania County, North Carolina, and more particularly described as being all of Camps 1-9 of Chimney Creek Conservation Estates as shown on a plat thereof recorded in Plat File 13, Slides 264-268, Records of Plats for Transylvania County.

Developer intends to sell and convey the camps and parcels situated within the Development and before doing so, desires to impose upon them mutual and beneficial restrictions, covenants, equitable servitudes and charges under a general plan or scheme of improvements for the benefit of all of the camps and parcels in the Development and the owners and future owners thereof.

NOW, THEREFORE, Developer declares that all of the camps hereinabove described and any additional property which may by subsequent amendment or supplemental declaration be added to and subjected to this Declaration by Developer are held and shall be held, conveyed, and 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 camps and parcels 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 camps and parcels in favor of each and all other camps and parcels; to create reciprocal rights between the respective owners of all such camps and parcels; to create privity of contract and estate between the owners of such camps, their heirs, successors and assigns; and shall, as to the owner of each such camp or parcel, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other such camps and parcels in the Development and their respective owners, present and future.

**ARTICLE 1**  
**LAND USE AND STRUCTURE TYPE**

All numbered camps in the Development shown on the recorded plat hereinabove referred to are hereby designated single-family residential as to their permissible uses. No trade or business of any kind may be conducted on any camp, nor may any trade materials or inventories be stored upon any camp. Lease or rental of a dwelling for residential purposes and the growing of fruits and vegetables for personal use in a garden plot on a camp which is situated in a location and cultivated and maintained in a manner which is in conformance with the rules and regulations and design guidelines of the Association shall not be considered to be a violation of this covenant.

No building shall be erected, altered, placed or permitted to remain on any camp other than such buildings which erected, altered, placed and maintained in accordance with the design guidelines and application procedures promulgated by the Architectural Control Committee pursuant to the provisions of Article 2 hereof.

**ARTICLE 2**  
**ARCHITECTURAL CONTROL**

A. Architectural Control Committee.

In order to ensure that all houses and other structures are of appropriate size and harmonious design, properly located in relationship to neighboring structures and adapted to the terrain of each camp, Developer retains for the Architectural Control Committee full architectural control in order to achieve these objectives. Accordingly, the Board of Directors of Chimney Creek Conservation Estates Property Owners Association, Inc. (sometimes hereinafter referred to as "the Association"), shall appoint annually an Architectural Control Committee consisting of three or more competent persons to serve as members until their successors are appointed. A majority of said committee may also designate a representative to act for it.

The Architectural Control Committee shall prepare and, on behalf of the Association, shall promulgate design guidelines and application procedures. The standards and procedures shall be those of the Association, and the Architectural Control Committee shall be responsible for preparing and amending the standards and procedures. It shall make both available to owners, builders and developers who seek to engage in development of or construction upon all or any portion of the Development or in making any modifications, additions or alterations to any existing improvements located in the Development who shall conduct their operations strictly in accordance therewith.

B. Procedure.

The Architectural Control Committee's approval or disapproval as required by these covenants shall be in writing. Such approval shall not be unreasonably withheld

and shall be given or denied by the Committee in writing within thirty days after any such plan and other required information has been properly submitted to the Committee. Denial or approval of the plans, location, specifications and other matters requiring the approval of the committee may be based by it upon any reasonable grounds, including purely aesthetic considerations. In the event that the Architectural Control Committee fails to approve or disapprove within thirty (30) days after proper plans and specifications and other required information have been properly submitted to it, or in any event, if no suit to enjoin any construction for which the Architectural Control Committee's approval is required under this Article has been commenced prior to the completion thereof, approval will not be required and the provisions of these covenants specifying the manner in which proposed improvements must be approved shall be deemed to have been fully complied with provided that proper plans and specifications and other required information were properly submitted to the Architectural Control Committee at least thirty (30) days prior to the commencement of such construction.

C. Activities either Prohibited or Requiring the Architectural Control Committee's Approval.

No single-family dwelling, guest house, patio, porch, terrace, private garage, carport, driveway, dog house, fence, wall or structure of any kind shall be constructed, erected, situated or altered on any camp until the construction plans and specifications and a plan showing its location on the camp have been approved by the Architectural Control Committee as to quality of workmanship and materials, appearance, harmony of external design and external color with existing structures and the natural environment and as to location with respect to topography, its effect on the view from structures already constructed in the Development and finish grade elevation. In no event shall any fence be constructed in front of a house nor shall any chain link fence be constructed on any portion of a camp, or any building containing exposed cement or cinder block be erected on any camp, or any vinyl or aluminum siding be placed on any building. However, subject to the approval of the Architectural Control Committee, stucco will be acceptable on foundations. Natural drainage shall not be changed without the approval of the Architectural Control Committee. The Architectural Control Committee shall not be responsible for any drainage problems affecting any camp.

No permission or approval shall be required to repaint in accordance with an originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his or her residence or to paint the interior of his or her residence any color desired.

D. Variances.

Notwithstanding anything set out to the contrary in Article 4 of these covenants, in the event that the

Architectural Control Committee shall determine that application of the minimum setbacks specified in Article 4 of these covenants to a particular camp would unreasonably limit the use thereof by the owner and effectively deprive such owner of an appropriate construction site upon said camp, the Architectural Control Committee shall have the authority to grant a variance to the owner of said camp from the provisions of the minimum setback restrictions specified in Article 4.

The Architectural Control Committee may authorize variances from compliance with any of the provisions of the design guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall be effective unless in writing, be contrary to the restrictions set forth in the body of this Declaration except to such extent as may be specifically authorized in specified circumstances by the provisions of this Declaration, or estop the Architectural Control Committee from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

E. Indemnification.

Neither the Architectural Control Committee, the Association, nor Declarant or any of its employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In such events, the members of the Architectural Control Committee shall be defended and indemnified by the Association in the same manner and to the same extent as officers and directors are indemnified under the provisions of the Articles of Incorporation and the Bylaws of the Association.

**ARTICLE 3  
TEMPORARY STRUCTURES**

No motor vehicles or structures of a temporary character, including, but not limited to, any trailer, tractor trailer, single-wide or double-wide mobile home/manufactured home/modular home, basement, tent, shack, garage, carport, shed or other outbuilding shall be used on any camp at any time as a residence, either temporarily or permanently.

With the exception of those vehicles owned or being utilized by Developer and any corporation or business owned and operated by Developer or employed by Developer, which shall have such right at any time when Developer or such corporation or business is engaged in the construction or

repair of any building or any improvement on any portion of the property which is subject to this Declaration, and the further exception of those trucks, construction vehicles and any commercial vehicles being utilized by any camp owner in connection with the construction or repair of any improvement on such owner's camp (which has been properly approved pursuant to the appropriate articles of this Declaration) which may be parked in spaces designated by Developer or the Architectural Control Committee, during such times and for such periods of time that may be designated by Developer or the Architectural Control Committee, there shall be no outside storage or parking upon any camp or upon any road in the Development which is owned and maintained by Developer or by the Association, or upon any common area of any commercial vehicle, truck (other than pickup trucks owned by such camp owner), trailer, tractor trailer, single-wide or double-wide mobile home/manufactured home, or bus, nor shall any tent, shack or any other type of structure, whether temporary or permanent, not specifically authorized by these covenants or any amendment thereto, be placed or erected on any camp.

#### **ARTICLE 4 BUILDING LOCATION**

Subject to the limitation set out in Article 2 of this Declaration that the location of buildings and other proposed improvements on each camp must be approved by the Architectural Control Committee, each camp is subject to the further restriction that no building shall be located on any camp nearer to the property lines or nearer to the street lines than the minimum building setback lines shown on any plat which Developer may prepare and record of camps in the immediate vicinity thereof. In the event that no minimum building setback line is shown on a plat, all buildings shall be at least: (a) 50 feet from all road right of way lines; (b) 35 feet from rear property lines and streams; (c) 35 feet from interior property lines other than rear property lines; and (d) 75 feet from lakes and ponds.

Notwithstanding anything set out to the contrary in Article 2 of these covenants, in the event that the Architectural Control Committee shall determine that application of the minimum setbacks specified for buildings in the preceding paragraph of this Article 4 of these covenants to a particular camp would unreasonably limit the use thereof by the owner and effectively deprive such owner of an appropriate construction site upon said camp, the Architectural Control Committee shall have the authority to grant a variance to the owner of said camp from the provisions of such setback restrictions.

#### **ARTICLE 5 NUISANCES**

It shall be the responsibility of each camp owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her camp. No camp shall be used, in whole or in part, for the storage of any



property or thing that will cause such camp to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any plant, substance, animal, thing, device or material be kept upon any camp that will be noxious, noisy, dangerous, unsightly, or unpleasant or which will emit foul or obnoxious odors or will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of the Development. No noxious or offensive activity shall be carried on upon any camp nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the camp. Construction of improvements on any camp, once commenced, shall be completed within eighteen (18) months. Improvements not so completed or upon which construction has ceased for ninety (90) consecutive days or which have been partially or totally destroyed and not rebuilt within ninety (90) days, shall be deemed nuisances. The Association may remove any such nuisances or repair or complete the same at the expense of the owner, the cost of which shall be levied as an assessment against the owner's camp.

Noxious or offensive activity shall include but shall not be limited to (1) a public nuisance or nuisance per se, (2) any behavior which is inconsistent with both a reasonable pleasurable use of the properties of the owners of camps and parcels in the Development, their tenants and guests, and their reasonable expectation of vacationing, year-round living, studying, working and recreating, free of excessively noisy behavior grossly disrespecting the rights of others, (3) flashing or excessively bright lights, (4) racing vehicles (regardless of the number of wheels), (5) the operation of unlicensed motor vehicles in the Development (including specifically trail motor bikes with two, three or more wheels), (6) the operation of motor vehicles by unlicensed persons on any roads in the Development or any motorcycle, moped or motor bike riding in the Development other than as a means of transportation to and from the home of a resident camp owner to the state road (the operation of not more than one electric golf cart per camp by the occupants of a camp either on such camp or on any road in the Development shall not in itself constitute a noxious or offensive activity), (7) offensive displays of public sexuality, (8) public drunkenness, (9) significantly loud electronic music distractions or vibrations which extend beyond property lines, (10) the discharge of fireworks, (11) the assembly and disassembly of motor vehicles and other mechanical devices which might tend to create disorderly, unsightly or unkempt conditions, (12) parking or storing any junked, inoperable or unlicensed automobiles, trucks or heavy equipment on any camp or road in the Development, or (13) other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of the camps in the Development.

#### ARTICLE 6 MAINTENANCE OF CAMPS

All camps whether occupied or unoccupied, and any improvements placed thereon, shall at all times be

maintained in such manner as to prevent them from becoming unsightly, unsanitary or a hazard to health. If not so maintained, the Association shall have the right, through its agents, employees and contractors to do so, the cost of which shall be levied as an assessment against the owner of the camp. Neither the Association, nor any of its agents, employees or contractors shall be liable for any damage which may result from any such maintenance work.

**ARTICLE 7  
PETS**

No swine, cattle, poultry, horses, ponies or other animals other than a reasonable number of dogs and cats may be kept on any camp in the Development at any time, provided that any such dogs and cats are not bred or maintained for commercial purposes and that whenever such dogs and cats are not inside of the single-family dwelling, garage or authorized dog house on the camp on which they are kept, they are either restrained by a leash which is held by the individual accompanying them or are kept within a fence. While being kept within a fence, no authorized pets shall be chained or restrained by a leash during any time when the camp owner or some other person is not present with them. All fences and other structures in which animals are kept or confined must be designed, constructed, erected, installed, cleaned and maintained in a manner which has been approved by the Architectural Control Committee.

Any pet shall be muzzled which consistently barks, howls or makes other disturbing noises which might be reasonably expected to disturb any other camp owner or his tenants or guests. The breach of any of these restrictions, obligations and duties shall be a noxious and offensive activity constituting a private nuisance.

**ARTICLE 8  
SEWERAGE DISPOSAL**

No sewerage system shall be permitted on any camp except such system as is located, constructed, and equipped in accordance with the minimum requirements of the State Board of Health. Approval of such system shall be obtained from the health authority having jurisdiction.

**ARTICLE 9  
LIMITED ACCESS**

There shall be no access to any camp on the perimeter of the Development except from designated streets or roads within the Development as shown on the recorded plats of the Development without the express written consent of Developer which must be recorded in the Office of the Register of Deeds for Transylvania County, North Carolina.

**ARTICLE 10  
RESUBDIVISION OF CAMPS**

Except as set out below, no camp or parcel, with the exception of those camps or parcels owned by Developer, shall be further divided, however, Developer shall have the absolute right, in Developer's sole discretion, to combine and divide or redivide any camps or parcels owned by Developer and to place on record plats of any such combined, divided or redivided camps or parcels and to submit or withdraw said camps or parcels from the provisions of these covenants without the consent or joinder of the owners of the other camps and parcels in the Development.

Camp owners other than Developer may only divide a camp or parcel by dividing it in such a manner that it is either completely absorbed by one or more of the adjoining camps or parcels thus creating one or more adjoining camps or parcels which are larger than when originally platted and shown on recorded subdivision plats, or it is partially absorbed by one or more of the adjoining camps or parcels and the remaining portion thereof forms a camp which is not less than ten acres in size.

**ARTICLE 11  
PROHIBITION OF OIL AND GAS WELLS AND SUBSURFACE MINING**

No well for the production of, or from which there may be produced, oil, gas or minerals shall be dug or operated upon any camp, nor shall any machinery, appliance or structure ever be placed, operated or maintained thereon in connection therewith, nor shall there be any subsurface mining or drilling activity thereon; provided further that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the installation of utilities and communication facilities and any activity associated with soil testing, construction of building foundations or master drainage control.

Any grading or other land use which creates erosion runoff into streams or other camps is prohibited. Any grading performed in violation of any county, state or federal ordinance, statute or regulation shall be deemed to be a noxious or offensive activity as defined in Article 5 of these covenants.

**ARTICLE 12  
FIREARMS AND OTHER PROJECTILE PROPULSION DEVICES**

The discharge of firearms in the Development, including rifles, guns and pistols of any kind, caliber, or type and any other devices which propel bullets and other projectiles through the air utilizing any method of propulsion except pursuant to Article 13 of these covenants or by security personnel in the course of their duties is prohibited. Notwithstanding anything hereinabove set forth to the contrary, it is specifically understood that the term "firearms" does not include BB guns or pellet guns and that the use of such guns and bows and arrows by property owners

on their camps is not prohibited under the provisions of these covenants.

**ARTICLE 13  
WILLFUL DESTRUCTION OF WILDLIFE**

No hunting shall be allowed in the Development except under controlled conditions approved by the Association and appropriate governmental wildlife authorities for the purpose of protecting property owners, the public and other animals against health hazards, disease and other anomalies resulting from species over-population, significant wildlife predation and outbreaks of contagious wildlife diseases. Since the Development is not intended to be maintained as a wildlife sanctuary, any depletion of wildlife stock which may result from the process of planned development shall not be deemed to be a violation of this article.

**ARTICLE 14  
CLOTHESLINES, GARBAGE CANS, TANKS, WOODPILES, ETC.**

No clotheslines or above-ground tanks may be placed on any camp. All garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of the other camps, streets and areas in the Development outside of the camp on which such items are located. Each camp owner shall provide closed sanitary receptacles for garbage and all rubbish, trash, and garbage shall be regularly removed from each camp and shall not be allowed to accumulate thereon. Furthermore no bedding or clothing of any type, nor any towels, clothes or other items of wearing or cleaning apparel, or any mops, brushes, brooms or other types of cleaning apparatus shall be hung or placed outside of any structure located on any camp in the Development in such a manner as to be visible from any street, or other camp or area located in the Development.

**ARTICLE 15  
TREE REMOVAL, SITE CLEANING,  
UNDER BRUSHING AND BURNING**

No trees, brush or shrubs, including, but not limited to, mountain laurel, wild azaleas and rhododendron, shall be trimmed on or removed from any camp prior to proper approval of such trimming or removal by the Architectural Control Committee or such other committee which may be delegated the right to make such approval by the Association. Such approval shall not be unreasonably withheld and shall be given or denied by the committee having the authority to give or deny such approval in writing within thirty (30) days after written plans showing such proposed trimming or removal and any other information requested by such committee relating to such trimming or removal have been submitted to such committee. Denial or approval of such trimming or removing may be based by such committee upon any reasonable ground, including purely aesthetic considerations. In the event such committee or its designated representative fails to approve or disapprove any matter involving the trimming or removal of trees, brush or

shrubs from any camp which is properly submitted for its approval hereunder within thirty (30) days after proper plans and any other requested information have been submitted, approval shall not be required and the provisions of these covenants specifying the manner in which any such proposed trimming or removal must be approved shall be deemed to have been fully complied with. No open burning of any kind shall be done before the camp owner has obtained the written permission of such committee.

**ARTICLE 16  
SIGNS**

With the exception of those camps owned by Developer on which Developer may in its absolute discretion erect such signs as it may deem appropriate, no signs shall be placed on any camp except one property address sign of not more than two square feet and, during the construction of an authorized structure on a camp, one sign of not more than four square feet identifying the builder or contractor provided that the content and design of all of such signs other than those erected by the Developer has been approved by the Architectural Control Committee after a copy of such sign has been submitted to said committee for its approval. Notwithstanding anything hereinabove set forth to the contrary, the Association shall have the right to erect reasonable and appropriate signs on the common area, and each camp owner shall have the right to erect a mailbox on his or her camp with the property address inscribed thereon provided that the type of mailbox, the manner that the property address has been inscribed thereon and the support post for such mailbox has been approved by the Architectural Control Committee which shall have the right to specify uniform standards for mailboxes and support posts which shall be applicable to all camps.

**ARTICLE 17  
OUTDOOR LIGHTING**

All outdoor lighting, including the location, intensity and duration of such lighting, must be approved by the Architectural Control committee which shall have the right at any time to prohibit the use of any outdoor light which unreasonably interferes with the privacy of any other camp owner and such other camp owner's use and enjoyment of his camp at any time.

**ARTICLE 18  
AERIALS AND ANTENNAS**

With the exception of one satellite dish not greater than two feet in diameter which is not visible from any road in the subdivision which may be erected behind the residence or garage on a camp, no radio, television or other aerial, antenna, satellite dish, tower or other transmitting or receiving structure or support thereof shall be erected, installed, placed or maintained on any camp unless so erected, installed, placed or maintained entirely within the enclosed portion of the individual residence or garage.

**ARTICLE 19  
UTILITY LINES**

No overhead utility lines, including lines for cable television, shall be permitted on any camp without the written approval of the Association.

**ARTICLE 20  
ENERGY CONSERVATION EQUIPMENT**

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any camp unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of Developer.

**ARTICLE 21  
AIR CONDITIONING UNITS**

Except as may be permitted by the Architectural Control Committee, no window air conditioning units may be installed in any house or other structure which is located on any camp.

**ARTICLE 22  
ARTIFICIAL VEGETATION, EXTERIOR SCULPTURES  
AND SIMILAR ITEMS**

No artificial vegetation shall be permitted on any camp. Exterior sculptures, fountains, flags and similar items must be approved in writing by the Architectural Control Committee before being placed on any camp.

**ARTICLE 23  
IRRIGATION**

No sprinkler or irrigation systems of any type which draw upon water from wells, community water systems, creeks, streams, rivers, lakes, ponds or other waterways within the Development shall be installed, constructed, or operated within the Development unless prior written approval has been received from the Architectural Control Committee.

**ARTICLE 24  
POOLS**

No above ground pool shall be erected, constructed or installed on any camp and no other type of pool shall be erected, constructed or installed on any camp without the express written permission of the Architectural Control Committee which shall have the absolute right in its sole discretion to deny such permission on any reasonable grounds.

**ARTICLE 25  
EASEMENTS**

The following easements over each camp or parcel and the right to ingress and egress to the extent reasonably

necessary to exercise such easements, are reserved to Developer, Developer's successors, assigns or licensees:

A. Utilities. A ten (10) foot wide strip running along the inside of all property lines other than those property lines which extend along the center of streams; however, where property lines run along the center of roads or along road right-of-way lines, such strips shall, at the option of Developer, run along either the inside or the outside of the road right-of-way line, but Developer, after having located said ten foot wide strip on a particular camp, may not thereafter relocate said strip on said camp without the express written consent of the owner of said camp. Said strips shall be used for the installation, maintenance and operation of public, quasi-public or private utility lines or other devices which provide utility or similar services, including, without limitation, electric light, power, telephone and cable service lines, storm water drains, land drains, public and private sewers and pipelines supplying gas and water, and the accessory right to locate guy wires, braces or anchors or to cut, trim or remove trees and plantings wherever necessary upon such camps in connection with such installation, maintenance and operation. Developer shall have the right to enter and to permit others to enter upon said reserved strips.

B. Roads. An easement on, over and under all roads in the Development for the purpose of installing, maintaining and operating utilities thereon or thereunder; for the purpose of drainage control; for access to any camp or parcel or any other lands owned by Developer located outside of the Development; and for the purpose of maintenance of said roads.

C. Sight Easements. Such sight easements, if any, of the sizes and locations as may be shown on recorded plats of portions of the Development are reserved for the purpose of ensuring that visibility at road intersections shall be unimpeded. No fence, wall, hedge, tree or shrub which obstructs sight lines at elevations between two (2) and eight (8) feet above roadways shall be placed or permitted to remain within sight easements.

D. Other Easements. Any other easements shown on recorded plats of portions of the Development.

E. Use of and Maintenance by Owners. The areas of any camps affected by the easements reserved herein shall be maintained continuously by the owners of such camps, but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purposes herein set forth. Improvements within such areas shall be maintained by the owners of said improvements except those for which a public authority or utility company is responsible.

**ARTICLE 25A**  
**SPECIAL ADDITIONAL EASEMENTS RETAINED BY DEVELOPER**

The Developer reserves the right to construct the following easements to be utilized for the following purposes:

1. A 45 foot wide road and utility line easement across Camp 1 in the approximate location shown on the recorded plat hereinabove referred to for the purpose of providing a road and utility line right of way from, and to serve, other lands belonging to the Developer to the public road over and along said 45 foot wide easement and the other road and utility line easements shown on recorded plats of the Development which connect the Development with the public road together with the right of ingress, egress and regress over and along the same in common with the other property owners served by said easements. This easement may be repositioned slightly following the completion of the road to be constructed in said easement if conditions encountered during construction make such repositioning reasonably necessary.

2. A 25 foot wide easement for road and utility line purposes extending across the Meadow for the purpose of providing an additional road and utility line right of way from the Development to the public road over and along said 25 foot wide easement and the other road and utility line easements shown on recorded plats of the Development which connect the Development with the public road together with the right of ingress, egress and regress over and along the same in common with the other property owners in the Development and also an additional temporary construction easement 100 feet in width.

3. A 25 foot wide easement for road and utility line purposes extending across the eastern portion of Camp 9 in the location shown on the plat recorded in Plat File 13, Slides \_\_\_\_\_, hereinabove referred to, for the purpose of providing an additional road and utility line right of way from the Development to the public road over and along said 25 foot wide easement and the other road and utility line easements shown on recorded plats of the Development which connect the Development with the public road together with the right of ingress, egress and regress over and along the same in common with the other property owners in the Development and also an additional temporary construction easement 100 feet in width.

4. Hiking trails across the Meadow and the Stream Buffer - Greenway area shown on the recorded plats of the Development together with the right to connect such hiking trails with the trail easements shown on said plats and to connect said trail easements with such other properties as the Developer may designate. Such trails and trail easements shall be for the benefit of such parties as Developer may designate. Although it



shall have the right to do so, Developer assumes no obligation to construct or maintain any hiking trails in the Development.

**ARTICLE 26**  
**CHIMNEY CREEK CONSERVATION ESTATES**  
**PROPERTY OWNERS ASSOCIATION, INC.**

A. Membership

Every person (or entity) who/which is a record owner of a fee or undivided fee interest in any camp that is subject to this Declaration shall be deemed to have a membership in Chimney Creek Conservation Estates Property Owners Association, Inc. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold interests merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the owner's membership. No owner, whether one or more persons, shall have more than one membership per camp owned. In the event that a owner of a camp is more than one person or entity, votes and rights of use and enjoyment shall be as provided for in the bylaws and rules and regulations of the Association.

B. Voting

The Association shall have two classes of membership, Class A and Class B, as follows:

1. Class A members shall be all owners with the exception of the Class B members, if any. Class A members shall be entitled on all issues to one vote for each camp in which they hold the interest required for membership by Section 1 hereof; however, there shall be only one vote per camp regardless of the number of persons or other entities owning an interest in a particular camp.

2. The Class B member shall be the Declarant or any successor of the Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. The Class B member shall originally be entitled to two votes for each camp in which it holds the interest required for membership by Section 1 hereof on all issues on which the Class B member is entitled to vote; this number shall be decreased by one vote for each Class A member existing at any one time. The Class B membership shall terminate and become converted to Class A membership upon the happening of the earlier of the following: (a) when the total outstanding Class A votes equal or exceed six; (b) January 1, 2011; or (c) when, at its discretion, the Declarant so determines. From and after the happening of these events, whichever occurs sooner, the Class B member shall be deemed to be a Class A member entitled to one vote for each camp in which it holds the interest required for membership under Section 1 hereof. At such time, the Declarant shall call a meeting, as provided in the bylaws of the Association for special

meetings, advising the membership of the termination of Class B status.

### C. Assessments

Each camp in the Development is served by roads which connect the Development with the public road. The owner of each camp, with the exception of Developer, shall, by the acceptance of a deed or other conveyance for such camp, be deemed obligated to pay to the Association an annual assessment or charge for the purposes stated within this article to be fixed, established, and collected on a camp by camp basis as hereinafter provided. Said annual assessment or charge shall be due on a date to be established by the Association and pursuant to reasonable advance notice given in writing to all camp owners. Upon demand, the Association shall furnish to any owner or mortgagee a certificate showing the assessments or charges or installments thereof due as of any given date. Each camp made subject to these restrictions is hereby made subject to a continuing lien to secure the payment of each assessment or charge when due.

The funds collected from said assessments may be used for any or all of the following purposes: maintaining and landscaping the entrance, maintaining, operating, improving and replacing roads and dams within the Development; protection of property from erosion; maintaining camps as provided in Article 5 herein; maintenance, improvement and lighting of common areas and facilities including recreational facilities within the development; employing watchmen and security personnel; enforcement of these restrictions; paying taxes and other indebtedness of the Association, including insurance premiums, governmental charges of all kinds and descriptions; legal and accounting fees; and, in addition, doing any other things necessary or desirable in the opinion of the Association to maintain the Development in neat and good order and to provide for the health, welfare and safety of owners and residents of the Development.

In addition to the foregoing, Declarant, until such time as the Association has been organized and incorporated by Declarant, and thereafter, the Association, shall have the power to, and be obligated to, levy special assessments, at such times, for such amounts and for such purposes as may be specified in any amendment or supplemental declaration to this Declaration or in any deeds from Declarant to purchasers of camps and/or parcels in the Development.

The amount of each assessment levied pursuant to the provisions of this Declaration shall constitute a personal obligation of the camp owner against whom such assessment is levied and shall be paid to the Association on or before the date specified by the Association at the time that it levies such assessment.

### D. Enforcement Procedures

Upon the failure of the owner of any camp to pay any assessment or charge when due, the Association shall have the right to collect the amount thereof by an action at law

against the owner as for a debt, and may bring and maintain such other suits and proceedings at law or at equity as may be available. Such rights and powers shall continue in the Association and the lien of such charge shall be deemed to run with the land; and the successive owners of each camp, by the acceptance of deeds therefor, shall be deemed personally to assume and agree to pay all unpaid assessments or charges or additional assessments which have been levied against the property and all assessments or charges or additional assessments which shall become a lien thereon during their ownership. Any assessment or charge levied against a camp remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that camp when a claim of lien (sometimes herein referred to as a "Notice of Assessment and Lien") setting forth the name and address of the Association, the name of the record owner of the camp at the time the lien is filed, a description of the camp and the amount of the lien claimed is filed of record in the office of the Clerk of Superior Court for Transylvania County. Upon the filing of any such lien pursuant to the authority granted under this Declaration, the Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. All liens levied pursuant to the provisions of these Covenants shall include the amount of any unpaid assessments, plus any other charges thereon, including a late charge of the greater of TWENTY DOLLARS (\$20.00) per month or ten percent (10%) of any assessment installment unpaid to cover administrative expenses, interest at one and one-half percent (1½%) per month, costs of collection, including attorneys' fees, document preparation and recordation charges and all other charges which are allowable under the provisions of North Carolina Statutes Section 47-3-102. Each Notice of Assessment and Lien shall be signed by the Association or such other person or legal entity to whom the Association may assign the authority to file Notices of Assessments and Liens pursuant to a document filed in the office of the Register of Deeds for Transylvania County. Such lien shall be prior to all other liens recorded subsequent to the filing of such Notice of Assessment and Lien. Each owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association, or such other person or legal entity to whom the Association may assign the authority to file Notices of Assessments and Liens, the right and power to bring all actions against said owner personally for the collection of such charges set out in said Notice of Assessment and Lien as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement for real property. The lien provided for in this Article shall be in favor of the Association and it shall have the power to bid on the camp in any foreclosure proceeding or to acquire, hold, lease, mortgage, or convey the camp. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged damage, inconvenience or discomfort arising from the completion by the Association of repairs or improvements or removal of nuisances pursuant to the provisions of Article 5 of these Covenants or for any maintenance performed by the Association pursuant to the

provisions of Article 6 of these Covenants. All payments shall be applied first to costs and attorney fees, then to late charges, then to interest, then to delinquent assessments. Upon payment of all assessments and other charges, costs and fees provided for in a particular Notice of Assessment and Lien, or other satisfaction thereof, the party filing said lien shall cause to be recorded a further notice stating satisfaction and the release of the lien thereof.

E. Period of Declarant Control

As provided for in the bylaws of the Association, the directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant so long as the Class B membership exists, as set forth in this Declaration, unless the Declarant shall earlier surrender this right to select directors. The directors selected by the Declarant need not be owners or residents in the Development. After the period of declarant appointment, all directors must be members of the Association.

**ARTICLE 27**

**NO POLLUTION OF STREAMS, PONDS AND LAKES**

No camp owner shall pollute any stream, pond or lake in the Development nor shall any camp owner cause or allow any stream in the Development which may flow across his camp to be diverted in part or in whole from its natural direction and course of flow. No solid or liquid waste of any kind shall be drained, dumped or disposed of in any way into open ditches or water courses.

**ARTICLE 28**

**PARKING OF VEHICLES**

Except as may be permitted on a limited basis for certain vehicles under the provisions of Article 3 of these covenants, no trailer, tractor trailer, bus, truck, tractor, recreational vehicle, camper trailer, boat trailer or any other transportation device other than an automobile or a pickup truck may be parked on any road or street in the Development.

**ARTICLE 29**

**AMENDMENT**

Prior to the termination of the Class B membership in the manner provided for in subsection 2 of Section B of Article 26 of the Declaration, this Declaration may be amended unilaterally at any time and from time to time by Declarant. This Declaration may also be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance

company to issue title insurance coverage with respect to the camps subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association of Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the camps subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the camps subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any owner's camp unless any such camp owner shall consent thereto in writing. The signatures appearing on amendments executed by Developer shall be properly notarized and any such amendment shall become effective upon the date of its recordation in the office of the Register of Deeds for Transylvania County, North Carolina, unless a later effective date is specified therein.

In addition to those instances when this Declaration may be amended by the Developer in the manner provided for in the preceding paragraph, this Declaration may also be amended at any time and from time to time either by the recordation in the office of the Register of Deeds for Transylvania County, North Carolina, of a written amendment to these restrictions signed by the owners of at least sixty-seven percent (67%) of the camps in the Development, and also by the Developer so long as the Developer shall own any camps which are subject to this Declaration, or by the recordation in said office of a document prepared and executed by the Secretary of the Board of Directors certifying that the amendment to the declaration set out therein has been approved by the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association and also by the Developer so long as the Developer shall own any camps which are subject to this Declaration. The signatures appearing on such documents shall be properly notarized and any such amendment shall become effective upon the date of its recordation in the office of the Register of Deeds for Transylvania County, North Carolina, unless a latter effective date is specified therein.

Notwithstanding anything hereinabove set forth to the contrary, no amendment may remove, revoke or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege.

**ARTICLE 30  
SUPPLEMENTAL DECLARATIONS**

Developer reserves the right to record supplemental declarations which add additional property to that covered by this Declaration. Any such subsequent supplemental declaration may, but is not required to, impose expressly or by reference, additional restrictions and obligations on the land submitted by that supplemental declaration to the provisions of this Declaration, or modify or limit the

extent to which the provisions of this Declaration shall be applicable to such additional property.

**ARTICLE 31**

**TERM**

All of the restrictions, conditions, covenants, charges, easements and agreements contained in this Declaration shall run with the land and be binding on all parties and all persons claiming under them in perpetuity. However, if any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision(s) shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, II, Queen of England.

**ARTICLE 32**

**GRANTEE'S ACCEPTANCE**

Each grantee or purchaser of any camp or parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such camp or parcel, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and all amendments thereto, and to the jurisdiction, rights, powers, privileges and immunities of Developer and the Association herein provided for. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with Developer and the grantee or purchaser of each other camp or parcel to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration, and all amendments and supplemental declarations thereto.

**ARTICLE 33**

**SUSPENSION OF RESTRICTIONS**

The provisions of this Declaration which are applicable to improvements, use and occupancy shall be suspended as to any camp, parcel or other area while and so long as the same is owned by or leased to the State of North Carolina or any governmental agency, public or private utility, whenever and to the extent, but only to the extent, that such provisions shall prevent the reasonable use of such camp, parcel or area for the purposes for which it was acquired or leased. On cessation of such use, such provisions shall become applicable again in their entirety. While owning or leasing and using, such owner shall not have rights as a member of the Association nor shall it be liable for any Association assessments.

**ARTICLE 34  
ENFORCEMENT**

Developer and each person to whose benefit these restrictions inure, including Chimney Creek Conservation Estates Property Owners Association, Inc., and other camp owners in the Development, may proceed at law or in equity against any person or other legal entity violating or attempting to violate any provisions of these restrictions, either to restrain violation, to recover damages, or both.

**ARTICLE 35  
SEVERABILITY**

Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

**ARTICLE 36  
DEVELOPER'S RIGHTS**

Developer's rights under this Declaration may be assigned at any time, in whole or in part, to any other person, persons or legal entity including, but not limited to, the Association.

**ARTICLE 37  
WETLANDS**

Nothing shall be constructed, nor may any activities be conducted on any portion of a camp on which wetlands are located which would be in violation of federal and state rules regulating the use of wetlands.

**ARTICLE 38  
USE OF COMMON AREA**

No planting or gardening shall be done upon any portion of any area within the Property which may hereafter be designated as common area in any supplemental declaration placed on record in the office of the Register of Deeds for Transylvania County by Declarant pursuant to the provisions of this Declaration or upon any portion of any area within the Property which may be designated as common area on any recorded plat referred to in this Declaration except for such as may be approved by the Association, nor shall any fences, hedges, walls or other improvements be erected or maintained upon any common area except as approved by the Architectural Control Committee. Except for the right of ingress and egress, the owners of camps may use the property outside their respective camps only in accordance with such reasonable regulations as may be adopted by the Association or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this article is for the mutual benefit of all owners and is necessary for the protection of all owners.

**ARTICLE 39  
USE OF BOATS ON LAKES AND PONDS**

No motorized boats may be operated on lakes and ponds located in the Development and operation of boats will be controlled by rules and regulations from time to time established by the Association.

**ARTICLE 40  
STORAGE OF BOATS AND OTHER WATER CRAFT**

All boats, floats, rafts, and other water craft and/or boat trailers which may be located on any camp shall be placed in such a manner so as to not be visible from any area outside of said camp which is located within the Development.

**ARTICLE 41  
PROHIBITION OF DOCKS**

No dock shall be constructed or erected on any camp which is adjacent to a lake or pond.

**ARTICLE 42  
DAM EASEMENTS**

An easement is reserved for Developer, Developer's successors, assigns or licensees for the purpose of inspecting, repairing and maintaining at Developer's expense all dams which do not form a portion of the common area. Developer shall be solely responsible for ensuring that said dams are repaired and maintained adequately and in a manner which complies fully with all safety standards promulgated by the regulatory agencies having jurisdiction over such dams. Developer reserves the right to assign its rights and obligations under this Article, in whole or in part, to the Association at any time.

**ARTICLE 43  
WATER WAY BUFFER RESTRICTIONS**

The area located within 25 feet of the high water bank on each side of Tinsley Creek as said creek flows through the Stream Buffer - Greenway and Meadow areas shown on the recorded plat hereinabove referred to into the lake shown on said plat shall be maintained in perpetuity in its natural or **mitigated** condition. Subject always to the Declarant's reserved right to construct a road and install utility lines in the easement areas referred to in Article 25A of this Declaration upon receipt of and while acting in compliance with the requirements set forth in a permit to undertake such construction which has been issued by the appropriate governmental agency having jurisdiction over such matters, no person or entity shall perform any of the following activities on such area:

- a. fill, grade, excavate or perform any other land disturbing activities;
- b. cut, mow, burn, remove, or harm any vegetation;



- c. construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures;
- d. drain or otherwise disrupt or alter the hydrology or drainage ways of the protected area;
- e. dump or store soil, trash, or other waste;
- f. graze or water animals, or use for any agricultural or horticultural purpose.

This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, Action ID, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it.

IN WITNESS WHEREOF, the Developer has executed this Declaration, this 5<sup>th</sup> day of October, 2009.

CHIMNEY CREEK PARTNERS, LLC,  
a North Carolina Limited Liability  
Company

By: Arthur G. Fisher member/manager  
Member-Manager

STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA

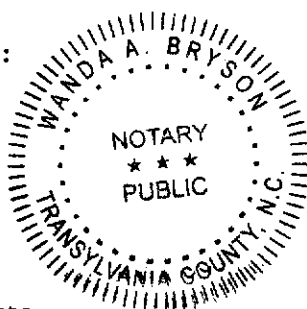
I, a Notary Public of said State and County, do hereby certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: ARTHUR G. FISHER.

WITNESS my hand and Notarial Seal, this the 5th day of October, 2009.

Wanda A Bryson  
Signature of Notary Public

WANDA A. BRYSON  
Printed or typed name of Notary Public

My commission expires:  
9-29-13



F:\Norma\Ramsey\ChimneyCreekCovenants