

✓ 244 410

DECLARATION
OF
RESTRICTIVE COVENANTS
OF
FALLS CREEK SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS, that Falls Creek, Inc. (hereinafter referred to as Developer), is the owner and developer of that certain property situate, lying and being in Dunns Rock Township, Transylvania County, North Carolina, known as Falls Creek Subdivision (The Development), described and attached hereto, designated as Exhibit "A" and made a part hereof by reference.

Developer intends to sell and convey the lots 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 lots and parcels in the Development and the owners and future owners thereof.

NOW, THEREFORE, Developer declares that all of the lots and parcels in the Development 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 held in furtherance of a plan for the Development, improvement and sale of said lots 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 lots and parcels in favor of each and all other lots and parcels; to create reciprocal rights between the respective owners of all such lots and parcels; to create privity of contract and estate between the grantees of such lots, their heirs, successors and assigns; and shall, as to the owner of each such lot or parcel, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other such lots and parcels in the Development and their respective owners, present and future.

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A. RESIDENTIAL AREA COVENANTS

1. LAND, USE AND BUILDING TYPE: No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached, single-family dwelling, not to exceed two and one-half stories in height, and a private garage for not more than two cars. Each lot is to be sold as a single-home site, and is not to be further divided. All utilities on lots, including electrical and telephone lines shall be located as per the attached plat of said subdivision. No road shall be constructed through any lot to connect with lands lying outside of Falls Creek Subdivision.

2. ARCHITECTURAL CONTROL: No building shall be erected, placed or altered on any lot until the construction plans and specifications, and a plan showing the location of the structure on the lot have been approved by the Architectural Control Committee as to the quality of workmanship and materials, harmony of external design with existing structures and the natural environment, and as to location with respect to topography and finish-grade elevation. Unless similarly approved, no major portion of any lot shall be cleared or graded, nor shall any trees over four (4) inches in diameter be cut down unless removing the same is necessary for the construction of a home or dwelling permitted herein or is necessary for the health, safety, and welfare of the owner of the lot or for adjoining owners; nor shall any fence or wall be erected, placed, or altered on any lot. Approval shall be provided as in Part C hereof; and under no conditions should approval as under Part C hereof be withheld from any proposed building arbitrarily, capriciously and without good cause and justification. Natural drainage shall not be changed without the approval of said committee. Developers shall not be responsible for any drainage problems

affecting any lot.

3. DWELLING COST, QUALITY AND SIZE: No dwelling shall be permitted on any lot of said subdivision at a cost of less than \$35,000 based upon the cost levels prevailing on the date these covenants are recorded; it being the intention and purpose of these covenants to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded. The ground floor of the main structure of any dwelling erected or placed on any lot, exclusive of one-story open porches and garages, shall not be less than 1,000 square feet for one-story dwelling nor less than 1,800 square feet for a structure of more than one story.

4. BUILDING LOCATION: No building shall be located on any lot nearer to the front line or nearer to the side-street line than the minimum building set-back line shown on the recorded plat. In any event, no building shall be located on any lot nearer than 55 feet to the centerline on all streets. Further, no building shall be located nearer than 10 feet to an interior side-lot line. No dwelling shall be located on any interior lot line nearer than 25 feet to the rear-lot line. No building shall be located nearer than 25 feet to any side-street line. For the purpose of these covenants, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of the building on a lot to encroach upon another lot.

5. EASEMENTS: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

6. NUISANCES: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become any annoyance or nuisance to the neighborhood.

7. TEMPORARY STRUCTURES: No structure of a temporary character, trailer, basement, tent, shack, garage, or other out-buildings shall be used on any lot at any time as a residence, either temporarily or permanently.

8. SIGNS: No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than five square feet advertising the property for sale or rent.

9. LIVESTOCK AND POULTRY: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purposes.

10. GARBAGE AND REFUSE DISPOSAL: No lot shall be used or maintained for a garbage dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

11. COMPLETION OF STRUCTURE: Construction of any building shall be completed within twelve (12) months of the date that construction was begun.

12. MOTOR VEHICLES AND REPAIRS: No junk cars, trucks, buses, (whether operative or inoperative) and inoperative motor vehicles of any type shall be kept on any lot nor shall any repairs be made on any motor vehicles on any lot

with the exception of minor emergency work such as the replacement of flat tires, dead batteries and other minor repairs.

13. SITE DISTANCE AND INTERSECTION: No fence, wall, hedge, or shrub planting shall be constructed, placed or permitted to remain in any place where the same shall obstruct the view above roadways of streets, roads or driveways or otherwise interfere with vehicular traffic in the roads of said subdivision.

14. WATER SYSTEM: Developer shall not be responsible for supplying water for any lot as it is each individual lot owner's responsibility to secure water for his lot.

15. DRILLING AND MINING: No drilling, refining, quarrying or mining operations of any kind shall be permitted on any lot.

16. DRIVE-WAY CONNECTIONS: All drive-way connections for each lot must include a fifteen (15) inch or larger diameter culvert and sufficient gravel.

17. STREAMS: No lot owner shall pollute any stream in the development nor shall any lot owner cause or allow any stream in the Development which may flow across his lot to be diverted from its natural direction and course of flow. The provisions of this article shall not be construed as prohibiting the construction of a dam on a lot by a lot owner so long as the construction plans and specifications thereof and a plan showing its location on the lot have been submitted to and approved by the Architectural Control Committee in the manner herein above specified in Section A Part 2 hereof, and so long as the stream which flows across the lot owner's lot flows in its natural direction and course of flow at all points on the lot downstream from the dam constructed on the lot and upstream from the pond created by said dam.

18. CONCEALMENT OF FUEL-STORAGE TANKS: Fuel-storage tanks on any lot shall be buried below the surface of the ground or screened to the satisfaction of the Developer.

B. ROAD MAINTENANCE

Access to Lot Numbers 1 through 12 shall be over the roads shown on the plat hereinabove referred to. Until said roads are taken over for maintenance by the North Carolina Department of Transportation, or any successor or agency thereto; Developer, for itself and its successors or assigns, reserves the right to levy an annual road maintenance fee, against the owner of each lot, of _____ of the yearly maintenance cost of said roads, not to exceed a maximum of \$ 120⁰⁰ per lot per year; however, the permissible maximum fee chargeable in each calendar year shall be adjusted upward each year by the same percentage that the dollar has decreased in purchasing power during the preceding calendar year as reflected in statistics set out in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics or any successor government bureau which may subsequently become responsible for compiling and publishing such statistics. In the event that the owner of one of said lots does not pay said maintenance fee within 90 days after the fee is levied each year said levy shall constitute a lien against said lot from the date of the filing of a Certificate of Levy in the office of Register of Deeds of Transylvania County. If any lot owner or group of owners should voluntarily accept the dual responsibility of overseeing the maintenance of said roads and levying the annual road maintenance fees, Developer reserves the right to turn over such duties to them for a period of time acceptable to all the parties concerned. Developer reserves the right to turn over to the lot owners as a group the responsibilities of overseeing the maintenance of said roads and of the levying the road maintenance fees at any time after 50% said lots are sold.

C. ARCHITECTURAL CONTROL COMMITTEE:

1. MEMBERSHIP: The Architectural Control Committee shall be composed of two (2) to five (5) members duly appointed by the Developer, Developer's assigns, or successors in interest, who shall serve for a period of one year.

A majority of the committee may designate a representative to act for it. In the event the death or resignation of any member of the committee, the remaining members of the committee shall have full authority to designate his successor. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. Developer reserves the right to turn over to the lot owners as a group, the responsibility of appointing, on a one-vote-per-lot basis, the members of the Architectural Control Committee at any time after 50% of the lots of Falls Creek Subdivision are sold, and at any time after said responsibility shall have been turned over to said lot owners as a group, the then record owners of the majority of the lots shall have the power to change the membership of the committee through a duly recorded written instrument, or, likewise, through a duly recorded written instrument, to withdraw from the committee all or any portion of its powers and duties, or to restore to it any of its powers and duties.

2. PROCEDURE: The committee's approval or disapproval as required by the covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and related covenants shall be deemed to have been fully complied with.

D. FALLS CREEK PROPERTY OWNER'S ASSOCIATION:

At such time as developer shall have sold and conveyed 50% lots in Falls Creek Subdivision, all owners of lots situated in the development shall be obligated to join the Falls Creek Property Owner's Association, to participate in the activities of said association on a one-vote-per-lot basis and to assist in the organization and operation thereof by paying their pro-rata share of the cost of organizing and operating said association.

E. AESTHETIC PROVISIONS AND COVENANTS:

LOT AND HOME MAINTENANCE: All lots and homes constructed on said lots in this subdivision shall be maintained in a state of good repair and good condition. No lot or home located on the same shall be allowed to so deteriorate as to present a nuisance to the other lot owners or to present a danger to the health, safety, and welfare of the other lot owners in this subdivision.

F. GENERAL PROVISIONS:

1. TERM: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of ten (10) years from the date these covenants are recorded, after which said time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots have been recorded, agreeing to change said covenants in whole or in part.

2. ENFORCEMENT: Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

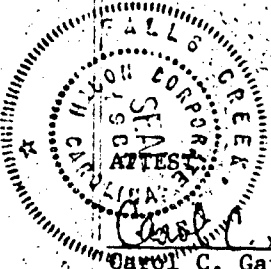
3. SEVERABILITY: Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 14th day of OCTOBER, 1980.

IN WITNESS WHEREOF, the said grantor has caused these presents to be signed in its name by its President and its corporate seal to be hereto affixed and attested by its Secretary, all by order of its Board of Directors duly given, this the day and year first above written.

FALLS CREEK, INC.

By: Ronald S. Gardner
Donald S. Gardner, President



Carol C. Gardner
Carol C. Gardner, Secretary

STATE OF NORTH CAROLINA

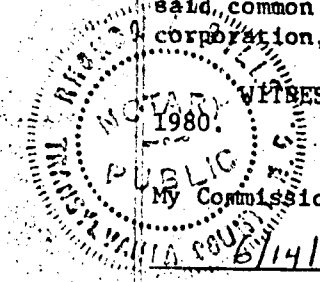
COUNTY OF TRANSYLVANIA

I, Rhonda A. Dills, a Notary Public of said State and County, do hereby certify that Donald S. Gardner personally came before me this day and acknowledged that he is the President and that Carol C. Gardner is the Secretary of Falls Creek, Inc., a corporation described in and which executed the foregoing instrument, that she knows the common seal of said corporation, that the seal affixed to the foregoing instrument is said common seal, and the mane of the corporation was subscribed thereto by its President and that the said President and Secretary subscribed their names thereto and the said common seal was affixed, all by the order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 20 day of October, 1980.

My Commission expires: 6/14/81

Rhonda A. Dills
Notary Public



STATE OF NORTH CAROLINA

COUNTY OF TRANSYLVANIA

The foregoing certificate of Rhonda A. Dills, a Notary Public is certified to be correct. This instrument was presented for registration and recorded in this office in Deed Book 244, Page 410.

This the 20 day of October, 1980, at 1:30 o'clock P. m.

Fred H. Israel
Register of Deeds

By: _____
Deputy Register of Deeds

BEGINNING on a stone located in the line of property belonging to Hope Camp, said stone also being a corner of property belonging to J. J. Brown and running from said beginning point and along the line of J. J. Brown, North 82 deg. 44 min. West 1138.33 feet to a concrete monument; thence North 05 deg. 59 min. East 311.22 feet to a point; thence leaving the line of J. J. Brown and running with the line of property belonging to Knob Creek Subdivision North 85 deg. 03 min. West 295.85 feet; thence North 07 deg. 24 min. West 182.76 feet; thence North 84 deg. 08 min. West 85.63 feet; thence South 70 deg. 18 min. West 70.12 feet; thence South 70 deg. 22 min. West 135.85 feet; thence South 70 deg. 19 min. West 58.02 feet; thence North 44 deg. 35 min. West 111.00 feet; thence North 44 deg. 35 min. West 178.01 feet; thence North 44 deg. 35 min. West 167.58 feet; thence North 44 deg. 35 min. West 54.66 feet to a point in the line of property belonging to Prillamin as described in Deed Book 198 Page 747, Transylvania County Registry; thence with the line of Prillamin property North 83 deg. 46 min. West 116.44 feet; thence still with the line of Prillamin property North 09 deg. 15 min. East 55.65 feet; thence continuing with the line of property belonging to Knob Creek Subdivision North 83 deg. 39 min. West 190.23 feet; thence North 58 deg. 16 min. West 64.43 feet to a point in the eastern edge of Three Mile Knob Road; thence down and with the eastern edge of Three Mile Knob Road the following five (5) calls: South 19 deg. 05 min. East 62.49 feet; thence South 06 deg. 48 min. East 47.50 feet; thence South 02 deg. 09 min. East 28.44 feet; thence South 06 deg. 40 min. West 26.83 feet; thence South 17 deg. 07 min. West 65.80 feet; thence South 15 deg. 04 min. East 20.81 feet; thence South 64 deg. 04 min. East 90.00 feet to a point on the northern margin of Falls Creek Road; thence crossing Falls Creek Road South 37 deg. 14 min. 32 sec. East 89.29 feet; thence along with the line of property belonging to Knob Creek Subdivision South 21 deg. 40 min. West 105.29 feet; thence South 28 deg. 48 min. West 147.63 feet to a point in the line of Lot 5 Section 3 Knob Creek Subdivision; thence with said lot line South 70 deg. 44 min. East 155.73 feet to a point in the line of Lot 6 Section 3; thence with the line of Lot 6 Section 3 South 48 deg. 29 min. East 81.03 feet; thence South 44 deg. 29 min. East 170.59 feet; thence South 71 deg. 27 min. West 49.96 feet to a point in the line of Lot 7 Section 3 Knob Creek; thence with the line of Lot 7 Section 3 Knob Creek Subdivision South 24 deg. 30 min. East 158.90 feet to a point in the line of Lot 17 Section 3 Knob Creek Subdivision; thence North 78 deg. 07 min. 30 sec. East 159.38 feet; thence South 88 deg. 31 min. East 101.93 feet to a point in the line of Lot 18 Section 3 Knob Creek Subdivision; thence with the line of Lot 18 Section 3 Knob Creek South 69 deg. 21 min. East 89.29 feet; thence South 44 deg. 23 min. East 150.25 feet to a point in the line of Lot 19 Section 3 Knob Creek Subdivision; thence with said line South 17 deg. 40 min. 30 sec. East 218.38 feet to a point in the line of Lot 20 Section 3 Knob Creek Subdivision; thence with said line South 16 deg. 49 min. 30 sec. East 198.93 feet to a point in the line of Lot 22 Section 3 Knob Creek Subdivision; thence with said line North 72 deg. 49 min. East 91.26 feet; thence South 18 deg. 44 min. East 150.33 feet to a point in the line of Lot 26 Section 3 Knob Creek Subdivision, said point being a common corner of Lot 27 Section 3; thence with the line of Lot 27 Section 3 North 69 deg. 18 min. East 180.62 feet to an iron pin; thence South 07 deg. 31 min. East 174.27 feet to an iron pin in the line of Lot 28 Section 3 Knob Creek Subdivision; thence with said line South 07 deg. 32 min. East 127.67 feet to an iron pin in the line of Lot 30 Section 3 Knob Creek; thence with said line South 05 deg. 16 min. East 178.19 feet to an iron pin in the line of Lot 36 Section 3 Knob Creek Subdivision; thence with said line South 05 deg. 19 min. East 113.73 feet to an iron pin in the line of Lot 37 Section 3 Knob Creek Subdivision; thence with said line South 05 deg. 17 min. 30 sec. East 264.75 feet to an iron pin in the northern margin of Three Mile Knob Road; thence South 05 deg. 17 min. East 26.90 feet to a point in the center of Three Mile Knob Road; thence South 28 deg. 14 min. East 34.23 feet to a point on the margin of Three Mile Knob Road; thence with the southern margin of Three Mile Knob Road the following five (5) calls: South 67 deg. 41 min. West 50.68 feet; thence South 51 deg. 02 min. 30 sec. West 135.76 feet; thence South 75 deg. 08 min. 30 sec. West 61.61 feet; thence North 82 deg. 48 min. 30 sec. West 123.56 feet; thence North 75 deg. 16 min. West 77.18 feet to an iron pin; thence leaving the southern margin of Three Mile Knob Road and running South 55 deg. 27 min. West 149.67 feet to an iron pin; thence South 55 deg. 27 min. West 87.60 feet to an iron pin; thence South 81 deg. 28 min. 30 sec. West 138.55 feet to an iron pin; thence South 64 deg. 56 min. West 185.95 feet to an iron pin; thence North 29 deg. 37 min. West 82.97 feet to a point; thence South 68 deg. 17 min. East

301.52 feet; thence South 44 deg. 14 min. 30 sec. East 165.05 feet to a point in the center of Old Three Mile Knob Road; thence with the center of Old Three Mile Knob Road the following twenty-one (21) calls: North 45 deg. 23 min. East 131.12 feet; thence North 35 deg. 51 min. East 286.07 feet; thence North 31 deg. 58 min. 30 sec. East 99.26 feet; thence North 70 deg. 01 min. East 178.91 feet; thence North 86 deg. 20 min. East 152.81 feet; thence North 54 deg. 22 min. 30 sec. East 97.42 feet; thence North 31 deg. 25 min. 30 sec. East 160.71 feet; thence North 02 deg. 39 min. East 81.47 feet; thence North 07 deg. 19 min. West 146.88 feet; thence continuing with the center of Three Mile Knob Road and with the line of property belonging to Knob Creek North 04 deg. 26 min. East 71.60 feet; thence North 15 deg. 18 min. East 182.04 feet; thence North 16 deg. 11 min. West 66.24 feet; thence North 39 deg. 55 min. East 38.27 feet; thence North 23 deg. 02 min. East 116.28 feet; thence North 20 deg. 11 min. East 261.73 feet; thence North 19 deg. 23 min. East 209.42 feet to a point in the line of property belonging to Crane; thence with the line of Crane North 07 deg. 07 min. East 87.14 feet; thence North 00 deg. 38 min. East 117.42 feet; thence North 04 deg. 37 min. 30 sec. East 101.22 feet; thence North 05 deg. 05 min. 30 sec. West 68.89 feet; thence North 17 deg. 35 min. 30 sec. West 199.27 feet to a point in the line of property belonging to Hope Camp; thence leaving the center of Old Three Mile Knob Road and running with the line of property belonging to Hope Camp, South 40 deg. 50 min. West 679.08 feet to a point and place of BEGINNING. Containing 76.53 acres, more or less, as surveyed and platted by P. R. Raxter, RLS, in July, 1980, and partially recorded in Plat Files 1 Slides 195+195A, Transylvania County Registry.

Together with the right to take water from the utility water system now serving Knob Creek Subdivision and SUBJECT to those Rules and Regulations governing the cost of taking water from the same.

Grantors, their heirs and assigns, reserve the right to enter upon the above-described property for the purpose of installing and maintaining water lines and any pumps thereon, and also reserve the right to take water from any wells now situated on the above-described property.

Grantors reserve, unto themselves and their assigns, a joint and perpetual easement of right-of-way over and across Three Mile Knob Road for purposes of ingress and egress to and from Knob Creek Subdivision and other property owned by Grantor and not conveyed herein, said easement to run over existing grade to Falls Creek Road.

Grantors also reserve to themselves and their assigns a joint and perpetual easement of right-of-way over and across that parcel of property denoted as "Area C" on the above said plat; the same running over and across the common line of Lots 36 and 37 of Falls Creek Subdivision between Falls Creek Road and Section 1 of Knob Creek.

EXCEPTED from this conveyance is an area denoted as "B" on the plat hereinabove referred to lying along the eastern margin of Three Mile Knob Road and contiguous with the lines of Lot 39 of Falls Creek Subdivision upon which is located a pumphouse.