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in book no: 230 of page 472

Cindy M. Overbey
Register of Deeds, Transylvania County
By: Peresa M. Morton
Deputy

Hold

This instrument prepared by Kimberly R. Coward, Attorney at Law, Cashiers, NC 28717.

DECLARATION OF PROTECTIVE COVENANTS

FOR

THE PRESERVE AT ROCK CREEK

T.P.B., LLC, a Louisiana limited liability company authorized to transact business in North Carolina as "Falcon Ridge Development, LLC", herein referred to as "Declarant", hereby creates a planned community known as **THE PRESERVE AT ROCK CREEK**, as described herein.

RECITALS

NOW, THEREFORE, Declarant hereby declares that all of the Property described in Exhibit "A", attached hereto and incorporated herein by reference shall be held, conveyed, hypothecated, encumbered, leased, used, improved and occupied subject to the provisions of Chapter 47 F of the North Carolina General Statutes and subject to the following covenants, conditions, restrictions and easements which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These covenants, conditions, restrictions and easements shall run with the land and be binding upon all persons having or acquiring any right, title or interest in the above-described property or any part thereof, and shall inure to the benefit of each owner thereof.

I. DEFINITIONS

For the purpose of this Declaration the following definitions shall Review:

Section 1. "Articles of Incorporation" means the Articles of Incorporation of **THE PRESERVE AT ROCK CREEK PROPERTY OWNERS ASSOCIATION, INC.**, and all exhibits which are attached thereto and made a part thereof, and shall include such amendments, as may be adopted from time to time pursuant to the terms hereof. Said Articles of Incorporation are attached as Exhibit "B" hereto and incorporated herein by reference.

Section 2. "Association" means **THE PRESERVE AT ROCK CREEK PROPERTY OWNERS ASSOCIATION, INC.**, a North Carolina non-profit corporation.

Section 3. "Board" means the Board of Directors of **THE PRESERVE AT ROCK CREEK PROPERTY OWNERS ASSOCIATION, INC.**, a North Carolina non-profit corporation.

Section 4. "Bylaws" means the Bylaws of **THE PRESERVE AT ROCK CREEK PROPERTY ASSOCIATION, INC.**, and all exhibits which are attached thereto and made a part thereof, and shall include such amendments, as may be adopted from time to time pursuant to the terms thereof.

Section 5. "Committee" means the Architectural Review Committee of the Association.

Section 6. "Common Areas" means all real property interests owned by the Association for the common use and enjoyment of the members of the Association

Section 7. "Conservation Easements" means the Conservation Easements recorded in Book 177, Page 589 and Book 35, Page 539, Transylvania County Registry, to which reference is specifically made.

Section 8. "Declarant Control Period" means the time period that the Declarant appoints the Board of Directors of the Association (Article V, Section 6 of the Declaration) and appoints the members of the Architectural Review Committee (Article VIII, Section 10 of the Declaration).

Section 9. "Declaration" means this instrument, together with those exhibits which are attached hereto and made a part hereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms hereof.

Section 10. "Developer" and/or "Declarant" means T.P.B., LLC, a Louisiana limited liability company authorized to transact business in North Carolina as Falcon Ridge Development, LLC.

Section 11. "Lot" means any numbered lot designated on any plat of property that has been previously subjected to the Declaration of Protective Covenants for THE PRESERVE AT ROCK CREEK.

Section 12. "Member" means the individual designated by an Owner to be a member of the Association.

Section 13. "Owner" means any person, corporation or legal entity that owns fee simple title to any lot.

Section 14. "Person" means a person or persons, firm, corporation or other legal entity.

Section 15. "Plat" means any map of the Declaration Property or portions thereof, which is on record in the Transylvania County Registry.

Section 16. "Property" or "Declaration Property" means that certain real property described herein.

Section 17. "Residence" means the single-family dwelling located upon a lot of Declaration Property.

Section 18. "Single-family dwelling" means a residential dwelling for one or more persons, each related to the other by blood, marriage, or legal adoption or, alternately, a group of not more than four (4) persons not so related who shall maintain a common household in such dwelling.

Section 19. "Supplemental Declaration" means that document made and executed by Declarant, which annexes any additional lands as Declaration Property and submits same to the terms and provisions of this Declaration or an amendment hereto.

II. PROPERTY SUBJECT TO THIS DECLARATION.

The sixteen, five (5) acre lots of land described in Exhibit "A" attached thereto is the property hereby declared to be held, transferred, sold, conveyed, encumbered, leased, used, improved and occupied subject to this Declaration.

III. SPECIAL DECLARANT RIGHTS

1. Declarant shall have the right to retain as to any roads in THE PRESERVE AT ROCK CREEK, such rights thereto including but not limited to the use thereof and the right to improve, modify and maintain same as is necessary in Declarant's sole opinion for the possible development and sale of other adjacent lands, and rights-of-way for ingress and egress thereto and use and enjoyment thereof by Declarant, its successors and assigns.

2. Declarant shall have the right to use, maintain, improve, and /or replace the roadways, ditches, slopes, and culverts, and to install, maintain and replace water lines, and other public and private utilities within the right-of-way of all roads within Declaration Property, for the benefit of Declaration Property.

3. Declarant shall have the right to use, maintain, improve, and/or replace the common areas, for the benefit of Declaration Property. Specifically, Declarant shall have the right to drill wells and install waterlines within any of said common areas for the purpose of providing water to owners from wells or water sources from a private water system, to grant easements to the Association and/or to owners or water associations for the purpose of taking water and for the purpose of maintaining, repairing and/or replacing the wells and waterlines drilled and installed within said common areas.

4. Declarant shall have the right to use the subdivision roads and water system for the purpose of providing ingress and egress and water service to Declarant's retained land that is contiguous to Declaration Property, as said land is described on Exhibit "C" attached hereto and incorporated herein by reference. Declarant shall pay to Association an amount equal to the sum paid by one individual owner to Association for the items set forth in Article V, Section 9, hereinbelow, until such time as said tract is subdivided and a subdivided parcel is conveyed to a third party. At such time as any subdivided portion is conveyed to a third party, the owner of said subdivided parcel shall pay to the Association the sums set forth hereinabove, as shall Declarant. Declarant shall pay said sums to the Association until Declarant has conveyed all of said Property to third parties. Declarant and those third parties to whom it conveys portions of the Property shall be subject to all of the provisions of Article V and the bylaws of the Association as said provisions pertain to the assessment and lien rights of the association.

IV. OWNER'S RIGHT AND EASEMENT OF ENJOYMENT IN THE ROADS.

The non-exclusive right to use all roadways within the Declaration Property shall be an appurtenance to each lot within said property, subject to the reserved right of Declarant set forth above, and every owner shall have a right and easement of enjoyment in and to said roads in common with all other owners, subject to:

1. All rules and regulations governing the use and enjoyment of the roads by the Association;
2. The right of the Declarant and the Association to establish easements over the roads for service to or in favor of any private or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers, sewer lines, water lines and pipes, cable television lines or hook-ups or any other utility services serving any lots within the Declaration Property;
3. All provisions of this Declaration not enumerated above, and all restrictions and provisions contained on the plats of the Property.

V. THE ASSOCIATION; ADMINISTRATION, MAINTENANCE AND IMPROVING OF ROADS, WATER SYSTEMS, COMMON AREAS AND CONSERVATION EASEMENTS; FINANCIAL RESPONSIBILITY OF OWNERS THEREFOR; AGREEMENT FOR ASSESSMENTS AND ENFORCEMENT THEREOF.

Section 1. General. The Association is a North Carolina non-profit corporation organized to further and promote the common interests of property owners in the Development. The Association shall have such powers as are set forth in Section 47F-3-102 of the General Statutes and in its Articles and Bylaws.

Section 2. Membership. The membership to the Association shall consist of Members, as defined in Article I, Section 11. When the Owner is more than one person, a corporation, a partnership, a trust, a limited liability company, or other entity, said Owner shall designate, in writing, one natural person to be the Member, as follows: Multiple owners shall designate one of the individual owners; a corporation shall designate either its president or vice president; a partnership shall designate a general partner; the trustee of a trust shall designate a trustor, a trustee or a primary beneficiary; a limited liability company shall designate one of its Members or its manager.

Section 3. Classes of Members. Class "A" members shall be all those owners of lots in the Declaration Property, with the exception of the Declarant. The Class "B" member shall be the Declarant.

Section 4. Associate Members. The immediate family of the Member, designated in accordance with the provisions of this Section 2, above, shall be considered "Associate Members", and shall have the right to use amenities and to hold office, but shall not have the right to vote. (For purpose of this Paragraph B, a family member is the spouse of a Member or a child of a Member who is less than 23 years of age and residing with the Member or at an institution of higher learning).

Section 5. Votes. Each Class "A" member shall be entitled to one (1) vote for each lot it owns. Each Class "B" member shall have three (3) votes for each lot it owns.

Section 6. Board of Directors. The affairs of the Association shall be governed by the Board of Directors. Initially, the Board shall be composed of three persons designated by the Declarant, none of whom needs to be the owners of a lot. The members may be removed and/or replaced by the Declarant during the Declarant Review period. The directors appointed by the Declarant shall be replaced as provided for in the Articles of Incorporation and Bylaws of the Association but in no event later than either: The conveyance of all of seventy-five percent (75%) of the property then subjected to this Declaration or April 30, 2024, whichever shall first occur, or at such time as Declarant in its sole discretion elects.

Section 7. Administration, Maintenance and Improvement.

The Association shall be responsible for the administration, maintenance and improvement of the roads, water systems, common areas in THE PRESERVE AT ROCK CREEK, and for the administration and maintenance of the Conservation Easements described in Article I, above, pursuant to the terms and conditions set forth in said Conservation Easements. Membership in the Association shall consist exclusively of all the lot owners in said planned community. The Association shall have the powers enumerated in Section 47F-3-102 of the General Statutes. The management of the Association shall be by a Board of Directors, pursuant to Section 47F-3-103 of the General Statutes.

Section 8. Financial Responsibility of Owners; Assessments by Association.

The owners are responsible for providing funds necessary to the Association to carry out the above purposes. The Association shall prepare an annual budget, and shall assess each owner as provided herein for its pro rata share of such expenses.

Section 9. Assessments; Personal Obligations of Owners; Creation of Lien.

The Declarant, for each lot owned by it within the property, and for the property described in Article III.4, above, hereby covenants, and each owner of any lot by acceptance of a deed therefor whether or not it shall be so expressed in any such deed or other conveyance is deemed to covenant (which covenant shall run with the land and be binding on every owner) and agree to pay to the Association:

- A. Annual assessments for administration and maintenance.
- B. Annual assessments for capital improvements.
- C. Special assessments for administration, maintenance and capital improvements.
- D. An "impact" assessment for abnormal road usage during the construction of improvements, to be due and payable at the time a building permit is issued for construction on any lot.
- E. An Architectural Review Fee due and payable at the time building plans are submitted to the Architectural Review Committee for review.
- F. An assessment or fine for damage to or destruction of Association property by a Member or guest of a Member, said damage or destruction not to include ordinary wear and tear.
- G. An assessment or fine levied by the Board for failure by Owner to comply with the rules and regulations of the Association or failure to pay any other assessment or fine levied by the board.

Section 10. Budget.

The Board of Directors shall adopt a proposed annual budget for the planned community, and, within 30 days thereof shall provide to all owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The meeting shall be held not less than 10 nor more than 60 days after mailing of the summary and notice. The budget shall be deemed ratified unless at that meeting a majority of all the owners rejects the budget.

Section 11. Effect of Non-Payment of Assessments; Remedies of the Association; The Personal Obligation of Owner; The Lien.

A. Any assessment or fine levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court in the manner provided in the North Carolina General Statutes, Section 47F-3-116. 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 General Statutes. All fees, charges, late charges, fines, interest, and other charges are enforceable as assessments. The Association shall have any other remedy available under the law.

B. If any assessment against a lot is not paid by the due date, such assessment shall be delinquent and shall bear interest from the due date at the rate of eighteen per cent (18%) per annum, or the maximum interest rate allowed by law, whichever is lower.

C. If any delinquent assessment is not paid within (30) days from the date of the notice of assessment and is placed in the hands of an attorney for collection, there shall be added to the amount due all costs of collection including reasonable attorney's fees.

Section 12. Owner May Not Escape Liability by Non-use of Roads, Water System and/or Common Areas.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the roads, water system and/or common areas or abandonment of his lot.

Section 13. Privileges of Members: Members in good standing shall have a license to use the Common Areas subject to the provisions of the Declaration, and subject to such other rules and conditions as may be established by the Board, and shall have the right to cast a vote on Association matters.

Section 14. Suspension of Privileges of Membership: A hearing shall be held before the Board of Directors to determine if any owner should be fined or if planned community privileges or services should be suspended. The owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. The Board may suspend the license of any member to use the Common Areas or to vote on Association matters for:

- (i) Any period during which any Association charge on such member's lot remains unpaid;
- (ii) The period of any continuing violation by such member of the provisions of the Declaration after the existence thereof shall have been declared by the Board;
- (iii) A period to be determined by the Board, for repeated violations of the By-Laws or the rules and regulations of the Association.

Section 15. Fines for non-compliance: The Board may levy fines upon any member, as determined by the Board, for repeated violations of the Bylaws or the rules and regulations of the Association. Said fines, if unpaid by member, shall constitute a lien on the member's lot pursuant to Article V, Section 11, hereinabove.

VI. RESTRICTIONS ON USE

Section 1. Use of Lots Restricted to Residential Purposes.

No lot or portion thereof shall be used except for one single-family residential dwelling, a guest house for bona fide, non-paying guests, and out buildings approved by the Architectural Review Committee. There shall be no commercial activity on any lot.

Section 2. Site Location.

Residences or recreational vehicles, if the placement thereof on Declaration property is permitted as set forth in Section 14, hereinbelow, shall be reasonably located on each lot in a manner which shall not encroach on the privacy of the adjacent lots or roads. Such locations must be approved by the Architectural Review Committee, which shall be the sole determiner of the above criteria.

Section 3. Minimum Square Footage Requirement.

While there is no minimum or maximum dwelling size, the Architectural Review Committee must approval the size and configuration of all improvements to be placed or erected on a lot, which size shall not encroach on the privacy of adjacent lots or be inharmonious with other improvements placed or erected on Declaration Property and/or other lots.

Section 4. Completion of Construction.

Construction and improvements, once commenced, shall be completed within fifteen (15) months. Improvements not so completed, or construction that has been partially or totally destroyed and not rebuilt or cleaned away so as to leave a neat and tidy appearance, within fifteen (15) months, shall be deemed a nuisance.

Section 5. Maintenance of Lots and Improvements.

All lots, whether occupied or unoccupied, and all improvements placed thereon shall at all times be maintained in such a manner as to prevent their becoming unsightly, unsanitary, or a hazard to health. If not so maintained, the Association shall have the

right to rectify such offensive situations, and the costs of such undertakings shall be a special assessment against the lot owner and the lot. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from its actions to so rectify any offensive situations.

Section 6. Burning or Burying of Garbage, Trash or Rubbish Prohibited.

No owner shall burn or bury any trash, garbage or refuse or natural materials on Declaration Property with out the approval of the Architectural Review Committee.

Section 7. Storage of Garbage, Trash or Rubbish.

No owner shall accumulate on his lot any junk vehicles, or any litter or garbage except in receptacles provided by owner for such purposes. All rubbish, garbage, and trash receptacles and fuel storage tanks shall be buried for concealment or covered in a manner so as not be visible from any roadway or from adjacent property. No owner shall conduct activity on its lot, to include the operation of radio, television, tape recorder or other such devises, in a manner such that the resulting of sound or noise adversely affects the peaceful enjoyment of other lot owners.

Section 8. Portable Structures Prohibited.

No travel trailer, mobile home, modular home, manufactured home, relocated dwelling, tent, lean-to other temporary structures may be placed or erected on any lot except that temporary structures, trailers or the like may be permitted by the Architectural Review Committee when used in the process of erection of improvements thereto.

Section 9. Re-subdivision of a Lot.

No lot may be subdivided, except for the purpose of adding the subdivided portions thereof to an adjoining lot or lots. In the event of such subdivision for such purpose, all of the lot so subdivided shall become part or parts of such adjoining lot or lots, and shall lose its identity as a lot. In such event the adjoining lot, together with the portion of a subdivided lot added thereto, shall be considered a single lot for purposes of these restrictions. (For example, if Lot 2 is subdivided into two smaller parts, and on portion is combined with Lot 3 and the other portion is combined with Lot 1, Lot 2 will cease to exist, and Lot 1 and Lot 3, will be larger lots).

Section 10. Access to Lots.

There shall be no access to any lot within Declaration Property except from designated roads as contained on the plat. There shall be no access from any lot within the subdivision to any adjacent lands not within Declaration Property. No owner may grant a right-of-way through his lot for the purpose of affording access to property not within Declaration Property. This provision shall not apply to the Declarant.

Section 11. Animals.

Animals usually considered to be household pets may be kept or maintained on any lot without the approval of the Architectural Review Committee. Animals typically used for recreation purposes and any other purpose may be kept or maintained on any lot with the written permission of the Architectural Review Committee. All pets shall be kept reasonably confined so as not to become a nuisance. No animals shall be commercially raised or bred for resale or distribution to others.

Section 12. Signs.

No signs other than the owner's name or identification of the owner's property shall be permitted on any lots; provided, however, that the Architectural Review Committee shall have the right to determine the kind, size and location of all permitted signs. This provision shall not apply to Declarant.

Section 13. Overnight Camping Provision.

Overnight camping on any lot is prohibited.

Section 14. Recreational Vehicles, Boats and Trailers.

Recreational vehicles shall be permitted on lots, provided, however, that the Architectural Review Committee shall have the right to approve or disapprove the design and/or appearance of any such vehicle prior to the location of such vehicle or Declaration Property. No mobile home or house trailer shall be permitted on any lot.

Section 15. Street Lights.

No street lights or bright outdoor lights shall be permitted on any lot without the prior written consent of the Architectural Review Committee.

Section 16. Motorcycles.

No motorcycle, motor bicycle, "dirt bike", "4-Wheeler", "off-road vehicle" or other such vehicle shall be operated on any lot or roadway in Declaration property. (Since one of its purposes is to limit noise, this restriction shall be broadly construed to include all such vehicles, notwithstanding the number of wheels.) Motorcycles used only for ingress and egress to lots are permitted as are motorized golf carts, A.T.V.s, "Mules", and/or "Rangers" when used only for ingress and egress to common areas and trails specifically designated for use by such vehicles, and on individual lots by the owners of said lots.

Section 17. Nuisance.

No nuisance, and no noxious or offensive activities or noise shall be permitted.

Section 18. Water Impoundment.

No impounding of water on any lot shall be permitted, unless approved by the Architectural Review Committee.

Section 19. Clearing and Grading, Removal of Trees and Shrubs, Topping of Trees.

No trees measuring six inches (6") or more in diameter at two feet (2') above ground level may be cut or removed from any lot without the prior written consent of the Architectural Review Committee nor may any native flowering shrubs and trees such as wild Azalea, Laurel, Dogwood, Rhododendron, Dog Hobble and Sarvis Berry be removed from any lot or embankment without the prior written consent of the Architectural Review Committee. The Committee shall have the power to fine any Owner for removal of any such trees and shrubs as described herein that are removed without the prior written consent of the Committee.

VII. EASEMENTS

Section 1. Reservations of Easements.

The following easements over each lot and the right of ingress and egress to the extent reasonably necessary to exercise such easements are reserved to Declarant, its successors and assigns.

(A) Utilities. A ten (10) foot wide strip running along the inside of all lot lines for the installation, maintenance and operation of underground utilities including, water lines, septic lines, radio and television transmission cables and the accessory right to cut, trim or remove trees and plantings wherever necessary upon such lots in connection with such installation, maintenance and operation.

(B) Roadways. Rights-of-way shall be as shown on recorded plats of the Declaration Property;

(C) Other Easements. Any other easements shown on the plat.

Section 2. Use or Maintenance by Owners.

The areas of any lots affected by the easements reserved herein shall be maintained continuously by the owner of such lot with the exception of the actual roadways, which shall be maintained by the Association. No structures, plantings or other materials 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 owner except those for which a public authority or utility company is responsible.

Section 3. Limitation on Liability for Use of Easement.

No owner shall have any claim or cause of action against Declarant or its licensees arising out of exercise or non-exercise of any easement reserved hereunder or shown on the plat.

VIII. REVIEW OF IMPROVEMENTS; THE ARCHITECTURAL REVIEW COMMITTEE.

There is hereby created an Architectural Review Committee, which shall perform the duties required of it by its Declaration.

Section 1. Improvements Prohibited Without Approval.

No clearing or grading shall be commenced and no tree or shrub shall be removed or cut (as set forth in Article VI, Section 19, hereinabove) and no building, fence, wall, satellite dish antenna or other structure shall be commenced, erected, maintained or placed upon any lot nor shall any exterior change or alteration to any residence or improvement thereon be made upon any lot until the plans and specifications showing the nature, kind, shape, height, materials, square footage of finished, enclosed, heat-able living space, and location of the same shall have been submitted to the Architectural Review Committee in the manner and form prescribed by it and approved by it. The application shall be accompanied by two sets of plans and specifications, which shall show all information, including but not limited to the location of all improvements, if any, existing upon said lot, the location of the improvements proposed to be constructed, the color and composition of all exterior materials to be used, proposed landscaping and any other information which the committee may require. No utility lines other than underground lines shall be placed on or above any lot.

Section 2. Approvals Other Than for Improvements Required by Architectural and Environmental Review Committee.

Where the approval of the Architectural Review Committee is required in matters other than the above by this Declaration, requests for such approval shall be submitted in writing to the Committee in the manner and form prescribed by it. The application shall show in sufficient detail those factors necessary for the Committee to render a decision on the request.

Section 3. Grounds for Disapproval.

The Committee may disapprove any applications:

(A) If, in the judgment of a majority of the Committee reasonably exercised, the proposed request fails to meet the criteria set forth in this Declaration.

(B) Because of the reasonable dissatisfaction of the Committee with grading plans, location of the proposed improvements on a lot, finished ground elevation, color scheme,

finish, design proportions, architecture, shape, height, or style of the proposed improvements, the materials used therein, the kind, pitch, or type of roof proposed to be placed thereon;

(C) If, in the judgment of a majority of the Committee reasonably exercised, the proposed improvements would not be harmonious with the improvements erected on other lots.

Section 4. Rules and Regulations

The Committee shall, from time to time adopt written rules and regulations or general application governing its procedures which shall include, among other things, provisions for the form and content of applications; required number of copies of plats and specifications; provisions for notice of approval or disapproval, including a thirty (30) day time period after approval becomes automatic by reason of failure to disapprove.

Section 5. Variances.

The Committee may grant reasonable variances or adjustments from the provisions in this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to owners of other lots.

Section 6. Certification of Compliance.

At any time prior to completion of construction of an improvement, the Committee may require a certification, upon such forms, as it shall furnish, from the contractor, owner, or a licensed surveyor that such improvement does not violate any setback, ordinance, or statute nor encroach upon any easement or right-of-way of record.

Section 7. Liability.

Notwithstanding the approval by the Committee of plans and specifications or its inspection of the work in progress, neither it, Declarant, the Association, nor any person acting in behalf of any of them shall be responsible in any way for any defects in any plans or specifications or other material submitted to the Committee, nor for any defects in any work done pursuant thereto. Each person submitting such plans for specification shall be solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant there.

Section 8. Appeals.

Any applicant shall have the right to appeal to the Board of Directors of the Association any decision of the Committee within thirty (30) days after entry of such decision.

Section 9. Certificate of Completion.

Upon completion of the improvement of a lot in accordance with the plans and specifications approved by the Committee, and payment of any fines levied by the Committee, the Committee shall issue a Certificate of Completion.

Section 10. Committee Membership.

The Committee shall be composed of three (3) members to be appointed by Declarant. Committee members shall be subject to removal by Declarant. The power to appoint or remove Committee members shall be transferred to the Association upon the sale of all lots within Declaration Property or at such time as Declarant in its sole discretion elects.

IX. GENERAL PROVISIONS

Section 1. Covenants, Conditions, Restrictions and Easements Run with Land.

All covenants, conditions, restrictions and easements contained in this Declaration shall constitute covenants running with land.

Section 2. Grantee's Acceptance.

Each owner of any lot, by acceptance of title thereto, or by the execution of a contract for the purchase thereof, shall accept such title or contract subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges, and immunities of Declarant and of the Association. Such owner or contracting party, for himself, his heirs, assigns, and successors, covenants, consents and agrees to and with the Declarant, the Association and the owner of each other lot to keep, observe, comply, and perform the covenants, conditions and restrictions contained in this Declaration.

X. REMEDIES

Section 1. Enforcement.

The Declarant, Association and each person to whose benefit this Declaration inures, may proceed at law or in equity to prevent the occurrence, continuance, or violation of any provisions of this Declaration, and the Court in such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorneys' fees.

Section 2. Cumulative Rights.

Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity.

No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provisions of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

Section 3. Effect of Waiver of Violation.

No waiver of a breach or violation of any of the covenants, conditions, restrictions and easements in this Declaration shall be construed as a waiver of any succeeding breach of the same covenant, conditions, restriction and waiver.

XI. SEVERABILITY

Each provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

XII. TERM AND AMENDMENT

The provisions of this Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in Declaration Property until April 30, 2024, A.D., after which time they shall be automatically extended for successive periods of ten (10) years unless affirmative vote of a seventy-five percent (75%) of the voting Members of the Association decides to the contrary.

During the time period that the Declarant appoints the Board of Directors of the Association (Article V, Section 6) and the Architectural Review Committee (Article VIII, Section 10), (hereinafter "Declarant Review Period") this Declaration may be amended by the Declarant without joinder of the owners or the Association except that the

Declarant shall amend Article VI, Restrictions on Use, only by affirmative vote or written agreement signed by owners of lots to which at least seventy-five percent (75%) of the votes in the Association are allocated. After the termination of the Declarant Review Period, this Declaration may be amended only by affirmative vote or written agreement signed by owners of lots to which at least seventy-five percent (75%) of the votes in the Association are allocated. Every amendment to the Declaration shall be recorded in the county in which the Property is located.

XIII. GENDER

Wherever the context so requires, the use of any gender shall be deemed to include all genders and the use of the singular shall include the plural and the plural shall include the singular.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 29 day of April, 2004.

T.P.B., LLC, a Louisiana limited liability company authorized to transact business in North Carolina as "Falcon Ridge Development, LLC"

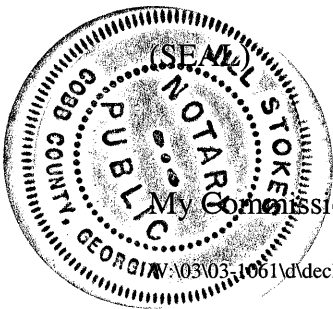
BY: Timothy P. Bright (SEAL)
TIMOTHY P. BRIGHT, Manager

STATE OF Georgia

COUNTY OF Cobb

I, a Notary Public of the County and State aforesaid, do hereby certify that TIMOTHY P. BRIGHT, Manager of T.P.B., LLC, a Louisiana limited liability company authorized to transact business in North Carolina as "Falcon Ridge Development, LLC", personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this the 29th day of April, 2004.



Notary Public, Cobb County, Georgia
My Commission Expires September 6, 2005

Gill Stokes

Notary Public

My Commission Expires: _____

STATE OF NORTH CAROLINA TRANSYLVANIA COUNTY

The foregoing certificate of Gill Stokes
a Notary Public () of the
State and County designated, is (are) certified to
be correct.

This 30 day of April 2004

Cindy M. Owenby
Register of Deeds
By: Peressa D. Norton
Deputy

000230 000484

**EXHIBIT "A"
TO THE
DECLARATION OR PROTECTIVE COVENANTS
FOR
THE PRESERVE AT ROCK CREEK**

BEING ALL of Tract P 15, containing 15.00 acres, and Tract P5, containing 10.00 acres,
as shown on plats thereof recorded in Plat File 10, Slides 664 and 669, Transylvania
County Registry, to which reference is specifically made.

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 Elaine F. Marshall
 North Carolina Secretary of State
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STATE OF NORTH CAROLINA

DEPARTMENT OF THE SECRETARY OF STATE

ARTICLES OF INCORPORATION
NONPROFIT CORPORATION

Pursuant to Section 55A-2-02 of the General Statutes of North Carolina, the undersigned corporation hereby submits these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. The name of the corporation is: **THE PRESERVE AT ROCK CREEK PROPERTY OWNERS ASSOCIATION, INC.**
2. _____ (Check only if applicable.) The corporation is a charitable or religious corporation as defined in N.C.G.S. Section 55A-1-40(4).
3. The street address and county of the initial registered office of the corporation is:

 Number and Street: **211 Cashiers School Road**

 City, State, Zip Code: **Cashiers, NC 28717** County **Jackson**
4. The mailing address **if different from the street address** of the initial registered office is: **PO Box 1918, Cashiers, NC 28717**
5. The name of the initial registered agent is: **Kimberly R. Coward**
6. The name and address of each incorporator is as follows:

 Kimberly R. Coward
 PO Box 1918
 Cashiers, NC 28717
7. (Check either a or b below.)
 a. The corporation will have members.
 b. The corporation will not have members.
8. Provisions regarding the distribution of the corporation's assets upon dissolution are as follows: No part of the net earnings of the corporation shall inure to the benefit of any officer, director, or member of the corporation; except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the exempt purposes of the organization; and upon dissolution of the corporation the assets thereof shall, after all of its liabilities and obligations have been discharged or adequate provision made therefore, be distributed to any association or associations organized for purposes similar to those set forth in Article 9, hereinbelow.
9. Any other provisions which the corporation elects to include are attached.

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10. The street address and county of the principal office of the corporation is:
211 Cashiers School Road, Cashiers, NC 28717, Jackson County.

11. The mailing address **if different from the street address** of the principal office is:
PO Box 1918, Cashiers, NC 28717

12. These articles will be effective upon filing.

This the 19th day of April, 2004.



Kimberly R. Coward, Incorporator

ATTACHMENT TO ARTICLES OF INCORPORATION

1. The purposes for which the corporation is organized are to provide an entity through which the lot owners of the residential area known as **THE PRESERVE AT ROCK CREEK** may act in enforcing protective and restrictive covenants, maintaining common areas and performing other acts in the mutual interest of its members.
2. The number of directors shall be as prescribed in the Bylaws of the corporation, pursuant to N.C.G.S. Section 55A-8-03; and the number of directors constituting the initial board of directors shall be two (2); and the names and addresses of the persons who are to serve as the initial directors are:

| Name | Address |
|----------------|--|
| Timothy Bright | Bldg. 100 Tower Place, Ste 930 3340 Peachtree Road Atlanta, GA 30326 |
| Garry Mulkey | P.O. Box 2497 Cashiers, NC 28717 |

The directors of the corporation shall be elected or appointed in the manner and for the terms provided in the bylaws.

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EXHIBIT "C"
TO THE
DECLARATION OR PROTECTIVE COVENANTS
FOR
THE PRESERVE AT ROCK CREEK

BEING ALL of Tract "C", containing 118.19 acres, as shown on a plat thereof recorded in Plat File 10, Slide 687, Transylvania County Registry, to which reference is specifically made.