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Faye H. Huskey Register of Deeds

BK 872 PG 309-315

STATE OF NORTH CAROLINA

COUNTY OF RUTHERFORD

Drawn By: Arledge Law Firm

DECLARATION OF COVENANTS AND RESTRICTIONS
OF CLEARWATER CREEK

WHEREAS, Mtn. Creek Land Co., Inc., a North Carolina corporation (but referred to hereinafter as the Developer of Clearwater Creek) by deeds recorded in Deed Book 860 at Page 146, Deed Book 860, at Page 155, , Deed Book 871, at Page 589 and Deed Book 871, at Page 595, in the office of the Register of Deeds for Rutherford County, North Carolina, acquired parcels of land aggregating 544.163 acres (a plat of survey being of record in Plat Book 86, at Pages 80, and 81, Rutherford County Registry), said property being located in Gilkey Township, Rutherford County, North Carolina; and

WHEREAS, Mtn. Creek Land Co., Inc. , the owner and Developer of said property intends to subdivide said 544.163 acres, and prior to subdividing and conveying lots or parcels out of said 544.163 acres, desires to place and impose certain conditions and restrictions upon said lots or parcels for the use and benefit of all of the lots or parcels created by such subdivision and future owners thereof in order to promote the best interests and protect the investments of said owners, and the successor or successors of each of them and for the use and benefit of all subsequent owners of said lots or parcels and each of them.

NOW, THEREFORE, in consideration of the premises, said owner, referred to hereinafter as the Developer, for the use and benefit of itself and for the use and benefit of its successors and assigns and for the use and benefit of its future grantees, and for the use and benefit of all subsequent owners of said lots, does place and impose hereby on all of the lots created by the aforesaid subdivision, the following conditions and restrictions:

- 1) a) No manufactured Housing (i.e. single or double wide mobile homes) that are initially sold with a title or certificate of origin will be allowed to be placed on any lot in Clearwater Creek. However, modular homes with all wood framing (i.e. floor support beams and floor joist) along with Log and custom built homes having at least 1,200 square feet of heated living space not including decks, garages and /or basements, will be allowed.
- b) Any painted or vinyl siding on any home must be of earth tone colors (i.e. no white, pink, etc)
- c) No "large" satellite dishes will be allowed, only the small satellite dish is permissible (i.e. no larger than thirty (30) inches)).

- 2) Each owner of a lot in The Subdivision will be a member of Clearwater Creek Property Owner's Association.
- 3) Each lot will have one (1) vote in the Association regardless of the number of owners of that lot.
- 4) The Developer, (Mtn. Creek Land Co., Inc.) retains unto itself up until the time the Association is turned over to the new owners the right to:
 - a) Add to or amend these covenants and restrictions for any lots still owned by Developer by recording said changes in the Rutherford County Register of Deeds Office.
 - b) Grant variances for any provision of these covenants and restrictions to any individual lot owner by providing the variance in writing in recordable form to the said owner. Variances may be granted by a majority vote of the elected officers of the Association after the property has been turned over to the Association as provided in Paragraph 7) hereafter. (It will be the new owners responsibility to record said variance for it to become effective).
- 5) The Covenants and Restrictions herein set forth (or as amended) shall exist and be in full force and effect until December 31, 2035, and shall be automatically extended for successive periods of ten (10) years unless prior to the beginning of such a ten (10) year period an instrument signed by the owners of a majority of lots subject to this Declaration agreeing to terminate, amend, or modify the Declaration shall have been recorded in the office of the Register of Deeds for Rutherford County, North Carolina.
- 6)
 - a) At the discretion of the Developer or when 75% of the lots are sold (whichever comes first) the Association will be turned over to the owners of said lots and they will elect their own officers. (to keep some consistency in the Board The initial fiscal term for the Pres., V.P. and Sec. will be one year, the Treas. and an alternate will be for a term of two years. There after when elected terms expire all terms will be for a period of two years) and assume all management responsibilities with the following terms and conditions.
 - b) Each officer must be a deeded owner or the legally married spouse of a deeded owner and may only serve (3) consecutive terms in the same office unless 75% of the owners, in good standing that attend the meeting, vote to extend the number of terms allowed for a specific officer.
 - c) The maximum expenditures or total encumbrance to the Association that may be approved by any single officer is \$500.00. All expenditures or encumbrances of the Association in excess of \$500.00 must be approved in writing and signed by at least three (3) officers. The approval must be kept by the Treasurer along with the other financial records.
 - d) the Treasurer may sign checks up to \$250.00. All checks over \$250 00 must have the signatures of two (2) officers.
 - e) In the event the office of President becomes open during the year, the Vice President will automatically become President for the remainder of their elected term.
 - f) If the offices of Vice President, Secretary or Treasurer become open during the year the position will be filled by the alternate for the remainder of their elected term.

- g) If the position of Alternate becomes open during the year, then the President, Vice President, Secretary and Treasurer will select from the Property Owner base, someone willing to fill the alternate position for the remainder of their term.
- 7) After the Developer turns the Association over to the new owners the elected officers of the Property Owner's Association will have the right to grant variances pertaining to any individual lot as set forth in paragraph 4 b) above.
- 8) The Association, through one or more of its elected officers, will have the power to enforce, in accordance with the laws of N. C., Collection of Dues and Compliance to the Covenants and Restrictions, including the recovery of damages and the restraining of violations.
- 9) The elected officers will have the power to set association dues on a yearly basis. However, if these dues need to be adjusted upward more than 5% in any given year then a meeting with the entire Association members must be called for this purpose with at least 30 days notice at which time 75% of the members in good standing attending the meeting in person or through proxy (provided a quorum is present) must vote positive to effect the raise.
- 10) At the first annual meeting called by The Developer no quorum need be present, However at all future meetings called by the Association a quorum of 51% must be present (personally or through proxy) to effect any business. If a quorum is not met then a second meeting for the same purpose may be called with 2 week notice and 25 ½% of the owners will represent a quorum. Subsequent meetings are called if a quorum is not present at the 2nd meeting and those present (personally or through proxy) will constitute a quorum). However at least 2 weeks notice to all members restating the purpose of the meeting and that those present will constitute a quorum, needs to be sent to ALL members.
- 11) a) Each lot will pay \$300.00 per calendar year Association dues for maintenance of roads, common area and other minor Association expenses (i.e.: postage, meeting place, taxes, etc); pro-rated dues will be collected at closing for the remainder of the calendar year, excluding the month of closing. Adjusted from time to time by the Association. A bill for the Association dues will be sent to each owner by the Association the 1st week of January each year.
- b) Any members not paying their dues promptly (by January 31st of each calendar year) will be assessed an additional \$10.00 per month late fee. If your address changes it will be your responsibility to notify the Association. However, not receiving a bill because of address changes will not alleviate your responsibility to pay your Association dues by January 31st each year.
- c) Any owners who are delinquent for five (5) months (150 days) will be given final notice by certified mail of the amount due with request for prompt payment within ten (10) days.
- d) If after that notice by certified mail the dues are still not paid in full within ten (10) days then any elected officer of the Association may at their discretion file in court for the payment of dues, late fees and the recovery of expenses, and pursue any other remedies deemed advisable, including the filing of a lien and, if necessary, the foreclosure thereof.
- 12) a) The Developer and Clearwater Creek Property Owners Association will be exempt from paying any Association dues on any lots or common areas owned.
- b) Any person(s), or entity purchasing and holding deeds titled the same to two (2) or more contiguous lots in The Subdivision (whether in a single deed, or in separate deeds, and whether such purchases are simultaneous or otherwise) will be required

to pay Association dues on only one lot per year, as provided in this Declaration; provided, however, that the owner of said lots shall designate to the President of the Association which lot or lots in excess of one are the exempt lot or lots, and such exempt lot or lots will maintain exempt status unless or until 1) the lot is sold, 2) a living unit is built upon it, and in the event of either (a) or (b) above the exemption will be lost permanently.

- c) If any persons or entity owning two (2) contiguous lots build one single family home that crosses over the division line between the two lots will owe only one (1) POA due, unless the lots are re-subdivided as allowed in Paragraphs 31, 32 and 33 below.
- 13) Any lots exempt from paying dues unless owned by Developer or The Property Owners Association will not be eligible to
- a) vote on any matters regarding dues.
 - b) Count toward a quorum on votes regarding dues (all other rights are retained).

However, the Developer and/or The Property Owners Association will retain one (1) vote for each lot owned (common areas not included).

- 14) No recorded lot in The Subdivision will be allowed to have more than one (1) single family residence constructed on it, however, a mother in law or garage apartment will be allowed so long as it is not constructed prior to the construction of the main home and does not count toward the 1200 square foot minimum (The Developer only guarantees one (1) septic approval per lot).
- 15) a) There shall be no raising of fighting roosters, commercial swine or poultry established on any lot in the subdivision.
- b) Other grazing animals such as horses, cattle sheep or goats may be maintained on any Lot based on two grazing animals per fenced acre
- 16) No loud or offensive activities shall be allowed on any property by any owner or guest that would affect the peace, quiet and enjoyment of their neighbors.
- 17) Any animals maintained on any lot that become a nuisance such as continually barking dogs must be removed from the subdivision.
- 18) a) No more than one (1) unlicensed, unregistered, uninsured vehicle may be maintained on any lot and must be kept under cover or out of sight of any common roadways and neighboring properties.
- b) No tractor trailers or large dual or tri axel tandem trucks, may enter The Subdivision except for purposes of delivery or pick-up.
- 19) a) A utility easement of 40 feet is reserved along interior lot lines, 20 feet either side of line. A utility easement of 20 feet on the interior side of the line is reserved on exterior lines.
- b) The right of way of all roads is 45 feet unless shown otherwise on the plat.
- c) Building setbacks are as follows: 35 feet from all street right of way lines; 20 feet from all rear lines; 20 feet from all outside boundaries; 35 feet from all creek boundaries; and 20 feet from side lot lines that are not outside boundaries.
- 20) The Developer (Mtn. Creek Land Co , Inc) retains the right to add to its subdivision and to

this original Declaration any real estate which said Developer may acquire in the future provided that any such future acquired real estate is in the general vicinity of the original 544.163 acres hereinabove referred to. Any such future acquired real estate may, upon the recording of a Supplemental Declaration be subjected to all the provisions, rights, duties, privileges and obligations as set forth in this Declaration.

- 21) Any purchaser of any lot within The Subdivision may cut any pine trees on said lot, but is required, upon such cutting or clearing, to remove, bury or burn within 90 days any such trees or debris from any portion of said lot where said cut trees or debris are visible from any road right-of-way or other lot, and any such portion of the lot so affected must be landscaped, reseeded or replanted within same 90 day period unless the condition existed when purchased from the Developer.
- 22)
 - a) The cutting of any hardwood trees ten (10) inches in diameter or larger is prohibited on any Lot except within fifty (50) feet of the house site, or where necessary for construction of driveways or septic tank systems. Clean-up and reseeded, replanting or landscaping will be required as stated in paragraph 21 above.
 - b) Necessary precautions must be taken when any ground is disturbed so as to prevent erosion and sediment from reaching any stream, creek, lake, roadway, walking easement, common area or other lot.
 - c) Any damage done to any association roads, ditch lines, grassed or common areas by lot owners, their guests or general contractors must be promptly repaired by said owners or if the repair is done by the Association the lot owners will be financially responsible to reimburse the Association for said repairs.
- 23) Camping is allowed on any lot by the use of specific equipment professionally manufactured for that purpose (i.e., campers, motor homes, tents, etc.) Any camping equipment situated on any lot whereon a permanent home has not been built must be removed from the lot by January 5 of that year, and such camping equipment (or any replacement thereof) cannot be returned to be used on said lot until March 1 of that year, however, if a permanent home has been built or is under construction (foundation footers are poured) then the permitted camping equipment does not have to be removed from the property as above specified.
- 24) Rules and Regulations for conduct pertaining to use of any common areas within Clearwater Creek, such as a) hours of use, b) number of guests, c) eligibility for use, etc., shall be set up and approved by majority vote at the second annual property owners meeting and reviewed each year thereafter.
- 25) No discharging of firearms will be allowed from, on or over any common areas, road rights of way, or within 500 feet of any residence in The Subdivision. All laws of the State of North Carolina must be adhered to. However, NO firearms may be discharged so as to become a noise or safety issue to other property owners.
- 26) There shall be no accumulation or burning of junk or trash allowed on any Lot in The Subdivision.
- 27) All state laws as to the operation of motor vehicles must be observed on all private roads in The Subdivision.
- 28)
 - a) No motorized vehicle such as dirt bikes, 3 and 4 wheel ATV's, or unlicensed cars or trucks may be operated on any roads or common areas within The Subdivision.
 - b) In no event will any vehicles be allowed to operate as to be a noise or physical nuisance to other owners in The Subdivision.

- c) Golf carts and street legal motorcycles operated by duly licensed riders will be allowed.
- 29) House hold pets such as cats and dogs are allowed but must be kept so as not to become a nuisance to the neighbors.
- 30) All roads and driveways that serve two (2) or more lots as shown on the original plat recorded by the Developer will be maintained by the Association.
- 31) Lots may be subdivided, however no remaining portion or subdivided portion of the original lot or contiguous lots sold to the same owners may be less than 2 acres.
- 32) Any additional roads necessary to subdivide a lot will not become the responsibility of the Association, even if they serve more than one Lot.
- 33) Each additional lot subdivided and recorded in the Register of Deeds Office of Rutherford County will be responsible for the Association dues (except for exemption provided for in 12(b) above) and become voting members of the Association; and will be subject to all the terms of this Declaration.
- 34) Any commercial operation established on any lot that substantially increases the traffic on subdivision roads or has heavy trucks or vehicles regularly traveling on subdivision roads will be subject to yearly dues equal to 3 times the normal yearly dues.
- 35) a) Custom built, log or modular homes constructed on the property must have the exterior completed within six (6) months of the start of construction.
- b) Out buildings may be constructed prior to the construction of the house but must not be equipped in any way so as to be a living unit (i.e.: no kitchen or bath allowed).
- 36) Initially Developer will complete all roads in the Subdivision and maintain same until the Association is turned over to the owners. Pursuant to the provisions of Section 136-102.6 of the North Carolina General Statutes prospective purchasers of lots and property in the Subdivision described or shown on the plat are hereby advised that the roads and streets are private and the responsibility for the maintenance of said road and streets rests with the Developer and/or the Property Owners Association until such time as the road is included into the State Highway System for maintenance. Roads in Clearwater Creek are private roads and are built to county standards for private roads and may not meet state standards.
- 37) Unless otherwise ordered by the Rutherford County Planning Commission, no parcel of land in Clearwater Creek may be used as ingress or egress to or from other properties not originally a part of the subdivision (unless such other properties are added by the Developer as permitted by paragraph 20 above).
- 38) The Association will own and be responsible for maintaining any common wells, front entrance, gate and all common areas
- 39) Mtn. Creek Land Co., Inc., intends to develop the property covered by this Declaration in Phases, and this Declaration shall apply to all Phases.
- 40) Anyone building near any River or stream or on a low lying level interior Lot should purchase Flood Hazard Insurance as some portions of all of these Lots may lie in the 100 year Flood Plain.
- 41) These covenants and restrictions are to run with the land and shall be binding on Developer and all persons claiming under it. The invalidation of any one of the covenants and restrictions by judgement or court order shall in no way affect any of the other provisions

which shall remain in full force and effect. These covenants may be enforced by Developer, the Association or the owner of any lot within the subdivision. If an action is brought by Developer or the Association to enforce any of these covenants, the violator must pay all costs and expenses of such action, including reasonable attorney fees.

IN WITNESS WHEREOF, Mtn. Creek Land Co., Inc., has caused this instrument to be signed and sealed in its name by its President, this 4 day of May, 2005.

Mtn. Creek Land Co., Inc.

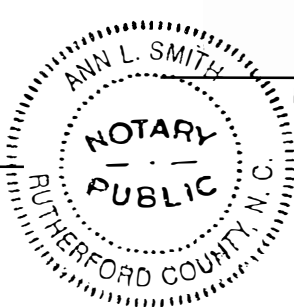
[Signature] (SEAL)
President

STATE OF NORTH CAROLINA

RUTHERFORD COUNTY

I, Ann L. Smith, Notary Public of said County and State, do hereby certify that David B. Myers, personally came before me this day and acknowledged that he is President of Mtn Creek Land Co., Inc., a North Carolina corporation, and that he as President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official stamp or seal, this the 4 day of May, 2005.



[Signature]
Notary Public

My commission expires 5/12/05

State of North Carolina
County of Rutherford

The foregoing certificate of Ann L. Smith, Notary Public is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page thereof.

[Signature]
Faye H. Huskey, Register of Deeds

**BYLAWS
OF
CLEARWATER CREEK
PROPERTY OWNERS' ASSOCIATION, INCORPORATED**

A North Carolina Nonprofit Corporation

ARTICLE I
NAME AND LOCATION

The name of the corporation is Clearwater Creek Property Owners' Association, Inc., (hereinafter referred to as the "Association"). The principal office of the Corporation shall be located at 181 Clearwater Parkway, Rutherfordton, Rutherford County, North Carolina, but meetings of Members and Directors may be held at such places within the State of North Carolina, County of Rutherford, as may be designated by the Association's Board of Directors (hereinafter referred to as the "BOD").

ARTICLE II
ARTICLES OF INCORPORATION, DECLARATION OF COVENANTS AND
RESTRICTIONS, AND NORTH CAROLINA PLANNED COMMUNITY ACT

That the Articles of Incorporation of Clearwater Creek Property Owners' Association ("POA", Incorporated (hereinafter referred to as the "Articles")) executed on April 25, 2005, and filed and recorded with the Office of the Secretary of State for the State of North Carolina on May 12, 2005, and bearing Secretary of State Identification Number (SOSID) number 781945 is herein incorporated by reference.

That Declaration of Covenants and Restrictions of Clearwater Creek (hereinafter referred to as the "Declaration") is recorded in the Office of the Register of Deeds for Rutherford County, North Carolina in Book 872, Page 309 et seq., and is herein incorporated by reference.

The North Carolina Planned Community Act (hereinafter referred to as the NCPCA) as codified in N.C.G.S. § 47F-1-102 et seq. is herein incorporated by reference.

These Bylaws are expressly subordinate to the Articles, Declaration and the NCPCA, all as may be amended.

ARTICLE III
MEMBERS

Section 1. QUALIFICATION: The Members of the Association shall be the record Owner(s) of legal title to one or more lots as defined in the Declaration. In the case of a lot(s) subject to an agreement for deed, the purchaser in possession shall be deemed the Member for purposes of determining voting and use rights. In the case of a lot(s) owned in trust, the grantor of the trust and or the trust beneficiary shall be considered the Member.

Section 2. VOTING RIGHTS & INTERESTS: The Members of the Association are entitled to one (1) vote for each lot they own and are paying annual Association dues on. Owners of multiple lots

will have one vote for each non-contiguous lot. Pursuant to Declaration Section 13 owners of contiguous lots that are paying annual Association dues as outlined in Declaration Section 12.b. and 12.c. will have one vote only for each grouping of contiguous lots (one vote per annual POA dues paid). The total number of votes ("Voting Interests") is equal to the number of Members paying annual Association dues as defined in Declaration Sections 12 and 13. The right to vote may not be denied because of delinquent assessments. If the owner of a lot(s) is a corporation, the President or Vice-president of the corporation may cast the vote for that lot or lots. Any lot(s) owned by a partnership, any general partner of the partnership may cast the vote for that lot.

Section 3. MEMBERSHIP STATUS: Every Owner shall be a Member of the Association. The provisions pertaining to Membership in the Declaration are incorporated herein by reference. Additionally, Members shall be considered to be in "good standing" provided they have paid (i) their annual POA dues, (ii) any special assessments, (iii) have no disputes before the BOD, and (iv) are in compliance with the rules and regulations as described in the Bylaws, Declaration, and Articles of the Association.

Section 4. NOTICE OF INTENT: Members shall provide written notification to the BOD of their intent to place for sale and or transfer of legal title any Member owned lot(s) as defined in the Declaration, within fifteen (15) days of listing properties for sale or contracting a real estate agent for the sale or transfer of the lot(s).

Section 5. MEMBERSHIP TERMINATION: Membership shall terminate upon sale and or transfer of legal title of all of all Member owned lot(s) as defined in the Declaration. Termination of Membership does not relieve or release the Member from any liabilities, assessments, and/or obligations incurred during the period of qualified Membership.

ARTICLE IV MEMBERS MEETINGS

Section 1. ANNUAL MEMBERS MEETINGS: Annual Members meetings shall be held on the first Saturday in October of each year beginning at 10:00 am. If the day for the annual Members meeting is a legal holiday, the meeting will be held at the same hour on the first Saturday following which is not a legal holiday.

Section 2. SPECIAL MEMBERS MEETINGS: Special Members meetings may be called at any time by the President of the BOD, a majority of the BOD, or upon written request by at minimum of one third (33%) of the Membership who are entitled to cast votes. The business at any annual and or special Members meeting shall be limited to only the items as specified in the agenda and/or notice for the annual and/or special Members meeting.

Section 3. NOTICE OF MEMBERS MEETINGS: The BOD or their authorized designee will send, by standard mail service or by electronic e-mail when specifically requested by the Member, a notice for any Members meeting a minimum of thirty (30) days but not more than forty-five (45) days prior to the scheduled date for the Members meeting. Notices shall be sent to the Member's address as it appears in the records of the Association, as supplied by the Members to the Association for the purpose of notification. All meeting notices shall specify the place, date and time of the meeting, and include the meeting agenda. On occasions where the meeting agenda contains any item that is subject to a vote by the Members a voting ballot and a voting proxy will be included with the meeting notice.

Pursuant to Paragraph 9 of the Declaration if a meeting is to include a vote on increasing, the yearly POA dues by more than 5%, all Members must receive at least thirty (30) days' notice.

Section 4. QUORUM: see Section 10 of the Declaration.

Section 5. PROXIES: At all Members meetings, each Member may vote in person, by ballot, or by proxy. A Member may only designate another Member of the Association to act as the Member's proxy. All proxies shall be in writing and presented to the Secretary of the Association prior to commencement of the meeting. Each proxy shall be valid in accordance with the NC Community Act under N.C.G.S Section 47F-3-110.

Section 6. CLOSED MEETINGS: All Members meetings are closed to the public. Only Members of the Association, their spouses, significant others and those persons invited to attend a meeting by the BOD may attend.

Section 7. WAIVER OF NOTICE; Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any voting Member may, in writing, waive notice of any meeting of the voting Members, either before or after such meeting. Attendance at a meeting by a voting Member shall be deemed a waiver by such voting Member of notice of the time, date, and place thereof, unless such voting Member specifically objects to lack of proper notice at the beginning of the meeting. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted unless an objection on the basis of lack of proper notice is raised at the beginning of the meetings.

ARTICLE V BOARD OF DIRECTORS

Section 1. NUMBER: The BOD shall consist of four (4) Directors and one (1) Alternate, all of which shall be Members of the Association.

Section 2. QUALIFICATION & NOTIFICATION OF INTENT: Any Member of the Association as specified in Article III Section 1 shall be eligible for election to the BOD. Members seeking election to the BOD shall submit a letter of their intent to run for election and/or re-election to the BOD no later than ninety (90) days prior to the date for the annual meeting of the Association. Said letter of intent may contain, at the Member's discretion, a short synopsis of the Member's background and their reason for desiring to obtain a position on the BOD. The BOD shall prepare a voting ballot containing the names of all Members seeking election and/or re-election to the BOD, said ballot shall be distributed with the notice for the annual meeting.

Section 3. ELECTION: Election to the BOD shall be by ballot vote of the Members entitled to vote or their duly appointed proxies. At such election, the Members or their proxies may cast, in respect to each vacancy, one vote for each qualifying lot as specified in Article III Section 2 of these Bylaws. The Members receiving the largest number of votes for the positions available shall be elected. Cumulative voting is not permitted.

Section 4. PUBLICATION: The Secretary of the Association shall publish to the Members the names, and contact information for all Directors within thirty (30) days of the election of such Directors.

Section 5. TERM OF OFFICE: The terms of office shall be as specified in paragraph 6. (a) of the Declaration.

Section 6. REMOVAL: Any Director may be removed from the BOD, at any time by a majority vote of the Members of the Association entitled to vote and/or as specified in Article VII, Section 1. (c). In the event of death, resignation, or removal of a Director, their successor shall be established pursuant to paragraphs 6. (e), (f) and (g) of the Declaration.

Section 7. COMPENSATION: No Director shall receive compensation, in any form, for any service they may render to the Association, including but not limited to, compensation or reimbursement for any travel, lodging or other related costs associated with the Director's attendance to annual Members meetings, special Members meetings, and/or regular and special meetings of the BOD. A Director may be reimbursed for their actual expenses incurred in the performance of their duties, provided said expenses are accompanied by receipts and are purchased solely for use by Directors or contractors in the business, maintenance, or improvement of Clearwater Creek.

ARTICLE VI BOARD OF DIRECTORS MEETINGS

Section 1. REGULAR BOD MEETINGS: Regular meetings of the BOD shall be held quarterly, or at such other periodic intervals as may be established by the BOD at such place and hour as may be fixed from time to time. No regular BOD meeting will be scheduled to fall on a legal holiday. The following will apply to all meetings of the BOD:

- (a) Regular BOD meetings are closed to the public and open only to Members of the Clearwater Creek Property Owner's Association.
- (b) Members of the Association desiring to attend a BOD meeting and who wish to address the Board pertaining to a subject matter(s) shall notify the BOD by written request and/or electronic email of their intent a minimum of five (5) days prior to the meeting. The BOD may not decline admittance to any Member that has provided the BOD with their notice to attend as stated herein.
- (c) Meetings will be limited to those items included on the agenda posted for the meeting. All Agenda items shall be posted on the Association Website and/or via US Mail and the Community Bulletin Board at the Common area. Agenda items will be limited to normal business concerning the standard operations of the Association, reports from committees, recommendations from legal counsel, and any other matters that require the attention of the BOD. The agenda for the meetings will follow the following format and sequence:
 - a. Call to Order
 - b. Establishment of Quorum
 - c. Acceptance of Previous Meeting Minutes
 - d. Treasurer's Report
 - e. Action Items/Old business (all action items to be discussed must be listed)
 - f. New business/Members Input

- g. Upcoming Meeting
- h. Adjournment

- (d) Members may only address the BOD for a maximum of five (5) minutes per person, per meeting during the Members Input section of the agenda unless granted otherwise by the BOD. Members may not, unless granted approval by the Board, use the allotted time for any other Members present at the meeting or by written proxy.
- (e) Members do not have any vote at BOD meetings. However, a consensus of opinion shall be given consideration by the BOD.
- (f) BOD may only vote on or take action on those items that were specifically included in the list of action items in the agenda for the meeting.

Section 2. SPECIAL BOD MEETINGS: In the event that emergency situations arise, the President, or any two other Directors, may call for a Special BOD Meeting, after not less than three (3) days notice to each Director.

Section 3. QUORUM: Three (3) Directors shall constitute a quorum for the transaction of business.

Section 4. CLOSED BOD MEETINGS: BOD meetings with the Association's legal counsel will be closed to the public and Members, with the exception of those individuals specifically invited by the BOD or said legal counsel.

Section 5. CANCELLATION OF MEETINGS: The BOD may cancel a regular BOD meeting at their discretion, provided that:

- (a) There is no business before that BOD that requires immediate action by the BOD, or
- (b) The BOD has not received any notification from a Member of their intent
- (c) The cancellation of the meeting will not create a situation that endangers in any way the Association and or the Members.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. POWERS: The BOD shall have power to:

- (a) Adopt and publish rules and regulations governing the use of the Common Area and facilities of the Association, and the personal conduct of the Members and their guests thereon, and to establish reasonable fines for the violation thereof, provided that the damages are not covered in the Declaration or the NCPA. The Associations legal counsel, when necessary, will review the legality and or possible liability to the Association for adopting any fine established under this section prior to the enforcement of said fine.
- (b) Exercise all powers, duties and authority vested in or delegated to the Association and/or Directors not reserved to the Membership by other provisions of these Bylaws, the

Articles of the NC Community Act, the Declaration and subsequent Amendments to these Bylaws, the Articles and the Declaration.

- (c) Cause to remove a Director in the event said Director is absent from three (3) consecutive regular meetings of the BOD, provided that:
 - a. No Director shall be removed due to a personal injury or emergency that did not allow the Director to attend. Said Director will provide evidence of the emergency to the BOD at the next meeting.
 - b. No Director shall be removed for failure to attend a Special BOD meeting.
 - c. No Director shall be removed that has attended any of the stated three (3) consecutive regular meetings by means of a conference call to the meeting.
 - d. Notification for removal from the Board shall be delivered, in writing, a minimum of five days prior to the next regular meeting.
 - e. Any vacated office created per this section will be filled pursuant to Sections 6. (e), (f) and (g) of the Declaration, unless otherwise approved by the Membership.
- (d) Contract and or engage a property manager, independent contractors, attorney, accountant and or such other individuals, professionals and or services as deemed necessary to maintain, operate and protect the Association and its properties.
- (e) Establish committees as may be required to investigate and make recommendations concerning requests, services, changes, and procedures that affect the Association, its property and Membership at large and to ensure their compliance with the Bylaws, Declaration, and NCPCA.

Section 2. DUTIES: It shall be the duty of the BOD to:

- (a) Cause to be kept complete sufficiently detailed records of all of its actions, meetings and corporate affairs.
- (b) Cause to be kept and maintain an internet web site for the purpose of posting notifications, minutes and other pertinent information to the Membership.
- (c) Cause to be kept complete sufficiently detailed records of all financial records, transactions and expenses of the Association.
- (d) Cause to be prepared an annual budget for the operation, maintenance and reserves of the Association.
- (e) Cause an annual income and expense statement and balance sheet to be available to all Members, at no charge, with in seventy-five (75) days after the close of the fiscal year to which the information relates.
- (f) Cause a more extensive compilation, review or audit of the Association's financial records

for the current fiscal year and/or any time frames as may be required by a majority vote of the BOD or Members of the Association at a Special Members Meeting.

- (g) Supervise all officers, agents and contractors of the Association, and ensure that their duties are properly performed in accordance to their contracts and the Bylaws, Articles and Declaration.
- (h) Conduct hearings in accordance with Article XI.
- (i) Cause to be prepared special assessments, as may be legally required, a minimum of sixty (60) days in advance of each said special assessment.
- (j) Issue special assessments to the Member or Members' subject thereto a minimum of forty-five (45) days in advance of the due date of the assessment.
- (k) Pursue the collection of annual dues and special assessments in accordance with Articles XII and XIII of the Bylaws.
- (l) Issue to the property owner or their authorized agent(s), a certificate setting forth whether or not any assessment has been paid and or unpaid by the Member. The certificate shall be furnished within ten (10) business days after receipt of the request by the Secretary of the Association. The information stated in the certificate shall be binding on the Association and the BOD.
- (m) Procure and maintain adequate liability insurance covering the Association, its directors, and officers, and to procure and maintain adequate property and hazard insurance on any real property owned by the Association.
- (n) Cause all managers and/or contractors entering into contract with the Association to be licensed and bonded.
- (o) Cause to establish committees as needed for the management and improvement of the Association and community.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. ENUMERATION OF OFFICERS: The Officers of the Association shall be a President, Vice-President, a Secretary, a Treasurer, and an Alternate all of which shall be Members of the BOD.

Section 2. APPOINTMENT OF OFFICERS: The appointment of the Directors to their offices shall take place at the first meeting of the Board of Directors following the annual Members meeting.

Section 3. TERM: The term the officer shall hold the office shall be two (2) years.

Section 3. RESIGNATION AND REMOVAL: Any Officer may be removed from office provided all remaining Directors agree that just cause exists for the removal. The removed officer shall remain a Member of the Association. Any officer may resign their office at any time by giving written

resignation to any Member of the BOD or verbally at a BOD meeting.

Section 4. VACANCIES: Office vacancies will be filled pursuant to Section 6, (e), (f) and (g) of the Declaration. The officer appointed to such vacancy shall serve for the remainder of the term of the Officer he/she replaces.

Section 5. MULTIPLE OFFICES: No person shall simultaneously hold more than one office as a Director, unless otherwise designated by the Covenants or the NC Community Act.

Section 6. DUTIES: The duties of the Officers are as follows:

- (a) **PRESIDENT:** The President shall; preside at all meetings of the BOD, Members, and serve as ex-official of all committees; shall see that orders and resolutions of the BOD are carried out; shall sign all leases, mortgages, deeds, contracts and other written instruments, and co-sign promissory notes, for business pertaining to the BOD, as approved by the BOD.
- (b) **VICE-PRESIDENT:** The Vice-President shall; act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board of Directors.
- (c) **SECRETARY:** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the BOD and Members; keep appropriate current records showing the Members of the Association, together with their addresses, and shall perform such other duties as may be required by the BOD.
- (d) **TREASURER:** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of BOD keep proper books of account; cause an annual certification of Association books to be made by an Internal Audit Committee at the completion of each fiscal year. The Treasurer shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

ARTICLE IX BOOKS AND RECORDS

The accounts, minutes, and documents (electronic and hard copy), hereafter referred to as the records, of the Association shall be available for inspection and review by any Member or any Member's authorized agent. The Member will provide notice to the Secretary of the items to be reviewed and schedule an appointment for the review. No Member shall remove any records for any reason. A Member may request copies of published records from the Secretary provided the published records do not conflict with the Clearwater Creek Privacy Policy and the Member reimburses the Association any costs associated with the review.

ARTICLE X VIOLATIONS *In accordance with N.C.G.S. Chapter 47F Planned Community Act*

Section 1. PRELIMINARY HEARING: A preliminary hearing shall be held by the BOD and the Associations legal counsel to determine if any action should be taken against a Member of the

Association for violation(s) of the Declaration, Bylaws, or Articles of the Association.

Section 2. NOTICE: Any Member determined to be in violation of the Declaration, Bylaws and/or Articles of the Association according to Section 1 of this Article, shall be given written notice, a minimum of twenty (20) days prior to the proposed BOD hearing, of the violation and the date, time and place of the hearing. Notice shall be transmitted by certified mail, return receipt requested to the address of such Member on file. If the Notice is returned as undeliverable, unclaimed or refused, Notice may be transmitted by first class mail or electronic mail. If requested by the Member the BOD shall reschedule the meeting to allow the Member adequate time to; justify the situation, consult legal counsel and or make the necessary arrangements to attend the hearing, said rescheduled date shall not exceed sixty (60) days from the original date as it appears in the Notice.

Section 3. CONDUCT OF HEARING: All five (5) Directors must be present in order for a hearing to proceed. At a hearing under this Article, the President of the Association, or such other Officer as the BOD may appoint, shall be heard and present evidence. Thereafter, the Member charged with a violation shall be heard and present evidence. The Member charged with a violation is entitled to one (1) continuance of the hearing, if requested, not to exceed thirty (30) days. After the presentation of evidence, the Directors shall deliberate and vote. A Member shall be adjudicated to be in violation of Declaration of Restrictions, Covenant as to Road Maintenance and Upkeep of Wells, Bylaws and Rules and Regulations of the Association, if at least four (4) Directors vote that the Member is in violation.

Section 4. FINES: After an adjudication of a violation by a Member, the BOD may impose a fine up to but not to exceed one hundred dollars (\$100.00) for the violation. If the violation continues in existence following the sixtieth (60th) day after the adjudication of violation, the BOD may impose, without further hearing, a fine not to exceed one hundred dollars (\$100.00) per day until the violation is cured or otherwise abated. If any fine is not paid in full within thirty (30) days after the due date, any unpaid amount of the fine shall bear interest from the due date at the rate of nine percent (9%) per annum. Any fine shall be an assessment and secured by liens as set forth below in Article XIII.

Section 5. SUSPENSION: After an adjudication of violation by a Member, the BOD may suspend the community privileges, including but not limited to the privilege of voting at Annual or Special Meetings of the Members, and services of the Member. The BOD may continue the suspension, without further hearing, until the violation is cured or otherwise abated.

ARTICLE XI ASSESSMENTS FOR COMMON EXPENSES

Section 1. EXPENSE: Pursuant to the Declaration, each Member is obligated to pay to the Association an annual POA dues for the operation, administration, maintenance and repair of the Association's common property, roads, wells and other common facilities.

Section 2. SPECIAL ASSESSMENTS: Each Member is obligated to pay their proportional share of any special assessment for unforeseen expenses not included in the annual budget or incurred by a natural disaster, event or situation within a period of thirty (30) days following the date the imposed assessment.

Section 3. DELINQUENCY: Assessments not paid in full within ten (10) days of the date due shall

be deemed delinquent and subject to a late fee as per section 11(b) of the Declaration. The assessment shall not be deemed satisfied until the assessment and all associated late fees have been paid.

Section 4. EXPENSES CAUSED BY NEGLIGENCE OR MISCONDUCT: If any common expense is incurred by the negligence or misconduct of any Member or occupant of a Member's property, the Association may assess that expense exclusively against the Member. (N.C.G.S. Chapter 47F, Article 3-107(b)).

Section 5. OBLIGATIONS NOT WAIVABLE: No Member may waive or otherwise escape liability for any assessments provided for herein for nonuse of the Common Areas or abandonment of his/her lot.

ARTICLE XII LIEN FOR ASSESSMENTS

Section 1. LIENS AND CLAIM OF LIEN: Pursuant to Section 11 of the Declaration, the BOD may record a Claim of Lien in the Office of the Clerk of Superior Court of Rutherford County, North Carolina, on any lot or lots that are delinquent on annual POA dues or other assessments as defined in these Bylaws. The Claim of Lien shall state the lien claimant, the record owner(s) of the lot, a description of the lot, the amount claimed under the lien and any other information as may be legally required for the lien. Except as provided in Section 2 below, the Association may institute foreclosure on the property for the Claim of Lien in like manner as a mortgage on real estate under power of sale pursuant to Article 2A of Chapter 45 of the North Carolina General Statutes.

Section 2. LIENS FOR FINES AND ADMINISTRATION FEES: The Association may not foreclose on an assessment lien under Article 2A of Chapter 45 of the North Carolina General Statutes if the assessment specified in the lien consists solely of fines, interest on unpaid fines, administration fees or interest on unpaid administration fees. However, the Association may enforce liens for fines and administration fees by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes.

Section 3. PRIORITY OF LIENS: Upon the proper filing of a Claim of Lien, the lien shall be prior to all other liens and encumbrances on a lot except for: liens and encumbrances (specifically including, but not limited to, mortgages and deed of trust) recorded prior to the docketing of the Claim of Lien; liens for real estate taxes and other governmental assessments; and mechanics' or material men's liens. (N.C.G.S. Chapter 47F, Article 3-116(b)).

Section 4. TIME LIMIT FOR ENFORCEMENT: Any lien for unpaid assessments is terminated and extinguished unless the Association institutes proceedings to enforce the lien within three (3) years after the lien has been recorded with the Office of the Clerk of Superior Court for Rutherford County. (Chapter 47F, Article 3-116(c)).

Section 5. OTHER ACTIONS IN LIEU OF FORECLOSURE: Nothing in this Article or these Bylaws shall prevent the Association from pursuing any other action in law or in equity to recover sums owed to the Association by Members.

Section 6. NOTICE AND ATTORNEY'S FEES: In situations that the BOD determines it is necessary to seek payment of attorney's fees and other costs related to a lien, the BOD shall give

notice of such intent to the Member. The notice shall be sent to the mailing address for the Member in the Association's records via certified mail. The notice shall state the fees due as of the date of the notice and that the Member has thirty (30) days from the mailing of the notice to pay the fees. The notice shall also state that the Member may contact the Treasurer of the Association to discuss the establishment of a payment schedule along with the telephone number and address of the Treasurer of the Association.

Section 7. PAYMENT SCHEDULES: The BOD, in its sole discretion, may allow a Member to pay an outstanding balance in installments. Neither the BOD nor a Member is obligated to offer or accept any proposed payment arrangements. The BOD may impose reasonable administrative fees and costs for accepting and processing installments and such fees and costs may be included in the payment scheduled. Reasonable attorney's fees may be added and included in the payment schedule only after the Member has been given notice as set forth in Section 6 above.

ARTICLE XIII CORPORATE SEAL

The Corporate Seal of the Association shall consist of two concentric circles between which are the name of the corporation, Clearwater Creek Property Owners' Association, Inc., and in the center of which is inscribed "SEAL."

ARTICLE XIV AMENDMENTS

These Bylaws may be amended, at an Annual or Special Meeting by a two-thirds (2/3) vote of the Membership; proxies will be included in the vote.

ARTICLE XV GENERAL AND MISCELLANEOUS PROVISIONS

Section 1. CONFLICTS: In case of any conflict or inconsistency between the Articles and these Bylaws, the Articles shall control. In case of any conflict or inconsistency between the Declaration and these Bylaws, the Declaration shall control. The NCPA takes precedence over the Articles, Declaration, and Bylaws.

Section 2. FISCAL YEAR: The fiscal year of the Association shall Begin on the first day of October and End the 30th day of September of every year.

Section 3. TAX YEAR: The tax year of the Association shall Begin on the first day of October and End the 30th day of September of every year.

Section 4. INTERPRETATION: Power to interpret these Bylaws and Covenants, where the meaning is uncertain or ambiguous, shall rest with the Board unless otherwise interpreted by a court of law.

Section 5. LIAIBITY: The Association shall not be liable for bodily injury unless the Association's willful, wanton, or grossly negligent action or commission or omission caused the injuries.

Section 6. TRANSFER OF OWNERSHIP: Member shall deliver notification to the BOD no more than five (5) days from entering into a contract to sell or transfer ownership of the Member's lot(s). Notification shall include description of lot(s) to be sold or transferred, purchaser's information and closing agent's information. Secretary will provide purchaser or closing agent with copy of Bylaws and Declaration so that said information can be included with the closing documents.

Section 7. RENTAL PROPERTY: For safety purposes, owners shall report to the BOD of anyone who leases their property. The owner shall provide the lessee's name, phone number, car type and if they will need mail delivered. Lessees must be given a copy of the Declaration of Covenants, Restrictions and Bylaws.

Section 8. USE OF COMMON AREAS: The use of common property by the Members of the POA, or any other authorized person(s) shall be at all times subject to the Rules and Regulations as set down by the BOD from time to time and approved by the Members according to Section 24 of the Declaration. Said regulations shall be clearly posted.

Section 9. PERSONAL PROPERTY LOSS: Damage to or loss of any personal property, effects or any other personal items stored on or left unattended on the common property of the Association shall be borne by the owner and not the Association.

Section 10. DESIGNATED FUNDS: Designated accounts will be established for the purpose of creating funds for significant improvements or repairs to community or common areas. This will not eliminate assessments but is intended to reduce the impact on Members.

Section 11. ELECTRONIC BANKING: Electronic banking can be used for accounts that have been pre-approved by the BOD. Monthly statements will be reviewed and signed by two Directors.

Section 12. CONDUCT OF MEETINGS: All meetings of the Association and the BOD shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

CERTIFICATION

I, the undersigned, do hereby certify:

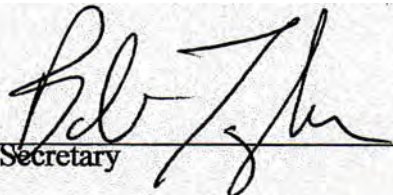
That I am the duly elected and acting Secretary of the Clearwater Creek Property Owners' Association, Inc., a North Carolina Nonprofit Corporation; and

That the foregoing Bylaws constitute the official Bylaws of the Clearwater Creek Property Owners' Association, Inc., as duly adopted at a meeting of the Board thereof, held on the 18th day of FEB., 2012

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this the 6 day of MARCH, 2012

(Corporate Seal)




Secretary