



Doc ID: 000084840007 Type: CRP
Recorded: 05/04/2005 at 12:31:35 PM
Fee Amt: \$32.00 Page 1 of 7
Excise Tax: \$0.00
Instr# 200400005818
Rutherford County, NC
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 86 and 86, 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 beam 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 filed 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 25½% 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-axle 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) Outbuildings may be constructed prior to the construction of the house but must not be equipped in anyway 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 judgment 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.

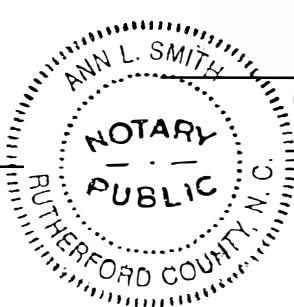
David B. Myers (SEAL)
President

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.



Ann L. Smith
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.

Faye H. Huskey
Faye H. Huskey, Register of Deeds