

NORTH CAROLINA
SWAIN COUNTY

FILED in SWAIN County.
on Jul 28 1999 at 10:49:13 AM
by: Genevieve Lindsey
Register of Deeds
BOOK 226 PAGE 583

FIRST AMENDMENT TO RESTRICTIVE COVENANTS, TERMS AND
CONDITIONS
GOVERNING BRUSH CREEK PROPERTIES

THAT WHEREAS, BRUSH CREEK PROPERTIES, INC., is the owner of those certain lands known as Brush Creek Properties as described in a deed recorded in the office of the Register of Deeds for Swain County, North Carolina, in Deed Book 212 at page 181, all of which lands are situate, lying and being in Nantahala Township, Swain County, North Carolina; and,

WHEREAS, Brush Creek Properties and any additions to same are subject to the Restrictive Covenants, Terms and Conditions as recorded in the office of the Register of Deeds for Swain County, North Carolina, in Book 214 at page 702; and,

WHEREAS, Brush Creek Properties, Inc. constitutes in excess of 50% of the ownership of the lots subject to the Restrictive Covenants, Terms and Conditions above stated, and as set forth in the Restrictive Covenants, Terms and Conditions, desires to AMEND AND MODIFY those Restrictive Covenants, Terms and Conditions as hereinafter set forth.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Brush Creek Properties, Inc., for full value received, and in consideration of the premises, covenants and agrees with all persons, firms and other corporations hereafter acquiring any of the property hereinafter described, that the same shall be and is hereby made SUBJECT TO the Restrictive Covenants, Terms and Conditions as hereinabove referenced, which restrictions are to be construed as restrictive covenants running with the land and comprising the properties hereinabove referred to and hereinafter described, and which shall inure to the benefit of and be binding upon the successors and assigns of Brush Creek Properties, Inc. and all other acquiring parties and persons.

FURTHERMORE, Brush Creek Properties, Inc., does hereby declare that such other real property as may later be made subject to this declaration pursuant to the provisions thereof, from and after the filing of record of any supplementary declaration, shall be held, transferred, sold, conveyed, used and occupied subject to the provisions of this declaration which are specified in any supplementary declarations. Every person hereinafter acquiring any of the within described property made subject to this declaration, by acceptance of a deed or contract for deed or other conveyance of any interest in or to said property, whether or not it shall be so expressed in any such deed, contract for deed or other conveyance, regardless of whether the same shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take such property interest subject to this declaration and to the terms and conditions hereof and shall be deemed to have assented to same.

The Amendments and Modifications to those Restrictive Covenants are as follows:

1) Article IV, COVENANT FOR MAINTENANCE ASSESSMENTS, Paragraph #2 of the Restrictive Covenants, Terms and Conditions for Brush Creek Properties (DB 214-702) shall be amended to read as follows:

"2. Creation and Collection of Lien. The Declarant, for each lot owned within the Development, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it is so expressed in the deed, is deemed to covenant and agree to pay to the Association: (a) an initiation fee of \$50.00 per lot, immediately upon acquiring ownership of the lot, and (b) annual assessments or charges, \$150.00 per year for improved lots and \$100.00 per year for unimproved lots, and (c) special assessments for capital improvements. Each lot owner shall be fully

responsible for road damages caused by heavy equipment and trucks during the construction process and shall take immediate action to repair such damage. The fee and assessments (hereafter referred to simply as "assessments"), together with interest at the rate set by the Association, costs, and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the lot against which the assessment is made. If any assessment is not paid within thirty days after the due date, the Association may file a notice of the lien with the Clerk of Superior Court in the county in which the land lies (and the notice shall be filed not later than one hundred twenty days from the due date of the assessment. In such instance, the services rendered by the Association for the benefit of the lot for which an assessment is levied shall be deemed to have been performed on the due date of the assessment and to "improve" the lot or create an "improvement" to the lot as defined in Chapter 44A, Article 2, part 1, of the General Statutes of North Carolina; the lien arising therefrom shall constitute a "lien of mechanics, laborers, and materialmen dealing with the owner" and the lien may be perfected and enforced pursuant to the provisions of Part 1. the lien created hereby shall not, however, be superior to any institutional mortgage or deed of trust recorded prior to the filing of the notice of claim of lien or any statutory lien having priority or otherwise provided by law. Any action to enforce the lien may, at the Association's option, include a prayer for collection of assessments levied against the lot after the filing date of the notice of claim of lien. The Association may purchase the property at any sale thereof contemplated under Chapter 44A-14 of the General Statutes of North Carolina. The Association may, at its election, simultaneously pursue each and every other remedy that it may have available to it for the enforcement and collection of any delinquent assessments."

The foregoing covenants, conditions, restrictions and affirmative obligations were designed and placed upon the lots and land above described for the mutual benefit of Brush Creek Properties, Inc., and the respective owners of said lots and for the purpose of the betterment of said lots and lands involved.

Enforcement of these covenants and restrictions shall be by action at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages. The party bringing the action or suit shall be entitled to recover in addition to costs and disbursements by law, such sum as the court may adjudge to be reasonable for the services of his attorney.

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

IN WITNESS WHEREOF, Brush Creek Properties, Inc., has caused these presents to be executed and duly acknowledged this the 23 day of July, 1999.

BRUSH CREEK PROPERTIES, INC.
a North Carolina Corporation

(CORPORATE SEAL)

BY: Arthur D. Williams

PRESIDENT

ATTEST:

Anne E. Williams
SECRETARY

STATE OF NORTH CAROLINA
COUNTY OF JACKSON

I, a Notary Public of the aforesaid County and State, do hereby certify that ANNE EGAN WILLIAMS personally appeared before me this day and acknowledged that she is the Secretary of BRUSH CREEK PROPERTIES, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its secretary.

Witness my hand and notarial seal this the 23rd day of July, 1999.

Donald Niemesh (SEAL)
NOTARY PUBLIC

My Commission Expires:

June 27, 2004



NORTH CAROLINA
SWAIN COUNTY

The foregoing certificate of Donald Niemesh, Notary Public, is/are certified to be correct. This instrument was presented for registration and recorded in this office in Book 226 at page 583.

This the 26 day of July, 1999, at 10:49¹³ o'clock A.M.

Aleana W. Kurland, asst.
REGISTER OF DEEDS