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INSTRUMENT # 00928

**NORTH CAROLINA**

**DECLARATION OF RESTRICTIONS  
OF**

**ALLEGHANY COUNTY**

**BEAR CREEK**

Deerwood Park, LLC, (hereinafter "Developer") the fee simple owners of the real estate shown on the plat of Bear Creek, said plat being recorded in the Alleghany County Registry in Plat Book 9 at Page 419 and 420, do hereby make the following declaration of restrictions and limitations for the use and enjoyment of the owners of the properties included therein, specifying that this Declaration shall constitute covenants to run with the land as provided by law and shall be binding on all parties and persons claiming under us, and shall be for the benefit of and shall be limitations upon all future owners of said land, these Restrictions being established for the purpose of keeping the tracts and parcels of land shown on said plat desirable, uniform, and suitable for residential purposes as herein provided:

These Restrictions are imposed to insure that in the future use of the property will be limited to attractive residential purposes; to prevent nuisances; to prevent any impairment of the attractiveness of the property; to maintain the atmosphere of desirability in Bear Creek, and thereby to secure to each site owner the full benefit and enjoyment of his home, with no greater advantage to each of the other site owners. Anything tending to detract from the attractiveness and value of the property for residential purposes will not be permitted.

Specifically, it is declared as follows:

**A) STRUCTURES**

(1) No parcel of land shall be used for any purpose other than as a residence, and only one dwelling house shall be constructed on any parcel.

(2) There shall be only one single family dwelling permitted on any parcel. "Single family" shall be defined as the property owner and his/her spouse and all direct ancestors and descendants of either spouse.

(3) No more than one garage or other detached outbuilding shall be permitted for purposes of storing vehicles, trailers, boats or other recreational vehicles, and lawn, garden and other outdoor equipment. Said building may also be used as

guest quarters. The exterior of this outbuilding must substantially conform to the main residence.

(4) No campers, camping trailers, pop-up campers or recreational vehicles are permitted upon any premises on a permanent basis. During temporary storage, such vehicles must be parked in such a manner so as to not be visible from the front property line. No structure of a temporary character, such as a trailer, camper, tent, or basement, shall be permitted on any parcel at any time as a permanent dwelling.

(5) No mobile homes of any size may be constructed or placed on any parcel.

(6) Modular or prefabricated homes are permissible as long as their exterior appearance is compatible with the other improvements in the subdivision and they are placed upon foundations comprised of materials consistent with the other improvements in the subdivision.

## **B) ARCHITECTURAL REQUIREMENTS**

(1) All buildings constructed must have an exterior consisting of natural wood, stone, log siding or bevel siding. No aluminum siding, imitation brick, or imitation stone will be permitted. No dwelling or any other building shall have a visible exterior consisting in whole or in any part of concrete, concrete blocks, or cinder blocks. Concrete blocks are permissible if used under ground or are covered by plaster or stucco.

(2) All utilities must be placed under ground.

(3) All tanks for the storage of fuel or any other liquid substance must be placed under ground or so concealed as to not be visible from any adjoining property.

(4) With the exception of satellite receiving dishes no more than 24 inches in diameter, no permanent attachments of any kind or character whatsoever, including, but not limited to, television antennae, solar energy related systems and radio antennae shall be affixed to the roof of any dwelling. No detached television, radio or satellite antennae or solar energy related system may be erected.

(5) No building shall be erected, placed or altered on any parcel until two sets of construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Review Committee as to quality of workmanship and materials, harmony of external design with the existing structures and location with restrictions as to topographic and finished grade elevation. Upon submission of plans for construction or remodeling, if no response is received by the property owner within 30 days from the Architectural Review Committee, the property owner may commence construction.

(6) Grading, excavation, and the moving of earth in preparation for the erection of improvements or for any other purposes on a parcel must preserve the general topographic features of said parcel.

(7) The height of any buildings erected on any parcel may not exceed 45 feet above the highest point on said parcel regardless of the number of floors in said building.

(8) Dwellings shall contain no less than 1250 square feet of heated living space exclusive of porches and decks.

(9) Air conditioning and/or heating units shall not be installed on the ground in front of any dwelling or attached to any front wall of any dwelling. All air conditioning and/or heating units shall be screened with either shrubbery or a fence so as not to be visible from any road or street, or from any other residence.

(10) The Architectural Review Committee shall consist of Developer and such other persons as they may designate.

### **C) PROPERTY USAGE**

(1) No parcel is to be subdivided by sale or otherwise unless each portion of the parcel resulting from the subdivision of the parcel becomes a part of a contiguous parcel which has not been subdivided.

(2) No animals or livestock of any kind shall be bred, raised or kept for commercial purposes. Common household pets, including dogs, cats and poultry may be kept. The number and activities of such pets must be controlled so as not to create a nuisance. On any occasion when a pet is off of its owner's premises, the owner shall be responsible for maintaining reasonable physical control of such animal. Actions which are considered a nuisance include, but are not limited to, excessive or loud barking, howling, defecating or urinating on other persons' property, damage to or destruction of other persons' property, and displays of aggressive or threatening behavior. Certain breeds of dogs are specifically prohibited. This includes Pit Bulls, Rotweillers, Canary Island dogs and any other breed of dog commonly considered as aggressive. No raising, breeding, training, or dealing in dogs, cats, or other animals in a commercial manner will be permitted.

(3) No business activity or trade involving the retail sale of goods and merchandise to the ultimate consumer or the provision of services to the ultimate consumer within a dwelling shall be carried on upon or from any parcel. This provision shall not be construed so as to prevent the use of one's home for in-home professional activities. This provision shall not prohibit Bear Creek Club from engaging in the sale of retail items.

(4) No drilling, refining, quarrying, mining is permitted. No commercial agriculture including the growing of trees, Christmas trees, bushes or nursery stock for commercial harvesting is permitted. This provision is not intended to prohibit the growing and maintenance of a fruit, flower, or vegetable garden which does not exceed one-half acre in size or the decorative planting of fruit or nut trees or flower gardens.

(5) No tractor trailers, trucks, buses, or other commercial vehicles larger than a pickup truck or a service van may be stored on any property. All motor vehicles parked on the property or in the roads or streets must display a current license tag.

Any boats, all terrain or other small recreational vehicles must be stored in such a manner so as to not be visible from the front property line.

(6) No parcel shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste. Garbage cans must be removed promptly from pickup areas. Cut trees, yard debris, construction debris, and other wastes shall be disposed of by hauling same away. Yards consisting of grass must be regularly mowed and continuously maintained. No junk or unused vehicles, appliances, or machinery is permitted on any premises.

(7) No owner shall discharge or allow to be discharged any firearm on the premises. No hunting or shooting of any animals or birds shall be permitted on any premises.

(8) All building, structures, appurtenances and landscaping, including natural foliage, shall be maintained in suitable state of repair. Grass lawns must not exceed 12 inches in height. All landscaped, mulched and planted areas must be kept free of weeds or other unsightly vegetation. Gravel driveways must be maintained so as to be free of grass, weeds and any vegetation. All porches, roofs, exterior surfaces of improvements and decks must be maintained in good repair including timely painting and staining. Failure to comply with the provisions of this Paragraph shall subject the offending owner to notification of noncompliance by Declarant. If the failure cited in the notification is not corrected within 30 days of notification, Declarant shall fine the offending owner \$10 per day until the noncompliance is corrected. Any fine so levied remaining unpaid for 60 days shall constitute a lien upon the noncomplying property. In the event of destruction by fire or other casualty, premises are to be cleared and debris removed within ninety (90) days from date of such casualty.

(9) No signs of any kind shall be erected or placed on any parcel except for one sign designating the licensed general contractor responsible for construction during the initial construction period, or one sign advertising the property for sale. The maximum allowable size for such signs is 12 inches by 18 inches. Notwithstanding the foregoing, the Architectural Review Committee reserves the right to disapprove any signs erected on any parcel.

(10) No noxious nor offensive activity such as, but not limited to, the making of any kind of loud noise, or the repeated congregating of numerous persons at a house or parcel, shall be carried on upon this property, nor shall anything be done which may be or become an annoyance or nuisance to the other owners in Bear Creek. The use of ATV's, go karts, and golf carts must comply with North Carolina law and must comply with the community-wide speed limit. Auto and truck engine tuning, maintenance and repair which includes the racing of motors and other loud noises is not permitted.

(11) No motorized boats are permitted on common area ponds, lakes, or waterways.

(12) No parcel may be used as a street, lane, way or easement over which access might be obtained to adjacent properties without specific written consent of Developer, their successors or assigns.

#### **D) CONSTRUCTION REQUIREMENTS**

(1) Before construction is commenced on any parcel, the Owner of the parcel shall cause to be constructed a gravel driveway twelve (12) feet in width with a minimum of five (5) inches of number ten (10) wash stone which shall extend into the parcel from the margin of the road on which the parcel fronts.

(2) Sufficient sedimentation control measures including, but not limited to, installation and maintenance of silt fences, straw bale fences, storm water inlet protection and temporary seeding, to the extent deemed reasonably necessary by the Architectural Review Committee, shall be taken by the owner or owner's general contractor to ensure that all sediment resulting from any land disturbance or construction operation is retained on the parcel in question. All sediment control measures shall meet the requirements of the North Carolina Sedimentation Pollution Control Act and must be maintained until such parcel has been permanently stabilized with respect to soil erosion.

(3) All wells, toilets and sewage units installed upon said property shall be in accord with the rules and regulations of the North Carolina Department of Health, or its successor agency, and shall be located upon said parcels in positions approved of by said Department of Health. No outside toilets will be permitted.

(4) Construction of any improvement, once commenced, shall be pursued diligently to completion and, in any event, must be completed within eighteen months of commencement. Improvements not so completed or upon which construction has ceased for 90 consecutive days or which have been partially or totally destroyed and not rebuilt within a reasonable period shall be deemed nuisances. Such nuisance may be removed, repaired or completed at the expense of the owner.

(5) Prior to commencing construction the general contractor in charge of erecting improvements on any lot shall pay to developer or its successors in interest the sum of \$1000 as a non-refundable road and infrastructure impact fee. Additionally, the general contractor shall pay a refundable fee of \$500 as liquidated damages to insure compliance with Paragraph 4 immediately above.

(6) Only licensed general contractors which have been approved by the Architectural Control Committee may erect any improvements in the subdivision.

#### **E) SETBACKS**

(1) No structure may be erected within 15 feet of the boundary line which separates one parcel from another.

#### **F) ROADS, DRIVEWAYS AND EASEMENTS**

(1) Property owners may construct one driveway from the common access road to a primary dwelling and/or its garage. Additionally, an owner may construct a driveway from the public road to the primary dwelling and/or its garage. Interior driveways connecting primary dwellings and/or garages to allowable outbuildings must be of minimal width and length.

(2) All owners must maintain their driveways in such a manner so as not to create a drainage or erosion problem for any other property owner, particularly during the construction of any driveways.

(3) The Developer shall convey the common roads in Bear Creek to the homeowners' association upon the creation of said association and the adoption of its rules, regulations and bylaws. The primary obligation of the homeowners' association and the funds it accumulates is the maintenance and repair of Bear Creek roads.

(4) Use of the roads in Bear Creek is limited to those owning property in Bear Creek and their guests. Use of these roads by the general public is not permitted.

(5) The undersigned Developer reserves and retains unto themselves the right to grant easements as may be required by the North Carolina Department of Transportation or its successor agency for the purpose of constructing and maintaining public roads, and to any utility company or cable television company licensed by the State of North Carolina or a county or municipality for the installation of electric power, telephone, cable television, water and sewer lines, and such easements as may be required for reasonable drainage flow lines on the property. Within these easements, no structure, planting, or other material shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of utilities, change of direction of flow drainage canals or ditches in the easements or obstruct or retard the flow of water to drainage ditches or canals in the easements. The easements area of Bear Creek shall be maintained continuously by the parcel owner, except for those improvements for which a public authority or utility is responsible. Consistent with this restriction, each Lot in Bear Creek is hereby encumbered with an easement for the purpose of creating a septic drain field for an adjoining or nearby Lot or Lots, however, this provision shall not be construed, interpreted or effectuated in such a way that it would prohibit a Lot owner from erecting the type of improvements which he desires on his own property.

#### **G) HOMEOWNERS' ASSOCIATION, BEAR CREEK CLUB, DUES AND ASSESSMENTS**

(1) All owners shall be members of the Bear Creek Homeowners' Association (hereinafter "Association") which shall be formed at a later date. The general purposes of the Association are the maintenance and upkeep of Bear Creek roads, lights, landscaping, security and common areas and the enforcement of these Restrictions. All property owners will be required to pay an annual fee to the Association to pay for the purposes of the Association. The amount of fees to be billed to property owners and all other matters relating to the operation of the Association shall be determined by the Association Board of Directors in accordance with its bylaws.

(2) Prior to the formation of the Association, Developer shall function as the entity which effectuates the purposes of the Association.

(3) Prior to the formation of the Association each property owner shall pay to Developer \$900 per year as annual assessment for each Lot, which said sum is due by January 10<sup>th</sup> of each year. The amount due shall be prorated for new owners. Assessments not paid within 60 days of the due date shall incur a penalty of \$75. All unpaid assessments and penalties shall become a lien upon the premises. Developer may increase the amount of the annual assessment without notice.

(4) Upon creation of the Association, Developer shall turn over to the Association the records of assessment collection and expenditures along with any unspent funds remaining in the assessment account.

(5) Regardless of the number of parcels owned by Developer, Developer shall never be responsible for the payment of an assessment for more than one parcel.

(6) Declarant may assess an additional sum of up to \$500 per Lot in any calendar year for improvements which, in the sole discretion of Declarant, will enhance the value of the property in the subdivision.

(7) Declarant may, at Declarant's election, require any Lot purchasers to pay an initiation fee for membership in Bear Creek Club.

(8) All owners shall be members of the Bear Creek Club, LLC and shall be required to pay the annual dues for membership in said limited liability company as determined annually by the managers of said company. Any unpaid membership dues shall become a lien upon the premises of the member in Bear Creek.

(9) Upon the sale of any parcel the Buyer shall pay to the Developer or Home Owners' Association a transfer fee of \$500.

#### **H) RENTING OF PROPERTY**

(1) Those renting a property in Bear Creek must comply with all restrictions and conditions contained in this document, the bylaws of the Association, and any other requirements set forth in any other document with regard to the use of property within Bear Creek.

(2) Owners renting out their property will be liable for any damage caused by their renter to the property of any other owner in Bear Creek.

(3) If an owner repeatedly rents his property to persons whose actions materially impair the rights of other owners to enjoy their property, the other owners in Bear Creek may, by a vote of two-thirds of the remaining property owners, restrict or even terminate the rights of the offending property owner to continue to rent his property.

#### **I) PROTECTION OF TREES**

(1) No tree with a diameter of 6 inches or greater may be cut without the written consent of the Developer or Association except for trees removed for the actual construction of an improvement as approved.

(2) No commercial lumbering of any kind is permitted on any property.

**J) OTHER PROVISIONS**

(1) Developer reserves the right to add contiguous areas of land to Bear Creek and to sell parcels of no less than 1 acre in said additional property. Any additional property will be subject to the same covenants and restrictions as are contained in this document.

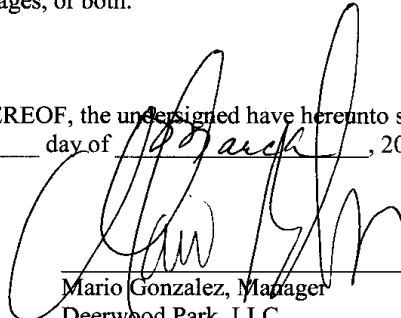
(2) Prior to the creation of the Homeowners' Association, any restriction, covenant, condition or requirement contained in this document may be removed, modified, or waived or a variance granted from its enforcement, or any violation excused by Developer, as long as Developer owns at least one parcel in Bear Creek. After the creation of the Homeowners' Association any restriction, covenant, condition or requirement contained in this document may be removed, modified, or waived, or a variance granted from its enforcement, or a violation excused by the concurrence of the Developer, as long as Developer continues to own at least one parcel in Bear Creek, and two-thirds of the members of the Homeowners' Association.

(3) These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date of these covenants having been recorded, after which time they shall be extended automatically for successive periods of ten (10) years unless a statement signed by a majority of the then owners of the parcels has been recorded agreeing to change the covenants in whole or in part.

(4) Invalidation of any one of these covenants by judgment, court order, or otherwise, shall in no way affect any of the other provisions which shall remain in full force and effect.

(5) Enforcement shall be by proceedings at law or in equity by the Developer, by the Association, or by any individual property owner against any person or persons violating or attempting to violate any restriction, either to restrain violations, recover damages, or both.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, this the 13 day of March, 2007.

  
\_\_\_\_\_  
(SEAL)  
Mario Gonzalez, Manager  
Deerwood Park, LLC



STATE OF NORTH CAROLINA

COUNTY OF Alleghany

I, A Notary Public for the County and State aforesaid, do hereby certify that Mario Gonzalez, Manager of Deerwood Park, 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 13 day of March, 2007

Jean R. Osborne  
Notary Public

My Commission Expires: 6 - 12 - 2010



This Instrument Prepared by:  
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