

DECLARATION OF RESTRICTIVE COVENANTS

BRUSHY FORK CREEK

GREEN CREEK TOWNSHIP
JACKSON COUNTY, NORTH CAROLINA

PART A - PREAMBLE

Smith Roberts Earnest Partners being the owner of the land situate, and lying in Jackson County, North Carolina, and described as follows:

That certain tract of land described in Exhibit "A" attached hereto, reference to which is hereby made for a more particular description, the same which shall for the purposes of these restrictive covenants be known as Brushy Fork Creek does hereby by these presents make, declare and impose upon said described land the following agreements, conditions, restrictions, limitations and easements which shall be and constitute covenants running with the land and shall be binding upon the undersigned, their successors and assigns, as well as upon people claiming under them and each and all subsequent purchasers, their heirs, personal representatives, successors and assigns, of said property or any part, parcel or portion thereof, subject to the provisions contained herein below, to-wit:

PART B - RESIDENTIAL AREA COVENANTS

1. USE RESTRICTIONS: All lots in Brushy Fork Creek are restricted to the use as residential property and no commercial enterprise shall be conducted on said lands. A construction shed or camper may be placed on a lot and remain there temporarily for vacation periods not to exceed four weeks or during the course of active construction of a residence not to exceed one year. Otherwise, no portable or temporary buildings, mobile homes or trailers may be placed on a lot. This restriction shall not apply to boat trailers, small utility trailers and camper units that are stored on rear portions of lots behind wood construction screening that matches the general decor of the other construction with said development.

2. SETBACK RESTRICTIONS; Subject to the exceptions hereinafter mentioned, no building or any part thereof may project beyond setback lines, as follows:

35 feet from front property road right of way lines;

25 feet from rear property lines;

25 feet from either side property line,

EXCEPTIONS TO SETBACK RESTRICTIONS:

(a) Terraces, walls, fences and low platforms or steps may be erected outside of setback lines, except front lines may not have any structure, terrace walls or fences within five feet of the right of way, and further provided such construction shall not interfere with the exposure or view, or reasonable privacy of adjoining, or facing property.

3. CARE AND APPEARANCE OF PREMISES: The structure and grounds on each building lot shall be maintained in a neat and attractive manner. Upon the owner's failure to do so, Grantors may, at their option, after giving the owner ten (10) days written notice sent to his last known address, have the grass, weeds, and vegetation cut when, and as often as, the same is necessary in their judgment, and have dead trees, shrubs and plants removed from any lot. Upon the owner's failure to maintain the exterior of any structure in good repair and appearance the Grantors may, at their

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Donna L. Smith
REGISTER OF DEEDS
JACKSON CO. N.C.

option, after giving the owner sixty (60) days written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The owner of such lot shall reimburse the Grantors for the cost of any work as above required, including ten (10%) percent interest from the time that the work is completed, and to secure such reimbursement the Grantors shall have a lien upon such building lot enforceable as herein provided. Upon performing the work herein provided, the Grantors shall be entitled to file in the Public Records of Jackson County, North Carolina, a notice of its claim of lien by virtue of these restrictions on the lots of Brushy Fork Creek Subdivision. Said notice shall state the cost of said work, including interest, and shall contain a description of the property against which the enforcement of the lien is sought. The lien herein provided shall date from the time the work is completed, but shall be binding against creditors or subsequent purchaser for a valuable consideration and without notice until said notice is recorded. The lien herein provided shall be due and payable forthwith upon the completion of the work, and if not paid, said lien may be enforced as provided by the General Statutes of the State of North Carolina. The cost of any action to enforce this restriction, including the cost of litigation and reasonable attorney's fees shall be paid by the lot owner in violation. Said litigation cost and attorney's fees, if unpaid shall constitute a lien on the property of that party against whom such action for enforcement is brought. The liens herein provided shall be subordinate to the lien of any mortgage encumbering any lot to any institutional lender; provided, however, that any such mortgagee when in possession and any purchaser at any foreclosure sale, and all persons claiming by, through or under such mortgagee or purchaser, shall hold title subject to the obligations and liens herein provided.

PART C

COMMERCIAL TRUCKS, TRAILERS, AND BOATS: In order to maintain the high standards of the subdivision with respect to rural residential appearance, commercial vehicles, shall not be allowed to be parked in the subdivision, except only during periods of approved construction on said lot. All such vehicles shall possess a current license tag properly displayed. There shall be no inoperable or skeletonized vehicles permitted to remain on the property.

This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other commercial services or recreational vehicles on a temporary basis.

DRAINAGE: No changes in elevations of the land shall be made which will cause undue hardship to adjoining property.

EASEMENTS: Reasonable easements for installations and maintenance of utilities and drainage facilities are herewith reserved. Within these easements, no structure, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements.

ROADWAY: Thirty foot (30') road rights-of-way for roads will be constructed through said Development and are reserved for the use of the developers and lot owners in said Development. No obstruction or fences shall be placed within thirty (30) feet of the center line of said 60 foot road rights-of-ways or within fifteen (15) feet of any thirty (30) foot road rights-of-ways established, or within any turning area (or within 5 feet of the right-of-way).

FENCES: Abutting property owners may share a common property line fence. Fencing shall be of split rail

construction only. Fences and gates shall be maintained in good repair.

GARBAGE AND REFUSE DISPOSAL: No lot shall be used or maintained as a dumping ground for rubbish. No garbage, refuse or rubbish shall be deposited or kept on any lot except in a suitable container; provided, however, that garden trash and rubbish that Jackson County requires to be placed at the front of a lot in order to be collected by the Jackson County garbage licensee, may be placed and kept at the front of the lot, and need not be in any container, for periods not exceeding twenty-four hours. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

LIVESTOCK: No animals of any kind shall be raised, fed or kept on any parcel or lot. Pets such as dogs, cats, birds, etc., are permitted, however, not for commercial purposes.

MINIMUM SIZE OF RESIDENCE: The floor area of a residence shall not be less than 1,000 square feet for single story or 1,400 square feet for two story of heated living area, excluding garages, porches, decks and patios.

NUISANCES: No noxious or offensive activity shall be carried on upon any lot; nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

OIL AND MINING OPERATIONS: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

SEWAGE: Whether or not provision therefore is specifically stated in any conveyance of a lot made by the Subdivider, the owner or occupant of each and every lot by acceptance of title thereto or by taking possession thereof covenants and agrees that no septic tanks shall be placed upon his lot unless and until the plans and specifications therefor have been approved by the lawful authorities of the State of North Carolina or Jackson County.

SIGNS: No sign of any kind shall be displayed to the public view on any lot except one sign used to indicate the name of the resident, or one sign of not more than five square feet advertising the property for sale or for rent, or signs used by a builder to advertise the property during construction and sales period.

TEMPORARY STRUCTURES: No structure of temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

CONSTRUCTION: Owner shall have a period of one year from the date of commencement of construction in which to complete all exterior work required by such construction.

Any lot owner will be responsible for road damage by his home builder or contractors during construction on his lot.

PART D

"PROPERTY OWNERS" ASSOCIATION: Each lot owner of Brushy Fork Creek shall be bound by the rules and obligations of the Property Owners Association as adopted from time to time by the Property Owners Association. Until such time as the Property Owners Association shall be formed

and assume responsibility for all road maintenance, lot owners agree to pay to Brushy Fork Creek Partners the sum of \$100.00 annually for the purpose of road maintenance, so long as said partners are willing to accept the money and oversee the maintenance to the extent of the monies collected.

ADDITIONAL RESTRICTIONS: The Grantors may from time to time, in its sole discretion, modify, amend or add to the Declaration of Restrictions; provided that no such modification, amendment or addition shall abrogate the provisions of Paragraph 1 of Part B of these restrictions.

ENFORCEMENT: Enforcement shall be by proceedings at law or in equity by the developer or any lot owner against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages or both. The cost of litigation in the enforcement of any of the restrictions included herein, including reasonable attorney's fees, shall be paid by the lot owner violating any of said restrictions. Said litigation and attorney's fees, if unpaid, shall constitute a lien enforceable as herein before stated on the property of that party against whom such action or enforcement is brought.

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

TERM: These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants are recorded, after which said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of a majority of the lots in the described property, has been recorded, agreeing to change said covenant in whole or part.

This the 23RD day of APRIL, 1990.

SMITH ROBERTS EARNEST PARTNERS ✓

By: Wilson M. Earnest
Wilson M. Earnest

Paul R. Roberts
Paul R. Roberts

Earl C. Smith
Earl C. Smith

STATE OF FLORIDA

COUNTY OF Hillsborough

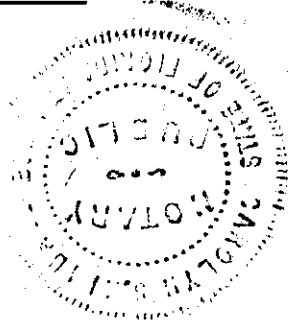
I, Carolyn S. Kimball, a notary public do hereby certify that Paul R. Roberts and Earl C. Smith appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 23rd day of April, 1990.

(SEAL)

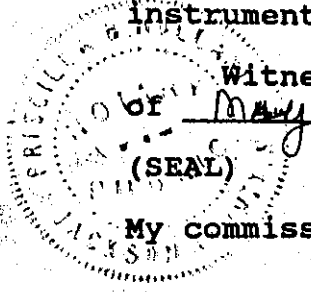
Carolyn S. Kimball
Notary Public

My commission expires: May 11, 1991



STATE OF NC
COUNTY OF JACKSON

I, Priscilla B. Holland, a notary public do hereby certify that Wilson M. Earnest appeared before me this day and acknowledged the due execution of the foregoing instrument.



Witness my hand and notarial seal, this the 1st day of May, 1990.

Priscilla B. Holland
Notary Public

My commission expires: 8-11-91

NORTH CAROLINA
JACKSON COUNTY
The foregoing certificate of Priscilla B. Holland a Notary Public is certified to be correct. This instrument was presented for registration and recorded in this office in Book 753 at page 112 of May 1990 3:27 P.M.
Register of Deeds Gerard Bunnell