

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

Prepared by and return after recording to: James Michael Lloyd, P.A., P.O. Box 948, Asheville, NC 28802

STATE OF NORTH CAROLINA
COUNTY OF SWAIN

Ref: Deed Book 214, Page 702
Deed Book 228, Page 583

SECOND AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BRUSH CREEK PROPERTIES

This *Second Amendment to Declaration Of Covenants, Conditions and Restrictions For Brush Creek Properties* is made this the ____ day of _____, 2006 by Brush Creek Properties Owners Association, Inc., a North Carolina Nonprofit Corporation.

WITNESSETH:

WHEREAS, the planned community of Brush Creek Properties was created by that *Declaration Of Covenants, Conditions and Restrictions For Brush Creek Properties*, (hereinafter referred to as "the Original Declaration"), recorded in Deed Book 214, at Page 702 in the Swain County, North Carolina Registry, which is hereby incorporated by reference; and

WHEREAS, Brush Creek Property Owners Association, Inc., a North Carolina Nonprofit Corporation, (hereinafter referred to as the Association), is comprised of every Owner of a Lot in Brush Creek Properties and is the Association designated by the Original Declaration to promote and carry out the common interests of the Owners of Brush Creek Properties; and

WHEREAS, the Original Declaration has been previously amended by that *First Amendment to Restrictive Covenants, Terms and Conditions Governing Brush Creek Properties*, (hereinafter referred to as "the First Amendment"), recorded in 228, at Page 583 in the Swain County, North Carolina Registry, which is hereby incorporated by reference; and

WHEREAS, pursuant to Article X of the Original Declaration, (said Article having not been changed by the First Amendment), the Original Declaration may be amended by the affirmative vote of a majority of the Owners of all Lots in the Development entitled to vote and by the subsequent recordation of such an amendment by the Association, in which case, the amendment shall have attached to it a copy of the resolution of the Board of Directors of the Association attesting to the affirmative action of the requisite number of the owners to effect the amendment, certified by the secretary of the Association; and

WHEREAS, at a duly held meeting of the membership of Association, the affirmative vote of a majority of the Owners of all Lots in the Development entitled to vote were cast in favor of this *Second Amendment to Declaration Of Covenants, Conditions and Restrictions For Brush Creek Properties*,

NOW THEREFORE, the Original Declaration, as amended by the First Amendment, is amended as follows:

Article IV, Paragraph 2, entitled "Creation and Collection of Lien" of the Original Declaration, as amended by the First Amendment, is hereby stricken in its entirety and replaced with the following new Article IV, Paragraph 2:

"2. Allocation of Interests, Assessment and Collection of Common Expenses.

Section IV.2.1 **Purpose of Assessments.** Each owner of any Lot within the Development by acceptance of a deed therefor, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association fees and assessments as set forth in this Article. The assessments for common expenses as described in Section 47F-3-115 of the North Carolina Planned Community Act, and as otherwise provided for in the Declaration, shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots in the Planned Community as may be more specifically authorized from time to time by the Board.

Section IV.2.2. **Initiation Fee.** Each owner of any Lot must pay to the Association an initiation fee of \$50.00 per lot, immediately upon acquiring ownership of a Lot. Said initiation fee shall be delivered to the Association together with the Lot Owner's preferred mailing address for the Association's records.

Section IV.2.3 **Apportionment of Common Expenses.** Except as set forth in this Article, common expenses shall be assessed against all Lots in accordance with the allocated interests in the common expenses as set forth in this Declaration.

Section IV.2.4 **Allocated Interests for Expenses.** The allocated interest in the common expense liability and the interest of each Lot of the Development shall be such that an unimproved lot shall be liable and responsible for two-thirds of the common expense assessed against an improved lot. For purposes of this allocation, an improved lot is defined as any lot

upon which a residential dwelling structure has been placed.

Section IV.2.5 Allocated Interests for Voting. Each Lot shall have one (1) vote on every matter for which a vote of the membership of the Association is required.

Section IV.2.6 Assessment of Common Expenses. Common expenses shall be shared by the Owners on the basis of the allocated interest of each Lot, except for those expenses that may be allocated otherwise pursuant to this Article of the Declaration.

Section IV.2.7 Common Expenses Attributable to Fewer than All Lots.

(a) If a common expense is caused by the misconduct of a Lot Owner, or, if a Lot Owner causes damage to the roadways during construction and does not immediately repair such damage and the Association carries out such repairs, the Association may assess that expense exclusively against that Lot Owner's Lot.

(b) Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against a Lot Owner pursuant to the Planned Community Act, the Declaration, Bylaws and Rules and Regulations are common expenses attributable solely to the Lot Owner and Lot responsible for such fees, charges fines and costs and such expenses and are enforceable as common expense assessments against such Lot and Lot Owner.

Section IV.2.8 Lien for Assessments.

(a) (a) Any assessment levied against a Lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Fees, charges, late charges, and other charges imposed pursuant to N.C. Gen. Stat. §§. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) The Association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the Association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the Association. The Association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) The Association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by

judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or N.C. Gen. Stat. § 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys'

fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

Section IV.2.9 Computation of Operating Budget and Annual Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Development during the coming fiscal year and amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership. The Board shall cause the budget and the annual assessments to be levied against each Lot for the coming fiscal year. Within 30 days after adoption of any proposed budget for the planned community, the Board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than ten (10) and not more than sixty (60) days after mailing of the summary and notice. There shall be no requirements that a quorum be present at the meeting. The budget and the assessment established therefrom is ratified unless at the meeting sixty-seven percent (67%) of all the lot owners in the Association vote to reject the budget. Notwithstanding the foregoing, however, in the event that the membership rejects the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

Section IV.2.10 Personal Liability of Lot Owners. The Owner of a Lot at the time any common expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. In addition to lien rights described in Section IV.2.8 above, the Association has the right to bring a separate collection action to enforce the personal liability of Lot owners to pay assessments.

The grantee(s) of a Lot shall be jointly and severally liable with the grantor Owner for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the

grantor the amounts paid by the grantee therefore.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors in its discretion. Unless otherwise provided, the annual assessment payments shall be late and the Lot Owner in default if not paid on or before the fifteenth (15th) day such installment becomes due.

Section IV.2.11 Acceleration. If a Lot Owner is in default in payment of any assessment or charge, which the Board has fixed to be paid in installments, the Board of Directors may accelerate the remaining balance of such assessment, including regular installments based on the budget, special assessments, and specific assessments, upon ten (10) days written notice to such Lot Owner, whereupon the entire unpaid balance shall become due and payable upon the date stated in such notice.

Section IV.2.12 No Waiver of Liability for Common Expenses. No Lot Owner may exempt himself or herself from liability for payment of the common expenses by waiver of the use or enjoyment of the common elements or by abandonment of the Lot against which the assessments are made.

Section IV.2.13 Special Assessments.

(a) Notwithstanding the provisions of Section IV.2.9, in the event that the annual assessment proves inadequate for any year, or in the event of an emergency, the Board may at any time levy a special assessment against all Owners.

(b) The Board of Directors may further levy special assessments for capital improvements upon the common elements and for such other matters as the Association shall determine; provided, however, prior to becoming effective any such special assessment for capital improvements shall be approved by the affirmative vote of a majority of all the lot owners at a special meeting of the Association duly called for that purpose.

Section IV.2.14 Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution, if any, in an amount sufficient to meet the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required may be fixed by the Board and included within the budget and assessment as provided in Section IV.2.9 of this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

Section IV.2.15 Interest, Late Charges and Payments. In accordance with N.C. Gen. Stat. §47F-3-115(b), the Association hereby establishes that any past due common expense

assessment or installment thereof, past due special assessments, fines, or other past due charges shall bear interest at 18% per annum.

The Board shall set a late charge of ten percent (10%) of any assessment to be assessed against Lot Owners for late payment of any common expense assessments or installment thereof, special assessments, fines, or any other charges.

Any payments received by the Association in the discharge of a Lot Owner's obligation may be, but are not required to be, applied to the oldest balance due. Such payments may be applied at the discretion of the Board of Directors.

Section IV.2.16 **Surplus Funds.** Any surplus funds of the Association remaining after payment of or provisions for common expenses and any prepayment shall be retained in the general operating funds or long range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be paid to Lot Owners nor shall such surplus funds be used as a credit to reduce future common expense assessments."

RESOLUTION OF THE BOARD OF DIRECTORS

We, the undersigned Directors of Brush Creek Property Owners Association, Inc. hereby attest that a duly held meeting of the membership of the Association the affirmative vote of a majority of the Owners of all Lots in the Development entitled to vote were cast in favor of this *Second Amendment to Declaration Of Covenants, Conditions and Restrictions For Brush Creek Properties.*

Mike Boudreaux - Director -Brush Creek Property Owners Association, Inc.

Bill Mayne - Director - Brush Creek Property Owners Association, Inc.

Scott Blanck - Director - Brush Creek Property Owners Association, Inc.

(CORPORATE SEAL)

ATTEST:

Theresa Mayne - Secretary -Brush Creek Property Owners Association, Inc.

STATE OF _____
COUNTY OF _____

FILED
SWAIN COUNTY NC
DIANA WILLIAMSON KIRKLAND
REGISTER OF DEEDS

FILED	Mar 15, 2012
AT	01:03:25 pm
BOOK	00400
START PAGE	0434
END PAGE	0438
INSTRUMENT #	00439
EXCISE TAX	(None)

Please return to BCPHOA, 4632 Buckline Drive, Dunwoody, Ga. 30338

STATE OF NORTH CAROLINA
COUNTY OF SWAIN

Ref: Deed Book 214, Page 702
Deed Book 228, Page 583
Deed Book 335, Page 168

THIRD AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BRUSH CREEK PROPERTIES

This *Third Amendment to Declaration of Covenants, Conditions and Restrictions For Brush Creek Properties* is made this the 15th day of March, 2012 by Brush Creek Properties Owners Association, Inc., a North Carolina Nonprofit Corporation.

WITNESSETH:

WHEREAS, the planned community of Brush Creek Properties was created by that *Declaration of Covenants, Conditions and Restrictions For Brush Creek Properties*, (hereinafter referred to as "the Original Declaration", recorded in Deed Book 214, at Page 702 in the Swain County, North Carolina Registry, which is hereby incorporated by reference; and

WHEREAS, Brush Creek Properties Association, Inc., a North Carolina Nonprofit Corporation, (hereinafter referred to as the Association), is comprised of every Owner of a Lot in Brush Creek Properties and is the Association designated by the Original Declaration to promote and carry out the common interests of the Owners of Brush Creek Properties; and

WHEREAS, the Original Declaration has been previously amended by that *First Amendment to Restrictive Covenants, Terms and Conditions Governing Brush Creek Properties*, (hereinafter referred to as "the First Amendment"), recorded in Book 228, at Page 583 in the Swain County, North Carolina Registry, which is hereby incorporated by reference; and

WHEREAS, the Original Declaration has also been previously amended by that *Second Amendment to Restrictive Covenants, Terms and Conditions Governing Brush Creek Properties*, (hereinafter referred to as "the Second Amendment"), recorded in Book 335 at Page 168 in the Swain County, North Carolina Registry, which is hereby incorporated by reference; and

WHEREAS, pursuant to Article X of the Original Declaration, (said Article not having been changed by the First or Second Amendments), the Original Declaration may be amended by the affirmative vote of a majority of the Owners of all Lots in the Development entitled to vote and by the subsequent recordation of such an amendment by the Association, in which case, the amendment shall have attached to it a copy of the resolution of the Board of Directors of the Association attesting to the affirmative action of the requisite number of the owners to effect the amendment, certified by the Secretary of the Association; and

WHEREAS, at a duly held meeting of the membership of the Association, the affirmative vote of a majority of the Owners of all Lots in the Development entitled to vote were cast in favor of this *Third Amendment to Declaration of Covenants, Conditions and Restrictions For Brush Creek Properties*.

NOW THEREFORE, the Original Declaration, as amended by the First and Second Amendments, is amended as follows:

Article 11, Paragraph 2, entitled "Minimum Dwelling Size" is hereby stricken in its entirety and replaced with the following new Article 11, Paragraph 2;

"2. Minimum Dwelling Size, Construction Type and Appurtenant Structures

2.1 No structure shall be placed or erected upon any lot that shall lie within ten (10) feet of any property or easement line of the lot.

2.2 No dwelling shall have less than twelve hundred square feet of enclosed heated space (exclusive of any basement area), whether the same be enclosed and heated.

2.3 No dwelling type other than a single family residence is allowed. Duplex or multi-family dwellings, or commercial buildings of any type are prohibited.

2.4 No appurtenant structure or outbuilding of any type shall be constructed on any lot prior to the construction of the permanent dwelling. Said structures are defined as any shed, garage, barn, workshop, lean-to, or any other type of structure not meeting the requirements of 2.2 above.

Article II, Protective Covenants, new Paragraphs 7 and 8, are hereby added as follows:

"7. Only those areas of the lot as needed for the reasonable construction of the dwelling, driveway, septic area, and appurtenant structures are to be cleared of trees. No logging or clear cutting of any lot is permitted.

"8. Light pollution is to kept to a reasonable minimum. No pole mounted street type lighting is allowed.

The following new Article is hereby added:

Article II.5 Leasing or Rental of Lots

"1. No more than twenty-five percent (25%) of the improved lots are permitted to be leased at any time. Requests for leasing approval must be submitted in writing by the Owner to the Board of Directors. The Board shall determine the number of Lots leased at that time and shall not approve any lease request which causes the number of Lots to exceed the maximum percentage allowed. The Board, however, shall have the option, in its sole discretion, to allow exceptions exceeding the 25% maximum should the Board determine that not allowing said exception would impose undue hardship on the Owner.

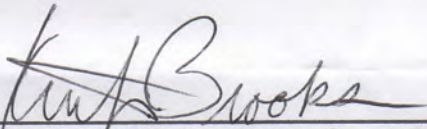
"2. Those Lots that are currently approved by the Board for leasing as of the date of the recordation of this Third Amendment to Declaration of Covenants, Conditions and Restrictions, are considered grandfathered under the above provision, in that the privilege to lease said property shall convey with an exchange of title. However, any such new Owner shall submit to the Board within thirty (30) days of closing, a written request to the Board to maintain the rental or leasing status of that Lot.

"3. All leases and lessees are subject to the provisions of the Declaration, By-Laws, and Rules and Regulations. The Lot Owner must make available to the tenant copies of said documents.

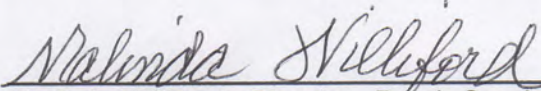
RESOLUTION OF THE BOARD OF DIRECTORS

We, the undersigned Directors of Brush Creek Property Owners Association, Inc. hereby attest that a duly held meeting of the membership of the Association the affirmative vote of a majority of the Owners of all Lots in the Development entitled to vote were cast in favor of this *Third Amendment to Declaration of Covenants, Conditions and Restrictions For Brush Creek Properties*.

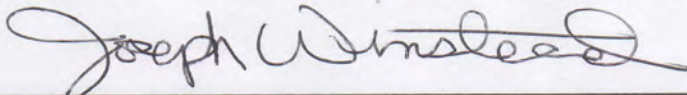
BY:



Keith Brooks - Director - Brush Creek Property Owners Association, Inc.



Malinda Williford - Director - Brush Creek Property Owners Association, Inc.

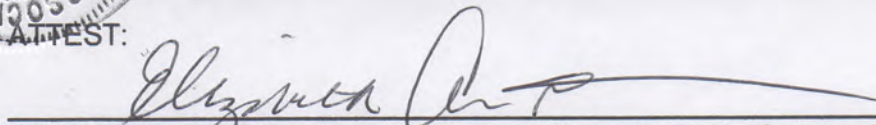


Joseph Winstead - Director - Brush Creek Property Owners Association, Inc.

(CORPORATE SEAL)



ATTEST:



Elizabeth Ann Brooks - Secretary - Brush Creek Property Owners Association, Inc.

STATE OF GEORGIACOUNTY OF Cobb

I, ROSIE GRANATO, a Notary Public for said County and State,
certify that Elizabeth Ann Brooks personally came before me this day and acknowledged
that she
is Secretary of Brush Creek Property Association, Inc. and that by authority duly given
and as the act of the Corporation, the foregoing instrument was signed in its name by
its Board of Directors, sealed with its corporate seal, and attested by herself as its
Secretary.

Witness my hand and official seal, this 31st day of January, 2012.

(Seal)

Notary Public:

Rosie Granato

My Commission Expires:

3-25-13

BY-LAWS
OF
BRUSH CREEK PROPERTIES HOMEOWNERS ASSOCIATION, INC.

ARTICLE I
OFFICES

Section 1. Principal Office. The principal office of the Association shall be located at Brush Creek Properties Homeowners Association, Inc., 99 Berry Hill Drive, Sylva, Jackson County, North Carolina.

Section 2. Registered Office. The registered office of the Association required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office.

Section 3. Other Offices. The Association may have offices at other places, either within or without the State of North Carolina, as the Board of Directors may designate or as the affairs of the Association may require from time to time.

ARTICLE II
MEMBERS

Section 1. Class. There shall be one class of members, as provided by the Articles.

Section 2. Membership. Membership of this association shall constitute the owners of lots in the Brush Creek Properties Subdivision.

Section 3. Transferability. Membership within the Association shall be an appurtenance to each lot that is subject to assessment within the Development pursuant to the Declaration, and membership shall be transferred with each conveyance of a beneficial interest in each lot. No member may resign or withdraw from membership without conveying his interest in the appurtenant lot.

ARTICLE III
MEETINGS OF MEMBERS

Section 1. Place of Meeting. All meetings of members shall be held at the principal office of the Association, or at any other place, either within or without the State of North Carolina, designated in the notice of the meeting or agreed upon by a majority of the members entitled to vote at the meeting.

Section 2. Annual Meetings. The annual meeting of members shall be held at 10:00 o'clock a.m., on the second Tuesday of each July for the purposes of electing directors of the Association and for the transaction of any other business that may be properly brought before the meeting. If the day fixed for the annual meeting is a legal holiday, the meeting shall be held on the next succeeding business day.

Section 3. Substitute Annual Meeting. If the annual meeting is not held on the day designated by these by-laws, a substitute annual meeting may be called in accordance with the provisions of Section 4 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 4. Special Meetings. Special meetings of the members may be called at any time by the president, secretary or Board of Directors of the Association, or by any five members having voting rights.

Section 5. Notice of Meetings. Written or printed notice stating the time and place of the meeting shall be delivered not less than ten or more than fifty days before the date of any meeting, either personally or by mail, by or at the direction of

the president, the secretary, or other person calling the meeting, to each member entitled to vote at the meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the record of members of the Association, with postage prepaid.

In the case of a special meeting, the notice of meeting shall specifically state the purpose or purposes for which the meeting is called; but, in the case of an annual or substitute annual meeting, the notice of meeting need not specifically state the business to be transacted unless a statement is required by the provisions of the North Carolina Non-Profit Corporation Act.

When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given, as in the case of an original meeting. When a meeting is adjourned for less than thirty days in any one adjournment, it is not necessary to give any notice of the adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Section 6. Voting Lists. At least ten days before each meeting of the members, the secretary of the Association shall prepare an alphabetical list of the members entitled to vote at the meeting or any adjournment thereof, with the address of and number of lots held by each, which list shall be kept on file at the registered office of the Association for a period of ten days prior to the meeting, and shall be subject to inspection by any member at any time during the usual business hours. This list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any member during the whole time of the meeting.

Section 7. Quorum. A majority of the members of the Association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of members, except that at a substitute annual meeting of members the number of shares there represented either in person or by proxy, even though less than a majority, shall constitute a quorum for the purposes of the meeting.

The members present a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

In the absence of a quorum at the opening of any meeting of members, the meeting may be adjourned from time to time by a vote of the majority of the members voting on the motion to adjourn; and at any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the original meeting.

Section 8. Proxies. A member may vote either in person or by one or more agents authorized by a written proxy executed by the member or by his duly authorized attorney in fact. A proxy is not valid after the expiration of eleven months from the date of its execution, unless the person executing it specifies therein the length of time that it is to continue in force, or limits its use to a particular meeting, but no proxy shall be valid after ten years from the date of its execution.

Section 9. Voting of Members. Each lot, or subdivided lot, within the Development that is subject to assessment shall be entitled to one vote, and the owner or owners of that lot shall be entitled to cast the vote appurtenant to that lot.

Except in the election of directors as governed by the provisions of Section 3 of Article IV, the vote of a majority of the members voting on any matter at a meeting of members at which a quorum is present shall be the act of the members on that matter, unless the vote of a greater number is required by law or by the articles or by-laws of this Association.

Section 10. Informal Action by Members. Any action that may be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the persons who would be entitled to vote upon the action at a meeting, and filed with the secretary of the Association to be kept as part of the Association records.

ARTICLE IV BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the Association shall be managed by its Board of Directors.

Section 2. Number, term and qualifications. The number of directors constituting the Board of Directors shall be three. Each director shall hold office until his death, resignation, retirement, removal, disqualification, or his successor is qualified. Directors need not be residents of the State of North Carolina or members of the Association.

Section 3. Election of Directors. Except as provided in Section 5 of this Article, the directors shall be elected at the annual meeting of member, and those persons who receive the highest number of votes shall be deemed to have been elected. If any member so demands, the election of directors shall be by ballot.

Section 4. Removal. Any director may be removed at any time with or without cause by a vote of the members holding a majority of the membership entitled to vote at an election of directors.

Section 5. Vacancies. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors even though less than a quorum, or by the sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the authorized number of directors shall be filled only by election at an annual meeting or at a special meeting of members called for that purpose.

Section 6. Chairman of Board. There may be a chairman of the Board of Directors elected by the directors from their number at any meeting of the board. The chairman shall preside at all meetings of the Board of Directors and perform such other duties as may be directed by the board.

Section 7. Compensation. The Board of Directors may not compensate directors for their services as directors, but may provide for the payment of any or all expenses incurred by directors in attending regular and special meetings of the board.

ARTICLE V MEETINGS OF DIRECTORS

Section 1. Regular Meetings. A regular meeting of the board of directors shall be held immediately after, and at the same place as, the annual meeting of members. In addition, the board of directors may provide, by resolution, the time and place, either within or without the State of North Carolina, for the holding of additional regular meetings.

Section 2. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the president or any two directors. Special meetings may be held either within or without the State of North Carolina, as fixed by the person or persons calling the meeting.

Section 3. Notice of Meeting. Regular meetings of the Board of Directors may be held without notice. The person or persons calling a special meeting of the Board of Directors shall, at least two days before the meeting, give notice thereof by any usual means of communication. The notice need not specify the purpose for

which the meeting is called.

Section 4. Waiver of Notice. Any director may waive notice of any meeting. The attendance by a director at a meeting shall constitute a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 5. Quorum. A majority of the number of directors fixed by these by-laws shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 6. Manner of Acting. Except as otherwise provided in these by-laws, the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 7. Presumption of Assent. A director of the Association who is present at a meeting of the Board of Directors at which action on any Association matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to the action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward his dissent by registered mail to the secretary of the Association immediately after the adjournment of the meeting. The right to dissent shall not apply to a director who voted in favor of the action.

Section 8. Informal Action By Directors. Action taken by a majority of the directors without a meeting is nevertheless board action if written consent to the action in question is signed by all the directors and filed with the minutes of the proceedings of the board, whether done before or after the action is taken.

Section 9. Committees of the Board. The Board of Directors, by resolution adopted by a majority of the number of directors fixed by these by-laws, may designate one or more directors to constitute an executive committee and other committees, each of which, to the extent authorized by law and provided in the resolution, shall have and may exercise all of the authority of the Board of Directors in the management of the Association. The designation of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility or liability imposed upon it or him by law.

ARTICLE VI OFFICERS

Section 1. Officers of the Association. The officers of the Association shall consist of a president, a secretary, a treasurer and any vice-presidents, assistant secretaries, assistant treasurers, and other officers as the Board of Directors may from time to time elect. Any two or more offices may be held by the same person, but no officer may act in more than one capacity where action of two or more officers is required.

Section 2. Election and term. The officers of the Association shall be elected by the Board of Directors and each officer shall hold office until his death, resignation, retirement, removal, disqualification or his successor is elected and qualified.

Section 3. Compensation of officers. Officers of the Association serve without compensation.

Section 4. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed by the board whenever in its judgment the best interests of the corporation will be served thereby; but such removal shall be without prejudice to

the contract rights, if any, of the persons so removed.

Section 5. Bonds. The Board of Directors may by resolution require any officer, agent, or employee of the Association to give bond to the Association, with sufficient sureties, conditioned on the faithful performance of the duties of his respective office or position, and to comply with other conditions as may from time to time be required by the Board of Directors.

Section 6. President. The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the members. He shall sign, with the secretary, an assistant secretary, or any other proper officer of the Association authorized by the Board of Directors, any deeds, promissory notes, mortgages, deeds of trust, bonds, contracts, or other instruments that the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof is expressly delegated by the Board of Directors or by these by-laws to some other officer or agent of the Association, or is required by law to be otherwise signed or executed, and in general he shall perform all duties incident to the office of president and other duties as may be prescribed by the Board of Directors from time to time.

Section 7. Vice-Presidents. In the absence of the president or in the event of his death, inability or refusal to act, the vice-presidents in the order of their length of service as vice-presidents, unless otherwise determined by the Board of Directors, shall perform the duties of the president, and when so acting shall have all the powers of and be subject to all the restrictions upon the president. Any vice-president shall perform any duties as from time to time may be assigned to him by the president or the Board of Directors.

Section 8. Secretary. The secretary shall (a) keep the minutes of the meetings of members, of the Board of Directors and of all executive committees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these by-laws or as required by law; (c) be custodian of the Association records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the post office address of each member that shall be furnished to the secretary by the member; (e) keep or cause to be kept in the State of North Carolina at the Association's registered office or principal place of business a record of the members, giving the names and addresses of all members, and prepare or cause to be prepared voting lists prior to each meeting of members as required by law; and (f) in general perform all duties incident to the office of secretary and other duties as from time to time may be assigned to him by the president or by the Board of Directors.

Section 9. Assistant Secretaries. In the absence of the secretary or in the event of his death, inability or refusal to act, the assistant secretaries in the order of their length of service as assistant secretary, unless otherwise determined by the Board of Directors, shall perform the duties of the secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the secretary. They shall perform other duties as may be assigned to them by the secretary, by the president, or by the Board of Directors.

Section 10. Treasurer. The treasurer shall (a) have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all moneys in the name of the Association in depositories selected in accordance with the provisions of Section 4 of Article VII of these by-laws; (b) prepare, or cause to be prepared, a true

statement of the Association's assets and liabilities as of the close of each fiscal year, all in reasonable detail, which statement shall be made and filed at the Association's registered office or principal place of business in the State of North Carolina within four months after the end of each fiscal year and kept available there for a period of at least ten years; and (c) in general perform all of the duties incident to the office of treasurer and other duties as from time to time may be assigned to him by the president or by the Board of Directors, or by these by-laws.

Section 11. Assistant Treasurers. In the absence of the treasurer or in the event of his death, inability or refusal to act, the assistant treasurers in the order of their length of service as assistant treasurer, unless otherwise determined by the Board of Directors, shall perform the duties of the treasurer and when so acting shall have all the powers of and be subject to all the restrictions upon the treasurer. They shall perform other duties as may be assigned to them by the treasurer, by the president, or by the Board of Directors.

ARTICLE VII CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and the authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Association and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. The authority may be general or confined to specific instances.

Section 3. Checks and drafts. All checks, drafts or other orders for the payment of money, issued in the name of the Association, shall be signed by the Officer or Officers, agent or agents, of the Association and in a manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in depositories selected by the Board of Directors.

ARTICLE VIII ASSESSMENTS

Section 1. Budget. The Board of Directors shall propose a complete operating budget for each succeeding fiscal year which shall be submitted to the members for review, modification, and adoption at each annual members' meeting. The budget as adopted shall specifically state the aggregate annual assessment attributable to each lot and to subdivision of lots and assessable against each lot owner and to each owner of a subdivided lot for the ensuing year. Lots with an "A" suffix designation shall be considered as part of the same numbered lots without an "A" suffix designation and shall not be subject to assessment separate from lots without an "A" suffix designation. For example, for the purpose of assessment, Lot 64 and 64 A shall be considered as a single lot.

Section 2. Deficiencies. During the course of any fiscal year, the Board of Directors may levy supplemental assessments in the appropriate category of assessments if revenue attributable to any assessment shall be less than the actual costs incurred therefore by the Association, or if the Association shall incur any cost or expenses not foreseen in the budget. Payment of these supplemental assessments shall be as prescribed by the Board of Directors.

Section 3. Assessment Collections. Assessments shall be paid to the Association for the purposes expressed in, and pursuant to, Article IV, Section 2 of the Declaration.

Section 4. Collection of Delinquent Accounts. The Board of Directors shall be empowered to enforce the collection of all assessments pursuant to Article IV, Section 2 of the Declaration. The Board of Directors may direct the officers, agents, and attorneys of the Association to pursue in the Association's name those remedies available to it.

Section 5. Segregation of Accounts. The Board of Directors may direct that the establishment of Separate bank accounts (or accounts with independent trustees) as it may deem desirable to segregate operating revenue receipts from capital contributions and for funds received for repairs or maintenance services for the Development which shall be incurred in future fiscal years.

Section 6. Initiation Fee. An initiation fee of \$50.00 per lot shall be assessed to each owner immediately upon his acquiring ownership of a lot, or of a subdivided portion of a lot. The initiation fee shall not pertain to lots with an "A" suffix.

ARTICLE IX GENERAL PROVISIONS

Section 1. Seal. The corporate seal of the Association shall consist of two concentric circles between which is the name of the association and in the center of which is inscribed SEAL; and the seal, as impressed on the margin hereby adopted as the seal of the Association.

Section 2. Waiver of Notice. Whenever any notice is required to be given to any member or director by law, by the articles or by these by-laws, a waiver thereof in writing signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 3. Indemnification. Any person who at any time serves or has served as a director, officer, employee or agent of the Association, or in that capacity at the request of the Association for any other corporation, partnership, joint venture, trust or other enterprise, shall have a right to be indemnified by the Association to the fullest extent permitted by law against (a) reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the Association seeking to hold him liable by reason of the fact that he is or was acting in that capacity, and (b) reasonable payments made by him in satisfaction of any judgment, money decree, fine, penalty or settlement for which he may have become liable in any action, suit or proceeding.

The Board of Directors of the Association shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by this by-law, including without limitation, to the extent needed, making good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him and giving notice to, and obtaining approval by, the members of the Association.

Any person who at any time after the adoption of this by-law serves or has served in any of the above capacities for or on behalf of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. That right shall inure to the benefit of the legal representatives of that person and shall not be exclusive of any other rights to which that person may be entitled apart from the provision of this by-law.

Section 5. Fiscal Year. The fiscal year of the Association shall be fixed by the Board of Directors.

Section 6. Amendments. Except as otherwise provided herein, these by-laws may be amended or repealed and new by-laws may be adopted by the affirmative vote of a majority of the directors then holding office at any regular or special meeting of the Board of Directors.

The Board of Directors shall have no power to adopt a by-law (1) prescribing quorum or voting requirements for action by members or directors different from those prescribed by law; (2) increasing or decreasing the number of directors; or (3) classifying and staggering the election of directors.

No by-law adopted or amended by the shareholders shall be amended or repealed by the Board of Directors, except to the extent that the by-law expressly authorize its amendment or repeal by the Board of Directors.

ARTICLE X
NET EARNINGS

Section 1. No part of the net earnings of the organization shall inure to the benefit of its members, directors, officers, or other persons except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the exempt purposes of the organization.

ARTICLE XI

Section 1. In the event of dissolution, the residual assets will be turned over to one or more organizations with similar purposes which are exempt as organizations described in Section 501 (c) (3) of the Internal Revenue Code of 1986.

Adopted this the 12th day of March, 1998.

(CORPORATE SEAL)

BRUSH CREEK PROPERTIES HOMEOWNERS
ASSOCIATION, INC.

BY Richard A. Williams
PRESIDENT

ATTEST:

Anne E. Williams
ANNE E. WILLIAMS, Secretary

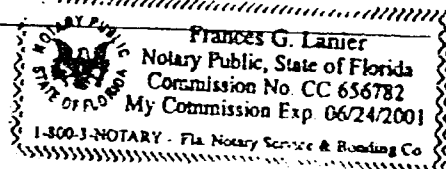
STATE OF FLORIDA
COUNTY OF PASCO

I, Frances G. Lanier, a Notary Public of the aforesaid County and State, do hereby certify that ANNE E. WILLIAMS personally came before me this day and acknowledged that she is Secretary of BRUSH CREEK PROPERTIES HOMEOWNERS ASSOCIATION, 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 12th day of March, 1998.

Frances G. Lanier
Notary Public

My Commission Expires:



NORTH CAROLINA
SWAIN COUNTY

The foregoing certificate(s) of Francis G Lamer,
Notary(ies) Public, is/are certified to be correct. This
instrument was presented for registration and recorded in this
office in Book 214 at page 707.

This the 27 day of May, 1998, at 4:18²⁴ o'clock
PM.

Khana W. Kunkland, Asst.
REGISTER OF DEEDS

FILED in SWAIN County, NC
on May 27 1998 at 04:18:24 PM
Genevieve Lindsay
Register of Deeds

FILED in SWAIN County,
on Jul 08 2002 at 03:48:38 PM
by: Genevieve Lindsay
Register of Deeds
BOOK 208 PAGE 672

STATE OF NORTH CAROLINA
COUNTY OF SWAIN
Each of the foregoing certification, or certificates, namely of
Patricia Lester
a notary or Notaries Public of the County and State de-
signated is certified to be correct and filed for registration
on the 9th day of July, 2002, in book 208
at page 672 at 3:48 PM
GENEVIEVE LINDSAY, REGISTER OF DEEDS
BY: Shana W. Burkland
Assistant

NORTH CAROLINA
SWAIN COUNTY

FIRST AMENDMENT TO BY-LAWS
OF
BRUSH CREEK PROPERTIES HOMEOWNERS ASSOCIATION, INC.

THIS AMENDMENT TO BY-LAWS OF BRUSH CREEK PROPERTIES
HOMEOWNERS ASSOCIATION, INC. is made this the 7th day of June, 2002, by
BRUSH CREEK PROPERTIES HOMEOWNERS ASSOCIATION, INC., a North Carolina non-
profit corporation.

WITNESSETH:

WHEREAS, the By-Laws of Brush Creek Properties Homeowners Association, Inc. executed
and recorded in the Office of the Register of Deeds for Swain County, North Carolina, in Book 214
at page 707, and

WHEREAS, the By-Laws for Brush Creek Properties provides that they may be amended by
Brush Creek Properties Homeowners Association, Inc., and,

WHEREAS all of the Directors of the Brush Creek Home Owner's Association, Inc., having
met in a duly called regularly scheduled board of directors' meeting on the 16th day of March 2002,
and a quorum being present, and by the power vested in them to amend those By-Laws, and having
amended those By-Laws by resolution adopted unanimously as recorded in the Minutes of the
meeting, do hereby declare that the By-Laws of the Association are hereby amended as is shown on
the attached Exhibits 1 thru 5.

IN WITNESS WHEREOF, the Association has caused this instrument to be executed by its
Board of Directors, the day and year first above written.

BRUSH CREEK PROPERTIES HOMEOWNERS
ASSOCIATION, INC.

By: Wayne Abernathy
Wayne Abernathy, Director

By: Wynnette Cheek
Wynnette Cheek, Director

By: Buddy Stinson
Buddy Stinson, Director

STATE OF GA
COUNTY OF Fulton

I, Patricia Lester, a Notary Public for said County and State, do hereby certify that WAYNE ABERNATHY, Director of Brush Creek Properties Homeowners Association, Inc. personally appeared before me this day and acknowledged the due execution by them of the foregoing instrument, for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the 7th day of June, 2002.
My Commission Expires: Patricia Lester
NOTARY PUBLIC



STATE OF GA
COUNTY OF Fulton

I, Patricia Lester, a Notary Public for said County and State, do hereby certify that WYNETTE CREEK, Director of Brush Creek Properties Homeowners Association, Inc. personally appeared before me this day and acknowledged the due execution by them of the foregoing instrument, for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the 7th day of June, 2002.
My Commission Expires: Patricia Lester
NOTARY PUBLIC



STATE OF GA
COUNTY OF Fulton

I, Patricia Lester, a Notary Public for said County and State, do hereby certify that BUDDY STINSON, Director of Brush Creek Properties Homeowners Association, Inc. personally appeared before me this day and acknowledged the due execution by them of the foregoing instrument, for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the 7th day of June, 2002.
My Commission Expires: Patricia Lester
NOTARY PUBLIC



North Carolina
Swain County

Amendment 2002-01 to By-Laws Of Brush Creek Properties Homeowners Association, Inc.

The Amendment(s) and Modification(s) to those By-Laws are as follows:

Article I, Section 1, of the By-Laws Of Brush Creek Properties Homeowners Association, Inc. shall be amended to read as follows:

"Section 1. Principal office. The principal office of the Association shall be located at c/o Coward, Hicks, & Siler, P.A., 705 West Main St., Sylva, NC 28779."

Board Of Directors Vote

	Yes	No	Not Present	Signature	Date
Wayne Abernathy	<u>W</u>	—	—	<u>Wayne Abernathy</u>	<u>3/16/02</u>
Wynnette Cheek	<u>W</u>	—	—	<u>Wynnette Cheek</u>	<u>3/16/02</u>
Buddy Stinson	<u>B</u>	—	—	<u>Buddy Stinson</u>	<u>3/16/02</u>

North Carolina
Swain County

Amendment 2002-02 to By-Laws Of Brush Creek Properties Homeowners Association, Inc.

The Amendment(s) and Modification(s) to those By-Laws are as follows:

Article III, Section 2, of the By-Laws Of Brush Creek Properties Homeowners Association, Inc. shall be amended to read as follows:

"Section 2. Annual Meetings. The annual meeting shall be held each year, usually in the month of June, at a time, date, and place designated by the Board of the Directors in the notice of the meeting, for the purposes of electing directors of the Association and for the transaction of any other business that may be properly brought before the meeting."

Board Of Directors Vote

	Yes	No	Not Present	Signature	Date
Wayne Abernathy	✓	—	—	Wayne Abernathy	3/16/02
Wynnette Cheek	✓	—	—	Wynnette Cheek	3/16/02
Buddy Stinson	✓	—	—	Buddy Stinson	3/16/02

North Carolina
Swain County

Amendment 2002-04 to By-Laws Of Brush Creek Properties Homeowners Association, Inc.

The Amendment(s) and Modification(s) to those By-Laws are as follows:

Article III, Section 9, of the By-Laws Of Brush Creek Properties Homeowners Association, Inc. shall be amended to read as follows:

"Section 9. Voting of Members. Each lot, or subdivided lot, within the Development that is subject to assessment shall be entitled to one vote, and the owner or owners of that lot shall be entitled to cast a vote appurtenant to that lot. To be eligible to vote, an owner or owners shall be current on their Association dues and assessments, having paid all billed annual dues and assessments.

Except in the election of directors as governed by the provisions of Section 3 of Article IV, the vote of a majority of the members voting on any matter at a meeting of members at which a quorum is present shall be the act of the members on that matter, unless the vote of a greater number is required by law or by the articles or by-laws of this association."

Board Of Directors Vote

	Yes	No	Not Present	Date	
Wayne Abernathy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3/16/02	Wayne Abernathy
Wynnette Cheek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3/16/02	Wynnette Cheek
Buddy Stinson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3/16/02	Buddy Stinson

North Carolina
Swain County

Amendment 2002-03 to By-Laws Of Brush Creek Properties Homeowners Association, Inc.

The Amendment(s) and Modification(s) to those By-Laws are as follows:

Article IV, Section 2, of the By-Laws Of Brush Creek Properties Homeowners Association, Inc. shall be amended to read as follows:

"Section 2. Number, term and qualifications. The number of directors constituting the Board of Directors shall be three. Each director shall hold office for a term of three years from the date of his election or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualified; whichever comes first. Directors can serve more than one elected term. Directors need not be residents of the State of North but must be a member of the Association or the spouse of a member of the Association."

Board Of Directors Vote

	Yes	No	Not Present	Signature	Date
Wayne Abernathy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>Wayne Abernathy</i>	3/16/02
Wynette Cheek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>Wynette Cheek</i>	3/16/02
Buddy Stinson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>Buddy Stinson</i>	3/16/02

North Carolina
Swain County

BOOK 258 PAGE 67B

Amendment 2002-05 to By-Laws Of Brush Creek Properties Homeowners Association, Inc.

The Amendment(s) and Modification(s) to those By-Laws are as follows:

Article VI, Section 2, of the By-Laws Of Brush Creek Properties Homeowners Association, Inc. shall be amended to read as follows:

"Section 2. Election and term. The officers of the association shall be elected by the Board of Directors and shall hold office for a term of three years from the date of his election or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualified; whichever comes first. Officers can serve more than one elected term. Officers need not be residents of the State of North Carolina but must be a member of the Association or the spouse of a member of the Association."

Board Of Directors Vote

	Yes	No	Not Present	Date	
Wayne Abernathy	<u>✓</u>	—	—	3/16/02	Wayne Abernathy
Wynnette Cheek	<u>WNC</u>	—	—	3/16/02	Wynnette Cheek
Buddy Stinson	<u>✓</u>	—	—	3/16/02	Buddy Stinson

FILED
SWAIN COUNTY NC
DIANA WILLIAMSON KIRKLAND
REGISTER OF DEEDS

FILED Mar 15, 2012
AT 01:07:06 pm
BOOK 00400
START PAGE 0439
END PAGE 0442
INSTRUMENT # 00440

EXCISE TAX (None)

Please return to BCPHOA, 4632 Buckline Drive, Dunwoody, Ga. 30338

STATE OF NORTH CAROLINA
COUNTY OF SWAIN

Ref: Deed Book 214, Page 707
Deed Book 258, Page 672

SECOND AMENDMENT TO THE BY LAWS OF
BRUSH CREEK PROPERTIES HOMEOWNERS ASSOCIATION, INC.

This *First Amendment to the By Laws of Brush Creek Properties Homeowners Association, Inc.* is made this the 15th day of March, 2012 by Brush Creek Properties Homeowners Association, Inc., a North Carolina Nonprofit Corporation.

WITNESSETH:

WHEREAS, the By Laws of Brush Creek Properties Homeowners Association, Inc., a North Carolina Nonprofit Corporation, are recorded at Deed Book 214, Page 707, in the Swain County, North Carolina Registry, and

WHEREAS, the Original By Laws has been previously amended by that *First Amendment to By-Laws of Brush Creek Properties Homeowners Association, Inc.* (hereinafter called the First Amendment), recorded in Deed Book 258 at Page 672 in the Swain County, North Carolina Registry, which is hereby incorporated as reference, and

WHEREAS, pursuant to Article IX General Provisions of the By Laws (said Article having not been changed by the First Amendment), the Original By Laws may be amended by the affirmative vote of a majority of the Board of Directors, and

WHEREAS, all of the Directors of the Brush Creek Home Owners Association, Inc., having met in a duly called regularly scheduled Board of Directors meeting on the 16th day of January 2012, and a quorum being present, and by the power vested in them to amend those By Laws, the affirmative vote of a majority of the Directors were cast in favor of this *Second Amendment to the By Laws of Brush Creek Properties Homeowners Association, Inc.*

NOW THEREFORE, the Original By Laws, as amended by the First Amendment, is hereby amended as follows:

Article I, Section 1 shall read:

Section 1. Principal office. The principle office of Brush Creek Properties Homeowners Association shall be located at 4632 Buckline Drive, Dunwoody, Ga. 30338

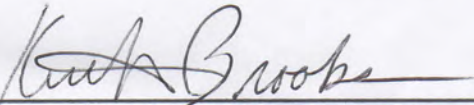
Article IV, Board of Directors, Section 2, is hereby stricken in its entirety and replaced with the following new Article IV, Section 2;

Section 2. Number, term and qualification: The 2013 regularly scheduled election of Directors shall be termed an 'initial' election. The number of directors constituting the Board of Directors shall be three, and shall serve staggered terms. The Person receiving the most votes will serve an initial term of three (3) years, the Person receiving the next highest amount of votes will serve an initial term of two (2) years, and the third Person elected will serve an initial term of one (1) year. After these initial terms are served, each subsequent term of office will be for three (3) years. In the event of two or more persons receiving the same number of votes, the current Board of Directors shall determine the initial staggered terms by vote of the Directors. Directors must be members of the Association but need not be residents of the State of North Carolina.

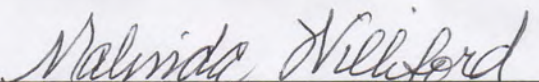
RESOLUTION OF THE BOARD OF DIRECTORS

We, the undersigned Directors of Brush Creek Property Owners Association, Inc. hereby attest that at a duly held meeting of the Board of Directors the majority of the affirmative votes were cast in favor of this *Second Amendment to the By Laws of Brush Creek Properties Homeowners Association, Inc.*

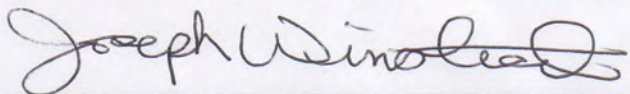
BY:



Keith Brooks - Director - Brush Creek Property Owners Association, Inc.



Malinda Williford - Director - Brush Creek Property Owners Association, Inc.




Joseph Winstead - Director - Brush Creek Property Owners Association, Inc.

(CORPORATE SEAL)



ATTEST:



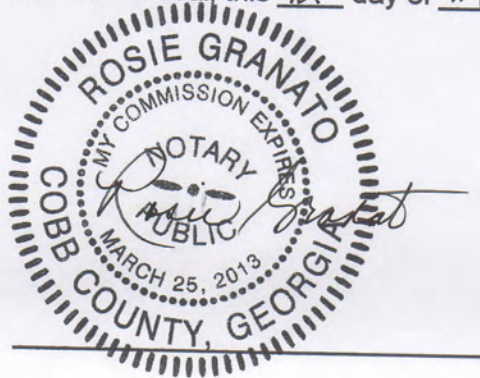
Elizabeth Ann Brooks - Secretary - Brush Creek Property Owners Association, Inc.

STATE OF GEORGIACOUNTY OF Cobb

I, ROSIE GRANATO, a Notary Public for said County and State,
 certify that Elizabeth Ann Brooks personally came before me this day and acknowledged
 that she
 is Secretary of Brush Creek Property Association, Inc. and that by authority duly given
 and as the act of the Corporation, the foregoing instrument was signed in its name by its
 Board of Directors, sealed with its corporate seal, and attested by herself as its
 Secretary.

Witness my hand and official seal, this 12 day of MARCH, 2012.

(Seal)



Notary Public: _____

My Commission Expires: 3-25-13