

Prepared by/Return to: Joseph A. Ferikes, Ferikes & Bleynat, PLLC  
21 Broad Street, Asheville, NC 28801

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

**AMENDMENT OF DECLARATION OF RESTRICTIONS  
AND AFFIRMATIVE COVENANTS FOR  
FOXFIRE MOUNTAIN HOMES**

**THIS AMENDMENT OF DECLARATION OF RESTRICTIONS AND  
AFFIRMATIVE COVENANTS FOR FOXFIRE MOUNTAIN HOMES**, (hereinafter called  
"Amendment"), is made, entered into and effective this, the \_\_\_\_\_ day of  
\_\_\_\_\_, 2015, by and between the owners of more than seventy-five  
(75%) percent of the lots ("Owners") within the FOXFIRE MOUNTAIN HOMES  
("Development").

**WITNESSETH:**

THAT WHEREAS, the original developer/declarant of the Development recorded  
a DECLARATION OF RESTRICTIONS AND AFFIRMATIVE COVENANTS in Book  
1169, at Page 551 of the Buncombe County, North Carolina Registry; and

WHEREAS, an AMENDMENT TO DECLARATION OF RESTRICTIONS AND  
AFFIRMATIVE COVENANTS FOR FOXFIRE MOUNTAIN HOMES was recorded in  
Book 1308, at Page 550 and re-recorded in Book 1310, at Page 697, of the Buncombe  
County, North Carolina Registry; and

WHEREAS, an AMENDMENT TO DECLARATION OF RESTRICTIONS AND  
AFFIRMATIVE COVENANTS FOR FOXFIRE MOUNTAIN HOMES was recorded in  
Book 1618, at Page 496 of the Buncombe County, North Carolina Registry; and

WHEREAS, an AGREEMENT TO AMEND RESTRICTIVE COVENANTS FOR  
FOXFIRE MOUNTAIN HOMEOWNER'S ASSOCIATION was recorded in Book 3864 at  
Page 679-684, of the Buncombe County, North Carolina Registry; and

WHEREAS, in addition, a MODIFICATION AGREEMENT dated February 23, 1998 was recorded in Book 2010 at Page 662; and

WHEREAS, the original developer/declarant no longer retains any development rights or voting privileges with regard to the Development; and

WHEREAS, the Owners herein wish to amend all previous covenants referred to herein in order to create one unified set of restrictive covenants as set forth hereinafter; and

WHEREAS, it is the intention of the Owners that all real property subject to all previous restrictive covenants shall remain subject to this Amendment.

**NOW, THEREFORE,** for and in consideration of the premises, and for the mutual advantage and benefit which the Foxfire Mountain Homeowners Association, Inc. and all present and future owners of Lots will receive from the sale and ownership of the Lots in a restricted subdivision, and to establish a general scheme of development for the Subdivision, the Owners hereby restrict the Subdivision as follows:

## **ARTICLE I** **DEFINITIONS**

**Definitions:** The terms defined below shall be deemed to have the meanings specified whenever they appear in this Declaration and in any instrument of the Association, unless the context specifies otherwise. These definitions shall apply whether or not the defined terms are capitalized.

"Agreement", "Declaration" or "Amendment" means this Declaration of Covenants, Conditions and Restrictions for the Subdivision.

"Assessment" means the share of the Common Expenses from time to time assessed against a Lot or Lot Owner by the Association in the manner herein provided. Such assessments may be classified as General Assessments, Special Assessments or Limited Common Assessments as herein provided.

"Association" means the association of property owners within Foxfire Mountain Homes Subdivision, the same being organized and known as Foxfire Mountain Homeowners Association, Inc. as a North Carolina non-profit corporation.

"Board of Directors" or "Board" means the board of directors of the Association, which is the governing body of the Association.

"By-laws" means the By-laws of the Association, as the same may be amended from time to time.

"Common Area(s)" means all real and personal property, together with those areas within dedicated portions of the Subdivision, which are currently or in the future may be deeded to or acquired by the Association for the common enjoyment of the Members of the Association. Without limiting the generality of the foregoing, Common Area shall include all private roads, including the easements for such private roads to the full width reflected on the Plat, and all walkways, gates, entry walls and features, and signage. The designation of any land or improvement as a Common Area will not mean or imply that the public at large acquires any easement of use or enjoyment therein. All Common Areas are to be devoted to and intended for the common use and enjoyment of the Owners and their respective guests and invitees.

"Common Expenses" means and includes actual and estimated expenses, expenditures or liabilities incurred by or on behalf of the Association to maintain and operate the Common Areas and to operate the Association for general purposes, including reasonable reserves, all as may be reasonably necessary or appropriate as determined in accordance with this Declaration, the Articles of Incorporation, By-laws and other governing documents of the Association.

"Dedication" means the act of committing a portion of the Subdivision to and in furtherance of the purposes of this Declaration.

"Dwelling" or "Townhome" shall mean and refer to the individual family living unit on an individual Lot.

"Effective Date" means the date this Declaration is filed for recording with the office of the Register of Deeds for Buncombe County, North Carolina.

"Lot" or "Property" means a separate tract of land whether or not said tract of land is improved or unimproved lying within the Development by reference to Deed Book 1169, at Page 551; Deed Book 1308, at Page 550, and re-recorded in Deed Book 1310, at page 697; Book 1618, at Page 496 ; and, Book 2010 at Page 662, all references to the Buncombe County Registry.

"Lot Owner" or "Owner" means one or more persons who owns a Lot in fee simple.

"Member" means those persons identified as members of the Association in Article III, Section 2 of this Declaration.

"Occupant" means any person, including, without limitation, any guest, customer, invitee, tenant, lessee or licensee of an Owner, occupying or otherwise using or visiting a Lot.

"Person" means any natural person, corporation, business trust, estate, joint venture, partnership, association, limited liability company, trust or other legal entity, or any combination thereof.

"Restrictions" means any section of this Declaration that mandates, prohibits, or otherwise impacts upon an Owner's use of a Lot or affects the Lot or Owner.

"Subdivision" means the Property known collectively as Foxfire Mountain or Foxfire Mountain Homes.

## **ARTICLE II**

### **Applicability**

These Restrictions shall apply to the Property, which Lots are for residential purposes only, and all homes located thereon. The Property, Subdivision and Association shall at all times be subject to the North Carolina Planned Community Act, as the same may be modified and amended from time to time.

It is the intention of this document to simplify and replace any and all previous restrictions, modifications and covenants for Foxfire Mountain Homes as previously recorded or modified in:

1. DECLARATION OF RESTRICTIONS AND AFFIRMATIVE COVENANTS in Book 1169, at Page 551 of the Buncombe County, North Carolina Registry;
2. AMENDMENT TO DECLARATION OF RESTRICTIONS AND AFFIRMATIVE COVENANTS FOR FOXFIRE MOUNTAIN HOMES recorded in Book 1308, at Page 550 and re-recorded in Book 1310, at Page 697, of the Buncombe County, North Carolina Registry;
3. AMENDMENT TO DECLARATION OF RESTRICTIONS AND AFFIRMATIVE COVENANTS FOR FOXFIRE MOUNTAIN HOMES recorded in Book 1618, at Page 496 of the Buncombe County, North Carolina Registry;
4. AGREEMENT TO AMEND RESTRICTIVE COVENANTS FOR FOXFIRE MOUNTAIN HOMEOWNER'S ASSOCIATION recorded in Book 3864 at Page 679-684, of the Buncombe County, North Carolina Registry; and
5. MODIFICATION AGREEMENT dated February 23, 1998 recorded in Book 2010 at Page 662.

It is further the intention of this document to not increase or decrease the property subject to these restrictions, but to have these restrictions be applicable to all previously included property now known as Foxfire Mountain Homes as defined in.

1. DECLARATION OF RESTRICTIONS AND AFFIRMATIVE COVENANTS in Book 1169, at Page 551 of the Buncombe County, North Carolina Registry;
2. AMENDMENT TO DECLARATION OF RESTRICTIONS AND AFFIRMATIVE COVENANTS FOR FOXFIRE MOUNTAIN HOMES recorded in Book 1308, at Page 550 and re-recorded in Book 1310, at Page 697, of the Buncombe County, North Carolina Registry;
3. AMENDMENT TO DECLARATION OF RESTRICTIONS AND AFFIRMATIVE COVENANTS FOR FOXFIRE MOUNTAIN HOMES recorded in Book 1618, at Page 496 of the Buncombe County, North Carolina Registry;
4. AGREEMENT TO AMEND RESTRICTIVE COVENANTS FOR FOXFIRE MOUNTAIN HOMEOWNER'S ASSOCIATION recorded in Book 3864 at Page 679-684, of the Buncombe County, North Carolina Registry; and
5. MODIFICATION AGREEMENT dated February 23, 1998 recorded in Book 2010 at Page 662.

### **ARTICLE III**

#### **Homeowner's Association**

Section 1. Homeowner's Association. Owners have previously established a property owner's association known as "Foxfire Mountain Homeowners Association." which is now incorporated as a North Carolina Non-profit Corporation known as Foxfire Mountain Homeowners' Association, Inc. which shall remain in full force and effect and be responsible for the following purposes: (1) to provide for maintenance and management of all Common Areas located within the Development (2) to provide for maintenance of any and all parcels conveyed to the Association by anyone as Common Areas; (3) to maintain the Common sewer lines located within the Development, (4) to provide for the enforcement of these Restrictions; (5) to provide for any other matters which affect or may affect the Lots or the Lot Owners; (6) to perform such acts and functions as are provided in the Articles of Incorporation, as amended, of the Association, (7) to make and enforce rules and regulations governing the Owners' use and occupancy of Lots, (8) to institute and defend civil actions against Lot Owners and other Persons in connection with the enforcement of this Declaration, (9) to assess, collect and expend amounts sufficient to accomplish the foregoing, (10) to exercise all

other powers that may be necessary and proper for the governance and operation of the Association and Development; and (11) to exercise all other powers set forth and in accordance with the Act.

Section 2. Membership and Voting. The Association shall initially have one (1) class of membership - Class "A":

Class "A". Class "A" Members shall be all Owners. A Class "A" Member shall be entitled to one (1) equal vote for each Lot owned by such Member. There shall be one (1) vote per Lot. In any situation where there is more than one (1) Owner of a particular Lot, the vote for such Lot shall be exercised as such Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it. An absent Owner may exercise its vote by proxy.

Section 3. Board of Directors. The Board of Directors, and such officers as may be elected or appointed in accordance with the Articles of Incorporation and Bylaws of the Association, shall conduct the affairs of the Association. The Board of Directors may also appoint committees and managers or other employees and agents who shall, subject to the general direction of the Board of Directors, be responsible for the day to day operation of the Association.

## **ARTICLE IV**

### **Maintenance and Architectural Control of Common Area**

Section 1. Maintenance.

(a) By the Association. Except as specifically limited herein, the Association shall be responsible for the maintenance and repair of all common sewer lines located along the roadway.

Section 2. Architectural Control. No Owner, occupant, lessee, or any other person may make any encroachment onto the Common Area, exterior change, alteration, or construction, nor erect, place, or post any sign, object, light, or thing on the exterior of any structure within the Common Area ("Exterior Alteration") without first obtaining the written approval of the Board of Directors of the Association or its designee.

Once completed in accordance with this Section, all Exterior Alterations shall become the property of the Association, and shall be maintained and repaired by the Association, in the discretion of the Association and as otherwise provided in this Declaration.

## **ARTICLE V**

### **Assessments**

Section 1. Obligation for Assessments. The Owner of each Lot, their heirs, personal representatives, successors, and assigns is deemed to covenant and agrees to pay to the Association Assessments and charges as herein provided. All such Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the provisions of this Article V, shall be a continuing lien upon each Lot against which such Assessment is made. Furthermore, each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the Assessment became due and payable. The personal obligation for delinquent Assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent Assessments shall continue to be a lien upon such Lot.

Section 2. Use of Assessments. The Assessments levied by the Association shall be used to improve, maintain and repair the Common Areas, to pay the Common Expenses of the Association, to pay the cost of any insurance purchased by the Association, to promote the recreation, health, safety and welfare of the Members, to pay taxes levied upon the Common Areas, and for such other purposes in furtherance of the Association which are not inconsistent with the Act, this Declaration, or the Articles of Incorporation and Bylaws of the Association.

Section 3. Annual General Assessment. The Board shall establish an annual budget for ratification by the Lot Owners in accordance with the Act in an amount sufficient for maintenance of the Common Elements and reasonable capital reserves as determined by the Board. Following ratification of the annual budget by the Lot Owners, the Association shall levy the annual General Assessment against each Lot consistent with the annual budget, which annual General Assessment shall be payable annually or in installments as determined by the Board.

Section 4. Special Assessment. In addition to other Assessments authorized hereunder, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, or for such other reasons as are provided in this Declaration, the Articles of Incorporation or Bylaws, or the Act. The Association may levy and impose Special Assessments upon a majority vote of the Members as provided in these Restrictions and the Bylaws of the Association. The purposes for which Special Assessments may be levied include, but

are not limited to, providing funds to pay Common Expenses which exceed the General Assessment fund then on hand available to pay the same, and for funding capital improvements and other extraordinary expenses.

## **ARTICLE VI**

### **Lien for Assessments**

Any Assessment, if not paid within thirty (30) days after the date such Assessment is due, together with interest at the maximum allowable rate pursuant to the Act and other applicable law, costs of collection, court costs, and reasonable attorneys fees shall constitute a lien against the Lot upon which such Assessment is levied. The Association shall be entitled to all remedies available to it pursuant to the law in connection with the enforcement of the Association's lien and the collection of all Assessments due hereunder. Without limiting the foregoing, the Association may record notice of the same in the Office of the Clerk of Superior Court of Buncombe County, North Carolina or file a suit to collect such delinquent Assessments and charges. The Association may file Notice of Lis Pendens, bring an action at law against the person or persons personally obligated to pay the same, and/or bring an action to foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein.

## **ARTICLE VII**

### **Easements, Utility Contracts and Roadways**

Section 1. Utility and Drainage Easements. Utility and drainage easements affecting all Lots in the Subdivision are reserved for all utilities and drainage fields in existence within the Subdivision and upon any Lot or as reflected on the Plats, for the installation, repair and maintenance of utilities and drainage facilities.

Section 2. Roadway Easements. Appurtenant to each Lot is an easement for ingress and egress on, over, and across all private roadways located on or to be located on a portion of the Subdivision, which private roadways extend to publicly dedicated streets. Roadways, other than those that have been accepted by applicable governmental authorities for maintenance, constitute Common Areas and shall be maintained, insured, and repaired by the Association in accordance with this Declaration.

Section 3. Adjacent Property. No easements, right of way or rights of access shall be deeded, granted or in any way provided by any Owner to any other person, firm or corporation through or over any portion of the Subdivision without the prior written permission of the Association.



Section 4. General Easements. An easement is hereby reserved and/or granted in favor of the Association in, on, over and through the Common Areas and Lots for the purpose of maintaining, cleaning, repairing, improving, regulating, policing, replacing and otherwise dealing with the Common Areas and Lots, including all improvements thereon as required or permitted by this Declaration, the Bylaws, Articles, and Rules and Regulations of the Association.

Section 5. Easements to Run With Land. All easements and rights described in this Article IX are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding upon any Owner, purchaser, mortgagee, and other Person now or hereafter having an interest in the Subdivision, or any part or portion thereof.

## **ARTICLE VIII**

### **Restrictions on Use**

Section 1. Residential Use. All Lots shall be known and described as residential Lots and no part of any Lot shall be used for any type of business or commercial endeavor. Without limiting the generality of the foregoing, the following specific uses shall be specifically prohibited: institutional uses, including without limitation, group homes, day care centers, lodges, inns, and bed and breakfasts. This restriction shall not prohibit a home office or occupation conducted from a home on a Lot, so long as it does not have customers, suppliers, delivery trucks or clients coming to the Lot or otherwise increasing traffic within the Subdivision, and which does not otherwise violate any other provision of these Restrictions.

Section 2. Division of a Lot. No Lot shall be re-subdivided.

Section 3. Permanent Structures. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling. No single family residence shall have a living area of less than 1800 square feet.

Section 4. Temporary Structures. No structures of a temporary character, including trailers, mobile homes, tents or shacks, shall be placed upon any portion of the Subdivision at any time; provided, however, that this shall not prohibit temporary shelters used by builders of Lot improvements during construction.

Section 5. Trash and Nuisances. No noxious or offensive activities shall be carried out upon any Lot, nor shall anything be done thereon which is or is likely to become an annoyance or nuisance. All routine household garbage and trash shall be deposited in receptacles approved by the Town of Woodfin, North Carolina. No such garbage shall be stored or maintained except in such designated areas, and no Lot shall be used in whole or in part for the placement, dumping or storage of rubbish, garbage, junk or refuse.

Section 6. Signs. Except as expressly permitted hereby, no sign of any kind shall be displayed to the public view on any Lot (whether within or without a structure), except one sign of not more than six (6) square feet advertising the property for sale or for rent, and signs of similar dimension used by a builder to advertise the Lot during the construction and sales period. House number signs and owner names are allowed in addition to the above so long as the area of any such sign does not exceed two (2) square feet.

Section 7. Rentals and Vacation Rentals. Long term rentals of ninety (90) days or more in duration are permitted without prior approval of the Association. Rentals no shorter than seven (7) days, nor longer than eight-nine (89) days in duration must be pre-approved in writing annually by the Association. Short-term rentals of less than seven (7) days in duration are not allowed. All rentals must comply with N.C.G.S. Chapter 42 (*Landlord and Tenant*) and/or Chapter 42A (*Vacation Rental Act*).

Section 8. Livestock and Pets. No cows, pigs, goats, chickens, sheep, horses, llamas or other animals generally considered livestock may be kept on any Lot. No commercial animal raising or boarding of any type shall be permitted on any Lot. Only animals which are generally recognized as domestic pets, not to exceed a total of two (2) per Lot (exclusive of fish, gerbils or other like pets kept indoors at all times), may be kept and maintained upon a Lot. All pets must be kept under the control of their Owners and kept in such a manner so as not to become a nuisance or annoyance to other residents of the Subdivision. All Lot Owners shall abide by all applicable statutes, regulations, and ordinances related to the keeping of domestic pets within the Subdivision.

Section 9. Hunting and Weapons. No hunting shall be allowed at any place within the Subdivision, nor shall any firearms or other weapons of any kind be discharged within the Subdivision.

Section 10. Motorized Vehicles. No unlicensed or inoperable vehicles may be operated, placed, or otherwise permitted within the Subdivision. For purposes of this section, the term "inoperable vehicle" means any vehicle which cannot move under its own power. All motor vehicles shall be maintained in proper operating condition so as not to be a nuisance by noise, exhaust emissions or otherwise. No motor vehicles shall be driven within the Subdivision, except on driveways and on the roadways of the Subdivision, and may not be operated within the Subdivision for recreational purposes. This section shall not prevent the private use of ATV's or golf cart type vehicles to be used on an Owners' own property.

Section 11. Vehicle Parking and Storage. No person shall wash, repair, or perform maintenance on any vehicle within the Subdivision except wholly within their own lot. No commercial truck with a gross payload capacity in excess of one (1) ton, or a tractor and trailer cab or trailer shall be kept or allowed to remain anywhere within the Subdivision. No vehicles shall be allowed to remain parked anywhere within the

Subdivision for more than twenty-four (24) hours except designated parking areas or wholly within a lot.

## **ARTICLE IX**

### **Insurance**

Association Insurance. The Association, acting through its Board or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance and liability insurance if reasonably available, and otherwise in accordance with the Act. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Act that the loss is the result of the negligence or willful conduct of one (1) or more Lot Owners, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lot(s) pursuant to Article V.

In addition to other insurance required by this Section, the Association shall obtain, as a Common Expense, worker's compensation insurance if and to the extent required by law, directors' and officers' errors and omissions and liability coverage, if reasonably available, and flood insurance, if advisable.

## **ARTICLE X**

### **Enforcement and Amendment**

Section 1. Restrictions Appurtenant to the Land. The foregoing covenants are intended to and shall be appurtenant to and run with the land and shall be kept by the parties hereto, and upon conveyance of a Lot, or if same shall be acquired by inheritance, devise or otherwise such covenants, restrictions and limitations shall be binding and in full force and effect as running with the land, and the said Grantees, their heirs, devisees, executors, administrators, successors and assigns, fully acknowledge the same and agree to keep and perform the same forever.

Section 2. Period of Enforcement. The within covenants are to run with the land and shall be binding on all parties and all persons claiming under them until the 31st day of December, 2034, at which time said covenants shall be automatically extended for successive periods often (10) years unless terminated or modified, in whole or in part, by the affirmative Member vote representing at least two-thirds (2/3) of those Lots entitled to vote.

Section 3. Enforcement. Enforcement hereof shall be by proceeding at law or in equity commenced by any Lot Owner or by the Association against any person or

persons violating or attempting to violate any covenant either to restrain violation and/or to recover damages. Should any person or persons be found in violation of any part hereof (including but not limited to the obligation to pay Assessments), the Bylaws, the Housing Approval Requirements, or any duly adopted Rules, in addition to all other remedies available to the Association, the Association shall have the right to assess a fine in an amount not to exceed the maximum allowable under the Act per violation against any Owner, after such Owner has been given notice of the violation and an opportunity to be heard with respect to the violation in accordance with such policies and procedures as may be adopted from time to time by the Board of Directors as may be set forth in the Bylaws. Upon a violation of these Restrictions by a Lot Owner for nonpayment of any General Assessment, Special Assessment, Individual Assessment, or Fine Assessment, the Association shall have the right to suspend the offending Lot Owner's voting rights in the Association and the use by such Owner, their agents, family, employees, and invitees of any Common Areas in the Subdivision for any period during which an Assessment against the Lot remains unpaid. Specifically, and without limiting the generality of the foregoing, in addition to any other remedies available to the Association for the enforcement of this Declaration, or the Housing Approval Requirements, the Association shall be entitled to take any action against the Lot Owner as provided in the Planned Community Act.

Section 4. Severability. Invalidation of any one of these covenants by judgment or court order shall not affect any of the other provisions which shall remain in full force and effect.

Section 5. Amendment. This Declaration may be modified, amended or terminated in whole or part by the affirmative Member vote of the Association representing at least two-thirds (2/3) of the Lots entitled to vote.

(remainder of page intentionally left blank)

*Signature Pages to follow*

IN WITNESS WHEREOF, the Owners have caused the due execution of the foregoing Amendment of Declarations of Restrictions for Foxfire Mountain Homes to be effective as of the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, personally appeared before me this day and acknowledged the execution of the foregoing for the purposes therein expressed.

WITNESS my hand and official stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC

Printed Name: \_\_\_\_\_

My commission Expires:

\_\_\_\_\_

*Notarial Stamp/Seal →*