

**DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS,
RESERVATIONS, TERMS AND CONDITIONS GOVERNING FIREFLY
COVE, A MASTER PLANNED COMMUNITY, IN RUTHERFORD
COUNTY, NORTH CAROLINA**

THIS DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS, RESERVATIONS, TERMS AND CONDITIONS, made and entered into this the 30th day of November, 2006, by and between **FIREFLY COVE, INC.**, a Florida Corporation, hereinafter referred to as "Declarant", and the future owners of properties within the Firefly Cove planned community located off Boys Camp Road in Rutherford County, North Carolina (hereinafter "the Subdivision"), as hereinafter described and as redefined and amended in the future to include additional phases of the Subdivision.

WITNESSETH:

WHEREAS, Declarant is the developer and owner of that certain 53.70 acre tract, more or less, located in Rutherford County, North Carolina and described in Deed Book 899 at Page 880, Rutherford County Registry (hereinafter "the Property"); and

WHEREAS, the Declarant plans to develop a master planned community on some or all of the Property with lots, neighborhoods and common areas along with supporting infrastructure to be locally known as Firefly Cove; and **WHEREAS**, Declarant desires for the benefit of future purchasers of lots or properties making up the Subdivision that Firefly Cove shall be developed as a restricted area and used exclusively as hereinafter set forth.

NOW THEREFORE, in consideration of the premises and for the advantage which the Declarant and future owners of lots or properties in the Subdivision will receive from the sale and ownership of restricted land, Declarant and its successors and assigns do hereby covenant and agree with all other persons, firms, or corporations now owning or hereafter acquiring any portion of Firefly Cove, for full value received, and the landowner covenants and agrees upon acceptance of a deed or deeds of conveyance to any of the Lots as hereinafter defined or properties making up the Subdivision that Firefly Cove is hereby subjected to the following covenants and restrictions as to the use and occupancy thereof, running with the land by whomsoever owned, to wit:

ARTICLE I

PURPOSE; LAND SUBJECT TO RESTRICTIONS

The primary purpose of these covenants and restrictions and the foremost consideration in the origin of the same has been the creation of a planned community which is aesthetically pleasing, functionally convenient and environmentally-sound; attracting residents seeking privacy and comfort in a beautiful environment. Subject to the Special Declarant Rights as hereinafter defined, the Declarant submits the land described on Exhibit A attached hereto and incorporated herein by reference to the covenants, restrictions, easements, reservations, terms and conditions contained in this Declaration and to the Act as hereinafter defined. The Declarant reserves the right to submit additional platted Lots as hereinafter defined or other properties to the general scheme of development set forth in this Declaration by the recording of a supplemental or amended Declaration.

ARTICLE II

DEFINITIONS

The following are terms that shall be considered as defined terms under this Declaration and the same definition shall be applicable whether the word is shown as singular or plural, capitalized or not.

1. **"Act"** shall mean the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes and amendments thereto.
2. **"Annexed Properties"** shall mean any tract of land not included within the boundaries of the Subdivision as described on Exhibit A attached hereto and incorporated herein by reference which may be added to Firefly Cove planned community as provided in Article VIII below.
3. **"Architectural Review Committee" or "ARC"** shall mean the architectural review committee established by the Master Association as hereinafter defined (or as delegated to a sub or Neighborhood property owners' association or committee) to review and approve structures, improvements or alterations to a Lot as hereinafter defined pursuant to Article VI hereof
4. **"Board"** shall mean the Board of Directors of the Master Association as hereinafter defined and the Executive Board referred to in the Act.

5. **"Bylaws"** shall mean the Bylaws of the Master Association and any amendments thereto. The original Bylaws of the Master Association are on file with the Secretary of the Master Association and incorporated herein by reference.

6. **"Common Elements"** shall mean: i) the road rights of way (s) depicted on any recorded plat of the Subdivision providing access to the Lots; ii) any real estate owned or leased by the Master Association, other than a Lot; and iii) those areas expressly designated by the Declarant as "Common Elements" or "Common Areas" on recorded Plats of Firefly Cove for the use and enjoyment of all owners of Lots within the Subdivision except as may be expressly limited by Declarant in writing for specific Neighborhoods or Lots within Firefly Cove as referred to below; provided, that property shall not be irrevocably dedicated as a Common Element until said property is described as a Common Element (i) in a Supplemental Declaration filed in the Rutherford County Registry; or (ii) in an instrument of conveyance as hereinafter set forth. Prior to the expiration of the Declarant Control Period as provided below, the Declarant shall convey by Special Warranty or Non-Warranty deed or by an easement instrument ownership and/or use of the Common Elements to the Master Association or to a Neighborhood property owners association. **PROVIDED HOWEVER**, before the recording, as provided above, of the Supplemental Declaration or the instrument of conveyance, the Declarant has the right to remove, withdraw or alter any portion of the property denoted as "Common Elements" or "Common Areas" on a recorded Plat or on any unrecorded plat, survey, drawing, sketch or site plan, including, but not limited to, road rights of way, and subject said area to its exclusive dominion whether for future sale or to build upon and without the need for any Lot owner approval or association consent, including the right to enlarge, reduce and/or modify the boundaries of any Common Element. "Common Elements" do not include those areas denoted as "Future Development" or as "Reserved" or those areas not labeled on the plats of record for Firefly Cove. Subject to Special Declarant Rights as hereinafter defined, the governance, management and/or control of the Common Elements shall reside with the Master Association unless otherwise provided in writing by Declarant or unless such governance, management and control has been delegated or dedicated to a Governmental Entity as hereinafter defined. Common Elements are more fully described in Article V below.

7. **"Common expenses"** shall mean the expenditures made by or financial liabilities of the Master Association, together with allocations for reserves, if any.

8. **"Community-Wide Standard"** means the standards of conduct, architecture, maintenance or other activity generally prevailing in the Firefly Cove planned community. Such standards may be more specifically determined and established by the Board or any committee(s) delegated such responsibility by the Board and such standards may vary depending, in part, on the characteristics of each Neighborhood within the Subdivision as defined below.
9. **"Firefly Cove" or "Subdivision"** shall mean the master planned community pursuant to N.C. Gen. Stat. §47F-1-103(28)(v) made up of Lots, Neighborhoods, Common Elements and infrastructure located within the boundaries described on Exhibit A attached hereto and incorporated herein by reference and described on future recorded plats and Supplemental or Amended Declarations executed by the Declarant at such times and in such phases as determined in Declarant's sole discretion.
10. **"Declarant"** shall mean Firefly Cove, Inc., a Florida corporation, its successors and/or assigns; including any person which succeeds to any Special Declarant Rights as set forth herein and in the Act.
11. **"Declarant Control Period"** shall mean the time in which Declarant has to exercise certain exclusive rights such as, but not limited to, Special Declarant Rights as hereinafter defined. The Declarant Control Period shall be the earlier of (i) twenty-five (25) years after the date of the recording of this Declaration, (ii) when all of Firefly Cove (platted at such times and in such phases as determined in Declarant's sole discretion) has been sold or transferred to parties other than a Declarant, or (iii) such earlier time as determined in Declarant's sole discretion by the recording of a written instrument in the Rutherford County Registry executed by Declarant and expressly terminating or modifying the Declarant Control Period. **THE FUTURE OWNERS OF LOTS IN FIREFLY COVE ACKNOWLEDGE, BY THEIR PURCHASE OF SAID PROPERTY, THE REASONABLENESS OF THE ABOVE TIME PERIODS.**
12. **"Declaration"** shall mean this Declaration of Covenants, Restrictions, Easements, Reservations, Terms and Conditions governing Firefly Cove and any amendments thereto.
13. **"Future Development"** or **"Reserved Areas"** shall mean any parcel of land owned by the Declarant depicted on Site Plans or other advertising material or on any plat or survey for Firefly Cove as "Future Development", "Reserved" or not designated at all as Lots as hereinafter defined or Common Elements,

which property may or may not be included within the Subdivision as determined in the Declarant's sole discretion and wherein the Declarant reserves the right to impose use restrictions that may differ from those set forth in this Declaration.

14. **"Governmental Entity"** shall mean any and all federal, state or local governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of Firefly Cove as provided by law or in written agreements with the Declarant.

15. **"Limited Common Elements"** shall mean a portion of the Common Elements within Firefly Cove designated by the Declarant or the Master Association, in their discretion, as being either 1) for the exclusive use of one or more but fewer than all of the Lots; or ii) benefiting, either directly or indirectly, one or more but fewer than all of the Lot Owners. "Limited Common Elements" may be designated by the Declarant on plats for the Subdivision or other recorded instrument and may include, but not be limited to, shared driveways or Neighborhood amenities. The Board may designate Limited Common Elements as reflected in the minutes of any Master Association Board meeting; provided, however, such designation must receive the written consent of the Declarant during the Declarant Control Period.

16. **"Lot"** shall mean a physical portion of the Subdivision designated with a number on a recorded plat, survey or plan of Firefly Cove, intended for separate ownership or occupancy by an Owner, and expressly made subject to the terms and conditions of this Declaration by a recorded instrument. A Lot designated on a recorded plat, survey or plan of Firefly Cove shall be deemed "Improved" when a residence has been constructed thereon and a permit authorizing occupancy has been issued by the applicable Governmental Entity. All other Lots designated on a recorded plat of Firefly Cove shall be deemed "Unimproved". A condominium unit, if any, located on a parcel of land within Firefly Cove shall be deemed a "Lot" for purposes of this Declaration.

17. **"Lot Owner" or "Owner"** shall mean and refer to the owner or owners as shown by the real estate records in the Rutherford County Registry of fee simple title to any Lot situated within Firefly Cove. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.

18. **"Master Association"** shall mean the Firefly Cove Property Owners Association, Inc., its successors and/or assigns. The Master Association shall have the powers of an "owners association" as provided in the Act (N.C. Gen. Stat. §47F-2-120, §47F-3-102).
19. **"Member"** shall mean each owner or owners of a Lot who shall also then be a Member of the Master Association for such period of ownership. If a Lot is owned by more than one person, then such persons collectively shall be the Member and shall be entitled to only one vote. A "Qualified Voting Member" shall mean a Member who is designated as set forth in the Bylaws as the Voting Member for a Lot who is not otherwise disqualified from voting as provided in Article III, Section 1(e) below.
20. **"Neighborhood"** shall mean a separately designated residential area within Firefly Cove, whether or not governed in part by a separate property owners association, in which the Owners of Lots may have common interests other than those common to all Members of the Master Association. Within a Neighborhood, there may be different rules, regulations and/or restrictions that apply or modifications to the Community-Wide Standard as determined in the discretion of the Declarant or Board or as otherwise set forth in amendments to this Declaration or Supplemental Declarations. Examples of Neighborhoods within Firefly Cove include the Pinnacle Homes, Cove Estates, Hillside Homes, Village Cottages, and Lake Front Homes.
21. **"Plat"** shall mean any existing or future plat of the Subdivision signed by the Declarant or its authorized agent and placed of record in Rutherford County Registry, together with all amendments thereto, as approved by the Governmental Entity, if any, having authority to regulate subdivisions.
22. **"Reasonable attorneys' fees"** shall mean attorneys' fees as allowed by the Act.
23. **"Rules and Regulations"** shall mean the procedural and substantive requirements adopted by the Board in accordance with the Bylaws and imposed upon Members of the Master Association, concerning the use of any Lot or Common Element. Unless provided otherwise in writing, the Declarant reserves, during the Declarant Control Period, the right to consent in writing to the Rules and Regulations prior to the application of such restrictions on Lot Owners. A copy of the Rules and Regulations shall be kept on file with the Secretary of the Master Association.

24. **"Single Family"** shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption or having a guardian/ward relationship created by decree of a Court of competent jurisdiction, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

25. **"Single-Family Residence"** shall mean a dwelling occupied by a single-family as defined above and constructed in accordance with the restrictions and conditions set forth in Article VI hereof. Single family residences within Firefly Cove may include, without limitation, attached single family dwelling units such as townhouses or patio homes or residential condominiums.

26. **"Single-Family Residential Use"** shall mean the occupation or use of a Single Family Residence in conformity with this Declaration. **TIME SHARES AND COOPERATIVES ARE STRICTLY PROHIBITED AND EXCLUDED FROM THE DEFINITION OF SINGLEFAMILY RESIDENTIAL USE.**

27. **"Special Declarant Rights"** shall mean rights reserved during the Declarant Control Period for the benefit of the Declarant including, but not limited to, the right (i) to construct and/or complete improvements indicated on plats and plans filed with this Declaration or any supplemental or amended Declaration; (ii) to add properties to Firefly Cove as provided in Article VIII below (iii) to designate, withdraw or alter Common Elements as provided in Article 116. above; (iii) to re-designate a previously designated Lot as an easement or right of way for access and/or utilities to property whether or not owned by Declarant and whether or not outside Firefly Cove and regardless of the use of the benefiting parcel; (iv) to remove properties from Firefly Cove as provided in Article VIII below; (v) to maintain sales offices, management offices, signs advertising Firefly Cove and models; (vi) to use or grant easements through the Common Elements for the purpose of accessing properties or making improvements in Firefly Cove or areas outside Firefly Cove, whether or not said areas are added to the Subdivision and regardless of the use of the benefiting parcel; (vii) to use or grant easements, without limitation, that are reserved to the Declarant in Article III, Section 6 below; (viii) to designate (or re designate) streets within the Subdivision as private and maintained by the Master Association or Neighborhood association or for dedicated public use to be maintained by a Governmental Entity; (ix) to make the Subdivision part of a larger planned community or group of planned communities; (x) to make

the planned community subject to a master association; (xi) to appoint or remove any one or more members of the Board of Directors of the Master Association during the Declarant Control Period as provided in the Bylaws; (xii) to exercise special voting rights as may be provided in the Bylaws; (xiii) to modify, amend, change, vary or release all or any part of this Declaration; (xiv) to consent to any amendments proposed by the Lot Owners; (xv) to approve in writing any changes to this Declaration, Rules and Regulations or architectural standards; or (xvi) any other rights provided Declarant in this Declaration or by North Carolina law, including, but not limited to, the Act. The above rights shall also be deemed "development rights" as referred to in the Act (N.C. Gen. Stat. §47F-1-103(28)).

28. **"Structure"** shall mean any building, (including, but not limited to, house, barn, garage), lampposts, driveway lights, fence, wall, swimming pool, tennis court, detached antennae, satellite dishes or other receivers/transmitters, mailboxes, fuel tanks, septic systems, dog lots, play sets, and sports equipment or any other thing artificially erected or installed on or under a Lot.

ARTICLE III

PROPERTY RIGHTS AND EASEMENTS

Section I. **Owner's Easements of Enjoyment to Common Elements.**

Subject to the provisions of this Declaration and the Rules and Regulations established by the Board, every Owner of a Lot shall have a right and easement of enjoyment in and to the Common Elements, existing now or in the future, which shall be appurtenant to and shall pass with the title to any Lot, subject to:

(a) the right of the Board to convey any Common Element that is irrevocably dedicated as provided in Article II above or subject same to a security interest with a concurring vote of 80% of the Members of the Master Association;

(b) the right of the Board to lease or grant easements or licenses of use over the Common Elements without a vote of the Members of the Master Association;

(c) the right of the Board to charge and collect usage fees for a Common Element recreational facility, if any, at the time that a Member and/or guest or Non-member intends to use such facility;

(d) the right of the Board to dedicate any road and utility rights of way within Firefly Cove to any Governmental Entity or public utility without a vote of the Members of the Master Association;

(e) the right of the Board, after an opportunity for a hearing as provided in the Bylaws, to suspend voting rights in the Master Association and the use of the Common Elements (except for access to a Lot) by an Owner, his tenant or their invitees for any period during which any assessment against his Lot remains unpaid or for any infraction of the use restrictions contained in this Declaration or the Rules and Regulations promulgated by the Board;

(f) the right of the Board to reasonably regulate, locate, and direct access routes and to designate parking locations;

(g) the right of Declarant, as determined in the Declarant's sole discretion, to grant and reserve unto itself, its successors and/or assigns the right of access for road and utility purposes over or under the Common Elements or Lots owned by Declarant to any parcel of land, whether located within or outside the Subdivision, whether owned or not owned by the Declarant and regardless of the use of the benefiting parcel; and

(h) Special Declarant Rights as hereinabove defined, including, but not limited to, the right of Declarant to alter Common Elements or to add additional properties to be subject to this Declaration and to allow the owners of those properties to become Members of the Master Association.

Section 2. Waiver of Unlimited Access.

Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, does waive all rights of unlimited and uncontrolled access, ingress to and egress from such Lot, and agrees that:

(a) To attempt to provide a more secure environment, access, ingress, and egress to and within Firefly Cove may be controlled, restricted, and limited to exclude uninvited members of the general public; and

(b) Access, ingress and egress from any Lot shall be limited to the roads, walkways, and paths designated as Common Elements on the Plat. Provided, however, that subject to the provisions of this Declaration, vehicular and pedestrian access to and from all Lots shall be available at all times.

Section 3. Gates and Attendants; Restricted Access to Lake Lure.

Declarant and/or the Board may, but shall not be required to, provide a gate(s) at or near the entrance(s) to Firefly Cove which gate(s) may or may not be supervised by one or more attendants for the purpose of limiting vehicular and pedestrian access to the Subdivision. In addition, the Declarant and/or the Board may establish restricted access points to and from the Lake Lure water body.

Section 4. Easements to Government Entities.

Subject to the provisions of this Declaration, Declarant does hereby grant a permanent, perpetual and non-exclusive easement to each department, branch or agency of any Governmental Entity, and to any agents or employees of said Governmental Entity, over, across and through all roads within Firefly Cove, now or in the future, for the purpose of performing such duties and activities as may be necessary or desirable for the common welfare of all Owners or for the Master Association which may include, but are not limited to, duties and activities related to law enforcement, fire protection, garbage collection, mail delivery and medical and emergency services.

Section 5. Easements to Utilities.

Subject to the provisions of this Declaration, Declarant does grant to the Master Association, to Duke Power and to any other utilities designated in writing by the Declarant, and their successors and/or assigns, a permanent, perpetual and non-exclusive easement over, across, under and through:

(a) all Common Elements;

(b) 10 feet inside the boundaries of all Lots; and

(c) as shown on the Plat now or in the future, for the purpose of installing, replacing, constructing, maintaining, and operating utilities or utility systems which are necessary or desirable for the use of any part of Firefly Cove which

include, but are not limited to, publicly or privately owned and operated electrical service, communication service, water service, sewer service, gas service, cable television, drainage systems, pipes, lines, conduits, storage devices, equipment, machinery or other devices necessary to the provision of such utility services. The easements established, reserved and granted herein shall include the right, where reasonably necessary, to cut and remove trees and other vegetation, to dig, excavate fill and take any other action necessary to provide for the installation, maintenance, replacement, relocation or operation of any utility service. Provided, however, that the easements herein granted or reserved shall not cause any undue interference with the use or occupancy of any Lot and further, that Declarant and/or the Master Association shall use good faith efforts to attempt to cause any utility provider, utilizing this easement, to repair any damage caused by such utility. The above services may require an initial payment and/or a continuing monthly payment to the utility provider by either some or all of the Lot Owners. All utility services from a Lot line to the residence shall be installed underground.

Section 6. **Easements Reserved to Declarant.**

(a) **Easements for Access.** Declarant reserves to itself, its successors and/or assigns, a perpetual alienable right to provide access over and across the roads and other Common Elements, if any, or across any Lot or parcel owned by Declarant to any parcels of land, whether within or outside the Subdivision, whether owned or not owned by Declarant and regardless of the use of the benefiting parcel.

(b) **Easements for Utilities.** The Declarant reserves to itself, its successors and/or assigns the utility easements referred to in Section 5 above and Declarant, in its sole discretion, may make such utility easements appurtenant to any parcel of land whether within or outside the Subdivision, whether owned or not owned by Declarant and regardless of the use of the benefiting parcel.

(c) **Easements for Stormwater and Drainage.** Declarant, its successors and/or assigns, may cut on any Lot or Common Element drainage channels or utilize existing natural channels for surface or storm water wherever and whenever such action may appear to Declarant to be necessary in order to maintain proper drainage and reasonable standards of health, safety and appearance. Declarant, in its sole discretion, may make such drainage easements appurtenant to any parcel of land whether within or outside the Subdivision,

whether owned or not owned by Declarant and regardless of the use of the benefiting parcel.

(d) **Easements for Vegetative, Pest or Fire Control.** Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on and over and under all areas within the Subdivision to dispense pesticides and take other action which in the opinion of Declarant is necessary or desirable to control insects, vermin and undesirable vegetation. The Declarant reserves the right to cut fire breaks and other activities on, over and under all areas within the Subdivision which in the opinion of Declarant are necessary to control fires. Declarant, however, is under no duty to take such actions as herein above provided.

(e) **Easements for Trails.** Declarant reserves unto itself, its successors and/or assigns, the right to locate trails, if any, across any portion of the Subdivision, including any Lot as provided below, for the development of a trail system as a Common Element for the use and enjoyment of all Lot Owners. The trail easement shall be designated on a recorded plat at a location within the sole discretion of Declarant; provided however, that in the event the trail runs across or onto a Lot and has not already been expressly reserved as an easement on a Plat prior to the conveyance by Declarant to a Lot Owner, said trail easement may only be located thereafter as follows:

(1) Within the utility easement reserved in Section 5 above; or

(2) If on a Lot and outside of the utility easement, then no closer than thirty (30) feet from any residence on a Lot existing as of the time of the recording of the plat designating the easement (herein "30-Foot Separation"). **This 30-Foot Separation requirement between a trail and an existing residence shall not apply if the trail is constructed within the utility easement reserved in Section 5 above or does not fall within the boundaries of a Lot.** A copy of the above referenced recorded plat shall be on file with the Secretary of the Master Association. The purchaser of any Lot is encouraged to review the public records or the Master Association files to ascertain the placement, if any, of such trail easement, **ANY PURCHASER IS ON NOTICE BY THIS DECLARATION TO SEARCH 130TH THE GRANTOR AND GRANTEE INDEX OF THE RUTHERFORD COUNTY REGISTRY TO ASCERTAIN THE LOCATION, IF ANY, OF A TRAIL EASEMENT RESERVED BY THIS SECTION ON ANY LOT.**

Section 7. Exclusive Recreational/Social Easements Reserved to Master Association.

In addition to any other easements reserved in this Declaration to the Master Association, the Declarant does hereby reserve to the Master Association over and upon Lots within the Village Cottage Neighborhood as referred to in Article II, Paragraph 20 exclusive easements for recreational and social use and enjoyment as more particularly described on the Plats of record for said neighborhood. The scope of said recreational and social uses shall be established by the Rules and Regulations adopted by the Board.

Section 8. Easements Appurtenant Upon Transfer of Lot or Common Element; Assignment to Master Association or Neighborhood Association.

All easements referred to in this Article III that are reserved unto the Declarant, its successors and/or assigns or the Master Association shall be automatically appurtenant to any Lot or Common Element at the time of transfer of said Lot or Common Element from the Declarant, its successors and/or assigns, regardless of whether the deed of conveyance expressly reserves such easements. Any easement reserved to the Declarant in this Article III may be assigned, in the Declarant's discretion, to the Master Association or any Neighborhood association.

ARTICLE IV

MASTER ASSOCIATION MEMBERSHIP AND ASSESSMENTS

Section 1. Membership in the Master Association.

Every Owner of a Lot shall be a Member of the Master Association and bound by this Declaration, the Articles of Incorporation of the Master Association and its Bylaws and Rules and Regulations as hereafter promulgated. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Powers of the Master Association.

The Master Association shall have such powers as are enumerated in its Articles of Incorporation, its Bylaws or as provided in the Act, including, but not limited to, N.C. Gen. Stat. §47F-2-120 and §47F-3-102.

Section 3. Creation of the Lien and Personal Obligation Assessments.

Each and every Owner of a Lot by acceptance of a deed therefore, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay the Master Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, or (3) or any other assessments, charges, or fees specified in this Declaration, such assessments, charges, or fees to be established and collected as hereinafter provided and as stated in the Bylaws (herein "Assessments"). All such Assessments, together with interest, late penalties, costs and reasonable attorney's fees for the collection thereof shall be a charge and lien upon a Lot and its improvements. The amount owed shall be a continuing lien upon the applicable property against which such Assessment is made, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against the Lot and (ii) liens and encumbrances recorded before the recordation of the Declaration. Each such Assessment, together with interest, late penalties, costs, and reasonable attorneys fees for the collection thereof, shall also be a personal financial obligation of the person, or persons, who was, or were, the Lot owner or owners at the time when the Assessments became due. The personal financial obligation for delinquent Assessments shall not pass to successors in title to any such Lot unless expressly assumed by such purchaser: PROVIDED, HOWEVER, the same shall be and remain a charge and lien upon any such Lot and improvements until paid or otherwise satisfied except as may herein otherwise be provided.

Section 4. Purpose of Assessments.

The Assessments levied by the Board of the Master Association shall be used for the purposes in keeping with a nonprofit corporation as set forth in the Master Association's Articles of Incorporation. Specifically, the assessments shall be used to promote the health, safety and welfare of the Members, including the Owners and residents of Firefly Cove, and for the improvements, maintenance and repair of the Common Elements, and easements appurtenant thereto, for the protection of the community from pollution or erosion; for the enforcement of these covenants; the provision of reserve funds, the employment of attorneys, accountants, and other professionals to represent the Master Association, when necessary, and for payment of local taxes, insurance and special governmental assessments on or to the Common

Elements together with payment of services, if any, provided to the residents by the Master Association.

Section 5. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Board of the Master Association may levy in accordance with its Bylaws, in any fiscal year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any acquisition, construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including, but not limited to, fixtures and personal property (such as road signs) related thereto and to pay special governmental assessments.

Section 6. Rate of Assessment.

The determination of the total amount of Common Expenses for any given fiscal year of the Master Association shall be within the sole discretion of the Board. The Board shall allocate assessments for Common Expenses in such amounts to be fixed from year to year and the Board may establish different rates for various general classifications of Lots after considering factors that include (but are not limited to) (i) the use of said Lots; (ii) the location of said Lots; and (iii) the benefits from Common Elements accruing to said Lots. For example, the Board may allocate in any given fiscal year assessments for Common Expenses based, at least, in part on whether a Lot is Improved or Unimproved. It is within the Board's discretion to determine what assessment is warranted in cases where a Lot is combined or subdivided. The Board may also allocate assessments in any given fiscal year for Common Expenses based, in whole or in part, on the number of Lots owned by a Member. For example, as a result of some perceived minimal impact on the community infrastructure, the Board may, in its discretion, levy a reduced assessment for each additional unimproved Lot that a Member owns in Firefly Cove. For purposes of illustration only, a Board may charge a full annual and/or special assessment for a Member's Lot and twenty-five percent (25%) of said annual and/or special assessment for every additional Lot that said Member may own. The Board may also assign different assessment rates based on a designation of Limited Common Elements for a Neighborhood or for one or more Lots. For purposes of N.C. Gen. Stat. §47F-3- 1 15(b), the reference to "allocations set forth in the declaration" for Common Expense assessments shall mean the allocations assigned to each Lot as established in the annual budget adopted by the Board for each fiscal year of the Master Association. **BY ACCEPTING A DEED FOR A LOT IN FIREFLY COVE, A PURCHASER**

ACKNOWLEDGES HIS OR HER UNDERSTANDING OF THE STANDARD IN THIS DECLARATION BY WHICH TO MEASURE A MEMBER'S ASSESSMENT LIABILITY AND THE PURPOSES FOR SAID ASSESSMENTS.

Section 7. Effect of Nonpayment of Assessments.

(a) Remedies of the Master Association. Any assessments which are not paid when due as determined by this Declaration and the Board shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of the delinquency at the rate of eighteen percent (18%) per annum, and the Master Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against his property, and interest, late penalties, costs and reasonable attorney's fees of any such action for collection thereof shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Master Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges and liens as a debt and to enforce the aforesaid charge and lien by methods available for the enforcement of such liens. The available enforcement remedies include, but are not limited to, those rights stated under the Act. The lien provided for in this Section shall be in favor of the Master Association and shall be for the benefit of all Members of the Master Association. The Master Association, acting on behalf of its Members, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, and to subrogate so much of its right to such liens as may be necessary or expedient. No owner of a Lot may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. After notice and opportunity to be heard as provided in the Bylaws, the Master Association may restrict the voting rights and/or use of Common Elements (not including rights of access to a Lot) by a Lot Owner who is delinquent in paying assessments.

(b) Remedies of Declarant. To the extent that any Lot Owner fails to pay his assessments relating to the Common Elements, then Declarant shall have during the Declarant Control Period, the right, but not the obligation, in addition to the Master Association, to use any of the remedies enumerated above, including filing a lien against the defaulting owner and pursuing the enforcement of such lien and other remedies as set forth in the Act. The remedies given herein

are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Declarant or Master Association to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement.

Section 8. Master Association Responsibility of Maintenance/Repair/Improvement of Common Elements.

Unless otherwise provided in writing by Declarant, the Master Association and its Members shall be responsible for the maintenance, repair and improvement of all Common Elements as identified on recorded plats for Firefly Cove and/or in a Supplemental Declaration in accordance with the Community-Wide Standard that may be established by the Board every fiscal year; provided, however, in any given fiscal year, the Board shall have the discretion to vary from such Community-Wide Standard based on the availability of Master Association funds, including any reserve funds, the differing characteristics of a Neighborhood or for any other reason of the Board exercising reasonable business judgment. During the Declarant Control Period, the Declarant has the right, at Declarant's expense, to build improvements on the Common Elements without Master Association consent (See Article II, subparagraph 27i.) or to maintain, repair or improve the Common Elements over and above the standards referred to in this Section 8.

Section 9. Reserve Funds, Operating Expense Surplus and Surplus Funds.

The Board shall have the right, but not the obligation, within its sole discretion, to impose assessments on Lot Owners for the maintenance of reserve funds or operating expense surpluses. The Master Association, within its sole discretion, may apply surplus funds to any purpose of a non-profit corporation or may credit such funds to its Members as provided for in North Carolina General Statutes §47F-3-114.

Section 10. Architectural Review fees; Impact fees; Cash Bonds; Usage Fees.

The Board shall have the right, but not the obligation, within its sole discretion, to impose a uniform schedule of fees to be applied to any Owner of a Lot at the time that Owner applies for approval to construct a residence on a Lot to offset the costs

of architectural review and to mitigate the effect that Owner's development plans will have on the infrastructure and environment within Firefly Cove. These fees may take the form of Architectural Review fees and/or Impact fees and any such fees may be nonrefundable in the sole discretion of the Board. In lieu of fees, the Board may accept cash bonds in its sole discretion. The Board shall also be authorized to collect usage fees as provided in Article III, Section 1(c) above.

Section 11. Transfer Fees.

The Declarant or the Board shall have the right, but not the obligation, to impose a transfer fee on any purchaser of a Lot, whether re-sale or original purchase from Declarant, the amount to be determined in the Declarant or Board's sole discretion. Said transfer fees shall be collected at the closing of a Lot and deposited with the Association for operating and/or capital expense purposes as determined in the Board's sole discretion. Repurchases of Lots by the Declarant or the Association shall be exempt from the applicability of a Transfer Fee.

Section 12. Membership in a Neighborhood or sub property owners' associations.

In addition to membership in the Master Association, the Declarant reserves the right to subject owners of Lots within established Neighborhoods in Firefly Cove to membership in a separate property owners association, the rights and obligations of which shall be set forth in a Supplemental Declaration.

Section 13. Property Management Contracts.

The Board shall be authorized to enter into contracts for the management of Association affairs, which may include an assignment of responsibilities to a management company of proposing budgets, collecting assessments and enforcing any provision of this Declaration, including any Rules or Regulations or architectural standards.

Section 14. Pre-condition to Suits Against Declarant.

The affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by the Master Association shall be required in order for the Master Association to

(1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Firefly Cove development or any part thereof; or (2) assert a claim against or sue Declarant.

ARTICLE V

COMMON ELEMENTS

Section 1. **Roads; Subdivision Street Disclosure Statement.**

As of the recording of this Declaration, Declarant is in the early stages of developing Firefly Cove. At this early stage, Declarant intends that the roadways within the Subdivision shall be privately maintained and not intended to be developed for takeover by the North Carolina Department of Transportation ("DOT") or any other Governmental Entity. As private roads, the roadways within Firefly Cove shall be constructed by Declarant to the minimum standards required by Rutherford County (and will not necessarily comply with the standards imposed by DOT for inclusion on the State highway system for maintenance). The schedule and completion of the construction and the design of said roads shall be within the sole discretion of Declarant. As private roads, the maintenance of same shall be borne, through Member assessments as provided in Article IV above, by either the Master Association or Neighborhood association as directed in writing by Declarant. This disclosure is given in accordance with N.C. Gen. Stat. §136-102.6. Notwithstanding the above, the Declarant reserves the right to designate or re-designate any street within the Subdivision as dedicated for public use and offer same for maintenance by a Governmental Entity, including, but not limited to, the DOT or local Governmental Entity. In that event, the Declarant shall certify at the time of acceptance by the applicable Governmental Entity that the right of way and design of the street in question has been approved by said entity and that the street has been or will be constructed to such Governmental Entity's standards.

Section 2. **Other Common Elements.**

During the Declarant Control Period, the Declarant may, but is not obligated to, provide other properties within Firefly Cove as Common Elements. The designation and transfer of these areas are solely in the discretion of Declarant and no parole or oral agreement or claims of estoppel shall be asserted by any resident providing rights to areas not explicitly denoted as "Common Elements" on the Plats for Firefly Cove and

described in a Supplemental Declaration or instrument of conveyance for such areas. The Master Association or Neighborhood association's application of assessments to the maintenance, repair or improvement of a Common Element shall not interfere with or alter the Declarant's rights concerning the modification of the designation or boundaries of Common Elements not otherwise irrevocably dedicated as provided in Article II above.

Section 3. Mixed Use Community Lodge.

The Declarant proposes for the Subdivision a Community Lodge with facilities and space located therein for the enjoyment of all members of the Master Association, but which building may also include space separately owned by Members as condominium units or designated as Limited Common Elements for said units. The allocation of expenses related to the maintenance, repair and/or improvement of said mixed use building shall be determined in Declarant's sole discretion in a supplemental or amended Declaration as well as any limitations on the imposition or modification of Rules and Regulations related to the use and enjoyment of any portion of said building.

Section 4. Conveyances.

Any Common Element conveyed by the Declarant to the Master Association or to a Neighborhood association shall be conveyed subject to:

- (a) All restrictions on use contained in this Declaration;
- (b) The right of access for ingress, egress and regress and utilities of the Declarant, its successors and/or assigns over and across such property; and
- (c) During the Declarant Control Period, the right of the Declarant, its successors and/or assigns, to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Common Element prior to the commencement of such activities or location of any object therein.

Section 5. Construction on Common Area known as Lot 25 and Part of Lot 16 that is Zoned Conditional R-3. It is the intent of this section that the current state of Lot 25 and Part of Lot 16 that is zoned conditional R-3 remain as is.

- (a) No structure of any kind shall be commenced or erected upon Lot 25 and Part of Lot 16 that is zoned Conditional R-3; nor shall any exterior addition to the existing structure, which includes a canoe rack, a fire pit, a board walk, covered board walk, and boat slips be changed or altered therein.
- (b) There shall be no more than 13 boat slips.

Section 6. Waiver of Claims.

Each Owner expressly waives and releases the Declarant, Master Association, including its Board and any member thereof, Firefly Lodge Condominium Owners Association, including its Board and any member thereof, and any Owner whose property includes a Common Element or Common Area, from any liability, claim, loss, harm, injury, or damage of any kind sustained on or about any Common Element or Common Area.

ARTICLE VI

SITE IMPROVEMENTS; ARCHITECTURAL REVIEW COMMITTEE

Section 1. Construction Within Firefly Cove.

Except as provided for the Declarant or Master Association below, no structure shall be commenced, erected or maintained upon any Lot in the Subdivision; nor shall any exterior addition to any existing structure or change or alteration therein, nor shall any site work be done until complete final construction plans and specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location, and floor plan therefore (including heated square footages), and showing front, side and rear elevations thereof, and septic system plans have been submitted to and approved in writing by an Architectural Review Committee (herein "ARC") appointed by the Declarant or Board as provided in Section 2 below. Prior to the construction or erection of any structure, a site plan to scale must be approved on a topographical map that shows the location of the structure, including all drives, walks and parking areas, with each clearly indicated. A landscaping maintenance plan must also be submitted and approved by the ARC, indicating what measures shall be taken to insure the longevity and vitality of any landscaping improvements. Prior to any physical disturbance of a Lot, special drainage and/or irreplaceable features are to be identified and provisions for their protection clearly established. This includes large and/or specimen trees, rock outcroppings, springs and streams, and concentrations of azaleas, rhododendrons, and other shrubs and wild flowers. Silt fences shall be required prior

to any physical disturbance. Culverts needed for ingress or egress shall be provided by the Owner of a Lot and shall be as specified by the ARC. The Owner of a Lot shall insure that all development performed by said owner conforms to all applicable federal, state and local laws and regulations. The ARC shall have the right to establish reasonable procedures for the preparation, submission, and determination of applications for any structure construction or alteration or landscaping work. Prior to construction, every Lot owner shall comply with the erosion control provisions in Article VII, Section 16 below and any other requirements of the ARC as outlined in the standards referred to in this Article VI.

Section 2. ARC Composition; Other Committees.

(a) Organization. The ARC shall consist of a minimum of three (3) members, one being a Chairperson. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be a member of the Board or an officer of the Association. The ARC shall meet upon the call of the Chairman or of any two (2) members. At any meeting, a majority of ARC members, one of which may be the Chairman, shall constitute a quorum. During the Declarant Control Period, the Declarant reserves the right to appoint the members of the ARC. The Declarant may delegate its right to appoint to the Board at any time; however, even with such delegation, the Declarant automatically reserves the right to remove any member and re-appoint a person to said position. After the Declarant Control Period, the Board shall appoint the members of the ARC. The term of each ARC member shall be established by the appointing person or entity. For Board-appointed members, no member may be removed except by a vote or written consent of a majority of the Board. Any members of the ARC may at any time resign from the ARC by giving written notice thereof to the Declarant and to the Board. No member of the ARC who is a member of the Association shall receive from the Association, any compensation for services, provided that the Board may pay reasonable compensation to any member of the ARC who is not a member of the Association with fees established pursuant to the Board's authority in Article IV, Section 10 above. All members of the ARC shall be entitled to reimbursement from the Association for all reasonable expenses incurred by them in the performance of any ARC functions. Notwithstanding the above, the Declarant reserves unto itself the right, but not the obligation, to perform the functions of the ARC during the Declarant Control Period, including, but not limited to, the preparation of architectural,

design and landscaping standards as provided in Section 5 below and any references herein to ARC or ARC approval shall also include the Declarant.

- (b) Other Committees. During the Declarant Control Period, the Declarant reserves the right to assign some of the functions, tasks or duties of the ARC to one or more committees, including, but not limited to, a Neighborhood architectural review committee. Said assignment shall be stated in writing and a copy of which shall be provided to the Secretary of the Association. With the consent of the Declarant during the Declarant Control Period, the Board may create additional committees to handle some of the functions, tasks or duties of the ARC, the organization of which and assigned duties shall be made a part of the Board's Rules and Regulations.

Section 3. Declarant and Master Association Exemption.

During the Declarant Control Period, Declarant reserves the right to erect or alter a Structure or perform any site work on a Lot without the need to submit any plans or obtain the prior approval of the Association or ARC. The Master Association shall also be exempt from Architectural Review *as* specified in this Article for any improvements or site work.

Section 4. Approval of Plans, Fees, Contractors and Enforcement.

The ARC's refusal or approval of plans, specifications, or location of any structure may be based upon any grounds including purely aesthetic considerations which at the sole discretion of the ARC, for projects within Firefly Cove, shall be deemed sufficient. In passing upon construction plans, specification plans, or landscaping plans, and without any limitation of the foregoing, the ARC shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of the building or other structure on the appearance from neighboring property. Notwithstanding that improvements meet or exceed specified minimum size requirements, the quality and attractiveness of every structure must also meet high neighborhood standards and the ARC is hereby granted broad discretion in judging the compatibility of proposed structures for the neighborhood. The ARC is presumed to have approved any plans referenced above, upon failure to respond within sixty (60) days after receipt of each completed application and particular plan. In the event any Owner violates the

terms of this Article, the Association shall give written notice to the Owner or responsible party to cure such violation within thirty (30) days. The Association or its agents shall be entitled to enter upon the property of the Owner and remedy such defect including removal of any structure built in violation hereof, all at the expense of the Owner. This right of the Association shall be in addition to all other general enforcement rights which the Association may have for a breach or violation of the terms of these covenants and restrictions and shall not be deemed a trespass by the Association or its agents. The Board of the Master Association shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications. The Board has the right to modify, waive or increase such application fee. Construction shall thereafter be completed in strict conformity with such approved plans and specifications and the Master Association or the Declarant shall be entitled to stop any construction which is in violation of these restrictions. Improvements shall be constructed or installed only by a builder or landscaper who has been approved by the Board or the Declarant. The Master Association and Declarant reserve the right to approve the builder and/or landscaper and to from time to time compile a list of approved builders and/or landscapers, which approval shall be in their discretion. During the Declarant Control Period, the Declarant's approval of a builder or landscaper will supersede that of the Master Association. **IT IS EXPRESSLY UNDERSTOOD AND ACKNOWLEDGED BY THE PURCHASER OF ANY LOT IN THE SUBDIVISION THAT THE DECLARANT, INCLUDING ITS OFFICERS AND AGENTS, AND THE MASTER ASSOCIATION SHALL BE HELD HARMLESS FROM AND AGAINST ANY CLAIMS OR LOSSES DIRECTLY OR INDIRECTLY RELATED TO ANY APPROVED BUILDER; THAT THERE IS NO JOINT VENTURE, PARTNERSHIP OR AGENCY RELATIONSHIP EXISTING BETWEEN THE DECLARANT OR MASTER ASSOCIATION AND ANY APPROVED BUILDER; AND THAT ANY PURCHASER OF A LOT MAY REASONABLY RELY ONLY ON HIS OR HER INVESTIGATIONS OF THE COMPETENCY OF SAID BUILDER PRIOR TO PURCHASING A LOT OR COMMENCING CONSTRUCTION.** Notwithstanding the above, the Declarant reserves unto itself the right, but not the obligation, to perform the functions of the ARC during the Declarant Control Period, including, but not limited to, the preparation of architectural, design and landscaping standards as provided in Section 5 below and any references herein to ARC or ARC approval shall also include the Declarant.

Section 5. Architectural Review and Development Standards.

The ARC may, from time to time in its sole discretion, adopt, amend, and repeal rules and regulations to be known as "Design and Development Standards" which shall establish policies for review procedures and standards for site improvements,

including minimum square footages allowed, authorized setbacks for structures and landscaping, within Firefly Cove. Such architectural, design and landscape standards shall be explanatory and illustrative of the general intent of the development of the Lots and are intended to guide Lot Owners and their home designers and builders and to assist the ARC in reviewing plans and specifications for improvements. Such architectural, design and landscape standards and submittal requirements may be revised and amended at any time by the ARC, in its sole discretion, and shall not constitute, in every event, the sole basis for approval or disapproval of plans, specifications and other materials submitted to the ARC for approval. Any committee established pursuant to Section 2(b) above shall have the authority to adopt, amend and repeal its own set of rules, regulations and development standards, subject to the approval of Declarant during the Declarant Control Period.

Section 6. Waiver; Governmental Entity Consideration.

The approval by the ARC of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval. Approvals by the ARC are not a substitute for approvals or reviews required by Rutherford County or other Governmental Entity with regulatory jurisdiction.

Section 7. Liability.

The Declarant, Master Association or any ARC or any member thereof shall not be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of:

- (a) The approval or disapproval of any plans, drawings, specifications, whether or not defective.
- (b) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.
- (c) The development of any property, including, but not limited to, defective construction of any portion of the residences.

Section 8. Right of Inspection.

Any member of the ARC shall have the right to go upon any Lot during reasonable hours to inspect any property or improvements with respect to which construction or work is underway to determine whether or not the plans and specifications thereof have been approved and are being complied with.

Section 9. Appeal of ARC Decisions.

Any party aggrieved by a decision of the ARC may appeal such decision to the Board in accordance with the appeal process established by the Board in its Rules and Regulations or to the Declarant during the Declarant Control Period. If the Board's Rules and Regulations are silent as to an appeal process or if the appeal is to the Declarant, then such appeal must be filed in writing within thirty (30) days of an adverse decision. If the appeal is to the Board, said appeal must be filed in the above time period to the Secretary of the Master Association. The decision of the ARC is final, unless overridden by a vote of two-thirds of the Board or the Declarant as the case may be. No Owner or any other party shall have recourse against the ARC, the Board or Declarant for their refusal to approve any plans, specifications or contractors.

Section 10. Final ARC Inspection.

At the completion of all construction in accordance with the plans submitted, the Owner shall request an on-site final inspection by the ARC. At the final inspection stage, the following shall be required in order to receive ARC approval:

- (a) Final as-built plans must be submitted in conformance with plans approved by the ARC for the construction of the structure, unless waived in writing by the ARC;
- (b) Exterior lighting must be approved;
- (c) All clean-up must be completed; and
- (d) A copy of the permit authorizing occupancy by the applicable Governmental Entity must be given to the ARC.

ARTICLE VII

USE RESTRICTIONS

Subject to the Special Declarant Rights, the following use restrictions shall apply to all Lots within the Subdivision unless modified by a Supplemental Declaration for Annexed Properties as provided in Article VIII below:

Section 1. **Single-family Residential Purposes; Principal Building; Accessory Structures.**

All Lots shall be used for single-family residential purposes only. No more than one principal building shall be permitted on any Lot. Accessory structures may be allowed subject to ARC approval.

Section 2. **Subdividing, Combination and Boundary Relocation.**

No Lot shall be subdivided, or its boundary lines relocated, for any purpose other than to merge an additional Lot or part thereof so as to create a Lot larger than the original Lot. No subdivision, combination or boundary relocation shall be made without the written approval of Declarant, its successors and assigns or Board except, however, Declarant hereby expressly reserves to itself, its successors or assigns, the right to re-plat, combine or subdivide any Lot or Lots, shown on the recorded plats, prior to the conveyance thereof, in order to create a modified Lot or Lots. These restrictions herein apply to each Lot which may be so created. Following the combination of two Lots into one larger Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of this Declaration. Once combined, the resulting larger Lot may only be subdivided with the consent of the Declarant, its successors and/or assigns or Board. The Board, in its sole discretion, shall determine what effect, if any, the combination or subdivision of a platted Lot has on the assessments for that modified Lot.

Section 3. **Commercial Use.**

Except for home occupations as defined below, no commercial or industrial enterprise, undertaking or use is permitted within the Subdivision, unless specifically shown on a recorded Plat that has been signed by Declarant. If no such enterprise, undertaking or use is shown on a signed recorded plat, then no such enterprise undertaking or use

is permitted. Notwithstanding the above, a "home occupation" on a Lot is allowed with the written consent of the Declarant or Master Association. A "home occupation" is a use of a residence by an Owner-occupant wherein not more than 25% of the residence is dedicated to business use and there is no traffic generated by the business.

Section 4. Setback of Structures.

Front, side and rear setbacks for structures on Lots shall be determined in the sole discretion of the ARC; provided, however, that, at a minimum, construction on any Lot shall comply with Governmental Entity restrictions such as Town of Lake Lure zoning setbacks and trout buffer setbacks as noted on the Plats or as otherwise required by North Carolina law. In addition to Governmental Entity restrictions that may or may not be noted on the Plats, setbacks for structures on Lots shall be based upon, but not limited to, such factors as topography, lot shape, frontages and also potential views to give property owners the fullest enjoyment of their Lots while balancing ecological constraints.

Section 5. Duty to Maintain and Rebuild.

(a) Each Owner shall, at his sole cost and expense, maintain and repair his residence, keeping the same condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

(b) Each Owner shall keep the grass on the lot properly cut, shall keep the lot free from trash, and shall keep it otherwise neat and attractive in appearance. This shall not be construed as requiring natural areas on a Lot to be mowed.

(c) If all or any portion of a residence is damaged or destroyed by fire, or other casualty, then the Owner shall, with all due diligence, promptly rebuild, repair or reconstruct such apparent condition existing immediately prior to the casualty. Alternatively, the Lot owner shall completely raze the residence and sod or seed the entire Lot until such time construction of a new residence is begun.

Section 6. Temporary Structures Mobile Homes and Modular Homes.

No structure of a temporary character shall be placed upon any portion of a Lot at any time; provided, however, that this prohibition shall not apply to shelters used by contractors during the construction of any single family residence which are approved in writing by the ARC. Basements or partially complete single-family residences will be considered temporary and may not be inhabited. Mobile homes, trailers, recreational vehicles, and tents, may not, at any time, be used as temporary or permanent residences or be permitted to remain on any portion of a Lot after completion of construction thereon as herein above provided, except that the Declarant or the Board may designate areas within Firefly Cove as camping sites. **Modular dwellings as defined by the ARC in the Design and Development Standards are not permitted within the Subdivision. Panelized construction as defined by the ARC in the Design and Development Standards may be permitted subject to ARC written approval**

Section 7. **Exterior Construction.**

The exterior of a single-family residence on a Lot as well as site work and landscaping must be completed within sixteen (16) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner of a Lot due to strikes, fire, natural emergencies or natural calamities. Notwithstanding the above, once construction has commenced, said work shall be pursued in a diligent manner. Single family residences may not be occupied until the exterior thereof has been completed. If the exterior is not completed within sixteen (16) months, the Board may require a responsible Lot owner to pay the Association the sum of one hundred dollars (\$100.00) in liquidated damages for each day after sixteen (16) months that the exterior is not completed.

Section 8. **Vegetation.**

No standing trees, living or dead, or shrubs may be removed without the written approval of the ARC. Notwithstanding the above, any tree which poses a threat to life or property may be removed without the written consent of the **ARC**. Should a party remove any tree or shrub as herein provided without the above-described written approval, the Board may fine a party the sum of one hundred dollars (\$100.00) for every tree or shrub cut without permission, and thereafter one hundred dollars (\$100.00) per tree or shrub for each day that a replacement plan acceptable to the Board is not completed. In addition to the above remedies, the Association and its agents may enter the property to replace the removed tree or shrub and charge the

violating owner the costs of such replacement. The Association may require a replacement ratio up to 3:1 for any violation of this Section.

Section 9. Trash.

No Lot shall be used or maintained as a dumping ground or disposal site for rubbish, trash, or garbage. Trash, garbage or other waste shall not be kept except in sanitary containers and at all times stored inside of a garage or residence or other enclosure approved by the ARC. This restriction shall not apply during the period of construction of a residence on the Lot or adjoining Lots, however, upon completion of construction the owner shall comply with all restrictions with respect to disposal of trash and maintenance of the Lot and property in a neat and attractive manner.

Section 10. Utilities; Antennae; Wireless Communication.

All utilities, wires, cables, antennae and the like, of any kind (such as telephone, electrical, television, radio and citizens band radios) must be placed underground except as may be expressly permitted and approved in writing by the ARC. No wireless communication towers or antennae shall be permitted within the Subdivision, except with the written permission of the ARC.

Section 11. Off-street Parking.

Each Owner of a single-family residence on a Lot shall provide sufficient space for parking of any and all vehicles off the roadways for any of said Owner's vehicles or his guest's vehicles.

Section 12. Vehicles; Trail Use.

The Board shall have the power to place any reasonable restrictions upon the use of roadways, including but not limited to the types and sizes of vehicles, including motor cycles, using the roads, the maximum and minimum speeds of vehicles, all other necessary traffic and parking regulations and the maximum noise level of vehicles. The Board shall also have authority to regulate or prohibit the use of vehicles, golf carts or bicycles on trails within the Subdivision.

Section 13. Vehicle Storage.

Any recreational vehicles, boats, motor homes, campers and the like must be parked in an area screened from view. Garage doors must be closed at all times when not in use. Vehicles which cannot be stored in garages or otherwise properly screened in a manner approved by the ARC must be removed and stored off site at Owner's expense.

Section 14. **Lot Upkeep.**

It is the responsibility of each Lot Owner to prevent any unclean, unsightly, or unkempt condition of buildings or grounds to exist on the Lot Owner's property. The Declarant or the Master Association shall have the right, but not the duty, to enter upon any property for the purpose of abating any unclean, unsightly or unkempt condition of buildings or grounds which tend to decrease the beauty of the specific area or the neighborhood as a whole. The cost of such abatement and any damage resulting from such entry shall be at the expense of the specific Lot Owner and said entry shall not be deemed a trespass.

Section 15. **Nuisances.**

No obnoxious or offensive activity shall be carried on upon any portions of the Subdivision nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner of a Lot, tenant or guest thereof in any area of the Subdivision thereby diminishing the enjoyment of other Lots by their owners. No hazardous or toxic substances or wastes as defined by applicable law shall be dumped within the Subdivision. No plant, animal, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of any portion of the Subdivision by the Lot owners, tenants, and guests thereof, may be maintained. The Board has the right in its sole discretion to determine a nuisance, and upon ten (10) days' written notification by the Board, the activity must cease.

Section 16. **Erosion Control.**

Declarant and/or the Master Association shall have the right to protect from erosion the land designated as areas upon which residential building shall take place, by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means as providing drainage ways and/or dams or other means deemed expedient or necessary by Declarant and/or Master Association to provide and insure against such erosion. The Declarant or the Master Association, however, is under no

duty to take such actions as herein above provided. During the improvement of any Lot, every Owner of a Lot shall use best management practices as that term is defined by applicable State of North Carolina environmental regulations to control erosion and prevent off-site damages so long as one-fourth (1/4) acre of land is disturbed. The ARC may require any Lot owner disturbing more than one-fourth (1/4) acre of land to submit for ARC approval an erosion control and drainage plan, and therein require that such plan be signed off by a licensed Engineer. In order to implement effective and adequate erosion control and protect the beauty and purity of the water courses within Firefly Cove, the Master Association and its agents shall have the right, but not the obligation, to enter any Lot for the purpose of correcting or remedying any erosion control violations. Any costs of remediation attributable to a Lot Owner's failure to comply with best management practices in erosion control incurred by the Master Association shall be the responsibility of the Lot Owner.

Section 17. Fires.

No outdoor fire shall be built within the Subdivision without the Board's or Declarant's permission. No leaves, trash, garbage or similar debris shall be burned except as permitted in writing by the Board or Declarant. Outdoor grilling may be allowed in structures approved by the ARC and if approved, said grilling shall be done with the greatest of care in view of fire and smoke hazards and general pollution.

Section 18. Signs.

No sign for advertising or for any other purpose shall be displayed on any Lot or on a building or a structure on any Lot, except signs approved in writing by the ARC; provided, however, Declarant or the Board shall have the right to (i) erect signs when advertising the property, (ii) place signs on Lots designating the lot number of Lots, and (iii) following the sale of the lot, place signs of such Lot indicating the name of the purchaser of that Lot. Notwithstanding the above, the Declarant or the Board may require an owner of a Lot to install, at Owner's expense, and at a location designated by Declarant or the Board, common address signage for easy identification for emergency services.

Section 19. Water Courses.

No lake shall be constructed, neither shall the course of any stream be changed, nor any culverts installed in any stream without prior written approval of the ARC. An Owner of a Lot shall maintain a thirty (30) foot undisturbed buffer from all

watercourses within the Subdivision unless a detailed grading plan is approved by the ARC and the Owner has provided to the ARC written confirmation of compliance from all Governmental Entities with jurisdiction over such project.

Section 20. Storage Tanks.

Underground gasoline storage tanks are not permitted within the Subdivision. Underground propane or liquid gas tanks and above ground storage tanks may be allowed subject to ARC written approval.

Section 21. Animals.

No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other commonly domesticated household pets maybe kept, provided that they are not bred, maintained or housed (i.e. kennels) for commercial purposes. Pets, when running loose, must be kept strictly within the boundaries of a Lot Owner's property. At all other times, they must be kept securely on a leash. No pets are permitted if they are kept so as to constitute a nuisance as determined by the Board in their sole discretion. Pet owners must remove pet waste from Common Elements and from property of others.

Section 22. Vacant Lots, Reserved Areas and/or Future Development.

Unused and/or vacant Lots, or property designated herein as Reserved Areas and/or Future Development are not to be trespassed upon for any reason.

Section 23. Hunting and Firearms.

Hunting, trapping, or the harassing of animals, fowl or game is prohibited, and the discharge of firearms or bows or arrows for any purpose shall be prohibited. The Board may (but is not required to) authorize recreational bow and arrow play Common Elements in accordance with Rules and Regulations.

Section 24, Fishing.

Fishing rules are to be governed by the State of North Carolina and rules as circulated to the owners of Lots by the Declarant and/or the Board.

Section 25. Trespass.

Whenever the Master Association or the Declarant is permitted by these covenants to correct, repair, clean, preserve, clean out or do any action on any portion of the Subdivision, including Lots, entering such areas and taking such action shall not be deemed a trespass on the part of the Master Association or the Declarant or their agents.

Section 26. Septic Systems.

Septic tanks, drain and repair fields constructed on a Lot must comply with all applicable State and local regulations.

Section 27. Responsibility for Others.

Owners of a Lot are obligated to assume the responsibility that any and all dependents, guests, servants, visitors and building contractors working for the Lot Owner observe and maintain all the Rules and Regulations, covenants and restrictions binding the Lot Owners themselves.

Section 28. Leasing or Renting.

The leasing or renting of a structure on any Lot within the Subdivision shall be subject to compliance with the Rules and Regulations adopted by the Board, including any limitations on minimum leasing periods set forth therein. The Board may establish, in its sole discretion, different minimum leasing periods in separate Neighborhoods within the Subdivision. A tenant or lessee shall be bound by all covenants and restrictions contained in this Declaration. At no time may a Lot Owner lease or rent a portion of a dwelling unit unless the entire dwelling unit is leased or rented.

Section 29. Variances.

In case of hardship and for good cause shown, the Declarant during the Declarant Control Period or the Board may in their sole discretion grant variances from any of the Use Restrictions contained in Article VI or Article VII. The decision of Declarant or the Board to grant or not grant variances as herein provided is based upon the Declarant's or Board's sole and absolute discretion.

Section 30. Density and Other Representations; Conflict with Sales Literature.

Notwithstanding any representation concerning density on any sales literature, unrecorded or recorded plats or any other document, the Declarant has the sole discretion in determining the number of Lots and/or Lots to make up Firefly Cove and what acreage will be encumbered by this Declaration and amendments thereto. Any such density projections or figures are speculative in nature, not binding on Declarant, and cannot be relied upon by any purchaser of a Lot. In case of a conflict between the disclaimer in this Section 30 and the information provided in any sales literature or in any other document, this Section 30 shall control. **IN CASE OF ANY CONFLICT BETWEEN THE REPRESENTATIONS IN THIS DECLARATION AND ANY VERBAL REPRESENTATIONS, WRITTEN SALES LITERATURE OR OTHER DOCUMENTS, THIS DECLARATION SHALL CONTROL.**

Section 31. Rules and Regulations.

Each Owner and/or occupant of a Lot shall comply with the Rules and Regulations established by the Board in accordance with the Bylaws. To the extent of any conflict between this Declaration and the Rules and Regulations, the most restrictive provision shall control. Each Lot Owner is encouraged to obtain a copy of the Rules and Regulations from the Association Secretary for easy reference as to matters pertaining to the use and enjoyment of property within Firefly Cove.

Section 32. Enforcement.

(a) All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.

(b) Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in the Act, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Declarant or Master Association to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or

conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover reasonable attorneys fees as a part of such action.

ARTICLE VIII

FUTURE PHASES; ANNEXED PROPERTIES; AND REMOVAL OF PROPERTIES

During the Declarant Control Period, the Declarant reserves the right to subject Annexed Properties as hereinabove defined to the terms of this Declaration and the general plan of development for Firefly Cove by the filing of a supplement to this Declaration with corresponding plat that identifies the property to be added to Firefly Cove. Notwithstanding any provision of this Declaration to the contrary, Declarant, in its sole discretion, shall designate in the Supplemental Declaration the permitted uses within the Annexed Properties, which may be other than residential, and any other development restrictions affecting the use and enjoyment of said land. Notwithstanding the differences, if any in the use restrictions for Annexed Properties, it is the intent of the Declarant that properties once annexed be part of the general plan of development for Firefly Cove; provided, however, during the Declarant Control Period, the Declarant reserves the right to modify the boundaries of Firefly Cove to remove unsold properties from Firefly Cove planned community. This right to remove properties from the general plan of development for Firefly Cove does not apply to Common Elements already conveyed to the Master Association or otherwise irrevocably dedicated as provided in Article II unless such removal is in conformity with N.C. Gen. Stat. § 47F-3-112 of the Act. This Article is to be construed to give the Declarant the broadest flexibility to add Annexed Properties to Firefly Cove planned community with use restrictions tailored for each additional tract or to modify the boundaries of Firefly Cove when determined in the sole discretion of the Declarant to be in the best interest of Firefly Cove.

ARTICLE IX

AMENDMENTS

During the Declarant Control Period, the Declarant reserves the right, without the consent of the Master Association, any Neighborhood association or any Lot Owner, to modify, amend or repeal this Declaration or any amendments thereto. This reservation shall not be construed to diminish in any way the right of Declarant, the Master Association (or any applicable Neighborhood association) or Lot Owners to enforce these covenants as real covenants running with the land against any Lot to the extent not expressly released by the Declarant from this Declaration in whole or in part. Otherwise, this Declaration may be amended only by affirmative vote at a duly called meeting in accordance with the Bylaws or written agreement signed by Qualified Voting Members representing sixty-seven percent (67%) of the eligible votes in the Master Association. During the Declarant Control Period, any amendments to this Declaration require the written consent of the Declarant. These covenants are to run with the land and be binding upon all parties purchasing Lots within Firefly Cove and all persons claiming by, through or under Declarant until January 1, 2035 at which time said covenants shall be automatically extended for successive periods of (10) years unless by vote of sixty-seven percent (67%) of Qualified Voting Members then owning Lots within Firefly Cove (and which are subject to the terms, conditions and provisions of this Declaration) it is agreed to change these covenants in whole or in part.

ARTICLE X

MISCELLANEOUS

Section 1. **Severability.**

Should any covenant, restriction, article, paragraph, subparagraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason whatsoever, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 2. **Construction of this Declaration.**

This Declaration and the provisions contained herein shall be construed in accordance with the laws of the State of North Carolina. IN WITNESS WHEREOF, the Declarant, has caused these presents to be signed this the 30th day of November, 2006.

DECLARANT: FIREFLY COVE, INC.

By: (SEAL) John V Cloud III
(Official Seal)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Joy K. Pelto, a Notary Public of Buncombe County, North Carolina, certify that John V. Cloud, III personally came before me this day and acknowledged that he is President of Firefly Cove, Inc, a Florida corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this 30th day of November, 2006.

Joy K. Pelto
(Notary Public)

My commission expires: *January 29, 2011*

EXHIBIT A

Property Subject to Declaration of Covenants, Restrictions, et al. For Firefly Cove, a Planned Community BEING all of Firefly Cove Subdivision as shown on a plat prepared by John A Nanney, P.L.S., dated November 28, 2006 and recorded in Plat Book 27, at Page 387, of the Rutherford County, North Carolina Register's Office, reference to said plat being made for a more particular description of said property.