

**Firefly Property Owners Association, Inc.**  
**Board Meeting**  
**February 9, 2013**

**Location:**

- Email Conference

**Roll Call/Call to Order:**

- The meeting was called to order by President Bob Cameron at 8:45 am.
- Directors contacted by Email: President Bob Cameron, Treasurer Scott Flowers, Secretary Mike Kirkman, Director Joe Pritchett, and Director Bob Cobbett
- Directors Absent: None

**Approval of Minutes:**

None

**Discussion Items:**

- Secretary Kirkman reported by email to the Board members that an agreement had been reached between Firefly Cove and Mountain First Bank for an easement to access the 27 acres owned by Mountain First Bank which can only be accessed over the private road in The Ridge at Firefly Cove. **See Attachment "A"**. Secretary Kirkman recommended that the Board approve the agreement. Board members were asked to respond by email to the Secretary and either vote "yes" for the agreement or "No" against the agreement. The recommendation was approved by a 4 – 1 vote with Treasurer Flowers voting no. President Bob Cameron is authorized to sign the agreement on behalf of the Board.

**Adjournment:**

- The meeting was adjourned upon the receipt of the last vote by email by the Secretary.

# ATTACHMENT "A"

**PREPARED BY AND RETURN TO:** Rebecca J. Reinhardt  
Roberts & Stevens, P. A.  
P.O. Box 7647  
Asheville, NC, 28802

**STATE OF NORTH CAROLINA**

**EASEMENT AND RIGHT OF**

**COUNTY OF RUTHERFORD**

**WAY AGREEMENT**

**THIS EASEMENT AND RIGHT OF WAY AGREEMENT** (the "Agreement"), is made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between **FIREFLY COVE PROPERTY OWNERS ASSOCIATION, INC., A NORTH CAROLINA NON-PROFIT CORPORATION** (hereinafter referred to as the "Association") and **MOUNTAIN 1<sup>ST</sup> BANK AND TRUST COMPANY, A NORTH CAROLINA BANKING CORPORATION** (hereinafter referred to as "Mountain 1<sup>st</sup> Bank"). The references to the Association and Mountain 1<sup>st</sup> Bank as used herein shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine and neuter as required by context.

**WITNESSETH:**

**WHEREAS**, a Declaration of Covenants, Restrictions, Easements, Reservations, Terms and Conditions Governing Firefly Cove, a Master Planned Community, in Rutherford County, North Carolina was recorded in Book 919, Page 836, Rutherford County Registry, as amended by that certain Supplemental Declaration to Declaration of Covenants, Restrictions, Easements,

Reservations, Terms and Conditions Governing Firefly Cove, a Master Planned Community, in Rutherford County, North Carolina was recorded in Book 954, Page 649, Rutherford County Registry, and as further amended by that certain Amendment to Declaration of Covenants, Restrictions, Easements, Reservations, Terms and Conditions Governing Firefly Cove, a Master Planned Community, in Rutherford County, North Carolina as recorded in Book 954, Page 651, Rutherford County Registry (hereinafter collectively referred to as the “Declaration”), which Declaration governs that development known as “Firefly Cove” (hereinafter referred to as the “Firefly Cove Subdivision”); and

**WHEREAS**, pursuant to the Declaration, the Association has the right to grant easements or licenses of use over the Common Elements, as defined therein, which Common Elements includes the road rights of way depicted on any recorded plat of the Firefly Cove Subdivision; and

**WHEREAS**, the Mountain 1<sup>st</sup> Bank is the owner of that property designated as “Future Phase” on that plat entitled “Subdivision Plat of The Ridge at Firefly Cove” recorded in Plat Book 29, Pages 19-21, Rutherford County Registry, less and excepting those portions conveyed in Book 969, Page 803 and Book 996, Page 150, said Registry (hereinafter referred to as the “Mountain 1<sup>st</sup> Bank Property”); and

**WHEREAS**, the Mountain 1<sup>st</sup> Bank Property accesses Boys Camp Road, a paved public road, by means of that private forty foot (40') right of way known as “Boulder Run Drive” (hereinafter referred to as the “Private Right of Way”) located within the Firefly Cove Subdivision and shown on that plat recorded in Plat Book 29, Pages 19-21, Rutherford County Registry (hereinafter referred to as the “Plats”); and

**WHEREAS**, Mountain 1<sup>st</sup> Bank desires to use the Private Right of Way for the purposes of ingress, regress, and egress to and from the Mountain 1<sup>st</sup> Bank Property in order to access Boys Camp Road, a public road; and

**WHEREAS**, the Association, pursuant to its authority under the Declaration, has agreed to expressly grant and convey unto Mountain 1<sup>st</sup> Bank, its successors and assigns, an easement and right of way over and upon that Private Right of Way as shown on said Plats, for the purposes of ingress, egress, and regress to and from the Mountain 1<sup>st</sup> Bank Property to access Boys Camp Road, a paved public road, subject to the terms and conditions as set forth below.

**NOW THEREFORE**, for and in consideration of the mutual covenants and conditions as contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. **EASEMENT AND RIGHT OF WAY FOR INGRESS, EGRESS, AND REGRESS.** The Association hereby gives, grants, and conveys unto Mountain 1<sup>st</sup> Bank, its successors and assigns, an easement and right of way forty (40) feet in width over the Private Right of Way as shown on the Plats for the purposes of vehicular and pedestrian ingress, egress, and regress to and from the Mountain 1<sup>st</sup> Bank Property and connecting to Boys Camp Road, a paved public road. It is understood and agreed by Mountain 1<sup>st</sup> Bank

that the Association shall have the ongoing power to place any reasonable restrictions on the use of the Private Right of Way, including, but not limited to, the types and sizes of vehicles (including dirt bikes, four-wheel off-road vehicles, golf carts, and similar vehicles that are not allowed on public rights of way within Rutherford County) using the Private Right of Way, the maximum and minimum speeds of vehicles, the noise level of vehicles, and all other necessary traffic regulations which shall be applicable to the owner of the Mountain 1<sup>st</sup> Bank Property and the owners within Firefly Cove Subdivision.

2. **MAINTENANCE.** The Private Right of Way shall be maintained in an all weather condition, and Mountain 1<sup>st</sup> Bank, its successors and assigns, shall share in the costs of such maintenance as provided in Section 3 below. The term “maintenance” shall include, but not be limited to, repairing the road surface, clearing obstructions, trimming brush along the roadside, mowing the entrance area along Boys Camp Road (a public road), removing snow, unplugging or opening culverts and/or drainpipes, and performing any and all other necessary work required to maintain the road in an all weather condition that will allow for reasonable and safe access of standard passenger vehicles. In the event an owner (or such owner’s licensees or permittees) who has the right to use the Private Right of Way causes the Private Right of Way to be damaged, other than ordinary wear and tear by standard passenger vehicles (e.g. in connection with construction on its lot or by other heavy use), then such owner shall be required to repair such damage at the owner's sole cost and expense.

If any owner of any portion of the Mountain 1<sup>st</sup> Bank Property fails to perform the requested repairs to the Private Right of Way within thirty (30) days from receipt of written notice from the Association, then the Association may perform the necessary maintenance or repairs to the Private Right of Way and shall be entitled to immediate reimbursement from the non-performing owner of the reasonable costs and expenses incurred in performing the necessary repairs or maintenance plus interest thereon at the rate of ten percent (10%) per annum from the date such non-performing owner receives written notice requesting reimbursement to the date when the non-performing owner pays the reimbursement amount in full. Failure of the non-performing owner to reimburse the Association within thirty (30) days of receipt of billing shall constitute a failure to pay for labor and materials as is contemplated in Chapter 44A of the North Carolina General Statutes and the Association shall be entitled to proceed against the non-performing owner to perfect a lien against the property belonging to the non-performing owner as is provided in Chapter 44A of the North Carolina General Statutes.

3. **ASSESSMENTS.** Mountain1st Bank, its successors and assigns, shall share in the maintenance of the Private Right of Way by tendering to the Association an annual assessment of Five Hundred and No/100 Dollars (\$500.00) per lot (each, a “Maintenance Assessment”). Notwithstanding the foregoing, if more than one single family dwelling is built on a lot, a separate Maintenance Assessment shall be added for each additional dwelling. The Maintenance Assessment may be increased based upon the Construction Cost Index as published by the Engineering News Record. As of January, 2013, the Construction Cost Index is 9437.27. As soon as is practical, the Association shall notify the owner of the Mountain 1<sup>st</sup> Bank Property, or any portion thereof, of the increase which shall be applicable to then current assessment due on January 1st. If publication of the Construction Cost Index shall be discontinued, the parties hereto shall agree to accept comparable statistics, such as the Building Cost Index as published

by the Engineering News Record. The assessment shall never be decreased from the prior year's assessment regardless of the Construction Cost Index. Notwithstanding the foregoing, the collective increases in the Maintenance Assessment shall never be greater than one hundred percent (100%) of the initial Maintenance Assessment, making \$1,000.00 be the maximum Maintenance Assessment to be collected per lot/dwelling.

The Maintenance Assessment owed for each lot shall be due and payable to the Association no later than January 1 of each year. Any Maintenance Assessment which is not paid when due shall be delinquent. If the Maintenance Assessment is not paid within (30) days after the due date, the Maintenance Assessment shall bear interest from the date of the delinquency at the rate of eighteen percent (18%) per annum.

The Maintenance Assessment and all costs, together with interest thereon (at the rate specified above) and costs of collection thereof (including reasonable attorneys' fees), shall each be a charge and continuing lien upon each lot within the Mountain 1<sup>st</sup> Bank Property, binding upon each lot owner and all successors in title to each lot. The lien of the Maintenance Assessment provided for herein shall be subordinate to the lien of any first mortgage or deed of trust upon any relevant lot (except as provided below). Sale or transfer of a lot or portion thereof shall not affect the Maintenance Assessment lien; provided, however, that after the period of redemption has expired after the sale or transfer of any lot pursuant to a foreclosure of any first deed of trust or mortgage by any bank, savings and loan association, insurance company or other institutional lender or any proceeding in lieu of foreclosure by any of the foregoing institutions, the lien of the Maintenance Assessment (but not the obligation to pay the same) shall extinguish as to payments which became due prior to such sale or transfer in lieu thereof. No sale or transfer shall relieve the owner of any lot (including, without limitation, any mortgagee in possession) from liability for any Maintenance Assessment thereafter becoming due or from the lien thereof. All Maintenance Assessments and costs, together with interest thereon (at the rate specified above) and costs of collection thereof, including reasonable attorneys' fees, shall also be the personal obligation of the record owner of the relevant lot at the time when the Maintenance Assessment is due.

Neither Mountain 1<sup>st</sup> Bank nor any subsequent owner of any portion of the Mountain 1<sup>st</sup> Bank Property may waive or otherwise escape liability for the Maintenance Assessment by reason of abandonment of their lot. Any Maintenance Assessment which is not paid when due shall be delinquent and, if not paid within thirty (30) days after the due date, the amount due shall bear interest from the date due at the rate set forth above. The Association may bring an action at law against any record owner of any lot, who by accepting a conveyance of such lot shall be personally obligated to pay the same, and/or the Association may foreclose the lien against the delinquent lot in any lawful manner. In each instance all interest, costs and the reasonable attorneys' fees of such action shall be added to the amount due. Thirty (30) days' written notice of such delinquency (which thirty (30) day period may run concurrently with the thirty (30) day period commencing on the due date) shall be provided to any first mortgagee of any lot that has advised the Association of its existence and of its name and address prior to the institution of any action at law or proceedings to foreclose the lien for any delinquent Maintenance Assessment; provided, however, that any failure by the Association to provide such notice shall not invalidate any notice given to the relevant lot owner, nor shall such failure

invalidate or impact in any way upon any action taken by the Association as provided herein.

The Association shall, upon demand therefor, furnish a certificate setting forth the status of the payments of the Maintenance Assessment on any lot within the Mountain 1<sup>st</sup> Bank Property. A reasonable charge may be made for the issuance of any such certificate. The certificate shall be conclusive evidence of the payment of any Maintenance Assessment stated to have been paid therein.

4. **RESTRICTIONS.** Mountain 1<sup>st</sup> Bank agrees and covenants with the Association that the Mountain 1<sup>st</sup> Bank Property shall be subdivided into no more than three (3) lots to be used for single-family residential purposes only.

5. **NOTICE OF CONSTRUCTION ON MOUNTAIN 1<sup>ST</sup> PROPERTY.** Prior to commencement of construction on any portion of the Mountain 1<sup>st</sup> Property, the owner of the lot on which such construction will take place shall notify the secretary of the Association. Any damage to the Private Right of Way caused by an owner of any portion of the Mountain 1<sup>st</sup> Property or such owner's builder or such builder's subcontractors shall be repaired by such responsible owner. Any builder of improvements and such builder's subcontractors on any portion of the Mountain 1<sup>st</sup> Property shall keep the Private Right of Way free of unsightly construction debris, in accordance with best construction practices), and shall similarly keep the Private Right of Way from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of improvements. If any owner of any portion of the Mountain 1<sup>st</sup> Bank Property fails to perform the requested maintenance or repairs to the Private Right of Way within thirty (30) days from receipt of written notice from the Association, then the costs of cleaning, removal of garbage, trash or other debris, or repairs which are occasioned by the activities of an owner or owner's builder or such builder's subcontractors during the construction of improvements may be recovered by the Association in the same manner as outlined in Section 2 above.

6. **FIREFLY COVE SUBDIVISION.** Nothing herein shall be construed to mean that the Mountain 1<sup>st</sup> Bank Property is a part of the Firefly Cove Subdivision or subject to the Declaration, and therefore it is expressly understood that the owners of any part of the Mountain 1<sup>st</sup> Bank Property cannot use any of the amenities located within the Firefly Cove Subdivision, other than the Private Right of Way expressly discussed in this Agreement. Additionally, nothing herein is intended, nor shall be construed, to create any rights whatsoever for the benefit of the general public in and to the Private Right of Way or the improvements constructed thereon, and nothing herein shall be constituted to affect, or intend to affect, a dedication of the Private Right of Way to the general public.

7. **ENFORCEMENT.** Either party, their successors or assigns shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, imposed by the provisions of this Agreement. Failure to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8. **BINDING; AMENDMENT.** The rights, benefits, and burdens described in this Agreement shall run with the lands, and be binding upon and inure to the benefit of the parties, their heirs, successors and assigns. The terms, covenants, conditions and provisions of this Agreement may be modified, rescinded or amended in whole or in part only with the consent of the owner(s) of the Mountain 1<sup>st</sup> Bank Property and the Association by an instrument in writing duly executed by such parties and duly recorded in the office of the Register of Deeds of Rutherford County, North Carolina.

9. **APPLICABLE LAW.** This Agreement shall be construed and interpreted under the laws of the State of North Carolina.

10. **EFFECTIVE DATE.** This Agreement shall be effective as of the date of its recording in the Rutherford County Register of Deeds Office.

**TO HAVE AND TO HOLD,** the aforesaid rights and easements as described above unto said Mountain 1<sup>st</sup> Bank, its successors and assigns, upon the terms set forth above. The Association covenants with Mountain 1<sup>st</sup> Bank, its successors and assigns, that it has the right and power to convey to Mountain 1<sup>st</sup> Bank such right and easement and that it will, and its successors and assigns, shall warrant and defend the title to said easement unto Mountain 1<sup>st</sup> Bank, its successors and assigns, against the lawful claims of all persons whomsoever.

**IN WITNESS WHEREOF**, the Association and Mountain 1<sup>st</sup> Bank have executed this Right of Way and Easement Agreement, as of the day and year first above written.

**ASSOCIATION:**

**FIREFLY COVE PROPERTY OWNERS ASSOCIATION, INC.**

By: \_\_\_\_\_

Print Name: Robert Cameron

Title: President

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STATE OF NORTH CAROLINA

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

I, a Notary Public of the aforesaid State and County, certify that **ROBERT CAMERON, who is the President of the Firefly Cove Property Owners Association, Inc., a North Carolina corporation,** appeared before me and being personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

**WITNESS** my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2013.

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

My Commission Expires:

\_\_\_\_\_

(NOTARIAL SEAL)

**MOUNTAIN 1<sup>ST</sup> BANK:**

**MOUNTAIN 1<sup>ST</sup> BANK & TRUST COMPANY**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**STATE OF NORTH CAROLINA**

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

I, a Notary Public of the aforesaid State and County, certify that \_\_\_\_\_, **who is the** \_\_\_\_\_ **of Mountain 1<sup>st</sup> Bank,** appeared before me and being personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

**WITNESS** my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_

NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

(NOTARIAL SEAL)