

**FILED  
WILKES COUNTY  
RICHARD L. WOODRUFF  
REGISTER OF DEEDS**

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Prepared by and return to:  
John M. Logsdon, McElwee Firm, PLLC  
906 Main Street, North Wilkesboro, NC 28659

NORTH CAROLINA  
WILKES COUNTY

**AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS  
BELL MOUNTAIN SUBDIVISION**

This Amended and Restated Declaration of Restrictive Covenants for Bell Mountain Subdivision is made and entered on the 14 day of October, 2013, by **BELL MOUNTAIN PROPERTY OWNERS ASSOCIATION, INC.**, a North Carolina non-profit corporation (the "Association")

**WITNESSETH:**

**THAT, WHEREAS**, Red Creek Ranch, Inc., (the "Original Declarant) executed a Declaration of Reservations and Restrictive Covenants, Bell Mountain, dated November 18, 1997, which was recorded in **Book 785, Page 372**, of the Wilkes County Registry; and

**WHEREAS**, Red Creek Ranch, Inc., as the Original Declarant, filed an Amended Declaration of Reservations and Restrictive Covenants, Bell Mountain Sections I, II, III, dated December 17, 1999, and recorded in **Book 830, Page 510**; and

**WHEREAS**, Red Creek Ranch, Inc., has conveyed all Lots within Bell Mountain Subdivision, Section I, II and III, and retains no ownership interest in any property subject to this Declaration; and Red Creek Ranch, Inc., transferred any rights it retained as Declarant to Bell Mountain Property Owners Association, Inc.; and the Original Declarant has transferred its obligation for maintenance of the roads to the Association; and

**WHEREAS**, Bell Mountain Property Owners Association, Inc. filed an Amended

Declaration of Reservations and Restrictive Covenants, Bell Mountain - Section I, II, III, dated January 8, 2000, and recorded in **Book 834, Page 216**, of the Wilkes County Registry; and

**WHEREAS**, Bell Mountain Property Owners Association, Inc., filed a document entitled "Amendment to Restrictive Covenants for Bell Mountain Subdivision and Notice of Election Pursuant to N.C. Gen. Stat. § 47F-1-1-2(d)" dated June 12, 2013, and recorded in **Book 1172, Page 177**, of the Wilkes County Registry; and

**WHEREAS**, in accordance with the provisions of the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes (the "Act") and specifically, N.C. Gen. Stat. §47F-2-117, amendments to Article III, Paragraph 3, and Article III, Paragraph 4, were approved by the affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, as appears on the Certification attached hereto as Exhibit A

**WHEREAS**, in accordance with the provisions of the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes (the "Act") and specifically, N.C. Gen. Stat. §47F-2-117, this Amended and Restated Declaration of Restrictive Covenants was approved by the affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, as appears on the Certification attached hereto as Exhibit A;

**NOW, THEREFORE**, the Association does hereby amend and restate the Declaration of Restrictive Covenants for Bell Mountain Subdivision (hereinafter, the "Declaration") as follows:

#### **ARTICLE I**

The real property which is, and shall be, held, transferred, sold and conveyed subject to the protective covenants set forth in the various articles of this Declaration is located in Wilkes County, North Carolina, and is more particularly described as follows:

All of Lots 1 through 23, as shown on the plat of Section I, Bell Mountain Subdivision, dated November 4, 1997, and recorded in Plat Book 9, Page 212-215, of the Wilkes County Registry; and

all of Lots 24 through 37, as shown on the plat of Section II, Bell Mountain Subdivision, dated November 19, 1997, and recorded in Plat Book 9, Page 237-239, of the Wilkes County Registry; and

all of Lots 38 through 52, as shown on the plat of Section II, Bell Mountain Subdivision, dated February 12, 1998, and recorded in Plat Book 9, Page 254-255, of the Wilkes County Registry;

including all divisions of and conveyances from such Lots (collectively, "Bell Mountain Subdivision").

No property other than that described above shall be subject to this Declaration until specifically made subject thereto.

## ARTICLE II

All real property within Bell Mountain Subdivision, as described in Article I, is subjected to the protective covenants and restrictions hereby declared in order to provide enforceable standards of improvement and development whereby aesthetics, living conditions and property values may be enhanced. Bell Mountain Subdivision is further subject to the provisions of the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes (the "Act").

## ARTICLE III

No lot shall be used except for residential and recreational purposes. No swine, livestock or poultry shall be raised or bred on any lot, except as household pets, such as cats or dogs, which may be kept provided they are not bred or maintained for commercial purposes. Improvements constructed for the maintenance of animals shall be kept in good repair and must conform generally in appearance with any dwelling upon a lot, although such improvements need not be constructed of materials identical to an existing dwelling. Each Lot owner shall maintain any such improvements placed upon any Lot, and no unsightly or dilapidated buildings or other structures shall be permitted on any Lot with the exception of any pre-existing structures.

No residence shall be erected, constructed, maintained or used or permitted to remain on any Lot other than one single-family dwelling of not less than 1200 square feet. Once construction is begun on said dwelling, all exterior construction must be completed within one (1) year of the commencement of construction.

Outbuildings or other related buildings usually associated with a residence, whether temporary or permanent in nature, must be built with consideration to intended use, location and visibility to main roads, common areas and neighboring lots. One large outbuilding used for the storage of large items such as RVs, boats and cars is permitted. This building must be totally enclosed and may not be used as a residence. Other smaller outbuildings usually accessory to single-family residences are permitted. These smaller structures would include, but not limited to, items such as gazebos, small work sheds (e.g., gardener work/storage area), covered picnic areas, open carports, children playground sets, etc. Each Lot may have not more than four such buildings, large or small. Any such outbuilding must be constructed in keeping with the architecture of the residence and meet all state and local building codes. All outbuildings existing on any lot as of January 1, 2013, shall be conclusively presumed to comply with this provision and shall not be deemed a violation of this Declaration.

There shall be no single-wide or double-wide mobile homes or buses situated on any Lot as a residence or storage, either temporarily or permanently. Manufactured homes or other prefabricated structures that are delivered on a permanent frame with attached wheels are not permitted, even if the hitch and wheels are removed prior to occupancy. All homes must meet state and local building codes and be suited to the terrain and surrounding area, and be consistent in appearance with the architectural style of existing structures in the Bell Mountain Subdivision.

#### ARTICLE IV

No trade, commerce or other activity which may be considered a nuisance to the neighborhood shall be carried on upon any Lot. No trade materials or inventories may be stored upon any Lot and no tractor-trailer type trucks, house trailers, or mobile homes may be stored or regularly parked on any Lot. No sign or billboard of any kind shall be erected or allowed to remain on any Lot other than a "For Sale" or "For Rent" sign. No junk or unsightly vehicles of any type or description or unsightly outbuildings may be placed upon said Lot.

#### ARTICLE V

No Lot or Lots (as shown on the subdivision plats recorded in Plat Book 9, Pages 212-215, 237-239, and 254-255) shall be subdivided more than once and not into tracts of less than five (5) acres, but any Lots so divided or enlarged cannot be improved with more than one single-family dwelling. All divisions and recombinations of any tracts or lots within Bell Mountain Subdivision occurring prior to January 1, 2013, shall be deemed to be in compliance with this Article V.

#### ARTICLE VI

No Lot shall be used for ingress or egress to any properties not part of this Subdivision. The Association, as transferee of the rights reserved by the original Declarant (Red Creek Ranch, Inc.) reserves the right unto itself to extend any existing roadways shown on the recorded subdivision plat above referenced to, to any additional property lying outside Bell Mountain.

#### ARTICLE VII

No structure, other than a fence, may be built within fifteen (15) feet of any property line.

#### ARTICLE VIII

Easements for installation and maintenance of utilities and drainage facilities are reserved fifteen (15) feet in width over all side Lot lines and Lot lines along any road in said Subdivision. In addition, the property described in Article I hereof is subject to easements, set backs and road rights-of-way as shown on the plats recorded in Plat Book 9, Pages 212-215, 237-239, and 254-255 Wilkes County Registry.

## ARTICLE IX

This development is not a campground. Lot owners are not, however, prohibited from overnight stays in professionally manufactured equipment, provided the camping equipment is not left on any Lot for more than thirty (30) consecutive days and is not in violation of any local ordinance. Permanent residence in any type of camping equipment is strictly forbidden.

## ARTICLE X

The roadways and rights-of-way constructed throughout the Subdivision are for the common use of Lot Owners and their respective heirs, successors or assigns.

## ARTICLE XI

Every Lot subject to this Declaration shall be subject to assessment for maintenance and expenditures as listed below. The annual assessment for each Lot owner of Bell Mountain shall be the sum of Three Hundred and no/100 Dollars (\$300.00) per Lot, per year. The funds shall be known as the "Bell Mountain Maintenance Fund." The annual assessment may be increased at any time by the affirmative vote or written agreement signed by Lot Owners of lots to which at least seventy-five percent (75%) of the votes in the Association are allocated.

The Bell Mountain Maintenance Fund shall be owned by the Association, and shall be used only for:

- a. road maintenance and road improvement expenses;
- b. common areas (property) maintenance and property owner security;
- c. administration costs necessary to manage the specified activities in this Declaration and the Articles of Incorporation and By-Laws of the Association; and
- d. lifestyle enhancements approved by a majority of the lot owners at a membership meeting of the Association

If any assessment has not been paid by May 1 of any year, the Association shall be entitled to file a claim of lien in the Office of the Clerk of Superior Court for Wilkes County and shall be entitled to enforce the lien as provided by law.

The Bell Mountain Subdivision Property Owners Association shall be comprised of all Lot owners. All decisions shall be made by a majority vote (except that a three-fourths (3/4) majority shall be necessary for the levy of increased or special assessments), at a meeting of the Lot owners held after a reasonable notice to all such Lot owners. The Association shall organize, elect officers, and operate freely within the restrictions herein contained and in accordance with

its duly adopted Bylaws and the Act.

Any damage by driveway connections to the private roads shown upon the recorded subdivision plats, or to the ditches or shoulders of the roads, or to the flow of drainage water along the said roads shall be repaired at the expense of the Owners connecting such driveways, within fourteen (14) days of notification.

#### **ARTICLE XII**

There shall be no hunting from any roadway, or other designated easement for ingress and egress or for drainage, within Bell Mountain Subdivision. No firearms shall be discharged within one hundred (100) feet of any property line, roadway or easement of ingress and egress of the subdivision.

#### **ARTICLE XIII**

No commercial timbering will be permitted upon any Lot. However, clearing for homesites will be permitted. However, no more than twenty (20%) percent of any Lot may be cleared without prior approval of the Bell Mountain Property Owners Association Board of Directors.

#### **ARTICLE XIV**

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2025, at which time said covenants shall be automatically extended to successive periods of ten (10) years. This Declaration may be amended at any time by the affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided, however, that no amendment shall not be valid or binding until recorded in the Office of the Register of Deeds for Wilkes County.

If the parties hereto, or any of them, or their heirs, successors, or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning Lots described herein or the Association to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate such covenant, and either to prevent it, her, him or them from so doing or to recover damages or charges (as provided in the Act) for such violation.

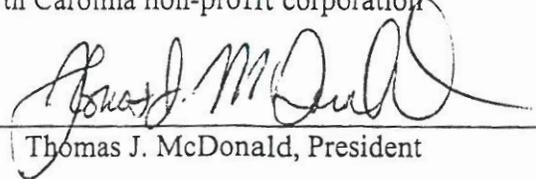
#### **ARTICLE XV**

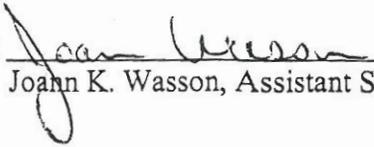
Invalidation of any of these covenants or any part thereof by judgements or Court order shall in no way affect any of the other provisions which shall remain in full force and effect, and the failure of any person or persons to take action to restrain the violation of any of these covenants and restrictions shall not be construed as waiver of any enforcement rights and shall

not prevent the enforcement of such covenant in the future.

**IN WITNESS WHEREOF**, this Amended and Restated Declaration of Restrictive Covenants is executed in the name of the Bell Mountain Property Owners Association by its President and attested by its Secretary, under authority duly given, as of the day and year first above written.

BELL MOUNTAIN PROPERTY OWNERS ASSOCIATION, INC.,  
a North Carolina non-profit corporation

By:   
Thomas J. McDonald, President

Attest:   
Joann K. Wasson, Assistant Secretary

[Corporate Seal]

NORTH CAROLINA  
Mecklenburg COUNTY

I, Charles E. Miller Jr. a Notary Public of the County and State aforesaid, do hereby certify that Joann K. Wasson personally came before me this day and acknowledged that she is the Assistant Secretary of Bell Mountain Property Owners Association, Inc., a corporation, and that by authority duly given and as the act of the corporation the forgoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary.

Witness my hand and official seal this 14 day of October, 2013.

Charles E Miller Jr  
Notary Public  
Mecklenburg County, NC  
My Commission Expires July 1, 2017

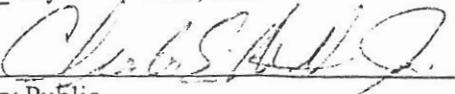
  
Notary Public  
Charles E. Miller Jr.  
Printed name  
My Commission expires: July 1, 2017

EXHIBIT A

NORTH CAROLINA

CERTIFICATION

WILKES COUNTY

I, Joann K. Wasson, the undersigned Assistant Secretary of Bell Mountain Property Owners Association, Inc., after being duly sworn, do certify as follows:

1. Bell Mountain Property Owners Association, Inc. (the "Association") is a non-profit corporation organized and existing under the laws of the State of North Carolina.

2. The following are the current, duly elected Officers of the Association:

- President-----Thomas J. McDonald
- Vice President -----Edward J. Steffy
- Treasurer-----Carl James Moreschi
- Secretary-----Amy Brix Tucker
- Assistant Secretary---Joann K. Wasson

3. Three ballots were mailed to each of the Association members within the Bell Mountain Property Owners Association with the below listed questions. The ballots/votes the Board received from the Association members for each ballot are also reflected below.

Ballot #1: A completely new "Amended and Restated Declaration of Restrictive Covenants" for the Association. The ballot included the statement "I/We, owner(s) of Lot(s) \_\_\_\_\_, AGREE or DISAGREE (please circle one choice) with the above proposed restated Bell Mountain Covenants."

TOTALS (of 82 votes entitled to be cast):	Agree	64	78.05%
	Disagree	2	2.44%
	No Reply	<u>16</u>	<u>19.51%</u>
		82	100.00%

Ballot #2: A proposed revision to Paragraph 3, Article III of the Covenants. The ballot included the statement "I/We, owner(s) of Lot(s) \_\_\_\_\_, AGREE or DISAGREE (please circle one choice) with the above proposed Amendment to the Bell Mountain Covenants."

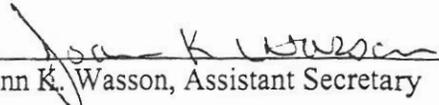
TOTALS (of 82 votes entitled to be cast):	Agree	58	70.73%
	Disagree	8	9.76%
	No Reply	<u>16</u>	<u>19.51%</u>
		82	100.00%

Ballot #3: A proposed revision to Paragraph 4, Article III of the Covenants. The ballot included the statement "I/We, owner(s) of Lot(s) \_\_\_\_\_, AGREE or DISAGREE (please circle one choice) with the above proposed Amendment to the Bell Mountain Covenants."

TOTALS (of 82 votes entitled to be cast):	Agree	63	76.83%
	Disagree	3	3.66%
	No Reply	<u>16</u>	<u>19.51%</u>
		82	100.00%

4. As the number of Association members who agreed with each individual question/ballot exceeded the number necessary for approval (67% of those Association members entitled to vote), the Bell Mountain Covenants will be amended accordingly.

This the 14 day of October, 2013.

  
\_\_\_\_\_  
Joann K. Wasson, Assistant Secretary

Sworn to and subscribed before me,  
this 14 day of October, 2013

  
\_\_\_\_\_  
Notary Public  
My commission expires: July 1, 2017

Charles E Miller Jr  
Notary Public  
Mecklenburg County, NC  
My Commission Expires July 1, 2017