

BK:00302 PG:0125

---

|              |              |
|--------------|--------------|
| FILED        | Feb 15, 2005 |
| AT           | 03:51:03 pm  |
| BOOK         | 00302        |
| START PAGE   | 0125         |
| END PAGE     | 0132         |
| INSTRUMENT # | 00481        |

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE FALLS**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE FALLS** (as may be amended or supplemented as set forth  
herein, "Declaration") is made this 15<sup>th</sup> day of February, 2005, by THE FALLS, LLC, a  
North Carolina Limited Liability Company (the "Declarant or Developer").

**WITNESSETH:**

The property that is subject to this declaration is all of the property shown on the plat  
by Joel Johnson, PLS dated 7-4-2004, entitled 'The Falls, LLC', recorded in the Swain  
County Registry in Plat Cabinet 3, Slides 1582 and 1583, and an 88.034 acre tract  
described in a deed from Rainbow Resources, Inc. and David R. Rainey and Diana D.  
Rainey to Fred Lovell, Trustee, dated July 14, 2004, and recorded in the Swain County  
Registry in Book 293, page 250, collectively hereafter referred to as the land, the  
property or the development, and such other land as the Developer may add.

The term Developer or Declarant includes the Developer, or any successor  
developer.

Developer intends to subdivide the land into various Lots and intends to sell those  
Lots individually. The Developer desires that the land be developed in an orderly manner  
and in a way that will benefit all present and future owners of the lots in the development.

THEREFORE, Developer declares and imposes the following covenants, conditions  
and restrictions on use, which shall be covenants running with the land by whomsoever  
owned and shall constitute a material part of the consideration for the purchase and sale  
of the land.

1. Lot. The word "Lot" as used in this document shall mean land conveyed by the  
Developer from the land described above. For the purpose of assessments by the  
association, all land owned by the Developer prior to a conveyance from the  
Developer shall be considered one lot.

2. North Carolina Planned Community Act. Regardless of the number of lots that initially or ultimately are included within the Development, Chapter 47F of the North Carolina General Statutes, the North Carolina Planned Community Act, shall apply in full to the Development.
3. Land Use.
  - a. No structure shall be erected, altered, placed or permitted to remain on any lot other than for use as a single-family residential dwelling and only one single-family residential dwelling shall be erected or permitted to remain upon any lot. Residential use on any lot shall be confined to the permanent, residential dwelling, except that one outbuilding may be used as a guest cabin on lots of three (3) acres or more. All outbuildings shall be subject to the same architectural review standards for dwellings as more fully set forth below. Except as allowed in this paragraph, no structure of a temporary character or any outbuilding shall be used as a residence on any lot at any time.
  - b. It is the express intent of the Developer that no lot shall be used for any commercial or business purpose other than the incidental business use described in 'c.' and 'e.' below.
  - c. An office may be maintained in and conducted from a residential dwelling provided that those maintaining, conducting and operating the business actually reside in the residential dwelling. No office may be maintained in and conducted from a building other than the residential dwelling.
  - d. No more than two (2) outbuildings may be erected on a lot. Any outbuilding erected upon any lot must be incidental to the residential use of the lot. All outbuildings must be of a design similar to the dwelling on the lot and aesthetically compatible with the dwelling located on the lot. All outbuildings shall be subject to the same architectural review standards for dwellings as more fully set forth below.
  - e. Owners of residential dwellings may rent the residential dwellings for residential use for a minimum lease term of 6 months. It is the intention of the Developer that short-term vacation rentals shall not be allowed.
  - f. The Developer reserves the right to operate a sales office located within the Development devoted to the sale of property within the Development.
4. Subdivision. Once sold by developers, no lot may be subdivided unless in the deed from the developer, the developer expressly allows subdivision and states the conditions upon which subdivision can be made. In the event a map of the development is made that shows the boundary lines of individual lots, prior to sale by the Developers, Developers reserve the right to alter lot lines, including the right to subdivide any lot shown on the development map.
5. Architectural Control Committee. It is the intention of the Developer that all lots shall be developed in a manner in harmony with the natural beauty of the development and in a manner that is reasonably unobtrusive to surrounding lots. Therefore, the Executive Board shall establish an Architectural Control Committee (ACC) consisting of at least 3 members. The ACC shall establish Rules and

Regulations that shall control the location, design and construction of all structures on the property. Structures failing to comply shall be modified to comply within 90 days after notice of noncompliance by the ACC, or shall be removed, both at the expense of the lot owner. The Rules and Regulations of the ACC shall include but are not limited to the following:

A. Dwelling Plans, Size, Height, Quality and Color.

1. All plans for any structure, including outbuildings, must be approved in advance and in writing by the ACC.
2. Any dwelling erected upon any lot shall contain not less than 2000 square feet, outside measurement, of enclosed and heated floor area, exclusive of open porches and garages.
3. No dwelling or other structure shall exceed 40 feet above the highest point off the foundation and shall comply with the standards set forth in the Mountain Ridge Protection Act, NCGS 113A-205 et seq.
4. All dwellings and outbuildings erected upon any lot must be erected in such a manner as to meet the requirements of the North Carolina Building Code. All dwellings shall be completed so that a certificate of occupancy is issued within one year of the issuance of the building permit or the commencement of construction activity, whichever occurs first.
5. All exterior walls of all dwellings or other structures must be earth tones or natural material, and all colors shall be expressly approved in advance and in writing by the ACC.

B. Setbacks. All lots shall be subject to setback restrictions. However setbacks for each lot shall be determined by the ACC in order to allow the ACC to consider the unique topography of each lot.

C. Trailers, Mobile Homes, Manufactured Homes and Modular Homes. No trailers or mobile homes shall be erected, placed or permitted to remain on any lot.

D. Modular Homes of the Following Quality Permitted. Modular homes may be permitted provided the quality and appearance of the modular home is reasonably equivalent to a quality site built home. Acceptable quality shall be determined in the sole discretion of the ACC.

E. Trees and Lawns. Except as reasonably necessary to construct and to protect the residential dwelling or to construct and to protect an outbuilding, no owner shall remove, cut or destroy any live tree greater than six inches (6" inches) in diameter. Unless approved in advance in writing by the ACC, violation of this provision shall subject the owner to a fine in the amount necessary to restore the property to its condition prior to the violation.

- F. Security Lights. No dusk to dawn continuous lighting is allowed unless specifically approved in advance by the ACC and designed in a manner so that the lighting is limited to the lot on which the light is located.
6. Utility Easements. Easements for the installation and maintenance of utilities, to include but not limited to electric, cable, water, sewer and telephone service and drainage facilities are expressly reserved over a ten (10) foot wide strip of land lying five (5) feet on each side of the centerline of each lot boundary line and over that strip of land lying thirty (30) feet on either side of the centerline of each development road right of way. It is the intention of this reservation to allow public utility companies to provide utility services to all lots within the development, and may be assigned by the Developer to appropriate public utilities. The owner of each lot shall maintain that portion of the lot lying within the easement areas. Provided that no utilities benefiting another lot owner are located in the common boundary of adjoining lots, if a single owner purchases 2 or more adjoining lots, then the utility easement shall apply only to the exterior boundary of the adjoining lots.
7. Utilities. Except where the cost of placing utilities underground will be prohibitively expensive, which shall be determined in the sole discretion of the developer, his successor-developers and assigns, all utilities must be placed, located and maintained underground.
8. Membership in a Property Owner's Association. The owner of each lot shall become a member of the Property Owners Association and shall pay to the Association an annual assessment that shall be applied toward the administrative costs of the association, maintenance and improvement of all subdivision roads, common areas within the development and the access road from the development to the public road. Any unpaid assessment shall become a lien upon that lot owner's lot as set forth in the North Carolina Planned Community Act, including the right to foreclose on the lien as set forth therein. The association shall have the right to name a trustee to conduct the foreclosure. No lot owner shall be released from any liability for the assessment because of non-use of that owner's lot. The Association shall have all powers allowed by the North Carolina Planned Community Act, including without limitation, the power to charge interest and reasonable attorney fees for all unpaid assessments, including unpaid assessments (fines) for violation of the Declaration as provided in 47F-3-107.1.

It is the express intention of the Declarant that the Association shall have broad discretion to use assessments in the best interest of the members to maintain or to improve the property, however it is expressly understood and agreed by the Declarant that assessments of members shall not be used to subsidize the cost of development. For example, during the period of Developer Control, new road construction shall be the responsibility of the Declarant and assessments shall be used solely to maintain or to improve existing roads.

It is the express intention of the Developer that the Executive Board shall, where administratively reasonable and practical, apply the concept of limited common elements as set forth in the North Carolina Planned Communities Act in determining the appropriate assessment for each lot. For example, the fact that a particular subdivision road benefits only a limited number of lots shall be considered in determining who shall pay the costs for maintaining, repairing or improving the road.

The Developer expressly reserves a period of control of the association pursuant to the authority of North Carolina General Statutes § 47F-3-103 (d), during which period the Developer, or persons designated by the Developer, may appoint and remove the officers and members of the Executive Board of the Association. The period of Developer control shall last until such time as the Developer shall have transferred more than 94 lots subject to this Declaration.

9. Development Roads.

- a. Developer expressly dedicates and conveys to all lot owners, easements for all existing roads within the development, all roads constructed in the future as development roads and all easements from the development to the state road. Easements conveyed are sixty (60) feet in width, thirty (30) feet of either side of the centerline of the subdivision roads, except that the width of the easement conveyed across the lands not within the development shall be the maximum width the developer can legally convey, or sixty (60) feet, whichever is less.
- b. Maintenance. Developer expressly states that the development roads are not suitable for acceptance by the North Carolina Department of Transportation as state maintained roads. The Property Owner's Association shall maintain the development roads. Except as a lot owner, the Developer has no responsibility for the maintenance of any development roads.
- c. All Roads Open. All development roads shall remain open at all times for the purpose of ingress and egress and for the maintenance of the roads.
- d. Road Damage. Individual lot owners shall be solely responsible for damage to any portion of a development road that exceeds ordinary wear and tear, such as damage incurred during any construction or improvement on the owners' lot, damage caused by the placement of underground utilities or by reason of travel by equipment, trucks or other vehicles to and from the lot to the public road.
- e. Reservation of Easement. The Developer reserves a non-exclusive easement, sixty (60) feet in width, for ingress, egress, regress and for utilities centered across all development roads, either presently existing or constructed in the future. This reservation is for the benefit of the developer, its successor-developers and assigns to access all lots within the development and for the benefit of any other lands that the Developer now owns or may acquire in the future adjoining the development.
- f. In the event that the North Carolina Department of Transportation should desire to make public roads out of any or all of the roads contained in the development, or to perform maintenance on any road within the development, the reservation in paragraph e. of this section is made for the benefit of the Department of Transportation and its successors, with the intent that no further consent shall be

- required of any lot owner then holding title to any lot. No warranty is made by the Developer regarding whether or not the development roads will ever be made public roads.
- g. A development road or subdivision road is defined as any road within the development that provides access to more than one owner's lot. From the point at which any subdivision or development road benefits only one lot, or multiple lots owned by one owner, the owner of the lot or lots shall be solely responsible for the cost of maintenance.
  - h. All lots are granted subject to the easement for subdivision roads that as they cross each lot.
10. Rules and Regulations Established by the Executive Board of the Association. The Executive Board shall establish Rules and Regulations to enhance and maintain the beauty of the development and a quiet and peaceful quality of life within the development. The Rules and Regulations shall include but shall not be limited to the following:
- A. Appearance of Property. Rules shall be established which shall ensure that each lot is kept in a manner consistent with the natural beauty of the development.
  - B. Nuisances. Rules shall be established which ensure that nothing is done which may be or become a nuisance or annoyance to the neighborhood. The Rules and Regulations shall be designed to preserve a quiet and peaceful community and shall provide that loud noises of any nature whatsoever, loud motorcycles, barking dogs, fireworks and the discharge of firearms are prohibited and that all terrain vehicles shall not be operated on any part of the property.
  - C. Pets. The Rules and Regulations shall allow a limited number of dogs, cats, or other household pets per lot, provided they are not kept, bred, or maintained for commercial purposes and do not constitute a nuisance.
11. Riparian Rights. A primary purpose in purchasing lots in this development is the beauty of each lot. Creeks and small streams provide a particular aesthetic benefit. For that reason, use of water by an upper riparian owner in quantities that diminish the aesthetic benefit to a lower riparian owner shall be considered an unreasonable use unless all lower riparian owners agree to the use. If riparian owners disagree whether or not there has been a diminution of aesthetic benefit, that determination shall be made in the sole discretion of the Developer, his successor-developers and assigns.
12. Reservation of Special Declarant's Rights. Until the end of the period of Developer control as described in paragraph #8 of this Declaration, the Developer reserves all Special Declarant rights as defined in § 47F-1-103 (28) of the North Carolina Planned Communities Act including, without limitation, the right (i) to complete improvements indicated on plats and plans filed with the Declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs

BK:00302 PG:0131

advertising the Development, and models; (iv) to use easements through the common elements for the purpose of making improvements within the Development or within real estate which may be added to the Development; (v) to make the Development part of a larger Development or group of planned communities; (vi) to make the Development subject to a master association; or (vii) to appoint or remove any officer or Executive Board member of the association or any master association during the period of declarant control.

13. Time. These covenants are to run with the land and shall be binding on all persons acquiring title to any of the lots up to and including the 1st day of January, 2050. This Declaration shall be automatically and continuously extended for additional 10 year periods, unless by the affirmative vote of the owners of not less than two-thirds of the lots, the owners vote to extinguish this Declaration.
14. Amendments. After the end of the period of Developer control as described in paragraph #8 of this Declaration, this document may be amended by an instrument signed by, or on the affirmative consent of the owners of not less than sixty-seven per cent (67%) of the lots. All amendments must be recorded in the Swain County Registry.
15. Developer Amendment. Until the end of the period of Developer control as described in paragraph #8 of this Declaration, the Developer and its successor Developer(s), reserve the right to amend, modify or vacate any restriction contained in this Declaration whenever, in the opinion of the Developer or its successor developer(s), the circumstances warrant such action as being necessary or desirable; provided however, such action must be reasonable and in harmony with the plan of development. This provision expressly anticipates that the Developer and its successor developer(s) shall have the right to allow a lot within the development to be used as access to property that is outside of the development.
16. Easements to Run with the Land in Perpetuity. Notwithstanding the time limitations and the ability to amend the Declarations in paragraphs 13, 14 and 15 above, it is the intent of the Developers that all easements for ingress, egress and utilities, both conveyed and reserved, shall be perpetual and appurtenant to the lands conveyed and shall not expire at the expiration of these covenants and shall not be amended without the express agreement of all benefited and burdened parties.
17. Voting. On any vote for extension or amendment of these covenants, each lot shall receive one vote, regardless of the size of the lot, the number of owners of each lot or its value.
18. Enforcement. Enforcement of these restrictions and conditions, by the Association, a lot owner or Developer, shall be as provided in Chapter 47F of the North Carolina General Statutes or by an action in equity or at law.

BK:00302 PG:0132

19. Severability. Invalidation of any one of these covenants or conditions by judgment or order of any court shall in no way affect any of the other provisions, which shall remain in full force and effect.

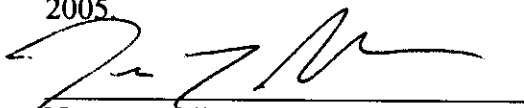
IN TESTIMONY WHEREOF, Developer has caused this instrument to be executed the day and year first written above.

THE FALLS, LLC

  
RONALD WITKOWSKI, Manager

STATE OF NORTH CAROLINA  
COUNTY OF SWAIN

I, a Notary Public for the County and State written above, certify that RONALD WITKOWSKI personally came before me this day and acknowledged that he is a Manager of The Falls, LLC, a North Carolina limited liability company, and that as Manager, and being duly authorized to do so, he executed this instrument of behalf of the LLC. Witness my hand and official stamp or seal, this the 15<sup>th</sup> day of February, 2005.

  
Notary Public

My commission expires

Swain Co, NC Notary Public  
William L. Richards  
Commission Expires 7-31-2007

NORTH CAROLINA - SWAIN COUNTY  
The foregoing certificate(s) of  
WILLIAM L RICHARDS

Notary Public is (are) certified to be correct.  
Duly registered this date and hour shown  
on the first page hereof.

DIANA WILLIAMSON KIRKLAND  
Register of Deeds

By   
Assistant / Deputy