

STATE OF NORTH CAROLINA  
COUNTY OF CHEROKEE

AMENDED DECLARATION OF RESTRICTIONS, CONDITIONS, EASEMENTS,  
COVENANTS, AGREEMENTS, LIENS, AND CHARGES FOR  
FALL BRANCH ESTATE SUBDIVISION ALSO KNOWN AS  
SCOTTIE MOUNTAIN RESORT AND SPA

This Declaration made this the 28<sup>th</sup> day of January, 2002, by:

CHRIS HENSON and wife, ROBYN HENSON, and  
SCOTTY FAIN and wife, DEBBIE FAIN

WITNESSETH:

WHEREAS, Declarant is the owner of a certain tract or parcel of land and as is more particularly described by that plat of survey by W. Hampton Company Land Surveyors, dated March 16, 2000 and entitled "Champion Realty Corporation", Murphy Township, Cherokee County, N.C. being, being all of the properties recorded in Deed Book 894 Page 194, Cherokee County North Carolina Registry, reference to which is made hereby for incorporation herein; and

WHEREAS DECLARANT previously declared the above described property subject to certain Restrictions, Conditions, Easements, Covenants, Agreements, Liens, and Charges, as recorded in Deed Book 904 Page 155, Cherokee County, North Carolina Registry.

THAT WHEREAS DECLARANT/DEVELOPER are the designated entities to implement and provide for amendments, alterations, or to repeal the Restrictions, Conditions, Easements, Covenants, Agreements, Liens, and Charges aforementioned, specifically reference is made to Article V for such authority.

NOW THEREFORE DECLARANT/DEVELOPER, pursuant to the powers and authority set forth in the Declaration of Restriction, Conditions, Easements, Covenants, Agreements, Liens, and Charges as recorded in Deed Book 904 Page 155, Cherokee County North Carolina Registry, does hereby amend said Restrictions, Conditions, Easements, Covenants, Agreements, Liens, and Charges so that the original covenants along with the amendments in full read as follows:

WHEREAS, it is the desire and intention of Declarant/Developer to sell the above described real property and any property annexed hereto by a set of Supplemental Restrictions and to impose upon it mutual beneficial restrictions, conditions, easements, covenants, agreements, liens, and

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County of Cherokee, North Carolina  
The foregoing certificate(s) of Andrea Smith  
is certified to be correct.  
This 29 day of Jan, 2002  
Ralph A. Kephart  
Register of Deeds/Assistant/Deputy

charges under a general plan or scheme of improvement for the benefit of all the said lands and future owners of said lands;

NOW, THEREFORE, Declarant/Developer declares that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following provisions, restrictions, conditions, easements, covenants, agreements, liens, and charges, all of which are declared and agreed to be in furtherance of a plan for subdivision improvements and sale of real property and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of said real property and every part thereof, all of which shall run with the land, be appurtenant thereto and shall be binding on all parties having acquired any part thereof.

**I. DEFINITIONS:**

The following terms as used in this Declaration and Supplemental Declaration of Restrictions are defined as follows:

- (a) "Articles" means the Articles of Incorporation of the Association.
- (b) "Association" shall mean or refer to Scottie Mountain Resort & Spa Property Owner's Association, Inc. formerly known as Fall Branch Estates Homeowners Association.
- (c) "Board" means the Board of Directors of the Association.
- (d) "By-Laws" means the Bylaws of the Association.
- (e) "Declarant" means Chris Henson and wife, Robyn Henson and Scotty Fain and wife Debbie Fain, or their successor and /or assigns.
- (f) "Declaration" means this Declaration of Restrictions, Conditions, Easements, Covenants, Agreements, Liens, and Charges, and any amendments thereto.
- (g) "Developer" means Scottie Fain and/or Chris Henson, or their successor and/or assigns.
- (h) "Development" means all real property situated in Cherokee County, North Carolina, in the aforementioned deed and all other property which may be annexed thereto as provided herein.
- (i) "Owner" means any person, firm, corporation, trust, or other legal entity, including Developer, who holds fee simple title to any lot.

- (j) "Supplemental Declaration" means any Declaration filed for record in Cherokee County, North Carolina, subsequent to the filing of record of this document; or in the event of real property being annexed to the Development, the recorded Supplemental Declaration which incorporates the provisions of this Declaration therein by reference. In either event, the Supplemental Declaration shall include a description of the real property in the Development subject to the provisions of this Declaration and shall designate the permitted uses of such property.
- (k) "Improvements" means all building, out-buildings, streets, roads, driveways, parking areas, fences and retaining wall and other walls, poles, antennae, and other structures of any type or kind.
- (l) "Lot" means any numbered or unnumbered lot or parcel of land within the Development as shown on a registered plat of survey.
- (m) "Scottie Mountain Resort and Spa" is the same property that is also known as Fall Branch Estates", this being all of the property subject to this Amended Declaration. Consequently, these two terms are used interchangeably throughout this Declaration.

## **II. PRINCIPAL USES**

This Declaration shall designate the principal uses of lots which are more particularly described on the aforementioned plat of survey, which are made subject to this Declaration. If a use other than that set out herein is designated, the provisions relating to permissible uses may be set forth in a Supplemental Declaration. The provisions for residential use of a lot are set forth below:

### **RESIDENTIAL DWELLING**

Except that as to those areas which may be designated on a plat or otherwise for a common enjoyment and use by all lot owners, or amenities constructed for the use of all lot owners who make the required contribution to be eligible to use the amenities, or office building or other such buildings deemed necessary by developer to help promote sell of lots, lots in the subdivision shall be used for single family dwelling purposes only.

No "For Sale" sign by either the owner or a real estate company shall be allowed on any undeveloped lot, except by Developer. However, any lot containing a dwelling may have such signs.

### **AMENITIES**

Developer plans on using some of the property within Scottie Mountain Resort and Spa,, to create certain amenities such as a Lodge and Spa area, river park, nature trail, and/or tennis courts, as money is available from the amount collected from the Sell of the lots for such purpose, which will be available to be used by all property owners within Scottie Mountain Resort and Spa who have contributed an amount determined and required by Developer toward the development of such amenities. It shall be conclusively presumed that all lots sold by Developer after the date these amended restrictions are recorded have made their required contribution and are free to use all amenities later built by Developer unless some document executed by Developer stating otherwise is recorded in the office of Cherokee County, N.C., and conclusively presumed that all lots in Fall Branch Estates that were sold by Developer before the date these amended covenants and restrictions are recorded have not made their contributions and are therefore not free to use said amenities, unless some document executed by Developer stating otherwise is recorded in the office of Cherokee County, N.C. after the date these amended Restrictions and Covenants are recorded, subject also to the additional contribution requirements of lots that may be later resubdivided in accordance with these covenants, as explained in the **Lot Subdivision** section below.

**SETBACKS**

All dwellings located within Fall Branch Estates shall have setbacks of twenty five(25') feet from each side of the lot and twenty five feet (25") from the front of the lot and fifty (50') feet from the back of each lot except with prior approval of the New Construction Review Board as hereinafter provided for.

**MINIMUM USE**

No residence shall be constructed on Tract Numbers 10, 11, 13, or 14 as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated September 15, 2000 entitled "Fall Branch Estates Subdivision Tracts 10, 11, 13, and 14", recorded in Plat Cabinet D Slide 106 Cherokee County, N.C. Registry, that contains less than 1,000 square feet of heated floor space.

No residence shall be constructed on Tract Number 12 as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated September 15, 2000, entitled "Fall Branch Estates Subdivision Tract 12", recorded in Plat Cabinet D Slide 65 Cherokee County, N.C. Registry, that contains less than 1,000 square feet of heated floor space.

No residence shall be constructed on Tract Numbers 19 as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated September 14, 2000, revised September 20, 2000, entitled "Fall Branch Estates Subdivision Tracts 15-18", recorded in Plat Cabinet D Slide 63 Cherokee County, N.C. Registry, that contains less than 1,000 square feet of heated floor space.

No residence shall be constructed on Tract Numbers 15, 16, 17, or 18 as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated November 15, 2000, entitled "Fall Branch Estates Subdivision Lot 19", recorded in Plat Cabinet D Slide 74 Cherokee County, N.C. Registry, that contains less than 1,000 square feet of heated floor space.

No residence shall be constructed on Tract Numbers 20-34 as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated January 4, 2001, entitled "Fall Branch Estates Subdivision Tracts 20 Through 34", recorded in Plat Cabinet D Slide 107 Cherokee County, N.C. Registry, that contains less than 1,000 square feet of heated floor space.

No residence shall be constructed on Lot Numbers 35 or 36 as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated January 4, 2001, revised January 16, 2001, entitled "Fall Branch Estates Subdivision Tract 35 and Tract 36", recorded in Plat Cabinet D Slide 109 Cherokee County, N.C. Registry, that contains less than 1,000 square feet of heated floor space.

No residence shall be constructed on Lot Number 37 as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated April 11, 2001, revised April 16, 2001, entitled "Fall Branch Estates Subdivision Lot 37", recorded in Plat Cabinet D Slide 85 Cherokee County, N.C. Registry, that contains less than 1,000 square feet of heated floor space.

No residence shall be constructed on tract numbers 38-46 as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated April 25, 2001, entitled "Fall Branch Estates Subdivision Tracts 38-46", recorded in Plat Cabinet D Slide 110 Cherokee County, N.C. Registry, that contains less than 1,000 square feet of heated floor space.

No residence shall be constructed on tract numbers 47-81 or tract numbers as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated

October 26, 2001, entitled "Fall Branch Estates Subdivision Tracts 47 Through 81 & Tracts 83 Through 98", recorded in Plat Cabinet D Slide 111 Cherokee County, N.C. Registry, that contains less than 1,400 square feet of heated floor space.

No residence shall be constructed on Tract 100 as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated December 7, 2001, entitled "Fall Branch Estates Subdivision Tract 100", recorded in Plat Cabinet D Slide 110 Cherokee County, N.C. Registry, that contains less than 1,200 square feet of heated floor space.

No residence shall be constructed on Tract Numbers 101-125 as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated July 26, 2001, entitled "Fall Branch Estates Subdivision Lots 101-125", recorded in Plat Cabinet D Slide 112 - 113 Cherokee County, N.C. Registry, that contains less than 1,800 square feet of heated floor space.

No residence shall be constructed on Tracts 126-140 as shown on Plat of Survey by W W Land Surveying Co., Jeffrey B. Weatherly, Professional Land Surveyor, dated January 4, 2002, entitled "Fall Branch Estates Subdivision Tracts 126 Through 140", recorded in Plat Cabinet D Slide 115 Cherokee County, N.C. Registry, that contains less than 1,200 square feet of heated floor space.

No residence shall be constructed on any lot or tracts not specifically listed above, if any, that were sold by Developer prior to the date of recordation of these amended covenants and restrictions, that contains less than 1,000 square feet of heated floor space.

A set of supplemental restrictions shall be recorded at a later date showing the minimum amount of square feet of heated floor space for property that is subject to these restrictions either now or through later annexation, that is not specifically mentioned above, or alternatively, the minimum amount of square feet of heated floor space may be included on the legal description of any lots not specifically listed above at the time the property is conveyed from Developers, or their successors in interest.

Necessary parking shall be provided by each individual lot owner in a manner that will not obstruct road traffic, except when and if Developer is providing parking spaces on the side of the subdivision road.

**TEMPORARY STRUCTURES AND VEHICLES**

Except as expressly provided herein, no house, trailer, mobile home (but not modular home) , camper, tent, commercial vehicles, travel trailer, and/or other temporary type residence shall be placed or located upon any lot; provided, that an owner or building contractor may reside in a travel trailer as temporary shelter during the period of construction of any residential dwelling on the lot. Temporary shelter placed and maintained during a period of construction may be utilized for residential purposes and for supervision of the construction project for a period not to exceed one (1) year from the date of commencement of construction.

**CONSTRUCTION MATERIAL STORAGE**

All construction material placed upon any lot shall be eliminated so as not to interfere with the use and enjoyment of appurtenant lots thereto.

**JUNK CARS AND APPLIANCES**

No unlicensed, unused, discarded, or salvaged motor vehicle or any part thereof and no unusable or salvaged household appliances, or parts thereof, shall be placed or left anywhere on any lot outside of any enclosed building or on the right-of-way of any subdivision road.

**NO NUISANCES**

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the neighborhood. All lots shall be kept free of accumulations of brush, trash, junk building materials, inoperable automobile and vehicles or other unsightly things. After fourteen (14) days written notice to the owner, sent to the address contained in the list maintained by the Association, the Association reserves the right of entry for the purpose of clearing away any such violations, assessing the cost thereof against the owner and such assessments shall be enforceable against the owner as other liens herein provided for. The Developer shall not be required to comply with these provisions by anyone until all development work has been completed and the common properties, if any, deeded to the Association.

**SEPTIC TANKS**

Prior to the occupancy of any residence on any lot, a proper and suitable septic tank and accompanying system shall be installed on such parcel for the disposal and treatment of all sewage. No sewage shall be emptied or discharged into any marsh, stream, or ravine, or upon the surface of the ground. No sewage disposal system shall be permitted or used on any lot unless said system is

located, constructed and maintained in accordance with the requirements, standards, and recommendations of the appropriate public health authority, and approval of said system shall be obtained from said authority prior to occupancy of any dwelling on any lot.

**MAINTENANCE OF LOTS**

It shall be the responsibility of each owner to prevent the development of any unclean, unsightly, or unkept conditions(s) of building or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or of the specific area. Excavation and landscaping of a lot shall conform to approved practices of the appropriate county or state agency having jurisdiction over such matters.

In the event of failure of owner to maintain the lot and/or the improvements thereon in good condition the Association may make such repairs and perform such maintenance as may be necessary for the general benefit of the remaining owners. The cost thereof shall be assessed against the owner and such assessment shall be enforced as other liens herein provided.

**ANIMALS**

No poultry, horses or cattle of any kind shall be raised, bred, or kept on any lot, in addition, dogs, cats, and other household pets are permitted so long as they are kept within the lot boundary lines and not raised for commercial purposes.

**FENCES**

Only fences made of wood or stone are permitted visible from roadway, unless prior written approval is received from the New Construction Review Board as hereinafter provided for.

**REFUSE DISPOSAL AND CONCEALMENT OF FUEL  
STORAGE TANKS TRASH RECEPTACLES**

Owners shall enclose any fuel storage tank on any lot so as to render it invisible from any street, adjoining water, or other common area, if any, within the subdivision.

Owners shall not store or permit to be stored any toxic chemicals, wastes or pesticides on any lot. Furthermore, owners shall not allow accumulation of refuse or garbage on any lot.

**WATER HOOKUP FEE**

Developer shall provide a central water system adjacent to each lot that Developer sells within Fall Branch Estates, and shall make available water connections to the central line for each lot, at a reasonable charge. The initial water hookup fee shall be five-hundred dollars per lot.



LOT SUBDIVISION

(A) No lot, or combination of lots, shall be further subdivided by any person, other than the Developer, unless Developer gives the lot owner prior written permission prior to subdividing said lot. This lot subdivision restriction is not applicable to any lots sold before the date these amended restrictions are recorded in the Cherokee County Register of Deeds Office, but rather those lots sold prior to recordation of these amended restrictions shall be controlled by the provisions in (B) below.

(B) All lots sold prior to the recordation of these amended restrictions in Cherokee County Register of Deeds Office shall not be subdivided in any way which will result in any subdivided lot containing less than 3 acres, nor shall any boundary lines of a lot, or a combination of lots, be altered by any person, other than the Developer, if the effect of such subdividing or alteration shall result in any of the altered lots having less than 3 acres, unless the subdivided portion containing less than 3 acres be merged with another lot. Provided, however, that an entire lot may be conveyed at the same time to two (2) or more adjoining lot owners, with each of the grantees receiving a portion of the lot, so that the lot so conveyed ceases to exist as a separate lot. Where portions of a lot are conveyed to one or more adjoining lot owners for the purpose of merging such portion of that lot with an existing lot, each portion so conveyed shall not be deemed a separate lot and building site, but shall be considered an addition to the lot of the acquiring land owner.

1. Any of these lots that are subdivided according to the restrictions above will be required to pay upon subdivision a contribution required by Developer toward the use of the amenities that are expected to be built, as listed under paragraph II above, before those subdivided lots are eligible to use the amenities. This is true even if the lot owner prior to the subdivision had paid the required contribution to use the amenities (as contemplated in paragraph II above) unless it is the last lot owned by lot owner who paid the amenities, because it shall be conclusively presumed that if a lot owner paid the required contribution, the right he had to use said amenities shall attach to the last lot obtained by said lot owner, and the right said lot owner had to use the amenities shall run with the last lot that a deed is recorded to transfer (thus last lot transferred would not have to pay additional amenity fee if lot owner prior to subdivision had paid amenity fee). It shall be conclusively presumed that all lots sold in Fall Branch Estates prior to the date these covenants are recorded by anyone other than Developer have not made the required contribution and thus are not free to use said amenities, unless some document by Developer stating otherwise is

recorded in the office of Cherokee County, NC, after the date these amended restrictions are recorded.

2. Any lot subdivided as permitted above shall be separately assessed and pay separate hookup fees for water as is otherwise provided for in these covenants.

### **III. RIGHTS-OF-WAY AND EASEMENTS**

The Declarant reserves unto itself, its successors, and assigns a perpetual, alienable, releasable, and non-exclusive road and utility right-of-way for purposes of ingress, egress, regress and utilities over, on, and across all roadways, whether existing or not, shown on any recorded plat of said subdivision for the benefit of properties now owned or hereafter acquired by Declarant. Declarant further reserves the right to grant said right-of-way unto additional properties owned by third parties in its sole discretion. Unless otherwise shown on a conveyance or plat, said road and utility right-of-way shall be forty five (45) feet in width, twenty two and one half (22 ½) feet on either side of the centerline of the roadway.

Said road and utility rights-of-way are for the benefit, use and enjoyment of the owners and their heirs, successors, and assigns, and every conveyance of the lands herein restricted shall be deemed to be subject to said easements while conveying to the Grantee under said conveyance a similar right appurtenant to his lands to the benefit, use, and enjoyment of said easements in common with the undersigned Declarant, its successors, and assigns, said road and utility right-of-way and easement to provide access to the State maintained road and well lots.

### **IV. PROPERTY OWNERS ASSOCIATION**

#### **MEMBERSHIP COVENANT**

All owners of lots in this subdivision shall become members of the Association upon the execution, delivery, and recordation of a deed of conveyance of title to any lot and lots at the office of the Register of Deed of Cherokee County. Developers are also members of the Association so long as they own a lot in Fall Branch Estates.

Each owner of a lot subject to these covenants and restrictions shall maintain one (1) membership per lot. Developer also is entitled to one membership per lot that Developer owns in Fall Branch Estates. All lot owners shall abide by the Bylaws of the Association as may be amended from time to time and further agree to pay to the Association an annual maintenance charge as hereinafter set forth.

## V. ARCHITECTURAL STANDARDS

All property which is now or hereafter subjected to this declaration is subject to architectural review. This review shall be in accordance with this Article and such standards as may be promulgated by the Board or the New Construction Review Board.

Section 1. New Construction Review Board. The New Construction Review Board (NCRB) shall have exclusive jurisdiction over all original construction on any portion of the Properties. No original construction or development of any kind whatsoever shall commence or be carried out on any Lot until approved in writing by the NCRB. Approval shall be subject to such regulations, architectural standards, and application procedures as may be promulgated by the NCRB. The NCRB may charge a reasonable fee not to exceed One Hundred Dollars (\$100.00) to cover the administrative expense of its review and comment, such fee to be payable to the NCRB members. The NCRB shall make its regulations, standards, and procedures available to Owners, Builder/Owners, and developers who seek to engage in development of or construction upon all or any portion of the Properties as said regulations are available, and shall conduct its operations in accordance therewith. The Declarant, in its sole discretion, shall appoint the members of the NCRB which shall consist of three (3) members, none of whom shall be required to residents of Scottie Mountain or own property at Scottie Mountain. The NCRB shall and may act independently of the Association and its Board until such time as the Declarant assigns its rights of appointment to the Board of Directors, at which time the NCRB shall function in the same fashion as committees of the Association. The Section may not be amended without the written approval of Declarant.

Section 2. Modifications. The Modifications Committee (MC) shall have jurisdiction over modifications, additions, or alterations made on or to existing Residential Units or structures containing Residential Units and the open space, if any, throughout the Properties: provided, however, the MC may delegate this authority to the appropriate board or committee of any residential association subsequently created or subsequently subjected to this Declaration, so long as the MC has determined that such board or committee has in force written review and enforcement practices, procedures, and appropriate written guidelines and standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice: provided, further, the MC shall not have jurisdiction over modifications or alterations made by the Declarant or Builder/Owners, and the jurisdiction of the MC shall be subordinate to the NCRB. Decisions of

the MC shall be advisory in nature and reported to the Board of Directors no later than thirty (30) days prior to the time the Board's power to deny a proposed modification expires.

The MC shall promulgate detailed standards and procedures governing its area of responsibility and practice. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and harmony of external design with existing structures and as to location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his or her Residential Unit or to paint the interior of his or her Residential Unit any color desired. In the event the Board, after receiving the report of the MC, fails to approve or to disapprove such plans or to request additional information reasonably required within sixty (60) days after submission, the plans shall be deemed approved. The MC may charge a reasonable fee not to exceed One Hundred Dollars (\$100.00) to cover the administrative expense of its review and comment, such fee to be payable to the Association.

## VI. ASSESSMENTS

### SECTION ONE

Purpose for Assessments. The Developer and its successors in interest, including the Association as herein provided shall, pursuant to these Declarations, have the power to levy assessments as herein provided for the purpose of financing the operations of the Association and maintaining roads and other improvements for services within or for the benefit of subdivision lots, including roads, water and/or utility easements of the subdivision in accordance with the formula herein set forth.

### SECTION TWO

Creation of Lien and Personal Obligation for Assessments. Each lot is and shall be subject to a lien and permanent charge in favor of the Developer or the Association in the event of transfer by the Developer to the Association of any and all rights and responsibilities it has under and pursuant to the terms of this indenture for the annual and special assessments set forth in Section Two and Three of the Article IV. Each assessment, together with interest thereon and cost of collection thereof as hereinafter provided, shall be a permanent charge and continuing lien upon the lot or lots against which it relates and shall also be the joint and several personal obligation of each

lot owner at the time the assessment becomes due and payable and upon such owner's successor in title if unpaid on the date of the conveyance of the lot. Each and every owner covenants to pay such amounts to the Association when the same shall become due and payable. The purchaser of a lot at a judicial or foreclosure sale shall be liable only for the assessments due and payable after the date of such sale.

SECTION THREE

Annual Assessments. The annual assessment shall be \$100.00 per lot. No annual assessments are due on land owned by Developer, before Developer conveys it. However, if Developer reacquires a lot that he has previously sold, then an annual assessment is due on that lot.

The annual assessments levied by the Developer or the Association as herein provided shall be collected by Developer or the Treasurer of the Association as provided in Section Five of this Article VI.

The annual assessments shall not be used to pay for the following expenses:

- (a) Casualty insurance of individual owners for their lots and improvements thereon or for their possessions within any improvements thereon, any liability insurance of such owner insuring themselves and their families individually, which insurance coverage shall be the sole responsibility of the owner(s);
- (b) Telephone, gas, sewer, cable television, or electrical utility charges for each lot which expense shall be the sole responsibility of each respective lot owner; and
- (c) Ad valorem taxes for any lot, improvement thereon, or personal property owned by owner of any lot.

SECTION FOUR

Special Assessments. In addition to annual assessments, the Developer, or the Association as assignee of the Developer as herein provided, may levy in any calendar year, special assessments for the purpose of supplementing the annual assessments if the same are inadequate to pay expenses and for the purpose of defraying in whole or in part the cost of any construction or reconstruction, repair or replacement of improvements on any lot or appurtenances thereto; provided, however, that any such special assessment by the Association shall have the assent of the majority of the votes represented, in person or proxy, at a meeting at which a quorum is present, duly called for the express purpose of approving such expenditure(s), written notice of which shall be sent to

all lot owners not less than ten (10) days no more than sixty (60) days in advance of such meeting, which notice shall set forth the purpose of the meeting. Any special assessments shall be fixed against the specific lot or lots for which an expenditure is appropriated. The period of the assessment and manner of payment shall be determined by the Board of Directors of the Association.

SECTION FIVE

Date of Commencement of Annual Assessments- Due Dates. Assessments are due in annual installments on or before January 1 of each calendar year, or in such other reasonable manner as the Developer or the Board of Directors of the Association as designee of the Developer by and through its Treasurer shall designate.

The annual assessment(s) provided for in this Article VI shall, as to each lot, commence upon either the execution and delivery of or the recordation of a deed of conveyance, whichever in time first occurs ("commencement date".)

The first annual installment for each such lot shall be an amount (rounding the sum to the nearest whole dollar) equal to the annual payment by the number of days in the current annual payment period divided by the number of days in the current annual payment period and multiplied by the number of days then remaining in such annual payment period.

The Developer, or the Association as assignee of Developer, shall upon demand at any time, furnish any lot owner liable for any such assessment a certificate in writing setting forth whether the same has been paid. A reasonable charge may be made for the issuance of any certificate. Such certificate shall be conclusive evidence of any payment of any assessment therein stated to have been paid.

SECTION SIX

Effect of Non-Payment of Assessments, the Personal Obligation of the Owner: the Lien: Remedies of Developer and/or its Assignees, including the Association. If an assessment is not paid on the date when due as hereinabove provided, then such assessment, together with any interest hereon and any cost of collection, including attorney fees as hereinafter provided, shall be a charge and continuing lien on the respective lot to which it relates and shall bind such property in the hands of the owner, his heirs, legal representatives, successors, and assigns for payment thereof. The personal obligation of the then owner to pay such assessment and related costs shall remain his personal obligation and if his successor in title assumes this personal obligation, such prior owner

shall nevertheless remain as fully obligated as before to pay the Developer or its assignee any and all amounts which said lot owner was obligated to pay immediately preceding the transfer of title thereto; and such prior lot owner and his successor in title who may assume such liability shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such lot owner and his successor in title creating the relationship of principal and surety as between themselves other than one by virtue of which such prior lot owner and his successor in title would be jointly and severally liable to make any lot assessment payment.

Any such assessment not paid by the 15<sup>th</sup> day of March as herein set forth within which such assessment is due, shall bear interest at the rate of eight (8%) percent per annum from such date (delinquency date) and shall be payable in addition to the basic assessment amount then due and payable.

The Developer or its assigns, including the Association, may institute legal action against any owner personally obligated to pay any assessment or foreclose its lien against any lot to which it relates or pursue either such course at the same time or successively. In such event the Developer or its assigns, including the Association, shall be entitled to recover attorney's fees actually incurred but not exceeding fifteen (15%) percent of the amount of the delinquent assessment and any and all other costs of collection, including, but not limited to, court costs.

By the acceptance by owner of a deed or other conveyance for a lot in the subdivision, vests the Developer or its assigns, including the Association as herein provided, the right and power to institute all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in appropriate proceeding at law or in equity.

The Developer and its assigns, including the Association as herein provided, shall have the power to bid on any lot at any foreclosure sale and to require, hold, lease, mortgage, and convey any lot purchased in connection therewith.

No owner shall be relieved from liability from any assessment provided for herein by abandonment of his lot or lots.

The amenity package provided for Fall Branch Estate will not become a special assessment or annual assessment but shall be provided by the Developer for the benefit of Fall Branch Estate owners, as money is available from the amount collected from the Sell of the lots for such purpose, for the lot owners who have made the required contribution toward the development of the

amenities.

SECTION SEVEN

Subordination of the Charges and Liens to Deeds of Trust Secured by Promissory Notes.

The lien and permanent charge for the annual and any special assessment together with interest thereon and any costs of collection authorized herein with respect to any lot is hereby made subordinate to the lien of any deed of trust placed on any lot if, but only if, all assessments with respect to any such lot having a due date on or prior to the date of such deed of trust is filed for record have been paid in full. The lien and permanent charge hereby subordinated is only such lien and charge as relates to assessments authorized hereunder having a due date subsequent to the date such lien of deed of trust is filed for record prior to the satisfaction, cancellation or foreclosure of such lien of deed of trust or sale or transfer of any mortgaged lot pursuant to any proceeding in lieu of foreclosure or the sale under power contained in any deed of trust.

- (a) Such subordination procedure is merely a subordination and not to relieve any lot owner of the mortgaged property of his personal obligation to pay all assessments coming due at a time when he is a lot owner; shall not relieve such property from the lien and permanent charge provided for herein (except as to the extent the subordinated lien and permanent charge is extinguished as a result of such subordination or against the beneficiary of the lien of a deed of trust or his assignees or transferee by foreclosure or by sale or transfer in any proceeding in lieu of foreclosure or by power of sale); and no sale or transfer for such property to the beneficiary of the lien of any deed of trust or to any other person pursuant to a foreclosures sale, or pursuant to any other proceeding in lieu of foreclosure, or pursuant to a sale under power, shall relieve any existing or previous owner of such lot of any personal obligation, or relieve any subsequent lot owner from liability for any assessment coming due after such sale or transfer of title to a subdivision lot.
- (b) Notwithstanding the foregoing provision, the Developer or its assigns, including the Association as herein provided may, in writing at any time, whether before or after any lien of deed of trust is placed upon a subdivision lot, waive, relinquish or quitclaim in whole or in part the right of Developer or its assigns, including the



Association as herein provided, to any assessment provided for hereunder with respect to such lot coming due during the period while such property is or may be held by an beneficiary of the lien of any deed of trust pursuant to the said sale or transfer.

**VII. REMEDIES FOR VIOLATIONS, AMENDMENTS,**

**TERMS, AND MISCELLANEOUS PROVISIONS**

Enforcement

These Covenants, Restrictions, Easements, Reservations, Terms, and Conditions shall run with the land and shall be binding on all parties and all persons claiming under them.

Enforcement of these Covenants, Restrictions, Easements, Reservations, Terms, and Conditions may be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. Either the undersigned Developer, or any successor in title to the undersigned Developer, or any owner of any property affected hereby may institute such proceedings.

Amendment

These Covenants, Restrictions, Easements, Reservations, Terms and Conditions may be altered, amended, or repealed at any time by filing in the office of the Register of Deeds of Cherokee County, North Carolina, an instrument setting forth such annulment, amendment or modification, executed by either the Developer or its assigns and/or successors in interest any time during which it owns of record lots in the Development subject to this Declaration or Declarant is an owner of adjacent properties which it intends or has intention to subdivide or, in the alternative, by the owner or owners of record as set forth on the records in the office of the Register of Deeds of Cherokee County, North Carolina at any time of the filing of such instruments by consent in writing of seventy-five (75%) of the owners of lots subject to these restrictions.

Invalidation

Invalidation of any one of the provisions of this instrument by Judgment or Order of a court of competent jurisdiction shall in no wise affect the validity of any of the other provisions which shall remain in full force and effect.

Developer's Obligation (s)

In this instrument, certain easements and reservations of rights have been made in favor of

the undersigned Developer. It is not the intention of the undersigned Developer in making these reservation and easements to create any positive obligations on the undersigned Developer insofar as sewage systems, furnishing garbage disposal, beginning and prosecuting a lawsuit to enforce the provisions of this instrument, or of removing people, animals, plants, or things that become offensive and violate this instrument. Where a positive obligation is not specifically set forth herein, none shall be interpreted as existing as it relates to the Developer.

Term

The provisions of this Declaration shall run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these Covenants are filed for record at the office of the Register of Deeds of Cherokee County, North Carolina at which time said Covenants shall be automatically extended for successive periods of ten (10) years at a time, unless prior to the beginning of each ten (10) year period an instrument signed by the then owner(s) of seventy-five (75%) percent of the lots subject to this Declaration agreeing to terminate, amend, or modify these Restrictions shall have been recorded in the office of the Register of Deeds of Cherokee County, North Carolina.

Governmental Regulations

The property herein described and lots subdivided therefrom, in addition to being subject to this Declaration, are conveyed subject to all present and future rules, regulations, and resolutions of the County of Cherokee, State of North Carolina, if any, relative to zoning and the construction and erection of any buildings or other improvements thereon.

Notices

Any notice required to be sent to any member or owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a member or owner of record(s) of the Association at the time of such mailing.

Assignment

The Developer may assign any and all rights and responsibilities it has under the terms of this Declaration to the Property Owner's Association.

Supplemental Declarations and Annexation

Developer reserves the right to annex additional properties to the terms and conditions of

these restrictions by the recordation of a Supplemental Declaration subjecting said properties to these Declarations.

IN WITNESS WHEREOF, the Declarant/Developer have hereunto set their hands and seals, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

FALL BRANCH ESTATES ALSO KNOWN AS  
SCOTTIE MOUNTAIN RESORT AND SPA:

By: Chris Henson  
Chris Henson; Declarant, Developer

By: Robyn Henson  
Robyn Henson; Declarant

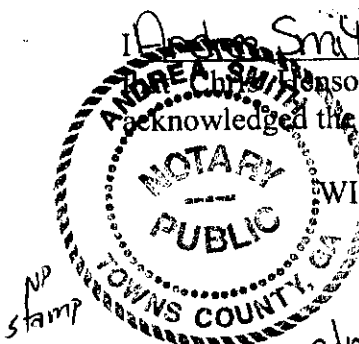
By: Scottie Fain  
Scottie Fain; Declarant, Developer

By: Debbie Fain  
Debbie Fain; Declarant

I, Andrea Smith, a notary public of Towns County, Georgia, do hereby certify that Chris Henson, and wife Robyn Henson personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and Notarial Seal this 28 day of January, 2002.

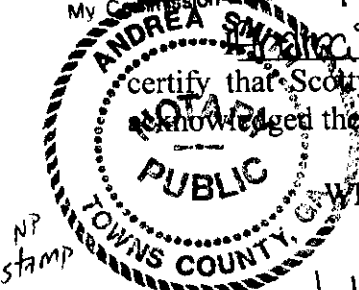
Andrea Smith  
Notary Public



I, Andrea Smith, a notary public of Towns County, Georgia, do hereby certify that Scottie Fain, and wife Debbie Fain personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and Notarial Seal this 28 day of January, 2002.

Andrea Smith  
Notary Public



My Commission Expires 7/1/03  
STATE OF NORTH CAROLINA  
COUNTY OF CHEROKEE

Each of the foregoing certificates, namely of \_\_\_\_\_, a notary or Notaries Public of the States and Counties designated, duly attested by Notarial Seal, is certified to be correct.

This \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Register of Deeds  
Cherokee County, North Carolina

Filed for registration on the \_\_\_\_\_ day of \_\_\_\_\_, 2001, at \_\_\_\_\_  
o'clock \_\_ m., and registered in the office of the Register of Deeds for Cherokee County, North  
Carolina, in Book \_\_\_\_\_ Page \_\_\_\_\_.

\_\_\_\_\_  
Register of Deeds  
Cherokee County, North Carolina