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IREDELL COUNTY NC
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BRENDA D. BELL
Register Of Deeds

NORTH CAROLINA

**AMENDED RESTRICTIVE
COVENANTS FOR FOX DEN
COUNTRY CLUB
PHASE I (APPLICABLE TO PLAYERS
PARK VILLAS)**

IREDELL COUNTY

20

THESE COVENANTS, made this 20th day of November, 1996, by FOX DEN DEVELOPMENT COMPANY, L.L.C., a North Carolina Limited Liability Company, with an office in Iredell County, North Carolina (hereinafter referred to as "Declarant").

WITNESSETH;

WHEREAS, the Declarant hereby declares that the following described real property located in Iredell County, North Carolina (hereinafter referred to individually as a "Lot" and jointly as the "Lots"), is and shall be held, transferred, sold and conveyed subject to the restrictive covenants hereinafter set forth:

Said real property being all Lots 61 through 84 of Phase I of Fox Den Country Club Subdivision as is shown on plats recorded in Plat Book 26, Page 112, and as shown on revised plat recorded in Plat Book 27, Page 134, in the office of the Register of Deeds for Iredell County.

WHEREAS, the restrictive covenants hereinafter set forth shall run with the Lots and be binding on all parties having any right, title or interest therein, their heirs, successors and assigns and shall ensure to the benefit of each owner thereof; and

WHEREAS, the Declarant did record restrictive covenants for Fox Den Country Club Subdivision consisting of a Declaration of Master Covenants, Conditions and Restrictions For Fox Den Country Club recorded in Book 991, Page 1040 (hereinafter referred to as "Declaration"), and Restrictive Covenants For Fox Den Country Club, Phase I, as recorded in Book 991, Page 1059 (hereinafter referred to as "Covenants"), and the Declarant now desires to amend the aforesaid Declaration and Covenants, all as recorded in the Office of the Iredell County Register of Deeds.

NOW, THEREFORE, pursuant to the authority set forth in Article IX, Section 5, of the aforementioned Declaration, the Declarant does herewith amend the said Declaration and Covenants as hereinafter set forth. This amendment is being accomplished in order to allow the Declarant to construct villas on the above-described property, all in accordance with the original intent of the Declarant.

1. **PREAMBLE:** In order to accomplish orderly, pleasing and reasonably uniform subdivision development, the Lots are hereby made subject to the covenants and restrictions contained herein for the purpose of ensuring the most appropriate development and improvement of each Lot, to protect the Owners against such improper use of nearby Lots as would depreciate the value of the property of each, to preserve, insofar as practicable, the natural beauty of the Lots, to guard against the erection thereon of poorly designed or proportioned structures and structures built of improper or unsuitable materials, to encourage and secure the erection of attractive homes thereon with appropriate locations thereof on the lots, to secure and maintain proper setbacks from streets and adequate free spaces between structures, to ensure conformance of the development with the guiding design concept of the Declarant, and in general to provide for a high quality of improvements. As set forth in the aforesaid Declaration and Covenants and in these Covenants, the Declarant or the Architectural Review Committee (hereinafter "ARC") must approve all improvements placed on a lot, and the Declarant shall serve as the ARC until such time as the said committee is duly formed. The Declarant does herewith reserve for itself the right and duty to serve as the ARC until it releases such duties to the duly formed committee appointed by the Fox Den Homeowners Association (hereinafter "FDHA").

2. **LAND USE AND BUILDING TYPE:** Each Lot shall be used for residential purposes only, and no structures shall be erected or allowed to remain on any Lot except one detached, single family Dwelling Unit not exceeding two stories and an attic (finished or unfinished) in height, a basement (finished or unfinished) and a garage. Any structure erected on

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any Lot must be compatible in construction, design, color and appearance with other structures erected on the other Lots described herein and must be approved pursuant to Paragraph 11 herein. As used in these Covenants, "Dwelling Units" shall mean a residence conforming to the provisions herein set forth.

3. STRUCTURES OTHER THAN THE MAIN DWELLING UNIT: Any structure or building which is detached from the Dwelling Unit on any Lot shall be prohibited unless the detailed plans for such detached structure and proposed location have been approved in writing by the Declarant or the ARC prior to the construction thereof.

4. GARAGES AND PARKING: Each Dwelling Unit shall have an enclosed attached garage with parking space therein of at least 400 square feet measuring at least 20 feet in width and 20 feet in length. The door(s) to said garage should open to either the side or rear of the Lot, except with the prior written consent of the Declarant or the ARC. In addition, each Lot shall contain sufficient off-street paved parking space for no more than two motor vehicles. No trailers, boats or motor vehicles shall be parked overnight on any public street abutting any of the property covered herein.

5. LEASE OF PORTION OF DWELLING UNIT: An owner may, in his or her absence, rent or lease his or her entire Dwelling Unit for a lease term of not less than one hundred eighty (180) consecutive days, but no portion of a Dwelling Unit shall be leased nor may any other building located on a Lot be leased separately from the Dwelling Unit.

6. RESUBDIVISION OF LOTS: No Lot shall be resubdivided except with the written consent of the Declarant or the ARC, and in no event shall any Lot be resubdivided in order to create an additional residential Lot.

7. NUISANCES: No portion of a Lot or any structure thereon shall be used for business, manufacturing or commercial purposes, except as set forth herein below, nor shall any animals, fowl or merchandise be kept or allowed to remain on a Lot for commercial purposes, nor shall anything be done on a Lot which is a nuisance or an annoyance to the community. Each Owner shall maintain his or her buildings, improvements, landscaping and grounds in a safe, clean and orderly condition.

8. BUSINESS: As aforementioned, all Lots shall be used for residential purposes only, and no trade or business may be conducted in or from any Lot, except that an Owner or Occupant residing on a Lot may conduct business activities within the dwelling on the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by activity, sight, sound or odor from outside the dwelling; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door delivery to residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Declarant, and (e) the Declarant or the ARC consents to the business.

The term "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required thereof. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Property or its use of any Lots which it owns within the Property.

9. ANIMALS: No animals, other than household pets, shall be kept or allowed to remain on a Lot for any purpose. In no event shall more than three (3) dogs or three (3) cats or a combination thereof be permitted upon any Lot if such animals are over ten (10) weeks of age.

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No ducks, geese or other fowl shall be kept or allowed to remain on a Lot whether for commercial purposes or as household pets. Each household pet must at all times be either confined to the lot of its owner or be on a leash.

10. **DWELLING SIZE:** No dwelling shall be erected or allowed to remain on a Lot if the finished floor area of the structure, exclusive of one-story open porches and garages, shall be less than 1,500 square feet. No dwelling shall be erected or allowed to remain on a Lot if the enclosed (including screened area) floor area of the first floor shall be less than 1,000 square feet.

11. **ARCHITECTURAL CONTROL:** The Declarant or the ARC shall control the improvements placed on the Lots and the following shall be controlling:

A. The Declarant or the ARC shall be solely responsible for the locating of all improvements on Lots.

B. Only Dwelling Units, all structures other than main Dwelling Units, building additions, garages, pools, tennis courts and other improvements (and site plans therefor) the plans of which have been approved in writing by the Declarant or the ARC prior to commencing clearing, grading, or construction of any kind on a Lot will be permitted.

C. All construction on any Lot shall be by an approved contractor whose name and credentials have been previously submitted to and approved by the Declarant or the ARC.

D. Following such approval and upon completion of the foundation but before proceeding with further building construction, an actual field survey of the foundation shall be presented to the Declarant or the ARC to ensure that such foundation has been constructed in accordance with the approved site plan. The survey must also show the proposed location of driveways and shall indicate the actual distances from the building at its closest point to all property lines.

E. All improvements shall comply with the plans as presented unless changes are previously approved in writing by the Declarant or the ARC. The Owner does herewith grant the Declarant or the ARC the complete authority to enter upon the Lot and stop all construction for the failure of the Owner or his agents or contractor to comply fully with these restrictions and to follow the site plans as approved. The Owner does agree to indemnify and hold harmless the Declarant or the ARC from halting of construction which may be directed by the Declarant or the ARC for the failure of the Owner to comply with the directives of the Declarant or the ARC with regard to construction.

F. In the event that the Declarant or the ARC fails to approve or disapprove the design of any proposed improvements or the construction or installation of any improvements on a Lot or fails to communicate in writing with the person submitting the plans within thirty (30) days after the plans and specifications therefor have been submitted, it shall be deemed a rejection by the Declarant or the ARC, provided that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the ARC if they contain erroneous data or fail to present adequate information upon which the Declarant or the ARC can arrive at a decision.

G. The Declarant or the ARC shall have the right, at its election, to enter upon any Lot during preparation, construction, erection, or installation of any improvements to determine that such work is being performed in conformity with the approved plans and specifications and to halt construction as hereinabove mentioned.

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H. Declarant or the ARC shall have the absolute right to charge a reasonable fee for the review of the plans and specifications and to perform any other tasks which may be related to the approval or disapproval process and such fee shall be paid by the Owner within thirty (30) days of presentation of a bill therefor. Additionally, Declarant or the ARC shall have the right to charge an additional reasonable fee for plan and specification approval and/or evaluation.

I. In the event Owner's proposed construction will utilize extraordinary materials or construction concepts which require the Declarant and/or the ARC to seek assistance in evaluation of the plans and specifications, the provisions of this Section are supplemented by Article IV, Section 2 of the aforesaid Declaration of Master Covenants, Conditions and Restrictions, which are incorporated herein by reference. In no event, shall the Owner begin construction of any improvements on the Lot without the prior written approval of his plans and specifications from the Declarant or the ARC.

12. DRIVEWAYS AND WALKS: All drives and walks must be paved with concrete, brick or such other materials as may be approved by the Declarant or the ARC.

13. LANDSCAPING AND COMPLETION: All Lots on which a Dwelling Unit is approved and built shall be landscaped in accordance with landscaping plans approved by the Declarant or the ARC. Landscaping must be finished within ninety (90) days following completion of the Dwelling Unit. Total construction time from the date of final approval of the proposed construction plans to the completion of the Dwelling Unit ready for occupancy shall not exceed twelve (12) months. Prior to the time any Owner commences construction of a Dwelling Unit thereon, such Owner shall be responsible for the weed control, mowing and general maintenance of such Lot; and in the event a Owner fails to perform such activities so as to keep his Lot clean and neat in appearance to the satisfaction of the Declarant or the ARC, the Owner does herewith authorize the Declarant or the ARC to perform such activities as may be necessary to clean up or mow the lot and maintain it in a neat appearance. The Owner agrees to pay whatever sums the Declarant or the ARC incur in order to accomplish these activities and to make payment of the same within thirty (30) days of presentation of a bill therefor. No construction may begin on a lot while any such bill remains unpaid.

14. MAILBOXES AND OUTDOOR LIGHTING: The written approval of the Declarant or the ARC shall also be required prior to erecting, placing or altering mail boxes, newspaper boxes and outdoor lighting upon any Lot as set forth in Master Covenants.

15. ANTENNAS AND DISHES: No radio or television antennas on Dwelling Units, free-standing antennas and satellite dishes larger than twenty-four (24) inches in diameter shall be permitted on any Lot. The Declarant or the ARC shall have complete and total authority as to the location of these satellite dishes on the Lot or Dwelling Unit.

16. TREES: The cutting of trees four (4) inches in diameter or larger shall be accomplished only after submission of a plan for such removal and the written approval thereof from the Declarant or the ARC.

17. CONSTRUCTION SITE: Every builder constructing improvements within the Subdivision shall, consistent with standard construction practices, keep all portions of the Lot free of unsightly construction debris and shall at all times during construction either provide dumpsters for the containment of garbage, trash or other debris which is occasioned by construction of improvements or take other measures consistent with standard construction practices necessary to keep the Lot free of garbage, trash or other debris which is occasioned by the construction of Owner's improvements. All Owners and Owners' builders shall comply with such rules of the Association as are from time to time adopted with respect to construction of improvements. All Owners shall be responsible to insure that any contractor employed, complies with all Builder's rules adopted by the Association from time to time.

18. BUILDING SETBACK GUIDELINES: No building, structure or any type of improvement, except for driveways shall be placed or erected or allowed to remain on any Lot

nearer than twenty-five (25) feet from the back of the road right of way running with the front property line of said Lot. There shall be kept open and uncovered by any building or structure a side yard along each side of the Dwelling Unit on each Lot; and the minimum width of any such side yard shall not be less than five (5) feet; and, as to a corner Lot, no building shall be erected or allowed to remain nearer the street abutting the side of the Lot than fifteen (15) feet. In no event shall any portion of any building be located nearer than forty (40) feet of the rear property line if that property line abuts the golf course corridor. If the rear property line does not abut the golf course corridor, the rear setback shall be at least thirty (30) feet. The siting of the Dwelling Unit and any improvements on each Lot shall be all in accordance with Paragraphs 11 and 21 hereof. Deviations from building line setback restrictions shall not be construed as a violation of these covenants so long as such deviations have been previously approved by the Declarant or the ARC.

Notwithstanding the foregoing provisions relating to setback requirements, which are set forth herein for guidance purposes only and to assure an orderly and attractive development, no specific front, rear or side setback restrictions are imposed by these Restrictions. Declarant or the ARC shall determine the required setback distances, if any, in excess of those required by applicable governmental zoning ordinances or other governmental authority in the course of granting site plan approval for a specific Lot and the proposed Dwelling Unit or other improvements to be built thereon. The Declarant or the ARC may, in its sole discretion it deems the same reasonable for the orderly development of the subdivision, waive, change or adjust all set back provisions set forth herein in order to locate improvements in a manner to benefit the subdivision. Some of the factors which may be considered are: Lot topography, Lot size, preservation of existing vegetation, views from the Lot and nearby Lots, location of existing or proposed utilities, location of existing houses on adjoining Lots and such other reasonable factors as the Declarant or the ARC may determine.

Further, all setback lines and requirements which appear on the aforementioned recorded plats be and are hereby declared to be of no effect as the Declarant or the ARC shall have exclusive authority to determine setback requirements, subject to compliance with governmental ordinances.

19. **UTILITIES:** All water, sewer, gas, electric, telephone, cable television and other utility lines as may be available to the Lots and connections between the main utility lines and the Dwelling Unit and other structures located on each Lot shall be located underground and concealed so as not to be visible.

20. **EASEMENTS:** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat, and the Declarant further reserves an easement and right to grant rights-of-way for the installation and maintenance of public utilities across, on or under each Lot at whatever distance from the rear and side lines of said Lot as required by Iredell County, City of Statesville or any other appropriate authority governing this property. Declarant further reserves the right, to establish easements adjacent to street rights-of-way to accommodate pedestrian paths including the related grading, landscaping and lighting along such streets and paths. Once Lots have been deeded to Owners, such Owners shall execute any necessary documentation required by Declarant in order to allow Declarant to establish easements and rights-of-way as set forth above.

21. **PLACEMENT OF DWELLING AND IMPROVEMENTS:** The Declarant or the ARC shall be solely responsible for the siting of all Dwelling Units and other improvements on all Lots.

22. **TEMPORARY STRUCTURES AND VEHICLES:** No structure of a temporary character shall be erected or allowed to remain on any Lot. No tent, shack, garage, modular building, mobile home or barn shall be erected on any Lot. Neither shall any trailer, boat and/or boat trailer, recreational vehicle, motor home or nonoperative motor vehicle be stored on any Lot, except as specifically permitted by the Declarant or the ARC.

23. **STREETS, FENCES, WALLS AND SIGNS:** Except for drainage and utility easements, no Lot or portion thereof shall be used as an easement either temporary or permanent.

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Fencing is discouraged so as to maintain open vistas and view corridors. Accordingly, fencing shall be allowed only where a specific purpose is served thereby and all fencing and its location must be approved by the Declarant or the ARC prior to construction thereof. No fencing shall be allowed within twenty (20) feet of the golf course corridor or within five (5) feet of any side street, right-of-way, side or rear Lot line, except with the prior consent of the Declarant or the ARC. No fencing shall be permitted on the front of any Lot, except with the prior approval of the Declarant or the ARC and even with such approval, the fencing is not permitted within fifty (50) feet of the property line of the front of such Lot. No signs (except one (1) not to exceed two (2) foot by three (3) foot in measurement "for sale" sign) shall be erected or allowed to remain on any Lot except with the written consent of the Declarant or the ARC. Electronic (invisible) below-ground fences for pet control shall be exempted from these lot line distance restrictions, except there shall be no electronic (invisible) fence extending beyond the front corners of the dwelling. An Owner may request and the Declarant or the ARC may approve the location of a fence, driveway or other improvement over areas which are designated as utility easements; and if such permission is granted, the Owner shall be solely responsible for all costs of removing the said improvements from the said easement and shall be solely responsible for all damage incurred by such improvement in the event work on, over and/or under said easement is required. The Owner agrees that in the event such damage occurs or if disassembly of any such improvement is made necessary then he will, as quickly as is reasonably possible, proceed to repair the area and return it to the condition it was in immediately before such damage or work was done on the easement.

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24. OUTDOOR STRUCTURES AND VEHICLES: No outside clothes lines, tree houses, play houses, motorcycles, golf carts, tractors, boats, trucks (other than pick-up trucks rated 1-1/2 ton or less) trailers, vans (except one non-commercial passenger van or mini-van owned and operated on a regular daily basis by the owner-occupants of the Lot), campers or other equipment or vehicles, except for operative motor vehicles, shall be regularly parked, stored or placed in any area on a Lot except inside an enclosed building or garage, or in specially designated areas as established by the Declarant or the ARC.

Garbage and refuse containers, transformers, air conditioning and other mechanical equipment including solar and other alternative energy devices approved by the Declarant or the ARC shall be either concealed within a screen or integrated with the building designs so as to be unseen from any roadway of the subdivision. Before placing any outdoor equipment and accessories on a Lot, such as play structures, benches, planters, sculpture, etc., the Owner shall obtain the written consent of the Declarant or the ARC as to the design and location of such items on the Lot.

25. SANITATION SERVICES: Regularly scheduled sanitation service shall be provided for Lots by the City of Statesville when certificates of occupancy have been issued on twenty (20) Dwelling Units within the subdivision. When the City of Statesville takes over the trash collection, all Owners shall be required to utilize its services. Owners will be solely responsible for their trash disposal until such time as the said City begins its services.

26. APPLICATIONS OF RESTRICTIONS: The foregoing covenants and restrictions shall apply only to the Lots, and nothing contained herein shall preclude the Declarant from altering the size or direction of frontage of any property other than the Lots or changing the location of any streets or roads other than portion of such streets or roads as abut the Lots or from establishing business districts or from establishing hospitals, schools, hotels or other institutions which in its opinion will be for the benefit of the community in which the Lots are located.

27. WAIVER OF AND CONSENT TO VIOLATIONS: In its sole discretion, the Declarant or the ARC may waive any violation of these restrictive covenants by an appropriate instrument.

28. TERM: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for the term set forth in Article IX, Section 3 of the Master Covenants.

29. **ENFORCEMENT:** Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain any violation or to recover damages for any such violation.

30. **ASSIGNMENT BY THE DECLARANT:** The Declarant shall have the right to assign its rights under this Declaration, in whole or in part, to any person or entity or Homeowners Association within Fox Den subdivision by any express transfer of such rights, including but not limited to the right to transfer its powers under Paragraph 11 above to an Architectural Review Committee elected by the FDHA.

31. **SEVERABILITY:** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which remain in full force and effect.

32. **NOTICES TO DECLARANT AND ARC:** Notices to the Declarant or the ARC shall be sent by registered mail, return receipt requested to Fox Den Development Company, L.L.C., 170 Fox Den Circle, Statesville, North Carolina 28677.

33. **PRE-EMINENCE OF AMENDMENT.** That all provisions of the aforementioned Declaration and Covenants, except to the extent that they are specifically changed by this Amendment, be and remain in full force and effect unchanged in any respect. In the event of any conflict between the provisions of this Amendment and the aforementioned Declaration and Covenants, the provisions herein shall control.

IN WITNESS WHEREOF, the undersigned **FOX DEN DEVELOPMENT COMPANY, L.L.C.**, being the Declarant herein, has caused this instrument to be executed in its name by its duly authorized officials, all on the day and year first above written.

FOX DEN DEVELOPMENT COMPANY, L.L.C.

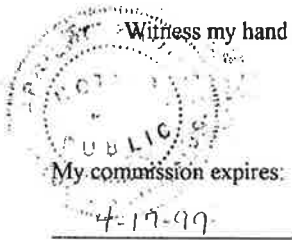
By: Donnie L. Alexander
Donnie L. Alexander, Member - Manager

NORTH CAROLINA

IREDELL COUNTY

I, a Notary Public of the County and State aforesaid certify that **DONNIE L. ALEXANDER** personally came before me this day and acknowledged that he is a Member-Manager of **FOX DEN DEVELOPMENT COMPANY, L.L.C.**, a North Carolina limited liability company having its office and place of business in Iredell County, North Carolina, and that by authority duly given, as an act of the company, the foregoing instrument was signed in its name by him.

Witness my hand and official seal, this the 20th day of November, 1996.



April T. Pruitt
Notary Public

North Carolina-Iredell County
The foregoing certificate(s) of April T. Pruitt, DP

is (are) certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the office of the Register of Deeds of Iredell County, North Carolina in Book 1085, Page 2127. This 25 day of November, A.D. 1996 at 4:48 o'clock P.M.

BRENDA D. BELL By Susan B. Rolan
Register of Deeds Deputy Asst.

PREPARED BY AND RETURN TO:
Walter H. Jones, Jr.
HOMESLEY, JONES, GAINES & FIELDS
Post Office Box 1235
Mooresville, North Carolina 28115

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