

## **MIXON CREEK COVENANTS – Phase II**

### **STATE OF NORTH CAROLINA COUNTY OF BEAUFORT, BOOK 906 PAGES 527-541**

This declaration, made this 30<sup>th</sup> day of January, 1989, by Weyerhaeuser Real Estate Company, a corporation of the State of Washington, hereinafter called Declarant;

#### **WITNESSETH:**

THAT WHEREAS, the Declarant is the owner of the real property described in Article I of this Declaration and is desirous of subjecting said real property to the protective covenants hereinafter set forth, each and all of which is and are for the benefit of such property and for each owner thereof, and shall inure to the benefit of and pass and run with said property, and each and every lot or parcel thereof, and shall apply to bind the successors in interest and any owner thereof;

NOW THEREFORE, the Declarant hereby declares that the real property described in and referenced to in Article I hereof is and shall be held, transferred, sold and conveyed subject to the protective covenants set forth below:

#### **ARTICLE I**

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

All of Lots Thirty-Eight (38) through Fifty-Four (54), Phase II, Mixon Creek, as they are shown on that map prepared by Woodlief & Associates, P.A. dated February 16, 1988, and recorded in Plat Cabinet D, Slide 388, Beaufort County Registry and further reference is made to said map for a more complete and accurate description of this property.

#### **ARTICLE II**

The real property described in Article I hereof (herein after called lot or lots as applicable) is subjected to the protective covenants and restrictions hereby declared in order to provide enforceable standards for improvements and development whereby aesthetics, living conditions and property values may be enhanced.

#### **ARTICLE III**

No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or be permitted to remain on any lot other than one detached single family dwelling, a private garage or other building, attached or detached, for the use only of the occupants of said dwelling. All buildings must be approved by the Declarant.

#### **ARTICLE IV**

No trade, commerce or other activity which may be considered a nuisance to the neighborhood shall be carried on upon any lot. No trade materials or inventories may be stored upon any lot and no tractor-trailer type trucks, house trailer (other than camping trailers) or mobile home may be stored or regularly parked on any lot. No sign or billboard of any kind shall be erected or allowed to remain on any lot other than a "For Sale" or "For Rent" sign.

#### **ARTICLE V**

No lot or lots shall be subdivided except to enlarge an adjoining lot but any lot so enlarged cannot be improved with more than one single family dwelling.

#### **ARTICLE VI**

No single story residential structure which has an area of less than 1,400 square feet exclusive of porches, breezeways, steps and garages shall be erected or placed or permitted to remain on any Lot, And no story and one-half, two story or two and one-half story residential structure which has a ground floor area of less than 800 square

feet, exclusive of porches, breezeways, steps and garages, shall be erected or placed or permitted to remain on any lot. Regardless of the number of stories, all dwellings must have a minimum of 1,400 square feet.

No structure of a temporary character, trailer, mobile home, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently. No metal building may be used as a residence on any lot or lots.

Piers and bulkheads may be constructed on the property or adjacent thereto provided that prior to construction, written approval has been obtained from the appropriate Federal, State, County and local authorities.

#### **ARTICLE VII**

No building on any lot shall be located nearer to any property line than fifty (50') feet from the front (near water) line, and with regard to the lots on the water, the front line will be the line nearest the water, fifty (50') feet from the rear line or main road, and ten (10') feet from side lines. The Declarant reserves unto itself, its successors and assigns, the right to control absolutely and to solely decide the precise site and location of any house or dwelling or other structure upon all properties. Exact location of the dwelling and outbuildings shall be shown on the site plan for each lot and approved by the Declarant.

#### **ARTICLE VIII**

No fence, wall, hedge, or mass plantings shall be allowed beyond the front (water side) of any dwelling. All fences or walls shall be approved by the Declarant.

#### **ARTICLE IX**

All electrical and telephone services from distribution system to residences shall be underground with the cost for such underground service being shared by lot owner and utility company in conformity with existing utility company's policy, and no overhead wiring insofar as electrical, telephone and other wire using utility services are concerned shall be permitted on any lot.

There is granted to Tideland Electric Membership Corporation, its successors and assigns, a blanket easement to go upon the property that is the subject of these covenants for the purpose of installing and maintaining the appropriate electrical transmission wire & and equipment; provided, however, this easement is subordinate to and is expressly subject to any and all existing structures, including septic tanks, located on the property at the time Tideland Electric Membership Corporation, its successors and assigns, seeks to place electrical transmission wires and equipment on the property.

#### **ARTICLE X**

At the time of this Declaration, the property described herein is composed principally of wooded lots. It is the intention and desire of the Declarant that the lots remain wooded insofar as is practicable while at the same time allowing the development of the property. Therefore, only under the terms and conditions hereinafter set forth can certain trees located on a lot can be cut and removed. Prior to any tree cutting, the provisions of Article X as hereinafter set forth must be complied with. The remaining terms and conditions for the cutting and removal of trees are as follows:

- A. All trees within the area of actual construction of a dwelling or buildings approved under these regulations can be cut and removed.
- B. All trees less than four (4") inches in diameter can be cut and removed
- C. After complying with the provisions of Paragraph A and Paragraph B as set forth in Article X above, one-half (1/2) of the remaining trees four (4") inches and above in diameter at ground level can be cut and removed.
- D. Any tree or trees endangering a dwelling or other buildings located on the property can be cut and removed.
- E. Other trees can be cut and removed when approved by the Declarant.



## ARTICLE XI

All plans and specifications for any structure or improvement whatsoever to be erected on any lot, and the proposed location and orientation in relation to streets, creek, marsh, or lots, the construction material, the roofs, and exterior color schemes, shall require prior written approval of the Declarant.

There shall be submitted to the Declarant a complete set of the final plans and specifications for any and all proposed improvements, the erection or alteration of which is desired. No structure or improvements of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plan elevations, and specifications thereof have received written approval as herein provided. Such Plans shall include plot plans showing the location on the lot of the buildings, wall, fence, or other structure proposed to be constructed or altered. Proposed construction materials and colors must also be included.

The Declarant shall approve or disapprove plans, Specifications and details within thirty (30) days from the receipt thereof. Plans will remain with the Declarant.

## ARTICLE XII

Subject to the terms and conditions hereinafter set out, the architecture of homes and/or improvements to and on each of the lots subject to these protective covenants will be controlled in the following manner by the "Architectural Committee":

Weyerhaeuser Real Estate Company reserves the right to approve or disapprove all plans and locations of homes on the lots until the Architectural Committee is appointed. Weyerhaeuser Real Estate Company also reserves the right not to appoint the Architectural committee until seventy-five (75%) percent of the lots in Phase II, Mixon Creek, are sold. The Architectural Committee will be composed of three (3) persons designated and appointed by the Mixon Creek Homeowner's Association, in which appointment, each lot, regardless of the number of owners, will be entitled to one (1) vote and a majority vote of the lots will be controlling. Weyerhaeuser Real Estate Company will be entitled to one (1) vote as a property owner. ~~The Architectural Committee will be appointed at a meeting of the property owners after at least thirty (30) days notice of a meeting to appoint the Architectural Committee has been given.~~ In the event the Architectural Committee fails to approve or disapprove plans or locations of home on lot within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required, and this Covenant will be deemed to have been fully complied with. Members of such Architectural Committee shall not be entitled to any compensation for services performed pursuant to this Covenant. The Declarant, by written instrument, may direct the Architectural Committee to perform those duties reserved by the Declarant in Articles III, VII, VIII, X and XI of this Declaration.

## ARTICLE XIII

GENERAL RESTRICTIONS: THE FOLLOWING RESTRICTIONS APPLY TO ALL LOTS AS THEY ARE SHOWN ON THE MAP HERETOFORE REFERRED TO:

### 1. Easement.

A. All private roads shown on the plat referred to in Article I herein, in addition to those shown on the map referred to in Article I of those Restrictive Covenants of record in Book 8B1, Page 354, Beaufort County Registry, for Phase I, Mixon Creek, shall be subject to an easement for ingress, egress, and regress in favor of the lots shown on the map referred to in Article I herein and also in favor of such future development as may be carried on in the area by the Declarant.

B. An easement for drainage and utility facilities ten (10') feet in width is reserved along each side of all road rights-of-way and five (5') feet in width along all side lot lines.

2. Assessments. Every Lot described above shall be subject to assessment for maintenance of the private road as shown on the plat. Each lot owner is assessed the sum of TWO HUNDRED AND NO/100 (\$200.00) DOLLARS yearly and payable in January. The first assessment will be paid at closing and prorated for the remainder of the calendar year. Said amount shall be deposited into a common fund account known as "Mixon Creek Maintenance



Fund." The annual road maintenance assessment may be changed at any time by a two-thirds (2/3) majority vote of the lot owners with each lot having one (1) vote.

The Mixon Creek Maintenance Fund shall be owned jointly by all of the Lot owners of the property heretofore described and the lots in Phase I, Mixon Creek, as shown on that map of record in Plat Cabinet D, Slide 192, Beaufort County Registry, and shall be used only for:

- (a) Road maintenance expenses, and
- (b) Administration costs for enforcement thereof, accounting and audits, the payment of taxes, insurance and maintenance, legal fees and related items, and, shall not be subject to partition by any individual lot owner.

There shall be created, for the purpose of holding and administering such funds, Mixon Creek Homeowner's Association, which shall have the power to file with the Register of Deeds of Beaufort County a Notice of Assessment Lien against any Lot for which the annual maintenance assessment has not been paid by February 1st of any year, and such lien shall continue until the assessment is paid. The Mixon Creek Homeowner's association shall be comprised of all lot owners. All decisions shall be made by majority vote (except that a two-thirds' (2/3) majority shall be necessary for changing the annual assessment or levy of special assessments), at a meeting or the lot owners held after thirty (30) days' written notice to all such lot owners. Voting rights are on the basis of one (1) vote per lot. The Association shall organize, elect officers, and operate freely within the restrictions herein contained.

Weyerhaeuser Real Estate Company will pay no assessments to the Mixon Creek Maintenance Fund with regard to the property herein described in Article I, to be managed by the Mixon Creek Homeowner's Association, until the following two (2) events have taken place:

- (1) Mixon Creek Homeowner's Association takes over the maintenance of the roads and the Mixon Creek Maintenance Fund.
- (2) Declarant deeds the roads referred to herein to the Mixon Creek Homeowner's Association in accordance with the terms and provisions referred to herein.

When seventy-five (75%) percent of the lots in Phase I, Mixon Creek, are sold, the Mixon Creek Homeowner's Association does hereby agree that it will take over the maintenance of the roads as shown on the plat referred to in Article 1. The Mixon Creek Homeowner's Association will be deeded the roads as shown on the plat and it agrees to accept the deed and ownership of said roads when seventy-five (75%) percent of the lots in Phase II, Mixon Creek, have been sold; however, the deed to said roads will be subject to a reservation in favor of Weyerhaeuser Real Estate Company, its successors and assigns whereby a permanent and perpetual easement over and upon said roads is reserved for such uses or purposes as Weyerhaeuser Real Estate Company, its successors and assigns, may deem appropriate under the circumstances.

### 3. Driveway Connections

A. All driveway connections to the access roads shall be at least sixteen (16') feet in width and shall contain an approved (by Architectural Committee) metal or concrete culvert for the width of the driveway connections.

B. Any damage caused by driveway connections to the private road shown on the plat, or to the ditches or shoulders of the road, or to the flow of drainage water along the said road, shall be repaired at the expense of the owners connecting such driveways.

## ARTICLE XIV

Future Development: The Declarant reserves the right to develop any of the property adjacent to the private roads shown on that map of record in Plat Cabinet D, Slide 192, Beaufort County Registry, and referred to in the Restrictive Covenants for Phase I, Mixon Creek, recorded in Book 8B1, Page 354, Beaufort County Registry, and additionally, the property adjacent to the private road shown on the map referred to in Article I herein. In the event this property or any portion thereof is developed, then and in that event, the lots located therein will become a part of the Mixon Creek Homeowner's Association and when conveyed by the Declarant, will pay an annual assessment to the Mixon Creek Maintenance Fund in the same amount and under the same conditions as the lots described in Article I. These lots will have the same rights and privileges with regard to the private road shown on the map

referred to in Article I as do the lots described in Article I.

#### ARTICLE XV

Lot Modification: In the event the Declarant, in its sole opinion, is unable to develop a lot or lots as shown on the map referred to in Article I because of governmental regulations or restrictions, then and in that event, the Declarant reserves unto itself the following rights and privileges with regard to the affected lot or lots:

1. To combine a portion of or all of a presently existing lot or lots with the adjoining lot or lots.
2. To delete the defined lot or lots that cannot be developed from the Mixon Creek Maintenance Fund.
3. To subject the new lot or lots formed by the process described in paragraph (1) above to the Mixon Creek Maintenance Fund.

#### ARTICLE XVI

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2010, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of a majority of the then owners of the lots described in Article I hereof it is agreed to change said covenants in whole or in part.

IN TESTIMONY WHEREOF, Weyerhaeuser Real Estate Company has caused these presents to be signed in its name by its Assistant Vice President, attested by its Assistant Secretary, with its corporate seal hereunto affixed, all by the authority of its Board of Directors duly given, this the day and year first above written.

WEYERHAUSER REAL ESTATE COMPANY

By: \_\_\_\_\_  
Assistant Vice President

(CORPORATE SEAL)

ATTEST:

Cherri Taylor  
Assistant Secretary

Prepared by T. R. Thompson, Jr.  
Attorney At Law  
Aurora, North Carolina