

ROCK CASTLE CREEK

**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS** made as of the 2nd day of December, 2004, by **ROCK
CASTLE CREEK, LLC**, a Virginia limited liability company, hereinafter referred to as the
“Declarant”,

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real property situated in Albemarle County, Virginia containing 402 acres, more or less, shown and described on the plats for Rock Castle Creek Subdivision (herein “Rock Castle Creek”) made by Roger W. Ray Assoc., Inc. titled “Plat Showing Lots 1 Thru 10 Rock Castle Creek a Division of the Rock Castle Creek, LLC Property also Boundary Survey of T.M. 130-7J,” dated July 21, 2004, revised August 13, 2004, a copy of which was attached to and recorded with that certain Declaration of Covenants, Conditions and Restrictions of Rock Castle Creek, dated September 30, 2004, recorded October 4, 2004 in the Clerk’s Office, Circuit Court, Albemarle County, Virginia (the “Clerk’s Office”) in Deed Book 2849, at Page 151 (the “Original Declaration”) and, titled “Plat Showing Lots 11 Thru 14 Rock Castle Creek and Tract A” dated August 13, 2004, revised September 13, 2004, a copy of which is attached to a deed, dated September 29, 2004, recorded October 4, 2004 in the Clerk’s Office in Deed Book 2849, at Page 142 (herein the “Plat” or “Plats”).

WHEREAS, Declarant desires to amend and restate in their entirety the covenants and restrictions contained in the Original Declaration subjecting Rock Castle Creek, to provide among other things that the Declaration shall subject Lots 1 – 14 and T.M. 130 – 7J (together

with any further divisions thereof, herein the “Lot” or “Lots”) shown on the Plats, to the covenants, conditions, restrictions, and easements set forth herein, each and all of which is and are for the benefit of the said property and the owners thereof.

NOW THEREFORE, Declarant hereby declares that the Lots shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, and easements, herein set forth, and any valid amendments hereto, which are being imposed to enhance and protect the value and desirability of Rock Castle Creek. The provisions set forth herein shall run with the land and shall be binding upon any and all parties who have or shall acquire any right, title and interest in all or part of the Lots. It is expressly understood that Tract A as shown on the Plats is not a Lot for purposes of this Declaration and shall not be encumbered by the terms of hereof.

ARTICLE I - DEFINITIONS

The following words, when used in this Declaration, shall have the following meaning:

Section 1.01. “Declaration” shall mean and refer to the covenants, conditions, restrictions, and easements, and all other provisions set forth in this Amended and Restated declaration of Covenants, Conditions and Restrictions of Rock Castle Creek, as the same may from time to time be amended or supplemented.

Section 1.02. “Declarant” shall mean and refer to Rock Castle Creek, LLC and any successor to or assignee of them as the developer.

Section 1.03. “Livestock” shall mean cattle, horses, llamas, sheep, goats and mules.

Section 1.04. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, including Declarant, of the fee simple title to any Lot including contract seller, but

excluding those having such interest merely as security for the performance of an obligation. In the case where a Lot is held by one or more persons for life with the remainder to another or others, the term “Owner” shall mean and refer only to such life tenant or tenants until such time as the remainderman or remaindermen shall come into use, possession or enjoyment of such Lot.

ARTICLE II - DUTIES OF DECLARANT

Section 2.01. Duties. When Declarant no longer owns any Lots, the then Owners of the Lots shall become the “successors” to Declarant under this Declaration for all purposes including the enforcement of the provisions of this Declaration and granting of necessary and appropriate utility and drainage easements. The Owners may organize as they may determine to effect these purposes. All of the “successors” decisions shall then be based upon a simple majority vote of the Owners.

ARTICLE III - USE RESTRICTIONS

Section 3.01. Restrictions on Certain Activities and Amenities.

- a. Trash or garbage must be kept in appropriate containers located in an area screened from public roads and adjacent residences.
- b. No exterior antennae of any kind or satellite dish three feet in diameter or greater may be erected.
- c. Discharging firearms within Rock Castle Creek is prohibited.
- d. Hunting within Rock Castle Creek is prohibited.
- e. Above ground swimming pools are prohibited within Rock Castle Creek.

Section 3.02. Building Restrictions.

a. Foundations on all structures shall consist of brick, stone veneer, stucco, parged block, or formed concrete.

b. Roofing materials on all structures shall consist of architectural fiberglass shingles, cedar shakes, or standing seam painted metal or copper.

c. The colors of all structures and their roofs shall consist of muted earth tones so as to minimize the visual impact on the natural character of the Lots.

d. Except as otherwise expressly approved by the Architectural Control Committee, (i) every single-story principal dwelling on any Lot shall have a minimum finished enclosed living area of 2,400 square feet and (ii) every one and one-half story or two-story principal dwellings shall have a minimum finished enclosed living area of 2,800 square feet. The square footage requirements set forth herein are exclusive of garages, decks, porches, carports, basements and any unfinished spaces.

e. Except as otherwise expressly approved by the Architectural Control Committee, only site-built structures are permitted. In no event shall manufactured homes or mobile homes be permitted on any Lot.

f. Except as otherwise expressly approved by the Architectural Control Committee, all structures shall be set back not less than 150 feet from any roadway.

Section 3.03. Use Restrictions.

a. Only Lots 7, 8, 9, 10 and T.M. 130-7J shown on the Plats may be further divided. No Lot shall be used as a roadway, right of way or easement for access to any property lying outside of the boundaries of Rock Castle Creek.

b. Except as set forth below, the Lots shall be used for residential purposes only. The following commercial and farming uses are permitted:

1. Home occupations may be conducted on the Lots with the following restrictions:

(i) Home occupations shall be conducted solely by resident occupants in their place of abode;

(ii) Not more than the equivalent area of one-quarter of the main dwelling on a Lot shall be used for such purpose;

(iii) No stock in trade shall be kept or products sold, except such as are made on the premises.

2. The keeping of Livestock for commercial purposes and not more than a total of ten (10) domestic fowls, such as chickens, turkeys, ducks and geese, is permitted on any Lot or combination of Lots under common ownership, totaling 100 acres or more. The keeping of Livestock for the use and enjoyment by a Lot Owner is permitted on a Lot, or combination of Lots under common ownership, that total ten acres or more. Equine centers for public or private use, commercial or non-commercial purposes, are permitted on any Lot or combination of Lots under common ownership totaling 50 acres or more. The keeping of horses is permitted on any Lot or combination of Lots under common ownership totaling five acres or more. As to all Livestock kept in Rock Castle Creek, the Owners on whose Lots Livestock is kept shall maintain the Livestock and Lots in accordance with accepted farming practices and industry standards. The keeping of swine and, except as expressly permitted in this Subsection 3.03(b)(2), poultry is prohibited within Rock Castle Creek.

3. Domestic animals such as dogs, cats, pet birds and other customary household pets may be kept on each Lot for the pleasure and use of the occupants but not for any commercial use or purpose. Dogs must not become a nuisance to other residents within Rock Castle Creek by barking or other acts. Dogs may not be kept for hunting purposes on any of the Lots.

ARTICLE IV - ARCHITECTURAL CONTROL

Section 4.01 Review and Control by Architectural Control Committee. No building, wall, fence or other structure shall be erected, added to, placed or altered on any Lot until one (1) complete set of building plans (including elevations), specifications, exterior color and finish samples, site plan (showing the proposed location of such building, drives and parking areas), shall have been reviewed and approved in writing by the Architectural Control Committee. If approval of such plans and specifications is neither granted nor denied within thirty (30) days following receipt by the Architectural Control Committee of written request for approval, the plans and specifications shall be deemed to be approved.

If any improvement is commenced or constructed without the approval of the Architectural Control Committee, then the Declarant and the Association shall have all rights and remedies at law or in equity, including the right to seek (a) an injunction of any construction and (b) the removal or modification of any improvement constructed.

Section 4.02. Declarant to Retain Architectural Control. Until such time as Declarant no longer owns any Lots and initial construction plans have been approved, the Architectural Control Committee shall consist of the Declarant and its appointees, if any. Thereafter, the

number of persons composing the Architectural Control Committee shall be set and their appointment made by a majority of the Owners of the Lots.

Section 4.03. No Waiver of Future Approvals. The approval of the Architectural Control Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters subsequently or additionally submitted for approval or consent.

Section 4.04. Variance. To the extent expressly authorized, the Architectural Control Committee may approve variances from compliance with certain provisions of the Building Restrictions set forth in Section 3.02 above in its sole discretion when it deems circumstances require. No variance shall (a) be effective unless in writing or (b) prevent the committee from denying a variance in other circumstances.

ARTICLE V - GENERAL RESTRICTIONS

This Article reserved for future use by Supplementary Declaration.

ARTICLE VI - EASEMENTS

Section 6.01. Utility and Drainage Easements. Declarant reserves unto itself, its successors and assigns, a perpetual and alienable easement and right-of-way above and under ground within ten (10) feet of any side or rear Lot boundary line and within twenty (20) feet of any front Lot boundary line to construct, maintain, inspect, replace and repair electric and telephone poles, wires, cables, conduits, pipes, ditches, and other suitable equipment for the conveyance of water, telephone, electricity, cable television, communications and other utilities and public

conveniences, and sewage, and for storm and surface water drainage, together with the right of ingress and egress to all such facilities and easements for the construction and maintenance thereof. The easements provided for in this Section shall include the right to cut any trees, brush, and shrubbery, to make any grading of the soil, and take other similar action reasonably necessary to provide economical and safe utility installation and drainage facilities. The rights herein reserved may be exercised by the licensee of Declarant, but shall not be deemed to impose any obligation upon Declarant to provide and maintain or be responsible for the lapse or temporary interruption of any utility or drainage services. Any damage caused by an Owner, his agent, or any party with whom he has contracted, to facilities located within these easements shall also be promptly repaired by the responsible Owner.

Section 6.01. Sight Easement. A sight distance easement for the benefit of the public is hereby established on Lot 11 which is more particularly shown and described on the Plat attached hereto.

ARTICLE VII - GENERAL PROVISIONS

Section 7.01. Enforcement. Enforcement of the provisions of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to the covenant either to restrain violation or recover damages. Such action may be brought by Declarant, or its successors as developer, or the Owner of any Lot or Parcel.

Section 7.02. Severability. Invalidation of any one or more of the provisions of this Declaration by judgment, court order or otherwise, shall in no way affect any other provisions which shall remain in full force and effect.

Section 7.03. Amendments. This Declaration may be amended in whole or in part by a recorded instrument bearing the signatures of the Owners of record, including joint tenants and tenants in common, of not less than 70% of the Lots.

Section 7.04. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date hereof and thereafter shall be automatically renewed for successive periods of ten years, unless modified, amended or rescinded as provided in Section 6.03.

Section 7.05. Deed of Trust Subordination. At the direction of the beneficiary, Citizens and Farmers Bank, as evidenced by its signature hereto, Larry G. Dillon or James H. Hudson, III, Trustees, either of whom may act, under that certain Credit Line Deed of Trust dated April 29, 2004 and recorded in said Clerk's Office in Deed Book 2739, page 734, joins in this instrument to subordinate the lien of said deed of trust, as supplemented, to these Covenants, Conditions and Restrictions

Section 7.06. Counterparts. This instrument may be executed in as many counterparts as may be required. All counterparts shall be deemed as original and shall collectively constitute a single instrument.

[Signature Page to Follow]

WITNESS the following signatures and seals.

ROCK CASTLE CREEK, LLC

By: _____(SEAL)
Title: _____

CITIZENS AND FARMERS BANK

By: _____(SEAL)
Title: _____

_____(SEAL)
Sole Acting Trustee

STATE OF VIRGINIA, At Large
_____ OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2004 by _____, manager of Rock Castle Creek, LLC.

My Commission expires: _____.

Notary Public

STATE OF VIRGINIA, At Large
_____ OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2004 by _____, _____ of Citizens and Farmers Bank..

My Commission expires: _____.

Notary Public

STATE OF VIRGINIA, At Large
CITY OF CHARLOTTESVILLE, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2004 by _____, Sole Acting Trustee.

My Commission expires: _____.

Notary Public