

Preliminary Agreement between the Town of Lake Lure and
the Firefly Cove Property Owners Association, Inc. for the
Purposes of Establishing a Utility Easement

This Preliminary Agreement is made effective on ~~10/29/19~~ between the Town of Lake Lure, PO Box 255, Lake Lure, NC 28746 and the Firefly Cove Property Owners Association, Inc., PO Box 303, Lake Lure, NC. The Firefly Cove Property Owners Association Inc.'s Board of Directors and the Town of Lake Lure are sometimes individually referred to as "Party" and collectively referred to as the "Parties".

WHEREAS, the Town of Lake Lure is desirous of locating a water interconnect station on property owned by the Firefly Cove Property Owners Association, Inc.; and,

WHEREAS, the subject property is designated as parcel number 1643157 by the Rutherford County Revenue Department; and,

WHEREAS, the Town of Lake Lure has an existing 6-inch ductile iron water line that continues to be in active service across the whole of subject property; and,

WHEREAS, a rough depiction of the location of the existing water line and water interconnect site, as proposed, is depicted on the attached Exhibit 1; and,

WHEREAS, the location of a water interconnect at this location is mutually beneficial for both the Firefly Cove Property Owners Association, Inc., its respective current as well as future residents, and the Town of Lake Lure inasmuch as the installation of the water interconnect shall provide a dependable source of water to the Firefly Cove subdivision and allow for future development in said subdivision; and,

WHEREAS, a formal agreement and professional survey depicting the site and easement location shall be recorded with the Rutherford County Register of Deeds before construction of the water interconnect is initiated;

NOW THEREFORE, in consideration of the facts as agreed upon by both parties and as described herein, the Firefly Cove Property Owners Association, Inc. and the Town of Lake Lure hereby agree as follows:

1. This preliminary agreement shall be sufficient to convey approval by the Firefly Cove Property Owners Association, Inc. to the Town of Lake Lure to establish a 40' x 40' utility easement on its property for the purposes of constructing a water interconnect station.
2. Before commencing construction, the Town of Lake Lure shall prepare a formal agreement that references a professional survey of the site and precisely locates the existing 6-inch ductile water line and proposed 40' x 40' easement location.
3. If no recorded easement exists for the active 6-inch ductile water line, the Firefly Cove Property Owners Association shall also approve a 20' easement (10' on center) for this public utility owned by the Town and same shall be denoted on the survey and incorporated into the formal agreement as described in paragraph 2, above.
4. The Town of Lake Lure agrees that it shall bear complete responsibility for the upkeep, maintenance and repair of both the six inch (6") ductile water line that traverses the Association's property as well as the 40' x 40' utility easement that shall be located on the Association's property. After the initial installation of the water interconnect station, the Town of Lake Lure shall promptly clean up the construction site and shall repair and return the property as close as is possible to its original condition as it existed prior to the construction of the water interconnect station. After the initial construction of the water interconnect station, should the Town of Lake Lure find it necessary to conduct any maintenance, repair or replacement of either the water interconnect station or the six inch (6") ductile pipe, the Town of Lake Lure warrants that any damage or disruption to the Association's property shall be promptly repaired to its original condition as it existed prior to the replacement or repair.
5. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Preliminary Agreement have the actual legal power, right and authority to make this Agreement and bind each respective Party
6. Amendment; Modification. No supplement, modification, or amendment of this Preliminary Agreement shall be binding unless executed in writing and signed by both Parties.
7. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

8. **Attorneys' Fees and Costs.** If any legal action or other proceeding is brought in connection with this Preliminary Agreement the successful or prevailing Party, if any, shall be entitled to recover reasonable attorneys' fees and other related costs, in addition to any other relief to which that Party is entitled. In the event that it is the subject of dispute, the court or trier of fact who presides over such legal action or proceeding is empowered to determine which Party, if any, is the prevailing party in accordance with this provision.
9. **Entire Agreement.** This Preliminary Agreement contains the entire agreement between the Parties related to the matters specified herein, and supersedes any prior oral or written statements or agreements between the Parties related to such matters.
10. **Enforceability, Severability, and Reformation.** If any provision of this Preliminary Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited. The intent of the Parties is to provide as broad an identification as possible under North Carolina law. In the event that any aspect of this Agreement is deemed unenforceable, the court is empowered to modify this Agreement to give the broadest possible interpretation permitted under North Carolina law.
11. **Applicable Law.** This Preliminary Agreement shall be governed exclusively by the laws of North Carolina, without regard to conflict of law provisions.
12. **Exclusive Venue and Jurisdiction.** Any lawsuit or legal proceeding arising out of or relating to this Preliminary Agreement in any way whatsoever shall be exclusively brought and litigated in the federal and state courts of North Carolina. Each Party expressly consents and submits to this exclusive jurisdiction and exclusive venue. Each Party expressly waives the right to challenge this jurisdiction or venue as improper or inconvenient. Each Party consents to the dismissal of any lawsuit that they bring in any other jurisdiction or venue.

13. Signatures. The agreement shall be signed by the President of the Firefly Cove Property Owners Association, Inc., Ms. Melva H.Dye, and C. Shannon Baldwin, Lake Lure Town Manager.

Melva H. Dye

Melva H. Dye

Date *10/29/2019*

State of North Carolina

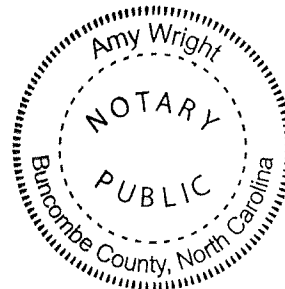
County of *Buncombe*

I, *Amy Wright*, Notary Public, do hereby certify that Joe Pritchett, President of the Firefly Cove Property Owners Association, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the *29* day of *October*, 20*19*

Amy Wright

My commission expires: *March 7, 2024*



C. Shannon Baldwin

C. Shannon Baldwin

Date 10/29/19

State of North Carolina

County of Buncombe

I, Amy Wright, Notary Public, do hereby certify that C. Shannon Baldwin, Lake Lure Town Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 29 day of October, 2019.

Amy Wright

My commission expires: March 7, 2024

