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by: WILLOREE B. JOBE

STATE OF NORTH CAROLINA
County of Yancey
Register of Deeds
BOOK 345 PAGE 198 to 200
AMENDMENT AND RESTATEMENT
OF RESTRICTIVE COVENANTS

Willoree Jobe

This Amendment and Restatement of Restrictive Covenants entered into this the 29th day of Nov., 1999, by Mount Mitchell Lands Property Owner's Association, Inc., a North Carolina non-profit corporation, hereinafter called "The Association"; thus

WITNESSETH:

THAT WHEREAS, the above named Association is comprised of members who are property owners in Mount Mitchell Lands as follows:

- | | |
|------------|--|
| Unit I | Lots 1-66, as designated on a recorded plat at Book 1, Pages 177 and 178, and subject to Restrictive Covenants as recorded in Book 148, Page 499; Book 149, Page 207; and Book 237, Page 669. Also subject to a Road Maintenance Agreement recorded at Book 218, Page 604. |
| Unit II | Lots 67-124, as designated on a recorded plat at Book 1, Page 180, and subject to Restrictive Covenants as recorded in Book 149, Page 207; Book 192, Page 271, and Book 237, Page 669. Also subject to a Road Maintenance Agreement recorded at Book 218, Page 604. |
| Unit V | Lots 1-66, as designated on a recorded plat at Book 2, Page 98B for lots 1-41; Plat Book 2, Pages 22 and 23 for lots 42-66, and subject to Restrictive Covenants as recorded in Book 203, Page 794. Also subject to a Road Maintenance Agreement recorded at Book 218, Page 604. |
| Riverlinks | Lots 1-10, as designated on a recorded plat at Book 1, Page 22B and subject to Restrictive Covenants as recorded in Book 231, Page 234. |

WHEREAS, it is the desire of the Association and its members to amend the Declaration of Restrictive Covenants of each of the separate units and combine them into one unified set of covenants, and whereas, the authority to amend the covenants of Units I and II are set forth in paragraph 1 of their respective covenants requiring a "majority" vote of the lot owners, and whereas the authority to amend the covenants of Unit V and Riverlinks are set forth in Article Four, Paragraph 4, of their respective covenants and require a two-thirds majority of the property owners,

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, it is hereby agreed and declared that the Declaration of Restrictive Covenants referred to herein are codified, restated and amended to read as follows:

ARTICLE ONE
RESTRICTIONS

1. All lots on said plats shall be known and described as residential lots, and no lot shall be used except for residential purposes. No building or structure shall be erected, altered, placed or permitted to remain on any residential lot other than one detached single-family dwelling, not to exceed two stories in height at the uppermost ground level as the natural grade shall occur (except that an attic or basement floor under the ground surface shall not be considered a story for this purpose) and a private garage, carport, servants quarters, and other appropriate outbuildings incidental to residential use.
2. No building, structure or swimming pool shall be erected, altered, placed or permitted to remain on any residential lot until:

- a. Two copies of the final building or construction plan, specifications and plot plans showing the location of each building, structure or pool have been submitted to and approved by the Architectural Committee of the Association, hereinafter called "the Committee", as to conformity and harmony of design with existing or planned structures in the subdivision of Mount Mitchell Lands and as to location of building, structure or pool with respect to topography and finished ground elevation;
 - b. Impact fees, as determined by the Board of Directors of the Association, are paid in full, and
 - c. The Committee shall have indicated its approval in writing.
3. A septic tank and drain field system shall be constructed and installed in compliance with the rules and regulations of the North Carolina Board of Health as administered and approved by the Yancey County Health Department on each lot prior to the commencement of construction of a dwelling place. There shall be provided on each lot on which a dwelling is constructed, off-street parking for at least two automobiles. Residential construction on lots within the development shall be completed within eighteen (18) months of breaking ground.
 4. The living area of the main building or structure, exclusive of one-story open porches, open carports, garages, and residential outbuildings, shall contain not less than 1,800 square feet of heated space for houses constructed in Riverlinks, and not less than 1,200 square feet for houses constructed in Units I, II and V.
 5. No building shall be located on any lot nearer than thirty (30) feet from the margin of the right of way shown on the map and plat of record, nor any nearer than ten (10) feet to any side or rear lot line unless otherwise approved in writing by the Association, nor nearer than thirty (30) feet from the golf course unless approved in writing by the owner of the golf course; provided further that no structure, including porches and decks, shall be located any closer than ten (10) feet to the top of any river bank as it exists at the time of the proposed construction without prior written approval of the Association.
 6. All homes constructed in the subdivision shall be principally of brick, stone or wood siding or of materials approved by the Association. No cement or cinder blocks, inless stuccoed, shall appear above ground level. No building material shall be stored on any lot longer than that length of time reasonably necessary for the construction to be completed, not to exceed eighteen (18) months, without the consent of the Association.
 7. No trade or business activity nor noxious, dangerous or unsightly activity of any kind shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance, nuisance, health hazard or safety hazard to the neighborhood without the written consent of the Association
 8. No trailer, tent, shack, garage or any other outbuilding on any lot shall at any time be used as a residence, temporary or permanent, nor shall any structure of a temporary character be used as a residence.
 9. No fence, wall or other dividing structure may be located on any lot in violation of the front setback line as set forth in Paragraph 5 hereinabove unless otherwise approved in writing by the Association.
 10. No animals, livestock or poultry of any kind shall be raised, harbored or kept, even temporarily, on any lot for any purpose whatsoever. Usual household pets may be kept by owners, provided they shall not become an annoyance or nuisance to the neighborhood.
 11. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary containers which are underground or surrounded by an enclosure at least one foot higher than the container.
 12. Each property owner shall maintain their property in such a way as to prevent deterioration and becoming an eye-sore or fire hazard.
 13. No sign or billboard of any kind shall be displayed to the public view on any lot other than signs of not more than five square feet as my be used by a builder while a residential building is under construction, or one of the

same size if a house is being offered for sale. Signs of the same size stating the owner's name, or the name of his house, are permissible.

14. No oil drills, oil development operations, refining, quarrying, timbering or mining operations of any kind whatsoever shall be permitted upon any lot, nor shall any oil wells, derricks, tanks, tunnels, mineral excavations or shafts be erected or permitted to remain on any lot.

15. No tree larger than eight (8) inches in diameter shall be cut or removed from any lot without the prior written permission of the Association.

16. None of the lots in the subdivision shall be re-subdivided so as to create an additional building lot without the prior written permission of the Association. Where a residence has been erected on a plot consisting of two or more lots, none of said lots shall thereafter be sold separately if such sale would result in a violation of Paragraph 4 hereinabove without prior written permission of the Association.

17. All storage tanks shall be underground or surrounded by an enclosure at least one foot higher than the storage tank(s).

18. No well of any nature is permitted on any lot without the prior written consent of the Association.

19. No activity shall be conducted within the subdivision which will cause embarrassment, discomfort, annoyance or nuisance to the owners. Specifically prohibited is the operation of any two wheeled internal combustion engine driven vehicle, motor bike, motor cycle, or any "toy" engine driven vehicles on any part of the subject property or roads except by approval of the Association.

20. These covenants, terms and conditions, restrictions and limitations herein contained are to run with the land and shall be binding upon all parties and all persons claiming under them, and each of their heirs, executors, administrators and assigns.

21. In the event construction of a dwelling or other structure on any lot shall require or involve soil excavation, the owner and/or the contractor shall place siltation screens or fences around or near excavated and filled areas in such a manner as to insure against the runoff of surface soil and sedimentation. Said screens and fences shall remain in place until areas affected have been stabilized by the planting of grass or some other suitable cover to insure against runoff.

ARTICLE TWO HOMEOWNER'S ASSOCIATION

1. By acceptance of a deed conveying a lot or lots in Mount Mitchell Lands, Units I, II, V or Riverlinks as evidenced by recordation in the Yancey County Deed Registry, the Grantee or Grantees herein named shall become members in Mount Mitchell Lands Property Owner's Association, Inc., a North Carolina nonprofit corporation created for the purpose of maintaining road and common areas within the development. The corporation shall maintain the common areas and facilities within the development which shall include roads, streets and any areas designated as "common area" upon maps and plats of the various subdivision units in the development. The corporation has entered into a Road Maintenance Agreement which is recorded in Plat Book 218, Page 604.

2. The Association shall have the power to levy annual and special assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the lot owners and for the improvement and maintenance of roads, streets and common areas, and the performance of the obligations of the Association, including the cost of operation of the Association. The Board of Directors of the Association shall fix an annual assessment to defray the expense of the aforesaid maintenance, and, in addition to the annual assessments herein authorized, the Association may levy special assessments for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement, upon the common areas, including paving, fixtures and personal property related thereto, provided that any such assessment

shall have the consent of at least two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting called for that purpose. Both annual and special assessments for capital must be fixed at a uniform rate for all members. The Board may authorize, in its discretion, that special assessments be paid on a monthly basis. Written notice of any meeting called for the purpose of levying a special assessment shall be sent to all members not less than 15 nor more than 60 days in advance of the meeting. The presence of members or of proxies entitled to cast 60% of the votes shall constitute a quorum. If the required quorum is not present, the continued meeting shall be adjourned to a day certain. At any such adjourned date, or meeting held thereafter, a quorum shall consist of not less than 51% of the total number of votes that may be cast in person or by proxy at a meeting duly called for this purpose.

3. The annual assessments provided for herein shall become due and payable on July 1st of each calendar year. The Board of Directors shall fix the amount of the annual assessment at least thirty (30) days in advance of their due date. Written notice of the annual assessment shall be sent to every owner subject thereto.

4. Any assessment not paid within thirty (30) days from the due date shall incur a late fee of 25% of the amount due, and shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the member, or members, who shall be personally obligated to pay the same, or foreclose the lien against the lot of the member or members as hereinafter provided. No member or owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas or by abandonment of his lot, or for any other reason. Each member and lot owner shall be deemed to covenant and agree to the enforcement of all assessments in the manner specified in this document. Each owner agrees to pay reasonable attorney fees as established from time to time by the Board and the costs incurred in the collection of any assessment against such owner or member and/or his lot, whetherby suit or otherwise, or in enforcing compliance with, or specific performance of, the terms and conditions of this declaration or other governing documents. Annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge against the lot(s) and shall be a continuing lien upon the property against which the assessment is made. The assessment shall also be the personal obligation of the member or members who were owner, or owners, of the lot(s) at the time when the assessment fell due. The Association may commence and maintain a lawsuit against any member, or members, for such delinquent assessment to which they were obligated. Any judgment rendered in any such action shall include the amount of delinquency, together with the interest thereon at the rate of 10% per annum from the date of delinquency, cost of collection, court costs and reasonable attorney fees in such amount as the Board has established from time to time. Suits to recover money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien herein provided for.

5. There is hereby created a claim of lien, with power of sale, on each and every lot to secure payment to the Association for any and all assessments levied against any and all lots pursuant to this Declaration, together with interest thereon, as provided for by this section, and all costs of collection which may be paid or incurred by the Association in connection therewith, including a reasonable attorney's fee, as may from time to time be established by resolution of the Board. At any time after the occurrence of any delinquency in payment of any such assessment, the Association, or an authorized representative thereof, may make a written demand for payment to the delinquent member or members. Said demands shall state the basis for a demand or claim of lien, and any demand or claim of lien on account of prior delinquency shall be deemed to include subsequent delinquencies and amounts due thereof. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association, or its duly authorized representative, may thereafter elect to file and record a claim of lien on behalf of the Association against the lot, or lots, of that defaulting member/owner in the Office of the Clerk of Court and the Register of Deeds for Yancy County, North Carolina, or both. Such claim of lien shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

- a. The name of the delinquent owner;
- b. The legal description of the lot, with reference to the recorded map and plat being sufficient;
- c. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs and attorney fees, as well as the costs of recording the lien;
- d. That the claim of lien is made by the Association pursuant to this Declaration;
- e. That a lien is claimed against the lot(s) in an amount equal to the amount stated, together with all other amounts becoming due from time to time in accordance with this Declaration; and

f. The date of issuance of the claim.

Upon such recordation of a duly executed claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the land against which the assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except for tax liens for real property and assessment on any lot in favor of any governmental unit, and the lien of any first mortgage. Any such lien may be foreclosed in the manner provided by law for the foreclosure of mortgages and Deeds of Trust. The Board is hereby authorized to appoint any officer or director of the Association for the purpose of conducting such proceeding.

ARTICLE THREE EASEMENTS

1. Lot owners in the subdivision shall have easements to travel in rubber-tired vehicles upon the roads shown in the various maps and plats of units of the development of record in the Yancey County Deed Registry. The developer retains title to the underlying fee and reserves the right to convey to others easements to travel upon said roadways, provided that Grantees of such easements must contribute to the maintenance of subdivision roadways according to their usage. The developer reserves the right to dedicate subdivision roadways to the State of North Carolina as well as the right to convey said roadways to Mount Mitchell Lands Property Owners Association, Inc. Upon sale of all of the properties in the development, and without the prior dedication of the roadways to the State of North Carolina, the developer shall convey said roadways to Mount Mitchell Lands Property Owners Association, Inc. subject to easement and right of all property owners in the development and others who may have been granted the right to use development roadways.

2. There is reserved to the developer, and/or the Association, without further assent or permit, the right, title and privilege of a perpetual, alienable and releaseable easement to construct, install, maintain and repair utilities, including but not limited to, water, sewer, telephone and electric utilities, with the right of entry for the purpose of installation, construction, inspection and repair, over, through, upon, across and under each and every lot in this subdivision. This easement shall run to and even with ten feet along sidelines of all such lots, and thirty feet on the road side of the property. By acceptance of a deed or other conveyance to any such lot in respect to which this easement is reserved, the purchaser, for himself, his heirs, legal representatives, successors and assigns, shall be deemed to have waived any and all claims for damages, if any, by virtue of construction, installation, maintenance and repair thereof, or on account of temporary or other inconvenience caused thereby. The exercise of this easement for the construction and installation of any given utility shall not bar the further exercise of this easement for the construction or installation of any other utility.

3. Lots and dwelling units abutting or contiguous with the Mount Mitchell Lands Golf Course are hereby subjected to an easement for ordinary and usual activities associated with playing golf, including without limitation, removals of balls, noise of players and carts, and normal maintenance of a golf course. All proposed improvements abutting the golf course shall be strictly reviewed by the developer to assure that such proposed improvements do not interfere with the playing of golf. The owner of Mount Mitchell Lands Golf Course shall have the right, but not the obligation, to enter onto any lot or portion of the property to remove underbrush or other material interfering with the use of the golf course. In addition, all owners of lots abutting the golf course, as well as their tenants, guests, invitees and pets, shall be obligated to refrain from any actions which would detract from the playing of golf.

4. Owners of all lots which are in the floodway as designated on Federal Emergency Management Agency maps, prior to commencement of any construction on any lot, shall be required to obtain a no-rise certificate from a licensed engineer in compliance with the Yancey County Flood Control Ordinance and approval of the Department of Yancey County Government enforcing the Flood Control Ordinance. All building plans submitted to the Association for approval must contain a standard floodway foundation design.

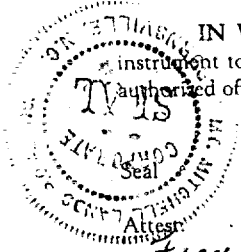
ARTICLE FOUR
ENFORCEMENT, INVALIDATION AND MODIFICATION

1. No lot shall be conveyed, devised, leased or demised at any time hereafter except as being subject to the covenants, terms, obligations, restrictions and limitations herein contained, and to the obligation to observe and perform the same. Whether or not it be so expressed in the deed or other instruments of conveyance of the property, the same shall be absolutely subject to the covenants, terms, conditions, restrictions and limitations herein contained, which shall run with and be appurtenant to the lands and every part thereof, as fully as if expressly contained in proper and obligatory covenants or conditions, in each and every contract and conveyance of, or concerning any part of the land or improvements to be made thereon.

2. If the parties hereto or any of them, or any of their heirs, executors, administrators or assigns, or any such future owner or owners of any lot(s) within Mount Mitchell Lands or any of their heirs, executors, administrators or assigns, shall violate or attempt to violate any of the covenants, terms, conditions, restrictions or limitations herein contained, it shall be lawful for the Association, or any person or persons owning real property situate in said subdivision, to prosecute at law or in equity against the person or persons violating, or attempting to violate, the same to prevent such person or persons from doing so or to recover damage for such violation or attempted violation.

3. Invalidation of any one of these covenants, terms, conditions, restrictions and/or limitations, or any part thereof, by judgment or court shall not affect any of the other provisions which shall remain in full force and effect.

4. Any one or all of the covenants, terms, conditions, restrictions and/or limitations hereinabove set forth may be annulled, waived, amended or modified at any time by an instrument duly executed by a vote of a simple majority of the lots in said Mount Mitchell Lands, which instrument shall be acknowledged by each person signing the same and shall be filed of record in the Office of the Register of Deeds, Yancey County, North Carolina; provided however, that no annulment, amendment or modification shall place an additional burden or restriction on any lot in said Mount Mitchell Lands, the owner of which does not join in said instrument. Provided further that the provisions of this paragraph shall not be construed to alter, amend, or in any way affect, the powers and duties of the Association, as set forth herein.



IN WITNESS WHEREOF, Mount Mitchell Lands Property Owners Association, Inc. has caused this instrument to be executed in its name and on its behalf, and its corporate seal to be affixed and duly attested by its authorized officers this the 29th day of November, 1999. Said Amendment and Restatement of Protective Covenants to become effective January 1, 2000.

Mount Mitchell Lands Property Owners Association, Inc.

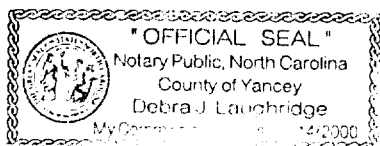
By: [Signature]
President

[Signature]
Secretary

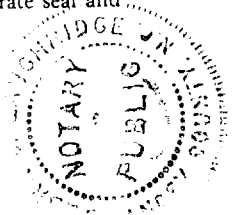
STATE OF NORTH CAROLINA
COUNTY OF YANCEY

I, Debra J. Laughridge, a Notary Public in and for the above county and state, do hereby certify that Frank S. Hay, Jr. personally appeared before me this day and acknowledged that he/she is the Secretary of Mount Mitchell Lands Property Owners Association, Inc., and that by authority given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him/her as its Secretary.

WITNESS my hand and notarial seal this 29 day of November, 1999.



[Signature]
Notary Public
My commission expires: 11/14/2000



ATTACHMENT TO
AMENDMENT AND RESTATEMENT
OF
RESTRICTIVE COVENANTS

WHEREAS, the undersigned being the President of Mount Mitchell Lands Property Owner's Association, Inc. does hereby certify that a vote was held in November of 1999 of the property owners in the Association and a two-thirds majority of all property owners voted by ballot to enact the attached Amendment and Restatement of Restrictive Covenants, dated November 29, 1999, incorporated herein by reference. Said Amendment and Restatement of Restrictive Covenants to become effective on January 1, 2000.

MOUNT MITCHELL LANDS PROPERTY
OWNERS ASSOCIATION

BY: [Signature]
President



Attest:

[Signature]
Secretary

NORTH CAROLINA YANCEY COUNTY:
The foregoing (or annexed) certificate(s) of _____
DEBRA J. LAUGHRIDGE, NP

Is (are) certified to be correct.
This 14 day of FEB, A.D. 20 00
[Signature]
REGISTER OF DEEDS

STATE OF NORTH CAROLINA
COUNTY OF YANCEY

Debra J. Laughridge a Notary Public in and for the above county and state, do hereby certify that Frank S. Hay, Jr. personally appeared before me this day and acknowledged that he/she is the Secretary of Mount Mitchell Lands Property Owner's Association, Inc., and that by authority given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him/her as its Secretary.

Witness my hand and notarial seal this the 11 day of February, 2000.

[Signature]
Notary Public

My Commission Expires: 11-14-00