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MACON CO, NC FEE \$35.00

PRESENTED & RECORDED

10-07-2010 02:53:03 PM

TODD RABY
REGISTER OF DEEDS
BY: TODD RABY
REGISTER

BK: CRP Y-33

PG: 165-172

This instrument prepared by
Richard Melvin
Jones, Key, Melvin & Patton, P.A.

NORTH CAROLINA
MACON COUNTY

AMENDMENT TO DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS
AND EASEMENTS REGARDING WHISPER MOUNTAIN SUBDIVISION

THIS AMENDMENT, made this the 7th day of October, 2010 by WHISPER
MOUNTAIN HOMEOWNERS ASSOCIATION, INC.

WITNESSETH:

WHEREAS, WHISPER Mountain Homeowners Association is an Association,
organized under the laws of the State of North Carolina and is governed by Declarations of Protective
Covenants as recorded in the respective deeds of property owners in the Office of the Register of Deeds
for Macon County, North Carolina;

WHEREAS, pursuant to and at a special meeting of the owners of the Association,
during which time a quorum was present, personally or by proxy, throughout, the following amendment
was adopted:

WHEREAS, under N.C.G.S. Chapter 47F, The North Carolina Planned Community Act,
Whisper Mountain Subdivision is a planned community, and the Association has been in continuous
existence collecting funds for subdivision expenses for the common benefit of lots in said subdivision;

AND WHEREAS, for the reasonable benefit of the health, welfare, and safety of owners
and residents, to maintain the character of the community, preserve property values, protect the long
term attractiveness of Whisper Mountain Subdivision, and to protect the legitimate expectations of
members, owners, and residents the covenants have been amended and extended as attached herein;

**PROTECTIVE COVENANTS OF
WHISPER MOUNTAIN ESTATES
FRANKLIN, NORTH CAROLINA**

Preamble:

These Covenants are intended to be incorporated into any conveyance of any interest in real property by the original developer or subsequent seller(s) to any purchaser(s), or successor(s) in interest however designated with respect to the platted real property referred to as "Whisper Mountain Estates" as set forth in the Plat or other evidence of title recorded or to be recorded in the Office of the Macon County Register of Deeds.

These Covenants, unless otherwise specified, are intended to "run with the land" or otherwise apply to the parcels of real property conveyed, in perpetuity. The only time these covenants shall be considered null and void shall be in the event of subsequent illegality or by operation of law. The purpose of these Covenants is to enhance and protect the value, attractiveness, and desirability of the property.

These Covenants are to be read and construed to conform with North Carolina Law and Macon County ordinances. The State of North Carolina shall be deemed the appropriate jurisdiction for adjudicating the rights and responsibilities of any party with any interest in real property subject to these Covenants.

These Covenants shall be recorded with the Office of the Register of Deeds of Macon County, North Carolina and shall become effective as of such date. Any person receiving any interest in any real property to which these Covenants relate, shall receive that interest in real property subject to these Covenants and each evidence of conveyance of real property shall make reference to these Covenants. However, in the event such evidence of conveyance fails to recite these Covenants, these Covenants shall, nonetheless, become a material part of any such conveyance.

WHISPER MOUNTAIN PROPERTY OWNERS ASSOCIATION, INC.
a non-profit corporation

A-1: All owners of property within Whisper Mountain Estates are members of the Whisper Mountain Property Owners Association, Inc. (hereafter "POA") which was set up as a non-profit corporation and has been duly recorded with the North Carolina Secretary of State on March 13, 2002, together with a copy of the By-Laws of the Association. A duly elected Board consisting of a President, Vice President, Secretary and Treasurer is responsible for the day-to-day matters concerning the POA. Said officers will be elected at the Annual Meeting of the POA and will serve for a term of two (2) years. The Board's duties are set forth in the By-Laws of the POA. The members of the Board must be property owners of Whisper Mountain Estates. A copy of these documents may be obtained upon request from the Secretary of the Board.

A-2: In an effort to make sure that all property owners are equally represented in the affairs of the POA, there is to be one (1) vote per household, corporation, partnership, LLC, etc., regardless of the number of lots owned. The purpose of this 1 vote per house is to prevent any future purchaser(s) from obtaining a majority of the properties within Whisper Mountain Estates, thereby possibly taking over sole ruling of the subdivision. This vote may be cast in person at the Annual Meeting or any other meeting of the Association, by proxy sent via E-mail or the U.S. Postal Service. Any actions to be taken by the Board, which require a vote, will be provided to all property owners via E-mail or U. S. Mail within at least 30 days to taking any such action(s).

A-3: The officers of the POA shall be responsible for collecting all road maintenance fees and using them to maintain the roads.

A-4: There shall be an Annual Meeting of the POA. Written notice shall be mailed to each lot owner at the same time as their statement for their annual fees is mailed. The Board may call a special meeting upon fifteen (15) days notice to all lot owners, and must call a special meeting if ten percent (10%) of the lot owners request one. Notice of special meetings may be given by first class U.S. Mail or E-mail, to those lot owners who have access to the Internet.

Covenants:

B-1: LAND USE AND BUILDING TYPE: No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached, single-family dwelling. No temporary houses, tents, trucks, lean-to or any other type of

canvas or makeshift structure shall be placed on the land described herein without prior approval of the Board.

B-2: ARCHITECTURAL CONTROL: No dwelling shall be permitted on any lot in said property unless the same shall meet the following minimum standards.

- a. The ground floor of the main structure, exclusive of one-story open porches and garages, shall not be less than seven hundred fifty (750) square feet of indoor living space.
- b. No dwelling shall be placed closer than ten (10) feet to any outside boundary line, except that if two or more lots are improved as a single unit, this restriction shall apply only to the boundaries of the unit. There shall be a distance of at least forty (40) feet between all dwellings constructed on the land described herein.
- c. Pre-manufactured homes, or other residential structures, which are built or manufactured off-site shall not be allowed. All homes must be site-built and placed on a permanent foundation unless otherwise approved by the Board..

B-3: NUISANCES: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the other property owners. No lot owner shall allow disabled or unlicensed motor vehicles or other motorized vehicles or power equipment to remain on the premises unless adequately covered by a suitable permanent structure and kept from view. Furthermore, no lot owner shall allow trash, rubbish or other aesthetically undesirable accumulations of waste of any kind or sort to accumulate on the premises. In the event either of the above conditions exists, the Board may, at their option, immediately notify the owner of the condition. If the condition is not corrected within thirty (30) days, the Board may itself take steps to correct the condition, including access to the premises to remove the same and the lot owner shall be liable to the POA for any and all costs attendant to the removal of the offending condition.

B-4: TEMPORARY STRUCTURES: No structure of a temporary character, trailer, basement, tent, shack, garage, recreational vehicle, or other outbuilding shall be used on any lot at any time as a residence, either temporary or permanently. A lot owner may use an RV, 5th Wheel or small trailer on a temporary basis as a vacation "home" for a period not to extend longer than 30 days in a calendar year. Any such vacation "home" must be self contained.

B-5: SIGNS: No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property for sale.

B-6: BUSINESS: No goods, wares or merchandise shall be manufactured or sold or offered for sale, or processed for sale on any portion of said land. A home based business may be conducted, provided only minimum daily traffic occurs, bringing clients, customers or salespersons to the premises.

B-7: RENTALS/LEASES: In the interest of security to all property owners, renting or leasing of any homes for a period of less than two (2) months is hereby prohibited. Any rentals or leases over a six (6) month period shall require a written agreement, a copy of which shall be furnished to the Board. There are several residences, which, due to the agreement between their owners and the original developer of Whisper Mountain Estates, are hereby "grandfathered in" and, thus, exempted from this Covenant. This exemption shall not be carried over to a future purchaser of such property or properties.

B-8: LIVESTOCK AND POULTRY: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes. Property owners are responsible for controlling their household pets at all times and are solely liable for any actual or consequential damages that may occur to others while within the premises of Whisper Mountain Estates. Pet owners are required to "clean up" after their pets after all times. No more than two (2) household animals shall be kept at one time unless otherwise approved by the Board. No animals may be kept in an outdoor kennel/cage of any type nor may they be kept on a tether.

B-9: GARBAGE AND REFUSE DISPOSAL: No lot shall be used or maintained for a garbage dumping ground. Trash, garbage or other waste shall not be kept except in sanitary containers until they can be taken to the transfer stations provided by Macon County. All such containers shall be kept in a clean and sanitary condition and out of public view.

B-10: ROAD MAINTENANCE: The owners of properties in Whisper Mountain Estates agree to pay their pro-rata share of the cost of maintaining the roads, as set forth more particularly in By-Laws of the POA. Also, lot owners, their heirs and assigns, shall be responsible for the cost of repairing any damage done to the roads in said property by any trucks, tractors or heavy equipment in bringing materials or equipment to owners' property; and shall be responsible for any other damage done in any manner to

said roads outside of "ordinary use" of said roads and common areas; and it is agreed that all such charges for maintenance or damage shall be a lien on the property, which lien shall run with the land. The Board will determine the damaged area(s), obtain two (2) bids for the repair of same, and submit the bid information to the property owner.

B-11: EFFECT OF NONPAYMENT OF ASSESSMENT/REMEDIES OF THE ASSOCIATION. Any owner who fails to pay their share of the cost of maintaining the roads for a period of two (2) years will be liable to have a lien placed upon their property. All assessments against any lot pursuant to this provision and cost of collection thereof (including reasonable attorney's fees, whether suit is filed or not), may become a lien on such lot effective upon recording a Claim of Lien against such lot by the POA. The POA may bring an action at law against the owner personally obligated to pay same, foreclose the lien against the lot, or both. Costs and reasonable attorney's fees incurred in any such action shall be awarded to the prevailing party. The lien provided for by this section shall be in favor of the POA. The Board, acting on behalf of all other owners, shall have the power to bid for an interest in any lot foreclosed at such foreclosure sale and to acquire and hold, lease, or convey the same. Any profits from a lease or sale of such property shall become part of the road maintenance fund. No owner may waive or otherwise escape liability for the assessments provided for herein by the abandonment of his/her/its lot.

B-12: PROPANE GAS USE: Propane gas tanks are to be in a location allowing visibility from the roadway to emergency services but should be shrouded with either low landscaping or fencing so as not to create an eyesore.

GENERAL PROVISIONS

C-1: ENFORCEMENT: Enforcement shall be by proceedings at law or in equity against any person violating or attempting to violate any covenant either to restrain violation or to recover damages, including a reasonable attorney's fee for the party having to bring said proceeding. Any lien created hereunder may be docketed by a notice in the Office of the Macon County Register of Deeds, and may be enforced by foreclosure in the same manner as for the foreclosure of a Deed of Trust on real property, pursuant to the North Carolina General Statutes.

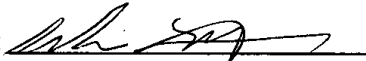
C-2: SEVERABILITY: Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

C-3: MODIFICATION: These Covenants may be modified by the POA with a two thirds (2/3) approval vote of its members. These Covenants shall supersede any and all prior "express stipulations and restrictions".

Dated this 4th day of October, 2010.

**WHISPER MOUNTAIN PROPERTY
OWNERS ASSOCIATION, INC.**

BY:



William A. Miller
President



Mark Gleesing
Secretary/Treasurer

NOW THEREFORE, the declarations and covenants as amended shall be extended in duration to run with the land and to be binding upon all parties and all persons claiming under them for a period of fifty (50) years from this date, and is hereby reaffirmed and declared to be in full force and effect. At the end of said fifty-year period the covenants shall automatically be renewed for successive periods of ten (10) years, unless specifically terminated by a vote of 67% of the ownership interest in said subdivision at such time or times.

It is certified that the foregoing amendment was duly adopted in accordance with the said declarations by an affirmative vote in excess of 67% of the ownership interest in said subdivision.

IN WITNESS WHEREOF, we the undersigned have caused these presents to be executed by WHISPER MOUNTAIN HOMEOWNERS ASSOCIATION, INC. in its corporate name by its President and its corporate seal to be hereto affixed and attested by its Secretary the day and year first above written.

Whisper Mountain Homeowners Association, Inc.

By: [Signature]

President

Attest:

By: [Signature]

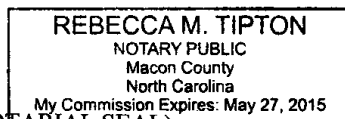
Secretary

(CORPORATE SEAL)

STATE OF NORTH CAROLINA
MACON COUNTY

I, Rebecca M. Tipton, a Notary Public of the aforesaid County and State hereby certify that Mark Gleesing personally appeared before me this day and acknowledged that he/she voluntarily signed as the _____ Secretary of the WHISPER MOUNTAIN HOMEOWNERS ASSOCIATION, INC., and that, by authority duly 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 himself/herself as its _____ Secretary.

WITNESS my hand and Notarial seal, this the 7th day of October, 2010.



(NOTARIAL SEAL)

Rebecca M. Tipton
Notary Public

Rebecca M. Tipton

(Type or print name of Notary)

My Commission Expires: _____

☐ Personally known to me

☒ Produced _____ Driver's License as identification