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PRESENTED & RECORDED:

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TODD RABY

REGISTER OF DEEDS

BY: TODD RABY

REGISTER

BK: CRP W-35

PG: 2025-2034

**AMENDMENT TO AND RESTATEMENT OF
DECLARATION OF RESTRICTIVE COVENANTS APPLICABLE
TO THE PROPERTY KNOWN AS MILL CREEK ESTATES
PHASES I, II, & III**

LET IT BE KNOWN BY THESE PRESENTS:

WHEREAS, Mill Creek Golf Club of Franklin, Inc., a North Carolina Corporation or its predecessors in title, have been the owner of certain real property located in Cartoogechaye Township, Macon County, North Carolina, said property having been conveyed to Mill Creek Golf Club of Franklin, Inc. by deed from Mill Creek Properties, dated July 3, 1986, recorded in Book X-16, page 203, Macon County Land Registry.

AND WHEREAS, Mill Creek Golf Club of Franklin, Inc., and its predecessors in title, Mill Creek Properties, a partnership have heretofore developed portions of the property described in the deed above referred to and other property formerly owned by Mill Creek Properties, said development consisting of a golf course and related facilities and amenities and have established certain portions thereof as residential subdivisions of both single family residences and townhouse units.

AND WHEREAS, Mill Creek Golf Club of Franklin, Inc. developed Mill Creek Estates as a private community, gated to provide security for its owners.

AND WHEREAS, Various Declarations of Restrictive Covenants applicable to said residential subdivisions and townhouse areas have previously been adopted and recorded all as will appear from the Public Records of Macon County, North Carolina;

AND WHEREAS, said Restrictive Covenants are not uniform, have been amended on numerous occasions and are difficult to follow and to uniformly enforce;

AND WHEREAS, in each of said Declarations of Restrictive Covenants provide that the same may be amended by the owners of the lots affected thereby upon the approval of the owners a majority thereof;

AND WHEREAS, the owners of all of the lots subject to the Restrictive Covenants are members of Mill Creek Estates Property Owners Association, Inc. and at a properly constituted meeting of said Association the majority of the owners of lots in each phase have agreed to amend the same and to restate them in a single document which will then be applicable to all phases and/or sections of the Mill Creek Development which have been developed and restricted for single family residential purposes;

NOW THEREFORE, the following identified Declarations of Restrictive Covenants as amended are hereby further amended and restated as follows:

A. The Restrictive Covenants applicable to the subdivisions known as "Mill Creek Estates, Phase I," which are of record in the Office of the Register of Deeds for Macon County, North Carolina, in Deed Book F-12, at page 165.

B: The Restrictive Covenants applicable to the subdivision known as "Mill Creek Estates Phase II," which are of record in the Office of the Register of Deed for Macon County, North Carolina in Deed Book M-16, at page 150, as amended by instruments of record in the Office of the Register of Deeds for Macon County, North Carolina in Book D-17, page 7, Book K-17, page 414, Book C-18, page 525, Book M-18, page 189, Book N-19, pages 1819-1820, Book O-20, pages 2171-2178, Book z-20, pages 714-715, Book V-22, pages 1307-1309, Book L-23, pages 170-179, Book E-24, pages 2403-2406.

- 1) All lots of Mill Creek Estates shall be used for residential purposes only. No structures, except as herein provided, shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling, and one small accessory building, which may include a garage or servant's quarters, or a combination thereof. Such accessory building may not be constructed prior to the construction of the main dwelling.

No dwelling or building shall exceed two (2) stories in height, unless because the nature of the terrain on any given lot, a dwelling exceeding two (2) stories would be logical and desirable. Any improvements exceeding the two (2) story limitation must first be approved by the Architectural Committee in writing.

No business or any activity normally conducted as a business may be carried on upon any lot or within any improvement located thereon.

Access to Mill Creek development shall be restricted by way of a gate erected at the main entrance to the property. Each property owner will have access to an electronic opener so as to provide a means of entry when the gate is closed.

The Association shall have sole authority over operation of the gate and shall set the hours during which the gate may remain open. No owner nor any personnel

from the Golf Course and the Clubhouse shall interfere with the operation of the gate. The Golf Course and the Clubhouse were designed for use during hours of daylight. The Association shall keep the gate closed after dark or nightfall. During hours of closure of the gate, owners must use their personal entry devices. Tampering with the gate or its operation is strictly prohibited. Interfering or tampering in any way with the operation of the gate is a violation of this covenant.

- 2) No lot as shown on any recorded plat, or as described in the original conveyance from the developer shall be subdivided.

Neither shall any lot be combined with another lot so as to reduce the number of lots shown on any recorded plat nor to reduce the number of lots conveyed in the original conveyances from the developer.

- 3) No tractor, trailer, mobile home, tent, motor home, camper, recreational vehicle or other vehicle of a similar nature shall be allowed to remain upon any building lot or common property, for a period of time in excess of twenty four hours, unless it is within an permitted enclosed structure which hides the same from general view. In addition to all other remedies provided herein there shall be assessed against the owner of any lot upon which the offending vehicle is located a penalty payable to Mill Creek Estates Property Owners Association, Inc., in the amount of \$100.00 for each day or portion thereof in which the limitation above set forth is exceeded.
- 4) A guest suite, or like facility, without a kitchen, may be included as a part of the main dwelling or the accessory building. Such suite may not be rented or leased separately from, but may be leased only as a part of, the entire premises, including the main dwelling.
- 5) The owner(s) of each property in Mill Creek Estates shall be a member of Mill Creek Estates Property Owners' Association, Inc. (referred to in this Declaration as "the Association"), which Association is a non-profit corporation organized for the benefit of the owner(s) of property located in Mill Creek Estates. Each owner shall be subject to all rules, regulations, by-laws, dues, fees, (usage and impact) and assessments (for capital projects, including beautifications) of said Association.
- 6) No clearing or other work shall be commenced nor shall any building, fence or other structure be constructed, erected, placed or altered on any lot until the proposed building plans, specifications, exterior color or finish, plot plans, and anticipated construction schedule shall have been approved in writing by the Architectural Committee of the Association, its successors or assigns and all applicable fees have been paid. No construction, including site preparation may be commenced until the required approval has been obtained. One file copy of all plans and related data shall be furnished to the Association for its records.

All construction shall be performed in strict compliance with the approved plans. No alternation or variation there forth may be made without the written consent of the Architectural Committee.

Violation of any portion of the above shall result in a \$100.00 per day penalty to the lot owner(s), effective from the date by which the violation is to be corrected either by removal or abatement as specified in writing to the owner(s) by the Association, if not found in compliance.

- 7) So as to enhance the beauty of the entire development the Architectural Committee of the Association shall have the right and power to control the cutting, and clearing of vegetation from any lot to insure that it will be accomplished in a selective and artistic manner. No living tree measuring six (6) inches or more in diameter when measure one (1) foot above the ground, shall be cut without the prior written approval of the Architectural Committee.

In addition to all other remedies provided hereby a lot owner in violation of this restriction shall pay to the Association a penalty in the sum of \$100.00 for each tree cut.

- 8) Each principal dwelling shall have the minimum of 1,200 square feet of heated floor space, exclusive of basements, carports, garages, or porches if the dwelling consists of one story. If the dwelling consists of two (2) or more stories, the principal dwelling shall have a minimum of nine hundred sixty (960) square feet on the main floor, exclusive of basements, carports, or porches. As used herein, the term "basement" shall mean one (1) story of a dwelling which is at least partially below the surface of the ground, and which is not used as a living space.
 - 9) Because of the varying size and terrain of the individual lots, the location of structures thereon will be independently determined as to each lot, and will not only relate itself to the specific lot, but also will be related to the surrounding property in each area of the development. It is intended that all structures on the building lots will be located so as to provide the fullest enjoyment of the lot by the resident owner, without adversely impacting other properties in the area. The Architectural Committee of the Association shall have the right in accordance with the terms established hereby, to control absolutely and to decide in its sole discretion, the precise site and location of any structure upon all building lots within the subdivision; provided however, that such location shall be determined only after reasonable opportunity is afforded to the lot owner to recommend a specific site. Ten (10) foot setback from all property lines is preferred, but this may be waived by the Architectural Committee of the Association when such waiver is deemed desirable.
 - 10) Refusal of approval of plans and specification by the Architectural Committee of the Association, may be based upon any reasonable ground, including purely aesthetic considerations, which the Architectural Committee, in its sole discretion, shall deem sufficient in the interest of the total development of the subdivision; provided, the Architectural Committee may not impose square footage requirements in excess of those set forth in this Declaration.
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- 11) The exterior of all structures on any individual lot must be completed within one year after commencement of construction thereof, except where natural disaster such as strikes, fires, national emergencies, or natural calamity make completion impossible, or would result in great hardship on the owner or builder.
- 12) It shall be the responsibility of each owner to prevent the development of any unclean, unsightly, or unkempt conditions of structures or grounds upon his or her individual lot or any common area, which would mar or substantially decrease the beauty of the adjoining area, or the neighborhood as a whole. The lot owner shall act to prevent or remove any such condition within thirty (30) days after having been given written notice by registered or certified mail by the Association. Upon failure to act timely the Association may, but is not obligated to, enter upon the properties and take the necessary action to correct or remove the condition, and the cost thereof shall be assessed against the lot owner and collected as is hereinafter provided for the collection of assessments, including all cost of collection.
- 13) No noxious or offensive activity shall be carried on any lot, nor shall anything be done thereon which tends to cause embarrassment, discomfort, annoyance, or a nuisance to the neighborhood or which shall endanger life or personal property within the Mill Creek Estates. Upon receipt of any written complaint the Association may, after Hearing, require the removal of any condition, the presence of which is found to cause any other owner or group of owners any embarrassment, discomfort, annoyance, or nuisance. The decision of the Association, after Hearing shall be final and shall be binding upon all parties thereto. The Board of Directors of the Association or a Committee appointed by it may hold the Hearing required hereby and shall adopt rules and regulations for doing so. The Board or its committee may initiate any Hearing allowed hereby.

For each day the objectionable condition continues after the order of removal is issued in writing by the Association, a penalty of \$25.00 will be assessed against owner payable to the Association.

- 14) The discharge of firearms within Mill Creek Estates is strictly prohibited, except for personal protection or in a life threatening situation. For each incident of prohibited firearm discharge the violator shall pay a penalty of \$100.00 to the Association.
- 15) There shall not be maintained nor allowed to exist upon any lot, any plant, vegetation, poultry, pet, livestock or any device or thing of any sort whose normal activities or existence is any way noxious, dangerous, unsightly, unpleasant, invasive, or of a nature that may diminish or destroy the enjoyment of other property in the neighborhood.

Household pets, such as dogs, cats, or tropical fish shall be permitted in any dwelling, provided however, their presence does not cause any other owner or

group of owners any hazard, nuisance, annoyance, or inconvenience.

All pets must be leashed and under the control of the owner, when on any road or common property or upon any lot other than that of the owner. The owner, or person in control, shall be responsible for picking up any of their pets droppings from any lot or common areas or road systems. Upon receipt of any written complaint, the Association shall hold a hearing to determine the facts and upon a determination that a violation has occurred, the Owner shall be issued a notice in writing that they are not in compliance with this provision and shall be subject to a fine in the amount of \$25.00 for a first violation, \$50.00 for a second violation, and in an amount increased by \$25.00 for each subsequent violation, and is subject to an "order of removal" if the problem continues to exist. The decision of the Association, after Hearing, shall be final and shall be binding upon all parties.

- 16) No sign of any kind shall be placed, erected or maintained upon any property in Mill Creek Estates (other than signs stating "available") without the express written permission of the Architectural Committee of the Association unless such sign is required as a result of a Judicial Order or pursuant to any Ordinance or law.

A violation of this provision shall be immediately corrected as specified by a "Notice in writing to the homeowner." Failure to act as required by the "Notice" shall result in a penalty of \$100.00 for each day the violation continues after the date stated for removal that is set forth in the "Notice from the Association."

- 17) There shall be provided upon each individual lot, sufficient space for the off-street parking of two automobiles, which spaces shall be constructed and available for use prior to the occupancy of any structure erected on said lot for residential purposes.

The parking space required hereby shall consist of an improved parking area designated for that purpose. No vehicles of any type may, at any time, be parked on the lawn or any other grassed or wooded area, either within the right of way of any road adjoining the lot.

- 18) All trash, garbage, and waste shall be kept in sanitary, closed receptacles provided by each lot owner, in a screened area not generally visible from the road or from adjoining residences.
- 19) The Association shall have a perpetual easement and right on, over and under the ground to erect, maintain, and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the transmission and discharge of electricity, telephone, telegraph, gas, sewer, water, or other public convenience, or utilities, on, in, or over 10 feet along the rear of each lot and 5 feet along the front and each side of each lot; provided that drain-ways for surface water may be cut wherever and whenever such action may appear necessary to the owner or to the Association in order to maintain reasonable standards of health, safety and appearance. Such easements and rights expressly include the right take any action

reasonably necessary to provide economical and safe utility installation, and to maintain reasonable standards of health, safety and appearance

- 20) No fuel tank or similar storage receptacles may be exposed to view, and such tanks or receptacles shall be buried underground or otherwise enclosed so as to be hidden from view from any road and other lots.
- 21) (a) No private wells may be drilled or maintained on any building lot, which is serviced by the central water distribution system, each individual lot being required to be connected with the central water distribution system provided for the entire development.
- (b) No private septic system shall be installed on any lot, which is serviced by the central sewage system, each individual lot being required to be connected with the central sewage system provided for the entire development
- 22) It shall be the obligation of the owner of each property, whether or not a dwelling shall exist or be used thereon, to pay a pro-rata share for the cost of operation, maintenance and repair of the road, security, water and sewer systems, which are a part of the entire Mill Creek Estates Development, and for beautification thereof and the operational costs of the Association. Such assessment shall be determined uniformly for each similar type property and shall be established annually by the Association. Notice of the amount of each assessment and the due date thereof shall be sent to each property owner sufficiently in advance of the due date thereof to allow timely payment.

Prior to sale or transfer of any property and upon written request of any owner, the Association shall, within a reasonable time thereafter, issue to such owner a certificate stating that all assessments, fines, or other charges with respect to the property have been fully paid. The owner(s) shall be responsible for furnishing a copy of said certificate and a current copy of the Restrictive Covenants and Architectural Guidelines to the proposed buyer prior to the closing of the sale of such lot or home.

Any assessments, due or fines which shall remain due and payable sixty (60) days after the date of issuance of an invoice therefore by the Association shall become a lien upon the lands, and shall remain a lien on said lot until the same is paid in full. The lien may be enforced in accordance with N.C.G.S. 47-3-116. The lien shall, however, be subordinate to any lien obtained by any bank, insurance, building and loan, or savings and loan association, or any other legitimate banking or lending institution by the lending of money for the purchase of said lot, or the construction of a residence thereon, for which said lot is accepted as security.

- 23) The use of golf cars and other similar type vehicles within the subdivision shall be subject to reasonable regulation by the Association. The Association shall promulgate reasonable and uniform rules and restrictions therefore. Provided however that no person under the age of 16 years shall operate a golf cart unless accompanied by an adult having a valid driver's license. Any violation of this restriction shall result in the imposition of a fine or penalty in the amount of \$100.00 for each infraction which shall be payable to the Association by the Owner of said golf cart.
- 24) The owners of property in Mill Creek Estates shall have the power to amend these restrictive covenants upon the affirmative vote of more than fifty per cent (50%) of the eligible property owners present in person, or by proxy, at any regular or special meeting of the Members of the Association, for which meeting notices of the proposed Amendment(s) and the exact terms thereof shall have been timely given all members and, further provided, that the matter shall also appear as an item for action on the meeting agenda, which agenda shall likewise be proved the membership with the Notice of Meeting

In the voting concerning such proposed Amendment, each property owner shall be entitled to one vote for each property upon which all assessments have been paid.

- 25) Invalidation of any of these covenants, conditions, or restrictions by a Judge mentor Order or Court of competent jurisdiction or by requirements of State or Federal law, shall in no way affect the validity of any of the other provisions, and said provisions shall remain in full force and effect.
- 26) These are covenants which shall run with the land and shall be binding on all parties and all persons claiming under them a period of fifty (50) years from the date these covenants are recorded. At the end of said fifty (50) year period, the covenants shall automatically extend for successive periods of ten (10) years, unless specifically terminated by a vote of a seventy-five percent (75%) of owners of lots in Mill Creek Estates.
- 27) In the event of violation of any of these restrictive covenants by any lot owner, or agent of such owner, the owner of any other lot subject to these restrictions shall have the right to take such legal or equitable action as necessary to compel compliance, or to terminate or enjoin any violation. Additionally, the Association shall have the same right of enforcement, and shall have the further right to enter upon the premises where such violation exists to abate or remove the same, if after sixty (60) days written notice to the lot owner.

Any and all costs incurred by the Association in pursuing the enforcement of any covenant shall be reimbursed to the Association by the Owner within ten (10) calendar days after written demand for the payment thereof. Such costs shall

include, but not be limited to, legal fees and expenses, court costs, communication and postage costs, and similar costs and expenses associated with enforcement of the covenants. Such costs and expenses shall be reimbursed in addition to all specific penalties, fees, or other expenses as provided herein.

- 28) In the case of uncertainty as to the meaning of any paragraph, sentence, clause, phrase or word in this Declaration, the interpretation thereof by the Board of Directors of Mill Creek Estates Property Owners Association, Inc., shall be final and conclusive and shall be binding upon all interested parties.
- 29) Unless otherwise specified or the context requires a different interpretation, the following terms, when used in this Declaration, shall have the following meanings:
 - a) Association: Shall mean the Mill Creek Estates Property Owners Association, Inc., a North Carolina non-profit corporation, and its successors and assigns.
 - b) Board: Shall mean the Board of Directors of the Mill Creek Estates Property Owners Association, Inc., or any successor governing body of the Association.
 - c) Mill Creek Estates: Shall mean all residential areas located within the Mill Creek Development, which shall be shown on one or more plats recorded in the Office of the Register of Deeds for Macon County, North Carolina.
 - d) Common Property: Shall mean roads, sewer, water systems, and other properties utilized for the common use of all owners of property in Mill Creek Estates.
 - e) Declaration: Shall mean the Declaration of Restrictive Covenants as set forth in this document.
 - f) Owner: Shall mean and include the holder of record title to the fee interest of any property in Mill Creek Estates.
 - g) Lot: Shall mean any separately numbered lot in Mill Creek Estates as shown on the recorded plats thereof including any separate dwelling units located in any multifamily dwelling areas.
 - h) Impact Fee: Shall mean "a fee established by the Association to reflect future maintenance and repair costs to roads and utilities caused by wear and tear by trucks and other construction equipment and any other conditions resulting from storm water run-off, soil erosion and similar acts of nature. This fee may be adjusted periodically by the Association to reflect current economic conditions.

IN WITNESS, WHEREOF, the Mill Creek Estates Property Owners Association, Inc., through its duly authorized officers has executed this Amendment to and

Restatement of the Declaration of Restrictive Covenants this 30th day of Sept. 2013.

(Seal)

Mill Creek Estates Property Owners Association, Inc.

by: Eugene Bass
President

Attest: June M. Hernandez
Secretary

NORTH CAROLINA
BUNCOMBE COUNTY

I Carolyn M. Perdue, Notary Public for said County and State, certify that Eugene Bass + June Hernandez personally came before me this day and acknowledged that she is Secretary of Mill Creek Estates Property Owners Association, Inc., a corporation, 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 herself as its Secretary.

Witness my hand and official seal, this the 30th day of Sept., 2013

Carolyn M. Perdue
Notary Public

My commission expires Nov. 4, 2017.

