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FILED Wanda C. Scott
Register of Deeds WATAUGA COUNTY, NC
BY:

Deputy *Anne Moreth*

NORTH CAROLINA

WATAUGA COUNTY

**AMENDMENT TO COVENANTS AND
RESTRICTIONS OF
CONTINENTAL DIVIDE ESTATES
PURSUANT TO THE NORTH CAROLINA
PLANNED COMMUNITY ACT**

**THIS INSTRUMENT DRAWN BY:
EGGERS, EGGERS, EGGERS, &
EGGERS, ATTORNEYS AT LAW
P.O. BOX 248
BOONE, NC 28607**

**AFTER RECORDING MAIL TO:
CONTINENTAL DIVIDE POA, INC.
✓BRENDA ABRAMS, SECRETARY
772 STATE VIEW ROAD
BOONE, NC 28607**

**THIS AMENDMENT OF COVENANTS AND RESTRICTIONS OF
CONTINENTAL DIVIDE ESTATES, made and entered into this 1st day of
March, 2003, by The Continental Divide Property Owners' Association,
Inc., on behalf of the property owners of Continental Divide Estates, being
the James and Joyce Cantrell Personal Trust, Gregory and Priscilla
Rosenfeld, George Edward Bruce and wife Betty Lynn Stall, John B. Kasarda
and wife Carolyn Y. Kasarda, Douglas Owen Coffey, Michael V. Cochran and
wife Marilyn M. Cochran, Kenneth R. Adams, Ira Abrams and wife, Brenda M.
Abrams, S. Owen Coffey and Betty M. Coffey, Trustees of the S. Owen Coffey
Living Trust, S. Owen Coffey and Betty M. Coffey, Trustees of the Betty M.
Coffey Living Trust, David Query and wife Janice Black Query, James L.
Ratledge, Trustee for the Ratledge Family Trust, Robert L. Fuerst and wife
Claudia A. Fuerst, Craig M. Hille and Sandra L. Hille, Thomas W. Henson,
Gregory R. Renn and wife Joni Renn, James D. Slaney, James Patrick Paal
and wife Patricia Y. Paal, Jacob L. Mock and wife Rosemary A. Mock,
Marshall W. Rowland and wife Carol C. Rowland, The Ruth F. George Personal
Trust, Roswell P. Sherling and wife Beverly A. Sherling, James N. Thomas,
Trustee of The James N. Thomas Revocable Trust, Sam C. Reep and wife
Marilyn B. Reep, S. Owen Coffey and Betty M. Coffey, Trustees of The S.
Owen Coffey Living Trust, James W. Kelley and wife Mary B. Kelley, tenants
in common, Marcus Gene McGuire and wife Anna Dellinger McGuire, William**

L. Bacon and wife Lynn S. Bacon, and Parkway Ventures, LLC, being the landowners of Continental Divide Estates, hereinafter called "Declarants", and this Amendment being adopted by at least sixty-seven percent (67%) of the votes in the property owners association for Continental Divide Estates; such amendment to the existing Declaration of Restrictions recorded in Book of Records 127 at Page 323, Watauga County Registry, and as amended in Book of Records 158 at Page 855, Watauga County Registry is to supercede and replace any inconsistent covenants which might conflict with this amendment or the actions of the Continental Divide Property Owners Association pursuant to this amendment; otherwise such existing covenants are to remain in full force and effect, subject to the changes and alterations contained herein.

WHEREAS, Continental Divide Estates is a planned community consisting of thirty-seven (37) lots, currently subject to a Declaration of Restrictive Covenants recorded at Book of Records 127 at Page 323, Watauga County Registry, and Book of Records 158 at Page 855, Watauga County Registry.

WHEREAS, Declarants are the owners of the real property described in Paragraph 1 of this Amendment of Covenants and Restrictions of Continental Divide Estates and are desirous of subjecting said real property to the rules, regulation, authority and protective covenants set forth by the North Carolina Legislature in the North Carolina Planned Community Act, N.C.G.S. § 47F-1 *et seq.*, which is for the benefit of such property and for each owner thereof, and each and every parcel thereof, and shall apply to and bind the successors in interest and any owners thereof.

NOW, THEREFORE, Declarants, for themselves, their heirs, successors and assigns, hereby declare that the real property described in and referred to in Paragraph 1 is and shall be held, transferred, sold and conveyed subject to the powers of the Property Owners Association as established by the North Carolina Planned Community Act, including but not limited to the specific powers and regulations set forth below.

1. The real property which is and shall be held, transferred, sold and conveyed subject to these covenants set forth in the paragraphs of this Amendment to the Declaration of Covenants and Restrictions is located in Blowing Rock Township, Watauga County, North Carolina, and is more particularly described as follows:

Being all of the tracts of land consisting of Continental Divide Estates, as shown described in Plat Book 11, Page 103, Watauga County Registry, being all of the lots of Continental Divide Estates, numbering thirty-seven (37) lots.

2. The real property described in Paragraph 1 hereof is subjected to the North Carolina Planned Community Act hereby declared to insure the best use and the most appropriate development and improvement of each tract thereof; to protect the owners of tracts against such improper use of surrounding tracts as will depreciate the value of their property; to preserve, so far as practical, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to encourage and insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on tracts; to prevent haphazard and inharmonious improvement of tracts; to secure and maintain a high type and quality of improvement in said property, and thereby to enhance the values of investments made by purchasers of tracts therein.

3. Any rights created by this adoption of the North Carolina Planned Community Development Act may only be knowingly waived in writing.

4. Pursuant to N.C.G.S. § 47F-3-102, the Continental Divide Property Owners Association may:

(A) Adopt and amend bylaws and rules and regulations, including but not limited to bylaws, articles of incorporation, declarations, and restrictive covenants;

(B) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;

(C) Hire and discharge managing agents and other employees, agents, and independent contractors;

(D) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;

(E) Make contracts and incur liabilities;

(F) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(G) Cause additional improvements to be made as a part of the common elements;

(H) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to N.C.G.S. § 47F-3-112.

(I) Grant easements, leases, licenses, and concessions through or over the common elements;

(J) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than the limited common elements and for services provided to lot owners;

(K) Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services during any period that assessments or other amounts due and owing to the

association remain unpaid for a period of thirty (30) days or longer.

(L) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;

(M) Impose reasonable charges in connection with the preparation and recordation of documents, including without limitation, amendments to the declaration or statements of unpaid assessments;

(N) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;

(O) Assign its right to future income, including the right to receive common expense assessments;

(P) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and

(Q) Exercise any other powers necessary and proper for the governance and operation of the association.

The above powers and authority of the Continental Divide Property Owners Association shall also include any powers and authority given to it by the original Declaration of Covenants and Restrictions.

5. The Property Owners Association may take any and all action, consistent with the North Carolina Planned Community Development Act, it deems necessary or prudent including but not limited to maintenance of insurance, levy of assessments for common expenses and resulting liens, and recordation of documents in the name of the Property Owners Association and on behalf of the property owners of Continental Divide Estates. Documents recorded in the name of Continental Divide Property Owners' Association, Inc., or its successor, shall be deemed to provide record notice to all third parties. Nothing herein shall be construed as to place an affirmative duty upon the Property Owners Association to take any actions or measures authorized herein or by the North Carolina Planned Community Development Act.

6. It is the intent of the Declarants to adopt the whole of the North Carolina Planned Community Act, and that the Act be given its full force and meaning in the most expansive manner possible.

7. In the event that the North Carolina Planned Community Development Act is repealed or found to be invalid or unconstitutional as it applies to Continental Divide Estates, Inc., the existing Covenants and Restrictions located in Book of Records 127 at Page 323, Watauga County Registry, and in Book of Records 158 at Page 855, Watauga County Registry shall remain in full force and effect, and shall not be stricken by any invalidity resulting from this amendment.

8. Pursuant to N.C.G.S. § 47F-3-120, in the event an action to enforce provisions of the articles of incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court may award attorney's fees to the party or organization seeking enforcement of the provisions.

9. This amendment has been recorded in the office of the Register of Deeds for Watauga County, North Carolina and is incorporated in deeds to the residential tracts described in paragraph 1 herein conveyed by Declarants, their successors and assigns.

IN TESTIMONY WHEREOF, the Declarants, by and through the authorized vote of Continental Divide Property Owners' Association, Inc. have executed this Declaration of Restrictions the day and year first above written.

CONTINENTAL DIVIDE PROPERTY OWNERS' ASSOCIATION, INC.

BY: Marcus G. McGuire (SEAL)
MARCUS G. MCGUIRE
PRESIDENT

ATTEST: Brenda Abrams (SEAL)
BRENDA ABRAMS
SECRETARY

STATE OF NORTH CAROLINA

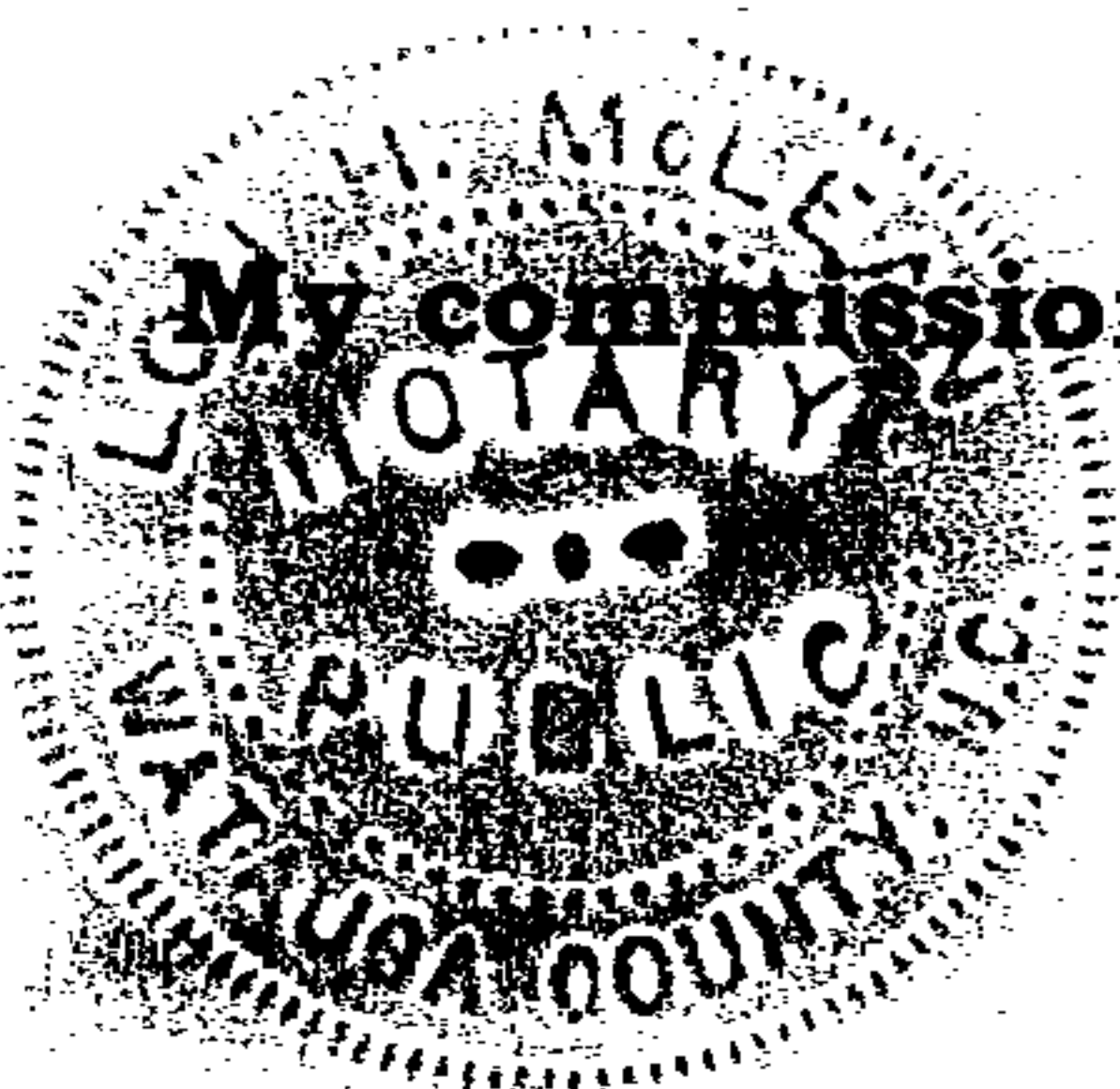
COUNTY OF WATAUGA

I, Lon H. McLean, Notary Public, do hereby certify that Marcus G. McGuire ^{President} and Brenda Abrams ^{Secretary}, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed, on behalf of the corporation.

WITNESS my hand and notarial seal, this 29th day of May, 2003.

Lon H. McLean
Notary Public

My commission expires 12-1-2006



NORTH CAROLINA - WATAUGA COUNTY

The foregoing certificate(s) of
Lou H. McLean, Notary Public, Watauga County, NC,
is (are) certified to be correct.

This the 29 th day of May 2003.

Wanda C. Scott, Register of Deeds

BY: Anne Moretz
Deputy