

STATE OF NORTH CAROLINA
WATAUGA COUNTY

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Register of Deeds WATAUGA COUNTY, NC
BY: *Phyllis S. Cretcher*
Deputy

**AMENDED COVENANTS AND DECLARATION
OF RESTRICTIONS OF CONTINENTAL
DIVIDE ESTATES**

THIS INSTRUMENT amends the Declaration of Restrictions and all amendments thereto, recorded in Book of Records 127 at Page 323 and Book of Records 158 at Page 855, Watauga County Registry, and shall supersede and replace all inconsistent covenants that might conflict with these Amended Covenants and the actions of the Continental Divide Estates Property Owners Association, Inc. (hereinafter called the "POA") taken pursuant to this Amendment.

WHEREAS, this Amendment was duly adopted on July 15, 2006 at the regular annual meeting of the POA by at least sixty-seven percent (67%) of the property owners of Continental Divide Estates ("Declarants" or "Owners"); and

WHEREAS, this Amendment, to the extent legally permissible, shall be binding on Declarants and future property owners of Continental Divide Estates subdivision lots, as well as their heirs, successors and assigns, and said real property (described in Paragraph 1. below) shall be held, transferred, sold and conveyed subject to this Amendment;

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Declarants, for themselves and all successors in title, agree that the following deed restrictions shall govern and control the ownership, use and conveyance of all lots in Continental Divide Estates:

1. The recitations set forth above are true and correct and are incorporated herein by reference as if recited at length. The real property that is subject to this Amendment is known as Continental Divide Estates and is located in Blowing Rock Township, Watauga County, North Carolina. The said property is comprised of thirty-seven (37) lots as more particularly described in Plat Book 11, Page 103, Watauga County Registry.

2. The Amendment To Covenants And Restrictions of Continental Divide Estates Pursuant to the North Carolina Planned Community Act dated the 1st day of March, 2003 and recorded in Book of Records 840 at Page 884, Watauga County Registry, is reaffirmed and is made a part hereof by reference, as if recited at length.

3. All lots in Continental Divide Estates shall be used for single family residential purposes only. No multiple family dwellings, duplexes or apartment houses shall be

constructed, placed or allowed to remain on any lot. There shall be only one house constructed on each lot and no lots shall be re-subdivided to allow an additional house or houses to be constructed. However, nothing herein shall prohibit an owner who owns two or more immediately adjacent lots from conjoining said lots, provided that POA dues will continue to be payable as if the lots were not conjoined. The following additional outbuildings shall be permitted, provided they are compatible and consistent with the design, appearance and materials used for construction of the main house: one detached garage, one utility shed and/or one gazebo. Nonconforming outbuildings may be approved on a case-by-case basis upon a vote of at least sixty-seven percent (67%) of the Owners present in person or by proxy at a meeting duly called for that purpose. Such approval shall not constitute a waiver or estoppel as to other Owners of lots in Continental Divide Estates.

4. All single family dwellings constructed on any lot or conjoined lot shall have at least 2,500 square feet of finished and heated floor space, exclusive of any and all garages, balconies, decks, porches and outbuildings. No such dwelling shall be constructed with less than 1,500 square feet of finished and heated floor space on the main floor. This restriction shall not apply to structures constructed before the date of this Amendment, nor shall this restriction apply to any rebuilding of such preexisting structures when same have been damaged due to fire, natural disaster or act of God, when the damage is less than a total loss of the structure.

5. No dwelling constructed on any lot shall be rented to a third party unless the minimum rental period shall be six (6) consecutive months or more. Owners wishing to rent their residences shall submit a copy of each proposed lease to the POA (through its President) at least ten (10) days prior to the commencement date of any proposed lease or rental agreement. A "renter" is defined as one or more persons who pay a fee or other consideration for occupancy of a residence at Continental Divide Estates. The Owner-Lessor shall at all times be responsible for full and timely compliance with these deed restrictions by their renters.

6. All dwellings are to be of a permanent type and constructed of brick, stone or wood, or other such material having the same or better durability, strength and good appearance as may be approved by the POA's Architectural Review Committee (hereinafter called the "ARC"). The ARC shall be comprised of three lot Owners elected annually by the majority of the Owners present in person or by proxy at the POA's annual meeting. The President of the POA shall be an ex officio member of the ARC. Only members of the POA's Board of Directors may serve on the ARC.

The ARC shall have the responsibility of reviewing all plans and specifications (the "plans and specs") for the construction of dwellings and outbuildings on lots in Continental Divide Estates. The ARC's power and authority shall be limited to determining whether the plans and specs, and constructed dwellings and outbuildings, are in compliance with the building and architectural standards set forth herein. The ARC shall have the right to enter upon the land and inspect the dwelling and outbuildings, if any, from time to time while they are under construction, to determine

whether the said structures are in compliance with said building and architectural standards.

The decision of the majority of the ARC members shall constitute the decision of the ARC as a whole.

7. All dwellings in Continental Divide Estates shall be custom, on-site, stick-built permanent construction. No modular or "manufactured" pre-constructed homes shall be permitted to be built or erected. Pre-packaged logs shall be permitted. All retaining walls (a) attached to the Owner's house or (b) which are necessary for the structural support of the house or (c) the collapse of which would pose a danger to any adjoining Owner's dwelling or permitted outbuildings, shall be constructed of and faced with: brick, stone reinforced with cement, stacked interlocking landscaping stone or stucco-finished concrete blocks or similar strong, durable and aesthetically appropriate materials approved by the ARC. All exposed masonry surfaces shall be plastered or faced with brick, stone, wood siding or similar strong, durable and aesthetically pleasing material as the ARC may approve. Vinyl and aluminum siding is prohibited.

All dwellings shall be aesthetically fitting and compatible with the existing homes, as well as the topography, in Continental Divide Estates. All decisions of the ARC shall be in writing, made promptly (within no more than thirty (30) days from the Owner's submission of building plans and specs for the prospective structure) and a copy of the ARC's decision shall be immediately thereafter furnished to the affected Owner. If the Owner has furnished an e-mail address to the POA, communications and notices to and from the ARC and the POA on one hand and the Owner on the other hand may be made by e-mail. E-mailed notices shall constitute a "writing" hereunder.

8. If an aggrieved Owner wishes to challenge the decision of the ARC affecting such Owner's property, the Owner may file a written Notice of Appeal with the POA Board of Directors, through the POA President. Such Notice of Appeal shall be filed and delivered to the POA Board of Directors President, if at all, within five (5) business days from the date of the ARC's decision. The POA Board of Directors shall render a decision on all timely filed Notices of Appeal within five (5) business days from the receipt of such Notice of Appeal. If the Owner is aggrieved by the decision of the Board of Directors the Owner may file a further appeal to all Owners of lots in Continental Divide Estates, delivered to the POA President within five (5) business days of the date of the Board of Directors' decision. A vote of two-thirds (2/3rds) of all Continental Divide Estates Owners (one vote per lot) present in person or by proxy and entitled to vote at a meeting duly called for that purpose shall be required to overturn the Board of Directors' decision. If the Board of Directors decision is not overturned, the Board's decision shall be final, binding and conclusive on the parties in interest.

9(a). Except as may otherwise be provided herein, no house trailer, shack, tent, barn, A-framed or other nonconforming structures shall be placed or allowed to remain on any lot. No unfinished basement or partially completed dwelling shall be used as a residence, either permanently or temporarily. No outside toilets may be placed on any

lot except for a limited time only during construction of the residence. Immediately upon completion of the residence, the outside toilet, if any, shall be removed from the premises. All construction equipment, unused materials and debris shall promptly be removed by the Owner immediately following the issuance of a final Certificate of Occupancy. No recreational vehicle, commercial vehicle, boat or boat trailer may be stored or kept on any subdivision lot, except in an enclosed garage. No junked vehicles shall be parked or allowed to remain on any lot. In no event shall permitted vehicles have more than six (6) wheels.

(b) Grass and weeds are to be kept down by the Owners of each improved lot in Continental Divide Estates, so as to avoid unsightly or unsanitary conditions. If an Owner is in violation hereof, the POA, after ten (10) days' written notice given to the Owner, shall have the right to enter upon the land of said Owner and take corrective action at the Owner's expense. A lien for said expense may be imposed and foreclosed upon the Owner's property in Continental Divide Estates in accordance with applicable North Carolina law if the expense remains unpaid thirty (30) days after written demand is made for payment.

10. No building, permitted outbuilding, fence or other structure shall be constructed, erected or placed upon or altered on any lot until any and all plans and specs showing elevations, structural and exterior materials description and plot plans showing the exact proposed location of such building or structure and any and all driveways, walkways, parking areas have been submitted to and approved in writing by the ARC. The plans and specs shall be reasonably detailed. Except for alterations to the interior of the structure as the Owner may desire, no alterations to or departures from the plans and specs shall be made or allowed to be made after approval of the ARC unless and until said alterations are approved in writing by the ARC.

11. No dwelling, outbuilding or other structure shall be erected, altered or placed on any lot that exceeds one story above the main (i.e., entry level) floor. If the foundation of the home is situated at or above the road elevation, the total height of the home shall not exceed two stories. No flat roof construction, built-up gravel, marble chip or rounded tile roofs shall be constructed in Continental Divide Estates subdivision.

12. No billboards or signs shall be erected or allowed to remain on any lot, except one "For Sale" sign, not to exceed six square feet (3 feet wide x 2 feet high) in size. No signs of any kind shall be placed on any common area or within any utility easements, the roadway or in drainage ditches. No "For Sale" signs shall be placed at the entrance to Continental Divide Estates and the POA reserves the right to remove such signs immediately. Each Owner shall have the responsibility to advise his or her real estate agent of these deed restrictions. In addition to one "For Sale" sign, Owners shall have the right to place one Cottage Name or Family Name sign, not to exceed two square feet in size.

13. All sewage from residences in Continental Divide Estates shall be disposed of in a septic tank of a size, location and standard approved by the North Carolina Board of Health and/or other appropriate governmental authority, or through an established sewage disposal and treatment service.

14. All fuel tanks shall be buried below ground and no unsightly utilities or storage facilities may be exposed to view. Any Owners who presently have above-ground fuel tanks shall cause such tanks to be buried below ground within three (3) years from the date of recordation of this Amended Covenant. No radio or cellular phone signal receiving or transmitting towers or any other outdoor tower or antenna designed to transmit or receive communications or electronic media signals shall be placed, constructed or allowed to remain on any lot, except that the Owner(s) may place up to two (2) UHF/VHF television antennas and/or a satellite television dish (the latter not to exceed eighteen (18") in diameter) on or about the residence, provided such installation is as unobtrusive as possible and does not pose a safety hazard. The height of any broadcast antenna mast may not exceed the height of the center ridge of the roofline, unless the Owner can demonstrate that an acceptable quality signal cannot otherwise be obtained. This clause shall be interpreted flexibly and may be broadened or restricted as new technological advances may require.

15. No roadways, except for a private driveway leading to the residence shall be constructed on any lot and no private driveway, whether leading to the residence or not, may be used to access other adjoining property located outside of Continental Divide Estates subdivision. Driveways of homes constructed in Continental Divide hereafter are to be paved with asphalt, brick or concrete within one year from the date of issuance of the final Certificate of Occupancy on new construction.

16. Each lot Owner shall be responsible for the removal and cleanup of any gravel wash, fallen trees, debris or erosion coming from that Owner's property that adversely affect the subdivision streets. The POA shall be responsible for maintaining shared wells in Continental Divide Estates and shall maintain culverts and water drainage pipes to the fullest extent required by applicable law. The POA shall have and retain the right to cut additional drains and culverts for surface water runoff wherever and whenever the same are necessary or desirable in order to maintain reasonable standards of health, safety and proper function. The POA, acting through its Board of Directors, shall have the authority to enact temporary rules and regulations so that shared wells and reservoirs are not unduly depleted of water. Such rules and regulations may include hours during which watering of lawns and gardens will be permitted and/or prohibited.

17. All outdoor trash cans, recycling bins and other solid waste storage receptacles shall be screened from view and protected from intrusion by animals.

18. No offensive or obnoxious activity shall be carried on or permitted to continue on any lot, nor shall any activity be carried out that constitutes a nuisance or annoyance to the Continental Divide Estates community.

19. No animals or fowls of any kind shall be raised, bred or kept on any lot for a commercial purpose. Household pets are permitted, subject to the following provisions: (a) No household pet shall be allowed to remain on any lot when such pet constitutes a nuisance or a danger to the community; (b) Inherently dangerous animals, such as Pit Bull terriers, are strictly prohibited to be kept or allowed to remain on any lot; (c) The Owners of all permitted household pets shall keep such pets under the Owners' supervision and control at all times; (d) When the pet is off the Owner's property, the pet shall be on a leash; (e) Said Owners shall pick up after their pets so that high health standards are maintained in the community; (e) grazing animals, livestock and poultry are prohibited.

20. No dwelling or permitted outbuilding shall be erected on any lot nearer than thirty feet (30') to the property line of the street abutting said lot, nor shall it be nearer than fifteen feet(15') to any non-conjoined adjacent lot. No permanent structure shall be erected or allowed to remain on the right-of-way adjacent to any street in the Continental Divide Estates subdivision.

21. Exterior wall, soffit or mounted security, flood and spot lighting shall be permitted, so long as each lighting fixture does not exceed 150 watts. Low wattage exterior landscape lighting shall be permitted. Gas and vapor lighting are prohibited. Exterior lighting shall not be directed in such a manner as to create a nuisance or annoyance to the neighboring Owners.

22. Buildings and other improvements erected prior to the date of adoption of these Amended Covenants and Declaration of Restrictions, which buildings and improvements complied with the restrictions that were in effect at the time they were erected or which were previously approved by the POA, shall be deemed to be in compliance with these Amended Covenants and Declaration of Restrictions. From and after the date these Amended Covenants and Declaration of Restrictions are adopted by the POA, all new buildings and improvements and any alterations to preexisting structures (in the event of rebuilding after total loss due to fire, act of God or natural disaster) must comply with these amended Covenants and Declaration of Restrictions.

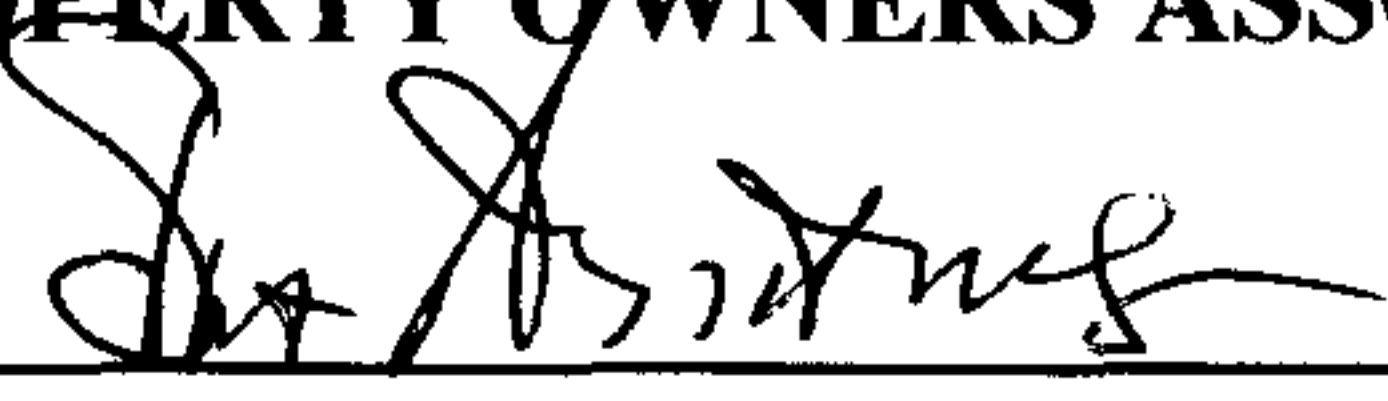
23. In the event of any violation or breach of these Amended Covenants and Declaration of Restrictions by any Owner, authorized renter or the agent of the said Owner, the POA shall notify the Owner in writing of the violation or breach. If the Owner fails to remedy the breach promptly (but in no event more than thirty (30) days from the date of such notice), the Owners of the remaining Continental Divide Estates lots, upon a vote of no less than sixty-seven percent (67%) of the Owners, shall have the right to authorize the POA to file an action at law or in equity to compel compliance by the offending lot Owner, to recover damages, costs and reasonable attorneys fees, and to seek an injunction or other appropriate relief. In the event the POA should seek an injunction, no bond shall be required to be posted by the POA, or if bond, by law, cannot be waived, the amount of said bond shall not exceed \$100. The failure of the POA to enforce any of the terms and conditions contained herein, regardless of how

long the violation has existed or continued, shall not be deemed a waiver or act as a bar to the enforcement of said terms and conditions. The remedies set forth herein are cumulative and do not bar any Owner from bringing an independent legal action, provided that action shall be at that Owner's sole expense.

25. The invalidity of any of the terms, conditions and restrictions contained herein by any Court shall not affect the enforceability of the remaining terms, conditions and restrictions, which shall remain in full force and effect, it being the Owners' intent that each restriction contained herein shall be severable from every other restriction, that no restriction shall be dependent on any other restriction and that each restriction shall be independently enforceable. The Bylaws of the Continental Divide Estates POA shall be amended to conform to the terms and provisions of this instrument to the extent that its terms and provisions may be inconsistent or in conflict with this instrument, and this Amended Declaration shall supersede such inconsistent or conflicting provisions.

SIGNED this 17th day of August, 2006.

CONTINENTAL DIVIDE ESTATES
PROPERTY OWNERS ASSOCIATION, INC.

By: 
President

ATTEST:


Secretary

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

I, Nicole H. Jones, Notary Public, do hereby certify that Ira Abrams, 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.

WITNESS my hand and notarial seal, this 5th day of September, 2006.

My commission expires Feb 9, 2011

Nicole H. Jones
Notary Public

