

STATE OF NORTH CAROLINA

COUNTY OF MACON

PREPARED BY: Joseph M. Collins

COLLINS & HENSLEY, P.A.

217 Iotla Street

Franklin, N.C. 28734

**EASEMENTS, CONDITIONS & RESTRICTIVE COVENANTS**

**FOR MISTY RIDGE SUBDIVISION**

MISTY RIDGE, LLC, a North Carolina Limited Liability Corporation, hereinafter referred to as Declarant, owns Lots Nos. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of Misty Ridge and MARK A. HANSON and wife, DEBORAH L. HANSON own Lot No. 2 of Misty Ridge as shown on Plat Card #5525, Macon County Land Registry. The parties hereto desire to create a uniform and common scheme of development for the property. The parties hereto hereby imposes the following easements, conditions and restrictive covenants on the properties, which shall attach to and run with the land:

1.No Mobile Homes, Manufactured Homes, Travel Trailers, Camper Trailers or Motor Homes shall be placed or permitted upon the property, except as follows:

(a) A Motor Home, Travel Trailer, Camper Trailer or other temporary structure may be placed upon any parcel and occupied by the property owner for not more than 30 days in any calendar year for the sole enjoyment of the property owner. Motor Home, Travel Trailer, Camper Trailer or other temporary structure may not remain on the parcel for more than 30 days and may not be stored on the parcel.

(b) A Motor Home, Travel Trailer, Camper Trailer or other temporary structure may be stored on the parcel only after the permanent residence is completed. In no event shall the Motor Home, Travel Trailer, Camper Trailer or other temporary structure be occupied as a permanent residence. Provided, however, property owners may occupy a Motor Home or Travel Trailer as a temporary residence for a period of not more than 9 months while actively constructing a permanent residence for which an active building permit has been secured. During this period the Motor Home or Travel Trailer must be connected to a septic system approved by the Macon County Health Department.

(c) This Paragraph does not apply to Modular Homes built in accordance with the then applicable Building Code for North Carolina and which has never been titled by the North Carolina Department of Motor Vehicles or certified by the United States Department of Housing & Urban Development. The developer retains the right to review

and accept or reject the plans of all modular homes prior to construction. Once the Property Owners Association takes the place of the developers, then the Property Owners Association may review and accept or reject the plans for Modular Homes.

2. No noxious or offensive activity shall be carried on upon any parcel, nor shall anything be done thereon which may be at any time an annoyance or nuisance to the neighborhood.

3. No hunting or discharging of a firearm is permitted within the boundaries of Misty Ridge subdivision.

4. No parcel shall be used or maintained as a dumping ground for rubbish or trash. Trash, garbage or other wastes shall only be kept in sanitary containers out of the sight of other property owners. No unlicensed or inoperable motor vehicles or nonfunctional appliances may be kept on any parcel. No heavy equipment other than farm tractors shall be stored on any parcel.

5. All parcels shall be maintained in a neat and orderly condition, and all grassed areas shall be kept mowed on a regular basis at least every 4 weeks between May and October of each year. All parcel drives where visible to the public must be maintained and mowed/wooded to preserve a high aesthetic standard of maintenance throughout Misty Ridge. An easement is reserved by Declarant, its successors and assigns over all of the property to mow the grass if a property owner allows it to become too high and a charge of \$75.00 per acre shall be assessed if a property owner fails to mow his grass as required.

6. Any permanent or security lighting on parcels must be placed on motion detectors and/or be shielded from adjoining parcel owners.

7. No fuel tanks may be maintained on any parcel unless the same are installed within the principal dwelling or garage or are buried under ground or shielded in such a way that it cannot be seen from roadways, adjoining parcels or from any place outside the parcel.

8. Any dwelling constructed on any parcel shall contain no less than 1400 square feet of heated floor space on the main floor level, excluding open porches, decks, garages and basements. No residence shall be located closer than 10 feet from any property line or the margin of any easement or right of way. No other structure shall be located closer than 10 feet from any property line or the margin of any easement or right of way. Declarant, its successors and assigns reserves the right to modify these setback requirements upon subdivision parcels should it be reasonably necessary to do so to accommodate the placement of structures.

9. The Declarant, its successors and assigns hereby reserves a 10 foot utility easement along all side property lines, a 30 foot road right of way and utility easement in both directions from the center of all subdivision roads and a 40 foot utility easement along all back property lines of all parcels for utilities. These utility easements shall also be for the benefit of all utility companies. No lot or subdivision road can be used to provide access to any property not included in the subdivision except that the Declarant, its successors and assigns, hereby reserves an easement over and across those roads constructed for access to adjoining property(ies) owned now or purchased in the future by Declarant, its successors and assigns.

10. No business or commercial activity shall be conducted on any parcel which solicits the presence of the general public upon said parcel for the purpose of purchasing goods, services, vehicle or machinery repairs, or which creates noises, odors or vibrations which would in any way be obnoxious or offensive to any adjoining property owner. No day care or child-care facility shall be permitted on any parcel.

11. No parcel shall be subdivided. No more than one single-family residence and one guest cottage shall be constructed per parcel.

12. All residences shall be constructed of materials consistent with North Carolina Building Codes. All exterior wooden surfaces of all structures shall be painted or stained. All exterior masonry surfaces of all structures shall be painted or covered with stucco. Metal roofing shall be permitted on any structure as long as such material has a single pre-finished color. All buildings must be completed within 24 months of the date for which the permit was originally issued and/or active signs that construction has begun. Driveways shall be graveled as soon as they are cut so as to prevent erosion on to community roadways and into streams. Each property owner shall install a culvert of not less than 18 inches at any point where he accesses his property from the subdivision access roads.

13. No outbuilding, garage, barn or other structure shall be constructed on any parcel until after the primary residence is under construction.

14. Authorized livestock may be maintained on a parcel. Authorized livestock include: one equine or two miniature equine with a mature height of no more than 3 feet at the withers or one bovine or one llama or one alpaca or two sheep or two goats per acre owned. For example, the owner of a 2.71-acre tract would have the right to maintain a combination of one equine and two goats; but no more livestock. No unauthorized livestock may be maintained on any parcel. No swine shall be maintained on any parcel. Property owners may keep a reasonable number of poultry but these must be confined to a pen and may not make such noise as to disturb the adjoining property owners. All authorized livestock shall be confined to the property owner's property and shall not be permitted to water from any branch or stream that forms a common property boundary. No livestock shall be kept for commercial use or illegal purpose. Property owners may keep normal household pets excluding swine but such pets shall be confined to the owner's property, and may not be confined in a fence or by tether for a period exceeding 12 hours per day. Such pets may not be permitted to become a noise nuisance to the adjoining property owners. Such pets may not be maintained for commercial purposes, i.e. dogs are normal household pets, but multiple dogs maintained in kennel runs or kennel buildings 24 hours a day for the sole purpose of breeding would constitute a commercial kennel, not household pets. This will not preclude an owner from hobby breeding and selling their in-home maintained household pets. No pets or livestock shall be permitted to range freely on or around the community roadways.

15. If wire fencing is used to confine pets or livestock permitted in deed restrictions, a wood style or decorative fence must be used in addition to the wire fence for aesthetic purposes on any fencing facing towards common roadways and adjacent property owners.

16. All water systems and septic systems shall be constructed to standards required by the Macon County health Department. No outdoor toilet shall be permitted.

17. No ATVs, Dirt Bikes or similar off-road vehicles may be operated on any parcel or community roadway except as used to maintain such property and not for recreational use.

18. The owner of each parcel shall provide adequate off-street parking. Owners of parcels shall not be permitted to park automobiles, boats, trailers, campers, commercial vehicles and all other similar vehicles on the roadways or easement areas.

19. The Declarant, its successors and assigns has constructed, or will construct a system of roads within the subdivision together with signage, gates, and lighting and related facilities. After such construction, the Declarant, its successors and assigns shall have no further responsibility with regard to the roads and gates, including without limitation the maintenance and upkeep of said roads. The maintenance and upkeep of the roads and facilities within the subdivision shall be the responsibility of the property owners. Each lot shall be assessed equally for the costs of the maintenance, repair and upkeep of the roadways within the subdivision. The initial assessment shall be \$500 per calendar year per single-family residence, and \$300 per calendar year per undeveloped parcel, commencing January 1, 2009 (pro-rated for portions of the year 2009). Each property owner shall pay an additional impact fee of \$1,500 to the Declarant or the Property Owners Association once one is established, upon receipt of a building permit for the construction of a residence. Each property owner shall be responsible for and immediately pay for repairs to any subdivision road damaged by their agents, employees or guests. Any repairs needed during or after construction to repair subdivision roads not covered by the \$1,500 impact fee shall be paid by the property owner within 14 days of the damage and the road shall be returned to its original condition. If the property owner fails to do this, the Declarant or the Property Owners Association, once one is established, shall have the road repaired and assess the property owner for the amount needed to return the road to its original condition. The Declarant or the Property Owners Association shall have the right to place a lien on said property until the assessment has been paid in full. Should the Property Owners Association not incur costs of more than \$500, then \$1,000 of the \$1,500 impact fee will be refunded to the property owner. Lots or parcels owned by the Declarant shall not be assessed any fees.

20. The Declarant reserves the right to establish a property owners association in the form of a not-for-profit corporation for the benefit of the owners of property within Misty Ridge. The Property Owners Association shall have as its function the obligation to maintain and repair the roadways within the subdivision. Upon the formation of such association, all assessment funds in the possession of the Declarant shall be turned over to the appropriate officers of the association.

21. Each parcel and each property owner must and shall automatically become a member of the Misty Ridge Property Owners Association, and shall be subject to all duly adopted articles, bylaws, rules, regulations and resolutions of the association. Any action of a majority of the members of the Association is binding on all members.

22. Assessments for road maintenance shall be payable on a calendar year basis or more frequently if so determined by Declarant or the Property Owners Association, and shall be payable at such times during the calendar year and in such amounts as Declarant and later the Association may from time to time establish and shall be delinquent if not paid in full by the times established. Any change in the amount due for assessments shall be recorded at the Register of Deeds Office for Macon County, North Carolina. If any assessment is not paid by the due date, such assessment shall be delinquent and shall bear interest from the due date at the rate of eighteen (18) percent per annum or the maximum interest rate allowed by law, whichever is less. The assessments levied against a lot remaining unpaid after the due date shall constitute a lien on that lot when filed for record in the Office of the Clerk of Superior Court for Macon County, North Carolina in a manner provided therefor by Article 8 of Chapter 44 of the General Statutes. If the delinquent assessment is placed in the hands of an attorney for collection there shall be added to the amount due all costs of collection including all reasonable attorney fees. The lien shall include all interest that accrues and continues to accrue on the assessment and shall include the aforementioned costs of collection and attorney fees. All assessments, interest, costs, and attorney fees shall be and constitute the personal, joint and several obligation of each lot owner. The association may in addition or in the alternative to enforcing its lien bring an action against the lot owner to seek a money judgment for the amount of the assessment, interest, costs of collection and attorney fees. The association may purchase the lot at any sale ordered pursuant to an action to foreclose the lien.

23. The foregoing restrictive covenants shall be effective for a period of fifty years after they are recorded, and shall be automatically renewed for successive ten-year periods for an additional 100 years. These restrictive covenants may be altered or amended by the action of the owners of seventy-five percent (75%) of the lots in the subdivision at any duly constituted meeting of the property owners if the notice of the meeting specifies the intention to alter or amend the restrictions at such meeting. Provided, however, no provision of this declaration which affects the rights, duties, and obligations of the Declarant may be altered or amended without the written consent of the Declarant and no easements may be modified in such manner.

24. In the event that two or more parcels as originally sold by the Declarant shall be developed as a unit, the provisions contained herein relative to building setbacks, easements, voting rights in the Association and the payment of the road maintenance assessments shall apply to the combined unit, and not to each parcel. The combined unit will be assessed as one parcel if a recording is made declaring that the parcels are to be used as one unit. If the property owner records a declaration to that effect and if the parcels are ever sold individually, then all original assessments shall apply.

25. These Restrictive Covenants, Conditions and Easements shall be enforceable by any property owner in the subdivision. The failure of the Declarant, the Property Owners Association, or any property owner to enforce any right, reservation, restriction, or condition contained herein, however long continued, shall not be deemed a waiver of right to do so subsequently as to the same violation, or as to any violation occurring prior or subsequent thereto, and shall not bar or effect its later enforcement.

26. No property owner shall be permitted to create any pond in the middle of an existing creek, stream or spring running through their property and continuing to other properties. Any ponds created by parcel owners must pipe water from existing waterways and overflow from ponds must be piped back to existing waterways.

27. No tree with a diameter in excess of 20 inches may be cut other than as necessary to accommodate construction of structures, drives, septic systems or should the tree be damaged by disease or lightning and pose a threat to the structures on that or an adjoining property. Said trees may be limbed to allow for view from the primary residence. Owners may ask adjoining lot owners for permission to limb trees on adjoining lots to accommodate a view from their primary dwelling, at the owner requesting the trimming's expense. Should the adjoining lot owner refuse to allow said trimming, then the owner requesting the right to trim the trees may petition the Property Owners Association to mediate the matter and the association's decision shall be binding on all parties. In any event, the cost of tree trimming and any resultant damage shall be born by the homeowner who requested it. Until the Property Owners Association is formed, all decisions in reference to tree topping or removal shall be referred to the developer.