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GEORGIA, FANNIN COUNTY  
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FILED FOR RECORD 6/19/01  
AP: 59AM RECEIVED 6/19/01  
BOOK 397 PAGE 723-724  
CLERK OF SUPERIOR COURT

4889

ROAD EASEMENT AND MAINTENANCE AGREEMENT AND  
RESTRICTIVE COVENANTS FOR MOUNTAIN HIGHLANDS SUBDIVISION

This ROAD EASEMENT AND MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANTS FOR MOUNTAIN HIGHLANDS SUBDIVISION is made this 19 day of June, 2001, by the undersigned C.J. SISSON and WILLIAM MARK BURGER (hereafter collectively referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of all that tract or parcel of land lying and being in Fannin County, Georgia, and being more particularly described below with any additional property added hereto by amendment (hereinafter referred to as the "Submitted Property"), said property being:

All that tract or parcel of land lying and being in the 8th District and 2<sup>nd</sup> Section of Fannin County, Georgia and being part of Land Lot No. 289 of Fannin County, Georgia, and being described as Lots 1-9 of Mountain Highlands Subdivision containing a total of 26.03 acres of land, more or less, as shown on plat of survey prepared by Blairsville Surveying Co. Surveyors, G.R.L.S. # 2228, dated July 26, 2000, and being recorded in Plat Hanger C-113, Page 1-2, Fannin County Deed Records: Said-recorded survey is hereby made a part of the above-described property by reference thereto for a more complete description of the above-described property.  
Said property is conveyed subject to all easements, restrictions, and rights of ways as set forth on said recorded plat or as appearing of record.

WHEREAS, Declarant desires to enhance the value and provide for the uniform development of the Subdivision;

NOW, THEREFORE, the Declarant hereby declares that the Submitted Property shall be held, conveyed, encumbered, used, occupied, and improved subject to the following covenants and restrictions, as well as easements and assessments, all of which are in furtherance of a plan for subdivision, improvement and sale of real property and every part thereof. The covenants, restrictions and easements set forth herein shall run with the land and shall be binding on all parties having or acquiring any right, title or interest therein or thereto, and shall, subject to the limitations herein provided, inure to the benefit of each Owner of property, his heirs, successors, and assigns.

1. The exterior of all structures to be constructed on any of said lots shall be completed within twelve (12) months from date that construction begins. Temporary campers are permitted during construction only.
2. All Lots shall be used for residential purposes only and no business or business activity shall
3. No inoperative cars, motorcycles, trucks, or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours; provided, however, that this provision shall not apply to any such vehicle being kept in a closed garage. There shall be no major repair performed on any motor vehicle on or adjacent to any Lots in the subdivision. All vehicles shall have current license plates.
4. No mobile, modular, prefab home or homes constructed in whole or in part off of any Lot will be allowed on any Lot. No structure of a temporary nature shall be used as a residence either temporarily or permanently (including but not limited to trailers, basements, tents, shacks, garages, or barns).

5. Trailers and Commercial Vehicles - No parking of any house or travel trailer, truck (excluding pickup truck), camper, tent, or other similar vehicle, outbuilding, or structure shall be placed on the property at any time for a period exceeding (48) hours. No industrial, commercial or farm equipment or vehicles, including without limitation dump trucks, moving vans, step vans, buses and lowboy trailers, shall be allowed to park or remain on the Property, except for so long as necessary for use in connection with ongoing construction.
6. 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 that they are not kept, bred, or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions. Large and/or potentially vicious breeds of dogs are specifically excluded, and may not be raised, bred or kept on any lot.
7. Except during the construction of permanent improvements thereon, no Owner shall excavate or extract earth from any lot for any business or commercial purpose or otherwise. No elevation changes shall be permitted which materially affect surface grade of surrounding lots.
8. Driveways shall be maintained in good order.
9. Garbage and trash - No trash, garbage, or other waste material or refuse shall be placed or stored on any Lot except in covered sanitary containers. All such sanitary containers must be stored in each home, or within an enclosure designed therefor, which must be at least five (5) feet from any Lot line.
10. Outdoor lighting - All outdoor lighting shall be so shaded and directed such that the light there from is directed to fall only on the same premises where light sources are located.
11. Clotheslines - No garments, laundry, rugs or other articles may be aired or dried on any Lot.
12. No structure shall draw power from a temporary pole except for a temporary pole necessary for the construction of a permanent home. Power shall be hooked up permanently.
13. No sign of any kind shall be displayed to the public view on any lot except such signs as comply with the provisions hereof Builders may display such signs as are normally utilized to advertise the property during the construction and sales period. After an Owner closes his purchase on any lot in the subdivision, the only signs permitted on his lot will be: (a) a professionally prepared sign for identification purposes (not more than one square foot in area); and (b) a single sign to rent or sell said lot of a type used by Brokers in the area, with the usual wording, such sign to be no more than four square feet in size. In the event any such sign is unsatisfactory, the sign will be removed. These limitations shall apply to signs of all types, including banners, signs on cloth, paper, cardboard or other materials.
14. Any outbuilding built shall have regular siding, in order to better blend in with surrounding buildings.
15. No parcel, or its configuration, as originally sold and conveyed by C.J. Sisson and William Mark Burger, shall be thereafter altered in size or configuration, or subdivided, by any parcel owner or his successors and assigns, provided that, C.J. Sisson and William Mark Burger reserves the unconditional right to alter the size or configuration, subdivide, or create new parcels, and/or to replat any unsold parcel, prior to its original sale and transfer to a parcel owner, and in such case any such altered or newly created parcels shall be subject to these covenants.
16. Declaration herein grants, to all owners of the above-referenced lots, all necessary easements for all current and future utilities, with said installations contemplated to be, but not required to be, within an area adjacent to the road system shown on the aforementioned plat.

#### ROAD MAINTENANCE ASSESSMENTS

Personal Obligation of Assessments; Claim of Lien: All purchasers of Lots within Mountain Highlands Subdivision, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to covenant and agree to pay to an Association or group of lot owners formed for the purpose of administering said funds, (1) Annual assessments or charges for regular road maintenance within Mountain Highlands Subdivision; and (2) special assessments for emergency repairs to said roads within Mountain Highlands Subdivision, these assessments to be established by:

1. For annual assessments for regular road maintenance: The Owners (by a majority vote) shall prorate an estimated budget (to begin at \$120.00 per year in 2000) for said maintenance among all owners of lots in Mountain Highlands Subdivision (one share per lot owned). Each lot's owner(s) shall then be responsible for this prorated amount, to be paid prior to January 1 of the year of the assessment.
2. By a majority vote of all lot owners, special assessments for emergency repairs or upgrades to said road shall be established with each lot owner responsibility for a pro-rata share of said approved emergency assessment (one share per lot owned).

The annual and special assessments, together with interest and costs of collection including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property or Lot against which each such assessment is made. Each such assessment, together with interest, costs of collection, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for such delinquent assessments shall also pass to his successors in title, provided a claim of lien has been recorded in the Public Records of Fannin County giving notice to all persons that a claim of lien upon the Lot is being asserted, prior to the conveyance of title to the Lot. Said claim of lien shall state the description of the residence, the name of the record Owner thereof, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by 1) an officer of the Homeowners' Association (if said Association has been established) or 2) by a representative of a majority of the lot owners in Mountain Highlands Subdivision. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, said satisfaction being executed either 1) by the record individual filing the lien, 2) an officer of the Homeowners' Association (if said Association has been established) or 3) by signatures indicating a majority of all lot owners. Liens for assessment may be foreclosed by suit brought in the name of the Homeowners' Association in like manner as a foreclosure of a mortgage on real property. Assessments shall not apply to the Developer and/or Declarant.

WATER USE, MAINTENANCE AND EASEMENT AGREEMENT

Declarant is the owner of a well located on Lot # 2 of Mountain Highlands Subdivision, but anticipates transferring said well to a water-servicing contractor, Declarant retains a permanent and perpetual easement to said well and water system, as well as an area of 400 square feet surrounding said well and water system, and retains the sole and exclusive right to operate, maintain and replace said well and water system for the benefit of all future owners of lots in Mountain Highlands Subdivision and other lots in other Phases as he deems necessary.

All future lot owners of Mountain Highlands Subdivision shall have a permanent and perpetual right to contract for water service from the above described water system at the following rates and under the following terms.

Declarant, or their heirs and/or assigns shall maintain a pump on said well for the benefit of themselves and other purchasers of lots in Mountain Highlands Subdivision, that have contracted with Declarant. Declarant shall be responsible for electricity to power said pump. Once a lot owner has hooked on to the meter box, the lot's owner shall be responsible for reimbursing Declarant \$30.00 per month (to be paid as a lump sum of \$360.00 on or before January 1 of each year, and to be prorated for the remainder of each year at the time of each future closing if a mid-year closing). This amount shall increase by an amount not to exceed the Consumer Price Index (CPI) each year, and Declarant shall give notice of this increase amount not less than 30 days prior to January 1.

Failure to pay the yearly water fee shall allow Declarant to place a lien on the nonpaying lot and against the lot's owner for the amount of the unpaid bill, interest, and reasonable attorney's fees to collect same.

Declarant and individual lot owners may agree to an alternate arrangement to the above expense repayment provisions. If Declarant and individual lot owners do not agree to an alternate arrangement, then the above provisions shall apply.

The following provisions shall apply to each lot's owner(s):

- 1) Each lot owner shall, at their own expense, pay the full cost of the water lines running from their homes to the meter established on each lot, and shall be solely responsible for maintenance and replacement of their own lines.
- 2) If, as the result of freezing of the water lines and breaking of the same, and if as a result the pump is destroyed and/or must be replaced or repaired, said responsibility shall be the responsibility of the party whose water line froze and broke. If multiple lines should freeze and break resulting in this damage, then the owners of the damaged lines shall share equally the costs associated with the repairs to the pump and/or well.
- 3) In the event that the pump or water system is damaged through an owner's

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negligence, then the party responsible for said negligence shall be wholly responsible for the costs of repair or replacement of the pump or water system and all necessary expenditures associated therewith.

#### RESERVATION BY DECLARANT OF ROAD EASEMENT

The Declarant hereby reserves unto himself, his successors and assigns, all necessary licenses, rights, privileges and easements over, upon, under and across all property, including but not limited to, (1) the right to use the said properties for rights-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water or other public conveniences or subdivision utilities; (2) the right to cut any trees, bushes or shrubbery, make any gratings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right to locate thereon wells and pumping stations; (4) the right and easement of ingress and egress for purposes of development and construction; and (5) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of Mountain Highlands Subdivision; provided, however, that said reservation and right shall not be considered an obligation of the Declarant to provide or maintain any such utility, development, or service. Declarant also reserves the right to connect with and make use of utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the property. Finally, the Declarant reserves the right to establish and continue to use any sales offices, signs, or parking spaces located on the property, in its effort to market the development. The easements and rights-of-way herein reserved shall continue in existence in favor of the Declarant until conveyance of all lots a occurred and Declarant filed a written EXTINGUISHMENT OF EASEMENT document with the clerk of Superior Court, Fannin County.

#### ROAD EASEMENT FOR MOUNTAIN HIGHLANDS SUBDIVISION

It is the express intent of Declarant to grant an easement along the road system within the boundaries of the above-mentioned survey for ingress and egress to each Purchaser, their heirs, and assigns, of lots or property within Mountain Highlands Subdivision. It is the express intent of Declarant to reserve for Declarant, Declarant heirs, and Declarant assigns, an easement for ingress and egress along same roads.

The easement is granted notwithstanding any error or omission in any individual conveyance to a purchaser of a lot or property, by the Declarant, which might fail to expressly grant or reserve such an easement.

#### DURATION AND AMENDMENT

This declaration and the restrictions contained here in shall run with and bind the submitted property for a period of twenty years from and after the date when this declaration is filed for record with the Clerk of the Superior Court of Fannin County, after which time this declaration and the restrictions shall be automatically renewed for successive periods of ten years; provided, however, that after the end of the said twenty year period and during any ten year renewal period (but only during such renewal period), this declaration and the restrictions contained herein may be terminated by an instrument executed by 2/3 of the lot owners and recorded in the Office of the Clerk of the Superior Court of Fannin County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

#### MISCELLANEOUS

1. Severability - A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.
2. Constructive Notice - Each owner, by his acceptance of a deed or other conveyance of a lot, acknowledges for himself, his heirs, legal representatives, successors and assigns, that he is bound by the provisions of this declaration, including, but not limited to, the easement provisions for all homeowners provided in this document.
3. Binding Effect - This declaration shall be binding upon the undersigned, its heirs, administrators, successors and assigns. Said declaration shall run with the title to the property described above and any subsequent property that is added hereto by amendment.

IN WITNESS WHEREOF, the Declarant has hereunto set their hands and seals as of the day and year first above written.

Signed, sealed and delivered in the Presence of:

Delita Taylor  
Witness

C.J. Sisson  
Declarant - C.J. Sisson

Veronica S. Adams  
Notary Public  
My Commission Expires:

William Mark Burger  
Declarant - William Mark Burger



VERONICA S. ADAMS  
Notary Public, Fannin County, Georgia  
My Commission Expires April 6, 2002