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RENEE DELLINGER
REGISTER OF DEEDS
BY: CHASE DELLINGER
DEPUTY

BK: RE 451
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DECLARATION OF TOWNHOME RESTRICTIONS, COVENANTS, AND CONDITIONS FOR UNITS 1 & 2 LOT G-4 GREAT CAMP AT EAGLES NEST

This DECLARATION OF RESTRICTIONS, COVENANTS, AND CONDITIONS is made on November 15, 2010, by and between:

GRANTOR/DECLARANT	GRANTEE
Grosvenor Properties, LLC	**G-4 Great Camp at Eagles Nest (a Planned Unit Development)**

PREAMBLE:

Owner is the owner in fee simple of all of the following Property situated in Banner Elk Township, Avery County, North Carolina, more particularly described as follows:

THE PROPERTY ("Property") is **Townhouse Units 1 & 2, Lot G-4 Great Camp at Eagles Nest, Banner Elk NC 28604**. The Property is described on a survey which is titled, "Townhouse Units 1 & 2, Lot G-4 Great Camp at Eagles Nest". This survey was prepared by David K. Stern, PLS #L-1301, on October 19, 2010, is surveyor's map #2010.1019-G04, and is of record in the Avery County Registry of Deeds in Book 42 of Maps, at page 32. The description from the survey is included in and made a part of this document as if fully set out in this document.

Owner intend by this Declaration to impose upon the Property mutually beneficial Town Home restrictions. These Restrictions are a general plan of improvement for the benefit of the owners of Units 1 and 2. Owners desire to provide a flexible and reasonable procedure for the overall development of Lot G-4 and the interrelationships of the

Mail after recording to *John Maffitt Wright, Attorney at Law*
139 Main Street, PO Box 725, Banner Elk, NC 28604

This Declaration was prepared by JOHN MAFFITT WRIGHT, Attorney at Law

owners of each unit.

DECLARATION:

Grosvenor Properties, LLC, declares that the Property and any additional property as may by subsequent amendment be added to and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the Property and any additional property which may be submitted to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Property or any additional property which may be submitted to this Declaration. All rights and interest granted under this Declaration shall inure to the benefit of each owner of a residential unit within this Subdivision.

1 PARTY WALLS.

1.1 **Laws of North Carolina to Apply; Easement.** All matters arising in connection with any wall which would constitute a party wall at common law shall, to the extent consistent with the provisions of this Section, be subject to the common law of North Carolina as modified by statute from time to time and as modified by this Section. If the centerline of a party wall now or hereafter fails to coincide with the boundary between the Lots it serves, an easement for any resulting encroachment is granted in accordance with this Declaration.

1.2 **Upkeep.** The Owners of Unit 1 and 2 served by a party wall shall provide for the Upkeep of party walls and shall share equally the cost of their Upkeep except as otherwise provided in this Section. No Owner shall impair the structural integrity of any party wall nor diminish the fire protection afforded by any party wall.

1.3 **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, the following procedures shall be followed in order to restore such party wall:

1.3.1 Either Owner served by the party wall shall notify the other Owner served by the party wall of any proposal to repair the wall. If within ten (10) days after such notice (or in an emergency, within twenty-four (24) hours after such notice or a bona fide attempt to give such notice) the other Owner has not responded to the notice, then the Owner giving notice may proceed with the repairs. Such repairs must be substantially similar to the original construction and installation and of first class qualify, but may be made with contemporary materials.

1.3.2 If the other Owner served by the party wall responds to the notice, the Owners shall act together to repair the party wall. If the Owners are unable to agree upon the action to be taken, they shall submit the issue to arbitration in accordance with the Section concerning arbitration in this Declaration.

1.3.3 If any Owner restores a party wall in accordance with this section, then the other Owner shall contribute one-half (½) of the cost. An Owner may, however, demand a larger contribution from the other Owner or refuse to contribute one-half (½) of such costs, under any rule of law or equity regarding liability for negligent or willful acts or omissions.

1.4 **Liability.** Any Owner who by a negligent or willful act or omission causes or permits a party wall to be damaged shall pay the cost of restoring such party wall to its condition prior to such damage.

1.5 **Fences and Other Barriers.** The provisions of this Section pertaining to party walls shall also govern any fence, other barrier or shared improvement.

2 EXTERIOR PAINTING AND ROOFS.

The exterior color of any home or roof may not be changed without the written permission of all of the owners of Units 1 & 2 as exercised in the Section on Voting Rights. The color of both Town Homes must be changed at the time when a change is made.

3 EXTERIOR DOORS AND LIGHTING FIXTURES.

Exterior doors (including entry doors and garage doors) and exterior lighting fixtures may be replaced provided that the replacement door or fixture is substantially the same in design, style, color, texture and hardware, as the original construction of the homes, unless otherwise approved in writing by all of the owners of Units 1 & 2 as exercised in the Section on Voting Rights.

4 EASEMENT FOR WELL & WATER RIGHTS.

There is located upon Unit 2 a certain well for domestic purposes which has already been established, is already being used, and shall continue to be utilized pursuant to the terms and conditions of this agreement (referred to as "Well"). Townhouse Unit 1 and Townhouse Unit 2 shall each enjoy the benefits and burdens of the Well.

There is hereby established, conveyed, and granted an easement to each unit for the purpose of constructing, operating, maintaining, repairing, inspecting, replacing and renewing a water well and reservoir, together with such pipes, fittings, fixtures and other accessories (collectively the "Water System") as from time to time may be required, over, above, along, under, in and across the 15 foot wide utility easement (together with a temporary easement for repairs when such are needed) which is shown on the survey and which Water System services both residences located on the Property.

4.1 **USE OF THE WATER SYSTEM IS CONFINED TO THE FOLLOWING CONDITIONS:**

4.1.1 The right to the use of the well is for domestic purposes only.

4.1.2 The installation or maintenance of pipe, conduits or wires, under, upon or over the easement for the purpose of obtaining water from the well is not forbidden.

4.1.3 Exclusive use of the easement and/or the Well is not hereby granted. The right to use the easement and/or the Well is expressly reserved by the Grantor.

4.1.4 **Maintenance and Repair:** The owners of each residence shall be responsible for the maintenance, repair, inspection, replacement and renewal (of the Water System. The costs of the maintenance, repair, inspection, replacement and renewal (collectively "Repairs") shall be shared equally by each residence. If either owner fails to maintain, etc., the Water System, and after five (5) days notice from the other owner of such failure (except in the case of an emergency, which shall not require such notice) that owner may take any reasonable actions to cure the failure, and all parties shall share equally in the cost of such actions. If any party fails to pay their share of any costs within thirty (30) days of receipt of an invoice, the other parties shall have the right to place a lien on the non-paying party's property.

4.1.5 **Default:** If there is a failure by any party to perform, fulfill or observe any of the terms of this Agreement to be performed, fulfilled or observed by such party, and such failure shall continue for thirty (30) days, or in situations involving potential danger to the health or safety of persons in, on or about any other party's property, or substantial deterioration of another party's property results from such failure, in each case after written notice, the other party may, at its election, cure such failure or breach on behalf of the defaulting party. Any amount which such party so electing shall expend for such purpose, or which shall otherwise be due by any party to another, shall be paid to the party to whom due on demand, without contest, upon delivery of an invoice, together with interest at the lower of (A) the rate of ten percent (10%) per annum, or (B) the maximum rate permissible from time to time under applicable law, from the date of the expenditure or the date when it shall become due to the date of payment in full. The parties have agreed after negotiation that these additional amounts represent their best estimate of damages, in addition to the payment of the monetary sums owing. The provisions of this paragraph shall be in all respects subject and subordinate to the lien of any mortgages or deeds of trust at any time or from time to time on the land of the defaulting party and the rights of the holder or holders of any mortgages or deeds of trust.

4.1.6 The Grantor does not make any guarantee as to the amount and/or the purity of the water from the well.

5 EASEMENT FOR DRIVEWAY.

There is located upon Unit 2 and crosses over onto Unit 1 a joint driveway which has already been established, is already being used, and shall continue to be utilized pursuant to the terms and conditions of this agreement (referred to as "**Driveway**").

There is hereby established, conveyed, and granted an easement to each unit for the purpose of a private Driveway for ingress, egress, and regress over, across, and along the 30 foot wide joint driveway and utility easement (together with a temporary easement for repairs when such are needed) which is shown on the survey where the Driveway presently exists for access from Lodge Woods Trail to each residence. The easement is 30 feet in width. The Owner of each residence shall share prorata in the maintenance and repair should the easement require the same for its proper upkeep and maintenance.

6 MAINTENANCE EASEMENT.

Each property owner, his agents, contractors, successors and assigns, shall at all times have the right of ingress and egress over and through the yard of the adjacent lot for the purpose of maintaining and repairing the exterior of the home, including but not limited to fences and decks. The easement herein described is an easement appurtenant, which shall be perpetual and shall run with the land. It shall at all times inure to the benefit of and be binding on each property owner, his grantees and their respective heirs, legal representatives, successors, and assigns.

7 GENERAL PROVISIONS.

7.1 PRIOR RESTRICTIONS.

These Restrictions are are subject to and supplement the Restrictive Covenants which are of record in Book 388 of Deeds, at Page 798 (as amended in Book 430 of Deeds, Page 2076, and Book 442 of Deeds, Page 2193), Avery County Registry.

7.2 AMENDMENT:

This Declaration may be amended by the affirmative vote of all of the owners of Units 1 & 2 as exercised in the Section on Voting Rights. Any amendment must be recorded among the records of Avery County, North Carolina.

7.3 RIGHT TO CONTRIBUTION RUNS WITH LAND.

Rights and duties of contribution set forth in this Declaration and any such rights and duties arising under the laws of North Carolina shall run with the land and bind successors in interest. This Section shall not prejudice any right of a successor in interest to recover any amount from a predecessors in title for which such predecessor was liable. Any rights or contribution set forth in this Section shall constitute a lien in favor of any Owner entitled to contribution against any Owner obligated to pay such contribution. Until fully paid and satisfied, the lien shall apply to and encumber the Unit owned, as of the date when payment was due, by the Owner from whom payment was due. The lien created by this section shall be prior to all liens and encumbrances, except mortgages, real estate taxes and other charges levied by governmental authority made superior by law.

7.4 BURDEN UPON THE PROPERTY.

The Declarant declares that this Declaration and the covenants, restrictions, conditions, reservations, and easements established herein shall be covenants to run with the land. Said covenants and restrictions shall inure to the benefit of and shall be binding upon each and every property owner and his or her respective mortgagees, heirs, administrators, executors, legal representatives, successors and assigns, purchasers, and lessees. By the recording or acceptance of the conveyance of property or any interest therein, the person or entity to whom such interest is conveyed shall be-deemed to accept and agree to be bound by the provisions of this Declaration.

7.5 ENFORCEMENT.

Enforcement of these covenants, restrictions, conditions, reservations, and easements shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, restriction, condition, reservation, or easement either to restrain violation or to recover damages. All costs of enforcement, including litigation expenses, title reports, and attorney's fees, shall be paid by the person violating or attempting to violate any covenant and restriction and any judgment or decree shall so provide for payment of these costs. Failure by the Declarant, or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to be abrogated or waived by reason of any failure to enforce same irrespective of the number of violations or breaches which may have occurred.

7.6 ARBITRATION.

In the event of any dispute between Owners concerning a party wall, the Owners on each side shall select one arbitrator, and the arbitrators thus selected shall select one additional arbitrator. Arbitrators shall be qualified by experience and education to serve as such. Once selected, the arbitrators shall promptly agree upon and notify the parties of the discovery procedures and rules of evidence to be used in the arbitration. The arbitrators shall be requested to reach a decision within twenty (20) days alter their appointment. The decision of a majority of the arbitrators shall bind the Owners and their successors in interest. The cost of arbitration shall be paid by the losing party unless the arbitrators determine that the cost should be otherwise allocated between the parties, in which case that allocation shall be binding.

7.7 VOTING RIGHTS.

If more than one person is the record owner of Unit 1 or 2, then the vote for that unit shall be exercised as those persons amongst themselves determine. No more than one vote shall be cast with respect to either unit.

7.8 NON-SEVERABILITY OF RIGHTS.

The rights, liabilities, and obligations set forth herein shall attach to and run with the ownership of a lot as more specifically set forth herein, and may not be severed or alienated from such ownership.

The Declarant reserves the right to enforce these covenants, restrictions, conditions, reservations, and easements for so long as they shall exist.

7.9 SEVERABILITY.

Invalidation of any one of these covenants, restrictions, conditions, reservations, or easements by judgment or. court order shall in no way affect any other provisions which shall remain in full force and effect.

7.10 DURATION.

The covenants and restrictions of this document shall run with and bind the land, and shall inure to the benefit of and be enforceable by any owner of a unit subject to this document, their respective legal representatives, heir, successors and assigns until November 1, 2040, unless expressly limited in this Declaration, after which time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by all of the owners has been recorded, agreeing to change the covenants and restrictions in whole or in part.

If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last surviving member of the now living descendants of Barack Obama, President of the United States.

IN WITNESS WHEREOF, **Grosvenor Properties, LLC** has caused this instrument to be signed in its name by its duly authorized officer and its seal to be hereunto affixed by authority of its Members, the day and year first above written.

GROSVENOR PROPERTIES, LLC

By: _____
Colin Webster, Member/Manager

Seal of Grosvenor Properties, LLC

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State of North Carolina County of Avery

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **Colin Webster as Member/Manager of Grosvenor Properties, LLC**, a North Carolina Limited Liability Company, and that s/he, is authorized to execute this Declaration on behalf of and as the act of the Limited Liability Company.

WITNESS my hand and notarial seal on this date: 11-23-10

_____
NOTARY PUBLIC'S SIGNATURE
Notary's printed or typed Name: Julia M. Wright
My comm. expires: 11-2-2015

Your Notary Seal or Stamp