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 CINDY M OWNBEY
 REGISTER OF DEEDS
 BY: TERESA D MORTON
 DEPUTY REGISTER OF DEEDS
BK: DOC 552
PG: 774-781

Please return to Robert E. Dungan, Esq., One Rankin Avenue, Third Floor, Asheville, North Carolina 28801

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

**Supplemental Declaration and Restatement of
Declarant Rights for Toxaway Views Condominium**

Toxaway Views, Inc., a North Carolina corporation, (“Declarant”) does hereby make this Supplemental Declaration and Restatement of Declarant Rights for Toxaway Views Condominium (sometimes “Toxaway Views”) with the mutual agreement of the Toxaway Views Homeowners Association, Inc., a North Carolina nonprofit corporation (“Association”).

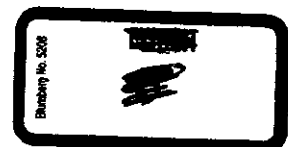
WITNESSETH

WHEREAS the Declarant, as the developer of Toxaway Views Condominium, is the owner of remaining portions of two tracts comprising approximately 11.11 acres that were described in the Declaration for Phase I of Toxaway Views as being the real property intended for development of as many as 176 condominium units and that are more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof (“Condominium Property”); and

WHEREAS, the Declarant created Toxaway Views condominium under the North Carolina Unit Ownership Act (NCGS, Chapter 47A) by recording the initial Declaration Creating Unit Ownership and Establishing Restrictions, Covenants, and Conditions for Toxaway Views, Phase I (“Declaration”) on June 17, 1983, in Condominium Drawer (Book) 4, Page 42, Transylvania County Registry of Deeds; and

WHEREAS, in accordance with the Declaration, the Declarant has been developing the Condominium Property in phases; and, to effect that process, the Declarant has retained the right and authority to record Supplemental Declarations in connection with the development; and

WHEREAS the Declarant has currently constructed 49 condominium units in 8 buildings on portions of the Condominium Property; and



WHEREAS the Declarant has only submitted to the Declaration those portions of the Condominium Property on which the existing buildings are located; and

WHEREAS the Declarant has the right to construct additional condominium units as set forth in the Declaration; and

WHEREAS, disputes with respect to the construction of condominium units and with respect to the scope of Declarant rights have arisen between the Association and the Declarant; and

WHEREAS, the Association filed a legal action Case No. 07 CVS 589 Transylvania County Superior Court against the Declarant and its owners; and

WHEREAS, the Declarant and its owners answered the action and filed counterclaims against the Association; and

WHEREAS, at mediation the plaintiff and the defendants agreed to settle the above-referenced litigation in accordance with the Memorandum of Mediated Settlement dated June 29, 2009, as amended with respect to Paragraph 1, 8, and 13 of the Memorandum as set out in the July 15, 2009, letter from Declarant's attorney and as agreed to by all parties; and

WHEREAS, in order to satisfy the terms of the Memorandum of Mediated Settlement, as amended, the Declarant must submit all of the Condominium Property to the Declaration through this Supplemental Declaration, but at the same time preserve and guarantee the retention of certain Declarant rights including the right to construct as many as thirty (30) more condominium units in five (5) buildings.

NOW THEREFORE, the Declarant with the agreement of the Association makes the following Supplemental Declaration for Toxaway Views:

1. Declarant hereby submits the Condominium Property as described in Exhibit "A" attached hereto and by this reference incorporated herein to the Declaration, as amended, for Toxaway Views.
2. Declarant, its successors, and assigns, subject to the conditions set forth below, retain the right to build no more than thirty (30) additional condominium units ("Additional Units") on the Condominium Property with such units being constructed in no more than five (5) separate additional buildings ("Additional Buildings").
3. The five additional building sites will be located approximately as shown and labeled "Proposed Condo Bldg" on that plat of the Condominium Property recorded in Plat File Book 13, Page 346, Transylvania County Registry of Deeds, ("Condominium Plat").
4. Declarant's right to construct the Additional Buildings shall be limited with respect to time of construction as follows:

A. Within seven (7) years from July 1, 2009, Declarant, its successor or assigns may begin construction of the first additional building to be constructed, which building may consist of up to six (6) units. Upon commencement of construction which means issuance of a building permit, the first additional building must be completed within two (2) years thereof, which means issuance of a certificate of occupancy. This building along with two other additional buildings will be constructed within the circular "center" area shown on the Condominium Plat.

B. Within ten (10) years from July 1, 2009, Declarant, its successor or assign may begin construction of the second additional building to be constructed, which building may consist of up to six (6) units. Upon commencement of construction, which means issuance of a building permit, the second additional building must be completed within 2 years thereof, which means issuance of a certificate of occupancy. This building will also be constructed within the circular "center" area shown on the Condominium Plat.

C. Within thirteen (13) years from July 1, 2009, Declarant, its successor or assign may begin construction of the third additional building to be constructed, which building may consist of up to 6 units. Upon commencement of construction, which means issuance of a building permit, the third additional building must be completed within 2 years thereof, which means issuance of a certificate of occupancy. This building will also be constructed within the circular "center" area shown on the Condominium Plat.

D. Within twenty (20) years from July 1, 2009, but only upon completion of the three additional buildings described in subparagraphs A-C above, Declarant, its successor, or assign may construct two additional buildings consisting of up to six (6) units each at approximate locations shown on the Condominium Plat. Upon commencement of construction of either of these two Additional Buildings, which means issuance of a building permit, any such Additional Building must be completed within two years thereof, which means issuance of a certificate of occupancy. Therefore, any and all construction allowed must be completed no later than twenty-two (22) years from July 1, 2009 (re. July 1, 2031) ["Construction Period"].

E. If the Declarant, its successor or assign fails to meet any of the deadlines set forth in subparagraphs A-D, then its rights to build set forth above shall cease, except for completion of any building then under construction.

5. Neither the Association nor any of its members shall interfere with the construction of the Additional Units by the Declarant, its successors or assigns, provided that such construction is done in compliance with the Declaration and all applicable laws. Declarant, its successor or assign shall during the construction of any Additional Building on the Condominium Property adhere to reasonable construction guidelines to avoid

interference with use of the Condominium Property in line with constructions practices found in other similarly situated residential developments in western North Carolina.

6. In connection with the construction, marketing, and sale of any and all Additional Units, Declarant, its successor or assign shall have and retain during the pendency of the Construction Period the following rights:

- A. Right to maintain and to operate a model condominium unit for sales purposes in each Additional Building constructed;
- B. Right to erect and maintain reasonable signage for the sale and marketing of any and all Additional Units;
- C. Right of ingress and egress of construction vehicles on to the Condominium Property for purposes of constructing Additional Buildings;
- D. Right to file Supplemental Declarations for the purposes of submitting Additional Buildings and Additional Units as contemplated herein to the Toxaway Views Condominium.

7. Condominium assessments shall be paid on all Additional Units as follows:

- A. Upon the sale of each condominium unit in any Additional Building, the purchaser shall pay regular assessments on each such unit to the Association.
- B. Declarant, its successor or assign shall pay after the sale of the first unit in any Additional Building, twenty-five percent (25%) of the regular assessments on each remaining unit in the Additional Building until each unit is sold. During the period in which the Declarant is paying a twenty-five percent (25%) share of an assessment, the Declarant shall be entitled to a one quarter member vote in the Association for each such twenty-five percent share of an assessment paid.
- C. Until the last unit is sold in any Additional Building, Declarant, its successor, or assign shall be responsible for maintenance of such Additional Building.

8. Except for the Declarant rights set forth above in this Supplemental Declaration, the Declarant hereby abandons any and all other Declarant rights that may be contained in the Declaration.

9. The rights, duties, and obligations of the Declarant set forth herein shall inure to any and all successors and/or assigns.

This the 24th ²⁵ day of ~~June~~ ^{September}, 2010.

Declarant: Toxaway Views, Inc.

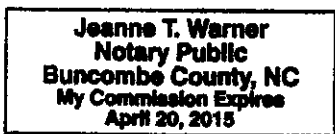
[Signature]
President
Attest: [Signature]
Secretary

NORTH CAROLINA
BUNCOMBE COUNTY

I JEANNE T. WARNER, Notary Public for said County and State, certify that personally came before me this day and acknowledged that he is Secretary of Toxaway Views, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and official seal, this the 24th day of SEPTEMBER, 2010.

(SEAL)



[Signature]
Notary Public

My commission expires APRIL 20, 2015.

Association: Toxaway Views Homeowners Association, Inc.

(Seal)

by: _____
President

Attest: _____
Secretary

NORTH CAROLINA
_____ COUNTY

[Signature]
President

Attest: [Signature]
Secretary

~~NORTH CAROLINA State of FL~~
~~St. Johns COUNTY~~

I Kevin Mackiewicz, Notary Public for said County and State, certify that personally came before me this day and acknowledged that he is Secretary of Toxaway Views, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and official seal, this the 22nd day of September, 2010.



[Signature]
Notary Public

My commission expires MARCH 15, 2012

ELG
[Signature]
MJB

Association: Toxaway Views Homeowners Association, Inc.

(Seal)

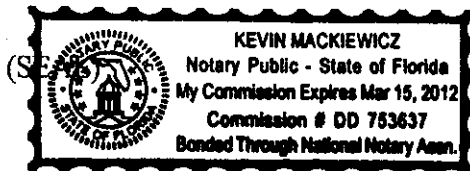
by: [Signature]
President

Attest: [Signature]
Secretary

~~NORTH CAROLINA Florida~~
~~St. Johns COUNTY~~

I Kevin Mackiewicz, Notary Public for said County and State, certify that personally came before me this day and acknowledged that he is Secretary of Toxaway Views Homeowners Association, Inc., a nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and official seal, this the 22nd day of September, 2010.




Notary Public

My commission expires MARCH 15, 2012.

EXHIBIT "A"

BEGINNING at a six inch by eight inch rock with and "x" mark scribed on its top, on the south side of an old road in the line of property belonging to Lake Toxaway Company and running thence from the point of beginning with the line of Lake Toxaway Company, two calls as follows: North 19 deg. 59 min. East, 1013.32 feet to an iron pipe; thence North 02 deg. 38 min. East, 182.85 feet to an iron pipe; thence North 8 deg. 36 min. West, 67.51 feet to a point in the center of the pavement of U.S. Highway 64; thence with the center of the Highway three calls as follows: South 82 deg. 55 min. East, 143.40 feet; North 81 deg. 21 min. East, 106.02 feet; North 54 deg. 46 min. East, 41.18 feet; thence leaving the Highway and running South 27 deg. 48 min. East, 101.30 feet to an iron pipe; thence North 40 deg. 03 min. East, 257.63 feet to an iron pipe; thence South 35 deg. 03 min. East, 94.38 feet to an iron pipe; thence South 14 deg. 22 min. East, 90.29 feet to an iron pipe; thence South 04 deg. 22 min. West, 88.12 feet to an iron pipe; thence South 8 deg. 45 min. West, 176.18 feet to an iron pipe; thence South 04 deg. 59 min. East, 62.60 feet to an iron pipe; thence South 8 deg. 35 min. West, 160.24 feet to an iron pipe; thence South 54 deg. 34 min. West, 63.35 feet to an iron pipe; thence South 61 deg. 46 min. West, 136.48 feet to an iron pipe; thence South 49 deg. 30 min. West, 96.50 feet to an iron pipe; thence South 38 deg. 09 min. West, 90.07 feet to an iron pipe; thence South 54 deg. 08 min. West, 111.14 feet to an iron pipe; thence South 69 deg. 32 min. West, 75.41 feet to an iron pipe; thence South 84 deg. 53 min. West, 103.27 feet to an iron pipe; thence South 63 deg. 37 min. West, 86.05 feet to an iron pipe; thence South 29 deg. 30 min. West, 153.51 feet to an iron pipe; thence South 39 deg. 54 min. West, 108.60 feet to an iron pipe; thence South 39 deg. 21 min. West, 120.30 feet to the point of beginning. Containing 10.90 acres, more or less, as surveyed and platted by William Leonard, RLS on September 14th, 1982.

Second Tract

BEGINNING at a point in the center of the pavement of U.S. Highway 64 which said point stands the following two calls: from a concrete monument (said monument being the southeast corner of the Cash property in the line of Lake Toxaway Company) South 86 deg. 35 min. East, 152.50 feet and North 8 deg. 36 min. West, 67.51 feet and running thence from the said point of beginning thus established South 8 deg. 36 min. East, 67.51 feet to an iron pin the Northeastern corner of a tract of land owned by Lake Toxaway Company; thence with the Toxaway line North 86 deg. 35 min. West, 152.50 feet to a concrete monument the Southeast corner of the Cash property described in Deed Book 219, page 810; thence with the Cash line North 1 deg. 54 min. East, 600.0 feet to a point in the center of the pavement of U.S. Highway 64; thence with the center of the pavement in a south and then southeast direction, to the point of beginning containing 0.8 acres, more or less, as surveyed and platted by William Leonard, RLS.