

**STATE OF NORTH CAROLINA  
COUNTY OF AVERY**

**AMENDMENT TO RESTRICTIONS**

Whereas, Avery Development Corporation did impose certain Restrictions and conditions on property owned by said Corporation by an instrument executed on October 31, 1963, acknowledged on March 5, 1964, and filed for registration in the Avery County Register of Deeds Office on March 5, 1964 in Deed Book 61, Page 401, said restrictions being incorporated by reference as if fully set out herein;

And Whereas, under Restriction number 19, paragraph 3, it is set out that said Restrictions "shall run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five (25) years from October 31, 1963, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of lots affected by such covenants has been recorded, agreeing to change said "covenants in whole or in part."

And Whereas, Avery Development Corporation and a majority of the lot owners of Mountain Glen Subdivision have expressed their desire to amend the above mentioned Restrictions of record;

Now Therefore, Avery Development Corporation and the undersigned lot owners, the same constituting a majority of the lot owners at Mountain Glen Subdivision subject to said Restrictions, do hereby agree to amend and change the above-mentioned Restrictions by substituting in their place and stead the Amended Restrictions set out below.

It should be noted that the only Amendments to the original Restrictions occur under Restriction number 8 and the first three paragraphs of Restriction number 19.

**RESTRICTIONS OF AVERY DEVELOPMENT CORPORATION AS AMENDED**

1. No building, fence or other structure shall be erected, placed or altered on any lot until the proposed building plans, specifications, exterior color or finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), and construction schedule shall have been approved in writing by Avery Development Corporation, its successors or assigns. Refusal of approval of plans, location or specifications may be based by the Corporation upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Corporation shall seem sufficient. No alterations may be made in such plans after approval by the Corporation is given except by and with the written consent of the Corporation. No alterations in the exterior appearance of any building or structure shall be made without like approval by the Corporation. One copy of all plans and related data shall be

furnished the Corporation for its records.

2. In order to assure that houses will be located with regard to the topography of each individual lot, Avery Development Corporation, herein sometimes referred to as "Corporation" reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any house or dwelling or other structure upon any lot or building plot consisting of more than one lot, provided, however, that such location shall be determined only after reasonable opportunity is afforded the lot owner to recommend a specific site.

3. The exterior of all houses and other structures must be completed within one year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergencies or natural calamities.

4. All lots shall be used for residential purposes exclusively. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling and one small one-story accessory building which may include a detached private garage and/or servant's quarters, provided the use of such dwelling or accessory building does not include any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main dwelling.

5. A guest suite or like facility without a kitchen may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling.

6. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

7. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants, poultry, animals (other than household pets) or devise or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof.

8. In the event the owner of any residential lot permits any underbrush, weeds, etc., to grow upon any lot to a height of two (2) feet, (except as part of a landscaping plan approved by the Corporation) and on request fail to have the premises cut within thirty (30) days, agents of the Corporation may enter upon said land to remove the same at the expense of the owner. The Corporation may likewise enter upon said land to remove any trash that has collected on said lot without such entrance and removal being deemed a trespass, all at the expense of the owner of said lot. This provision shall not be construed as an obligation on the part of the

Corporation to provide garbage or trash removal services.

9. In the event the owner desires to sell any unimproved lots, then said property shall be offered for sale to the Corporation at the same price at which the highest bona-fide offer has been made for the property, and the said Corporation shall have ten (10) days within which to exercise its option to purchase said property at this price; and should the Corporation fail or refuse, within ten (10) days after receipt of written notice of the price and terms forwarded via registered mail, return receipt requested, to exercise its option to purchase said property at the offered price, then the owner of said property shall have the right to sell said property subject, however, to all covenants and limitations herein contained; PROVIDED, however, that no lot, improved or unimproved, may be sold to any person, firm or corporation without the prior written consent of the Corporation or the Membership Committee of the Mountain Glen Golf Club; consent either by the Corporation expressed by action of its Board of Directors or the Membership Committee of the Mountain Glen Golf Club shall suffice.

10. No commercial signs, including "for rent", "for sale", and other similar signs, shall be erected or maintained on any lot except with the written permission of the Corporation or except as may be required by legal proceedings, it being understood that the Corporation will not grant permission for said signs unless their erection is reasonably necessary to avert serious hardship to the property owner. Property identification and like signs exceeding a combined total or more than three (3) square feet may not be erected without the written permission of the Corporation.

11. Each lot owner shall provide space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on said lot in accordance with reasonable standards established by the Corporation.

12. Each lot owner shall provide receptacles for garbage, in a screened area not generally visible from the road, or provide underground garbage receptacles or similar facility in accordance with the reasonable standards established by the Corporation.

13. The Corporation reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement over, upon, across and under each lot for the erection, maintenance, installation and use of electrical and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment, for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities, and the Corporation may further cut drainways for surface water wherever and whenever such action may appear to the Corporation to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety, and appearance. It further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or any residential lot designated for such use on the applicable plot of a residential subdivision, or to locate same

upon any adjacent lot with the permission of the owner of such adjacent lot. Such rights may be exercised by any licensee of the Corporation, but this reservation shall not be considered an obligation of the Corporation to provide or maintain any such utility or service.

14. No structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the lot after completion of construction.

15. No trailer, tent, barn, tree house or other similar outbuilding or structure shall be placed on any lot at any time, either temporarily or permanently.

16. No fuel tanks or similar storage receptacles may be exposed to view, and may be installed only within the main dwelling house, within the accessory building, or buried underground.

17. No trees measuring six inches or more in diameter at ground level may be removed without the written approval of the Company, unless located within ten (10) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building. No trees shall be removed from any lot without the written consent of the Corporation until the owner shall be ready to begin construction.

18. No lot or tract of land within the area of Avery Development Corporation and Mountain Glen Golf Course shall be subdivided, or its boundary lines changed, except with the written consent of the Corporation. This consent may be given only after a survey of the proposed division and/or new boundary is provided to Avery Development Corporation, in recordable form, from a professional land surveyor. If such division and/or new boundary is approved by the Corporation, the costs of the survey and its recording shall be borne by the lot owner and not by the Corporation.

Further the Corporation reserves the right to modify any of the lots or parcels of land still owned by it to the extent necessary to make the highest and best use of the said lot or parcel of land, not inconsistent with the overall nature and use of all the lands within the Development.

19. It is agreed that the owner of any lot or lots in the Mountain Glen Subdivision shall pay to the Corporation, its successors or assigns, on or before the first day of March in each year, a sum not to exceed 2% of the valuation of the lot or lots so owned, including all improvements thereon, as from time to time established for tax purposes, said sums so received by the Corporation to be by it used for construction, maintenance, repair, or landscape and beautification of roads, streets, sidewalks, water or sewerage facilities within the said Mountain Glen Subdivision until such time as said Mountain Glen Subdivision shall become a Municipal Corporation or shall have been annexed to or incorporated within some existing Municipal Corporation which shall have assumed the expense of maintaining roads, streets, sidewalks, sewerage, and water facilities.

Amounts due the Corporation hereunder shall bear interest, from the date payable hereinabove specified, at the highest lawful rate per annum and shall constitute a lien from said date payable upon the lot or lots, and improvements thereon, in favor of the Corporation. Such lien, if not discharged by payment of the amount due within sixty (60), days of written demand by the Corporation posted to the last known address of the owner by U.S. Mail shall be enforceable by foreclosure sale in the nature of an action to foreclose a mortgage under the Laws of the State of North Carolina. (Use of the word "Corporation" or "Owner", in each instance, shall refer also to the heirs, successors, and assigns of said Corporation and said Owner).

All covenants, restrictions, and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them for a period of ten (10) years from October 31, 1988, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of lots affected by such covenants has been recorded, agreeing to change said covenants in whole or in part.

In the event of a violation or breach of any of these restrictions by any property owner, or agent, or agent of such owner, the Corporation, the owners of lots in the neighborhood or subdivision, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Corporation shall have the right, whenever there shall have been built on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction, or condition contained in this deed, however long continued, shall not be deemed a waiver of the right to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any Court of any restrictions in this Declaration of Restrictions contained shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

IN TESTIMONY WHEREOF, the undersigned have entered into this Amendment To Restrictions and have set their hands and seals as set out in the following attached sheets.

Avery Development Corporation

(CORPORATE SEAL)

ATTEST:

Secretary

BY:

President