

# Golf Mountain Estates

## Property Owners Association

P.O. Box 1133

Etowah, NC 28739

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### FIRST RESTATEMENT OF DECLARATION OF COVENANTS AND RESTRICTIONS

### GOLF MOUNTAIN ESTATES, ETOWAH, NC

WHEREAS the ETOWAH BRICK COMPANY, INC., a North Carolina Corporation, subjected certain real property in Henderson County known as GOLF MOUNTAIN ESTATES to certain restrictive covenants by means of an instrument entitled Covenants and Restrictions ("Covenants") recorded in Deed Book 476 at Page 269 in the Henderson County, North Carolina Register of Deeds, and

WHEREAS, THE ETOWAH VALLEY GOLF CLUB, INC. was successor to the ETOWAH BRICK COMPANY, and

WHEREAS, ETOWAH SPORTS LLC. is successor to THE ETOWAH VALLEY GOLF CLUB, INC., and

WHEREAS, said Covenants authorize the formation of the GOLF MOUNTAIN ESTATES PROPERTY OWNER'S ASSOCIATION (GMEPOA) upon sale of a sufficient number of lots, and

WHEREAS, a sufficient number of lots having been sold, a property owners association known as "GOLF MOUNTAIN ESTATES PROPERTY OWNERS' ASSOCIATION" (GMEPOA) was formed on March 7, 1979, and

WHEREAS, the GMEPOA seeks to "promote the beautification of the Golf Mountain Estates Development and the implementation of the restrictions, limitations and protective covenants...", and

WHEREAS, ETOWAH SPORTS LLC. wishes to relinquish all of its' rights and responsibilities under said Covenants, and

WHEREAS, the GMEPOA agrees to assume all rights and responsibilities for administering and enforcing these Restrictions and Covenants to enhance and protect the value, desirability and attractiveness of GOLF MOUNTAIN ESTATES,

NOW, THEREFORE, ETOWAH SPORTS LLC and the GMEPOA do hereby revoke and replace all prior declarations of restrictive covenants, and amendments thereto with this First Restatement of Declaration of Restrictive Covenants for all Lots and Parcels in Sections 1 and 2 of GOLF MOUNTAIN ESTATES as shown on the plats for GOLF MOUNTAIN ESTATES and recorded as Slides 178 and A114A in the Henderson County , North Carolina Register of Deeds, along with individual lots at 73 West Fairway Drive (PIN # 00952921536455) and 75 West Fairway Drive (PIN # 00952921419955).

## **ARTICLE I - ADMINISTRATION**

1. Under the authority granted in Article 3 of N.C.G.S. 47F, the Board of Directors of the GMEPOA is hereby empowered to administer and enforce the provisions of this Declaration.
2. 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 coming under them for a period of twenty (20) years from the effective date of adoption, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the majority of the then owners of lots affected by such covenants has been recorded, agreeing to change said covenants in whole or in part.
3. Each grantee or purchaser of any Lot or Parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and to the jurisdiction, right, powers, privileges and immunities of the GMEPOA. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with the GMEPOA and the grantee or purchaser of each other Lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.
4. This Declaration may be amended by the affirmative vote of a majority of the votes entitled to be cast by Members present or represented by proxy at a meeting called for that purpose recording an amendment to this Declaration duly executed by (a) the requisite number of such Owners required to effect such amendment, or (b) by the Association, in which latter case such amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of such Owners to effect such amendment, certified by the Secretary of the Association.

## **ARTICLE II – LOTS AND STRUCTURES**

1. All lots shall be used for residential purposes exclusively.

2. No structure shall be erected altered, or placed other than one (1) detached single family dwelling unit, not to exceed two (2) stories in height above basement, and one (1) attached garage or carport.
3. All dwellings shall contain a minimum of 1,800 square feet for a one-story dwelling and 2,500 square feet for a two-story or split level dwelling. Basements, unfinished attic space, other storage space, garages, carports, porches or other area not enclosed by the main structure shall not be considered floor space in meeting the above requirements.
4. No building shall be erected nearer than forty (40) feet from the front boundary line of said lot, nor twenty (20) feet to any side street line, nor nearer than fifteen (15) feet to any adjoining property line.
5. No building, fence, wall, or other structure shall be erected, placed, or altered on any lot until the proposed building plans, specifications, plot plans (showing the proposed locations of such building or structure, drives and parking areas) and construction schedule shall have been approved in writing by the GMEPOA. No alterations may be made in such plans after approval by the GMEPOA is granted. No alterations in the exterior appearance of any building shall be made without like approval by the GMEPOA. One (1) copy of all plans, specifications and related data shall be furnished to the GMEPOA for its records.
6. No buildings (including additions), fences, retaining and other walls, nor any other structure of any type or kind shall be constructed or placed on any Lot without written approval of the GMEPOA. Such approval shall be granted only after written application has been made to the GMEPOA in the manner and form prescribed by it. The application, to be accompanied by two sets of plans and specifications, shall show the location of all improvements, if any, existing upon said Lot, the location of the improvement proposed to be constructed, the color and composition of all exterior materials to be used, proposed landscaping, and any other information which the GMEPOA may require, including soil, engineering and geologic reports and recommendations.
7. The construction of all houses and other structures, including site grading, shall be completed, and a Certificate of Occupancy issued by Henderson County authorities, within one (1) 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.
8. No buildings shall be erected of exposed cement or cinder blocks and no buildings shall be built where the siding shall consist of asbestos shingles or aluminum nor shall there be any metal roofing on any structure.
9. There shall be no prefabricated, modular, or other factory built buildings placed upon any lots except prefabricated components of buildings such as window units, door units, roof trusses, cabinet units, etc. which shall be permitted. As construction methods change in future years, the GMEPOA reserves the right to modify this paragraph in its sole discretion.

10. No structure of a temporary character shall be placed upon any lot at any time; however, 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 a residence or permitted to remain on the lot after completion of construction.
11. No fences with a height of more than five (5) feet shall be permitted on any lot within GOLF MOUNTAIN ESTATES. No fences, walls, hedges or shrubbery shall be planted on any corner lot which would prevent motorists from having a clear, unobstructed view of oncoming traffic. No fences shall be allowed in front of houses except accent sections. All fences must be in the rear portion of a house. However, no chain link fences shall be permitted.

### **ARTICLE III - GENERAL PROVISIONS**

1. No animals whatsoever excepting domestic pets such as dog, cats, or other small animals shall be harbored on any lot. It is specifically understood that no dogs shall be permitted to run free on the golf course adjoining Golf Mountain Estates.
2. Real Estate "For Sale" signs are restricted to a single sign not to exceed three (3) square feet placed on a pole not to exceed five (5) feet in height and placed on the street side of the property. The design must be in accordance with the style and color scheme established by the GMEPOA. The sign may not be closer than ten (10) feet nor farther than twenty (20) feet from the street. A single "Builders" sign, meeting these size and placement restrictions may be erected during the construction of a new house. It must be removed when the house is completed. No other commercial signs shall be erected or maintained on any lot except with the permission of the GMEPOA or except as may be required by legal proceedings. Property identification and like signs exceeding three (3) square feet may not be erected without permission of said GMEPOA.
3. Each owner shall provide space for a minimum of two (2) private vehicles off the street prior to occupancy of any dwelling. Unsightly or unkempt private vehicles which substantially decrease the beauty of the neighborhood as a whole, or any unregistered vehicle shall be parked or stored in areas which are screened from the street, the golf course, and adjoining properties. Parking on the streets of said subdivision will not be permitted except during times when the normal parking facilities will not accommodate all the vehicles owned by persons visiting said lot owners.
4. Trucks (including pickup trucks over  $\frac{3}{4}$  ton capacity), motorized recreational campers, travel trailers, boats and carriages for boats (hereinafter referred to as "subject personal property") may be permanently parked or stored on the Lots covered by this Declaration only with the permission of the GMEPOA and then only in areas which are screened from the street, the golf course, and adjoining properties. Subject personal property may be parked temporarily on the Lots for the sole purpose of loading and unloading, and only then for a period not to exceed two (2) days.
5. No manufactured home shall be parked on any lot for any purpose.

6. No fuel tanks or similar storage receptacles may be exposed to view, and may only be installed within the main dwelling house, within an enclosed garage, or buried underground.
7. Electric power, telephone and cable television service to all structures on all lots shall be by underground cable or wires from the utility company's main underground cables or lines to said structures. Small satellite television receivers are permitted to conform to the 1996 Telecommunications Law. To the extent possible, allowing for the requirements for proper reception, they should be screened from the street, the golf course, and adjoining properties.
8. Drainage and utilities easements are reserved as set out and itemized on recorded plats for Golf Mountain Estates. No other easements, rights of way, or rights of access shall be deeded, granted or in any way given by lot owners to any other person, firm, or corporation through and over any lot in Golf Mountain Estates without the written permission of the GMEPOA.
9. In order to ensure a panoramic view by all lot Owners, Owners shall have the right to trim or top any tree exceeding a height of forty (40) feet on any lot within GOLF MOUNTAIN ESTATES; such work to be performed by an insured tree cutting service with all costs and liability borne by the affected Owner. Owners of land upon which a tree or trees are to be trimmed or topped shall be given adequate notice of such work, and provided with proof of insurance prior to the work being performed.
10. 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.
11. 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.
12. No unsanitary conditions prejudicial to the public health shall be permitted on any lot. All sewage shall be disposed of by septic tanks approved by the State Board of Health until such time as a regular sewage system becomes available. No liquid waste of any description shall be drained, pumped or disposed of in any way into open ditches or water courses. Trash, garbage, or other waste shall be kept in sanitary containers, hidden from view of adjoining property owners and streets until disposed of. No portion of any lot shall be used or maintained as a dumping ground for rubbish of any description, including yard waste.
13. No lot shall be subdivided, or its boundary lines changed during the period of these restrictions nor shall any lot owner convey any parcel of said lot less than the whole of each without the written permission of the GMEPOA.
14. It is hereby agreed that ETOWAH SPORTS LLC, its successors and assigns, will not erect any structure or plant trees or shrubbery in the buffer zone which lies between the adjoining golf course fairways and the southern boundary line of Block No. 1, Section 1 of GOLF MOUNTAIN ESTATES to purposely and materially restrict or obstruct the view of the golf course from the lots in GOLF MOUNTAIN ESTATES which immediately border the golf

course. It is not the purpose of this clause to prohibit all plantings in the buffer zone area, but only such planting which would materially obstruct and impair an esthetically desirable view of the golf course and surrounding area.

## ARTICLE IV – ENFORCEMENT

1. In order to administer and enforce the provisions of this Declaration, the GMEPOA shall establish an Adjudication Committee (“Committee”). Said Committee shall be comprised of three (3) Owners, one of whom shall be a member of the Board of Directors.
2. In administering the provisions of Article II, the Committee may disapprove any application:
  - a) If such application does not comply with this Declaration;
  - b) Because of the reasonable dissatisfaction of the Committee with grading plans, location of the proposed improvements on a Lot, finished ground elevation, color scheme, finish, design proportions, architecture, height of foundation, shape, height or style of the proposed improvement, the materials used therein, the kind, pitch or type of roof proposed to be placed thereon; or
  - c) If in the judgment of a majority of the Committee reasonably exercised, the proposed improvement will be inharmonious with the neighborhood, or with the improvements erected on other Lots.
3. The Committee may grant reasonable variances or adjustments from the provisions in this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to Owners of other Lots.
4. Any involved Owner shall have the right to appeal to the Board from any decision of the Committee within 30 days after entry of such decision.
5. If an alleged violation of the provisions of Article III of this Declaration is brought to the attention of the GMEPOA, the following procedure shall be followed:
  - a) Every effort shall be made to settle the dispute directly, by negotiation, between the complainant and the alleged violator on a personal level. If necessary, a member of the Committee may be designated to act as a facilitator in these negotiations.
  - b) If negotiation fails to settle the dispute, a hearing shall be held before the Committee to determine whether a violation exists. The Committee shall accord the alleged violator fair notice and a hearing before the Committee. The alleged violator shall have the right to present evidence to the Committee and to be represented by counsel. Hearings shall be open to the public. Notice shall be given by written communication identifying the violation charged and given to the alleged violator sufficiently in advance of the hearing to allow preparation of a defense.

- c) After hearing testimony and receiving evidence, the Committee shall make its decision based on the Declaration and By-Laws, and shall issue a written decision no later than five (5) days after the hearing.
  - d) Upon determination of a violation, a letter to the violator to cease and desist shall be delivered within ten (10) days of the hearing. This letter shall specify: (i) the violation; (ii) the action required to abate the violation; (iii) a time period (not less than ten (10) days) during which the violation may be abated without further action, and (iv) the penalty for failure to abate the violation, which may include a fine of one hundred dollars (\$100) per day for each day after expiration of the time period specified for abatement.
  - e) Either the complaining party or the alleged violator shall have the right to appeal to the Board from any decision of the Committee within ten (10) days after entry of such decision.
  - f) Any penalty imposed shall constitute an assessment and lien on the property and shall be a personal obligation of the Owner.
  - g) In addition to the remedies herein set out, the Committee shall have the power to order the removal or abatement of any structure, thing, or condition which is in violation of the Declaration or By-Laws. If the Owner fails to abate the violation within the time period set forth in the written decision, the GMEPOA shall have the power to enter upon any property and remove therefrom the offending structure or condition, upon appropriate notice to the Owner of the property. All costs incurred in the removal or abatement of a violation shall be assessed against the violating Owner and may be collected as an assessment. "Costs" includes reasonable attorney fees and interest, if applicable, at the maximum rate allowed by law.
  - h) Prior to filing a civil action to enforce this Declaration, the GMEPOA shall attempt Prelitigation Mediation as set forth in N.C.G.S 7A-38.3F.
5. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
6. Notwithstanding the foregoing, the owner of a lot, or any owners jointly or severally, shall have the right to proceed at law or in equity to compel compliance to the terms of these Covenants or to prevent the violation or breach in any event.

## **ARTICLE V - SEVERABILITY**

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

IN WITNESS THEREOF, I, JOHN LANDRUM, President of the Golf Mountain Estates Property Owners Association, acting on behalf of the Members, and KEVIN GRIFFIN, acting on behalf of Etowah Sports, LLC hereby restates the Covenants by striking them in their entirety, and by substituting therefor this First Restatement of Declaration of Restrictive Covenants for Golf Mountain Estates, which has been duly adopted and approved by the Members of the Association by an affirmative majority vote of the votes entitled to be cast by Members by mail ballots tabulated on October 27, 2013.

John Landrum  
John Landrum, President GMEPOA

Kevin Griffin  
Kevin Griffin, ETOWAH SPORTS, LLC.

I, Cynthia Seymour , Secretary, certify that John Landrum personally came before me this day and acknowledged that he is President of Golf Mountain Estates Property Owners Association, a corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the Association.

Witness my hand this the 1 day of November, 2013

Cynthia Seymour  
Cynthia Seymour, Secretary GMEPOA

NORTH CAROLINA  
HENDERSON COUNTY

I, a Notary Public of the County and State aforesaid, certify that JOHN LANDRUM personally came before me this day and acknowledged that he is President of the Golf Mountain Estates Property Owners Association, and that by authority duly given and as the act of the Association, the foregoing instrument was signed and executed on its behalf.

Witness my hand and official stamp or seal, this 1<sup>st</sup> day of November, 2013.

My Commission Expires: 8/24/2018 Lori Ann Price  
Notary Public





NORTH CAROLINA  
HENDERSON COUNTY

I, a Notary Public of the County and State aforesaid, certify that KEVIN GRIFFIN personally came before me this day and acknowledged that he is the Registered Agent for Etowah Sports, LLC, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed and executed on its behalf.

Witness my hand and official stamp or seal, this 1<sup>st</sup> day of November, 2013.

My Commission Expires: 8/24/2018 Rori Ann Price  
Notary Public

NORTH CAROLINA  
HENDERSON COUNTY

I, a Notary Public of the County and State aforesaid, certify that CYNTHIA SEYMOUR personally came before me this day and acknowledged that she is Secretary of the Golf Mountain Estates Property Owners Association, and that by authority duly given and as the act of the Association, the foregoing instrument was signed and executed on its behalf.

Witness my hand and official stamp or seal, this 1<sup>st</sup> day of November, 2013.

My Commission Expires: 8/24/2018 Rori Ann Price  
Notary Public