

FILED
CHATHAM COUNTY NC
TREVA B. SEAGROVES
REGISTER OF DEEDS

FILED Apr 23, 2014
AT 04:19:58 pm
BOOK 01739
START PAGE 0362
END PAGE 0367
INSTRUMENT # 03662
EXCISE TAX (None)

BOOK 1739 PAGE 0362

Prepared by and return to:

Meritage Homes of the Carolinas
8800 E Raintree, Suite 300
Scottsdale, AZ 85260

**FIFTH AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

STATE OF NORTH CAROLINA

COUNTY OF CHATHAM

This FIFTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS for The Legacy at Jordan Lake (this "Fifth Amendment") is made this 21st day of April, 2014 (the "Effective Date"), by Meritage Homes of the Carolinas, Inc., an Arizona corporation ("Declarant").

A. Declarant is the successor to the "Declarant" under that Declaration of Covenants, Conditions, and Restrictions for The Legacy at Jordan Lake recorded in the office of the Register of Deeds of Chatham County, North Carolina, in Book 1252 at Page 524, as amended, supplemented, assigned or otherwise modified by instruments recorded in Book 1299 at Page 789, Book 1311 at Page 1090, Book 1375 at Page 196, Book 1444 at Page 400, Book 1490 at Page 652, Book 1597 at Page 165, Book 1643 at Page 829, Book 1643 at Page 860, as corrected in Book 1727 at Page 1, all recorded in the Chatham County Register of Deeds (collectively, the "Declaration"). Capitalized terms in this Fifth Amendment shall have the same meanings as set forth in the Declaration, except as otherwise set forth in this Assignment.

B. Pursuant to Section 15.2(a) of the Declaration, until termination of the Class "B" membership, Declarant may unilaterally amend the Declaration for any purpose.

C. Declarant desires to amend the Declaration to provide for certain additional Builder rights specific to Declarant.

NOW, THEREFORE, pursuant to the rights retained by Declarant under the Declaration, Declarant hereby declares that the Declaration is amended as follows:

1. Section 1.48 is added to the Declaration, which will read as follows:

“Meritage”: Meritage Homes of the Carolinas, Inc., its successors and affiliates.

2. A Section 1.49 is added to the Declaration as follows and the attached Exhibit “D” is hereby added as an exhibit to the Declaration:

“Meritage Property”: That Property owned by Meritage as of the Effective Date of this Fifth Amendment more particularly described on Exhibit “D.”

3. Section 2.1(j) of the Declaration is deleted and replaced in its entirety with the following:

(j) The right of the Declarant and Builders (with the approval of Declarant, which approval shall not be unreasonably withheld, conditioned, or delayed) to conduct activities within the Common Area, such as tournaments, charitable events, and promotional events and to restrict Owners from using the Common Area during such activities, provided such activities shall be conducted in a manner to minimize (to the extent reasonably possible) and substantial interference with the Owners’ use and enjoyment of the Common Area and shall not exceed seven consecutive Days;

4. Section 2.1(k) of the Declaration is amended by inserting “and, only with respect to Common Area within the Meritage Property, Meritage” immediately after “Declarant” in the first line of Section 2.1(k).

5. Section 4.2 of the Declaration is amended and restated in its entirety as follows:

Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant’s prior written consent, and Meritage (as former Declarant) may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits “A” or “B”, personal property and leasehold and other property interests. Such property shall be accepted by the Association in its “as is” “where is” condition and subject to ordinary wear and tear, and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Neither Declarant nor Meritage shall be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section nor to make any changes or improvements to any property to cause it to be in compliance with any applicable laws or regulations, as such laws and regulations may change from time to time. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines. Upon written request of Meritage, the Association shall reconvey to Meritage any unimproved portions of the Properties originally

conveyed by Meritage to the Association for no consideration, to the extent conveyed by Meritage in error or needed by Meritage to make adjustments in property lines.

6. Section 7.4 of the Declaration is amended by inserting the following to the end of the Section:

Meritage may unilaterally subject the Meritage Property (Phase 2) to a sub-declaration(s), which may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not inconsistent with this Declaration, as Meritage may determine. Such provisions may be more, but not less, restrictive than the provisions of this Declaration. Except for more restrictive provisions in any sub-declaration(s), this Declaration shall control over any provision of a sub-declaration that conflicts or is inconsistent with this Declaration.

7. The following Section 9.10 is hereby added to the Declaration:

9.10 Meritage Exemption. Notwithstanding anything to the contrary in this Declaration, Meritage shall be a permanent member of Declarant's Builder Team, this Article shall not apply to the activities of Meritage on the Meritage Property, this Article may not be amended in any way relating to the activities of Meritage on the Meritage Property without Meritage's prior written consent, and Meritage shall have the right to approve any amendments by the ARB to the Architectural Standards and Design Guidelines relating to the Meritage Property. Notwithstanding the foregoing, the exemptions set forth in this Section 9.10 shall not apply to Owners who purchase Units within the Meritage Property from Meritage.

8. Section 10.2 of the Declaration is amended by inserting at the end of Section 10.2 the following:

Notwithstanding the foregoing, for so long as Meritage owns a Unit within the Meritage Property, the Board may not promulgate, modify, or delete any rules or regulations in any way relating to the Meritage Property without the prior written consent of Meritage (which consent shall not be unreasonably withheld, delayed or conditioned).

9. Section 10.13 of the Declaration is amended by adding the following sentence to the end thereof:

Notwithstanding the foregoing, Meritage shall have the right to replat, subdivide, recombine, or change the boundary lines any Unit or Units that Meritage owns within the Meritage Property without the prior written consent of Declarant, so long as the total number of Units within the Meritage Property does not exceed the total number of Units within the Meritage Property as of the Effective Date of this Fifth Amendment.

10. The following Section 11.18 is hereby added to the Declaration:

11.18 Easement Rights Reserved to Meritage. Notwithstanding anything to the contrary in this Declaration, all rights reserved to the Declarant under this Article 11 shall also be reserved to Meritage as to the Meritage Property.

11. Section 13.5 of the Declaration is amended by adding the following to the end of the first main paragraph of Section 13.5:

For the sole purpose of providing Meritage the right to disapprove any action, policy, or program of the Association, the Board, or any committee under this Section 13.5 that may relate to the Meritage Property, Meritage shall be deemed a Class "B" Member for purposes of Sections 13.5(a), (b), (c), and (d). Meritage's rights under this Section shall relate only to matters arising under Section 13.5 relating to the Meritage Property, and in no event shall Meritage be deemed a Class "B" Member for any other purpose under the Declaration or Governing Documents."

12. The first sentence of Section 15.2(a) of the Declaration is amended by adding the following to the end thereof: "; provided, however, that Declarant may not amend this Declaration in any way relating to the Meritage Property without the prior written consent of Meritage."

13. Section 15.9 of the Declaration is amended by adding the following to the end of Section 15.9:

Declarant hereby grants to Meritage a personal license to use the words "The Legacy at Jordan Lake" and any logo of the "The Legacy at Jordan Lake" in printed or promotional materials in connection with Meritage's development, marketing, and sale of the Meritage Property for so long as Meritage owns a Unit (the "IP License"). The IP License shall be royalty free, nonexclusive, non-transferrable, and non-sublicensable, and Declarant shall have the right, but not the obligation, to approve such printed and promotional materials prior to their use, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Meritage shall have the right, without Declarant's prior written consent, to transfer or sublicense its IP License, in whole or in part, to another Builder(s) in connection with Meritage's transfer of a Unit within the Meritage Property to such Builder(s).

14. In the event of any conflict between this Fifth Amendment and the Declaration, the terms of this Fifth Amendment shall control. Except as specifically modified herein, the terms of the Declaration shall remain unchanged and in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Fifth Amendment as of the date first set forth above.

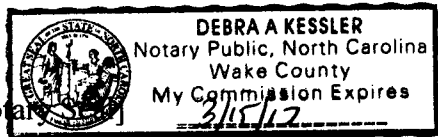
MERITAGE HOMES OF THE CAROLINAS, INC, an Arizona corporation

By: *Jimmy Gaskins*
Name: JIMMY GASKINS
Title: VP OF LAND

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, DEBRA A KESSLER, a Notary Public of the county and State aforesaid, certify that JIMMY GASKINS personally came before me this day and acknowledged that he/she is VP OF LAND of Meritage Homes of the Carolinas, Inc., and being authorized to do so, he/she executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal this the 23rd day of APRIL, 2014.



[Notary Seal]

Debra A Kessler
Notary Public
My Commission Exp. 3/15/17

EXHIBIT "D"

MERITAGE PROPERTY

BEING all of Tract 3, containing 82.52 acres, more or less, as shown on plat entitled "ALTA/ACSM Land Title Survey & Subdivision for The Legacy at Jordan Lake," dated July 13, 2012 by William M. DiGiacomo, P.L.S. recorded in Plat Slide 2012, Pages 158-170, Chatham County Registry (referred to individually as "Meritage Property (Phase 2)").

BEING all of those subdivided residential lots shown on the plat entitled "ALTA/ACSM Land Title Survey & Subdivision for The Legacy at Jordan Lake," dated July 13, 2012 by William M. DiGiacomo, P.L.S. recorded in Plat Slide 2012, Pages 158-170, Chatham County Registry, that are owned by Meritage.