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by: AMANDA W. GARRETT  
REGISTER OF DEEDS  
BOOK 467 PAGE 524

## RESTRICTIVE COVENANTS.

NORTH CAROLINA  
PERSON COUNTY

PREPARED BY: George W. Jackson  
Attorney at Law

**THIS DECLARATION AND AGREEMENT**, made and entered into this 8<sup>th</sup> day of December, 2003, by and between J. Howard Whitfield and wife, Dorothy B. Whitfield, parties of the first part and all successors in title and their heirs and assigns of all lots included within the lands hereinafter described, parties of the second part;

### WITNESSETH:

**THAT WHEREAS**, the parties of the first part own a development and lots hereinafter described and intend to convey certain of said lots subject to the restrictive covenants contained in this Agreement, which restrictive covenants are for the benefit of the present and future owners of the said lots made subject hereto;

**NOW, THEREFORE**, the parties of the first part do agree that all lots hereinafter enumerated and referred to shall be sold subject to the restrictions and covenants hereinafter set forth, and all present and future owners of said lots, for themselves, their heirs, successors and assigns, by the purchase or acquisition of said lots agreed to be bound by the restrictions and covenants contained in this Agreement. The purchaser or owner of any of the lots or any interest in any of the lots made subject to this Agreement does, for himself, herself, or itself, and for his, her or its successors in interest, agree to the following restrictions and covenants:

### ARTICLE I PROPERTY DESCRIPTION

**SECTION 1. Property Subject.** The property to which these restrictions and covenants shall apply is described as follows:

Being those lots or parcels of land in Bushy Fork Township, Person County, North Carolina, bounded on the west by NC Highway 49, bounded on the north by lands of Don F. Elliott, bounded on the east by Harvey Lee Bradsher lands and bounded on the south by lands of Magnolia F. Villines Estate, being what is shown and designated as Lots 1, 2, 3, 4 and 5 on plat of survey for Dorothy B. Whitfield, surveyed by Hamlett-Jennings & Associates, John J. Jennings, L-3252 dated March 2003 and recorded in Plat Cabinet 13, Page 294, Person County Registry, which plat is incorporated by reference.

### ARTICLE II DEFINITIONS

**SECTION 1. Owner.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any lot which is part of the property described above, and shall further include the record owner of a fee simple title to any lot which is shown upon a map or plat of survey of any property hereafter subjected to the terms, provisions and conditions hereof in accordance with the provisions herein provided.

SECTION 2. Properties. "Properties" shall mean and refer to all real property described in Article I above and such additions thereto as may hereafter be subjected to these restrictions and covenants.

SECTION 3. Lot. "Lot" shall mean and refer to any parcel of land shown upon any recorded Subdivision map or plat of survey of the properties. No lot, once platted of record, shall be further subdivided so as to create additional lots without prior approval of the Architectural Review Committee, as such Committee is hereinafter established.

SECTION 4. Declarant. "Declarant" shall mean the persons signing this document, their heirs, successors and assigns.

**ARTICLE III.  
ARCHITECTURAL REVIEW COMMITTEE,  
MAINTENANCE AND USE RESTRICTIONS**

SECTION 1. Architectural Review Committee and Approval of Plans. No building, wall, fence or other structure or improvement of any nature or kind whatsoever shall be commenced, constructed, erected or maintained upon the properties, nor shall any exterior addition to or change in or alteration to any building, fence, wall, or other structure be made until the plans and specifications showing the nature, kind, design, height, materials and location of the same have been submitted to and approved, in writing, as to harmony of external design and location in relation to surrounding structures and topography by the Declarant or by such persons as Declarant may appoint, or in the event the Declarant no longer owns any lots subject to these covenants and restrictions, then by the Architectural Review Committee. In the event the Declarant or his appointees, or the Architectural Review Committee, as the case may be, fails to approve or disapproves such design and location within 30 days following the dates such plans and specifications are submitted to the Declarant or the Architectural Review Committee, approval will not be required and this Article will be deemed to have been fully complied with. Upon giving approval to such plans and specifications, construction shall be commenced and prosecuted to completion promptly and in strict conformity with such plans as have been so approved by the Declarant or the Architectural Review Committee. Declarant or the Architectural Review Committee shall be entitled to enjoy any construction which is in violation of these restrictions.

SECTION 2. Architectural Review Committee. The Declarant, or their duly appointed representative, shall constitute the Architectural Review Committee for so long as the Declarant owns any lots subject to these covenants and restrictions, or until such time as Declarant appoints an Architectural Review Committee consisting of three or more owners, other than Declarant, of lots subject to these covenants and restrictions. Any Architectural Review Committee so appointed by Declarant shall serve for a period of one year following their appointment. Thereafter, an Architectural Review Committee consisting of three or more persons shall be elected annually by the owners of a majority of the lots subject to these restrictions and covenants. A meeting of the owners of such lots shall be held during the month of May of each year and the members so elected shall be responsible for notifying the lot owners of the time and place of the meeting to be held each year thereafter. At such meeting, the lot owners or their representatives shall be entitled to one vote for each lot owned. Each lot owner shall be entitled to reasonable notice of the meetings. The Architectural Review Committee shall elect one of its members to serve as chairman of the Committee and to preside over meetings of the Committee and meetings of the lot owners. The Architectural Review Committee shall have all duties, authorities and responsibilities herein specified. Members of the Architectural Review Committee shall not be entitled to compensation for services performed pursuant to these provisions or for any other purpose.

SECTION 3. Variances. The Declarant, or the Architectural Review Committee, as the case may be, shall have power to and may, but shall not be required to, allow adjustments of the conditions and restrictions herein contained in order to overcome practical difficulties and prevent unnecessary hardships in the application of the requirements herein contained, provided, however, that such is done in conformity with the intent and purpose hereof, and provided also that in each instance such variance or adjustment shall not be materially detrimental or injurious to the other property or improvements within the development hereby restricted. Variances may include, but not be limited to height, size and set back requirements. Variances so granted shall not exceed 20% of square footage required of buildings or 20% of set back requirement.

SECTION 4. Land Use and Building Type. The property hereby restricted shall be used exclusively for single family residential purposes and no lot may be subdivided without prior written approval of the Architectural Review Committee. All dwellings constructed herein shall not exceed two and one-half stories in height, exclusive of basement. No dwelling containing less than 2800 square feet of finished, heated living area, exclusive of garages, carports, storage areas, breeze ways, and stoops shall be erected on any lot. The discretion of the Architectural Review Committee in allowing a variance with the respect to the minimum dwelling square footage shall be limited to 20 percent thereof. No dwelling shall be constructed upon any lot hereby restricted unless said dwelling has an attached closed garage sufficient for the storage for at least two standard size motor vehicles. All structures erected shall be of good standard quality workmanship and the materials used therein shall be of standard and approved quality. No manufactured homes shall be permitted, without regard to whether the same are placed on permanent foundation and without regard to whether said manufactured homes are single wide or double wide. All dwellings shall be served by private wells and individual septic tanks, the construction, operation and maintenance of which shall be in full compliance with all applicable County and State building codes and health requirements. All trash receptacles shall be concealed from view of the public roads.

SECTION 5. Building Location. All buildings constructed on properties restricted hereby shall have a minimum set back of at least 100 feet from any highway or right-of-way and shall have a minimum set back of at least 20 feet from any side line and 20 feet from any rear lot line.

SECTION 6. Building Completion. The exterior of all dwellings and other structures must be completed within twelve (12) months following commencement of construction unless the Architectural Review Committee, for good cause shown, extends such construction and completion requirement.

SECTION 7. Prohibitive Activities. No noxious or offensive activities may take place on any lot restricted hereby, nor shall anything be done on such a lot which may be or may become an annoyance or nuisance to the surrounding property owners, including, but not limited to, hunting or the discharge of firearms. No business activity, trade, or profession of any kind whatsoever shall be carried on or practiced upon any of the lots restricted hereby. No swimming pools or other excavation which may reasonably be expected to contain accumulations of water may be constructed upon any lot without the prior written consent of the Architectural Review Committee. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within an accessory building with a screened area, or buried underground.

SECTION 8. Temporary Structures. No structure of a temporary nature, whether trailer, basement, tent, shack or barn shall be erected or paced upon any lot restricted hereby. No detached building of any kind shall be used for human habitation, either temporarily or permanently.

SECTION 9. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any lot hereby restricted or any dwelling located upon such lot except that dogs, cats, or other common household pets may be kept or maintained provided they are not kept or maintained for commercial purposes.

SECTION 10. Signs. No signs of any kind shall be displayed to the public view on any lot erected hereby, except that one sign of not more than five square feet advertising the property for sale or rent or signed used by the Declarant or their agents to advertise the property during construction and sale periods.

SECTION 11. Parking. Adequate off street parking shall be provided by the owner of each lot for parking of automobiles of such owner or residence of any dwelling constructed thereon.

#### ARTICLE IV MAINTENANCE

SECTION 1. Maintenance During Construction. During construction of any dwelling or other structure upon any lot erected hereby, the contractor and the owner must keep the building site reasonably clean. All building debris, stumps, trees and other refuse must be removed from the

construction site as often as is necessary to keep the site and lot in a neat and attractive condition. Such debris shall not be dumped or allowed to remain on any part of the properties restricted hereby.

SECTION 2. Building and Grounds. It shall be the responsibility of the owner of each lot restricted hereby to maintain the lots and structures thereon in a clean, sightly and well-kept condition and to prevent same from substantially decreasing the beauty and value of other properties in the neighborhood as a whole and in the specific area affected. No refuse pile or unsightly accumulation of trash and debris shall be placed upon or suffered to remain upon any such lot, whether developed or vacant.

#### ARTICLE V EASEMENTS AND RIGHTS OF WAY

SECTION 1. Access and Utility Easement. The Declarant hereby specifically reserves the right and privilege to determine the location of all necessary rights of way for utilities easements, and the heirs, successors and assigns of the Declarant shall accordingly take title to any portion of the property subject to the rights herein reserved by the Declarant to determine the location of and to grant any such necessary rights of way or easements. All utility lines specifically serving an individual lot must be placed underground at the expense of the owner of said lot to the extent that such underground placement is possible and consistent with the requirements and regulation of the applicable utility provider.

SECTION 2. Right of Entry. The Declarant and the Architectural Review Committee, their heirs, successors and assigns, agents and representatives are hereby expressly granted the right to enter upon any lot, such entry to be made by personnel with suitable equipment, for the purpose of moving, removing, clearing, butting or pruning underbrush, weeds, or other unsightly growth, trash or debris, which may be located upon any of the lots restricted hereby and for the purpose of otherwise enforcing the provisions hereof, which entry shall, in no event, be deemed to be a trespass.

#### ARTICLE VI

SECTION 1. Enforcement. The Declarant, or the owner of any lot restricted hereby shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these covenants and restrictions. In addition thereto, the Declarant, the Architectural Review Committee or their duly appointed representatives, shall have the right, but not the obligation, whenever there exists on any lot restricted hereby any condition which is in violation of these covenants and restrictions, and to summarily abate or remove the same at the expense of the owner if, after thirty (30) days prior written notice of such violation, such violation has not been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. Failure to enforce any covenant or restriction herein contained shall in no way be deemed a wavier of the continuing right to enforce such covenants or restriction.

SECTION 2. Subordination of Lien. The lien which may be created under the provisions of Article VI, Section 1 above for the expense of abatement or removal of any condition in violation of these covenants and restrictions shall be subordinate to and inferior to any mortgage then or thereafter encumbering the lot upon which such lien attaches.

#### ARTICLE VII GENERAL PROVISIONS

SECTION 1. Duration and Amendment. These covenants and restrictions shall run with and shall be binding upon the properties hereby restricted for a term of twenty years from the date of the recordation of these covenants and restrictions, after which time said restrictions and covenants shall be automatically extended for successive periods of ten years, unless an instrument signed by not less than eighty percent of the owners has been recorded, agreeing to change these covenants and restrictions in whole or in part.

SECTION 2. Binding Effect. The provisions contained herein, both negative and affirmative, and including, without limitation, the covenants to pay assessments, shall be binding upon and inure to the benefit of each lot and the owner of each lot, their heirs, successors and assigns.

ARTICLE VIII  
SEVERABILITY

Each and every one of the covenants and restrictions contained herein shall be considered to be an independent and separate covenant and agreement and in the event any one or more of such covenants or restrictions shall for any reason, be held to be invalid or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect. Failure of any person or persons to take action to enforce the violation of any of these covenants and restrictions shall not be construed as a waiver of any enforcement rights and shall not prevent the enforcement of any covenant or restriction in the future.

J. Howard Whitfield (SEAL)  
J. Howard Whitfield

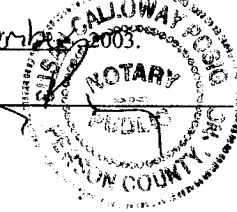
Dorothy B. Whitfield (SEAL)  
Dorothy B. Whitfield

NORTH CAROLINA  
PERSON COUNTY

I, Susan Calloway Posig, a Notary Public of the aforesaid State and County do hereby certify that **J. Howard Whitfield and wife, Dorothy B. Whitfield**, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal, this the 16<sup>th</sup> day of December, 2003.

Susan Calloway Posig  
Notary Public



My Commission Expires: November 12, 2006

NORTH CAROLINA  
PERSON COUNTY

(Person County, NC)

The foregoing certificate of Susan Calloway Posig, a Notary Public is certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the Office of the Register of Deeds of Person County, North Carolina, in Book 467, Page 524, this the 16 day of December, 2003.

Amanda W. Garrett  
Register of Deeds  
AMANDA W. GARRETT