

VANCE COUNTY, N. C.
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2002 SEP 30 AM 10:29

CYNTHIA S. ABBOTT
REGISTER OF DEEDS

6575

PREPARED BY: STAINBACK & SATTERWHITE - Michael E. Satterwhite
STATE OF NORTH CAROLINA
COUNTY OF VANCE

**RESTRICTIVE COVENANTS
FOR
BLACK HORSE RUN**

WHEREAS, Rogers & Franklin Design Builders, Inc., is the owner in fee simple of the following described lots or parcels of land located in Kittrell Township, Vance County, North Carolina, and more particularly described as follows:

BEING Lots 1 – 6, inclusive, according to survey and plat entitled "Final Plat of Black Horse Run; Owner – Rogers & Franklin Design Builders, Inc." as prepared by Cawthorne & Associates, PLS, PA, dated March 5, 2002, as appears in Plat Book "W," Page 574, in the office of the Register of Deeds of Vance County.

WHEREAS, Rogers & Franklin Design Builders, Inc. ("the Developer") for the purpose of creating and maintaining a quiet, restful and desirable development and for the

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protection of owners who build or buy homes in the said above-described development, does hereby covenant to and with the present and future owners of any lots as follows:

1. USE OF LOT: The above-described lots shall be used for single-family residential purposes only; no dwelling may be erected, altered, placed or permitted to remain on the above-described lots other than one detached single-family dwelling (and garage), not to exceed two stories in height, exclusive of basement or attic.

2. SUBDIVIDING LOTS: No lot shall be subdivided without the written consent of the Developer, its successors, assigns or duly authorized agent, except that two lot owners may subdivide an unimproved lot lying between them, but only one single-family residence shall be built on the combined original lot and the subdivided portion of any lot; provided further, that adjoining lot owners may adjust their common boundary line by the sale or exchange of property between such owners, so long as such sale or exchange is approved by the Developer and conforms in all respects with the zoning ordinances of Vance County, North Carolina and so long as such sale or exchange does not result in any improved lot being reduced to less than 30,000 square feet and so long as said sale or exchange conforms in all other respects with the provisions of these restrictive covenants.

3. PRIOR APPROVAL OF IMPROVEMENTS: No dwelling [NOTE: Lots 1 – 4, inclusive, are restricted to "stick built" dwellings and Lots 5 – 6, inclusive, are restricted to "stick built" and/or "off frame" modular dwellings, all subject to the approval hereinafter set forth], building, structure, outbuilding, fence, wall or other improvement of any nature whatsoever (except for the interior alterations to existing structures not affecting the external structure or appearance of any improvements on any portion of the lot) shall be constructed on any lot unless and until the plans and building specifications for such construction have been approved in writing by the Developer, its successors, assigns or duly authorized agent. The plans to be submitted to the Developer for its approval shall include:

- (a) the construction plans, specifications and description of materials, including all exterior colors and proposed landscaping (specifically including placing of driveways, and clearing and/or tree removal) and grading; and

- (b) a plat showing the locations of all proposed improvements.

The Developer's approval required hereinabove is a continuing approval in regards to all future alterations, including exterior colors.

4. NO LIABILITY: Approval by the Developer shall not constitute a basis for liability of the Developer for any reason, including, without limitation: (i) failure of the plans to conform to any applicable building codes; or (ii) inadequacy or deficiency in the plans resulting in defects in the improvements.

5. MINIMUM SQUARE FOOTAGE: No plans for a dwelling shall be approved unless the living area (heated floor area) exclusive of open porches, garages and patios, exceeds 1,500 square feet, measured from outside wall lines (and excluding any square footage in a basement). No plans for a two-story dwelling shall be approved unless the living area of the first story (heated floor area), exclusive of open porches, garages and patios, exceeds 1,200 square feet, measured from the outside wall lines.

6. FOUNDATIONS: All buildings shall have perimeter foundations of finished brick and/or stucco block.

7. PROHIBITED BUILDING MATERIALS: No building shall be constructed which uses cinder or concrete blocks (except cinder or concrete block construction with stucco to create a Spanish style home), asphalt shingles, tar paper, metal siding (exclusive of lap-side metal) or masonite siding (without prior written approval of the Developer, its successors, assigns or legal agent) as a major exterior building material (these materials may be used as roofing material, however).

8. TEMPORARY STRUCTURES: No structure of a temporary character, including tents, motor homes, trailers, campers, manufactured/mobile (single and/or double wide) homes and/or "off frame" modular homes shall be used on any lot at any time as a residence, either temporarily or permanently. In addition, the type of structure to be placed on a lot shall be governed by the requirements of Paragraph 3 above.

9. DRIVEWAYS: All driveway pipe shall be constructed of fifteen-inch (15") re-enforced concrete pipe, with a minimum of sixteen feet (16') of pipe laid in the driveway entrance in compliance with all specifications of the State of North Carolina, and all driveways and parking areas must have a minimum of four (4) inches of gravel covering their entire surfaces.

10. APPROVAL CRITERIA: Approval of the proposed plans and specifications shall be based upon the compliance with the provisions of these Restrictive Covenants, the quality of workmanship and materials, harmony of exterior design with the surrounding structures, locations of improvements with respect to topography and finished grade elevation, the effect of the construction on the natural tree growth and vegetation, and all other factors which in the sole opinion of the Developer shall affect the desirability or suitability of the proposed improvements.

11. COMPLETION REQUIREMENT: Construction of any approved dwelling building, structure, outbuilding, fence, wall or other improvement shall be completed within twelve (12) months from the date the Vance County Code Enforcement Office issues a building permit, if required, or within twelve (12) months from the date construction begins, whichever occurs first.

12. MAINTENANCE REQUIREMENT: All approved homes shall thereafter be maintained in a state of good repair (i.e. landscaped, grass mowed, painted, etc.) to further the harmonious design and maintenance of the subdivision and any external physical damage to a previously approved home shall be repaired within ninety (90) days of said damage [**NOTE:** The Developer, in its sole discretion, reserves the right to extend said ninety (90) day period of time for an additional period of time not to exceed a total of one eighty (180) days should the owner be delayed in making a repair as the result of material shortages, adverse weather conditions, delays in transportation which were not reasonably anticipated or acts of God].

13. PERMITTED ANIMALS: No animals, livestock, or poultry of any kind shall be raised or bred on any lot, except dogs, cats, or any other normal household pets may be kept, provided (i) they are not kept, bred, or maintained for any commercial purpose,

and (ii) they (dogs) are confined to the home or maintained in an appropriate fenced area; and (iii) they are not permitted to roam; and (iv) they shall not become an annoyance or nuisance to other lot owners. No dangerous animal of any kind will be permitted in the subdivision, nor will hog parlors or chicken houses be permitted on any lot in the subdivision. However, the Developer, in its sole discretion, reserves the right to permit a limited number of horses (not to exceed one horse for every acre) to be maintained on any lot provided the Owner of the lot provides appropriate shelter and fencing for said horses which said shelter and fencing shall be subject to the requirements of Paragraph 3 PRIOR APPROVAL OF IMPROVEMENTS hereinabove.

14. WASTE DISPOSAL: No part of the property herein conveyed shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste and the same shall not be kept, except in sanitary containers.

15. LANDSCAPING: No grass or weeds shall be allowed to grow taller than six inches (6") on any lot, and all residences shall be landscaped (seeded and strawed) within ninety (90) days of occupancy with the following features:

- (a) all driveways and parking areas shall have a minimum of four inches (4") of stone; and
- (b) all residences shall maintain a minimum of eight (8) shrubs in front of the dwelling, which shall be properly maintained and pruned at all times; and
- (c) all stumps and other vegetation shall be removed; and
- (d) all satellite systems shall be screened from public views, and have low growing shrubs or flowerbeds placed around the base.

In addition, any uprooted stumps, or unsightly vegetation (created as a result of an Owner's construction efforts and/or lot modification efforts) shall be removed from any lot within ninety days (90) from the date of purchase, or start of construction by the Buyer, unless the Buyer has contracted with the Developer to the contrary, and the Buyer has contracted with the Developer for the removal of said stumps and vegetation; in which event, the cost of the same shall be included in the purchase price of the lot; and said

agreement shall be recited in the deed of transfer; or unless the Developer, its successors, assigns or duly appointed agent have otherwise waived enforcement of this provision.

16. SIGNS: No billboard or sign of any kind shall be displayed to public view on any lot except one sign of not more than nine (9) square feet advertising the lot for sale or signs used by a builder to advertise the lot during the construction and sale period.

17. PERMITTED VEHICLES: No lot owner shall drive or park or permit any other person to drive or park any heavy equipment (including tractor trailers and trucks in excess of one ton) three wheelers, four wheelers, or dirt bikes on any street and/or any lot within the subdivision except moving vans and/or construction vehicles; which may be driven or parked on the subdivision streets and/or lots for the temporary purpose of moving a lot owner in or out of a dwelling constructed on a lot; and/or for the construction of improvements on a lot.

18. SPEED LIMITS: All lot owners agree to observe posted speed limits along said roads, and other safety signs, i.e., stop signs, etc.

19. SANITARY REGULATIONS: No water supply system for human consumption or sewage disposal system shall be permitted on the lots herein conveyed unless the locations, construction and design are in full compliance with requirements, standards and recommendations of the Vance County Health Department and North Carolina State Board of Health. No outdoor toilets or privy shall be constructed on any lot.

20. NOXIOUS ACTIVITY PROHIBITED: No noxious or offensive activity shall be carried on or allowed upon any portion of the Property nor shall anything be done thereon that may be or become a nuisance or annoyance. Final determination of what constitutes a nuisance or annoyance to the neighborhood shall be made by the Developer.

21. DISABLED VEHICLES: Any motor vehicle or other motor conveyance not in a running condition must be removed from any lot within thirty (30) days. No disabled, junked or dismantled motor vehicles shall be allowed on any lot.

22. EASEMENTS OR RIGHTS OF WAY: The conveyance of all lots is made and accepted subject to any easements or rights of way that may have been granted for

power, lights, telephone lines, access, drainage facilities, water facilities and/or sewage facilities, or as shown on any recorded plat of Black Horse Run.

23. ACCESS ROADS PROHIBITED: No lot owner shall be permitted to use his lot, or any portion thereof, as an access easement to allow an adjoining landowner access to the roads constructed by the Developer in this subdivision; provided however, that the lot owner may use his own lot for access to other property belonging solely to the said lot owner which is adjacent to a lot in this subdivision, provided the Developer consents in writing to such use.

24. ROADS AND SUBDIVISION SIGN: The Developer will construct the subdivision sign [**NOTE:** The Developer reserves an easement across Lot 1 for the purpose of constructing, maintaining and repairing a subdivision sign, the design, maintenance and repair of the same, which shall be in the Developer's sole discretion until such time as it becomes the responsibility of Black Horse Run Property Owners' Association of Vance County, Inc. to maintain and repair the same at which time said Association shall make all decisions in regards to the subdivision sign], and Black Horse Lane, a 60-foot right of way with private road. The Developer shall maintain said subdivision sign and Black Horse Lane in a state of good repair until such time as fifty (50%) percent of Lots 1 – 4 shall have been sold by the Developer, or until such time as Black Horse Lane has been accepted by the North Carolina Department Transportation for public maintenance, whichever occurs first. Once fifty (50%) percent of Lots 1 – 4 have been sold, and in the case of Black Horse Lane, should fifty (50%) percent of Lots 1 – 4 be sold prior to the acceptance of the road by the North Carolina Department for Transportation for public maintenance, then in that event, the subdivision sign and the road shall be maintained in a state of good repair by the Property Owners' Association to be denominated "Black Horse Run Property Owners' Association of Vance County, Inc." [**NOTE:** Road maintenance shall cease at the time said road is accepted by the North Carolina Department of Transportation for public maintenance]. The rights, responsibilities and duties of the lot owners, [once fifty (50%) percent of Lots 1 – 4 have been sold] **EXCLUDING** all lots owned by the Developer being as follows, to wit:

- Each lot owner [Lots 1 – 4, inclusive, **ONLY**] (excluding the Developer) shall be a member of the association (membership being mandatory) and shall vote in the affairs of the association on the basis of one (1) vote per lot regardless of the number of owners of any particular lot.
- Each lot [Lots 1 – 4, inclusive, **ONLY**] shall be assessed by the association for its prorata costs (i.e. per lot, excluding all lots owned by the Developer) of road maintenance and for the cost of maintaining the subdivision sign with such assessment becoming a lien against said lot until such time as it has been discharged by payment; it being agreed that the lien established herein shall be subordinate to mortgage and/or tax liens.
- Miscellaneous provisions applying to the association are as follows, to wit:
 - ◆ The Board of Directors shall consist of three (3) members, one (1) of which will be selected by the Developer (as long as the Developer owns any lots in the subdivision) and the other two (2) of which will be selected by a majority vote of the members.
 - ◆ The initial registered office of the association shall be P.O. Box 527, Kittrell, North Carolina, 27544, and the initial registered agent at said office shall be John C. Rogers.

25. ENFORCEMENT: The enforcement of these covenants may be by proceeding in law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. Failure to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same.

26. SEVERABILITY: The invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other covenants, which shall remain in full force and effect.

27. AMENDMENT: These restrictions and conditions can be amended only by an instrument signed by the Developer and two-thirds (2/3) of the owners of the six (6) original lots (including all lots owned by the Developer) in the subdivision.

28. DURATION: These restrictions and conditions are covenants running with the land and shall be binding on all owners of property covered by these restrictive covenants and all persons claiming under them for a period of thirty (30) years from the date these Restrictive Covenants are recorded, after which time, said covenants shall be automatically extended for additional periods of ten (10) years each, unless an instrument signed by two-thirds (2/3) of the owners of the similarly restricted lots has been recorded in which it is agreed otherwise.

IN WITNESS WHEREOF, the Developer has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, this the 27th day of September 2002.

ROGERS & FRANKLIN DESIGN BUILDERS, INC.

BY: _____

John C. Rogers
President

ATTEST:

John M. Franklin
Secretary

(CORPORATE SEAL)

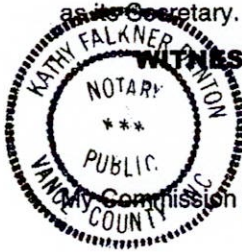


STAINBACK & SATTERWHITE ATTORNEYS AT LAW HENDERSON, N.C.

STATE OF NORTH CAROLINA

COUNTY OF VANCE

I, a Notary Public of said county and state, do hereby certify that **JOHN M. FRANKLIN** personally came before me this day and acknowledged that he is Secretary of **ROGERS & FRANKLIN DESIGN BUILDERS, INC.**, a North Carolina 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 him as its Secretary.



WITNESS my hand and notarial seal this 27th day of September, 2002

Kathy Falkner Denton
NOTARY PUBLIC

STATE OF NORTH CAROLINA, VANCE COUNTY

The foregoing certificate ~~(s)~~ of Kathy Falkner Denton, Notary Public of
Vance County, NC, is ~~(are)~~ certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

CYNTHIA S ABBOTT, REGISTER OF DEEDS

By: Shelia S Breedlove ~~Assistant~~ Deputy