

VANCE COUNTY, N.C.

BK 799 PG 504

FILED FOR RECORD

J4459

PREPARED BY: STAINBACK & SATTERWHITE, Michael E. Satterwhite

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STATE OF NORTH CAROLINA CYNTHIA S. ABBOTT

REGISTER OF DEED

**RESTRICTIVE COVENANTS
FOR AUTUMN WINDS****COUNTY OF VANCE**

WHEREAS, T & W Investments is the owner in fee of the following described lots or parcels of land located in Middleburg/Nutbush Township, Vance County, North Carolina, and more particularly described as follows:

BEING Lots 1 through 3 and Lots 20 through 59 according to survey and plat entitled "Property of T & W Investments; Survey of Autumn Winds" as prepared by Bobbitt Surveying, PA, dated July 2, 1997, revised July 14, 1997, as appears in Plat Book "V," Page 679, Vance County Registry, **SPECIFICALLY EXCLUDING** the remainder of the property acquired by T & W Investments, a North Carolina General Partnership, by deed recorded in Book 795, Page 35, Vance County Registry.

WHEREAS, T & W Investments, herein referred to as the developer, for the purpose of creating and maintaining a quiet, restful and desirable development and for the protection of owners who build or buy homes in said above-described development, does hereby covenant to and with the present and future owners of said lots as follows:

1. 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 any lot other than one single-family dwelling (and garage) not to exceed two stories in height, exclusive of basement and/or attic.

2. No lot shall be subdivided without the written consent of the developer or its successors, assigns or legal agent, to wit: Thomas S. Hester, Jr. and/or W.A. Currin, except that two lot owners may subdivide a 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 the common boundary line by the sale or exchange of the property between such owners so long as such sale or exchange

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conforms in all respects with the zoning ordinances of Vance County, North Carolina; so long as such sale or exchange does not result in any lot being reduced to less than 30,000 square feet; and so long as said sale or exchange conforms with all other provisions of these restrictive covenants.

3. No dwelling, building, structure, outbuilding, fence, wall or improvement of any nature whatsoever (except for interior alterations to existing structures not affecting the external structure or appearance of any improvement on any portion of the lot) shall be constructed on any lot until the plans for such construction shall have been approved in writing by the developer or its successors, assigns or legal agent, to wit: Thomas S. Hester, Jr. and/or W.A. Currin. The plans submitted to the developer for approval shall include:

- (a) the construction plans, specifications and description of materials, including all exterior colors (approval by the developer shall not constitute a basis for liability of the developer for any reason, including, without limitation: (i) the 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) and proposed landscaping (specifically including any clearing and/or tree removal) and grading; and
- (b) a plat showing the location of all proposed improvements (including proposed satellite systems).

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

4. No plans for a dwelling shall be approved unless the living area of such dwelling, exclusive of one story, open porches and garages, measured from outside wall lines shall be at least 1,050 square feet.

5. No building shall be constructed which uses cinder or concrete blocks, asphalt shingles, tar paper, metal siding (exclusive of lap-side metal) or masonite siding (without the prior written approval of the developer or its successors, assigns or legal agent, to wit: Thomas S. Hester, Jr. and/or W.A. Currin) as a major exterior building material (these materials may be used as roofing materials, however).

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6. No structure of a temporary character, including tents or trailers shall be used on any lot at any time as a residence, either temporarily or permanently. However, double-wide mobile homes (but no single-wide mobile homes) may be placed on the lot if approved in writing by the developer, its successors, assigns or legal agent, to wit: Thomas S. Hester, Jr. and/or W.A. Currin.

7. All buildings shall have perimeter foundations of finished brick and/or block or of an approved material of equal or better quality. The materials used for perimeter foundations, underpinning and/or skirtings must be approved in writing by the developer, or its successors, assigns or legal agent, to wit: Thomas S. Hester, Jr. and/or W.A. Currin.

8. Approval of the plans (including approval of double-wide mobile homes) by the developer shall be based upon compliance with the provision of these restrictions, quality of workmanship and material harmony of external design with surrounding structures, locations or improvements with respect to topography and finished grade elevation, the effect of the construction on the outlook from the surrounding lots, the effect of the proposed 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 improvement.

9. No animal, livestock (including pet pigs), or poultry of any kind shall be raised or bred on any lot except for dogs, cats, or other household pets which may be kept provided they are not kept, bred, or maintained for any commercial purpose and provided they do not become a nuisance or annoyance to the other lot owners; however, a maximum of two horses may be maintained on a combination of no less than three (3) adjoining lots (i.e. if one purchaser purchases as many as three (3) adjoining lots, then in that event, said purchaser can maintain a maximum of two (2) horses on said three (3) adjoining lots).

10. No part of any lot 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. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No accumulation of trash, garbage, rubbish or waste shall be permitted, and all lots shall be kept in an orderly and sanitary condition at all times.

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11. No automobile or equipment that is inoperable will be allowed to remain on any lot and/or street for more than fifteen (15) days.

12. No billboard or signs (except those suitable for sale of lot) shall be permitted or maintained on any lot.

13. 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 Autumn Drive, a 50-foot private right of way, and/or Spring Drive, a 50-foot private right of way, which private rights of way extend from State Road 1370 (Cedar Cove Road) through the subdivision, except moving vans and/or construction vehicles, which may be driven or parked on Autumn Drive and/or Spring Drive 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.

14. All utilities serving an individual lot shall be run underground at the expense of each individual lot owner.

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

16. No noxious or offensive activity shall be carried on upon the herein described lots nor shall anything be done on the lots herein described which may be or may become an annoyance or a nuisance to the neighborhood.

17. **ENFORCEMENT:** Enforcement shall be by proceeding at law or in equity, either to restrain violation or to recover damages against any covenant or restriction set forth herein. 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.

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18. **SEVERABILITY:** Invalidity of any of the provisions hereof by judgment or court order shall in no way affect any of the other provisions which shall remain in full force or effect.

19. **DURATION:** These provisions are to run with the lots and shall be binding on all parties owning the lots and all persons claiming under them for a period of 30 years from the date these restrictions are recorded, after which said time, said covenants shall be automatically extended for additional periods of 10 years each, unless an instrument signed by three-fourths of the then owners of the similarly restricted lots has been recorded in which it is agreed otherwise.

20. **UTILITIES:** The conveyance of all lots is made and accepted subject to any easements and/or rights of way that may have been granted for power, lights, telephone lines, drainage facilities, water facilities and/or sewage facilities, or as shown on the recorded plat of "Property of T & W Investments; Survey of Autumn Winds," and the developer reserves the right to subject the lots in the subdivision to a contract with Carolina Power & Light Company for the installation of street lighting, which may require a continuing monthly payment to Carolina Power & Light Company by each lot purchaser.

21. **ROADS AND ROAD MAINTENANCE:** Autumn Drive and Spring Drive (and the 0.09 lake access between Lots 41 and 42, which is an extension of Spring Drive) are 50-foot private rights of way for the use and benefit of the developer and all subsequent owners of lots adjoining said roads (*however*, owners of lots in Tract A containing 16.30 acres will be entitled to use Autumn Drive and Spring Drive, excluding the 0.09 lake access between Lots 41 and 42, only if specifically given the right to do so in a subsequent deed of conveyance from the developer). The conveyance of each lot is subject to the rights of the developer and other lot owners to cross said Autumn Drive and Spring Drive (and the 0.09 lake access between Lots 41 and 42, which is an extension of Spring Drive) as a means of access from State Road 1370 (Cedar Cove Road) to and from other lots in the subdivision and to and from the property of the United States of America (Kerr Lake; Parcel M-1223).

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Each of the owners of a lot adjoining Autumn Drive and/or Spring Drive agree to bear their prorata (i.e. per lot costs of the necessary expense to maintain the road (and the 0.09 lake access between Lots 41 and 42, which is an extension of Spring Drive) in an all-weather state of good repair. Until ninety (90%) percent of the lots in the subdivision have been sold, the developer shall be responsible for contracting any road maintenance work and shall be responsible for any decision regarding the need for maintenance and the manner and extent of said maintenance, improvement or repair and shall collect from the other adjoining lot owners their prorata costs of said maintenance and repair on a quarterly basis. Once ninety (90%) percent of the lots adjoining said roads have been sold, (at which time the developer's obligation to contribute prorata toward road maintenance shall cease), the owners of the adjoining lots shall form a non-profit association to be denominated "Autumn Winds Maintenance Association" which shall be charged with the responsibility of contracting for any road maintenance work and shall make decisions regarding the need for maintenance and the manner and extent of said maintenance, improvements or repairs and shall collect from the other adjoining lot owners (excluding the developer) their prorata (i.e. per lot) costs of said maintenance. Each lot owner's prorata costs shall be a lien upon his lot until the same is extinguished through payment.

IN WITNESS WHEREOF, the developer has set its hand and seal this 27th day of August 1997.

**T & W INVESTMENTS, a North Carolina
General Partnership**

BY: **CAROLINA COOLING & HEATING, INC.,**

Partner

BY: Thomas S. Hester, Jr. (SEAL)
THOMAS S. HESTER, JR.
President

ATTEST:



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

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