

See Amended

BK 311 PS 140

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DRAWN BY & RETURN TO:
PERRY, BUNDY, PLYLER & LONG, LLP
STATE OF NORTH CAROLINA
COUNTY OF UNION

RECORDED
AND
VERIFIED
MKH

Filed for record
Date 10-22-99
Time 12:35 o'clock P.M.
JULY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS AND CONDITIONS, made and entered into this the 22nd day of October, 1999, by and between **D & R DEVELOPERS, L.L.P.**, a N. C. General Partnership in Union County, hereinafter referred to as the parties of the first part; and **PROSPECTIVE PURCHASERS** of all lots in subdivision known as **KELLYSTONE** as shown on plats recorded in Plat Cabinet F, Files 789, Union County Registry, incorporated herein by reference.

WITNESSETH:

WHEREAS, the said parties of the first part intend to convey each of said lots as the same are shown and delineated on the above-mentioned maps, by deeds, deeds of trust, mortgages, and other instruments to various persons, firms, and/or corporations, subject to certain restrictive and protective covenants and conditions which are deemed to make the subdivision more desirable and to be for the benefit of all those who acquire title to any one or more of said lots to the end that the restrictive and protective covenants and conditions herein set out shall be inure to the benefit of each person, firm or corporation which may acquire title to any and all of said lots and which shall be binding upon each such person, firm or corporation to whom or to which the said parties of the first part may hereafter convey any of said lots by deed, mortgage, deed of trust, or other instrument.

NOW, THEREFORE, in consideration of the premises, parties of the first part hereby covenant and agree with said Prospective Purchasers that each of the aforementioned lots shall be held, sold, encumbered and conveyed subject to the restrictive and protective covenants and conditions hereinafter set forth and said restrictive and protective covenants and conditions shall become a part of each instrument conveying any of said lots as fully and to the same extent as if set forth therein. As a condition of the sale or conveyance, the purchasers agree and covenant to abide by and conform with said restrictive and protective covenants and conditions:

THE RESTRICTIVE AND PROTECTIVE COVENANTS AND CONDITIONS ARE AS FOLLOWS:

1. Lot. The word "Lot" as used herein shall mean the separately numbered parcels depicted on the above-mentioned maps. Provided, however, that the owner of all of a numbered lot on said map may combine with such numbered lot, parts or portions of another numbered lot or lots and the aggregate shall be considered as one "Lot" for the purposes of these restrictive and protective covenants and conditions. See, also, Paragraph 16.
2. Land Use and Building Type. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single-family residential dwelling, and only one single-family residential dwelling shall be erected or permitted to remain upon any Lot. The moving and placement of any existing or prior constructed building or portion thereof to be used as a dwelling upon any subdivision lot is prohibited; and the remodeling, reparation, renovation or conversion of any building moved and placed on any subdivision lot, for use as a dwelling, is prohibited. No mobile or manufactured or modular home may be erected, placed or permitted to remain upon any Lot. A private garage and outbuilding are permitted on each lot, provided they are erected incidental to the residential use of the subdivision lot. Any such outbuilding or garage that has an entrance fronting on a subdivision street or public road, or in which the contents or interior of the same are visible from the subdivision street or public road, shall have a door or doors which shall be maintained in good working order and which shall be used to conceal the contents and interior. It is provided, however, that the party of the first part, during the development stage, may maintain a dwelling for use as a model home to aid sales in the subdivision. After development has been completed, no such model home may be maintained in the subdivision.

All lot owners shall do the following and shall be solely responsible (no obligation or responsibility of parties of the first part) for: (a) maintaining road ditches and drainage areas located on their lot(s); (b) installing or setting any road tile and maintaining such; (c) planting minimum of two (2) trees of a minimum

height of six feet (6') above ground surface in the front yard of the residential dwelling prior to occupancy, (d) controlling soil erosion and sedimentation of his lot(s).

No plants or trees will be planted and maintained by parties of the first part, and parties of the first part shall not be responsible for nor shall it maintain any sign(s) and/or planter(s) at the subdivision entrance area or other areas. All Prospective Purchasers and owners of lots forever waive and relinquish any such claims and demands against parties of the first part on account of such.

3. Dwelling Size.

(a) Any one-story dwelling erected upon any Lot shall contain not fewer than 1,600 square feet, outside measurement, of enclosed floor heated area, exclusive of open porches and garages.

(b) Any one and one-half story dwelling erected upon any Lot shall contain not fewer than 1,650 square feet outside measurement of enclosed floor heated area, exclusive of open porches and garages. Such dwelling shall contain not fewer than 900 square feet, outside measurement, of enclosed floor heated area on the ground floor, exclusive of open porches and garages.

(c) Any two-story/two and one-half story dwelling erected upon any Lot shall contain not fewer than 1,700 square feet, outside measurement, of enclosed floor heated area, exclusive of open porches and garages. Such dwelling shall contain not fewer than 800 square feet, outside measurement, of enclosed floor heated area on the ground floor, exclusive of open porches and garages.

4. Construction Quality. All house plans must be approved by D & R Developers, L.L.P. prior to beginning construction. All dwellings, garages and outbuildings erected upon any Lot shall be constructed of material of good grade, quality and appearance, and all construction shall be performed in a good and workmanlike manner. All dwellings must be constructed of masonry exterior on the front. "Front" of the residence or garage is deemed to be that portion or portions that face one or more of the subdivision streets, including a residence located on a corner lot where a side of the residence is facing a street, in which case the side shall also be considered as "front." The exterior construction of any dwelling shall not be of asbestos shingle siding, imitation brick or stoneroil siding, or of concrete blocks. No "shell home," as the term is generally understood at this time in this area, shall be erected or allowed to remain on any Lots. The outside surface of beams, walls, and roofs of any appurtenant structures located on any Lot shall be of material and quality of construction comparable in cost, design, and quality to the outside surfaces of the dwelling located on said Lot. No barn shall be located on any Lot except 9, 10 and 11 and per approval of the parties of the first part. Any storage shed shall be designed, constructed and maintained so as to be aesthetically compatible with the dwelling located on said Lot; however, a new storage shed constructed of pre-finished (painted) metal shall be permitted. Any storage shed or outbuilding must be located behind the dwelling house (behind the building line of the backside of the dwelling). Storage sheds, utility buildings and outbuildings are considered the same for purposes of these restrictions.

5. Setback Lines. No building shall be erected or permitted to remain nearer to any street in said subdivision than the street setback lines as shown on the recorded plat of said subdivision. No building shall be located nearer than ten feet to any sideline or nearer than forty (40) feet to the rear line of any Lot. It is provided, however, that eaves, steps, scoops and fireplace chimneys shall not be considered a part of the building for the purposes of interpreting this paragraph of this Declaration. An error in the placement of structures in an amount less than ten percent of the setback requirement in question is not a violation of this Declaration or of the provisions of the recorded plat. The Union County Zoning Ordinance shall control and supersede all setbacks herein where the recorded plats do not show same or where county zoning setbacks require greater distance than are herein required.

6. Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved over the front and rear ten feet of each of the aforesaid Lots. A drainage and utility easement ten (10) feet in width is reserved along each sideline of each Lot. Additional drainage easements, utility, and watershed easements are reserved as may be more particularly shown and delineated on the recorded map of the subdivision. Within said easements so reserved, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may interfere with drainage

17. Changes and Time Period. These restrictive covenants are subject to being altered, modified, changed or cancelled any time by written document executed by the Declarants (if Declarants still own any lot at such time) and by the then-owners of not fewer than 75% of the total lots shown on the above-referenced plats, and recorded in the office of the Register of Deeds of Union County, North Carolina.

These covenants are to run with the land and shall be binding on all persons and entities acquiring title to any of the aforementioned Lots up to and including the 22nd day of October, 2019, at which time said covenants shall be automatically extended for successive periods of five (5) years, unless by written instrument executed by a majority of the then-owners of said Lots, and duly recorded in the office of the Register of Deeds of Union County no later than sixty (60) days prior to any anniversary date of any such automatic renewal, it is agreed to change or cancel in whole or in part.

18. Enforcement. Enforcement of these restrictions and conditions shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or condition, either to restrain violation thereof or to recover damages therefor. Injunction shall not issue to compel the removal of or moving of any completed residence for violation of any side setback or front setback restrictions, the sole remedy of any offended person being a suit for damages.

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

IT IS HEREBY DECLARED THAT the above described Lots as shown on the above-referenced recorded map shall be and are subject to the above-described restrictive covenants and conditions, and this Declaration and the Restrictions SHALL RUN WITH THE LAND and shall be binding on all parties having or acquiring any right, title, or interest in and to the real property or any part or parts thereof subject to this Declaration.

IN WITNESS WHEREOF, parties of the first part have set their hands and seals this day, month and year above written.

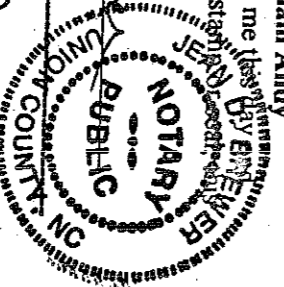
D & R DEVELOPERS, L.L.P.

By: Johnny Frank Davis (SEAL)
Johnny Frank Davis, General Partner

By: William Andy Rushing (SEAL)
William Andy Rushing, General Partner

NORTH CAROLINA - Union County
I, a Notary Public, of said County and State certify that Johnny Frank Davis and William Andy Rushing, General Partners of D & R Developers, L.L.P. personally appeared before me this 22nd day of October, 1999, acknowledged the execution of the foregoing instrument. Witness my hand and official stamp on the 22nd day of October, 1999.

My Commission expires: 1-11-04
Charles D. Brewer
Notary Public



THE FOREGOING CERTIFICATE of Alan D. Brewer N.P. is 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.

JUDY G. PRICE, REGISTER OF DEEDS OF UNION COUNTY

By: Candy D. Baker
Deputy/Assistant Register of Deeds

Prepared by: *Perry Bundy Plyler & Long, LLP*
Mail To: *PO Box 7, Monroe, NC 28111*

filed for record
Date 8/13/2001
Time 3:50 o'clock Pm
JUDY G. PRICE, Register of Deeds
Union County, Marree, North Carolina

STATE OF NORTH CAROLINA
COUNTY OF UNION

AMENDED DECLARATION OF
RESTRICTIVE COVENANTS WITH
PRIVATE DRIVE MAINTENANCE
AGREEMENT 65001

THIS AMENDMENT TO DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS AND CONDITIONS, made and entered into this 9th day of February, 2001, by and between **D & R DEVELOPERS, L.L.P.**, a N. C. General Partnership, and **NOEL WILLIAMS MASONRY, INC.**, a North Carolina corporation, both of Union County, North Carolina; and **PROSPECTIVE PURCHASERS** of lots in the subdivision known as **KELLYSTONE** as shown on plats recorded in Plat Cabinet F, File 789, Union County Registry, incorporated herein by reference.

WHEREAS, D & R Developers executed and recorded Declaration of Restrictive Covenants applying to Kellystone subdivision, in Book 1314, pages 622 - 625, Union County Registry, reference being made to the same and same being incorporated herein by reference. Noel Williams Masonry, Inc. has previously purchased and recorded its deeds to Lots 1, 2, 3, and 4 of said subdivision.

WHEREAS, D & R Developers and Noel Williams Masonry, Inc. desire to amend and change the restrictive covenants as contained in paragraph 3, at page 623, relating to size requirements of dwellings; that pursuant to paragraph 17 of the restrictive covenants, such amendments and changes are hereby made by both parties, although D & R Developers is still owner of 75% of remaining lots in the subdivision.

NOW, THEREFORE, in consideration of \$1 and other valuable considerations, receipt of which is hereby acknowledged by the parties, the following changes and amendments are hereby made to paragraph 3 on page 623, Dwelling Size:

- (a) Any one-story dwelling erected upon any Lot shall contain not fewer than 1,400 square feet, outside measurement, of enclosed floor heated area, exclusive of open porches and garages.
- (b) Any one and one-half story dwelling erected upon any Lot shall contain not fewer than 1,450 square feet of outside measurement of enclosed floor heated area, exclusive of open porches and garages. Such dwelling shall contain not fewer than 800 square feet, outside measurement, of enclosed floor heated area on the ground floor, exclusive of open porches and garages.
- (c) Any two-story/two and one-half story dwelling erected upon any Lot shall contain not fewer than 1,500 square feet, outside measurement, of enclosed floor heated area, exclusive of open porches and garages. Such dwelling shall contain not fewer than 700 square feet, outside measurement, of enclosed floor heated area on the ground floor, exclusive of open porches and garages.

AND WHEREAS, D & R Developers and Noel Williams Masonry, Inc. desire to amend and change the restrictive covenants contained in paragraph 12, at page 624, relating to livestock and poultry.

NOW, THEREFORE, in consideration of \$1 and other valuable considerations, receipt of which is hereby acknowledged by the parties, the following changes and amendments are hereby made to paragraph 12. Livestock and Poultry, on page 624 of the restrictive covenants:

Paragraph 12. Livestock and Poultry, on page 624 of the restrictive covenants is deleted in its entirety, and in lieu thereof the following paragraph is inserted and made a part of the restrictive covenants as recorded in the Union County Registry in Book 1314, pg. 622, at pg. 624:

12. Livestock and Poultry. No animals, livestock, reptiles or poultry of any kind shall be raised, bred, or kept on any Lot, except that horses, dogs, cats, or other household pets (not of those above

excluded) may be kept, provided that they are not kept, bred, or maintained for commercial purposes; provided further, that the keeping of horses must be in compliance with the Union County zoning and planning and land use regulations at all times, including stabling of same.

AND WHEREAS, D & R Developers and Noel Williams Masonry, Inc. desire to change and amend the restrictive covenants by adding a paragraph 15a., page 624, relating to private drive maintenance.

NOW, THEREFORE, in consideration of \$1 and other valuable considerations, receipt of which is hereby acknowledged by the parties, the following change and amendment is hereby made by adding paragraph 15a. Private Drive Maintenance Agreement, on page 624 of the restrictive covenants:

15a. PRIVATE DRIVE MAINTENANCE AGREEMENT. Know all people by these presents that D & R Developers, LLP, being the owner of 75% of the remaining Lots in Kelystone, and the owners of Lots 11, 12, 13, and 14, in particular, as shown on map recorded in the Union County Registry in Plat Cabinet F, File 789, does hereby agree and covenant with all persons, firms, corporations and entities now owning or hereafter acquiring Lots 11, 12, 13, and 14, or any or all of same, that all are hereby subjected to the following Private Drive Maintenance Agreement, running with said properties by whomsoever owned, to-wit: So long as the private drive identified as "Private Dr" shown on said recorded map and located between Lots 12, 13, and 11, and serving Lots 11 - 14, which private drive contains 0.201 acres, remains private, the owners of Lots 11, 12, 13, and 14, or its or their successors in title, shall be responsible for the costs of maintaining said drive. The proportionate share of each of these Lot owners for maintenance shall be the number of Lots he or she or it may own to the total number of Lots fronting on or served by said private drive. Lots 11-14 are deemed to front on and served by said private drive. The owner of each Lot shall be responsible for and covenant and agree to pay, each to and with the other owner(s) to pay 25% (1/4th) the cost of maintenance, and owner of more than one of said Lots shall be responsible for payment of the 25% costs associated with each Lot owned. The owners of Lots 11-14 covenant and agree to maintain said private drive, at all times and all year from year to year, to be serviceable in all weather conditions. However, any Lot owner may, at his, her, or its own expense, perform maintenance on the private drive, provided such maintenance improves the overall condition of the road. Provided, further, that maintenance of the private drive shall not include paving, unless all Lot owners agree, and any Lot owner who paves all or a portion of said private drive, shall do so at his, her or its own expense, unless owner or owners of the other Lots voluntarily agree to pay a proportionate share of the cost. This covenant and agreement to pay for maintenance and to maintain said private drive shall be binding upon each Lot owner (Lots 11-14) and for any repairs needed at any location along the said drive.

EACH OWNER OF LOTS 11, 12, 13, and 14, THEIR SUCCESSORS AND ASSIGNS, IS HEREBY GRANTED AND CONVEYED AN UNDIVIDED INTEREST IN SAID PRIVATE DRIVE, IN FEE SIMPLE, WHICH UNDIVIDED INTEREST SHALL BE IN PROPORTION TO THE NUMBER OF SAID LOTS OWNED BY EACH, AND THIS PROVISION SHALL BE AUTOMATICALLY INCORPORATED INTO THE DEED OR DEEDS CONVEYING THE SAID LOTS 1 - 14. PROVIDED, HOWEVER, ALL OWNERS, NOW AND IN THE FUTURE, COVENANT AND AGREE THAT THE SAID PRIVATE DRIVE AS SHOWN ON THE RECORDED PLAT ABOVE REFERENCED, SHALL BE AND SHALL CONTINUE TO BE USED EXCLUSIVELY FOR INGRESS, EGRESS AND REGRESS FOR BENEFIT OF LOTS 11 - 14, AND THAT THIS CONVEYANCE OF THE UNDIVIDED INTEREST(S) IS MADE SUBJECT TO SAID EASEMENT FOR INGRESS, EGRESS AND REGRESS, BEING PERMANENT, APPURTENANT TO AND RUNNING WITH THE LANDS.

The above changes and amendments are made to those restrictive covenants recorded in the Union County Registry in Book 1314, page 622 et. seq. ALL OTHER PROVISIONS OF THE SAID RESTRICTIVE COVENANTS ARE AND SHALL REMAIN THE SAME, AS WRITTEN AND RECORDED IN BOOK 1314, PAGE 622 ET SEQ., except for above changes and amendments.

These amendments shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in and to the real property or any part or parts thereof, for the duration(s) as set forth in the original document (Book 1314, pg. 625 et. seq.).

IN WITNESS WHEREOF, D & R Developers, L. L. P. has executed this document by its sole general partners, who have set their hands and seals the year first above written, and Noel Williams Masonry, Inc. has caused this instrument to be signed in its corporate name by its President and attested by its Secretary and sealed with its corporate seal, the day and year first above written.

D & R DEVELOPERS, L.L.P.

By: Johnny Frank Davis (SEAL)
Johnny Frank Davis, Gen. Ptn.

By: William Andy Rushing (SEAL)
William Andy Rushing, Gen. Ptn.

NOEL WILLIAMS MASONRY, INC.


ATTEST:
Secretary Cindi D. Heffer, ASST.
By: WCS
President

STATE OF NORTH CAROLINA
COUNTY OF UNION

I, Cheri M. Conley, a Notary Public for said County and State, do hereby certify that D&R Developers, LLP, by its general partners, Johnny Frank Davis and William Andy Rushing, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the partnership.

This 13 day of August 2001.

My commission expires:
My Commission Expires 11-20-2002

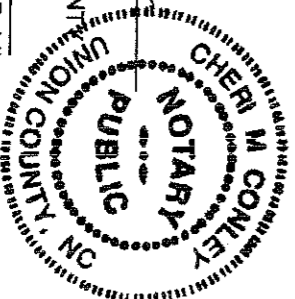
Cheri M. Conley
Notary Public


STATE OF NORTH CAROLINA
COUNTY OF UNION

I, a Notary Public of the County and State aforesaid, certify that Cindi D. Heffer personally came before me this day and acknowledged that he/she is the Secretary of Noel Williams Masonry, 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/her as its Secretary.

WITNESS my hand and official seal, this the 13 day of August 2001.

My Commission Expires 11-20-2002
Notary Public

Cheri M. Conley
Notary Public


of Cheri M. Conley
to be correct. Filed for record this 13th day
of Aug 2001 at 3:50 PM

JUDY B. PRICE, REGISTER OF DEEDS
BY: Sorena Locco