

*Return To: The Closing Company 8/30/05*

1304

**DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS**

**THIS DECLARATION** made this 25th day of March, 2005 by

**Thomas F. Bresnahan and Sallie E. Bresnahan (herein "Declarant").**

**WITNESSETH:**

**The Factual Background.** Declarant is the owner of certain real property situated in Greene County, Virginia, more particularly shown and described as the certain tracts or parcels of land lying and being situate in the Stanardsville Magisterial District of Greene County, Virginia, located on State Route 667, or Middle River Road, shown and described as Tax Map 20-((A))-6, by Roger Ray and Associates, Inc., dated May 24, 2004, consisting of 10.11 acres, more or less.

Declarant desires to subject Lots 1 through 5 shown on the Subdivision Plat to the Covenants, Restrictions, Conditions and Easements set forth herein, which are for the benefit of the owners of these lots.

Now therefore, the Declarant declares that said real estate consisting of aforesaid lots 1 through 5, herein called Whispering Ridge North, shall be held, transferred, sold, conveyed and occupied subject to the Restrictions, Covenants, Conditions and Easements herein.

These Restrictions, Covenants, Conditions and Easements shall be Covenants running

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with the land and shall be binding upon any and all parties who have or acquire title to all or any part of Whispering Ridge North and shall inure to the benefit of each of the owners thereof.

#### ARTICLE I DEFINITIONS

Section 1.01. **Declaration.** The term "Declaration" as used herein shall mean the restrictions, covenants, conditions and easements, and all other provisions herein set forth in this document, as it may from time to time be amended.

Section 1.02. **Subdivision.** The term "Subdivision" as used herein shall mean and refer to the aforesaid lots as shown on the Subdivision Plat of Whispering Ridge North.

Section 1.03. **Lot.** The term "Lot" as used herein shall mean and refer to any plot or parcel of land designated as one of the Lots shown on said Subdivision Plat of Whispering Ridge North.

Section 1.04. **Owner.** "Owner" as used herein shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding purchasers who have not yet taken title, and further excluding those holding such interest solely as security for the performance of an obligation. In the case where a Lot is held by one or more persons for life, with the remainder to another or others, the term Owner shall mean and refer only to such life tenant or tenants until such time as the remainder man or remainder men shall come into use, possession or enjoyment of such Lot.

Section 1.05. **Declarant.** "Declarant", as used herein, shall mean Thomas F.

Bresnahan and Sallie E. Bresnahan.

## ARTICLE II

### PROPERTY SUBJECT TO THE DECLARATION AND FURTHER SUBDIVISION

Section 2.01. **Subject Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this declaration is located in Greene County, Virginia, and is shown as Lots 1 through 5 on the Subdivision Plat.

Section 2.02. **Subdivision.** These lots shall not be further subdivided except as provided in Article III. However, minor boundary line adjustments may be permitted.

## ARTICLE III

### ARCHITECTURAL CONTROL

Section 3.01. **Committee Composition.** The Architectural Review Board, hereinafter the "Committee", will be composed of Seville Homes of Virginia, Inc., and/or its appointee(s).

Section 3.02. **Purpose.** The Committee shall regulate the external design, appearance, use, site, elevation and location of all improvements on the lots thereon in such a manner as to preserve and enhance the value of the lots, maintaining a harmonious relationship among the structures, landscaping, and natural vegetation and topography of Whispering Ridge North to conserve the natural amenities.

Section 3.03. **Conditions.** No improvements, alterations, repairs, excavations, changes in grade, major landscaping, or other work which in any way alters the exterior appearance of any Lot or improvement located thereon from its natural or improved state shall be made or done until the construction plans, site plans, landscaping plans,

specifications, working drawings, and proposals for the same showing the nature, kind, shape, color, type, materials, elevations and located thereof, shall have been submitted and approved in writing by the Committee. No building, installation of any outbuilding, fence, wall, structure, alteration, major landscaping or other improvement shall be commenced without prior written approval of the Committee. Written approval shall also be obtained for the location of the house and any other structure and driveway. Refusal of approval of plans, locations, etc., may be based upon any ground, including purely aesthetic reasons, in the sole discretion of the Committee. No shrubbery, bushes or trees shall be planted, installed or allowed within any access easement or drainage easement.

**Section 3.04. Procedure.** The Committee shall promptly review and act on all requests for approval of improvements submitted pursuant to Section 3.03. In the event the Committee fails to approve, modify, or disapprove in writing a request for approval required herein within thirty (30) days after the plans, specifications or other appropriate materials have been received in writing by it, approval will be deemed to have been granted. All actions shall be by majority vote.

**Section 3.05. Exceptions.** Notwithstanding the foregoing, the provisions and requirements of this Article shall be deemed waived if no suit in equity or action at law has been filed with notice of lis pendens, in the Circuit Court of the County of Greene, Virginia, with respect to any violation of this Article within six (6) months after the initial occurrence of the violation.

#### ARTICLE IV BUILDING AND USE RESTRICTIONS

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**Section 4.01. The Lots shall be occupied and used as follows:**

- (a) No commercial swine, or poultry of any kind shall be raised, bred or kept on any Lot, except that:
  - (1) Dogs, cats and other common and normal household may be kept on any Lot subject to reasonable rules and regulations adopted by the Committee.
  - (2) Such pets shall be confined to the owner's lot or on leashes at all times.
  - (3) All other animals may be kept on any Lot subject to reasonable rules and regulations adopted by the Committee, including the approval by the Committee of any barn or other structures constructed to house animals and livestock.
- (b) No building or buildings of any kind whatsoever shall be erected or maintained on any Lot except one private dwelling house, designed for use and used by a single family, a private garage and utility building for the sole use of the Owner of the Lot upon which they are located. Lots shall be used for single family residential purposes only; provided, however, the use of a portion of a residence as an office by the Owner shall be allowed if such use does not create employee, customer, client, or other traffic to and from the Lot. In addition, notwithstanding other provisions herein, the Declarant or anyone approved by Declarant may use a residence(s) as a model home(s).

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- (c) No residence shall be constructed upon any lot having an enclosed dwelling area of less than 2000 square feet if all enclosed dwelling area is on one level, or less than 2,200 square feet if all enclosed dwelling area is on one and one half level, or less than 2,400 square feet with no less than 1,200 square feet on the first floor if the enclosed dwelling area is on two levels. The approval of plans required under Article III will not be granted unless a proposed residence shall meet these minimum floor space requirements for enclosed dwelling area. The term "enclosed dwelling area" as used in this minimum size requirement does not include basements, garages, terraces, decks, porches, breeze ways, utility buildings and similar areas.
- (d) No sign of any kind, with the exception of a standard real estate "For Sale" or "For Rent" sign no more than seven square feet in area and the community sign to be installed by the Declarant shall be displayed to the public view from any Lot without prior written consent of the Committee.
- (e) No obnoxious, boisterous, or offensive activities shall be permitted on any Lot, nor shall anything be done thereon that may be an annoyance or nuisance to the Owners of other lots in the subdivision.
- (f) No burning of paper, cardboard, construction materials or other refuse shall be permitted on any lot.
- (g) There shall be no further subdivision of any Lot by any Owner other than the Declarant without the prior written consent of the Committee.

The Declarant may subdivide lots to create new lots or rearrange boundary lines without the consent of the Committee.

- (h) No structures of a temporary character, tent or trailer shall be used as a residence on any Lot at any time.
- (i) No radio antennas or television reception antennas over 36 inches in Diameter shall be installed on any lot.
- (j) No driveway entrance requiring a culvert pipe shall be installed unless such pipe is at least 15" in diameter and 24' in length with the top of the culvert to be placed in a manner to meet the Virginia Department of Highways regulations allowing acceptance of the adjacent road into the state highway system. The contour of the adjoining land and the area of land disturbed at each culvert shall be restored and seeded. If any headwall is used, it shall be of stone and similar to others in the subdivision and approved by the Committee.
- (k) No unlicensed or inoperable vehicles, school busses, other busses, wreckers or other large commercial vehicles shall be parked on any lot or road bordering a lot over night unless within a garage.
- (l) No RV's, boats, trailers, or other recreational equipment shall be stored in front of the residence or in a manner so that any portion of it protrudes behind the rear-most portion of the residence.
- (m) It shall be the responsibility of each Owner and Tenant to prevent the development of any unclean, unsightly, or unkept conditions of buildings or ground on their Lot.

- (n) Should any dwelling unit or other structure on any Lot be destroyed in whole or in part, it shall be reconstructed, or the debris therefrom removed and the Lot restored to a neat sightly condition within six (6) months of the damage or loss.
- (o) A garage for a minimum of two (2) automobiles shall be constructed on each lot prior to the occupancy of any building or structure constructed on a Lot. The garage shall be located so that the doors for vehicle entry are not visible from the highway or subdivision road.
- (p) There shall be no exposed foundations, except those faced with stone, brick, stucco or approved natural siding material.
- (q) All driveways shall have a paved or stone surface which has been approved by the Committee.
- (r) There shall be no manufactured or modular homes placed on any lot. This would include a prohibitive of any structure with wheels or a steel frame from being attached or affixed to the Lot. There shall be no flat roofs, except for porches, and no roof with a primary pitch of less than a ratio of 8 to 12.
- (s) Roofs shall be covered with thirty year dimensional shingles, metal, wood shake or slate.
- (t) No structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters or temporary structures used by the contractor during the construction of the main dwelling house, it being clearly understood that



these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction. The design and color of structures temporarily placed on a lot by a contractor shall be subject to reasonable aesthetic control by the Committee.

- (u) Any and all exterior lighting shall be subject to approval by the Committee. No single fixture shall be rated greater than 100 watts. No light fixture shall be installed in any tree. No light fixture shall be directed toward a road or adjoining Lot.
- (v) There will be no clothes lines erected on any lot.
- (w) Fences will be allowed on property lines. All fences must be approved by the Committee as provided in Article III.
- (x) The exterior of all residences and other structures must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner and builder due to strikes, fires, national emergency or natural calamities. During the continuance of construction, the Owner of the Lot shall require the contractor to maintain the Lot in reasonably clean and uncluttered condition.
- (y) Each Lot Owner shall provide a screened area in which garbage receptacles, fuel tanks or similar storage receptacles, satellite dishes, electric and gas meters, air conditioning equipment, and other unsightly objects shall be placed or stored in order to conceal them from view of

the road and adjacent properties. Plans for such screened area delineating the size, design, texture, appearance and location must be approved by the Committee prior to construction. Garbage receptacles and fuel tanks may be located outside of such screened area only if located underground, or if curbside for pick up by garbage service.

- (z) No part of any Lot shall be used as a right-of-way, easement or road for access to any property outside Whispering Ridge.

#### ARTICLE V

#### EASEMENTS

**Section 5.01: Existing Easements.** The Lots shall be conveyed subject to easements shown on the Subdivision Plat, and such other easements as may exist of record at the time of conveyance. All easements are reserved for the benefit of the Declarant, its successors and assigns, which easements may be conveyed by the Declarant to one or more Grantees.

**Section 5.02: Reservations of Utility Easements.** The Declarant reserves unto itself, its successors and assigns, perpetual and alienable easements and rights-of-way ten feet (10') in width and on the edge of each lot to survey, lay, construct, operate, maintain, inspect, replace and repair suitable equipment and facilities including, but not limited to, wires, cables and pipes for the conveyance of all underground utilities and for storm and surface water drainage, together with the rights of ingress and egress to all such facilities, easements and rights-of-way for the construction and maintenance thereof. Included in all of the foregoing reservations of easements shall be the right to cut any trees, brush and

shrubbery to make any grading of soil and to take other similar action reasonably necessary to provide economic and safe utility installation and drainage facilities installation, and to maintain appropriate sight distances for vehicles using the roads. The rights herein reserved may be exercised by a licensee, assignee, or grantee of the Declarant, but shall not be deemed to impose any obligation upon the Declarant to provide or maintain any utility drainage services, or maintenance of sight easements.

**Section 5.03: Entrance Structure Easements.** The Declarant reserves unto itself, its successors and assigns, perpetual and alienable easements for the construction and maintenance of entrance structures including gate posts and community signs twenty feet (20') in width.

**Section 5.04: Drainage Easements and Drainage and Storm Water Management Easements.** The Declarant reserves unto itself, its successors and assigns, perpetual and alienable drainage easements twenty feet (20') in width. These easements are solely for surface and storm water drainage purposes and are not to be used for access or any other purpose by the public or any other lot owner. The maintenance of the portion of each of these easements within each lot shall be the responsibility of the owners of that lot.

#### ARTICLE VI

#### SETBACK

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**Section 6.0.1. Building Set Backs** Building set backs from front, side and rear boundaries shall conform to setbacks as required by the Greene County Planning and Zoning Department.

#### ARTICLE VII

##### SITE PLANS, LANDSCAPING AND CLEARING

**Section 7.01. Plans.** Prior to initiating any work on a lot, the owners shall submit to the Committee complete plans for the construction of all improvements on the lot, a site plan showing the location of all improvements on the lot, a landscape plan showing all clearing to be done and landscaping to be installed on the lot, and a grading plan showing all grading to be done on the lot and the finished grade thereof.

**Section 7.02. Perimeter Trees.** No trees of caliper two inch or greater located within fifty feet of the exterior boundary of the subdivision shall be cut without approval of the Committee.

**Section 7.03. Other Trees.** No trees on a lot having a caliper of four inches or greater shall be cut without the approval of the Committee

#### ARTICLE VIII

##### GENERAL PROVISIONS

**Section 8.01. Notice.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postage prepaid to the address of the Owner shown on the real estate tax records of the County of Greene, Virginia.

**Section 8.02. Enforcement.** Enforcement of the provisions of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate said provisions, either to restrain violation or recover damages, or both. Such action may be brought by the Declarant or any Lot Owner. In addition, the Declarant shall have the power to suspend a Lot owner's right to use facilities or services provided directly through the Declarant provided that such suspension shall not endanger the health, safety or property of the owner, tenant or occupant, and to assess charges against any Lot owner for any violation of the provisions of this declaration for which the member or his family members, tenants, guests or other invitees are responsible. Before any charges or suspension may be imposed, the member shall be given an opportunity to be heard by the Declarant and to be represented by counsel. Notice of a hearing, including the charges or other sanctions that may be imposed shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the Declarant or Declarant's assignee, at least 14 days prior to the hearing. The amount of any charges so assessed shall not be limited to the expense or damage to the Declarant caused by the violation, but shall not exceed \$50.00 for a single offense or \$10.00 per day for any offense of a continuing nature. The total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days. A suspension or assessment of charges may be enforced through an action filed in the Circuit Court for Greene County, Virginia. The Declarant or any Lot Owner, bringing a successful action pursuant to this paragraph shall be entitled to recover its court costs and reasonable attorneys' fees.

**Section 8.03. Severability.** Invalidation of one or more of the provisions of this Declaration by judgment, court order or otherwise, shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 8.04. Amendments.** This Declaration may be modified or amended in whole or in part by recorded instrument bearing the signature of the Declarant, until such time as the Declarant has conveyed its interest in all of the Lots in the subdivision to a third party. After the Declarant has conveyed all of its interest in said Lots to Seville Homes, this Declaration may be amended only by an affirmative vote of four fifths (4/5) of the Lot Owners.

**Section 8.05. Duration.** The provisions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date hereof, and thereafter shall be renewed automatically for successive periods of ten (10) years each, unless modified or amended as provided in the foregoing Section 8.04.

WITNESS the following signatures and seals:

Sallie E. Bresnahan

BY: Sallie E. Bresnahan

(Seal)

Thomas F. Bresnahan

BY: Thomas F. Bresnahan

(Seal)

STATE OF VIRGINIA AT LARGE, to wit:

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that Sallie E. Bresnahan as owner of the Lots 1-5 has on this 23 day of March, 2005, acknowledged the same before me in the City/County of James, Virginia.

Given under my hand and seal this 23 day of March, 2005.

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My Commission Expires: 3-31-06*Dawn M. Davis*  
Notary Public

STATE OF VIRGINIA AT LARGE, to wit:

I, the undersigned, a Notary Public in and for the State of Virginia at Large, do hereby certify that James J. Bassett owner of the lots 1-5 has on this 23 day of March 2005, acknowledged the same before me in the City/County of Shenandoah Virginia.

Given under my hand and seal this 23 day of March 2005.My Commission Expires: 3-31-06*Dawn M. Davis*  
Notary Public

INSTRUMENT #0501304  
RECORDED IN THE CLERK'S OFFICE OF  
GREENE ON  
MARCH 28, 2005 AT 01:30PM  
MARIE C. DURRER, CLERK

*Susan B. Rankin* Dep.  
RECORDED BY: SBR

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