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Pitt County, NC
Judy J. Tart Register of Deeds
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File: Scott Browning

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR ELKIN RIDGE TOWNHOMES, LOT 43 ELKIN RIDGE SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by Thomas Ashley Elks and Kami Sutton Elks, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Greenville, Pitt County, North Carolina, which is more particularly described as follows:

Being all of Lot 43 of Elkin Ridge Subdivision, as shown on map, appearing of record in Map Book 56, Page 32 of the Pitt County Registry.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1: "Association" shall mean and refer to Elkin Ridge Townhomes Lot 43 Elkin Ridge Homeowners Association, its successors and assigns.

Section 2: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties; including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3: "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the, jurisdiction of the Association.

Section 4: "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be reserved to the Association at the time of the conveyance of the first lot is described as follows:

Section 5: "Lot" shall mean and refer to any plot of land shown upon arty recorded subdivision crap of the Properties with the exception of the Common Area.

Section 6: "Declarant" shall mean and refer to Williams & Hill, LLC, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7: "Member" shall mean and refer to every person or entity who holds membership in the Association. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as then determined, but in no event shall more than one vote be cast with respect to any Lot.

Section 8: "Total Project" shall mean all real property (including Improvements thereto) included within the bounds of Lot 43 of Elkin Ridge Subdivision, as shown on map of said subdivision appearing of record in Map Book 56, Page 32 of the Pitt County Registry.

ARTICLE II
PROPERTY RIGHTS

Section 1: Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right of use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

(d) the right of individual owners to the exclusive use of parking spaces as provided in this article.

Section 2: Delegation of Use. Any owner may delegate, in accordance with the by-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3: Parking Rights. Ownership of each unit shall include right for two parking slips.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS**

Section 1: Every owner of a lot, which is subject to assessment, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment.

Section 2: An assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2: General Assessments. The general assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose (but excluding the exterior maintenance of homes situated upon Townhouse Lot (as specified in Article VI of this Declaration) or for the use and enjoyment of the Common Area, including but not limited to, yard maintenance in the Common Area and on Townhouse Lot, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment and maintenance of insurance in accordance with the By-laws, that maintenance of all water and sewer lines running over and under the Common Area and to each individual unit (which maintenance shall be solely the responsibility of the Association and not that of Greenville Utility Commission), the payment of charges for television service to Townhouse Lot, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3: Basis and Maximum of General Assessments. Until January 1st of the year immediately following the conveyance of the first lot to an Owner, the maximum monthly general assessment shall be \$75.00 per lot, prorated for the remainder of said year.

(a) From and after January 1st of the year immediately following the conveyance of the first lot to an Owner, the maximum general assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the Membership.

(b) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five (5%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the general assessment at an amount not in excess of the maximum.

Section 4: Special Assessments for Townhouse Unit Maintenance. In addition to the general assessments authorized above, the Association may levy, in any assessment year, a special assessment for townhouse unit maintenance. Such special assessment shall be levied by the Board of Directors pursuant to Article VII of the By-Laws.

Section 5: Special Assessments for Capital Improvements. In addition to the general assessments and special assessment for townhouse unit maintenance authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment, including the payment schedule or due date, shall have the assent of fifty (50%) percent of the votes of members who are voting in person or by proxy at the meeting duly called for this purpose.

Section 6: Notice and Quorum for Any Action Authorized Under Sections 3, 4, 5 and 9. Written notice of any meeting called for the purpose of taking any action authorized under Section 3, 4, 5, or 9 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be onehalf (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the proceeding meeting.

Section 7: Uniform Rate of Assessment. General assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis.

Section 8: Date of Commencement of General Assessments. Due Dates. The general assessments provided for herein shall commence as to all units on the first day of the month following the conveyance of the Common Area. The first general assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the general assessments against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the general assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9: Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment, general or specified, not paid within thirty (30) days after the due date as set forth herein in the case of general assessments or as set by the Board of Directors in the case of special assessments, shall bear interest from the due date at the maximum rate allowed by law but in no event less than eight (8%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape or deny liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The interest rate hereinabove specified may be changed on the same basis as specified in Sections 3, 4, 5 and 9 of this Article.

Section 10: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due of from the lien thereof.

Section 11: Exempt Property. All property dedicated to and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) general assessments or charges, (2) special assessments for townhouse unit maintenance, and (3) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

ARTICLE V
PARTY WALLS

Section 1: General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Property and placed on then dividing line between the units shall constitute a party wall, and to the extent not inconsistent with the provisions in the Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2: Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3: Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution free the others under any rule of law regarding liability for negligent or willful acts or omissions. There shall be a blanket policy for the whole building in which each unit owner will be responsible for paying that units prorated share of the policy.

Section 4: Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful acts causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5: Right to Contribution Runs With Land. The right of arty owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor's in title.

Section 6: Arbitration. In the event of arty dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators, and binding on the parties.

ARTICLE VI
EXTERIOR MAINTENANCE

Section 1: Types of Maintenance. In addition to maintenance on the Common Area, the Association shall provide exterior maintenance upon each Townhouse Lot and is subject to special assessment for townhouse unit maintenance hereunder, as follows: Paint, repair, replace, and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, walks, and other exterior improvements. Such exterior maintenance shall not include exterior doors, glass surfaces including windows, doors or storm doors, and garage doors rich shall be the responsibility of the townhouse unit owners (this, however, shall not exclude the Association from making such repairs in the event of willful failure of a townhouse unit owner to perform his or her obligation). In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article.

Section 2: Costs Subject to Assessment. In the event that the need for maintenance, repair, or replacement is caused through the willful or negligent act of the Owner, his family, guests, invitees, or tenants, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil comumotion, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard are and extended coverage insurance policies, the cost of such maintenance, replacement, or repairs, shall be added to and became a part of the assessment to which such Lot is subject.

ARTICLE VII
ARCHITECTURAL CONTROL

Section 1: General. No building, fence, wall, patio, storm door or window, deck, greenhouse, room or other structure shall be commenced, erected or maintained upon the Properties (which specifically includes units owned by individual owners), nor shall any exterior addition to or change or alteration therein be made until plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall 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 Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2: Patio Area. The patio area adjoining each Townhouse Unit shall be considered to be a part of the Townhouse Unit and shall be under the exclusive control and supervision of the unit owner. The Association shall not be obligated for maintenance or repair in this area except for exterior maintenance as hereinabove defined.

Section 3: Landscaping. All landscaping within the Common Area and within each individual Lot, in areas except for the patio area, shall be under the exclusive control of the Board of Directors; and no bush, tree, shrub, or other vegetation shall be planted in these areas without the consent and supervision of the Board of Directors. Notwithstanding the foregoing, all landscaping within the Common Area shall be under the supervision and control of the Board of Directors.

ARTICLE VIII
USE RESTRICTIONS

Section 1: Land Use and Building Type. No Lot shall be used except for residential purposes.

Section 2: Nuisance. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3: Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except, dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes.

Section 4: Outside Antennas. No outside radio or television antennas shall be erected on any Townhouse Unit unless and until permissions for the same has been granted by the Board of Directors of the Association or its architectural control committee.

ARTICLE IX
EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

All Units and Common Areas shall be subject to easements for the encroachment of initial improvements constructed on adjacent units by the Declarant to the extent that such initial improvements actually encroach, including, but not limited to, such items as overhanging eaves, stoops, chimneys, bay windows, gutters and downspouts, misaligned common walls foundation footings and common or party walls including extensions thereof, such as garage or patio walls where a portion of said extension may encroach upon adjoining property. Declarant shall have a reasonable construction easement across the Common Area for the purpose of constructing improvements on the Lot.

ARTICLE X
GENERAL PROVISIONS

Section 1: Enforcement. The Association, or any Owner, 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 this Declaration. Failure by the Association or by any Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in now wise effect any other provisions which shall remain in full force and effect.

Section 3: Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive period of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners, and thereafter by an instrument signed by not less that seventy-five (75%) percent of the Lot Owners. Any amendment must be recorded.

Section 4: Annexation. Additional land described as land in the Total Project as specified in Article I, Section 8 of this Declaration may be annexed by the Declarant without consent of members within ten (10) years of the date of this instrument. Except as heretofore provided in this Section, additional residential property and Common Area may be annexed to the properties with the consent of two-thirds (2/3) of each class members.



Thomas Ashley Elks (SEAL)



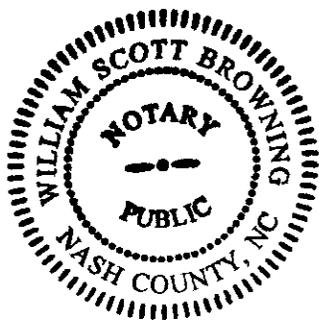
Kami Sutton Elks (SEAL)

STATE OF NORTH CAROLINA

PITT COUNTY

I, William Scott Browning, Notary Public of said County and State, do hereby certify that Thomas Ashley Elks and Kami Sutton Elks, personally appeared before me this day and acknowledged the due execution of the foregoing instrument in writing..

Witness my hand and official stamp or seal, this 27th day of November, 2006.



William Scott Browning
Notary Public

My Commission Expires:
June 17, 2009