

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

Deed Book Page
0690 0394
RUTHERFORD COUNTY NC
05/15/97 10:13 AM
FAIR H. HUSKEY
Register of Deeds
By: S.P. Deputy/

PINNACLE MOUNTAIN
AGREEMENT AND HOMEOWNERS ASSOCIATION PROVISIONS

THIS AGREEMENT, made and entered into this the 2nd day of May, 1997, by and between B.F. White and J.R. White, a North Carolina General Partnership, party of the first part, hereinafter referred to as "DEVELOPER", and all future owners of the residential lots and tracts located in the area of real property owned by Developer and described in deed recorded in Deed Book 677, Page 660, Rutherford County Registry;

W I T N E S S E T H:

THAT WHEREAS, the residential development known as Pinnacle Mountain (hereinafter referred to as the "Development") is property originally consisting of 42.066 acres and is shown upon that plat which is recorded in Plat Book 18, Page 4, of the Rutherford County Registry.

WHEREAS, Developer is desirous of establishing a plan for the periodic maintenance and repair of all streets and roads now located or to be located upon the real property set forth in Plat Book 18, Page 4, Rutherford County Registry, and which will continue to be known as Pinnacle Mountain, Phase I;

WHEREAS, streets and roads located within the property referred to as the Development are private roads and streets and are not maintained by the State of North Carolina or any municipal authority and therefore the responsibility for the construction and maintenance of said private roads and streets rests with the owners of lots within the subdivision:

AND WHEREAS, this agreement provides for a fair and equitable plan for the periodic maintenance and repair of all of said streets and roads in said Development under the direction and supervision of a Homeowners Association.

NOW THEREFORE, in consideration of the initial financial benefits accruing to the present owners and to the future owners of the Development lands, the parties to this agreement hereby establish for themselves and for their heirs, successors and assigns the following conditions and terms that shall henceforth permanently affect each owner or co-owner of every tract that shall hereafter be located in said Development:

1. An Association of Homeowners is hereby formed for the purposes and is subject to the conditions hereinafter set out;

a. All owners of tracts located in the Development are automatically members of Pinnacle Mountain Homeowners

Association. Only one vote per tract may be cast regarding any matter submitted to the members for vote.

b. The Pinnacle Mountain Homeowners Association shall meet once a year for the purpose of electing officers and planning road maintenance for the streets and roads of the residential area. Such annual meeting shall be held at 7:30 P.M. on the first Monday in June of each year, beginning with the year 1997. A President, Vice-President, Secretary and Treasurer shall be elected to serve until such time as his or her respective successor is elected. The elected officers of the Homeowners Association shall also serve as the official board of directors of such Association and shall have the authority to establish its own by-laws, rules and regulations for the purpose of effectively promulgating the provisions and intent of this agreement. Further, upon the sale of all lots within the Development, such Association may choose to incorporate such Association.

c. The Board of Directors at each annual meeting shall appoint a Superintendent of roads who shall serve for one year, or until his or her successor is appointed. Such Superintendent of roads shall be required to periodically inspect all roads and streets in the Pinnacle Mountain lands and to report at least twice a year to the Board of Directors his specific recommendations regarding any maintenance or upkeep of the streets that he deems is necessary and desirable for safe, comfortable and attractive access to and from the tracts located in Pinnacle Mountain lands.

d. The tract owners in the Pinnacle Mountain lands shall have the right to anticipate that safe and dependable roads and streets shall be provided to each of them for ingress and egress to and from their respective tracts, and in this connection the roads and streets shall always have proper drainage ditches along the sides of the roadbeds, be free of mud and standing water, potholes and ruts, and have adequate amounts of gravel and be properly sloped to prevent washout and erosion. These standards are minimal and the Superintendent of roads and the Board of Directors of the Homeowners Association shall act and perform in accordance with such standards. There is no necessity for the blacktopping or paving of said roads and streets unless and until it is decreed by the Superintendent of roads and the Homeowners Association.

e. The Board of Directors, immediately following the report of recommendation of the Superintendent of roads, shall within one week following the report of the Superintendent of roads, call a special meeting of the Board of Directors for the purpose of reviewing the costs of the recommendations of the Superintendent of roads and to make final determination as to the repairs and maintenance needed for said roads or streets in the development. The Board shall promptly obtain firm cost estimates as to the maintenance and repairs that it deems are necessary for preservation and maintenance of said streets and roads.

f. The Board of Directors, after review of the bids obtained for the desired work on said streets and roads, shall, by and through its President and/or Secretary, employ such persons as it deems prudent and in the best interest of all tract owners in said development to perform the work.

g. Each time the Board makes a decision to repair any of the streets and roads in the development, and following the securing of cost estimates for the same, it shall require that the Treasurer mail to each tract owner a statement covering such tract owner's pro-rata and equal share of the total sum contemplated for the completion of such work. To determine the pro-rata share due from each tract owner, the Treasurer shall divide the total amount of monies needed for the completion of work by the number of lots located in said development.

h. Upon failure of any tract owner to pay his or her pro-rata share of the cost of the maintenance and repair of such streets and roads within sixty days after written demand has been made upon him or her the Homeowners Association shall institute suit against the defaulting tract owner(s) for the purpose of establishing judgment and lien against the residence and property of such tract owner(s). The Homeowners Association shall have the right and privilege of enforcing any judgment so obtained by the issuance of levy of execution against such defaulting tract owner.

i. For the purpose of providing an operating fund for emergency and general repairs to the roads and streets in the development, and for administrative and legal expenses, the Board of Directors is authorized and directed to collect from each tract owner a sum of money annually which the Board deems is sufficient to cover during the current year such anticipated repair costs, administrative and legal expenses. The Treasurer shall be responsible for the collection of such costs from the tract owner. The collection of such charges shall be enforced through suit, if not paid by any tract owner voluntarily.

In order to carry out the spirit and purpose of this Agreement, all property owners for themselves and for their respective heirs, successors, and assigns, covenant and agree:

(1) That each lot owner, when he buys a tract, he or she shall then be required to pay all pro-rata charges and costs at that time assessed against him or her for maintenance and upkeep of all roads and streets;

(2) That the property owner shall place or cause to be placed in each deed conveying land an appropriate clause referring to this Agreement and subjecting the new owner to the terms and conditions hereof, and;

(3) Providing further, that these provisions shall run with the land and be permanently affixed thereto; and

(4) It is further agreed that all persons who purchase real property within the development shall accept title thereto subject to the terms of this Agreement whether or not this Agreement is referred to in the deed of conveyance; and

(5) It is further agreed that failure of the Homeowners Association or Superintendent of roads to act shall in no way relieve the tract owners of their responsibility in periodically repairing and maintaining, as a group, said roads and streets;

(6) It is expressly understood and agreed that Developer shall have one vote for each vacant tract owned by Developer in the subdivision and it is expressly understood and agreed that the Developer shall be exempt from paying any maintenance fees for vacant tracts or tracts with models thereon.

(7) The initial assessment shall be \$200.00 per lot per year.

(8) The tract owners are expressly advised that until the Department of Transportation of the State of North Carolina takes over said roads, that these will be private roads and the same must be maintained by them and the owners of other tracts of land in the development, in compliance with N.C.G.S. §136-102.6(f).

(9) Although the roads are not constructed to minimum standards to allow their inclusion on the State Highway Commission, Developer reserves the right to convey up to a sixty foot right of way to the Department of Transportation of the State of North Carolina at any time so that said roads may become public roads and may be maintained by the Department of Transportation of the State of North Carolina. The tract owners agree that the Developer shall be their agents and empowered to sign any and all documents to convey said sixty foot right of way to the Department of Transportation of the State of North Carolina without the necessity of their signing any legal documents to insure this transfer. The tract owners expressly waive any compensation from the State of North Carolina for the taking of the required right of way.

Each of the tract owners in the development shall be jointly and severally liable for the upkeep and maintenance of the roads and streets and failure of the Homeowners Association to act as hereinabove set out shall in no way relieve each tract owner from his or her responsibility to maintain said roads and streets. Each tract owner may enforce such liability against any and all other tract owners. However, should the Association choose to incorporate the Homeowners Association, such corporation shall be allowed to take over the upkeep and maintenance of said roads and assume the resulting liability from such upkeep and maintenance

or the lack thereof, relieving each tract owner from such liability should the incorporated Association choose to do so.

2. The property subject to this Agreement and Homeowners Association Provisions may be increased by filing with the Register of Deeds of Rutherford County referred to above, supplements to this Agreement, which need only be signed by the Developer, the owner of the additional land described in the supplement and the holder of any mortgage, deed of trust or similar lien thereon, stating that the additional land shall be subject to this Agreement. No other land in the vicinity of the Property shall be subject to this Agreement unless the provisions of this paragraph are complied with, it being intended that this Agreement not be construed or considered as a scheme for the development of any land other than that shown on the Plat or hereafter subjected to this Agreement in the manner described in this paragraph.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this the 2nd day of May, 1997.

J.R. WHITE & B.F. WHITE, a North
Carolina General Partnership,
DEVELOPER

BY: J.R. White
J.R. White, General Partner

STATE OF NORTH CAROLINA

COUNTY OF POLK

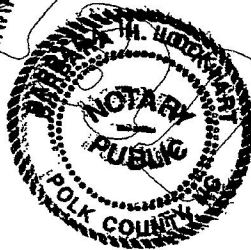
I, Barbara H. Lockhart, a Notary Public of the County and State aforesaid, certify that J.R. White & B.F. White, a North Carolina General Partnership, Developer, by and through J.R. White, General Partner, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 2nd day of May, 1997.

Barbara H. Lockhart
Notary Public

My commission expires:

10-3-2001



STATE OF NORTH CAROLINA

Book Deed Page
0690 0399

COUNTY OF RUTHERFORD

The foregoing certificate of Barbara H. Lockhart
is certified to be correct. This instrument
was presented for registration this the day and hour duly
recorded in the Office of the Register of Deeds for Rutherford
County, North Carolina, in Deed Book 690, Page 394.

This the 15 day of May, 1997, at 10:13
o'clock A.M.

FAYE H. HUSKEY, Register of Deeds
for Rutherford County, North Carolina.

BY: Anna R. Doherty Deputy/~~Assistant~~

Unofficial