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Pitt County, NC  
Lisa P. Nichols REG OF DEEDS  
BK 4192 PG 355-368

PREPARED BY: L. ALLEN HAHN, P.A.  
FILE: L. ALLEN HAHN, P.A.

NORTH CAROLINA  
PITT COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

**KINSEY CREEK, PHASE 2 DUPLEXES**

THIS DECLARATION, made on the date hereinafter set forth by ROCKY RUSSELL DEVELOPMENT, LLC, a North Carolina Limited Liability Company, hereinafter referred to as "Declarant".

W-I-T-N-E-S-S-E-T-H:

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

*All of the numbered lots, common areas, streets and roads located within the boundaries of Kinsey Creek, Phase 2 as shown on the plat of same entitled "Map of Record, Kinsey Creek Phase 2 Duplexes as drawn by Stroud Engineering dated July 23, 2021 recorded in Map Book 87 at Page 119 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

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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 KINSEY CREEK PHASE 2 OWNERS ASSOCIATION, INC., 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 hereinbefore 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 or used by the Association for the common use and enjoyment of the owners.

Section 5: "Lot" shall mean and refer to any numbered or lettered lot or plot of land shown upon any recorded subdivision map of the properties.

Section 6: "Declarant" shall mean and refer to ROCKY RUSSELL DEVELOPMENT, LLC and its successors and assigns.

Section 7: "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8: "Development Period" means the period commencing on the date on which this Declaration is recorded at the Pitt County Register of Deeds and terminating on the earlier to occur of (i) when Declarant no longer owns a Lot in the Subdivision; (ii) the date that Declarant relinquishes in writing Declarant's right to appoint Directors; or (iii) the occurrence of the date ten (10) years from the date of

recording the Declaration, renewable for an additional ten (10) year period with the consent of a majority of Lot Owners other than the Declarant.

## ARTICLE II:

### PROPERTY RIGHTS

Section 1: Owner's Easement 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 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 Sixty (60) days for any infraction of its published rules and regulations;
- (b) 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 2/3rds of each class of members has been recorded.

Section 2: Declaration 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: Transfer of Common Areas. The Declarant herein will convey to the Homeowners Association listed herein, the common areas as shown on the above referenced plot, on or before the sale of the last lot owned by Declarant to a third party.

## 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 ownership of any lot which is subject to assessment.

Section 2: The Association shall have two classes of voting membership.

Class A. Class A membership shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for such Lot owned. 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.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned, and notwithstanding any other provisions herein, shall be assessed at a rate of not more than twenty-five percent (25%) of the Class A membership rate. Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, and in all events no later than January 1, 2030. Declarant shall not be assessed on any lot until a final certificate of occupancy shall have been issued for the unit on said lot. However, at no time will Declarant's assessed dues be greater than twenty-five percent (25%) of the regular membership rate.

#### 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 therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such 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 the title unless expressly assumed by them.

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the 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 and related to the use and enjoyment of the Common Area, including but not limited to, maintenance and repair of the storm water detention pond and the common area surrounding it on the recorded subdivision plat, the cost of yard maintenance, common lighting, repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3: Special Assessments for Capital Improvements. In addition to the annual assessments 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. Declarant will also not be required to pay any dues for homes without a Certificate of Occupancy.

Section 4: Notice and Quorum of Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than thirty (30) days or 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%) per cent 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 one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5: Uniform Rate of Assessment. Except as provided for Class B members, both annual and special assessments must be fixed as a uniform rate for all Lots in Kinsey Creek Phase 2 and may be collected on a monthly basis.

Section 6: Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence as to Lots on the day a Lot is transferred to a new owner. The first annual 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 annual assessments against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates 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 the 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 7: Effect of Nonpayment of Assessment. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of one and one-half per cent (1 ½ %) per cent per month or eighteen per cent (18%) per annum, with a minimum fee of \$10.00. 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.

Section 8: Subordination of the Lien to Mortgages. The lien of the assessment 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 became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9:     Exempt Property. All property dedicated to and accepted by, a local 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 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 Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent no inconsistent with the provisions of this 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, an Owner who has use of 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 from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4:     Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act 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 Contributions Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 6: Arbitration.** In the event of any 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 upon the Common Area, the Association shall provide exterior maintenance upon each Duplex Lot which is subject to assessment hereunder, as follows: Paint, repair, replace and care of external siding, exterior boxing, shingles, concrete, landscaping and grass mowing. Such exterior maintenance shall not include windows, window frames, screens or glass or doors. Property owners are responsible for the maintenance and replacement of entry doors, windows and screens. The HOA is not responsible for exterior components of a home, such as heating or air-conditioning, plumbing, electrical fixtures or other outside components. 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 the Article.

**Section 2. Costs Subject to Assessments.** 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, or invitees, or tenants, or is caused by fire, lightening, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the assessment to which such Lot is subject.

**Section 3. Homeowners Insurance.** All unit owners must carry and maintain a Homeowners or Business Owner's policy covering loss or damage to the unit and furnish a copy to the Owner's Association at purchase of each unit and upon request.



## ARTICLE VII:

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the 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. For the purpose of this Article, storm windows and a storm door on the rear entrance may be placed and maintained on duplexes without need for approval of the architectural committee; but a storm door placed and maintained at the entrance, or front door, to a duplex must be approved by the architectural committee in accordance with the provisions of this Article.

## ARTICLE VIII:

### USE RESTRICTIONS

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

**Section 2:** Nuisance. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereof 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 that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. (See Section 10 Below)

**Section 4: Outside Antennas.** No outside radio, satellite dishes or television antennas shall be erected on any Duplex unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

**Section 5: Homeowners' Dues.** Homeowners' monthly dues and/or assessment payments are due and payable on the first day of each month. Dues and/or assessments not paid within 30 days will be subjected to accruing interest at a rate of 1.5% per month or 18% per annum, with a minimum late fee of \$10.00.

**Section 6: Renters.** Renters are considered equal with resident owners to abide by these rules and regulations. Non-resident owners must be aware that Section 32-3 of the Greenville Zoning Ordinance stipulates that no more than three (3) unrelated persons may occupy a single-family dwelling. The owners of the property in violation of this Ordinance are subject to enforcement action up to and including the issuance of Civil Citations of \$50 per day for each and every day the violation continues.

**Section 7: Units for Sale.** "For Sale" signs and "Open House" signs may only be placed in the shrubbery bed near the entrance of the unit that is for sale. In no case shall any signs be displayed on the common grounds, except that "Open House" signs may be displayed at the Subdivision entrance for 48 hours prior to the end of the open house. All units must be fully insured and minimal utilities must be maintained at all times, including period of vacancy.

**Section 8: Ground Maintenance.** Maintenance of the grounds shall be performed by the Homeowners Association including mowing, edging and fertilizing of the grass; cleaning the common areas; pruning the shrubs; distributing pine straw; and replacement of trees, shrubs, etc.

Residents who choose to plant trees or shrubs in the borders in front of their units (with proper approval) are responsible for the care and maintenance of those plantings. Owners are also responsible for damages caused to buildings, patios, sidewalks or fencing caused by such plantings. If the unit is sold, it must be conveyed to the new owners that they, and NOT the Association, are responsible for such planting. Plantings within the patio area must be located and/or maintained to prevent possible damage to plumbing, fences, patio fences, patio surfaces, and exteriors and/or patios are the responsibility of the owners. Under no circumstances