

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS OF
Elk's Ridge

WHEREAS, ELK'S RIDGE, a Utah Sole- Proprietorship Company, owned by Frank T. Smith III herein referred to as "Developer", has planned the development of ELK'S RIDGE, a residential community described in Exhibit "A," hereto; and

WHEREAS, Developer has caused to be incorporated a Utah non-profit corporation, ELK'S RIDGE HOMEOWNERS ASSOCIATION, INC. (the Association) for the purpose of maintaining and improving the roadways in Elk's Ridge, and of administering the covenants, conditions, and restrictions and easements established hereby;

NOW, THEREFORE, Developer hereby declares the all of the property described in Exhibit "A" shall be held, transferred, sold, conveyed, encumbered, leased, used, improved and occupied subject to the following covenants, conditions, restrictions and easements all of which are for the purpose of enhancing and protection the value, desirability and attractiveness of the property. These covenants, conditions, restrictions and easements shall run with the land and be binding upon all persons having or acquiring any right, title or interest in the above described property or any part , thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

For the purpose of this Declaration o the following definitions shall control:

1. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Elk's Ridge Homeowners Association, Inc., A copy of said Article of Incorporation are attached hereto as Exhibit "B" and incorporated herein by reference.
2. "Association" shall mean and refer to Elk's Ridge Homeowners Association, Inc.
3. "Bylaws" shall mean and refer to the Bylaws of Elk's Ridge Homeowners Association, Inc.
4. "Declaration" shall mean this instrument, together with those exhibits and any future amendments
5. "Declaration Property" shall mean and refer to that certain real property described in Exhibit "A" hereto and such additional lands, if any, as may hereafter be annexed thereto and decided to be subject to the provisions of this Declaration by Developer.
6. "Lot" shall mean and refer to any plot of land so designated upon any recorded plat of the Declaration Property.
7. "Member" shall mean and refer to each owner who is a member of the Association.
8. "Owner" shall mean and refer to the record owner holding a fee (non-lease) title.
9. "Committee" shall mean and refer to the Architectural Control Committee.
10. "Plat" shall mean any map or survey plat of Declaration Property which is on record in the Jackson County Registry.

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Recorded DEC 31 2003 and No. 62809

At 3:28 AM PM in Book W/9 Page 270

Fee \$6.00 Debra L. Ames Rich County Recorder

Requested by Town of Garden City

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11. "Single family dwelling" shall mean a residential dwelling for one or more persons, each related to the other by blood, marriage, or legal adoption or, alternately, a group of not more than four (4) persons not so related who shall maintain a common household in such dwelling.
12. "Supplemental Declaration" means that document made and executed by Developer which annexes any additional lands as Declaration Property and submits same to the terms and provisions of this Declaration or an amendment hereto.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

1. Property Subject to this Declaration. The property described in Exhibit "A" hereto is the property hereby declared to be held, transferred, sold, conveyed, encumbered, leased, used, improved and occupied subject to this Declaration.
2. Additions Thereto. Developer shall have the right in its sole discretion from time to time to commit to development, and to submit to the terms and conditions of this Declaration, additional lands by a supplemental declaration. Developer shall also have the right in future phases to change or modify the terms and conditions of the declaration in those phases. ???

ARTICLE III

ROADS AND WATER SYSTEM

1. Developer's Authority to Retain Rights in Roads. Developer shall have the right to retain, as to any roads or water systems in Elk's Ridge, such rights thereto including but not limited to the use thereof and the right to improve, modify and maintain same as is necessary in Developer's sole opinion for the possible development of Elk's Ridge or any future development in adjacent parcels and sale of Declaration Property, and easements for ingress and egress thereto and use and enjoyment thereof by Developer, its successors and assigns.
2. Owner's Rights and Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to all roads common with all other owners, subject to:
 - (a) All rules and regulations governing the use and enjoyment of the roads by the Association;
 - (b) The right of the developer and the Association to establish easements over the roads for service to or in favor of any private or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers, water pipes, cable television lines or hook-ups or any other private or public utility services serving any lots within the Declaration Property or future development parcel.
3. Reserved Rights by Declarant. The non-exclusive right to use all roadways within the Declaration Property shall be an appurtenance to each lot within said property, subject to the reserved right of the Developer and his assigns to use, maintain, improve, and/or replace the roadways, ditches, slopes and culverts, and to install, maintain and replace public and private utilities within the right-of-way of all roads within Declaration Property, for the benefit of Declaration Property or future phase.
4. Construction Bond. Developer may require any and all lot owners to post a construction bond for a minimum of \$2,500 for road and property damages in

construction of lot owner homes. If bond is not sufficient to cover the cost of damages, the lot owner will pay the full damage amounts. Lot owners are responsible for themselves, contractors and sub contractors and person or persons employed by the owner for any and all damages to above and below the ground and utilities.

ARTICLE IV

ADMINISTRATION, MAINTENANCE AND IMPROVING OF ROADS AND WATER SYSTEMS. FINANCIAL RESPONSIBILITY OF OWNERS THEREFOR. AGREEMENT FOR ASSESSMENTS AND ENFORCEMENT THEREOF

1. Roads. Developer may retain the title to all roadways until all road projects are completed or in the opinion of the developer, the association is able to maintain the same level of roads started that the Developer has set forth. ??? The Developer hereby covenants for itself, its heirs and assigns that the Developer shall convey the roadways to the Association, free and clear of all lines and encumbrances no later than January 1, 2012.
(a) Elk's Ridge Road, the main through fare, that starts from the entrance, will extend through all phases of Elk's Ridge subdivision and will continue through future phases and future developments. Developer retains the access rights of all roads for future developments.
2. Water Systems. Developer has agreed to turn over to the City, the water system, pumps and storage tank. The City will have sole responsibility to maintain the system thereafter. Lot owners will have responsibilities for fees, maintenance, liability for water system on their individual property.
3. Financial Responsibility of Owners: Assessments by Association. The owners are responsible for providing funds necessary to the Association to carry out the above purpose. The Association shall assess each owner as provided herein for their prorated share of its expense.
4. Assessments: Personal Obligation of Owners: Creation of Lien. Each lot owner agrees to pay to the Association:
 - (a) Annual assessments for administration and maintenance.
 - (b) Annual assessment for capital improvements.
 - (c) Special assessments for administration, maintenance, and capital improvements.
5. Rate of Assessment. All annual and special assessments shall be fixed at a uniform rate for all lots. The Board of Directors shall fix the amount of the annual assessment against each lot at least 30 days in advance of each annual assessment period. Written notice of annual and special assessments 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.
6. Effect of Non Payment of Assessments; Remedies of the Association; the Lien. Any assessment not paid within 15 days after the due date shall be deemed delinquent and shall bear interest from the due date at the rate of 15% or such rate of interest as the Board of Directors may from time to time determine. Any assessment not paid shall constitute a lien upon the property as an improvement thereto. And the Association shall

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pursue collection, and all remedies at law or equity, including a suit to judgment and execution thereupon, including the sale of the lot liened upon.

7. Owner May Not Escape Liability by Non-use of Roads. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use the roads or abandonment of his lot.

8. Suspension of Owner's Rights while Delinquent. The Association shall not be required to allow the exercise of any rights or privileges of membership to any lot owner or subsequent purchaser unless all assessments upon the lot are paid in full.

ARTICLE V

RESTRICTIONS ON USE

1. Use of Lots Restricted to Residential Purposes. No lot shall be used except for one single family dwelling, a guest house for bona fide, non-paying guests, and out buildings approved by the Architectural Control Committee. There shall be no commercial activity on lots within the subdivision, unless commenced inside resident dwelling as long as not visible outside dwelling.
2. Site Location. Residences and all additional buildings and improvements shall be reasonably located on each lot in a manner which shall afford the best privacy on each lot, including adjacent lots or roads and must be approved by the Architectural Control Committee, which shall be the sole determiner of the above criteria.
3. Minimum Square Footage. No single-family dwelling shall have less than 2,000 square feet of enclosed heatable space, exclusive of any basement.
4. Construction Plans and Requirements. All home plans must be reviewed by Architectural Committee. All homes must be site built and have a permanent concrete foundation, all homes must have site built electrical and plumbing.
5. Set Backs. All improvements except fences and landscaping, shall be located at least thirty (30) feet from the road right of way lines and ten (10) feet from property lines.
6. Construction and Completion of

- (a) Construction and improvements, once commenced, shall be completed within 2 years. Improvements not completed, or construction which has been partially or totally destroyed and not rebuilt or cleaned away so as to leave a neat and tidy appearance, within 3 months shall be deemed a nuisance. The Associations shall, at its discretion, clean debris from the lot and levy against the owner and lot for collection of cost thereof. Such action shall be considered an improvement to the lot, thereby allowing the Association to lien against the lot and collect under the lien laws of Utah.
- (b) All siding must be finished to ground level on houses, garages, and all out buildings. No concrete siding unless cultured stone or brick. All vinyl sidings must be approved by Architectural Committee. Any color or stain used for exterior finish must also be approved by Architectural Committee.
- (c) Roof color selections shall be brought forth to Architectural Committee.
- (d) Three months after certificate of occupancy landscaping must be completed. Minimum of ten indigenous trees are required at a minimum of 3 feet and over. Five of which must be planted in the area of your 30 foot set back. Minimum thirty (30) feet wide or grass extending from foundation

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- (c) No perimeter fences will be allowed, exception may be made for dogs, children or pools through the architectural Committee.
7. Maintenance of Lots and Improvements. All lots, whether occupied or unoccupied, and all improvements placed thereon shall at all times be maintained in such a manner as to prevent their becoming unsightly, unsanitary, or a hazard to health. If not so maintained, the Association shall have the right to rectify such offensive situations and the cost of such undertakings shall be a special assessment against the lot owner and the lot. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from its actions to so rectify any offensive situation.
8. Burning of Garbage, Trash or Rubbish Prohibited. No owner shall burn any trash garbage or refuse on their lot or any Declaration Property.
9. Storage of Garbage, Trash or Rubbish. No owner shall accumulate on his lot any junk vehicles, litter, trash or rubbish; or garbage except in receptacles provided for such purposes.
10. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, RV, travel trailers or other outbuildings shall be used on any lot at an time as a residence either temporarily or permanently.
11. Re-subdivision of a Lot. No re-subdivision of a lot are permitted.
12. Animals. The usual and customary household pets are permitted as long as they are under the owner's control.
13. Access to Lots. Other than the Developer, no owner shall grant a right of way for access to any other property within or outside of the development without the Association's approval.

ARTICLE VI

EASEMENTS

1. Reservation of Easements. The following easements over each lot and the right of ingress and egress to the extent reasonably necessary to exercise such easements are reserved to Declarant, its successors and assigns:
- (a) Utilities. A strip ten (10) feet wide, running along the inside of all lot lines (except those lot lines adjoining roadways) for the installation, maintenance and operation of utilities including but not limited to electricity, telephones, radio and television transmission cables and the accessory right to locate guy wires, braces and anchors or to cut trim or remove trees and plantings wherever necessary upon such lots in connection with such installation, maintenance and operation. Utilities within the interior of the development will be placed underground.
 - (b) Roadways. A right-of-way as shown on the plat of Declaration Property referenced herein above.
 - (c) Other Easements. Any other easements shown on the plat.

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2. Use of and Maintenance by Owners. The areas of any lots affected by the easements reserved herein shall be maintained continuously by the owner of such lot with the exception of the actual roadways, which shall be maintained by the Association. No structures, plantings or other materials shall be placed or permitted to remain or other activities undertaken thereon which may interfere with the use of said easements for the purposes herein set forth. Improvements within such areas shall be maintained by the owner except those for which a public authority or utility company is responsible.
3. Limitation on Liability for Use of Easement. No owner shall have any claim or cause of action against Developer or its licensees arising out of the exercise or non-exercise of any easement reserved hereunder or shown on the plat.

ARTICLE VII

CONTROL OF IMPROVEMENTS: THE ARCHITECTURAL CONTROL COMMITTEE

There is hereby created an Architectural Control Committee which shall perform the duties required of it by this Declaration.

1. Improvements Prohibited Without Approval. No building, fence, wall or other structure shall be commenced, erected, maintained or placed upon any lot nor shall any exterior to or change or alteration to any residence or improvement thereon be made upon any lot (except interior modifications) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to the Architectural Control Committee in the manner and form prescribed by it and approved by it. The application shall be accompanied by a sets of plans and specifications which shall show all information necessary including but not limited to the location of all improvements, if any, existing upon said lot, the location of the improvements proposed to be constructed, the color and composition of all exterior materials to be used, and any other information which the Committee may require.
2. Grounds for Disapproval. The Committee may disapprove any application:
 - (a) If such application does not comply with this Declaration;
 - (b) Because of the reasonable dissatisfaction of the Committee with grading plans, location of the proposed improvements on a lot, finished ground elevation, color improvements on a lot, finished ground elevation, color scheme, finish, design proportions, architecture, shape, height, or style of the proposed improvements, the materials used therein, the kind, pitch, or type of roof proposed to be placed thereon;
 - (c) If, in the judgment of a majority of the Committee, reasonably exercised, the proposed improvements will not be harmonious with the improvements erected on other lots; or
 - (d) If in the judgment of a majority of the Committee, reasonably exercised, the proposed request fails to meet the criteria set forth in this Declaration.
4. Rules and Regulation. The Committee shall, from time to time adopt written rules and regulations of general applications governing its procedures which shall include, among other things, provisions for the form and content of

applications, number of copies, time and notice allowed to approve or disapprove.

5. Variations. The Committee may grant reasonable variations from the provisions in this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental to owners of other lots.
6. Certification of Compliance. At any time prior to completion of construction of an improvement, the Committee may require a certification, upon such forms as it shall furnish, from the contractor, owner, or a licensed surveyor that such improvement does not violate any set-back, ordinance, or statute, nor encroach upon any easement or right of way of record.
7. Liability. Notwithstanding the approval by the Committee of plans and specifications or its inspection of the work in progress, neither it, the Developer, the Association, nor any person acting in behalf of any of them shall be responsible in any way responsible for any defects in any plans or specifications or other material submitted to the Committee, nor for any defects in any work done pursuant thereto. Each person submitting such plans or specifications shall be solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto.
8. Appeals. Any applicant shall have the right to appeal to the Board of Directors of the Association any decision of the Committee within thirty (30) days after entry of such decision.
9. Committee Membership. The Committee shall comprise 3 members, to be appointed by the Developer. Committee members shall be subject to removal by Developer. The power to appoint or remove Committee members shall be transferred to the Association upon the sale of 75% of all the lots within Declaration Property or at such time as the Developer in its sole discretion elects.

ARTICLE VIII

ANNEXATION AND SUBMISSION OF ADDITIONAL PROPERTIES TO THE DECLARATION

1. Property to be Annexed. Developer may from time to time, in its sole discretion, annex additional lands to the Declaration Property and submit to them terms and conditions of this Declaration.
2. Manner of Annexation. Developer shall effect such annexation by recording a plat of the real property to be annexed and by recording a Supplemental Declaration which shall:
 - (a) Describe the real property being annexed and designate the permissible uses thereof;
 - (b) Set forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restrictive uses of roads.

- (c) Declare that such annexed property shall be held, transferred, sold, conveyed, encumbered, leased, used, occupied and improved subject to the provisions of this Declaration as amended.

3. Results of Annexation. Upon the recording of such Plat and Supplemental Declaration the annexed area shall become a part of the Declaration Property and subject to all provisions of this Declaration as amended.

ARTICE IX

THE ASSOCIATION

1. General. The Association is a Utah non-profit corporation organized to further and promote the common interests of property owners within the Development. The Association shall have such powers in the furtherance of its purposes as are set forth in its Articles and by-laws.
2. Membership. The Declarant and lot Owner shall be a Member of the Association
3. Votes. For each lot not conveyed by the Developer, the Developer has 2 votes and each other lot owner shall have one vote within the Association where the lot owners/members.
4. Board of Directors. The Board of Directors shall govern the affairs of the Association. Initially, the Board will be comprised of three directors as appointed by the Declarant, and be replaced as provided for in the Articles of Incorporation and by-laws of the Association by majority vote of the members.

ARTICLE X

GENERAL PROVISIONS

1. Covenants, Conditions, Restrictions, and Easements Run with Land. All covenants, conditions, restrictions and easements contained in the Declaration shall be binding upon the Developer and all subsequent lot owners and runs with the land.
2. Grantee's Acceptance. Each owner of any lot shall, by acceptance of title thereto, or by the execution of a contract for the purchase thereof, shall accept such title or contract subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges, and immunities of the Developer and of the Association. Such owner or contracting party, for himself, his heirs, assigns, and successors, covenants, consents and agrees to and with the Developer, the Association and the owner of each other lot to keep, observe, comply, and perform the covenants, conditions and restrictions contained in this Declaration.

ARTICLE XI

REMEDIES

1. Enforcement. The Developer, Association and each person to whose benefit this Declaration inures, may proceed at law or in equity to prevent the occurrence or continuance of any violation of any provision of this Declaration, and the Court in such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorneys' fees.
2. Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provisions of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.
3. Effect of Waiver of Violations. No waiver of a breach or violation of any of the covenants, conditions, restrictions and easements in this Declaration shall be construed as a waiver of any succeeding breach of the same covenant, conditions, restriction and waiver.

ARTICLE VII

Common Areas and Amenities

1. All Elk's Ridge common areas that will be maintained and funded through the Homeowner Association. A number of parks, picnic areas and playgrounds will be build within the subdivision for the common use of all those in the Homeowners Association. All homeowner and lot owners will be members of the Elk's Ridge Homeowners Association and will contribute their portion of dues set forth by the Association.
2. The Developers will, in the future, add other amenities to the subdivision for the enjoyment and common use of the members of the Association.

