

Prepared by and
Returned to :
Wayne A. Roper

BK 7113PG0928

PRESENTED
FOR
REGISTRATION

STATE OF NORTH CAROLINA
000211

90 AUG 15 1996
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
PARKCREST TOWNHOMES
KENNETH B. PARKER
REGISTER OF DEEDS
WAKE COUNTY

THIS DECLARATION, made this 13th day of August, 1996, by HORIZON HOMES INCORPORATED, a North Carolina corporation (hereinafter referred to as "Declarant");

WITNESSETH

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

BEING all of Tract 2 consisting of 3.38 acres as show on plat recorded in the Book of Maps 1994, Page 1849, Wake County Registry.

NOW, THEREFORE, Declarant will convey said property, subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth;

NOW, THEREFORE, the 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, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, restrictions, covenants and conditions shall run with the real property and be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof and their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Parkcrest Townhomes Association, Inc., (a North Carolina non-profit Corporation), its successors and assigns.

Section 2. "Declarant" shall mean and refer to HORIZON HOMES INCORPORATED, 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 3. "Common Area" shall mean Association for the common use and enjoyment of the and sewer lines located on and serving the property dedicated public easement and city rights-of-way, except on a lot which serve only that lot.

Section 4. "Member" shall mean and who holds membership in the Association.

Section 5. "Owner" shall mean and one or more persons or entities, of a fee simple title to Properties, including contract sellers, but excluding those as security for the performance of an obligation.

Section 6. "Properties" shall mean property hereinbefore described, and such additional brought within the jurisdiction of the Association.

Section 7. "Townhome Lot" shall mean shown upon any recorded subdivision map of the Project Dwelling is to be situated, with the exception of "Block

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Easement a right and easement of enjoyment in and to the appurtenant to and shall pass with the title to every provisions:

(a) the right of the Association to charge and other fees for the use of any recreational facility for use by the Members.

(b) the right of the Association to suspend the voting rights and right to 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;

(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 by the

members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(d) the right of the Association to limit the number of guest of members;

(e) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

(f) the right of the individual members to the exclusive care of parking spaces as provided in this Article.

(g) easements as provided in Article XI hereof.

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. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, except utility and storm drainage easements.

Section 4. Parking Rights. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two (2) automobile parking spaces, unless a greater number is required by the Cary City Code at the time of initial development of PARKCREST TOWNHOMES, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas and over any private streets leading to and from such areas. The Association shall have the right to permanently assign one vehicular parking space for each dwelling, such space to be as near the dwelling to which it is assigned as is reasonably possible. The Association may regulate the parking of boats, trailers and other such items on the Common Area. No boats or trailers or owners, members or their guest shall be parked within the right-of-way of any public street in or adjacent PARKCREST TOWNHOMES.

Section 5. TV Antennas and Cablevision. The Association may provide one or more central television antennas for the convenience of the members and

the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas or satellite dishes on individual lots.

ARTICLE III

MEMBERSHIP

Every person who is record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of the Association. Ownership of such interest shall be the sole qualification for such membership; no owner shall have more than one membership in each association and there shall only be only one vote per lot in such Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

ARTICLE IV

VOTING RIGHTS

The Association shall have two classes of voting membership as follows:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each 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 they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. No fractional vote shall be allowed.

Class B. The Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of the following events;

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; provided however, the Class B membership shall be reinstated with all rights, privileges, and responsibilities if, after conversion of the Class B membership to Class A membership as herein provided, additional lands are annexed to the Properties by the Declarant in the manner provided in Article VIII of this Declaration, or

(b) January 1, 2011.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment.

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) annual assessments or charges, and (2) special assessment 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, cost 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 the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments.

The 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, including the maintenance, repair and reconstruction of all private streets, and water and sewer lines situated outside public streets and public easements, any erosion control devices situated on the Common Area required by the Town of Cary to comply with its erosion and sedimentation control ordinances, services and facilities devoted to this purpose and related to the exterior maintenance of the residences situated upon the "Townhome Lots" within the Properties or for the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments 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, the payment of lease payments on leases of recreational facilities for use by the members, and such other needs as may arise.

Section 3. Maximum Annual Assessment.

Until January 1 of the year immediately following the conveyance of the first Townhome Lot to an Owner, the maximum annual assessment shall be Eight Hundred Forty and No/100ths Dollars (\$840.00) per Lot. Such assessments during this period shall be paid on a monthly basis.

(a) From and after January 1 of the year immediately following the conveyance of the first townhome Lot to an Owner, the maximum

annual assessment may be increased effective January 1 of each year without a vote of membership by up to ten (10%) percent of the previous year's maximum annual assessments.

(b) From and after January 1 of the year immediately following the conveyance of the first Townhome Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 3 (a) above by a vote of the members for the next succeeding five (5) years, for each succeeding period of five (5) years, provided that any such charge shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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

Section 4. 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 only 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, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized under Section 3 or 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3, or 4 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 the 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 of requirement, 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 6. Date of Commencement of Annual Assessments: Due Dates.

The annual assessments provided for herein shall commence as to all Lots as provided in Section 6 above. The first annual assessment for each lot 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 assessment 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.

Section 7. Effect of Nonpayment of Assessments: 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 eight (8%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property. No owner may waive or otherwise escape 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 and Ad Valorem Taxes.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax 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 properties 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.

Section 10. Maintenance of Private Streets and Driveways.

The maintenance responsibility of the private streets and driveways as shown the aforesaid recorded map shall rest with Association until such time as the Town of Cary shall assume responsibility.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Townhomes upon the Properties and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Articles, the general rules of law regarding party walls, lateral support in below ground construction and of 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 from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Construction. The owner of any Townhome Lot may construct, reconstruct, repair, or extend party wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5. 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 6. Right to Contribution 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 7. Certification by Adjoining Property Owner that No Contribution is Due. If any Owner desires to sell his property, he may, in order to

assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article V, request of the adjoining property owner or property owners a certificate that no contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request without charge; provided, however, that where the adjoining property owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration. In the event of any dispute arising concerning party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE VII

ARCHITECTURAL CONTROL

No building, fence, signs, wall, storage buildings 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.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property, except as provided in Section 2 of this Article VII, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following

the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. If within seven (7) years of the date of incorporation of this Association; the Declarant or other developer approved by Declarant should develop additional land within the boundaries shown on the general plan of PARKCREST TOWNHOMES heretofore submitted to the Federal Housing Administration, or the Veterans Administration, and the plan approved by the Town of Cary on August 25, 1995, or subsequently submitted and approved for addition to the general plan, such land may be annexed by the Declarant without the consent of members provided that the Federal Housing Administration, the Veterans Administration and the Town of Cary determine that the annexation is in accord with the general plan heretofore approved, or subsequently approved, by them.

Section 3. Annexation or Phased Development shall be subject to the following additional conditions:

(a) Land not originally included in the general plan approved by the Town of Cary may not be subsequently annexed if such new land is not contiguous to land previously approved, does not include at least five (5) acres in area and has not received approval from the Town of Cary.

(b) Land included in the general plan approved by the Town of Cary may be developed in phases provided that:

(i) The entire plan (excluding lands not originally included in the general plan), including phase lines, receives approval of the City before any phase of the development begins;

(ii) The number of dwelling units in the developed phases conforms to the density requirements for the zoning district in which the land is situated;

(iii) The amount of open space land conveyed to the Association and the expenditures for required subdivision improvements in each phase bear a reasonable pro rata share to the entire development based on the number of dwelling units.

(c) The recording in the Wake County Register of Deed's office of a map depicting the area to be annexed or phased, signed by the Clerk of the Town of Cary, shall signify compliance with this Section 3.

(d) Land not included in the original general plan, but subsequently approved for addition thereto shall be governed by the Phase requirements set out in this Section 3.

ARTICLE IX

EXTERIOR MAINTENANCE

Section 1. In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Townhome which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefor), and other exterior improvements. Such exterior maintenance shall not include glass surfaces, screens, awnings, and if permitted, approved additions to dwellings made after completion of the initial dwelling (unless maintaining of such addition is affirmatively assumed by the Association) or the repair or reconstruction of any improvements on any lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect. Further, the owner of any lot may at his election plant trees, shrubs, flowers and grass in his rear yard and may also maintain portions or all of his rear yard provided that such maintenance by the owner does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. No such maintenance by a lot owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association, any such owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the owner's maintenance rights for a period not to exceed one year. The owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

(As a matter of information to future members of this Association, the developers wish to make it known that it is a part of the original plan of development to construct a variety of dwellings with a variety of exteriors for the good of the entire subdivision. Some dwellings will require far more maintenance than others because of the types of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those connected with the conception, design, construction and financing of this subdivision as originally planned, are in accord in their belief that all members of the Association will be benefitted by the variety of exteriors and, therefore, the Association should provide exterior maintenance and make a uniform rate of charge without regard to the actual cost of maintenance of each dwelling.)

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, tenants, contract purchasers, or guests,

or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

Section 2. Maintenance by Owner. In cases where maintenance or repair is required in this Declaration to be done or made by an Owner, and such maintenance or repair has not commenced within sixty (60) days, or if commenced, is not completed within a reasonable time thereafter, the Association may, upon thirty (30) days written notice to such owner, make or complete such maintenance or repairs, and the cost thereof shall be an additional assessment applicable only to such lot and Owner, and shall be payable as determined by the Board of Directors.

ARTICLE X

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each lot and the Common Areas. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties (except for temporary office of the Declarant and/or model townhomes used by Declarant) shall be used except for residential and street purposes and for purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 4. 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.

Section 5. Dwelling Specifications. Except with prior written approval of The Architectural Committee, no dwelling shall be constructed or permitted to remain on any Townhome lot having an area of the main structure, exclusive of open porches and decks, of less than 800 square feet for a one-story dwelling nor less than 1000 square feet for a dwelling of more than one-story.

Section 6. Screening. All garbage containers, utility meters and any

dumpsters shall be permanently screened from view all street rights-of-way.

ARTICLE XI

EASEMENTS

Section 1. Utilities. All of the properties, including lots and common areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Areas conveyed to it, subject further easements as are requisite for the convenient use and enjoyment of the Properties.

Section 2. Governmental Agencies. An easement is hereby established over the Common Areas and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 3. Encroachments. All Townhome lots shall be subject to easement for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and downspouts, fences, patios, decks and walls.

Section 4. Ingress and Egress Rights of Owners. All private streets and Common Areas shall be subject to an easement in favor of every lot to which they are adjacent or which they are designated to serve and shall be deemed appurtenant to each lot, whereby the owners of such lot shall be entitled to use them as means of ingress, egress and regress and such other use as shall have been designated. Such easement shall be superior to every easement of whatever nature to which any of the Common Area may be subjected.

ARTICLE XII

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 restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the Lot Owners; provided, however, that the Board of Directors of the Association may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction without action or consent of the Owners, and such amendment shall be certified as an official act of the Board and recorded in the Wake County Registry.

Section 4. Procedure for Certification and Recordation of Amendment. Any instrument amending these covenants, conditions and restrictions (other than an amendment by the Board to correct an error or inconsistency in drafting, typing, or reproduction) shall be delivered, following execution by the owners, to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

(a) Reasonably assure itself that the amendment has been executed by the owners of the required number of lots as provided in Section 4 of this Article. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any lot to be examined):

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

**CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS
CONDITIONS AND RESTRICTIONS OF PARKCREST TOWNHOMES**

By authority of its Board of Directors, Parkcrest Townhomes Association hereby certifies that the foregoing instrument has been duly executed by the owners of _____ percent of the lots of Parkcrest Townhomes and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Parkcrest Townhomes.

This ____ day of _____, 1996.

PARKCREST TOWNHOMES

ATTEST:

Secretary

By _____
President

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry; provided, however, that no such instrument shall be valid until it has been indexed in the name of this Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all lots in this development.

Section 5. FHA/VA/ Approval. As long as there is a Class B membership, the following actions may require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. Conflicts. In the event of any irreconcilable conflict between the Declaration and the bylaws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the Bylaws of the Association and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

ARTICLE XIII

DISSOLUTION OR INSOLVENCY OF THE ASSOCIATION

In the event that the Association becomes insolvent, is dissolved or for any reason whatsoever loses the ownership of any of the private streets or driveways areas referred to earlier, the owners of lots having an interest in such private streets and driveways may, at their election as determined by majority vote of those affected, form a non-profit corporation as provided in the Articles and Bylaws of the Association and assign to it the duty and authority to assess on a per lot basis all lots abutting such private street or driveway, whereupon such corporation shall maintain such private street or driveway in the same manner that the Association is empowered to do by this instrument with same right of lien for assessments provided for herein.

ARTICLE XIV

ELECTRICAL SERVICE

Declarant reserves the right to subject the above described property to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the owner of each lot within said property.

ARTICLE XV

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. The prior written approval of each institutional holder of a first deed of trust on units in the property will be required for the following:

(a) The abandonment or termination of the townhome property except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) Any material amendment to the Declaration or to the By-laws of the Association.

(c) The effectuation of any decision by the Association to terminate self management and assume professional management of the

property.

Section 2. No unit may be partitioned or subdivided without the prior written approval of the first lien holder of the unit.

Section 3. Upon written request, any institutional holder of a first lien on a unit will be entitled to:

(a) inspect the books and records of the Association during normal business hours;

(b) receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year; and

(c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

Section 4.

(a) In the event of substantial damage to or destruction of any unit or any part of the Common Area, the institutional holder of any first mortgage on a unit will be entitled to timely written notice of any such damage or destruction.

(b) If any unit or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institution holder of any first mortgage on a unit will be entitled to timely written notice of any such proceeding or proposed acquisition.

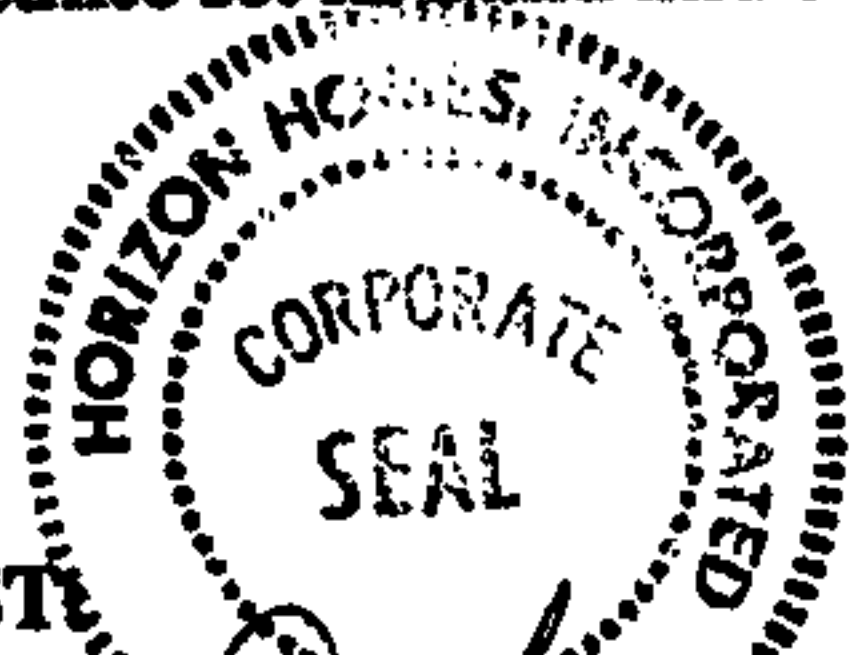
(c) The holder of a first mortgage on any unit shall be given prompt notice of any default by the unit mortgagor's obligations hereunder not cured within thirty (30) days of said default.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 13 day of August, 1996.

(SEAL)

ATTEST:

[Signature]
Secretary



DECLARANT:

HORIZON HOMES INCORPORATED

By:

[Signature]
President

North Carolina

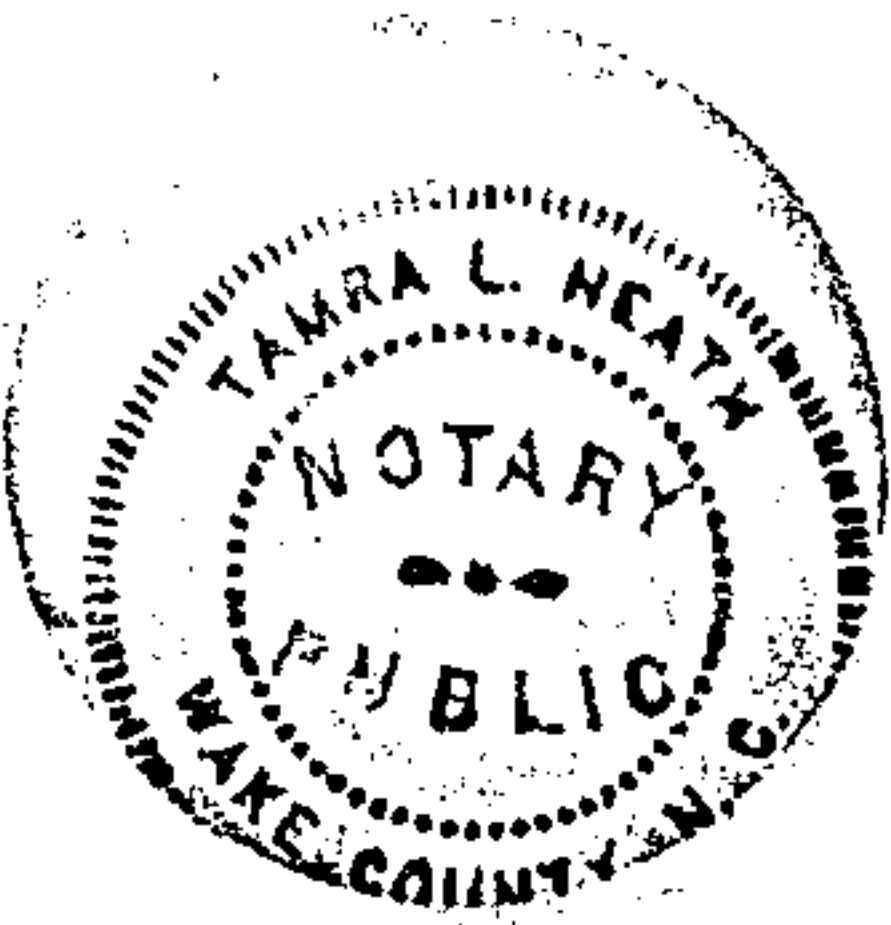
Wake County

I, a Notary Public of the County and State aforesaid, certify Diane D. Lacenery, personally appeared before me this day and acknowledged that she is Secretary of Horizon Homes, Incorporated a North Carolina corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary.

Witness my hand and official stamp or seal, this the 13th day of August, 1996.

My commission expires: 8/16/98

Tamra L. Heath
Notary Public



NORTH CAROLINA — WAKE COUNTY
The foregoing certificate ___ of ___

Tamra L. Heath

Notary Public is
(are) certified to be correct. This instrument and this certificate are duly registered at the date and time
and in the book and page shown on the first page hereof.

KENNETH C. WILKINS, Register of Deeds

By *P. Anne Reed*
Asst./Deputy Register of Deeds