

BOOK 1483 PAGE 222

BOOK NOTED

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DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF PARSONS CHASE SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by  
THE CONCORD COMPANY, LTD., a North Carolina corporation  
hereinafter referred to as "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in or  
near the City of Durham, County of Durham, State of North  
Carolina, which is more particularly described as follows:

SEE EXHIBIT "A" ATTACHED  
HERETO AND INCORPORATED HEREIN

20442

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

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to Parsons Chase Homeowners 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 owned by the Association for the common use and enjoyment of the owners, together with all sewer and water lines serving and located on the properties outside of dedicated public easement or City rights-of-ways. The Common Area to be owned by the Association at the time of the conveyance of the first lot is

described as follows:

Those certain tracts and parcels of land shown and designated as "Common Areas" on the plat and survey by Al Prince and Associates, registered land surveyors, recorded in Plat Book 119 at Page 6 of the Durham County Registry.

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

Section 6. "Declarant" shall mean and refer to the Concord Company, Ltd., its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the declarant for the purpose of development.

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

## ARTICLE II

### PROPERTY RIGHTS

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

- (a) the right of the Association to 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 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 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;

(c) the right of the Association to limit the number of guests of members using the Common Area:

(d) the right of the Association, in accordance with its Articles and Bylaws, 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;

(e) the right of the individual members to the exclusive use of parking spaces as provided in Article XI hereof.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, 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 in each phase.

Section 4. Parking Rights. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces unless a greater number is required

by the Durham City Code at the time of the initial development of Parsons Chase, 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.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

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

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

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 permitted.

Class B. The Class B member(s) 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 happening of either of the following

events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in Sub-paragraph (b) below, such additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article VII, Section 2, below, or

(b) May 1, 1993

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) 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, 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 and 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 any storm water Impoundment Area situated on the Common Area required by the City of Durham 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 lots within the Properties or for the use and enjoyment of the Common Area and Water Impoundment 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 Bylaws and this DECLARATION, the employment of attorneys to represent the Association when necessary, 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 Lot to an Owner, the maximum annual assessment shall be Seven Hundred Twenty Dollars (\$720.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first 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 twelve percent (12%) of the previous year's maximum annual assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first 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 five (5) years and at the end of each such period of five (5) years, for each succeeding period of five years, provided that any such charge shall have the assent of two-thirds (2/3) of the votes of each class 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 30 days nor more than 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 and 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 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) 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 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 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. Provided, however, lots owned by Declarant, which are not under a completed roof, may be a lesser amount as fixed by the Board of Directors of the Association, but shall not be less than twenty-five percent (25%) of the regular assessments for other lots.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The Annual assessments provided for herein shall commence

as to all Lots in each phase on the first day of the month following the conveyance of the Common Area for the phase. 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 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 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 8. 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 maximum rate allowed by law per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against his 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 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to 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 10. 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 11. Responsibility for Maintenance of Private Streets and Driveways. The maintenance responsibility of any private streets and driveways as shown on the aforesaid recorded map shall rest with the Association.

Section 12. Working Capital Fund. In order to insure that the Association will have sufficient monies available to meet operational needs during the initial months of the Association, the Association has established a Working Capital Fund. At the time of the closing of the first sale of each Unit, the purchaser thereof shall pay into such Fund an amount equal to two-twelfths (2/12ths) of the current annual assessment established by the Association. No such payments made into the Working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of this Declaration and the Bylaws.

ARTICLE V

PARTY WALLS AND JOINT DRIVEWAYS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the dwelling 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 Article, 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, subject 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 and/or Repair of Party Wall. The Owner of any Lot may construct, reconstruct, repair, or extend a 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 the Article V, request of the adjoining property owner or property owners a certificate that no 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.

Section 9. Joint Driveways. Each joint driveway serving lots shall be subject to the same rules governing use, repair, maintenance, reconstruction and contribution set out with respect to party walls in this Article V.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, signs, 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 specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Provided in no case shall there be placed or maintained upon the property or in the windows of units any "For Sale" or "For Rental" signage of any kind.

ARTICLE VII

ANNEXATION OF ADDITIONAL PROPERTIES

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Pg 589  
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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 30 days nor more than 60 days in advance of the meeting setting for 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 of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 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 five years of the date of incorporation of this Association, the Declarant should develop additional land within the boundaries shown on the general plan of Parsons Chase Subdivision heretofore submitted to the Federal Housing Administration, the Veterans Administration, and the City of Durham, such land may be annexed by the Declarant without the consent of members provided that the FHA, VA, and the City of Durham determine that the annexation is in accord with the

general plan heretofore approved by them.

ARTICLE VIII

EXTERIOR MAINTENANCE

Section 1. Maintenance By Association. In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutter, downspouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights and other exterior improvements. Such exterior maintenance shall not include glass surfaces, screens, awnings, and if permitted, approved additions to dwelling made after completion of the initial dwelling (unless maintaining of such addition is affirmatively assumed by the Association). 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 of 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 remaining yard spaces. Any owner who fences in his rear yard shall be required to maintain such area. 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 declarant desires to make known that it is a part of the 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 may 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 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, or guests, or invitees, the cost of such repair or maintenance shall be an 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 IX

INSURANCE AND RECONSTRUCTION

Section 1. Insurance. The insurance which shall be carried upon the Townhomes shall be governed by the following provisions:

(1) All improvements comprising the Townhomes shall be insured by the Association in an amount equal to the full insurable replacement value thereof, exclusive of excavation and foundations. Such coverage shall afford protection against the following:

(a) loss or damage by fire and other hazards covered by standard extended coverage endorsement; and

(b) such other risks as from time to time customarily shall be covered with respect to buildings similar to the buildings in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, subject to such deductible amounts not in excess of One Thousand Dollars (\$1,000.00) as the Board shall determine. The policy or policies providing such coverage (hereinafter called "Casualty Insurance") shall provide that the coverage thereof shall not be terminated for non-payment of premiums without at least ten (10) days' written notice to each Unit or Lot mortgagee. All Casualty Insurance policies shall be purchased by the Association of the benefit of the Grantor, the Association, the Unit or Lot Owners and their respective mortgagee, as their interests may appear, and shall provide (a) for the issuance of certificates of insurance with mortgagee endorsements to the

holders of mortgages on the Units or Lots, if any, and (b) that the insurer waives its rights of subrogation against Unit or Lot Owners, Occupants and the Association. All Casualty Insurance policies shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association, as trustee.

(ii) The Association shall insure itself, the members of the Board, the Unit or Lot Owners and the Occupants against Liability for personal injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Areas including without limitation water damage, legal liability, hired automobile, non-owner automobile and off-premises employee coverage, such insurance to be in such amounts as is determined necessary and adequate from time to time by the Board. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit or Lot Owners as a group or to a Unit or Lot Owner. In the event the insurance effected by the Association on behalf of the Unit or Lot owners and Occupants against liability for personal injury or property damage arising from or relating to the Common Areas shall, for any reason, not fully cover such liability, the amount of any deficit shall be assessed at a uniform rate against all Unit or Lot Owners without requirement of an affirmative vote of members.

(iii) Premiums upon insurance policies purchased by the Association shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies and shall be a part of the Annual Assessment.

(iv) Each unit or Lot Owner may, at his own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of his Unit and Casualty Insurance affording coverage upon his Unit and property inasmuch as the same will not be insured by the Association, but such Casualty Insurance shall provide that it shall be without contribution as against the Casualty Insurance purchased by the Association or shall be written by the carrier of such Casualty Insurance and shall contain the same waiver of subrogation as that, referred to in subparagraph (i) above.

Section 2. Responsibility for Reconstruction or Repair. If any portion of the Common Areas or Units or Lots shall be damaged by perils covered by the Casualty Insurance, the Association shall cause such damaged portion to be promptly reconstructed or repaired to the extent of the funds made available to the Insurance Trustee, as hereinafter provided, and any such reconstruction or repair shall be substantially in accordance with the original plans of the Unit or Lot damaged or destroyed.

Section 3. Procedure for Reconstruction or Repair.

(i) Immediately after a casualty causing damage to any portion of the Common Areas or Units or Lots, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

(ii) If the proceeds of the Casualty Insurance are not sufficient to defray the estimated costs of reconstruction and

repair by the Association (including the aforesaid fees and premiums, if any) one or more special assessments shall be made (without requirement of any affirmative note of the Members) against all Unit or Lot Owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Insurance Trustee.

(iii) The proceeds of the Casualty Insurance referred to in Subsection (i), Section 1 of this Article IX and the sums deposited with the Insurance Trustee from collections of special assessments against Unit or Lot Owners on account of such casualty, shall constitute a construction fund which shall be disbursed to the Insurance Trustee and be applied by the Insurance Trustee to the Payment of the cost of reconstruction and repair of the Common Areas, Units or Lots from time to time as the work progresses. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair from which the fund is established, such balance shall be disbursed to the Association.

(iv) Each Unit or Lot Owner shall be deemed to have delegated to the Board his right to adjust with insurance companies all losses under the Casualty Insurance policies referred to in Subsection (i), Section 1 of this Article IX.

Section 4. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in

the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed; provided however, the Board of Directors shall have satisfied these provisions, and shall not be liable to the members for failure to maintain sufficient coverage, if the amount of coverage maintained equals or exceeds the cost of replacement of all improvements as reflected on an annual appraisal made by an M.A.I. appraiser or by the insurance carrier, as selected by the Board.

ARTICLE X

USE RESTRICTIONS

Section 2. 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 townhouses used by Declarant) shall be used except for residential 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 or 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, and no animal shall be permitted upon the Common Area unless the same is under leash.

Section 5. Dwelling Specifications. No dwelling shall be constructed or permitted to remain on any lot having an area of the main structure, exclusive of open porches and decks, of less than 750 square feet for a one story dwelling nor less than 900 square feet for a dwelling of more than one story.

#### ARTICLE XI

##### EASEMENTS

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, such further easements as are requisite for the convenient use and enjoyment of the Properties.

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.

All lots shall be subject to easements 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 and walls.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforce. 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. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restriciton of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration if 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) years by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners.

Section 4. FHA/VA Approval. As long as there is a Class B membership, the following actions will 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.

#### ARTICLE XIII

##### ELECTRICAL SERVICE

Declarant reserves the right to subject the above described property to a contract with Duke Power 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 continuing monthly payment to Duke Power Company by the Owner of each lot within said property.

#### ARTICLE XIV

##### MANAGEMENT AND CONTRACT RIGHTS

The Declarant may enter into a contract with a Management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any contract or lease entered into by the Declarant or by the Association while

the Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer of management by the Declarant to the Association.

ARTICLE XV

RIGHTS OF NOTEHOLDERS

Any institutional holder of a first mortgage on a Unit or Lot will, upon request, 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 its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owned by the owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy of fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

XVI

RIGHT OF ENTRY INTO UNITS FOR EMERGENCIES

In case of any emergency originating in or threatening any

Unit or Lot, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the Managing Agent, shall have the right to enter such Unit or Lot for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

XVII

FIDELITY BOND

The Association shall maintain fidelity coverage against dishonest acts by the Association's officer, directors, trustees and employees, and all others who are responsible for handling funds of the Association. If the Association employs a professional property management person or firm to manage the Association and to receive and disburse the monies of the Association, then such professional management person or firm shall have adequate fidelity coverage against dishonest acts and the existence coverage shall satisfy the requirement of this paragraph. If the Association elects to manage its own affairs and directly receive and disburse its own fund (or, of the addition to professional management, the officers or directors of the Association can and do directly receive or disburse the monies of the Association), then the Association shall provide the coverage set forth in this paragraph.

Any such fidelity bonds shall name the Association as an obligee; shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association,

including reserves; shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to the Association and to any Institutional Lender who has given the notice required under this Declaration.

XVIII

CONDEMNATION OF COMMON PROPERTY;

CONDEMNATION OF LOTS OR UNITS

Section 1. If any part of the Common Property shall be condemned by public authority, the determination of whether or not to reconstruct or repair the same shall be made as follows:

(1) Partial condemnation shall be deemed to mean condemnation which renders less than two-thirds (2/3) of the Lots or Units untenable. In the event of partial condemnation, the Common Property shall be reconstructed or repaired unless this Declaration is terminated by the unanimous vote of all of the Unit or Lot Owners at a meeting of the members of the Association called and held prior to commencement of such reconstruction or repair.

(2) Total condemnation shall be deemed to mean condemnation which renders two-thirds (2/3) or more of the Lots or Units untenable. In the event of total condemnation, the Common Property shall not be reconstructed or repaired if, at a meeting which shall be called within thirty (30) days after the occurrence of the condemnation Unit or Lot Owners who in the aggregate own three-fourths (3/4) or more of the Units or Lots vote against reconstruction or repair.

(3) Any such reconstruction or repair shall be substantially in accordance with the plans and specification contained herein and on file with and approved by the City of Durham, North Carolina.

Section 2. If the condemnation is only to those parts of one or more units or Lots for which the responsibility for maintenance and repair is that of the Owner, then the Owner shall

be responsible for reconstruction and repair after condemnation. In all other instances, the responsibility of reconstruction and repair after condemnation shall be that of the Association as follows:

(1) Immediately after the condemnation causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the condemnation. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems necessary or appropriate.

(2) When the damage is to both Common Property and Units or Lots or to Common Property only condemnation proceeds shall be payable to the Association and shall be applied first to the cost of repairing the Common Property and the balance to the Units or Lots.

Section 3. Each Unit or Lot Owner shall be deemed to have delegated to the Board of Directors of the Association his right to negotiate with governmental authorities any condemnation claims.

XIX

OWNERS INGRESS AND EGRESS

Each Unit or Lot Owner shall have and is hereby granted an unrestricted right of ingress and egress to his or her unit or lot. This right is perpetual and passes with the unit or lot upon transfer of ownership.

XX

COMMON AREA TAXES

In addition to maintenance and the payment of liability insurance premiums on the common areas, the Association shall pay all ad valorem taxes and assessments levied by governmental authority on the common areas. Upon default by the Association

in payment of such taxes or assessments, which default shall continue for a period of six (6) months or more the governmental authority shall be vested with a lien on each individual unit within the development in an amount determined by dividing the total taxes as assessments by the total number of lots or units in the development. Such lien may be foreclosed by the governmental authority in the same manner as provided for foreclosure of liens for ad valorem taxes and assessments.

XXI

REFUSE COLLECTION

Refuse will be collected by the City of Durham from individual containers at each Unit.

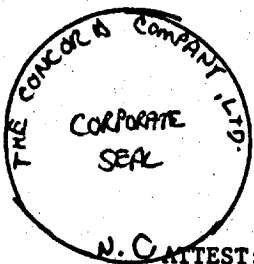
XXII

SUBORDINATION AND JOINDER

BY MORTGAGEE

The undersigned Mortgagee and Trustee hereby join in the execution of this Declaration in their capacity as Mortgagee and Trustee for the purposes of consenting to this Declaration and subordinating to this Declaration the liens of their mortgages recorded in Book 1451, Page 48 of the Durham County Registry, Book 1451, Page 44 of the Durham County Registry, and Book 1434, Page 543 of the Durham County Registry.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 22<sup>nd</sup> day of Sept, 1988.



DECLARANT

The Concord Company, Ltd.

BY: [Signature]  
President

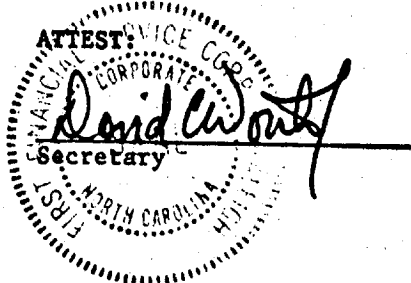
[Signature]  
Secretary

TRUSTEE

FIRST FINANCIAL SERV. CORP. OF RALEIGH

BY: [Signature]  
President

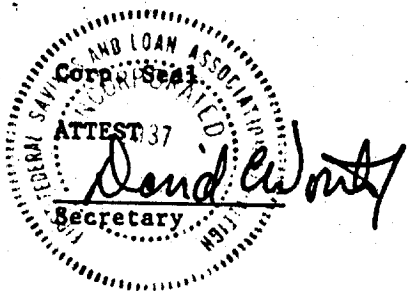
Corp. Seal



MORTGAGEE

FIRST FED. S&L ASSOCIATION OF RALEIGH

BY: [Signature]  
President



STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

I, Dorothy K. Tidwell, a Notary Public for said County and State do hereby certify that Sharon A. White personally came before me this day and acknowledged that he/she is Secretary of The Concord Company, Ltd., a corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and notarial seal this 22<sup>nd</sup> day of September, 1988.



Dorothy K. Tidwell  
Notary Public

My Commission Expires:

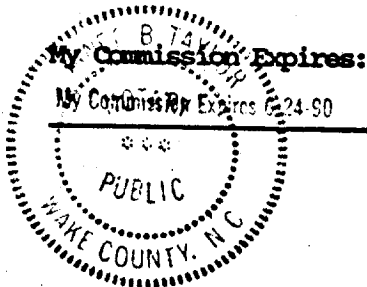
2/26/90

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM WAKE

I, Janet B. Taylor, a Notary Public for said County and State do hereby certify that David C. Wright personally came before me this day and acknowledged that he/she is Secretary of First Financial Service Corporation of Raleigh, Trustee, the foregoing instrument was signed in its name by its D President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and notarial seal this 3 day of October, 1988.

Janet B. Taylor  
Notary Public

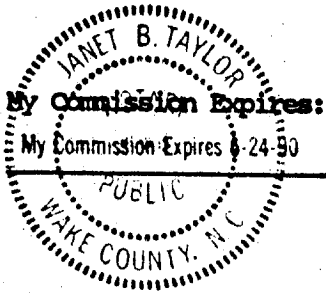


STATE OF NORTH CAROLINA  
COUNTY OF DURHAM WAKE

I, Janet B. Taylor a Notary Public for said County and State do hereby certify that William T. Smith personally came before me this day and acknowledged that he/she is Secretary of First Federal Savings and Loan Association of Raleigh, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and notarial seal this 3 day of October, 1988.

Janet B. Taylor  
Notary Public



FILED  
BOOK 1483 PAGE 222-255  
OCT 5 4 16 PM '88  
RUTH C. GARRETT  
REGISTER OF DEEDS  
DURHAM COUNTY, NC

State of North Carolina-Durham County  
The foregoing certificate(s) of Janet B. Taylor  
A Notary (Series) Public for the Designated Governments  
units is (are) certified to be correct.  
This the 5 day of Oct. A.D. 1988  
Ruth C. Garrett Joe Baker  
Register of Deeds By Assistant, Deputy  
Register of Deeds

## Exhibit A

BEGINNING at an existing iron pipe located in the southeastern right of way line of the Woodcroft Parkway at said existing iron pipe being designated as control corner North = 790,309.52 and East = 2,019,984.64 and said iron pipe also being the northeastern most corner of the Legacy Place Subdivision as shown on Plat Book 113, Page 114 of the Durham County Registry and from said point of beginning along the southeastern right of way line of the Woodcroft Parkway in a curve to the left having a radius of 638.00 feet, a length of 117.23 feet and a chord bearing of North 43 degrees 14 minutes 59 seconds East with a chord length of 117.06 feet to an existing iron pipe; thence continuing along the southeastern right of way line of the Woodcroft Parkway North 37 degrees 59 minutes 09 seconds East 28.85 feet to an existing iron pipe; thence continuing along the southeastern right of way line of the Woodcroft Parkway North 37 degrees 59 minutes 09 seconds East 143.45 feet to an existing iron pipe; thence leaving the southeastern right of way line of the Woodcroft Parkway and running South 42 degrees 32 minutes 14 seconds East 146.93 feet to an existing iron pipe; thence running South 50 degrees 8 minutes 20 seconds East 26.46 feet to an existing iron pipe; thence running South 42 degrees 32 minutes 14 seconds East 47.00 feet to an existing iron pipe; thence running South 47 degrees 27 minutes 46 seconds West 23.10 feet to an existing iron pipe; thence running South 42 degrees 32 minutes 14 seconds East 95.50 feet to an existing iron pipe, said existing iron pipe bearing control corner coordinates North = 790,284.78 and East = 2,020,369.82; thence running South 47 degrees 27 minutes 46 seconds West 271.97 feet to an existing iron pipe; thence running North 41 degrees 32 minutes 14 seconds West 278.73 feet to the point and place of BEGINNING, and being all of that 1.9074 acre tract as shown on plat entitled "Boundary Survey Parsons Chase, Triangle Township, Durham County, North Carolina" prepared by Kimley Horn, Registered Land Surveyor, dated October of 1987 and recorded in Plat Book 116, Page 30 at the Durham County Registry.

A:A5.5