

RECORDED 10/1/2001

Master

NORTH CAROLINA
WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR PERRY CREEK COMMONS

THIS DECLARATION, made this 28th day of September, 2001, by
PERRY CREEK COMMONS, INC., hereinafter referred to as the "Declarant";

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

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY
REFERENCE.

WHEREAS, Perry Creek Townhomes, LLC is the owner of certain property in Wake
County, North Carolina which is more particularly described as:

SEE EXHIBIT B ATTACHED HERETO AND INCORPORATED HEREIN BY
REFERENCE.

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

WHEREAS, Perry Creek Townhomes, LLC hereby executes this Declaration for
purposes of subjecting the above referenced property to the protective covenants, conditions,
restrictions, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant and Perry Creek Townhomes, LLC hereby declare that
all of the property 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 shall be binding on all
parties having or acquiring any right, title or interest in the described property or any part
thereof, and shall inure to the benefit of each owner thereof.

Wake County, NC 783
Laura M Riddick, Register Of Deeds
Presented & Recorded 10/01/2001 14:22:19
Book : 009096 Page : 01314 - 01344

ARTICLE I
DEFINITION

Section 1. "Amenities" shall mean the facilities constructed, erected, or installed on the Common Area for the use , benefit and enjoyment of Members.

Section 2. "Association" shall mean and refer to Perry Creek Commons Association, a North Carolina non-profit corporation, its successors and assigns.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of all members or designated classes of Members of the Association, including private streets and recreation areas, and including all easements granted for the benefit of the Association.

Section 4. "Declarant" shall mean and refer to Perry Creek Commons, Inc., a North Carolina corporation, its successors and assigns, to whom the rights of Declarant are expressly transferred, or if such successors or assigns should acquire more than one undeveloped lot or undeveloped acreage for the purpose of development, or acquire title to the Property under a deed in lieu of foreclosure, judicial foreclosure, or foreclosure under power of sale contained in any deed of trust, or one otherwise denominated a "Declarant" hereby.

Section 5. "Limited Common Area" shall mean those portions of the Common Area that serve only a limited number of lots and which may include, but specifically is not limited to, driveways and walkways serving townhouse lots and condominium units or areas serving only specified lots, and such other similar areas as may be designated by the Association. Limited Common Areas shall be maintained at the expense of the owners of lots served thereby and not at the expense of the Association.

Section 6. "Lot" shall mean and refer to any plot of land shown upon the last recorded subdivision map of the properties on which such plot appears (provided said map has been approved by Declarant), with the exception of the Common Area and Limited Common Area. "Lot" shall also include each of the condominium units within the Property.

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

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 10. "Private Streets" shall mean those portions of the Common Area which are designated as street area, whether or not constructed or opened, but which are not dedicated as a public street and are not publicly maintained.

Section 11. "Property" shall mean and refer to that certain real property hereinbefore described in Exhibit A and Exhibit B attached hereto and incorporated herein by reference, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 12. "Townhouse Lot" shall mean and refer to any Lot located in an area designated for the construction of any type of townhouses.

Section 13. "Townhouse Parking Areas" shall mean those parking areas and driveways which are constructed on Lots or on Limited Common Areas but are for the benefit of the owners of townhouse lots.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation By Members. Except as provided in Section 2 of this Article, additional lands may be added and annexed to the Property only if both two-thirds (2/3) of all of the votes entitled to be cast, in the aggregate, by Class A Members and also two-thirds (2/3) of all the votes entitled to be cast by Class B Members, if any, are cast in favor of annexation. A meeting shall be duly called for this purpose, written notice of which shall be sent to all Members of the Association, setting forth the time, place and purpose of the meeting, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

For the purposes of such meeting, the presence thereof of Members or proxies entitled to cast sixty percent (60%) of the votes of the Class A Members and sixty percent (60%) of the votes of the Class B Members, if any, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and the majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority, either of the Class A or of the Class B votes, or both, required for approval of the annexation, and it appears that the required two-thirds (2/3) majority of either class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within 120 days following the date of the meeting at which the vote was taken. Each Member so assenting or dissenting shall be deemed to have cast, respectively, all of the votes to which he is entitled under Article IV of this Declaration, either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by the Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of all votes entitled to be cast by the Class A Members, in the aggregate, and by the Class B Members, the annexation shall stand approved.

Section 2. Annexation By Declarant. Declarant may annex additional lands to the Properties in the following manner:

(a) If, within ten (10) years of the date of incorporation of the Association, Declarant should develop additional lands within the boundaries shown on the general plan of this development heretofore submitted to the City of Raleigh, such additional lands may be annexed to said Property without the assent of the Class A Members. Detailed plans for the development of additional lands may be submitted to the City of Raleigh prior to such development if such submission is required by ordinances of the City of Raleigh.

(b) If, within ten (10) years of the date of incorporation of the Association, Declarant should develop, from time to time, an additional tract or additional tracts of land, other

than as set forth in subsection (a) above, consisting of any property within reasonable proximity of previously annexed areas, such additional lands may be annexed to said Property without the assent of the Class A Members, provided, however, that such annexation shall be approved by the City of Raleigh if such approval is required by ordinances of the City of Raleigh and, provided further, that the development of the additional lands described in this subsection shall include amenities, equivalent in replacement cost (computed at the time that construction of the additional amenities is commenced and on the basis of the number of dwelling units being served), to those constructed on the Property.

(c) Declarant may annex to the Property the additional lands described in subsections (a) and (b) of this Section 2 by recording in the Wake County Registry a declaration of annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions therein. The additional land shall be deemed annexed to the Property on the date of recordation of the declaration of annexation, and no action or consent on the part of the Association or any other Person or entity shall be necessary to accomplish the annexation except as required in Article X, Section 8, and by the City of Raleigh as provided in subsections (a) and (b) of this Article.

(d) Subsequent to recordation of any subsequent declaration of annexation by Declarant, Declarant shall deliver to the Association one or more deeds conveying any Common Area or Limited Common Area within the lands annexed as such Common Area or Limited Common Area is developed.

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. There shall be one vote per Lot in the 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 of the Association may make reasonable rules regarding proof of ownership.

ARTICLE IV
VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership:

(a) Class A. Class A Members shall be all Owners, other than Declarant; however, Declarant shall be a Class A Member to the extent provided in (b) hereinafter. Class A Members 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 the Owners thereof determine, but in no event shall more than one vote be cast with respect to any Lot, and no fractional vote may be cast with respect to any Lot.

(b) Class B. The Class B Member shall be Declarant, and it shall be entitled to three (3) votes for each Lot in which it holds a fee or undivided fee interest, provided that 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:

(1) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; provided, however, that 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 Property Declarant in the manner provided in Article II of this Declaration, or

(2) On January 1, 2007.

Section 2. The right of any Member to vote may be suspended by the Board of Directors of the Association for just cause pursuant to its rules and regulations and according to the provisions of Article V, Section 1(b).

ARTICLE V
PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every Member 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 assessed Lot, subject to each of the following provisions:

(a) 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 the Common Area, or any portion thereof, except private streets, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the homeowners hereunder; provided, however, that the execution of such mortgage shall require the same approval of the membership which is required for special assessments for capital improvements as set forth in Article VI, Section 4 of this Declaration.

(b) The right of the Association to suspend the voting rights and right to the use of any recreational facilities by a Member or any Person to whom he has delegated his right of enjoyment 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 or Limited Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no conveyance of the Limited Common Area to any public agency, authority or utility shall deprive any Member, otherwise entitled, of the full use thereof. No such dedication or transfer shall be effective unless approved by Members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance of the vote. The instrument affecting such dedication, transfer or conveyance shall be sufficient if it is executed by appropriate offices of the Association, and contains a recital of the approval of the Members;

(d) The right of the Association to formulate, publish and enforce rules and regulations as provided in Article VII.

Section 2. Delegation of Use. Any member may delegate, in accordance with the Bylaws of the Association, 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, subject to such general regulations as may be established from time to time by the Association.

Section 3. Title to the Common Area and Limited Common Area. Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area shown on the aforementioned recorded maps to the Association, free and clear of all encumbrances and liens except utility, antenna and drainage easements and easements to governmental authorities. Similarly, Declarant will convey to the Association the Common Areas which are parts of this development, as those portions are annexed in the future.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and every other Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges; and
- (b) special assessments for capital improvements.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs of collection, shall be a charge on the land and shall be a continuing lien upon the Lot and improvements against which each such assessment is made. Each such assessment, together with such interest, costs, and attorneys' fees shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. The personal obligation of an

Owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to Common Area other than Limited Common Area shall be shared equally by the Owners of each Lot. All assessments which are for the maintenance or improvements of Limited Common Areas shall be shared equally by the Owners of Lots served by such Limited Common Area.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents and the Property; enforcing these covenants and the rules of the Association; providing the services and facilities for purposes of and related to the use and enjoyment of the Common Area and facilities, including, but not limited, to use, enjoyment and maintenance of the pool facility; and payment of the maintenance contribution required of Declarant pursuant to that certain Stormwater Easement Agreement between Perry Creek, LLC, YEL Development, L.L.C., and the Park at Perry Creek Community Association, Inc., recorded in Book 8519, Page 2235 Wake County Registry, the responsibility for such maintenance contribution being that of the Association.

Section 3. Amount of Assessment.

(a) Maximum Annual Assessment. To and including December 31, 2001, the maximum annual assessment shall not be in excess of Seven and 16/100 Dollars (\$7.16) per Lot, the exact amount of which shall be determined from time to time as provided in subsection (d) of this Section 3.

(b) Increase by Association. From and after December 31, 2001, the maximum annual assessment may be increased effective January 1 of each year by the Board of Directors of the Association, without a vote of the membership, by a percentage which may not exceed the percentage increase reflected in the U.S. City Average, Consumer Price Index - United States and Selected Areas for Urban Wage Earners and Clerical Workers, All Items Most Recent Index and Percentage Changes from Selected Dates (published by the U.S. Bureau of Labor Statistics, Washington, D.C.), or such other Index as may succeed the Consumer Price Index, for the twelve-month period ending the immediately preceding July 1. However, in no event shall such increase be greater than twelve percent (12%) in any one year.

(c) Increase by Members. From and after December 31, 2001, the annual assessment may be increased by a percentage greater than that established by the Consumer Price Index formula by an affirmative vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose, written notice of which setting forth the purpose of the meeting, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of Members required by Subsection (c) of this Section 3.

(e) Lots Owned by Declarant. Notwithstanding anything in this Article VI to the contrary, all Lots owned by Declarant and held for sale shall be assessed at an amount equal to twenty-five percent (25%) of the actual assessments paid by Owners.

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 costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property 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, written notice of which, setting forth the purpose of the meeting, shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, on a per lot basis, and may be collected on a monthly basis.

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Article III, Sections 3 and 4 of the Bylaws of the Association, the presence at the first meeting of Members or of proxies entitled to cast sixty percent (60%) of all 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 in said Sections 3 and 4, and the required quorum at any such 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 7. Date of Commencement of Annual Assessments. The annual assessments provided for herein may be collected in equal installments or on an annual basis and the payment of such shall commence on the first day of the month following the recordation of the Declaration. 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 of the Association. The Association, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and, in either event, interest and costs of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment 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 on any Lot shall be subordinate to the lien of any first mortgage and ad valorem taxes on such Lot. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina, shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Storm Water Charges. The Association shall be responsible for the payment of the maintenance contribution for the storm water facilities located on the property adjacent to the Property, as referenced in Section 2 of the Storm Water Easement Agreement between Perry Creek, LLC, YEL Development, L.L.C. and The Park at Perry Creek Community Association, Inc. recorded in Book 8519, Page 2235 of the Wake County Registry (the "Storm Water Easement Agreement"). Pursuant to the Storm Water Easement Agreement, the owners of the Property are responsible for the payment of forty-three percent (43%) of the annual expense for maintenance, repair, reconstruction and/or replacement of the storm water facilities (as defined in the Storm Water Easement Agreement). Such amounts shall be paid by the Association and shall be included in the budget of the Association and the annual assessments for each Lot shall include a pro rata portion (based on the number of Lots) of such expense.

ARTICLE VII

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 Common Area. Such rules and regulations, along with all policy

resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

Section 2. Use of Property. Each Lot, the Limited Common Area, Common Area and facilities, shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the Bylaws of the Association:

(a) No immoral, improper, offensive or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

(b) No Person shall undertake, cause, or allow any alteration or construction in, or upon, any portion of the Common Area and facilities, except at the direction of or with the express written consent of Declarant or the Association.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property nor shall anything be done which may be or may become a nuisance or annoyance to any residence within the Property.

ARTICLE VIII

EASEMENTS

Section 1. Walks, Drives, Parking Areas, and Utilities. All of the Property, including Lots, Common Area and Limited Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, and other public utilities as shall be established by Declarant or its predecessors in title; and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Property, such further easements as are requisite for the convenient use and enjoyment of the Property.

Section 2. Encroachments. All Lots, the Limited Common Area and the Common Area, shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 3. Private Streets and Limited Common Areas. All private streets and Limited 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 owner of such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses 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.

Section 4. Dumpster Easement. Perry Creek Townhomes, LLC hereby grants to Declarant and the Association an easement over the area of the Property described on EXHIBIT B attached hereto for use of the dumpster pad and area surrounding the dumpster pad, as the location of such dumpster pad may be changed from time to time. Such easement shall be deemed to be part of the Common Area and shall be for the benefit of each of the Members of the Association and their predecessors in interest.

ARTICLE IX
RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Amendments. The prior written approval of each institutional holder of a first deed of trust on Lots in the Property shall be required for any material amendment to the Declaration or to the Bylaws of the Association.

Section 2. Professional Management. Professional management of the Association is selected by Declarant for the period during which Declarant maintains voting control of the Association. Following the transfer of voting control to the Owners pursuant to Article IV hereof, professional management of the Association shall be continued by the Owners. Self management of the Association by the Owners shall be allowed only with the prior written consent of each institutional holder of a first deed of trust on any Lot or property within the Association.

Section 3. Inspection and Notice. Upon written request, any institutional holder of a first lien on a Lot shall be entitled to:

- (a) inspect the books and records of the Association during normal business hours;
- (b) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year;
- (c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings;

(d) written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owner's association;

(e) written notice of any proposed action that requires the consent of a specified percentage of mortgage holders; and

(f) written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any unit on which it holds the mortgage.

Section 4. Condemnation or Default.

(a) If any Lot 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 Lot will be entitled to timely written notice of any such proceeding or proposed acquisition.

(b) The holder of a first mortgage on any Lot shall be given prompt notice of any default in the Lot mortgagor's obligations hereunder not cured within thirty (30) days of said default, provided that the holder shall have given notice to the Association that it is a holder as to the Lot of such mortgagor and shall have requested the notice of default as herein set forth.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or 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 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. Exchange of Common Area for Other Portions of the Property.

Notwithstanding any provisions herein to the contrary, other than Section 9 of this Article X, it is expressly provided that the Association may convey to Declarant, as well as any other Member, in exchange for other portions of the Property conveyed by Declarant or other Member to the Association, any portion of the Common Area therefore conveyed to the Association, all as provided in the Articles of Incorporation of the Association. Upon such conveyance, the area thus conveyed to Declarant shall cease to be Common Area and shall cease to be subject to the provisions of these covenants relating to the Common Area, but the area thus conveyed to the Association shall become Common Area and subject to the provisions of these covenants relating to the Common Area.

Section 4. 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 said covenants shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots; 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 5. Amendment of Declaration Without Approval of Owners. Declarant, without the consent or approval of any other owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made or insured by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States government or the State of North Carolina,

regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Association, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

Section 6. Procedure for Certification and Recordation of Amendment. Any instrument amending these covenants, conditions, and restrictions (other than an amendment by the Board of the Association 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 of the Association 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); and

(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 PERRY CREEK COMMONS

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

This ____ day of _____, 2001.

ATTEST:
ASSOCIATION

PERRY CREEK COMMONS

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 of the Association, 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 7. Protective Covenants for Lots. Nothing herein shall affect Declarant's right to establish from time to time appropriate additional protective covenants governing the use of Lots and the size and location of buildings thereof.

Section 8. 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 the Common Area, and amendment of this Declaration.

Section 9. 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 XI

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 Limited Common Areas referred to in Article VIII, Section 3, the Owners of Lots having an interest in such Limited Common Areas and private streets 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 Limited Common Area or Common Area, whereupon such corporation shall maintain such Common Area in the same manner that the Association is empowered to do by this instrument with the same right of lien for assessments provided for herein.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by authority duly given.

PERRY CREEK COMMONS, INC.,
a North Carolina corporation

By:

Printed Name: JOHN R. LANCASTER

Title: MANAGER President

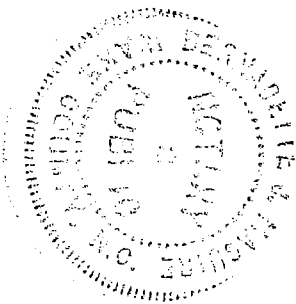
STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, BERNADETTE J. MAGUIRE, Notary Public for said County and State, certify that JOHN R. LANCASTER, _____ President of PERRY CREEK COMMONS, INC., a North Carolina corporation, personally came before me this day and acknowledged the due execution of the foregoing instrument as _____ President of PERRY CREEK COMMONS, INC.

WITNESS my hand and official seal, this 21ST day of SEPTEMBER, 2001.

Bernadette J. Maguire
Notary Public
(Official Seal)

My commission expires: December 29, 2001.



Perry Creek Townhomes, LLC executes this Declaration for the purpose of subjecting the property described on Exhibit B attached hereto and incorporated herein by reference, to the easements, restrictions, covenants, and conditions stated herein.

PERRY CREEK TOWNHOMES, LLC,
a North Carolina limited liability company

By: [Signature]

Printed Name: Michael Thomasson

Title: Managing Member

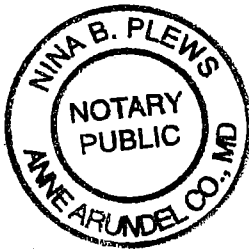
Maryland
STATE OF ~~NORTH CAROLINA~~
COUNTY OF Anne Arundel

I, Nina B. Plews, Notary Public for said County and State, certify that Michael Thomasson, Member of PERRY CREEK TOWNHOMES, LLC, a North Carolina limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument as member of Perry Creek Townhomes, LLC.

WITNESS my hand and official seal, this 20 day of September, 2001.

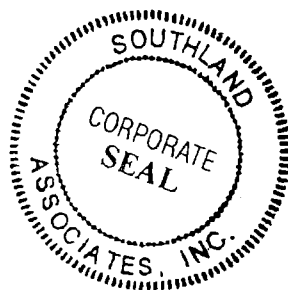
Notary Public
(Official Seal)

[Signature]
My commission expires: May 1, 2005.



CONSENT OF MORTGAGEE

Central Carolina Bank & Trust Company, being the Beneficiary under that certain Deed of Trust from YEL Development, LLC to Southland Associates, Inc., Trustee, recorded in Book 8503 at Page 523 (as amended) of the Wake County, North Carolina Public Registry, conveying the property described on **Exhibit A** attached to this Declaration, hereby: (a) consents to the recordation of this Declaration and the imposition of the provisions hereof to the real property described in **Exhibit A**; and (b) subordinates the lien and operation of the Deed of Trust to this Declaration and the provisions contained herein. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of the property in lieu of foreclosure, Beneficiary and Trustee agree that the purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the property together with and subject to all of the terms and conditions of this Declaration. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of the Declarant under this Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent as Trustee for the purposes set forth above.



TRUSTEE:

Southland Associates, Inc.

By: Spence H. Broadhurst

Printed Name: Spence H. Broadhurst

Title: Sr. Vice Pres.

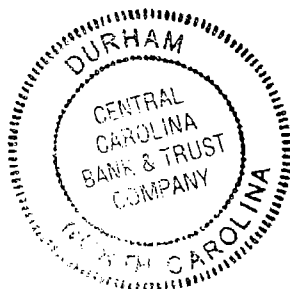
BENEFICIARY

Central Carolina Bank and Trust Company

By: Spence H. Broadhurst

Print Name: Spence H. Broadhurst

Title: Sr. Vice Pres.



STATE OF North Carolina

COUNTY OF New Hanover

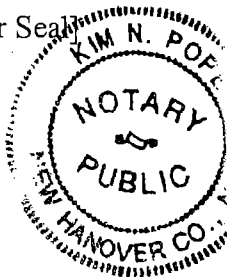
I, Kim N. Pope, Notary Public for said County and State, do hereby certify that Spence H. Broadhurst personally appeared before me this day and acknowledged that he/she is Sr Vice Pres. of Southland Associates, Inc., Trustee, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him/her.

WITNESS my hand and official seal, this the 27th day of Sept., 2001.

Notary Public Kim N. Pope

[Official Stamp or Seal]

My commission expires: 03-16-2004



STATE OF North Carolina

COUNTY OF New Hanover

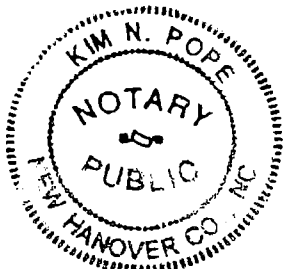
I, Kim N. Pope, Notary Public for said County and State, do hereby certify that Spence H. Broadhurst personally appeared before me this day and acknowledged that he/she is Sr Vice Pres. of Central Carolina Bank and Trust Company, and that by authority duly given and as the act of the association the foregoing instrument was signed in its name by him/her.

WITNESS my hand and official seal, this the 27th day of Sept, 2001.

Notary Public Kim N. Pope

[Official Stamp or Seal]

My commission expires: 03-16-2004.



CONSENT OF MORTGAGEE

Central Carolina Bank and Trust Company, being the Beneficiary under that certain Deed of Trust from Perry Creek Townhomes, LLC to Southland Associates, Inc., Trustee, recorded in Book 8797 at Page 1135 (as amended) of the Wake County, North Carolina Public Registry, conveying the property described on **Exhibit B** attached to this Declaration, hereby: (a) consents to the recordation of this Declaration and the imposition of the provisions hereof to the real property described in **Exhibit B**; and (b) subordinates the lien and operation of the Deed of Trust to this Declaration and the provisions contained herein. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of the property in lieu of foreclosure, Beneficiary and Trustee agree that the purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the Property together with and subject to all of the terms and conditions of this Declaration. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of Declarant under this Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent as Trustee for the purposes set forth above.

TRUSTEE:

Southland Associates, Inc.

By: Spence H. Broadhurst

Printed Name: Spence H. Broadhurst
Title: Vice Pres.

BENEFICIARY

Central Carolina Bank and Trust Company

By: Spence H. Broadhurst

Print Name: Spence H. Broadhurst
Title: Vice President
Sp.

STATE OF North Carolina

COUNTY OF New Hanover

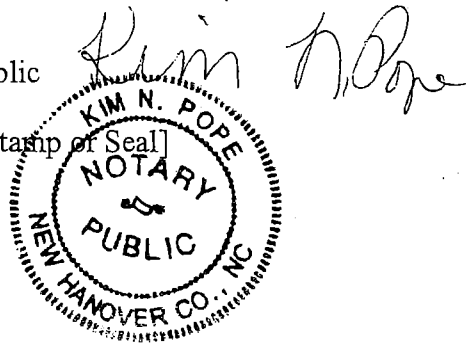
I, Kim N. Pope, Notary Public for said County and State, do hereby certify that Spence H. Broadhurst personally appeared before me this day and acknowledged that he/she is Sr Vice Pres. of Southland Associates, Inc., Trustee, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him/her.

WITNESS my hand and official seal, this the 27th day of Sept., 2001.

Notary Public

[Official Stamp or Seal]

My commission expires: 03-16-2004



STATE OF North Carolina

COUNTY OF New Hanover

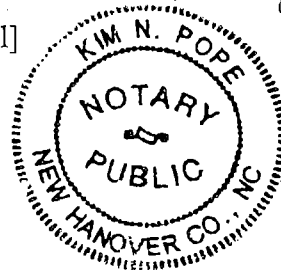
I, Kim N. Pope, Notary Public for said County and State, do hereby certify that Spence H. Broadhurst personally appeared before me this day and acknowledged that he/she is Sr Vice Pres. of Central Carolina Bank and Trust Company, and that by authority duly given and as the act of the association the foregoing instrument was signed in its name by him/her.

WITNESS my hand and official seal, this the 27th day of Sept., 2001.

Notary Public

[Official Stamp or Seal]

My commission expires: 03-16-2004



CONSENT OF MORTGAGEE

YEL Developments, LLC, being the Beneficiary under that certain Deed of Trust from Perry Creek Commons, Inc. to W. Robbins Cox, Trustee, recorded in Book 8590 at Page 1074 (as amended) of the Wake County, North Carolina Public Registry, conveying the property described on **Exhibit A** attached to this Declaration, hereby: (a) consents to the recordation of this Declaration and the imposition of the provisions hereof to the real property described in **Exhibit A**; and (b) subordinates the lien and operation of the Deed of Trust to this Declaration and the provisions contained herein. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of the property in lieu of foreclosure, Beneficiary and Trustee agree that the purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the property together with and subject to all of the terms and conditions of this Declaration. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of the Declarant under this Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent as Trustee for the purposes set forth above.

TRUSTEE:

W. Robbins Cox

W. Robbins Cox, Trustee

BENEFICIARY

YEL Development, LLC

By: John R. Lancaster

Print Name: JOHN R. LANCASTER

Title: Member / MANAGER

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, BERNADETTE J. MAGUIRE, Notary Public for said County and State, do hereby certify that W. Robbins Cox, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the 21ST day of SEPTEMBER, 2001.

Bernadette J. Maguire
Notary Public

[Official Stamp or Seal]

My commission expires: DEC. 29, 2002.



STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, BERNADETTE J. MAGUIRE, Notary Public for said County and State, do hereby certify that JOHN R. LANCASTER, a Member/ Manager of YEL Developments, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company.

WITNESS my hand and official seal, this the 21ST day of SEPTEMBER, 2001.

Bernadette J. Maguire
Notary Public

[Official Stamp or Seal]

My commission expires: DEC. 29, 2002.

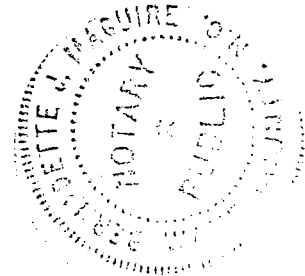


EXHIBIT A
Legal Description

BEING all of that certain 10.784 acre parcel labeled as Tract 3, and that certain 3.988 acre parcel labeled as Tract 2 of the Subdivision Plat for Perry Creek Commons for YEL Development LLC, dated January 27, 2000 and prepared by McKim and Creed, recorded in Book of Maps 2000, Page 1785, Wake County Registry.

EXHIBIT B
Legal Description

BEING all of that certain 4.692 acres labeled as Tract 1, of the Subdivision Plat for Perry Creek Commons for YEL Development LLC, dated January 27, 2000 and prepared by McKim and Creed, recorded in Book of Maps 2000, Page 1785, Wake County Registry.

BK011103PG00544

11

Master

WAKE COUNTY, NC 31
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
11/16/2004 AT 09:11:30

BOOK:011103 PAGE:00544 - 00547

NORTH CAROLINA *END.*
Return to: Kilpatrick Stockton LLP
1001 West Fourth Street
Winston-Salem, NC 27101
WAKE COUNTY
Attention:

**AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR PERRY CREEK
COMMONS, RECORDED IN BOOK 9098, PAGE 1314,
WAKE COUNTY REGISTER OF DEEDS**

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR PERRY CREEK COMMONS (the "Amendment") made this 10th day
of November, 2004, by PERRY CREEK COMMONS ASSOCIATION ("Perry Creek").

WITNESSETH:

WHEREAS, Perry Creek Commons, Inc. previously recorded in Book 9098, Page
1314 of the Wake County Register of Deeds that certain Declaration of Covenants, Conditions
and Restrictions for Perry Creek Commons, dated September 28, 2001 (hereinafter the
"Declaration"); and

BK011103PG00545

WHEREAS, Article X, Section 4 of the Declaration provides for amendment of the Declaration to correct any obvious error or inconsistency, without action or consent of the Owners (as defined in the Declaration); and

WHEREAS, Perry Creek wishes to amend the Declaration as stated herein.

NOW THEREFORE, in consideration of the foregoing, the Parties do hereby agree as follows:

1. Article VI, Section 3 of the Declaration is amended by deleting it in its entirety and replacing it with the following:

Maximum Monthly Assessment. To and including December 31, 2001, the maximum monthly assessment shall not be in excess of Seven and 16/100 Dollars (\$7.16) per Lot, the exact amount of which shall be determined from time to time as provided in subsection (d) of the Section 3.

2. Except as amended and modified herein the Declaration remains in full force and effect.

3. Whenever defined terms and words of art are used herein, as indicated by the initial capitalization thereof, such defined words and terms of art, if not defined herein, shall have the same meaning ascribed thereto in the Declaration.

BK011103PG00546

IN WITNESS WHEREOF, Perry Creek has caused this Amendment to be executed as of the day and year first above written and the officer named below hereby certifies that the amendment contained herein is an official act of the Board of Perry Creek.

PERRY CREEK COMMONS ASSOCIATION,
a North Carolina nonprofit corporation

By: _____

John R. Lancaster, PRES.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Bernadette J. Maguire a Notary Public of the County and state aforesaid, certify that John R. Lancaster, personally appeared before me this day and acknowledged that he is the _____ President of PERRY CREEK COMMONS ASSOCIATION, a North Carolina nonprofit corporation, and that by authority duly given and as an act of the corporation, he signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and official stamp or seal, this 10th day of November, 2004.

Bernadette J. Maguire
Notary Public

My Commission expires: March 2, 2008



BK011103PG00547



BOOK:011103 PAGE:00544 - 00547

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina – Wake County

The foregoing certificate of Bernadette J. McGuire

____ Notary(ies) 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.

Laura M. Riddick, Register of Deeds

By: Bernadette J. McGuire

~~Assistant~~/Deputy Register of Deeds

This Customer Group

____ # of Time Stamps Needed

This Document

____ New Time Stamp
4 # of Pages