

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
THE PINES - A CLUSTER COMMUNITY
AND
BY-LAWS OF
THE PINES OF ROCKY MOUNT HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION AND BY-LAWS; made on the date hereinafter set forth by PIONEER CAPITAL CORPORATION (herein "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property located in or near the City of Rocky Mount, Stony Creek Township, Nash County, North Carolina, and more particularly described as follows:

BEGINNING at an iron stake in the eastern right of way line of Fairway Terrace at the southwestern corner of a 0.402 acre tract of land conveyed to The Heritage Company of Northgreen, a North Carolina general partnership, by W. E. C. Properties, a Virginia general partnership by deed dated November 12, 1983, recorded in Book 1109, Page 604, Nash County Registry, which point of beginning is located 431.29 feet southwesterly of the point where the eastern right of way line of Fairway Terrace begins its curve to intersect the southern right of way line of Butternut Court; thence along the southern property line of The Heritage Townhouses at Northgreen, S. 35° 54' E. 81.43 feet to an iron stake, cornering; thence S. 25° 40' W. 247.0 feet to an iron stake and S. 57° 35' W. 195.35 feet to an iron stake, cornering; thence N. 35° 52' W. 132.90 feet to an iron stake and N. 22° 01' W. 156.88 feet to an iron stake, cornering; thence N. 45° 02' E. 226.5 feet to an iron stake, cornering; thence S. 44° 56' E. 160.0 feet to an iron stake, cornering; thence N. 45° 04' E. 91.96 feet to an iron stake and N. 38° 17' E. 36.24 feet to the point of beginning, and being a tract of land shown on "Map of Heritage Townhouses at Northgreen, Property of W. E. B. Associates," dated October 20, 1982, revised August 22, 1984, prepared by Gay-Jarvis Associates, Inc., as containing 2.169 acres, more or less.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions,

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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 inure to the benefit of each owner thereof.

PART I

DEFINITIONS

Section 1: "Association" means The Pines of Rocky Mount Home-owners Association, Inc., its successors and assigns.

Section 2: "By-laws" means the by-laws of the Association.

Section 3: "Common Area" means all portions of the real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The common area includes all of the real property herein described except for those portions designated as "homes" on any plat or map of the community and the portion offered for dedication as a public street as shown on the plat.

Section 4: "Community" means all of the real property described herein consisting of the common areas and homes.

Section 5: "Declarant" means Pioneer Capital Corporation, its successors and assigns.

Section 6: "Declaration" means the Declaration of Covenants, Conditions and Restrictions.

Section 7: "Executive Board" means the body designated to act on behalf of the Association.

Section 8: "Home" means a lot and improvements thereto located

on a portion of the community designated for separate ownership or occupancy on any recorded plat or map of the community.

Section 9: "Member" means every person or entity who holds membership in the Association.

Section 10: "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any home, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 11: "Plat" means the plat recorded at Plat Book 17, Page 213, Office of the Nash County Register of Deeds containing a description of the boundaries of each home, and any other recorded plat of the community.

PART II - DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS

ARTICLE I
PROPERTY RIGHTS

Section 1: 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 home, subject to the following provisions:

(a) The right of the Association to suspend the voting rights for any period during which any assessment against an owner's home remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

Section 2: Any owner may delegate his right to the use and enjoyment of the common area to members of his family or tenants.

Section 3: 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 liens, prior to the conveyance of the first home.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

Section 1: Every owner of a home 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 home which is subject to assessment.

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

Class A. Class A members shall be all owners, with the exception of the declarant, and shall be entitled to one vote for each home owned. When more than one person holds an interest in any home, all such persons shall be members. The vote for such home shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any home.

Class B. The Class B member(s) shall be the declarant and shall be entitled to three (3) votes for each home 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 declarant owns less than fifty (50%) percent of the home sites; or

(b) on December 31, 1991.

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: The declarant, for each home owned within the Property, and each owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, hereby covenants and agrees to pay 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 shall be a charge on the land and shall be a continuing lien upon the home against which each such assessment is made. Any assessment levied against a home remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that home when filed of record in the office of the Clerk of Superior Court of Nash County in the manner provided therefor by Article 8 of Chapter 44 of the North Carolina General Statutes. All assessments shall accrue interest at a rate set by the Association not to exceed 18% per annum. The Association's lien may be foreclosed in a like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. Fees (including attorneys' fees), charges, late charges, fines, and interest are also enforceable as assessments.

Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the

assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them. No owner may waiver or otherwise escape liability for the assessments provided for herein by non-use.

Section 2: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any home shall not affect the assessment lien. The sale or transfer of any home pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, however, 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 home from liability for any assessments thereafter becoming due or from the lien thereof.

Section 3: The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents and in particular for the acquisition, improvement and maintenance of the community, services and facilities devoted to this purpose and related to the use and enjoyment of the common area.

The Association may also levy a special capital assessment payable in a manner as specified by the Association 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, 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 4: Until January 1 of the year immediately following the conveyance of the first home to an owner, the maximum annual assessment shall be \$360.00 per home, prorated for the remainder of said year.

(a) From and after January 1 of the year immediately following the conveyance of the first home to an owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership by up to ten percent (10%) of the previous year's maximum annual assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first home to an owner, the maximum annual assessment for the next succeeding two (2) years may be increased above the increase permitted in Section 4(a), and at the end of such period, for each succeeding period of two (2) years, provided that any such assessment shall receive the affirmative vote of two-thirds (2/3rds) of the votes of the owners who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 5: 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 the votes of each class of membership shall constitute

a quorum. If the required quorum is not present, another meeting may be called subject to the same notice 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: Both annual and special assessments must be fixed at a uniform rate for all units and may be collected on a monthly basis.

Section 7: The annual assessments provided for herein shall commence as to all homes on the first day of the month following the conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The executive board shall fix the amount of the annual assessment against said home 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 executive board.

ARTICLE IV

EXTERIOR MAINTENANCE

The owner of each home shall be solely responsible for the exterior maintenance for each home, including the performance of the following, as needed: Paint, repair, replace and care of windows, roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements. In the event that the owner fails or refuses to maintain the exterior of the unit, the Association is empowered to make any such repairs and to assess the owner with the costs

thereof. There is hereby reserved to the Association the right to unobstructed access over and upon each home at all reasonable times to perform maintenance as provided in this Article.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the community, nor shall any exterior addition or change therein be made until the plans and specifications showing the nature, kind, shape, height, materials, colors, 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 executive board of the Association. In the event the executive board fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

USE RESTRICTIONS

Section 1: No home shall be used except for single-family residential purposes.

Section 2: No noxious or offensive activity shall be conducted nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood.

Section 3: No animals, livestock or poultry of any other kind shall be kept or maintained. Dogs, cats or other household pets may

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be kept or maintained provided that they are not kept or maintained for commercial purposes and are not allowed to run at large.

Section 4: No outside radio or television antennas, including satellite dishes or receivers, shall be erected on any home unless and until permission for the same has been granted by the executive board.

Section 5: No signs shall be permitted on or about any home other than "for sale" or "for rent", signs which shall be no larger than 18" x 12", and shall only be placed inside the front windows.

Section 6: All window coverings (i.e., curtains, blinds, draperies, shades, etc.) shall appear white or off-white from the exterior.

Section 7: Owners shall not park or store any boat, motorcycle, motor bike, camper, trailer, trailer vehicle, or similar vehicle anywhere on the premises. No trucks shall be permitted except for standard 2-ton pickup trucks, or smaller sized trucks.

Section 8: Owners shall not erect any mail or newspaper boxes except that provided by the declarant.

ARTICLE VII

EASEMENTS

Section 1: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on any recorded plat or instrument. Within these easements no structure, planting or other materials shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may obstruct or change the flow of drainage channels in the easements.

Section 2: All homes and common area shall be subject to easements for the encroachment of improvements constructed on adjacent homes to the extent that such improvements actually encroach, including, but not limited to, such items as overhanging eaves, provided such encroachment does not interfere with the reasonable use of the common area or homes so encroached upon.

Section 3: Declarant shall have a reasonable construction easement across the common elements for the purpose of constructing improvements on the homes. Declarant shall also have such easements through the common areas as may be reasonably necessary for the purpose of discharging declarant's obligations.

Section 4: The Association shall have a right of entry upon the homes to effect emergency repairs, and a reasonable right of entry upon the homes to effect other repairs, improvements, replacement or maintenance as prescribed herein.

Section 5: The common area shall be subject to an access easement for rescue officers, fire-fighting personnel, police officers and service personnel for the purpose of performing their respective duties.

Section 6: All easements granted herein are appurtenant to and shall run with the land, and shall inure to the benefit of and be binding upon the declarant, the Association, owners, occupants, and mortgage holders, and any other person or entity having an interest in the community.

ARTICLE VIII

GENERAL PROVISIONS

Section 1: The Association may adopt and enforce reasonable rules and regulations not in conflict with the declaration and

supplementary thereto, as more fully provided in the by-laws.

Section 2: The Association 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, the by-laws and articles of incorporation of the Association. Failure by the Association to enforce any covenant or restrictions therein shall in no event be deemed a waiver of the right to do so thereafter.

Upon notice to the Association of a violation hereunder and a failure of the Association to take action upon said violation within 90 days, any owner may undertake the enforcement of the provisions of the declaration at the expense of the owner.

Section 3: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4: The covenants and restrictions of this declaration shall run with and bind the land, for a term of twenty (20) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This declaration may be amended by an instrument signed by not less than seventy-five (75) percent of the owners. Any amendment is effective only upon recordation.

Section 5: The fiscal year of the Association shall begin on the first day of January and end the 31st day of December of each year, except that the first fiscal year shall begin on the date of incorporation.

Section 6: As long as there is a Class B membership, the following actions will require the prior approval of the Federal

Housing Administration ("FHA") and/or the Veterans Administration ("VA"); provided, the project has been previously approved by FHA and/or VA: annexation of addition properties, and amendment of this declaration.

PART III

BY-LAWS

ARTICLE I

MEETINGS OF MEMBERS

Section 1: The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day and the same month of each year thereafter.

Section 2: Special meetings of the members may be called at any time by the president or the executive board, or upon written request of any two (2) members.

Section 3: Written notice of each meeting shall be given by, or at the direction of, the secretary or person(s) authorized to call the meeting, by hand delivering or mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member. The notice shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4: Within 30 days after adoption of any proposed budget for the Association, the executive board shall provide a summary of the budget to all the members. The budget shall be considered at a duly called meeting of the members.

Section 5: The presence at the meeting of three (3) members or proxies shall constitute a quorum for any action except as otherwise provided by the declaration or these by-laws.

Section 6: Every member shall be entitled to one vote for each home owned.

Section 7: At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance of the member's home.

ARTICLE II

OFFICERS AND EXECUTIVE BOARD; SELECTION; TERM OF OFFICE

Section 1: The affairs of the Association shall be managed by an executive board of three (3) members, who shall be entitled to act on behalf of the Association. Nomination for election of the executive board shall be made from the floor at the annual meeting. Election shall be by secret written ballot and by a majority of the votes when a quorum is present. Cumulative voting is not permitted.

Section 2: Any executive board member may be removed, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a board member, a successor shall be selected by a majority of the members voting at a meeting when a quorum is present.

Section 3: No executive board member shall receive compensation for any service he may render to the Association; provided, however, with the prior approval of the executive board, any executive board member may be reimbursed for actual expenses incurred in the performance of his duties.

Section 4: The executive board shall have the right to take any action in the absence of a meeting which they could take at a duly held meeting by obtaining the written consent of all the executive board members. Any action so approved shall be filed in the corporate books and records and shall have the same effect as though taken at a meeting of the executive board.

Section 5: The members (and former members) of the Executive Board and the officers, employees, and agents of the Association shall be entitled to indemnification by the Association in accordance with the provisions of G.S. §55A-17.1.

ARTICLE III

MEETINGS OF EXECUTIVE BOARD

Section 1: Meetings of the executive board shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the board. Special meetings of the executive board may be called by any member of the executive board, after not less than three (3) days notice to each executive board member.

Section 2: A majority of the executive board members shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the executive board members present at a duly held meeting shall be regarded as the act of the board.

ARTICLE IV

POWERS AND DUTIES OF THE EXECUTIVE BOARD

Section 1: Subject to the provisions contained herein and applicable law, the executive board shall have the power and

authority to exercise all the rights of the Association, including, but not limited to:

(a) Adopt rules and regulations governing the use of the common area and facilities, the personal conduct of the members and their guests thereon, and establish penalties for the infraction thereof;

(b) Suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) Declare the office of a member of the executive board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the executive board;

(d) Employ a manager, an independent contractor, or other employees as they deem necessary, and prescribe their duties; provided always, any contract for professional management must contain a clause requiring not more than 90 days termination notice;

(e) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common area other than for service provided to unit owners;

(f) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;

(g) Exercise any other powers necessary and proper for the governance and operation of the Association; and

(h) Exercise any and all powers, rights and privileges which a non-profit corporation organized under Chapter 55A of the General Statutes of North Carolina may now or hereafter have.

Section 2: It shall be the duty of the executive board to:

(a) cause the common area to be maintained, repaired, and replaced as necessary, and to assess the members to recover the cost of the upkeep of the common elements;

(b) serve as the architectural committee;

(c) keep a complete record of all its acts and corporate affairs and present a statement thereof to the members at the annual meeting, or at any special meeting when such statement is requested in writing by two (2) members;

(d) supervise all officers, agents and employees of the Association, and see that their duties are properly performed;

(e) fix the amount of the annual assessment at least thirty (30) days in advance of each annual assessment period;

(f) send written notice of each assessment to every owner at least thirty (30) days in advance of each annual assessment period;

(g) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same;

(h) issue, or have issued, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made for the issuance of these certificates. If a certifi-

cate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(i) procure and maintain, at all times, sufficient liability insurance and any other insurance deemed necessary to adequately protect the Association;

(j) cause all officers or employees, including officers and employees of professional management, having fiscal responsibilities to be bonded, as it may deem appropriate.

ARTICLE V

OFFICERS AND THEIR DUTIES

Section 1: The officers of this Association shall be a president, vice-president, and secretary/treasurer. The officers shall be appointed by the executive board from among the members of the executive board.

Section 2:

(a) The president shall preside at all meetings of the executive board; see that orders and resolutions of the executive board are carried out; sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) The vice-president shall act in the place of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the executive board.

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the executive board and of the members; keep the corporate seal of the Association and affix

it on all papers requiring said seal; serve notice of meetings of the executive board and of the members; keep appropriate current records showing the members of the Association together with their addresses; prepare, execute, certify, and record amendments to the declaration and by-laws on behalf of the Association; and perform such other duties as required by the executive board.

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by the executive board; sign all checks and promissory notes (such checks and promissory notes to be co-signed by the president) of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and prepare an annual budget and a statement of income and expenditures to be presented to the membership at its annual meeting, and deliver a copy to each member.

ARTICLE VI

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member or a mortgagee of any member. The articles of incorporation and the declaration and by-laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE VII
CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: "THE PINES OF ROCKY MOUNT HOMEOWNERS ASSOCIATION, INC." and the words: "CORPORATE SEAL - 1988" in the center thereof.

ARTICLE VIII
AMENDMENTS TO BY-LAWS

Section 1: These by-laws may be amended, at a regular or special meeting of the members, by a vote of the majority of the members.

IN WITNESS WHEREOF, PIONEER CAPITAL CORPORATION has caused this instrument to be executed in its name by its duly authorized officers, this the 9th day of December, 1988.


DECLARANT:

PIONEER CAPITAL CORPORATION

By: *R. Grant Gudeye*
Sr. (Vice) President

ATTEST:

E. Dawn Harper
(Asst.) Secretary
(CORPORATE SEAL)



NORTH CAROLINA

Nash COUNTY

I, Beverly F. O'Berry, a Notary Public in and for the aforesaid County and State, do hereby certify that E. Dawn Harper personally appeared before me this day and acknowledged that he is ^{Asst.} Secretary of PIONEER CAPITAL CORPORATION, a corporation, and that by authority duly given by its Board of Directors and as an act of the corporation, the foregoing instrument was signed in its name by its ^{Sr Vice} President, L Ernest Bridgers, sealed with its corporate seal, and attested by himself as its Secretary.

WITNESS my hand and notarial seal, this the 9th day of December, 1988.

Beverly F. O'Berry
Notary Public
Nash County, N.C.

Beverly F. O'Berry
Notary Public

My commission expires: 12/7/91

CERTIFICATION

I, the undersigned, do hereby certify: That I am the duly elected and acting Secretary of THE PINES OF ROCKY MOUNT HOMEOWNERS ASSOCIATION, INC., a North Carolina corporation; and

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted by the Board of Directors thereof, held on the 9TH day of December, 1988.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 9TH day of December, 1988.

Pamela B. Smith
Secretary



NORTH CAROLINA

COUNTY OF Nash

The foregoing certificate(s) of Beverly F. O'Berry, Notary Public is (are) certified to be correct. This instrument was presented for registration and recorded in this office in Book 1270, Page 142.

This the 7 day of Feb, 1989 at 11²³ o'clock A.M.

Margaret B. Dauphin
Register of Deeds

By Joyce C. Jagger, Not

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