

ENC. 3344 642

PRESENTED
FOR
REGISTRATION

SEP 4 11 53 AM '84

Handwritten: said to be correct
Prepared by: Ann Hoppel Sturgis
Mail back to: Ann Hoppel Sturgis, P. O. Box 3843, Durham, N.C. 27702
NORTH CAROLINA
WAKE COUNTY

KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY, NC
DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR DURANT TRAILS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into this 11th day of August, 1984, between RALEIGH PROPERTIES, a North Carolina General Partnership (hereinafter called "Declarant") and all parties hereafter acquiring any of the described property.

WITNESSETH:

WHEREAS, Declarant is the owner of all lots within a subdivision in the County of Wake, State of North Carolina, known as Durant Trails, which includes lots for detached single family dwellings as well as clusterhomes and townhouses;

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and advantage of every party hereafter acquiring any of the described property that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the property be established; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the property in Wake County; and for the continued maintenance and operation of such recreational and common area.

NOW, THEREFORE, in consideration of the premises, the Declarant agrees with all parties hereafter acquiring any of the property hereinafter described, that it shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to the use and occupancy thereof, which shall be construed as covenants running with the land which shall

be binding on all parties acquiring any right, title or interest in any of the properties and which shall inure to the benefit of each owner thereof.

ARTICLE I

PROPERTIES SUBJECT TO THIS DECLARATION

Section 1. The property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Wake County, North Carolina, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The property is Phase One of Durant Trails which is the first of a series of phases which the Declarant intends to develop and to subject to the provisions of this Declaration. Phase One and all of the future phases of Durant Trails are located within that larger tract of land described on Exhibit B. The Declarant hereby subjects the property, more particularly described on Exhibit A attached hereto and incorporated herein by reference, to this Declaration and the jurisdiction of the Association. No additional properties may be subjected to this Declaration without the consent of the City of Raleigh.

Section 2. The Declarant hereby reserves the right to subject other real property to the Restrictions in order to extend the scheme of this Declaration to other property to be developed and thereby to bring such additional properties within the jurisdiction of the Association. Each additional parcel or tract of land, with the improvements thereon or to be placed thereon, which is subjected to this Declaration shall be designated consecutively as "Phase II of Durant Trails"; and such similar designation for each phase. All annexations of additional properties to the original development described in Exhibit A must contain a minimum of five (5) acres, be contiguous to Phase I or property previously annexed, be within the tract described in Exhibit B, and be approved by the City of Raleigh. In addition, each phase shall only contain either detached single family dwelling lots or clusterhome and townhouse lots. At this time Declarant

anticipates the total development to contain approximately 520 detached single family dwelling lots and 292 clusterhome and townhouse lots.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Durant Trails Homeowners Association, 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 in Exhibit A, and such additions thereto as may hereafter be made subject to the provisions of this Declaration:

Section 4. "Common Area" shall mean all property owned by the Association, or such other property which the Association may hold subject to the provisions of the Declaration. Common Areas shall be defined and bounded on the plat(s) as "Common Areas" or "Common Open Space". Common Areas in each phase shall be conveyed to the Association in accordance with Article III, Section 3 prior to deeding the first Lot in the phase. Common areas shall specifically include but shall not be limited to all water lines and sewer lines which serve the properties located outside of public rights and any City of Raleigh utility easements (excluding those located in any lot).

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, including detached single family lots, clusterhome lots and townhouse lots, with the exception of the Common Area. A lot shall be either a detached single family dwelling lot or a clusterhome or townhouse lot. The intended use of a lot shall be indicated by the recorded

plat showing the lot. Clusterhome or townhouse lots shall be used for the construction of single family attached dwelling units.

Section 6. "Declarant" shall mean and refer to Raleigh Properties, a North Carolina General Partnership, 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.- "Common Expense" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses for maintenance of the clusterhomes and townhouses as provided in this Declaration;
- (c) Expenses of the common area and administration, maintenance, repair, or replacement of the Common Areas;
- (d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase;
- (f) Ad valorem taxes and public assessment charges lawfully levied against common areas;
- (g) Expenses agreed by the members to be common expenses of the Association.
- (h) Expenses of storm sewer pipes and impoundment structures shown on Exhibit C including maintenance, repair and replacement thereof. Exhibit C will be supplemented with each annexation of additional properties. Expenses for this shall be a common expense shared equally by the Class A members.

ARTICLE III PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and over the Common Area for

access, ingress and egress from and to public streets, walkways and parking areas and such easement 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 charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

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

(d) The right of the Association to limit the number of guests of Members;

(e) 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;

(f) The right of the Association to adopt, publish and enforce rules and regulations as provided in Article XI.

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 successors and assigns, that it will convey fee simple title to the Common Area in each Phase to the Association, free and clear of all encumbrances and liens, except utility and storm drainage easements and a greenway easement to the City of Raleigh, prior to the conveyance of the first Lot in that Phase.

Section 4. Parking Rights. Ownership of each Clusterhome or Townhouse Lot shall entitle the Owner or Owners thereof to the use of not more than two (2) automobile parking spaces, 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. The Association may regulate the parking of boats, trailers and other such items on the Common Areas.

Section 5. TV Antennas and Cablevision. The Association may provide one or more central television antennas for the convenience of the Members and may supply cablevision and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas and satellite dishes on individual Lots.

ARTICLE IV

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 membership:

Class A. ^A Class 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 determine, but in no event shall more than one vote be cast with respect to any Lot, and in no event shall fractional votes be allowed. Class A membership shall be divided into two groups: Class A-1 members who shall be Owners of detached single family lots, and Class A-2 members who shall be Owners of Clusterhome and Townhouse Lots.

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 the 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 subparagraph (b) below, additional lands are annexed to the Properties without the assent of Class A Members on account of development of such additional lands by the Declarant, as provided for in Article VIII, Section Two, below, or;

(b) on December 31, 1986.

Class B membership shall be divided into two classifications: Class B-1 shall entitle the Declarant to three (3) votes for each detached single family dwelling lot owned, and Class B-2 shall entitle the Declarant to three (3) votes for each Clusterhome or Townhouse Lot owned.

ARTICLE V

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, costs, 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 delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to all common areas in any phases containing detached single family dwelling lots shall be shared equally by all the Owners of detached single family dwelling Lots. All assessments relating to all common areas and exterior maintenance in any phases containing clusterhomes and townhouses shall be shared equally by all the Owners of Clusterhome and Townhouse Lots. All assessments relating to common areas in phases containing recreational facilities and amenities shall be shared equally by all Lot Owners.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the acquisition, improvement and maintenance of the Common Areas, including the maintenance, repair and reconstruction of private streets, driveways, walks and parking areas

situated on the Common Area, maintenance and upkeep of storm sewer pipes and impoundment structures, the cutting and removal of weeds and grass, the removal of trash and rubbish or any other maintenance and the exterior maintenance and landscaping of the clusterhomes and townhouses situated upon the Properties as hereinafter provided or for the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Area, the procurement and maintenance of insurance in accordance with this Declaration, the employment of attorneys to represent the Association when necessary, to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting, the generality of the foregoing, roofs, paving, and any other major expense for which the Association is responsible, and such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund or funds for the periodic maintenance, repair and replacement of improvements to the common area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense for the Owners of the kind of Lots that require the reserve fund or funds.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for detached single family dwelling lots shall be Two Hundred Forty Dollars (\$240.00) per lot, and for clusterhome and townhouse lots shall be Four Hundred Eighty Dollars (\$480.00) 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 assessments may

be increased effective January 1 of each year without a vote of membership by up to 10% of the previous year's 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 for single family dwelling lots may be increased above the increase permitted in Section 4(a) above by a vote of two-thirds (2/3) of each class of A-1 and B-1 members, and the maximum annual assessment for Clusterhome and Townhouse Lots may be increased above the increase permitted in Section 4(a) above by a vote of two-thirds (2/3) of each class of A-2 and B-2 Members who are voting in person or by proxy, at a meeting duly called for this purpose. 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 5. 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. Special assessments related only to the common areas or exterior maintenance in Clusterhome or Townhouse Phases shall require a two-thirds (2/3) vote of A-2 and B-2 members,

and the assessments shall be levied only against owners of Clusterhome or Townhouse Lots.

Section 6. Notice and Quorum for any Action Authorized Under Sections 4 and 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 thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty 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 7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all detached single family dwelling Lots and a separate uniform rate for all Clusterhome and Townhouse Lots shall be collected on a monthly basis. Provided, however, that the assessment for Lots owned by Declarant which are not occupied as a residence, 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 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. Such annual assessments shall be paid ratably on a monthly basis. 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 assessment on a specified Lot has been paid. Any certificate so given shall be conclusive evidence of payment of the assessment stated therein.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight (8%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property and in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment. 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. Should any deficiency remain after the foreclosure, the Association may also bring an action against the Owner for said deficiency.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such 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 11. 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 12. Working Capital Fund. At the time of closing of the sale of each Lot by the Declarant a sum equal to at least two months assessment for each Lot shall be collected and transferred to the Association to be held as a working capital fund. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

ARTICLE VI

EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Clusterhome and Townhouse Lot which is subject to assessment hereunder, as follows: paint and/or stain the exterior, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefor), and other exterior improvements. Such exterior maintenance shall not include grass surfaces. Further, the Owner of any Clusterhome or Townhouse Lot may at his election plant trees, shrubs, flowers and grass in his rear yard and may also maintain portions or all of his rear yard provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. No such maintenance by a Clusterhome or Townhouse 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 undertake any required maintenance and add the cost thereof to the assessment against such Owner's

Clusterhome or Townhouse Lot. 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 the Association, the Declarant wishes to make it known that due to differing amounts of exposure to the elements and other factors, some Clusterhomes and Townhouses may require more maintenance than others and that it is in the best interest of the entire Association that all Clusterhomes and Townhouses be properly maintained and that the Association shall be required to provide such maintenance provided for herein and make a uniform rate of charge for Clusterhome and Townhouse Owners without regard to the actual cost of maintenance of each Clusterhome or Townhouse.)

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family or guest, or invitees, contract sellers, tenants or an independent contractor of the Owner, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. The Association is hereby granted an easement right of access to go upon any Lot for performance of repairs or maintenance, the responsibility of which is the Association's hereunder.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Clusterhomes or Townhouses upon the Properties and placed on the dividing line between the Clusterhome or Townhouse Lots and all reconstruction or extensions of such 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, 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. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the lot of another Owner to the extent necessary to perform repair, maintenance or reconstruction of a party wall. Such repair, maintenance or reconstruction 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 provisions of this Article an Owner who, by his negligence 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 Contribute Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner that No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution

as provided in this Article VII, request of the adjoining property owner or property owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and 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. In the event a property Owner refuses or neglects to do so, it shall be deemed a waiver to proceed against the members, who are Owners of Clusterhomes and Townhouse Lots.

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

ARTICLE VIII

ARCHITECTURAL CONTROL

No building, fence, 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 specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE IX

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. If the Declarant should acquire and decide to develop additional property not within the boundaries of the tract described in Exhibit B attached hereto, such land may be annexed by the Declarant provided in Article I without the consent of Members, provided that the Federal Housing Administration and the Veterans Administration determine that the annexation is in accord with the general plan heretofore provided to them. The consent of the City of Raleigh shall be required to determine that the annexation is in accordance with the general development plan for Durant Trails. Otherwise, the annexation of additional property not within the boundaries of the tract described in Exhibit B attached hereto 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. 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. All annexations of property not within the boundaries of the tract described in Exhibit B must contain a minimum of five (5) acres, be contiguous to the Properties and be approved by the City of Raleigh.

Section 2. If within seven (7) years of the date of incorporation of this Association, the Declarant should develop additional land within the property described in Exhibit B such land may be annexed by the Declarant in the manner provided in Article I without the consent of Members provided that the Federal Housing Administration and the Veterans Administration determine that the annexation is in accord with the general plan heretofore provided by them. The consent of the City of Raleigh shall be required to determine that the annexation is in accordance with the general development plan for Durant Trails.

Section 3. Annexation shall be accomplished by recording the County Registry a Declaration of Annexation, duly executed by the Declarant if the Declarant has the right to annex pursuant to Sections 1 or 2 above (and by the Association if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except the City of Raleigh if required by its ordinances.

Section 4. Prior to the conveyance of the first lot in any newly annexed area, the Declarant shall deliver to the Association one or more deeds conveying fee simple title to any Common Area within the lands annexed free and clear of all encumbrances and liens except utility, storm drainage and greeway easements.

ARTICLE X

INSURANCE

Section 1. Insurance coverage on the Property shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies covering the Common Areas, Clusterhomes and Townhouses shall be purchased by the Association for the benefit of the Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of Clusterhome and Townhouse Owners. Clusterhome and Townhouse Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

(b) Coverage. All buildings and improvements upon the Common Areas and all personal property included in the Common Areas and all Clusterhomes and Townhouses shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

- (i) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement,
- (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, and
- (iii) Such policies shall contain clauses providing for waiver of subrogation.

(c) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

(d) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged to the Owners as an assessment according to the provisions above; provided that premiums on account of hazard insurance coverage for individual Clusterhome and Townhouse Lots shall be apportioned to the individual Owners according to the amounts of the coverage required.

(e) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their interest may appear, and shall provide that all proceeds thereof

shall be payable to the Association as insurance trustees under this Declaration. The sole duty of the Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Common Areas and facilities held for the Association.

(ii) Proceeds on account of damage to Clusterhomes and Townhouses shall be held in undivided shares for the Owners of the Lots of the damages Clusterhomes and Townhouses in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.

(iii) In the event a mortgagee endorsement has been issued for any Clusterhome or Townhouse Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustees shall be first paid or provisions made therefor.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify

the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

ARTICLE XI

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish, and endorse reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Clusterhome and Townhouse 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 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 of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes.

Section 5. Dwelling Specifications. 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 500 square feet for a one-story dwelling, nor less than 500 square feet for a dwelling of more than one-story.

ARTICLE XII

EASEMENTS

Section 1. 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 lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the conveyance of the individual lots to Owners and the Common Area to the Association; 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. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress and regress across all Common Areas, now or hereafter owned by the Association, for the purpose of construction of improvements and development of the Properties.

Section 2. All Lots shall be subject to easements for the encroachments 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.

Section 3. An easement is hereby established over the common areas and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 4. If any dwelling is located closer than five (5) feet from its lot line, the owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the owner shall restore the adjoining lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 5. Greenway - City of Raleigh Approval. Notwithstanding any other provisions of these Declarations the Association, Owners, Members, Tenants of members, members' guests or invitees, or families of members shall not, within the greenway area shown on the Plans of the Properties referred to above, without the prior written consent of the City of Raleigh;

- (a) Remove any trees or vegetation;
- (b) Erect gates, fences or other structures;
- (c) Place any garbage receptacles;
- (d) Fill or excavate;
- (e) Plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said greenway in its natural state, including without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within this greenway area, the City of Raleigh may erect trails, trail markers, place litter receptacles, and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including without limitation hours of operation), which shall be equally applicable to the general public and the Owners. The Association may adopt such other regulations governing the use of the greenway, not inconsistent with those adopted by the City and may enter into such agreements with the City -

of Raleigh as is deemed appropriate to insure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

Section 6. Membership in the Association as defined hereinabove shall be mandatory for each original purchaser and each successive purchaser of a Lot.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment. 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 during the first twenty (20) year period 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. Amendments shall not become effective until approved by the City Attorney of the City of Raleigh or until he, after 20 days notice fails to comment on the amendment. Any provision contained herein to the contrary notwithstanding, the Declarant reserves the absolute right to terminate this Declaration of Covenants, Conditions and Restrictions in its entirety within six months after the recording of this

document, by recording an amendment to that effect in the Register of Deeds of Wake County; said amendment must be approved by the Raleigh City Attorney.

Section 4. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within 30 days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined.)

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

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS,
CONDITIONS AND RESTRICTIONS OF DURANT TRAILS HOMEOWNERS ASSOCIATION

DURANT TRAILS HOMEOWNERS ASSOCIATION

By: Michael J. Brown
President

ATTEST:

William J. Jackson
Secretary

Section 5. Management and Contract Rights of Association. Declarant shall 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 Declarant or

2. If a waste water collection system or waste water treatment and/or disposal facility provided by any city, town, village, county, water and sewer authorities, or other unit of government shall hereinafter become available to serve the Durant Trails Homeowners Association properties, the owner of the waste water collection system, and waste water treatment and/or disposal facilities or any portion thereof, serving Durant Trails, whether it be the Association or the Declarant, shall take such action as is necessary to cause the existing and future waste waters of the properties to be accepted and discharged into said governmental systems; and shall convey or transfer as much of the wastewater collection system and waste water treatment and/or disposal facilities and such necessary easements as the governmental unit may require as a condition of accepting the waste water.

ARTICLE XVI

In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to such developments or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the developer, homeowner's association or occupants.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration to be executed by its General Partners this 24th day of August, 1984.

RALEIGH PROPERTIES, a North Carolina
General Partnership

By: Central Atlantic Mortgage and Investment
Company, Inc., a North Carolina Corporation,
General Partner

By: [Signature]
President

ATTEST:

[Signature]
Secretary

800-3344 121979

By: TBSB, INC., a North Carolina Corporation,
General Partner

By: *[Signature]*
President

ATTEST:

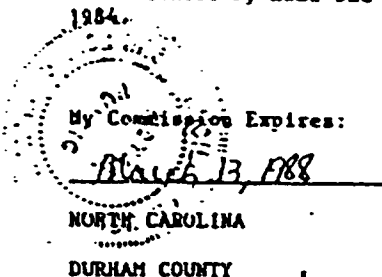
[Signature]
Secretary



NORTH CAROLINA
Durham County

I, Luille B. Branson, a Notary Public of said state and county certify that Janet H. Henry personally appeared before me this day and acknowledged that she is Assistant Secretary of Central Atlantic Mortgage and Investment Company, Inc., a North Carolina corporation, a General Partner of Raleigh Properties, a North Carolina General Partnership, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Assistant Secretary.

Witness my hand and notarial seal this the 20th day of August, 1984.

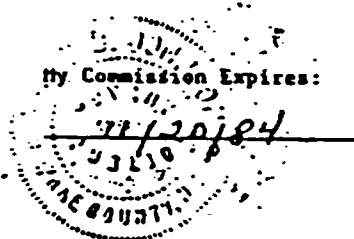


Luille B. Branson
Notary Public

NORTH CAROLINA
Durham County

I, Peggy B. Johnson, a Notary Public of said state and county certify that W. Robert Johnson personally appeared before me this day and acknowledged that he is Assistant Secretary of TB&B, Inc., a North Carolina corporation, a General Partner of Raleigh Properties, a North Carolina General Partnership, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by himself as its Assistant Secretary.

Witness my hand and notarial seal this the 24th day of August, 1984.



Peggy B. Johnson
Notary Public

NORTH CAROLINA - WAKE COUNTY

The foregoing certificate is of Luille B. Branson
Peggy B. Johnson

Notary(s)/Notary Public is

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

KENNETH C. WILKINS, Register of Deeds

By Glenn C. Smith
Asst./Deputy Register of Deeds

Prepared by: Garland Askev and Ann Hoppel Sturgie
Mail-back to: Ann Hoppel Sturgie, B. O. Box 3443, Durham, N.C. 27703

Handwritten: Held: *Handwritten:* *Handwritten:*

BOOK 3344 PAGE 694

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FIRST AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR DURANT TRAILS

THIS FIRST AMENDMENT TO DECLARATION, made this 24 day of August, 1984, by RALEIGH PROPERTIES, a North Carolina General Partnership with its principal office in Wake County, North Carolina, hereinafter called "THE DECLARANT;" and CENTRAL ATLANTIC MORTGAGE & INVESTMENT COMPANY, a North Carolina Corporation, "TRUSTEE," as hereinafter set forth; and FIRST AMERICAN FEDERAL SAVINGS & LOAN ASSOCIATION, a Savings and Loan Association, hereinafter called "AMERICAN FEDERAL,"

W I T N E S S E T H

THAT WHEREAS, the Declarant has recorded that certain Declaration of Covenants, Conditions and Restrictions for Durant Trails, hereinafter referred to as Declaration, in Book 3344 at Page 642 Wake County Registry; and

WHEREAS, the Declarant desires to amend said Declaration by placing additional covenants on Phase I of Durant Trails, which is a phase consisting solely of detached single family dwelling lots, and more particularly described in Article I; and

WHEREAS, Declarant is the owner of 100% of the lots and therefore amends the Declaration pursuant to Article XIII, Section 3 of said Declaration.

WHEREAS, the Declarant has heretofore executed a note secured by a deed of trust to the Trustee for the benefit of First American covering said property, the same being dated July 19, 1984, and being recorded in Book 3324, Page 636, Wake County Registry.

NOW, THEREFORE, In consideration of the sum of TEN DOLLARS (\$10.00) paid to the Trustee and First American and the Beneficiary by Declarant, the parties do hereby agree that the lands described above shall be and remain subject to the Declaration and this First Amendment to Declaration:

RECORDED
SEP 4 11 54 AM '84
REGISTER OF DEEDS
WAKE COUNTY, N.C.

ARTICLE I.

The real property subject to this Amended Declaration is located in House Creek Township, Wake County, North Carolina, and more particularly described as follows:

BEING all of Lots 1 through 17, Lots 159 through 177, Lots 197 through 204, Lot 222, and Lots 241 through 297 of Durant Trails Subdivision, Phase one, according to a plat recorded in Map Book 1984, Page 123/32, Wake County Registry.

ARTICLE II.

The real property described in Article I hereof is hereby subjected to the protective covenants and restrictions hereby declared to insure the best use and the most appropriate development and improvement of each lot thereof; to protect the owners of lots against such improper use of surrounding lots as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures and structures built of improper or unsuitable materials to obtain harmonious color schemes, to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate location thereof on lots; to prevent haphazard and inharmonious improvements of lots; to secure and maintain property set-backs from street, and adequate free spaces between structures, and in general to provide adequately for a high type and quality of improvement in said property, and thereby enhance the values of investments made by purchasers of lots therein.

ARTICLE III.

No lot shall be used, except for residential purposes, except that nothing herein shall preclude the use of any lot as a well site for a community water system or for the use in providing a

recreational area for the individual lot owners as a group. No building shall be erected, altered, placed or be permitted to remain on any lot other than one detached single family dwelling not to exceed two and one-half stories in height.

No building shall be erected, placed or altered on any premises in said development until the building plans, specifications and plat showing the location of such building, have been approved in writing as to conformity and harmony of external design with existing structures in the development and as to location of the building with respect to topography and finished ground elevation by an architectural committee (The Architectural Committee) composed of three persons designated and appointed by Declarant or its assigns. In the event The Architectural Committee fails to approve or disapprove such design or location within thirty days after said plans and specifications have been submitted to it or, in any event, if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with. Members of The Architectural Committee shall not be entitled to any compensation for services performed pursuant to this covenant.

ARTICLE V.

Without the prior written approval of The Architectural Committee, no building shall be located on any lot, other than a corner lot, less than 30 feet from the front lot line or less than 10 feet from any side lot line, except that a detached garage may be

placed 5 feet from a side lot line provided such detached garage is located at least as far back from the front lot line as the rear of the residence. The location of any building on a corner lot in this subdivision shall be fixed by The Architectural Committee but shall be located no less than 30 feet from the front lot line and 20 feet from the side street. Declarant reserves the right to waive minor violations of the set back and side line requirements set forth in this paragraph (violations not in excess of 10 per cent of the minimum requirements shall be deemed minor). With the written consent of the adjoining property owner (or owners), the Declarant may also waive any sideline violation that does not exceed 3 feet.

ARTICLE VI.

No single story residential structure which has an area of less than 1,200 square feet, exclusive of porches, breezeways, steps and garages shall be erected or placed or permitted to remain on any lot shown on said recorded plat, and no story and one-half, two story or two and one-half story structure which has an area of less than 1,500 square feet exclusive of porches, breezeways, steps and garages, shall be erected or placed or permitted to remain on any of said lots.

ARTICLE VII.

No lot or combination of lots shall be re-subdivided in such a manner that will result in there being more than the present number of lots shown on said recorded plat.

~~ARTICLE VIII~~

Article VIII

No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

~~billboards shall be erected or maintained on the premises.~~ No trade materials or inventories may be stored upon the premises and no trucks or tractors may be stored or on the premises. No business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a doctor's office or professional office of any kind, a fraternity house, a rooming house, a boarding house, an antique shop or gift shop shall be carried on upon any lot.

ARTICLE IX.

No trailer, tent, shack, barn or other building, except a private garage complying with Article III hereof, shall be erected or placed on any lot covered by these covenants. No detached garage shall at any time be used for human habitation temporarily or permanently, except for domestic servants employed by the owner of the lot upon which said garage is located.

ARTICLE X.

No animals, livestock or poultry of any kind shall be raised or kept on any lot, except that dogs, cats or other household pets may be kept on lots provided that said animals are not kept or maintained for any commercial purpose.

ARTICLE XI.

No fence, wall, hedge, or mass planting shall be permitted to extend near the front line than the minimum building set-back lines established herein except upon approval by The Architectural Committee.

ARTICLE XII.

Adequate off-street parking shall be provided by the owner of each lot for the parking of automobiles owned by such owner and no

parking will be permitted on the streets.

ARTICLE XIII.

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

ARTICLE XIV.

~~These covenants shall run with the land and shall be binding on all parties and on persons claiming under them from time to time and on their heirs and assigns forever. These covenants shall be automatically extended for successive periods of 10 years unless by vote of a majority of the then owners of the lots covered by these covenants it is agreed to change said covenants or to abolish them.~~

If the parties hereto, or any of them, or their heirs, successors, or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, and either to prevent it, her, him or them from so doing or to recover damages or other dues for such violation.

ARTICLE XV.

Invalidation of any one of these covenants or any part thereof by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect, and the failure of any person or persons to take action to enforce the viola-

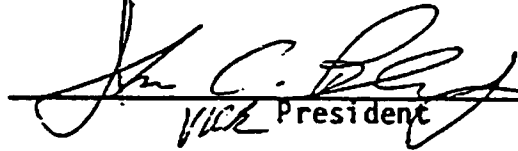
tion of any of these covenants and restrictions shall not be construed as a waiver of any enforcement rights and shall not prevent the enforcement of such covenant or covenants in the future.

IN TESTIMONY WHEREOF, The Declarant, the Trustee and First American have caused this instrument to be executed in their corporate names by their President or Vice-president attested by their Secretary or assistant secretary and their corporate seals to be hereto affixed, all by order of their Board of Directors duly given, as of the day and year first above written.

RALEIGH PROPERTIES,
A North Carolina General Partnership

BY: TB&B, INC.
A General Partner

BY:

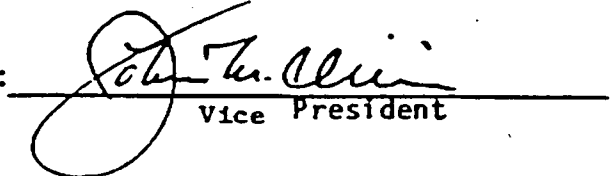

VICE President

ATTEST:


Asst. Secretary

FIRST AMERICAN FEDERAL SAVINGS AND LOAN ASSOCIATION

BY:


Vice President

ATTEST:


Asst. Secretary

RECORDED
INDEX
MAY 27 5 04 PM '85
REGISTER OF DEEDS
WAKE COUNTY, N.C.

Prepared by Ann M. Happel

Mail Back To: Ann M. Happel, P. O. Box 3843, Durham, North Carolina 27702

NORTH CAROLINA

WAKE COUNTY

SECOND AMENDMENT
TO DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR DURANT TRAILS

THIS SECOND AMENDMENT TO DECLARATION, made this the 20th day of February, 1985, by RALEIGH PROPERTIES, a North Carolina General Partnership, with its principal office at 4900 Waters Edge Drive, Suite 245, Raleigh, North Carolina, 27606, hereinafter called "the Declarant;" CENTRAL ATLANTIC MORTGAGE & INVESTMENT COMPANY, a North Carolina Corporation, hereinafter called "Trustee;" FIRST AMERICAN SAVINGS BANK, F.S.B., formerly FIRST AMERICAN FEDERAL SAVINGS & LOAN ASSOCIATION, a Savings and Loan Association hereinafter referred to as "American Federal;" DURANT TRAILS HOMEOWNERS ASSOCIATION, a North Carolina Non-Profit Corporation, hereinafter referred to as "Homeowners Association;" together with all of the other undersigned parties who taken together represent owners, and Trustees and Beneficiaries of Deeds of Trust on not less than 90% of the lots in Durant Trails.

WITNESSETH:

THAT WHEREAS, the Declarant has recorded that certain Declaration of Covenants, Conditions and Restrictions for Durant Trails, hereinafter referred to as the "Declaration," in Book 3344 at page 642, Wake County Registry and that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Durant Trails, hereinafter referred to as "First Amendment," in Book 3344 page 694, Wake County Registry; and

WHEREAS, the Declarant, Trustee, American Federal, Homeowners Association, and all of the other undersigned parties desire to amend the Declaration and

First Amendment to eliminate any question as to their compliance with the Federal National Mortgage Association (FNMA) Regulations, Requirements and Guidelines.

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged all of the undersigned parties do hereby agree that the Declaration and First Amendment are hereby amended as follows:

1. The first paragraph of ARTICLE XV, SEWER SYSTEM, on page 27 of the Declaration is hereby deleted in its entirety and in lieu thereof the following provision is substituted:

1. Declarant shall construct the waste water collection system, and waste water treatment and/or disposal facilities in accordance with the permit and plans and specifications hereinafter issued and approved by the North Carolina Environmental Management Commission; and shall thereafter properly operate and maintain such systems and facilities in accordance with applicable permit provisions and law. In no event will the Declarant transfer ownership of the waste water collection system or waste water treatment and/or disposal facilities to the Association. In no event will the Declarant transfer ownership of the waste water collection system, or the waste water treatment and/or disposal facilities to any third party until it has been inspected and a permit issued to said third party by the North Carolina Environmental Management Commission. The transfer of the waste water treatment and/or disposal facilities to any third party shall be subject to that certain recorded Agreement between the Declarant and the City of Raleigh, a copy of which is attached to the Declaration as Exhibit D and incorporated by reference. If the Declarant transfers ownership of the waste water collection system, or the waste water treatment and/or disposal facilities to any third party, said third party shall maintain the waste water collection system located outside public streets, city of Raleigh sanitary sewer easements, and/or lots, and said third party shall maintain the waste water treatment and/or disposal facility together with its related force main. The Association shall not be required to pay or contribute any costs toward the maintenance, repair, or replacement of the waste water collection system or the waste water treatment and/or disposal facility; however, it is contemplated that the storm water impoundments which are planned for the Durant Trails project will be conveyed to the Association as part of the common area and that the Association may have expenses for maintaining the impoundment areas, which would be a common expense shared equally by the Class A Members.

2. The second paragraph of ARTICLE XV, SEWER SYSTEM, on page 28 of the Declaration is hereby amended by deleting from the sixth and seventh lines

thereof the phrase "whether it be the Association or the Declarant," so that that provision as amended now reads:

2. If a waste water collection system or waste water treatment and/or disposal facility provided by any city, town, village, county, water and sewer authorities, or other unit of government shall hereinafter become available to serve the Durant Trails Homeowners Association properties, the owner of the waste water collection system, and the waste water treatment and/or disposal facilities or any portion thereof, serving Durant Trails, shall take such action as is necessary to cause the existing and future waste waters of the properties to be excepted and discharged into said governmental systems; and shall convey or transfer as much of the waste water collection system and waste water treatment and/or disposal facilities and such necessary easements as the governmental unit may require as a condition of accepting the waste water.

3. The first sentence of Section 8. Date of Commencement of Annual Assessments: Due Dates. of ARTICLE V, COVENANT FOR MAINTENANCE ASSESSMENTS, on page 11 of the Declaration, is hereby deleted and the following sentences are substituted in lieu thereof:

The annual assessments provided for herein shall commence as to all Lots within a particular phase on the first day of the month following the conveyance of a Lot within that phase for which a certificate of occupancy has been issued. (For example: the first conveyance to a Lot Owner of a Lot with improvements constructed thereon for which a certificate of occupancy has been issued by the appropriate governmental authority shall trigger the commencement of assessments for all Lots within that phase.)

4. The initial maximum annual assessment for cluster home and townhouse lots is changed from \$480.00 per lot to \$840.00 per lot so that the first sentence of Section 4, Maximum Annual Assessment. of ARTICLE V, COVENANT FOR MAINTENANCE ASSESSMENTS, on page 9 of the Declaration, now reads as follows:

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for detached single-family dwelling lots shall be Two Hundred Forty Dollars (\$240.00) per lot, and for cluster home and townhouse lots shall be Eight Hundred Forty Dollars (\$840.00) per lot.

5. The date which is one of the events upon which Class B membership shall cease and be converted to Class A membership is hereby changed from

December 31, 1986 to December 31, 1989 so that paragraph (b) of subsection Class B. of Section 2 of Article IV, MEMBERSHIP AND VOTING RIGHTS on page 7 of the Declaration, is hereby amended to read: "on December 31, 1989."

Except as herein amended all of the terms, conditions, restrictions and obligations of the Declaration and the First Amendment shall remain and continue in full force and effect.

This Amendment is made pursuant to Section 3 of ARTICLE XIII, GENERAL PROVISIONS of the Declaration and by the signing of 90% of the Lot Owners, and by the certification by the Homeowners Association, and by the approval of the City Attorney of the City of Raleigh this Amendment shall become binding upon all Lots and all Lot Owners.

The undersigned not only indicate their consent and agreement with this Second Amendment but reconfirm and ratify the application of the Declaration of the First Amendment to all Lots and all Lot Owners in Durant Trails.

IN WITNESS WHEREOF, each of the undersigned has hereunto set his hand and seal or if corporate has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by the authority of its Board of Directors, the day and year first above written.

Prepared By: Ann M. Happel
Mail Back To: Ann M. Happel
P. O. Box 3843
Durham, N.C. 27702.

JUN 6 4 16 PM '85
KENTON H. HARRIS
REGISTERED CLERK
WAKE COUNTY, NC

NORTH CAROLINA

WAKE COUNTY

THIRD AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
DURANT TRAILS

This Third Amendment to Declaration, made this the
21 day of May, 1985 by Raleigh Properties, a North
Carolina General Partnership, with its principal office at 4900
Waters Edge Drive, Suite 245, Raleigh, North Carolina 27606,
hereinafter called "the Declarant;" Central Atlantic Mortgage &
Investment Company, a North Carolina Corporation, hereinafter
called "Trustee;" First American Savings Bank, F. S. B. formerly
First American Federal Savings and Loan Association, a savings &
loan association hereinafter referred to as "American Federal;"
The Whistler Corporation, a North Carolina Corporation
hereinafter called "Whistler;" Bay Tree Homes, a North Carolina
General Partnership consisting of Phillip R. Barker, Jonny Hayes
and John Rock, General Partners, hereinafter referred to as "Bay
Tree;" Terry B. Todd, Trustee, hereinafter referred to as "Todd;"
and Bankers Mortgage Corporation, hereinafter referred to as
"Bankers."

WITNESSETH:

THAT WHEREAS, the Declarant has recorded a certain
Declaration of Covenants, Conditions and Restrictions for Durant
Trails, hereinafter referred to as "Declaration," in Book 3344 at
page 642, Wake County Registry; that certain First Amendment to
Declaration of Covenants, Conditions and Restrictions for Durant

Trails, hereinafter referred to as "First Amendment," in Book 3344 at page 694, Wake County Registry, and that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions for Durant Trails hereinafter referred to as "Second Amendment" in Book 3451 at page 698, Wake County Registry; and

WHEREAS, the Declarant, pursuant to Article I Section 2 of the Declaration desires to add additional property within the area described in the metes and bounds description attached to the Declaration as Exhibit B; and

WHEREAS, Whistler and Bay Tree are the owners of certain lots within the area to be annexed.

NOW, THEREFORE, in consideration of the premises, the sum of \$10.00 in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant, Whistler and Bay Tree hereby make and declare the following Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Durant Trails:

The Declarant, Whistler and Bay Tree are the owners of certain property located in Wake County, State of North Carolina, being approximately 40 acres, and more particularly described as:

All of that certain land shown on the plats and surveys entitled "Durant Trails, Section 3," "Durant Trails Section 4," "Durant Trails, Section 5," and "Durant Trails, Section 6" as prepared by Triangle Engineering Services, Inc. and recorded in Book of Maps 1985, at pages 989, 990, 991, and 992 Wake County Registry, to said plats and surveys reference is hereby made for a more particular description of same.

Declarant, Whistler and Bay Tree hereby declare that all of the property described above shall be annexed to the property

subject to the Declaration, First Amendment, and Second Amendment, and shall be held, sold, and conveyed subject to all of the easements, restrictions, covenants, and conditions therein contained, which shall run with the real property and be binding on all parties having any right, title and interest in the above described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

The Declarant, Whistler and Bay Tree execute this Third Amendment pursuant to the provisions of Article I Section 2 of the Declaration. While this Amendment does not require the joinder of any lot owners, a copy of this Third Amendment has been delivered to the Board of Directors of the Durant Trails Homeowners Association and the President and Secretary have affixed a Certificate of Validity hereto evidencing such delivery. Trustee and American Federal join in the execution of this Third Amendment for the purpose of subordinating that certain Deed of Trust executed by Declarant to Trustee for American Federal dated July 19, 1984 and recorded July 27, 1984 at 3:09 p.m. in Book 3324 at page 636, Wake County Registry, and that certain Deed of Trust executed by Whistler to Trustee for American Federal dated March 7, 1985 and recorded March 7, 1985 at 3:56 p.m. in Book 3441 page 960, Wake County Registry to the provisions of this Third Amendment. Todd and Bankers join in the execution of this Third Amendment for the purpose of subordinating that certain Deed of Trust executed by Bay Tree to

Todd for Bankers recorded May 1, 1985 at 10:47 a.m. in Book 3472, Page 237, Wake County Registry to the provisions of this Third Amendment. The Raleigh City Attorney joins in the execution of this Third Amendment for the purpose of indicating his approval as required by Article I Section 2 of the Declaration.

IN WITNESS WHEREOF, each of the undersigned has hereunto set his hand and seal or if corporate has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be affixed by the authority of the Board of Directors, the day and year first above written.

RALEIGH PROPERTIES, a North
Carolina General Partnership

By:

T. B. & B., Inc. a General Partner

ATTEST:

Secretary
(Corporate Seal)

CENTRAL ATLANTIC MORTGAGE &
INVESTMENT COMPANY, a North
Carolina Company, Trustee

By:

ATTEST:

Secretary
(Corporate Seal)

ds:A0007195

FIRST AMERICAN SAVINGS BANK, F.S.B.
(Formerly First American Savings
and Loan Association)

By: *John W. Miller*

ATTEST:

James E. McElroy
Secretary
(Corporate Seal)

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS, CONDITIONS
AND RESTRICTIONS OF DURANT TRAILS HOMEOWNERS ASSOCIATION.

DURANT TRAILS HOMEOWNERS ASSOCIATION

By: *Michael M. Mical*

President

ATTEST:

Richard B. Reed
Secretary
(Corporate Seal)

RALEIGH CITY ATTORNEY

By: *Don I. Bathurst*

(SEAL)

Superior Hill
BAY TREE HOMES, a North Carolina
General Partnership

By: *Phillip R. Barker*

(SEAL)

Phillip R. Barker, General
Partner

By: *Jonny Hayes*

(SEAL)

Jonny Hayes, General Partner

By: *John Rock*

(SEAL)

John Rock, General Partner

By: *Terry B. Todd*

(SEAL)

Terry B. Todd, Trustee

3708 PAGE 57

Prepared By: Ann M. "Margie" Happel
Mail Back To: Ann M. "Margie" Happel
P. O. Box 3342
Durham, N.C. 27702.

NORTH CAROLINA
WAKE COUNTY

FOURTH AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
DURANT TRAILS

This Fourth Amendment to Declaration, made this the
22nd day of April, 1986 by Raleigh Properties, a North
Carolina General Partnership, with its principal office at 4900
Waters Edge Drive, Suite 245, Raleigh, North Carolina 27606,
hereinafter called "the Declarant;" Central Atlantic Mortgage &
Investment Company, a North Carolina Corporation, hereinafter
called "Trustee;" First American Savings Bank, F. R. B. formerly
First American Federal Savings and Loan Association, a savings &
loan association hereinafter referred to as "American Federal;"

WITNESSETH:

THAT WHEREAS, the Declarant has recorded a certain
Declaration of Covenants, Conditions and Restrictions for Durant
Trails, hereinafter referred to as "Declaration," in Book 3344 at
page 642, Wake County Registry; that certain First Amendment to
Declaration of Covenants, Conditions and Restrictions for Durant
Trails, hereinafter referred to as "First Amendment," in Book
3344 at page 694, Wake County Registry; that certain Second
Amendment to Declaration of Covenants, Conditions and
Restrictions for Durant Trails hereinafter referred to as "Second
Amendment" in Book 3452 at page 690, Wake County Registry, and

that certain Third Amendment to Declaration of Covenants Conditions and Restrictions for Durant Trails hereinafter referred to as "Third Amendment" in Book 3493 at page 528, Wake County Registry; and

WHEREAS, the Declarant, pursuant to Article I Section 2 of the Declaration desires to add additional property within the area described in the metes and bounds description attached to the Declaration as Exhibit B; and

NOW, THEREFORE, in consideration of the premises, the sum of \$10.00 in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant hereby makes and declares the following Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for Durant Trails:

The Declarant, is the owner of certain property located in Wake County, State of North Carolina, being approximately 19 acres, and more particularly described as:

All of that certain land shown on the plats and surveys entitled "Durant Trails, Section Seven," and "Durant Trails Section Eight" as prepared by Triangle Engineering Services, Inc. and recorded in Book of Maps 1986, at pages 140, and 141 Wake County Registry, to said plats and surveys reference is hereby made for a more particular description of same.

Declarant hereby declare that all of the property described above shall be annexed to the property subject to the Declaration, First Amendment, Second Amendment, and Third

Amendment and shall be held, sold, and conveyed subject to all of the easements, restrictions, covenants, and conditions therein contained, which shall run with the real property and be binding on all parties having any right, title and interest in the above described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

The Declarant executes this Fourth Amendment pursuant to the provisions of Article I Section 2 of the Declaration. While this Amendment does not require the joinder of any lot owners, a copy of this Fourth Amendment has been delivered to the Board of Directors of the Durant Trails Homeowners Association and the President and Secretary have affixed a Certificate of Validity hereto evidencing such delivery. Trustee and American Federal join in the execution of this Fourth Amendment for the purpose of subordinating that certain Deed of Trust executed by Declarant to Trustee for American Federal dated July 19, 1984 and recorded July 27, 1984 at 3:09 p.m. in Book 3324 at page 636, Wake County Registry, to the provisions of this Fourth Amendment. The Raleigh City Attorney joins in the execution of this Fourth Amendment for the purpose of indicating his approval as required by Article I Section 2 of the Declaration.

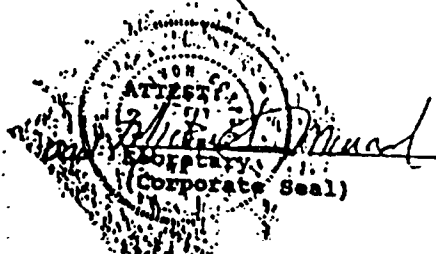
IN WITNESS WHEREOF, each of the undersigned has hereunto set his hand and seal or if corporate has caused this instrument to be signed in its corporate name by its duly authorized officers

3703 m 60

and its seal to be affixed by the authority of the Board of Directors, the day and year first above written.

RALEIGH PROPERTIES, a North Carolina General Partnership

By: [Signature]
T. P. & D., Inc., a General Partner



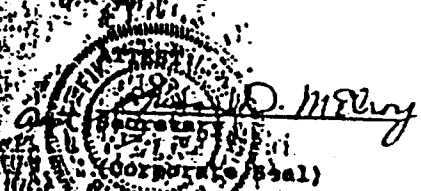
CENTRAL ATLANTIC MORTGAGE & INVESTMENT COMPANY, a North Carolina Company, Trustee

By: [Signature]



FIRST AMERICAN SAVINGS BANK, F.S.B. (Formerly First American Savings and Loan Association)

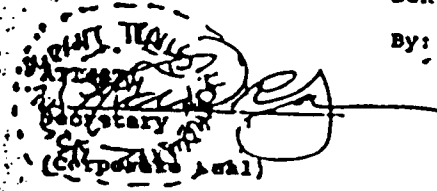
By: [Signature]



CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS OF DURANT TRAILS HOMEOWNERS ASSOCIATION.

DURANT TRAILS HOMEOWNERS ASSOCIATION

By: [Signature]
President



RALEIGH CITY ATTORNEY [Signature]

By: [Signature] (SEAL)

JS1A0007195

000262

88 MAR 31 PM 1:45

Prepared by and return to:
W. Robbins Cox
FAISON, BROWN, FLETCHER & BROUGH
4900 Falls of Neuse Road, Suite 210
Raleigh, North Carolina 27609

KENNETH J. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

STATE OF NORTH CAROLINA
COUNTY OF WAKE

DECLARATION OF ANNEXATION OF
ADDITIONAL LAND IN DURANT TRAILS
SUBDIVISION TO DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR DURANT TRAILS
SUBDIVISION

THIS DECLARATION OF ANNEXATION, entered and made this 30^L
day of March, 1988, by Greenview Properties, Inc., a
North Carolina corporation, with its principal office at 4900
Falls of Neuse Road, Raleigh, North Carolina 27609, hereinafter
called "Declarant",

WITNESSETH:

WHEREAS, Declarant is the successor in interest to Raleigh
Properties, a North Carolina general partnership, having
purchased the property described in Exhibit A attached hereto by
deed recorded in the Wake County Registry in Book 4080, Page 01;
and,

WHEREAS, Declarant now desires to annex additional property
described in Exhibit A attached hereto the Declaration of
Covenants, Conditions and Restrictions for Durant Trails
Subdivision recorded in Book 3344, Page 642 of the Wake County
Registry, all in accordance with Article IX, Sections 2 and 3 of
said Declaration; and,

WHEREAS, the property described in Exhibit A satisfies the
requirements of Article I, Section 2 for annexation, to-wit; the
property contains an area of greater than five (5) acres, is
contiguous to other property previously annexed, is within the
original Declaration's Exhibit B tract, and has City of Raleigh
approval, as evidenced herein; and

WHEREAS, approvals by Federal Housing Administration and the
Veterans Administration have been obtained contemporaneously with
the recording of this Declaration of Annexation;

NOW, THEREFORE, in consideration of the premises, the sum of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant hereby declares that the following described real property located in the City of Raleigh, Wake County, North Carolina, being a portion of Durant Trails Subdivision, is and shall be held, transferred, sold and conveyed subject to the Declaration of Covenants, Conditions and Restrictions for Durant Trails Subdivision as recorded in Book 3344, Page 642 of the Wake County Registry:

SEE EXHIBIT A
ATTACHED HERETO AND INCORPORATED
HEREIN BY THIS REFERENCE

The property described in Exhibit A attached hereto shall henceforth be designated as annexed to Durant Trails Subdivision and shall be subject to all of the terms, conditions and requirements of the Declaration of Covenants, Conditions and Restrictions of Durant Trails Subdivision recorded in Book 3344, Page 642, Wake County Registry, the provisions of which are herein specifically incorporated by reference. The property described in Exhibit A shall be subject to additional terms, conditions and requirements set forth as follows:

1. The terms, conditions and covenants contained in paragraphs numbered 1, 2, 3, 4 and 5 of the Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Durant Trails, recorded in Book 3451, Page 698 of the Wake County Registry, shall apply to the property described in Exhibit A to this Declaration of Annexation.

2. No building shall be erected, placed or altered on any premises subject to this Declaration until such plans, locations and specifications have been approved in writing as to conformity and harmony of external design with existing structures and as to location of the structure by an architectural committee composed of three persons designated and appointed by Declarant or its assigns. In the event the Architectural Committee fails to approve or disapprove such design or location within thirty (30) days of submission of the plans, such approval will not be required and this covenant will be deemed to have been fully complied with.

3. No lot shall be used, except for residential purposes, except that nothing herein shall preclude the use of any lot as a recreational area or well site. Declarant shall be allowed the use of any lot as a model home for sales and advertising of the property.

4. Minimum setback requirements and minimum square footage requirements for all platted lots shall be subject to and in accordance with the zoning regulations for the City of Raleigh.

5. Exterior maintenance of single family detached dwellings and lots shall be the responsibility of the owner. Exterior maintenance of townhomes or cluster homes shall be handled pursuant to Article VI of the Declaration of Covenants, Conditions and Restrictions for Durant Trails.

6. Private streets shall be designated as common area and ownership thereof conveyed free and clear of all liens and encumbrances to the Durant Trails Homeowners Association, Inc. whereupon all maintenance and repair of the private roadways shall be the responsibility of the Durant Trails Homeowners Association, Inc. pursuant to the Declaration of Covenants, Conditions and Restrictions for Durant Trails, to which the property described in Exhibit A is being annexed. The cost of any repair or maintenance for any common area shall be paid by the homeowners association out of annual assessments.

It is expressly understood that this Declaration of Annexation subjecting the property described in Exhibit A attached hereto to the original Declaration of Covenants, Conditions and Restrictions for Durant Trails recorded in Book 3344, Page 642 of the Wake County Registry shall not subject the property described in Exhibit A to any amendments to the Declaration recorded prior to the date of this Annexation, or to any covenants or restrictions, other than those expressly contained herein.

Exhibit A

Parcel 1 - Lying and being in the City of Raleigh, Wake County, North Carolina and being all of the 58.94 acre tract, inclusive of the 13.07 acre greenway easement, as shown on survey entitled, "Property of Raleigh Properties" prepared by Rivers and Associates, Inc., dated July 30, 1987 and recorded in Book of Maps 1987, Page 1316 of the Wake County Registry.

This property is a portion of the property described as Parcel 1 conveyed to Greenview Properties, Inc. by deed dated August 3, 1987 and recorded in Book 4080, Page 01 of the Wake County Registry.

A:0.0