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NORTH CAROLINA
WAKE COUNTY

FIRST AMENDMENT TO THE DECLARATION
OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR SMOKETREE
HOMEOWNERS ASSOCIATION, RECORDED IN
BOOK OF MAPS 1984, PAGES 964-967,
WAKE COUNTY REGISTRY.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is
entered into this 1st day of October, 1984 between SMOKETREE DEVELOPMENT,
INC., (hereinafter called "Declarant") REGENCY RESIDENTIAL, INC.; VAN
PARRISH ASSOCIATES and SMOKETREE HOMEOWNERS ASSOCIATION and all parties
hereafter acquiring any of the described property.

WITNESSETH:

WHEREAS, Declarant, REGENCY RESIDENTIAL, INC. and VAN PARRISH
ASSOCIATES are the owners of all lots within a subdivision in the County of
Wake, State of North Carolina, known as Smoketree Development, Inc.;

WHEREAS, it is in the best interest of the Declarants 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; and

WHEREAS, the Declarant desires this document to supersede the
effect of the document recorded in Book 3320, Page 136, Wake County
Registry.

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

PRESENTED
FOR
REGISTRATION
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KIMMETH C. WALKER
CLERK OF DEEDS
WAKE COUNTY

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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.

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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 contains 21 acres, more or less, as more particularly described on Exhibit A attached hereto and incorporated herein by reference plus the utility and access easement and package sewer treatment plant site as shown on the aforesaid recorded map. Phase One is the first of a series of five phases which the Declarant proposes to create, each of which will be located within said property described on Exhibit B, which contains 82.596 acres. 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 these 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 "Smoketree, Phase II"; 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 and be approved by the City of Raleigh. No annexation of additional properties to the original development other than that land described in Exhibit B may be made without the consent of the Class A members as set forth in Article VII herein.

Section 3. Some of the additional properties are intended to contain attached single-family townhomes. To manage these properties a separate association consisting of townhome lot owners will be established prior to the development of townhouse lots. The townhouse association will have the power to levy assessments only against townhouse lots. Townhouse lot owners will also be Class A members of this association and will be subject to the benefits and restrictions contained in this Declaration or as it may be amended from time to time. In no event will the waste water treatment plant be conveyed to the townhouse association.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Smoketree 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, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

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 free and clear of encumbrances prior to deeding the first Lot in the phase. Common areas shall specifically include but shall not be limited to all water lines which serve the properties located outside of public rights-of-way, all 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 with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Smoketree Development, Inc., 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 of the common area and administration, maintenance, repair, or replacement of the Common Areas;
- (c) Expenses declared to be common expenses by the provisions of this Declaration or the ByLaws;
- (d) Hazard, liability, or such other insurance premiums as the Declaration or the ByLaws may require the Association to purchase;
- (e) Ad valorem taxes and public assessment charges lawfully levied against common areas.
- (f) Expenses agreed by the members to be common expenses of the Association.

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 (2/3rds) 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 By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the homeowners hereunder;

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

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all

encumbrances and liens, prior to the conveyance of the first Lot, except utility and storm drainage easements and a greenway easement to the City of Raleigh.

Section 4. Parking Rights. The Association may regulate the parking of boats, trailers and other such items on the Common Area.

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

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, 1987.

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 common areas and maintenance of the exterior shall be shared equally by the owners of each lot.

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, such maintenance to include the cutting and removal of weeds and grass and the removal of trash and rubbish or any other maintenance 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, 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 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.

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 shall be Three Hundred, Thirty Dollars (\$330.00) per lot.

(a) From and after January 1 of the year immediately following

the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of membership by up to five per cent (5%) of the previous years assessment.

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

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

Section 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. Written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

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 authorize 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 ememberhsip 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 Lots and shall be collected on a monthly basis. Proveded, 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 have 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 six (6%) per cent 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 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 unit a sum equal to at least two months assessment for each

unit 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

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 specification 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 VII

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property, except as provided herein in Section 2 of this Article VIII, shall require the assent of two-third (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or of proxies entitled to

cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat. Provided, however, that 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 and be approved by the City of Raleigh.

Section 2. If prior to December 31, 1987, the Declarant should develop additional land within the property described in Exhibit B as hereinabove provided in Article I, 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 plat entitled "Smoketree Cluster Unit Development Revisions" drawn by Robert T. Newcomb, RLS dated April 1, 1984, and approved by the Raleigh City Council on May 15, 1984.

Section 3. Annexation of additional Properties shall be accomplished by recording in the County Registry a Declaration of Annexation, duly executed by the Declarant if the Declarant has the right to annex pursuant to Section 2 above (and by the Association if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out

said 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 VIII

INSURANCE

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

(a) Ownership of Policies. All insurance policies upon the common areas shall be purchased by the Association for the benefit of all the Association and the Owners.

(b) Coverage. All buildings and improvements and all personal property included in the Common Areas and facilities 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, and

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land.

(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 Association and charged to the Owners as an assessment according to the provisions of Article V above.

(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 By-Laws 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) In the event a mortgagee endorsement has been issued for any 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 IX

USE RESTRICTIONS

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

Section 2. Use of Properties. No portion of the Properties (except for temporary office of the Declarant and/or model 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 X
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 subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under, and across the Common Areas conveyed to it, such further easements as are requisite for the convenience 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 within 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.

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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 Property 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 unit owners. The Association and lot owners 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. 19

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

ARTICLE XI

GENERAL PROVISIONS

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

Section 2. Severability. Invalidation of anyone 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 until he, after 20 days notice fails to comment on the amendment.

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:

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(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 or 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 SMOKETREE HOMEOWNERS ASSOCIATION

SMOKETREE HOMEOWNERS ASSOCIATION

BY:

[Signature]
President

ATTEST:

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

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation

of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

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Section 7. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

ARTICLE XII

ELECTRICAL SERVICE

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

ARTICLE XIII

SEWER SYSTEM

1. The 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 hereafter 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 until each system and facilities have been transferred to the Association.

2. The Declarant shall not transfer ownership of the waste water collection system, or the waste water treatment and/or disposal facilities to the Association until they have been inspected and a permit issued to the Association by the North Carolina Environmental Management Commission.

3. When the Association comes into legal existence, the Developer who will be the sole member of the Association, will cause the Association to join in the execution of this agreement before any unit is conveyed to any person, firm or corporation that will become a member of the Association, to assure that the Association will be bound by this agreement to the same extent as if the Association were presently existing and executing this agreement with the Declarant and the North Carolina Environmental Management Commission. After causing the Association to execute this agreement, the Declarant will return to the North Carolina Environmental Management Commission an executed copy of this agreement. The Association, thereafter will apply for reissuance of the permit to the Association for operation of the system. The conveyance of the waste water system to the Association shall be subject to the contract entered into between the Declarant and the City of Raleigh.

4. The Association, after transfer of ownership of the waste water collection system, and waste water treatment and/or disposal facilities to it by the Declarant, shall thereafter properly maintain and operate the waste water collection system and waste water treatment or disposal facilities and appurtenances thereto in conformity with law and the provisions of the permit for construction, operation, repair, and maintenance of the system and facilities hereafter issued by the North

Carolina Environmental Management Commission; and in order to provide the necessary funds to carry out such construction, operation, repair and maintenance, the Association shall levy and collect the assessments provided for in its By-Laws, including special or additional assessments, and in the event that the sum realized by the levy of such assessments shall not be adequate to maintain and operate the system and facilities as required by law and permit provision, the Association shall take such action as is necessary to secure funds adequate for such purposes.

5. In order to assure that there shall be funds readily available to repair or re-construct the waste water collection system, waste water treatment and/or disposal facilities, in the event of severe damages or destruction, the Association shall create, maintain and use the contingency funds as provided in its By-Laws. The Association in its duly filed By-Laws, shall identify the entire wastewater treatment, collection and disposal system as a common area which will receive the highest priority for expenditures by the Association except for Federal, State and local taxes, and insurance.

6. If a waste water collection system or waste water treatment and/or disposal facility provided by and city, town, village, county, water and sewer authorities, or other unit of government shall hereinafter become available to serve the Smoketree Homeowners Association properties, the owner of the waste water collection system, and waste water treatment and/or disposal facilities or any portion thereof, serving the condominiums, whether it be the Association or the Declarant, shall take such action as is necessary to cause the existing and future waste waters 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.

7. The Association, recognizing that it would be contrary to the public interest and the public interest and the public health, safety and welfare to enter into voluntary dissolution without having made adequate provision for the continued proper maintenance, repair and operation of its waste water collection system and waste water treatment and/or disposal facilities, shall not enter into voluntary dissolution without first having transferred its system and facilities to some person, corporation or other entity acceptable to and approved by the North Carolina Environmental Management Commission by the issuance of a permit.

8. The Association shall not transfer, convey, assign or otherwise relinquish or release its responsibility for the operation and maintenance of its waste water collection system and waste water treatment and/or disposal facilities until it has first secured the written approval of the North Carolina Environmental Management Commission.

ARTICLE XIV

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.

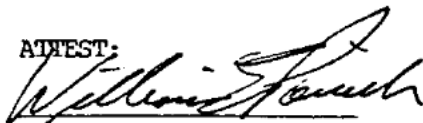
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 1st day of October, 1984.

SMOKETREE DEVELOPMENT, INC.

BY: 

President

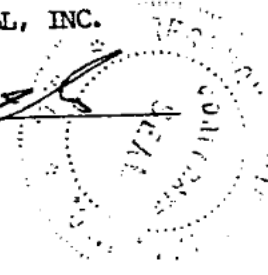
ATTEST:


Secretary



ATTEST: William E. Smith
Secretary

BY: [Signature]
President



VAN PARRISH ASSOCIATES,
a partnership

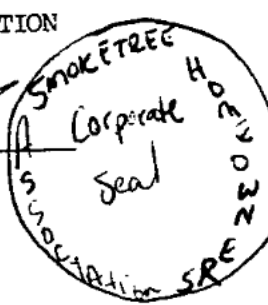
BY: William E. Smith (SEAL)

BY: George J. Smith (SEAL)

SMOKETREE HOMEOWNERS ASSOCIATION

BY: [Signature]
President

ATTEST: William E. Smith
Secretary



CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS

CONDITIONS AND RESTRICTIONS OF SMOKETREE HOMEOWNERS ASSOCIATION

The undersigned hereby certify that the foregoing amendments were duly adopted by a joint meeting of the directors and members of the Association held on October 1, 1984.

SMOKETREE HOMEOWNERS ASSOCIATION

BY: [Signature]
President

ATTEST: William E. Smith
Secretary



State of North Carolina

County of Wake

BOOK 3403 PAGE 994

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I, a Notary Public of the County and State aforesaid, certify that William E. Parrish, personally came before me this day and acknowledged that he is the Secretary of Smoketree Development, Inc., a North Carolina corporation, 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 him as its Secretary.

Witness my hand and notarial seal, this the 1st day of October, 1984.

My Commission Expires:

1-11-87

State of North Carolina

County of Wake



Debra Denton Strickland
Notary Public

I, a Notary Public of the County and State aforesaid, certify that William E. Parrish, personally came before me this day and acknowledged that he is the Secretary of Regency Residential, Inc., a North Carolina corporation, 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 him as its Secretary.

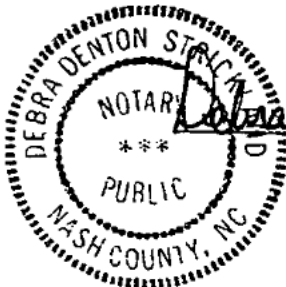
Witness my hand and notarial seal, this the 1st day of October, 1984.

My Commission Expires:

1-17-87

NORTH CAROLINA

WAKE COUNTY



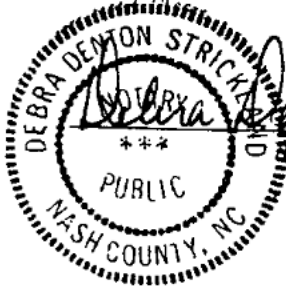
Debra Denton Strickland
Notary Public

I a Notary Public in and of said county and state do hereby certify that William E. Parrish and George Van Nortwick, partners of Van Parrish Associates, each personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 1st day of October, 1984.

My Commission Expires:

1-17-87



Debra Denton Strickland
Notary Public

State of North Carolina

County of Wake

SSC 3403 PAGE 995

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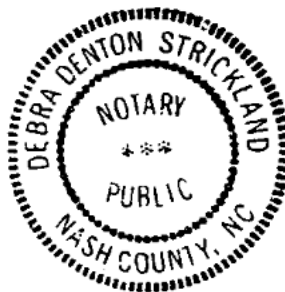
I, a Notary Public of the County and State aforesaid, certify that William E. Parrish, personally came before me this day and acknowledged that he is the Secretary of Smoketree Homeowners Association, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and notarial seal, this the 1st day of October, 1984.

My Commission Expires:

1-17-87

Debra Denton Strickland
Notary Public



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate S of Debra Denton Strickland

Notar(y)(ies) Public is

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

KENNETH C. WILKINS, Register of Deeds

By P. Anne Redd
Asst./Deputy Register of Deeds

BOOK 3403 PAGE 996

EXHIBIT A

BOOK ~~3320~~ PAGE ~~164~~

BEGINNING at an iron stake in the centerline of Allen Drive, said iron stake being located at the intersection of the centerline of Allen Drive and the southeasternmost corner of Tract 2 as shown by map and survey recorded in Book of Maps 1966, Page 116, Wake County Registry; runs thence from said point of beginning with the line of Hathaway North 47 degrees 35 minutes 15 seconds East 532.89 feet to an iron stake; runs thence South 52 degrees 38 minutes 45 seconds East 151.59 feet to an iron stake; runs thence South 57 degrees 30 minutes 47 seconds East 306.50 feet to an iron stake; runs thence South 52 degrees 44 minutes 24 seconds East 294.27 feet to an iron stake; runs thence South 26 degrees 17 minutes 52 seconds West 1337.35 feet to an iron stake; runs thence North 45 degrees 46 minutes 58 seconds West 189.63 feet to an iron stake; runs thence North 18 degrees 10 minutes 50 seconds West 806.41 feet to an iron stake; runs thence North 46 degrees 24 minutes 54 seconds West 107.04 feet to an iron stake; runs thence North 49 degrees 38 minutes 52 seconds East 221.65 feet to an iron stake; runs thence North 36 degrees 39 minutes 55 seconds West 197.70 feet to an iron stake, the point and place of beginning, being all of that certain tract of land containing 20.9201 acres as shown by map and survey of Robert T. Newcomb, III, Registered Land Surveyor, dated 5-3-84 entitled "Property of Smoketree Development, Inc., Neuse Township, Wake County, North Carolina."

BEGINNING at an iron stake in the eastern right-of-way line of U.S. Highway 1, said iron stake being located South 34° 54' 55" West 138.96 feet from a stake which is the Southeast intersection of the right-of-way of U.S. Highway 1 and Allen Drive; runs thence South 36° 39' 55" East 141.27 feet to an iron pipe; runs thence South 41° 54' 36" West 78.59 feet to an iron pipe; runs thence South 46° 24' 50" East 282.29 feet to an iron pipe; runs thence North 49° 38' 52" East 191.48 feet to an existing iron pipe in the center of Allen Drive; runs thence with the centerline of Allen Drive North 36° 39' 55" West 197.70 feet to a stake; runs thence North 47° 35' 15" East 30.15 feet to an iron stake in the northern line of Allen Drive; thence continuing North 47° 35' 15" East 502.74 feet to an existing iron pipe; runs thence along the centerline of William E. Fulford, Jr. property South 52° 38' 45" East 151.59 feet to an iron pipe, South 57° 30' 47" East 306.50 feet to an iron pipe, South 52° 44' 24" East 677.24 feet to an iron pipe, South 42° 15' 03" East 834.03 feet to an iron pipe, and South 86° 26' 14" East 895.99 feet to an iron pipe; runs thence South 00° 26' 04" West 1653.44 feet to an iron pipe in the northern line of Jeffreys property; runs thence along the thread of Marsh Creek in a western and northwestern direction to an iron pipe, a corner of Ethel, Inc. property, the traverse line along said creek being as followings: North 87° 34' 05" West 229.77 feet, South 76° 51' 11" West 62.85 feet, North 82° 29' 26" West 35.22 feet, North 60° 08' 45" West 197.15 feet, and North 36° 17' 52" West 147.03 feet to an iron stake set at a fence corner, corner of Ethel, Inc. property; runs thence along the eastern line of Ethel, Inc. property North 00° 08' 39" East 727.70 feet to an existing iron pipe at a fence corner; runs thence along the northern line of Ethel, Inc. property North 82° 10' 55" West 1544.40 feet to an iron set at a fence corner; runs thence North 45° 46' 58" West 479.90 feet to an iron set at a fence corner; runs thence North 18° 10' 50" West 806.41 feet to an iron pipe set at a large White Oak; runs thence North 46° 24' 54" West 107.04 feet to an existing iron pipe; runs thence North 46° 24' 54" West 278.23 feet to an existing iron pipe; and runs thence North 46° 24' 54" West 122.20 feet to an iron pipe in the eastern right-of-way line of U.S. Highway 1; runs thence along the eastern right-of-way of U.S. Highway 1 North 34° 54' 55" East 134.02 feet to an iron pipe, the point and place of Beginning, and containing 82.596 acres, according to survey and plat prepared by Robert T. Newcomb, III, Registered Land Surveyor, dated January, 1983.