

NORTH CAROLINA

WAKE COUNTY

REGISTERED

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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR OLDE RALEIGH,
SECTION ONE, RECORDED IN PLAT BOOK
1986, PAGE 204-205 WAKE COUNTY
REGISTRY

THIS DECLARATION, made on the date hereinafter set forth by
OLDE RALEIGH, INC., a North Carolina corporation, hereinafter
referred to as the "Declarant;"

WITNESSETH: THAT WHEREAS, the Declarant is the owner of
certain property lying within the City of Raleigh, Wake County,
North Carolina, constituting approximately forty-five (45) acres,
which is more particularly described as Olde Raleigh, Section One
as the same is shown on a map recorded in Plat Book 1986, Page
204-205, Wake County Registry.

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

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

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ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to OLDE RALEIGH HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property referred to as Olde Raleigh, hereinbefore described, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property and amenities located thereon and all private streets owned by the Association for the common use and enjoyment of members of the Association. Common Area shall also include any water lines and sewer lines that may be located within the Common Area and not within the City of Raleigh sanitary sewer easements.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded map of a portion of the Properties with the exception of the Common Area and area designated as Open Space.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "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 7. "Declarant" shall mean and refer to OLD RALEIGH, INC., and its successors and assigns to whom the rights of

Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section 8. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 9. "Building" shall mean and refer to a residential structure, constructed or erected on the Property.

Section 10. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association, unless a contrary intent is evident.

Section 11. "Common Expenses" shall mean and include:

(a) All sums lawfully assessed by the Association against its members;

(b) Expenses of 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) Expenses agreed by the members to be common expenses of the Association; and

(e) Ad valorem taxes and public assessments levied against the property of the Association.

Section 12. "Amenities" shall mean the facilities constructed, erected or installed on the Common Areas.

Section 13. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and all subsequent valid amendments thereto.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Except as provided in §2 of this Article, annexation of additional Property 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.

1986 Section 2. Annexation by Declarant. If within 5 years of the date of incorporation of this Association, the Declarant should develop additional lands and desire to subject such additional lands to this Declaration, then such additional lands may be annexed to said Properties without the assent of the Class A members, provided that such additional lands are contiguous to property which is already subject to this Declaration and contain at least five acres in area.

Section 3. Method of Annexation. Annexation of additional Properties shall be accomplished by recording in the Wake 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 of 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. Conveyance of Common Area Upon Annexation.

Subsequent to recordation of the Declaration of Annexation by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Area within the lands annexed as such Common Area is developed, as set forth in Article V, Section 3 of the Declaration.

ARTICLE III

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to the Declaration, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot.

ARTICLE IV

VOTING RIGHTS

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

Class A. Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lot, all such person shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot and no fractional vote may be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which he holds the interest required for membership by Article III, provided, that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

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

(b) on December 31, 1991.

Section 2. Suspension of Voting Rights. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations.

ARTICLE V

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area, including the rights of ingress and egress, and such easement shall be appurtenant to and shall pass with the right to every Lot, subject to each of the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage the Common Area, or any portion thereof, provided the rights of such mortgagee in said Properties shall be subordinate to the rights of the owners hereunder.

(b) The right of the Association to dedicate or transfer all or any part of the Common Area for utility, drainage, pedestrian walkway and cablevision easements.

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

(d) Actions contemplated under subparagraph (a), (b), and (d) above shall not be taken until the following two steps are met:

1. Board members entitled to cast three-fourths (3/4) of all the votes of the Board of Directors have voted in person

or by proxy for such action at a meeting duly called for said purpose, notice of which was sent to every board member not less than fifteen (15) nor more than thirty (30) days in advance of the meeting.

2. Owners of Lots (or persons to whom the Owner has granted a proxy) owning two-thirds (2/3) of the Lots other than those owned by Declarant have approved the action in writing.

The instrument effecting such dedication, transfer, conveyance or mortgage shall be sufficient if executed by appropriate officers of the Association and contains a recital of the above provisions, and that they have been complied with.

Section 2. Delegation of Use. Any Member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area to the Members of his family, his tenants, or contract purchasers who reside on the Property and to his guests and invitees.

Section 3. Suspension of Rights of Use. Any member's right to use and enjoyment of Common Areas may be suspended during any period in which that member is in default in payment of any annual or special assessment levied by the Board of Directors, as provided in Article III, Section 2 of the Bylaws. Such rights may also be suspended, after notice and hearing, for a period not to exceed 30 days, for violation of any rules and regulations established by the Board of Directors governing the use of the Common Area.

Section 4. Title to the Common Area. The Declarant hereby covenants for itself its heirs and assigns, that, prior to the

conveyance of the first lot, it will convey fee simple title to the Common Area shown on the aforementioned map recorded in Plat Book 1986, Page 2014-2015 Wake County Registry, to the Association, free and clear of all encumbrances and liens, except utility and drainage easements and easements to governmental authorities. Similarly, the Declarant will convey to the Association Common Areas which are a part of the Properties as those portions are annexed in the future until all Common Areas, as shown on plans approved by the City of Raleigh, have been conveyed to the Association.

ARTICLE VI

COVENANT FOR ASSESSMENTS

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

(a) Annual assessments or charges which are common expenses; and

(b) Special assessments for capital improvements.

Notwithstanding any provision herein to the contrary the assessment for each Lot owned by Declarant shall be twenty-five percent (25%) of the assessment which is applicable for a lot titled in a name other than the Declarant, provided, however, that Declarant shall pay the full assessment on any Lot which has been leased by Declarant and on which an occupiable dwelling is

located. Furthermore, any provision of this Declaration to the contrary notwithstanding, the Declarant may, at its sole election and discretion, postpone, in whole or in part, the date on which the assessment shall commence as to a Lot or Lots provided the Declarant maintains the Common Areas for which no assessment is being collected during the period of such postponement.

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

The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall constitute a lien upon the Lot and improvements thereon when filed of record in the Office of the Clerk of Superior Court of Wake County. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the Lot at the time the assessment fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments shall be shared equally by the owners of each Lot, except as otherwise provided in this section.

Section 2. Purpose of Assessments. The annual assessment shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents of Olde Raleigh; enforcing these covenants and the rules of the Association; improving and maintaining the Common Area lying within Olde Raleigh, and paying all common expenses.

Section 3. Amount of Annual Assessment.

(a) Initial Assessment. To and including December 31, 1987, the initial annual assessment shall not be in excess of \$1,200 per Lot, the exact amount of which shall be determined from time to time as provided in Subsection (d) of this Section 3.

(b) Increase by Association. From and after December 31, 1987, the annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, to an amount which may not exceed the original assessment (or revised assessment determined pursuant to Subparagraph (c) below) plus five (5%) percent of said assessment per year since 1987 or the year the revised assessment was established, whichever is later.

(c) Increase by Members. From and after December 31, 1987, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than fifteen (15) day nor more than thirty (30) days in advance of the meeting. The limitations herein set forth shall not apply to an increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessments. The Association is required to set the annual assessment high enough to enable the Association to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas. The fund shall be maintained out of annual assessments for common expenses as provided for in this article. In establishing the annual assessment for any assessment year, the Board of Directors shall set the annual assessment high enough to cover all current costs and expenses of the Association, any accrued debts, and reserves for future needs.

(e) Decrease of Annual Assessment. The Board of Directors may decrease the annual assessment from time to time if in its opinion such decrease is prudent.

Section 4. Special Assessments for Capital Improvements.
In addition to the annual assessments authorized above, the Association, may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property 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, setting forth the purpose of the meeting, shall be sent to all members not less than fifteen (15) days nor more than

thirty (30) days in advance of the meeting. The amount of the proposed assessment need not be stated.

Section 5. Uniform Rate of Assessments. The annual assessment and special assessments must be fixed at a uniform rate for all Lots, on a per Lot basis, and may be collected on a semi-annual basis.

Section 6. Quorum for Any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Section 3 and 4 of this Article, the presence at the meeting of members of of proxies entitled to cast sixty percent (60%) of all the votes for each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, subsequent meetings may be called, subject to the notice requirement set forth in Sections 3 and 4 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the next preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the next preceding meeting.

Section 7. Date of Commencement of Annual Assessments. Unless postponed by the Declarant, as provided in Section 1 of this Article, the annual assessments provided for herein shall commence as to any Lot on the later of: (1) the first day of the first month following the closing of the sale of the first Lot; and (2) the first day of the first month following the subjection of the Lot to this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year. The Board of Directors shall fix

the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates and appropriate penalties for late payment shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certification in writing signed by an officer of Association setting forth whether the assessments on a specified lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been made and shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessments are not paid within thirty (30) days after the due date, assessments shall bear interest from the date of delinquency at the lesser of the highest lawful rate or twelve (12%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. A sale or any transfer of any Lot

shall not affect the assessment liens; provided, however, that the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from the liability for any assessment thereafter becoming due or from the lien thereof.

Section 10. Two Months Assessments to be Collected at Closing. At the closing of each sale of a Lot, a sum shall be collected from the purchaser of such Lot equal to the total assessment for such Lot for the succeeding two months and such sum shall be contributed to the accounts of the Association to insure that the Association will have sufficient funds to meet unforeseen expenditures. This contribution shall not be considered an advance against assessments to become due or a refundable deposit.

Section 11. Management of Funds. All funds collected through assessments shall be managed by the Association subject to the provisions of this Declaration. Disbursement of funds collected from Lot Owners shall be as directed by the Board of Directors.

ARTICLE VII

MAINTENANCE OF PROPERTIES

Section 1. Maintenance of Common Areas. Maintenance of Common Areas, and all amenities and structures located therein shall be supervised by the Association. Funds for such maintenance shall be supplied from the annual assessment.

Section 2. Maintenance of Lots. If in the opinion of the Board, an Owner fails to maintain his property in a neat and orderly condition or otherwise neglects his property and allows unsightly conditions to develop, the Board, after thirty (30) days written notice to the Owner, may, but is not obligated to, take steps to remedy the problem. Such remedy may include, but shall not be limited to; the removal of debris or junked cars, the mowing of grass or cutting of brush and the painting or repair of structures located on the property. The Board may bill such Owner for all expenses incurred in correcting the problem. Every Owner by acceptance of a deed covenants to pay said bill. Upon failure to pay said bill, the Board may file a lien against said property and enforce said lien by action at law.

ARTICLE VIII

ARCHITECTURAL CONTROL AND INSPECTION

Except for initial improvements by Declarant, no construction, erection, or installation of any improvements, including, but not limited to, residences, outbuildings, fences, walls, screens (whether by plants or structures) and other structures, shall be undertaken upon the Properties unless the site plans, building plans, and specifications therfore, showing the nature, kind, shape, height, materials and location of the proposed improvements shall have been submitted to the Declarant or its agent and expressly approved in writing. No subsequent alternation or modification of any existing improvements nor construction, erection, or installation of additional improvements may be undertaken on any of the Properties without

prior review and express written approval of the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board of the Association.

In general, no exterior alterations or additions to buildings or garages shall be considered for approval unless such alternations or additions are in harmony with existing structures, as to style, shape, color and size. The architectural plans for such alteration or addition must be drawn and sealed by a registered architect or engineer. However, this section shall not be construed to mean that the Architectural Committee or Board shall have to approve a proposed alternation or addition that meets the above criteria.

In general, the construction of fences, walls and other structures and the planting of screens will not be permitted if in the opinion of the Declarant, Board, or Architectural Committee, as applicable, such construction or planting constitutes an unreasonable obstruction of the view of another Owner.

In the event that the Declarant or the Association, as the case may be, fails to approve or disapprove the site or design or any proposed improvements within sixty (60) days after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Association

if they contain erroneous data or fail to present adequate information upon which the Declarant or the Association, as the case may be, can arrive at a decision.

The Declarant and/or the Association (as applicable) shall have the right, at its election, but shall not be required, to enter upon any of the Properties during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE IX

RULES AND REGULATIONS

Section 1. Common Area. 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 Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolution which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

Section 2. Rules and Regulations for Parking of Vehicles. The Board of Directors of the Association shall have the power to formulate, publish, amend and enforce reasonable rules and regulations concerning the parking of any type of vehicle on the Properties, including Common Areas. Said rules may provide, without limitation, the following:

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(a) A definition of a "recreational vehicle" and regulations covering the parking of recreational vehicles on private streets.

(b) That campers, motorscooters, motorcycles, motorbikes, planes, boats, trailers, trucks and commercial vehicles of any kind that the Board designates cannot be parked on a private street, in any Common Area or on any Lot, except in areas designated for that purpose, if any.

(c) Limitations on the period of time and extent to which a motor vehicle may be repaired on the premises, and that all motor vehicles parked on private streets or in Common area are to have currently valid license plates issued by a state in the United States and insurance coverage which satisfies North Carolina Department of Transportation requirements for insurance coverage of motor vehicles licensed in the State of North Carolina.

ARTICLE X

RESTRICTIVE COVENANTS

Section 1. Lot Size. A Lot shall have a width at the minimum building set back line and an area that meets the minimum requirements of the Raleigh City Code. Adjustments may be made in the line between two Lots so long as the area of any Lot is not reduced by more than ten percent (10%), the adjustments do not violate the Raleigh City Code, and other restrictions herein set forth are observed. Upon any recombination of Lots, the setbacks and side line clearances from new Lot lines shall be applicable and set backs from former Lot lines shall no longer be required. No combination of Lots shall increase the number of

Lots above the number existing before recombination, except as hereinafter set forth.

Section 2. Land Use. No Lot shall be used except for residential purposes; provided, however, that nothing herein shall prevent the conversion of portions of Lots to public or private streets. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed three stories in height, not more than two private garages, and outbuildings incidental to residential use. Provided however, that Declarant reserves the right to use any dwelling located on a Lot as an office and/or model which may be shown to prospective purchasers of units.

Section 3. Dwelling Size. No dwelling shall be permitted on any Lot unless the dwelling has, exclusive of decks, porches, breezeways, steps, basements and garages, at least ²⁴⁰⁰~~2100~~ square feet of heated living area for a one-story building, ²⁶⁵⁰~~2250~~ square feet for a one and one-half story building, ³⁰⁰⁰~~2400~~ square feet of heated living area for a two story building and ⁴⁰⁰⁰~~3000~~ square feet of heated living area for a building having more than two-stories. The Declarant or the Architectural Committee may make reasonable exceptions to the minimum square footage required herein, provided that the dwelling contains at least 90% of the minimum square footage, and if such exception is made, the secretary of the Association shall record such exception in the Association's minute book.

Section 4. Building Location. No building shall be located nearer to any front lot line than 30 feet; nearer to any rear lot

line than 30 feet; or nearer to any side lot line than 10 feet. Buildings located on corner lots shall be a minimum of 20 feet from a side street. For the purpose of this covenant, eaves, steps and open porches shall not be considered a part of a building provided, however, that this shall not be construed to permit any appurtenant portion of a building on a lot to encroach upon another lot or more than 20% into any required yard setback.

Section 5. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved over the rear ten feet or each Lot. In the event that the owner of any Lot shall acquire land adjacent to and in the rear of such Lot, such Lot Owner may relocate the easement herein established over the rear line to conform to the increase in the size of his Lot, provided that alteration in drainage does not thereby adversely affect the drainage of any other Lot or interfere with the rights of the Owners of other property within this subdivision to services rendered by the easement herein created. Such relocated easement shall be the same width as the original easement. A map of such relocated easement shall be recorded at the Wake County Register of Deeds Office.

Section 6. Temporary Structure. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 7. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that

dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

Section 8. Utility Yard. Garbage cans shall be kept in a screened utility yard and not visible from the street or an adjacent Lot.

Section 9. Mail Box Posts. All mail box support posts shall be of material and design as initially approved by Declarant or by an Architectural Committee.

Section 10. Signs. No sign of any kind, except an owner and street number identification, shall be displayed to the public's view on any Lot except one professional sign of not more than 5 square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale period unless prior approval of the Declarant or Architectural Committee has been obtained.

Section 11. Driveways. All driveways shall be concrete unless a different material has been approved by the Declarant or the Architectural Committee.

Section 12. Prohibition of Television Antennae, Satellite Discs and Clotheslines. Television antennae, satellite discs, and outdoor clotheslines are prohibited on the Properties unless approved in writing by the Architectural Committee of the Association.

ARTICLE XI

RIGHTS OF FIRST MORTGAGEES AND INSURERS OF FIRST MORTGAGES

Any institutional holder of any mortgage on a Lot will, upon request in writing to the Association, be entitled to (a) inspect

the books and records of the Association during normal business hours, (b) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (c) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage, (d) receive written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage, (e) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (f) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, (g) be furnished with a copy of any insurance policy owned by the Association, and (h) to be furnished with at least one copy of the Annual Financial Statement and Report of the Association, prepared by a Certified Public Accountant' designated by the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year. The Association may require the payment of expenses incurred in preparing copies and mailing of documents furnished to mortgage holders pursuant to this Article.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by and proceeding at law or in

equity, all restrictions, conditions, covenant, reservations, liens, and charters 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. Insurance. In the event the Association becomes the owner of any buildings, or other improvements, or personal property, located within the Common Area, the Board of Directors shall obtain hazard insurance (if available) in an amount equal to the maximum insurable replacement value as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time shall be customarily covered with respect to buildings and properties similar in construction, location and use.

The Board of Directors shall also procure and maintain public liability and property damage insurance, insuring: each member of the Board of Directors; the manager, if any; and the Association against any liability to the public or to homeowners (and their invitees, agents, and employees) arising out of or incident to the ownership and/or use of the Common Area and facilities, or such other areas for which the Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy

shall not be prejudice with respect to his action against another named insured. The amount of such public liability insurance shall be determined by the Board of Directors, but in no event shall it be less than \$1 million per occurrence with regard to the Association and each individual director.

There shall also be obtained such other insurance coverage as the Board of Directors shall determine from time to time to be desireable and necessary. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors as a common expense of the Association.

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

Section 4. FHA/VA Approval. Notwithstanding any provisions in this instrument to the contrary, as long as there is a Class B membership, and if Declarant desires to qualify sections of Olde Raleigh for Federal Housing Administration or Veterans Administration approval (but not otherwise), the following actions will require the prior approval of Federal Housing Administration or the Veterans Administration: Annexation of additional properties, amendment of the Declaration of Covenants, Conditions and Restrictions, merger and consolidations, dissolution and exchange of Common Areas.

Section 5. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is

recorded, after which time they shall be automatically extended for an unlimited number of successive periods of ten (10) years each. This Declaration may be amended by an instrument signed by the owners of not less than sixty-six and two-thirds ($66 \frac{2}{3}$) of the Lots that have been made subject to this Declaration.

Furthermore, the Declarant, for so long as it controls the Board, and thereafter, the Board of Directors, may amend this Declaration without the consent of the owners and hereby reserves the right to act on behalf of the owners to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any units therein for mortgage or improvement loans made, guaranteed or insured by a governmental agency, including, without limitation, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, Housing and Urban Development and Federal Home Loan Mortgage Corporation, or to comply with the requirements of law or regulations of any governmental corporation or agency regarding purchase of mortgage interests in units by such agency. A letter from any such agency stating that a change is desired or necessary in order to qualify the Property or any units for loans eligible to be guaranteed by, insured by or purchased by such agency, shall be sufficient authority for the amendment of this Declaration.

Section 6. Certification of Amendment. If any amendment to these covenants, conditions and restrictions is executed, each such amendment shall be delivered to the Board of Directors of

the Association. Thereupon, the Board of Directors, shall, within thirty (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 OLDE RALEIGH

By authority of its Board of Directors, Olde Raleigh Homeowners Association, Inc. hereby certifies that the foregoing instrument has been duly executed by the Owners of _____ percent of the Lots of Olde Raleigh and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Olde Raleigh.

OLDE RALEIGH HOMEOWNERS
ASSOCIATION, INC.

President

ATTEST:

Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry, provided, however, that no such amendment shall be valid until it has been indexed in the name of the Olde Raleigh Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots in Olde Raleigh.

Notwithstanding the foregoing, an amendment which requires the approval of the City Attorney of Raleigh shall not be effective until approved by said attorney.

Section 7. Prohibition Against Association Entering Into Long Term Contract While Declarant in Control of the Board of Directors. Until such time as the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, or December 31, 1991, whichever occurs first, the Association is not bound either directly or indirectly to contracts or leases (including a management contract) unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after the occurrence of one of the above events, upon not more than 90 days notice to the other party.

Section 8. Limitation of City Responsibility. The City of Raleigh shall not be responsible for failing to provide any emergency or regular fire, police or other public service to the Properties when such failure is due to lack of access to the Properties due to inadequate design or construction, blocking of access routes, or any other factor within the control of Declarant, Association or Members.

ARTICLE XIII

EASEMENTS

Section 1. Walks, Drives, Parking Areas and Utilities. All of the Property, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking area, water lines, irrigation systems, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, cable television and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

The Declarant reserves the right to subject the real property covered by this Declaration to a contract with a power and light company for the installation of underground electric cables and/or the installation of street lighting, either or both or which may require an initial payment and/or a continuing

monthly payment to the power and light company by the owner of each building.

Section 2. Easements Appurtenant to Lots. All Common Area, shall be subject to an easement in favor of every Lot to which they are adjacent or which they are designated to serve and shall be deemed appurtenant to each such Lot, whereby the owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

Section 3. Emergencies. Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any building or portion of the Common Area.

Section 4. Easement for Governmental Agencies. An easement is hereby established over the Common Area 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 5. Emergency Vehicle Access. An easement for emergency vehicle access shall exist via Balsam Drive to Boxwood Drive. Neither the Association nor Members shall restrict emergency vehicle access over this access way. The Association and its members shall hold the City and other emergency vehicle operators harmless for any liability which might result from their use of the access way.

Section 6. Easement and Right of Entry for Repair, Maintenance and Reconstruction. 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 townhouse. 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.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its corporate name by its duly authorized officers and its corporate seal to be affixed hereto by authority of its Board of Directors, this the 18, day of November, 1986.



OLDE RALEIGH, INC.

BY: [Signature]

President

ATTEST:

[Signature]
Secretary

NORTH CAROLINA

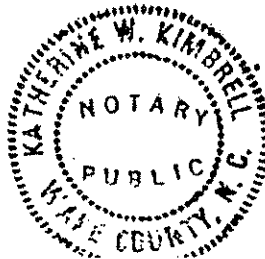
WAKE COUNTY

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that Michael S. Mangum, personally appeared before me this day and acknowledged that he is Secretary of OLDE RALEIGH, INC. a 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 self as its Secretary.

WITNESS my hand and notarial seal this the 18th day of November, 1986.

Katherine W. Kimbrell
Notary Public

My Commission Expires: 1/23/91



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate _____ of Katherine W. Kimbrell

_____, Notary 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

NORTH CAROLINA
WAKE COUNTY

AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
OLDE RALEIGH

THIS AMENDMENT, made on the 28th day of April, 1988

by OLDE RALEIGH, INC., a North Carolina corporation,
hereinafter referred to as the "Declarant".

RECITALS

The Declarant has subjected certain property located in Wake County known as "Olde Raleigh" as shown on maps recorded in Book of Maps 1986, Pages 2014 and 2015, Book of Maps 1987, Page 1034 and Book of Maps 1987, Page 1185, all of the Wake County Registry, to a Declaration of Covenants, Conditions and Restrictions For Olde Raleigh recorded in Book 3873, page 533, Wake County Registry, (the "Declarant");

B. Article XII, Section 5, of the Declaration provides that the Declaration may be amended by an instrument signed by the owners of not less than sixty-six and two-thirds ($66 \frac{2}{3}$) of the Lots that have been made subject to the Declaration;

C. The Declarant desires to amend Article X, Section 3, "Dwelling Size" to increase the required minimum square footage of dwellings.

NOW THEREFORE, the Declarant, being the owner of sixty-six and two-thirds ($66 \frac{2}{3}$) of the Lots subject to the Declaration hereby amends the Declaration as follows:

Article X, Section 3, "Dwelling Size" is hereby deleted in its entirety and the following paragraph is inserted in lieu thereof:

PRESENTED
FOR
REGISTRATION

88 MAY 24 PM 12:58

000118

KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

Section 3. Dwelling Size. No dwelling shall be permitted on any Lot unless the dwelling has, exclusive of decks, porches, breezeways, steps, basements and garages, at least 2,400 square feet of heated living area for a one-story building, 2,650 square feet for a one and one-half story building, 3,000 square feet of heated living area for a two story building and 4,000 square feet of heated living area for a building having more than two-stories. The Declarant or the Architectural Committee may make reasonable exceptions to the minimum square footage required herein, provided that the dwelling contains at least 90% of the minimum square footage, and if such exception is made, the secretary of the Association shall record such exception in the Association's minute book.

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

IN WITNESS WHEREOF the Declarant has caused this instrument to be executed in its corporate name, by its duly authorized officer, attested by its secretary and the corporate seal affixed hereto all by authority of its Board of Directors the day and year first above written.

OLDE RALEIGH, INC.

By: W. H. Henderson
President

ATTEST:

Kaye M. Horton
Assistant Secretary

NORTH CAROLINA

WAKE COUNTY

I, the undersigned Notary Public, do hereby certify that Kaye M. Horton personally appeared before me this day and acknowledged that she is Assistant Secretary of Olde Raleigh, Inc. 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 her self as its Assistant Secretary.

WITNESS my hand and notarial seal, this the 13 day of May, 1988.

Karen Huffman
Notary Public

My Commission Expires: March 29, 1992

KAREN HUFFMAN
NOTARY PUBLIC
WAKE COUNTY, N. C.

Held: Bucky & Matthews, Attorney at Law, 616 W. Johnson St, Raleigh N.C. 27603

NORTH CAROLINA

WAKE COUNTY

000116

PRESENTED
FOR
REGISTRATION
SECOND AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
OLDE RALEIGH
KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

THIS AMENDMENT, made on the 10th day of October, 1989
by OLDE RALEIGH, INC., a North Carolina corporation hereinafter
referred to as the "Declarant" and the undersigned lot owners in
Olde Raleigh subdivision, hereinafter referred to as "Lot
Owners".

RECITALS

A. The Declarant has subjected certain property located in
Wake County known as "Olde Raleigh" as shown on maps recorded in
Book of Maps 1986, Pages 2014 and 2015, Book of Maps 1987, Page
1034, Book of Maps 1987, Page 1185 and Book of Maps 1988, Page
967, all of the Wake County Registry, to a Declaration of
Covenants, Conditions and Restrictions for Olde Raleigh recorded
in Book 3873, Page 533, Wake County Registry, as amended in Book
4267, Page 21, Wake County Registry (the "Declaration");

B. Article XII, Section 5, of the Declaration provides
that the Declaration may be amended by an instrument signed by
the owners of not less than sixty-six and two-thirds (66 2/3) of
the Lots that have been made subject to the Declaration;

C. The Declarant and the Lot Owners desire to amend
Article X, Section 4, "Building Location" to allow the Declarant
or the Architectural Committee to make reasonable exceptions to
the setback requirements.

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After approval of a special use permit, a copy of the approved site plan shall be filed with the department of inspections, and no building permit shall be issued except in conformity with the plan.

(b) *Cluster unit development exempted.* Except in primary reservoir watershed protection areas shown on the official zoning map and reflected in the current comprehensive plan of the city, a cluster unit development consisting of residential structures on a site of at least twenty (20) acres in size in the R-1 and R-4 districts and ten (10) acres in size in other residential districts shall be exempt from the minimum required plot area requirements as stated in sections 10-2062 and 10-2063 of this chapter provided that the site plan conforms with the requirements of Chapter 3, Part 10 of this Code and that the overall density of dwelling units is no greater than that permitted by any applicable zoning requirements.

The above exemption does not include the use of private streets. Private streets are allowed in the primary reservoir watershed protection areas providing the private street standards are met and that an area measured twenty-five (25) feet from the center line of the private street shall be accepted from the area of each adjacent lot so as not to reduce the lot sizes below the eighty thousand (80,000) square feet required.

The following minimum setbacks shall apply to cluster unit developments:

- (1) Group housing developments, multifamily dwellings, townhouse developments, and condominium developments shall comply with sections 10-2075, 10-2075.1, 10-2072(d) and 10-2072(c), respectively.
- (2) Single-family dwellings shall comply with the following yard requirements:
 - a. Street yards. No structure shall be located closer than thirty (30) feet from a private drive, measured from the center line of the pavement. No structure shall be located closer than fifteen (15) feet from public street rights-of-way.
 - b. Rear yard. The rear yard shall not be less than twenty (20) feet, except when the rear yard adjoins a public street or private drive the setback shall be calculated in accordance with subsection (2)a., above.

- c. Aggregate front and rear yards. The aggregate setbacks of front and rear yards shall not be less than forty-five (45) feet.
- d. Aggregate side yards. The aggregate width of the side yards shall not be less than fifteen (15) feet but no yard shall be less than five (5) feet wide unless either two (2) or more structures are approved to be built on a common zero interior lot line and the yard area opposite this interior lot line is at least fifteen (15) feet wide or recorded building envelopes are approved which maintain a yard separation between the buildings of at least ten (10) feet.

(3) It is recognized that cluster unit developments contain a broad range of housing styles including condominiums, townhouses, multifamily, and group housing; and special regulations are established to protect adjoining properties. The peripheral yard spaces established in this section are supplemental to other required yard spaces; however, these other yard spaces may be utilized to satisfy the requirement of the peripheral yard regulations if they otherwise comply with the special peripheral yard regulations. When a cluster unit development adjoins or abuts properties zoned either R-1 or R-4, the peripheral lots for those portions of the cluster unit development are required to:

- a. Contain a single-family dwelling on its own lot with a minimum lot size of ten thousand eight hundred ninety (10,890) square feet and dimensional yard requirements which comply with the R-4 zoning district; or
- b. Contain peripheral yards of at least fifty (50) feet in width, except lots with detached family dwellings are required to contain thirty (30) feet in width minimum peripheral yards. No off-street parking spaces; loading areas; driveways, except for a driveway which exclusively serves one single-family dwelling or a joint driveway which serves only two (2) single-family dwellings; or buildings are allowed within peripheral yard spaces. No building over twenty-five (25) feet in height shall be located on a lot with a peripheral yard space, provided such buildings may be constructed to a height over twenty-five

NOW, THEREFORE, the Declarant and the Lot Owners, being the owners of sixty-six and two-thirds ($66 \frac{2}{3}$) of the Lots subject to the Declaration hereby amend the Declaration as follows:

Article X, Section 4, "Building Location" is hereby deleted in its entirety and the following paragraph is inserted in lieu thereof:

Section 4. Building Location. No Building shall be located nearer to any front Lot line than thirty (30) feet; nearer to any rear Lot line than thirty (30) feet; or nearer to any side Lot line than ten (10) feet. Buildings located on corner Lots shall be a minimum of twenty (20) feet from a side street. The Architectural Committee, or the Declarant during the period the Declarant controls a majority of the votes of the Association, may make reasonable exceptions to the setbacks required herein provided that all Building locations comply with applicable ordinances governing setbacks of local governmental authorities. An exception shall be deemed to be reasonable if it does not violate the above setback requirements by more than twenty percent (20%) or in the opinion of the Architectural Committee or Declarant as applicable, such exception would not be harmful to the appearance or value of any adjacent Lot or the Property, and the strict application of the setback requirement would create an economic

burden or prevent the Lot Owner desiring the exception from the full utilization of his Lot. If such exception is made, the Secretary or Assistant Secretary of the Association shall record such exception in the Association's minute book. For the purpose of this covenant, eaves, steps and open porches shall not be considered a part of a Building provided, however, that this shall not be construed to permit any appurtenant portion of a Building on a Lot to encroach more than twenty (20) percent into any required yard setback unless exception is granted as set forth above or upon another Lot.

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

IN WITNESS WHEREOF, each Lot Owner has set his hand and seal and, if corporate, has caused this instrument to be executed in its corporate name, by its duly authorized officer, attested by its secretary and the corporate seal affixed hereto all by authority of its Board of Directors the day and year first above written.