

Prepared by and return to:

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P. O. Box 20389
Raleigh, North Carolina 27619-0389

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PRESENTED
FOR
RECORD

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RECORDING
REGISTER OF DEEDS
WAKE COUNTY

DECLARATION
OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR
OLDE RALEIGH VILLAS

THIS DECLARATION, made on the date hereinafter set forth by THE BARTON CORPORATION, a North Carolina Corporation, with its principal office located at 4603 Western Boulevard, Raleigh, Wake County, North Carolina, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in or near the City of Raleigh, County of Wake, State of North Carolina, commonly referred to as "Olde Raleigh Villas", which is more particularly described on Exhibit "A" attached hereto;

WHEREAS, it is the desire and intention of Declarant (as defined herein) to impose on that Property described in Exhibit "A" attached hereto restrictions, conditions, easements, covenants and agreements under a general plan or scheme of improvement for the benefit of all Property herein described and the future owners thereof; and,

WHEREAS, the Property and any additional property added hereto, shall be comprised of multi-family tracts for condominium use and multi-family tracts for townhome subdivision; and

WHEREAS, Olde Raleigh Villas is a cluster unit development consisting of Olde Raleigh Villas Owners Association, Inc. and other sub-associations including the Olde Raleigh Townhome Owners Association, Inc.; and

WHEREAS, notwithstanding the necessity of the Declarant or other developer to create an owners association for any condominium or townhome project constructed within the Property, this Declaration and the covenants, conditions, restrictions and easements, to the extent applicable, shall apply to the owners of all condominium units and townhomes;

NOW, THEREFORE, Declarant hereby declares that all of the Property described on Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Olde Raleigh Villas Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

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Section 3. "City" shall mean City of Raleigh, North Carolina.

Section 4. "Common Elements" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of the Owners or members or designated classes of members of the Association and including Limited Common Elements as may be designated on any subdivision map of the Property or by the Association. The Common Elements to be owned by the Association at the time of the conveyance of the first Lot is all of that Property other than the Lots.

Section 5. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses for maintenance of the roads, streets, rights of way and any amenities as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair, or replacement of the Common Elements and Limited Common Elements;
- (d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase;
- (f) Ad valorem taxes and public assessment charges lawfully levied against Common Elements;
- (g) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property, cross Common Elements of the Property and serve both the Property and lands adjacent thereto;
- (h) The expense of maintenance of any roads, streets, easements, amenities, taxes or any other expense item associated with any Common Element not located on the Property but permitted to be used by the members of this Association by any adjoining landowner, association or other entity pursuant to any cross-easement, cross-access or other agreement by the Association with the adjoining land owner;
- (i) Expenses for maintenance of security devices or personnel; and,
- (j) Any other expenses determined by the Board or approved by the members to be common expenses of the Association.

Section 6. "Declarant" shall mean and refer to The Barton Corporation, a North Carolina corporation, its successors and assigns, to whom the rights of Declarant hereunder may be expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose.

Section 7. "Limited Common Elements" shall mean those portions of the Common Elements that serve only a single Lot or a limited number of Lots, and which may include, but

specifically is not limited to, driveways, walkways, parking areas or areas serving only specified Lots, and such other similar areas as may be designated by a subdivision map of the Property or by the Association.

Section 8. "Lot" shall mean and refer to: (i) any condominium unit erected on any tract; (ii) any townhome lot subdivided from a tract; (iii) single family detached dwellings (all designated for residential use and for separate ownership and occupancy); and (iv) multi-family apartments.

Section 9. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 10. "Owner" or "Lot 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 Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 12. "Property" shall mean and refer to that certain real property hereinbefore described on Exhibit "A" hereto attached, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Elements together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Common Elements, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) Subject to the ordinances of the City of Raleigh, North Carolina the right of the Association to charge reasonable admission and other fees for the use of any recreational or other similar facility situated upon the Common Elements;

(b) the right of the Association to suspend the voting rights and the right to use the recreational or other Common Element facilities, if any, 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, sell, lease or transfer all or any part of the Common Elements, or any interest therein, to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication, sale or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of members, as permitted by local government ordinances, and an instrument of dedication, sale, lease, or transfer properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of members have approved the dedication, sale, lease or transfer and that certificate may be relied upon by any third party without

inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes, as specified herein, may be made by the Association without consent of the members. Notwithstanding the foregoing, the Association shall have a right to participate in an equal exchange of open space as permitted by local government ordinances;

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

(e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and facilities and in aid thereof to mortgage the Common Elements, and the rights of such mortgagee in the Common Elements shall be subordinate to the rights of the members hereunder;

(f) the right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Common Elements and to create Limited Common Elements.

(g) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified above, to the initial Property and all lands included in subsequent phases.

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

Section 3. Title to the Common Elements. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Elements located within the Property to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except for encumbrances of utility, service, access, storm drainage and other similar service or utility easements. Similarly, the Declarant or other person annexing land will convey to the Association Common Elements which are a portion of any additional property as the same is annexed in the future at the time of conveyance of the first Lot located on that additional property.

Section 4. TV Antennas, Cablevision, Music. The Association may provide one or more central television or radio antennas for the convenience of the members and may supply cablevision and piped-in music, and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television, radio or other antennas on individual Lots.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every record 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; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned (as further defined in Section 4 of this Article III) including Lots later added pursuant to annexation of additional Property as set forth in the Declaration. The Class B membership shall cease and be converted to Class A membership with one vote for each Lot owned on the happening of either of the following events, whichever occurs earlier: 1

(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 Property 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 VI below, or

(b) ten (10) years from the date of conveyance of the first Lot by Declarant.

Section 3. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of Article II, Section 1(b) herein.

Section 4. It is recognized that with tracts set aside for multi-family development, and for which subdivision for condominium units or townhome lots has not been accomplished or the units or townhome lots designated, in view of that assessment provided in Article IV, Section 12, it would be inappropriate for Declarant, or its successor in interest to such tracts, to be limited to one vote per lot (or tract); therefore, notwithstanding the provision of Section 2 above, Declarant, or its successor in interest to any such multi-family tract, shall be entitled to three (3) votes for each unit or lot, as the case may be, which is permitted to be constructed or subdivided thereon by City approved plans or in the absence thereof, the maximum number of dwelling units allowed on the property by zoning regulations of the City. Such voting rights shall continue as to each lot until the same shall be constructed or subdivided, as the case may be, at which time Declarant shall have three (3) votes for each dwelling unit constructed or subdivided, if owned by Declarant; and if not owned by Declarant then the Owner shall have voting rights as a Class A member.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, 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 which are Common Expenses, and (2) special assessments for extraordinary maintenance and capital improvements, (3) special assessments for purchase, construction or reconstruction of

improvements; and (4) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Common Elements and public roads if the Association shall default in payment thereof. The annual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot 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 Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses to promote the recreation, health, safety, and welfare of the Owners of Lots; and, in particular, but not limited to, for the acquisition, improvement and maintenance of Property, services, amenities and facilities, and for the use and enjoyment of the Common Elements, including but not limited to, the cost of repairs, replacements and additions, the cost of maintenance of private streets and lighting on private streets, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Elements, the providing for security to the Property, the procurement and maintenance of insurance in accordance with the Declaration and Bylaws or as deemed appropriate by the Board, the payment of common antenna or cable service, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Amount of Assessment.

(a) Initial Maximum Assessment. To and including December 31, 1996, the maximum annual assessment shall not exceed Three Hundred Dollars (\$300.00) per Lot.

(b) Increase by Association. From and after January 1, 1997, the annual assessment effective for any year (including 1997) may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the greater of ten (10%) percent or the percentage increase reflected in the U. S. City Average, Consumer Price Index - United States and selected areas for urban wage earners and clerical workers, all items most recent index and percentage changes from selected dates, (published by the U.S. Bureau of Labor Statistics, United States Department of Labor, Washington, D.C.), or such other Index as may succeed the Consumer Price Index, for that twelve-month period ending the immediately preceding October 1.

(c) Increase by Members. From and after January 1, 1997, 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. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of ten (10%) percent or the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of members required by Subsection (c) of this Section 3.

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

(f) Declarant Expenses. Until such time as Declarant shall no longer control the Board, Declarant shall pay any Association expenses not otherwise covered by the assessment hereunder.

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 cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Elements, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, 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. Notwithstanding the foregoing, the Board, without vote by the members, may levy a special assessment in an amount not to exceed \$500.00 per lot, no more than one (1) time in any Three (3) year period.

Section 5. Replacement Reserve. Out of the Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and any Limited Common Elements which the Association may be obligated to maintain.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast forty percent (40%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or other periodic basis established by the Board.

Section 8. Date of Commencement of Annual Assessments; Due Dates; Initial Working Capital. The annual assessments provided for herein shall commence as to all Lots or Living Units on the first day of the month following the conveyance of the Lot or Living Unit from the Declarant to the Lot Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

In addition to the regular assessments to be charged and paid hereunder, each Lot Owner shall, at the time of the initial sale of each Lot by Declarant to that Lot Owner, pay to the Association a sum equal to two (2) months assessment on that Lot as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the Lot Owner notwithstanding the fact that Declarant may have made prior regular assessment payments to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed twelve (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court in the County in which the Property is located in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any such institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax 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, but shall not abate the personal obligation of the prior owner. 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. Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 12. Foreclosure of liens for unpaid Common Expenses. In any action brought by the Board to foreclose on a Lot because of unpaid Common Expenses, the Lot Owner shall be required to pay a reasonable rental for the use of his Lot, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board, acting on behalf of all Lot Owners, or on behalf of any one or more individual Lot Owners, if so instructed, shall have the power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same, subject, however, to applicable restrictions of record. A suit to recover money judgment for unpaid Common Expenses may be maintainable without foreclosing or waiving the lien securing the same.

ARTICLE V

ANNEXATION OF ADDITIONAL PROPERTIES AND CLUSTER UNIT DEVELOPMENT RIGHTS AND OBLIGATIONS

Section 1. Annexation of additional property, except as provided in Section 2 of this Article VI, 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, present 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 purposes of the meeting. The presence of members or of proxies entitled to cast forty percent (40%) 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 shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 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.

Section 2. If within twenty (20) years of the date of conveyance by Declarant of the first Lot, the Declarant should develop such other lands as Declarant may hereafter acquire contiguous thereto, such land may be annexed by the Declarant without the consent of members; and, in doing so, Declarant may file and record such amendments to this Declaration as are necessary without the consent of the members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Association.

Section 3. Annexation of additional lands shall be accomplished by recording in the Office of the Register of Deeds in the county in which the Property is located, 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 Property 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 any local governmental authority if required by its ordinances.

Section 4. Subsequent to recordation of the Declaration of Annexation by the Declarant or other person annexing land in accordance with Article II Section 3, and prior to the conveyance of the first Lot therein, the Declarant or other person annexing land in accordance with Article II Section 3, shall in accordance with Article II, Section 3, deliver to the Association one or more deeds conveying any Common Elements within the lands annexed.

Section 5. Foreclosure of liens for unpaid Common Expenses. In any action brought by the Board to foreclose on a Lot because of unpaid Common Expenses, the Lot Owner shall be required to pay a reasonable rental for the use of his Lot, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board, acting on behalf of all Lot Owners, or on behalf of any one or more individual Lot Owners, if so instructed, shall have the power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same, subject, however, to applicable restrictions of record. A suit to recover money judgment for unpaid Common Expenses may be maintainable without foreclosing or waiving the lien securing the same.

Section 6. Cluster Unit Development. The Property is part of a cluster unit development approved by the City of Raleigh consisting of the lands described on Exhibit A attached hereto and all such lands are subject to Part Ten, Chapter Three of the City Code of Raleigh and this Section is included in this Declaration to comply Section 10-3071(b)(9)c. of the City Code of Raleigh and all terms not otherwise defined herein shall have the definition set forth in the City Code of Raleigh:

(a) The Property is part of a cluster unit development approved by the City of Raleigh in which residential density transfers are permitted; therefore, even though some lots may appear to contain enough land area to construct additional dwelling units or create additional lots, prior density transfers approved within the cluster unit development may, in fact, preclude City of Raleigh approval of additional dwellings or further subdividing of lots.

(b) As long as Class B Membership exists, the Declarant reserves the following additional rights: to add real estate to Property in accordance with this Declaration; to add Common Elements; to create dwelling units or lots; to modify or change dwelling unit types; to reallocate dwelling units or lots within the property described on Exhibit A attached hereto; and to withdraw real estate from the property described on Exhibit A attached hereto. Notwithstanding anything here and to the contrary Declarant shall have no obligation to annex additional lands to the Property except as may be required under that certain Declaration of Cluster Unit Development of Olde Raleigh Villas being recorded contemporaneously herewith.

(c) The maximum number of dwelling units and the maximum number of dwelling units per acre that may be contained in the cluster unit development or transferred to portions of the cluster unit development without rezoning the cluster unit development to another zoning classification is 163 dwelling units and 6.0 dwelling units per acre, respectively.

ARTICLE VI

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements. 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 Property. No portion of the Property (except for a temporary office of the Declarant and building models 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 Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, birds, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats, pet birds or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners.

Section 5. Insurance. Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance applicable to residential use for the Property or any Lots. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, on his Lot or on the Common Elements which will result in the cancellation of insurance on any portion of the Property, or Lots therein, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Elements.

Section 6. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof. All laws, orders, rules, regulations, ordinances, or requirements of any governmental agency having jurisdiction thereof, relating to any Lot or any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain such portion of the Property.

Section 7. Structural Integrity. Nothing shall be done in, to, or upon any of the Common Elements which will impair the structural integrity of any building, or other improvement or portion of the Common Elements or which would impair or alter the exterior of any building, improvement or portion thereof, except in the manner provided in this Declaration.

Section 8. Business. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot, except that the Declarant or its agents may use any unsold Lots for sales or display purposes, Declarant may maintain a sales or rental office on the Property and Declarant may maintain golf courses, clubs, marinas or other amenities to the Property.

Section 9. Signs. No Lot Owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Lot, or

any portion of the Common Elements, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority; provided, however, that the Declarant and any Lot Owner, or their respective agents, may place "For Sale" or "For Rent" signs on any Lots for sale and in suitable places on the Common Elements approved by the Association; provided, however, that during the development of the Property and the initial marketing of Lots, the Declarant may maintain a sales office and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws. Such permitted signs shall be placed in the approximate center of a Lot and six feet from the road curb. No sign shall be nailed to trees.

Section 10. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

Section 11. Common Elements Use. The Common Elements shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Property, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

Section 12. Parking. No boats, trailers, campers, motorhomes, trucks or tractors shall be parked on any Lot, on the Common Elements, or on any right of way of any roads or streets within the Property or adjoining the Property by any Lot Owner, its family members, tenants or contract purchasers, except inside an enclosed garage located on a Lot or in a specified storage area established by the Association or except as otherwise may be permitted by Rules and Regulations of the Association. Delivery and maintenance vehicles are permitted.

Section 13. Trailers, etc. No trailer, tent, mobile home, modular home or other structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters or storage units or on the Common Elements used by the contractor during the construction of a dwelling, garage or accessory building, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction.

Section 14. Delivery Receptacle. No mail box, paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected or located on any Lot unless and until the size, location, design and type of material for the receptacle shall have been approved by the Board or the architectural committee.

Section 15. Antennae. Exterior radio and television antennae, aerials, disks and dishes for reception of commercial broadcasts shall not be permitted on any Lot and no other aerials, disks and dishes (for example, without limitation, amateur short wave or ship to shore) shall be permitted on any Lot without permission of the Board as to design, appearance and location or pursuant to Regulations issued for that purpose.

Section 16. Firearms; Hunting Prohibited. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion; and no hunting of any type shall be carried on or conducted on the Property.

Section 17. Drying Areas. Clotheslines or drying yards shall not be located upon any Lot without the prior written consent of the Board, which consent may be conditioned or withheld in the sole discretion of the Board, or as set forth in Regulations established for that purpose.

Section 18. Unsightly Growth. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain on any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain thereon, including vacant parcels.

Section 19. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

Section 20. Additional Restrictions. Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not diminish the covenants and restrictions set forth herein.

ARTICLE VII

EASEMENTS

Section 1. Utility Easements. All of the Property, including Lots and Common Elements, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Elements conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the membership as provided in the Articles of Incorporation and this Declaration.

Section 2. Easement for the Benefit of Governmental Authorities. An easement is hereby established for the benefit of any governmental authority having jurisdiction over the Property, or other governmental agency, over all Common Elements for the setting, removing and reading of water meters (which shall be separate for each Lot), maintaining and replacing water, sewage and drainage facilities, for police protection, fire fighting and garbage collection, postal services, and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property. In no case shall the governmental authority or other responsible agency, be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property or to any of its occupants when such failure is due to the lack of access to such area due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association, the Owners or occupants. All conveyances of any portion of the Property shall be subject to these limitations on the governmental authorities responsibilities.

Section 3. There are hereby reserved easements as shown on the recorded map or maps of the subdivision. In the event of a conflict in the width of any easement reserved herein or on the recorded map, the wider easement shall prevail.

Furthermore, in addition to the foregoing reserved specific easements, the Declarant so long as it controls the Association, and thereafter the Association, may cut and create drains and drainways both above ground and underground for the purpose of facilitating the removal of

surface water whenever such action may appear to be necessary in order to maintain reasonable standards of health, safety and appearance along, over or across any Lot.

These reservations of easements expressly include the right to cut any trees, bushes, shrubs or growth, the grading, cutting or ditching of the soil and any other action necessary to complete installation.

Section 4. Easement for Benefit of Utility Company. The Declarant reserves the right to subject the Property, including the Common Elements, to a contract with Carolina Power and Light Company for the installation of underground electric lines, cables and connector posts or for the installation of street lighting, either or both of which, may require an initial payment or a continuing monthly payment to the utility by the owner of each Lot.

Section 5. Easements for Repairs. Each lot owner shall have a perpetual access easement over the adjoining lot and Common Elements to the extent reasonably necessary to perform repair, maintenance, or reconstruction of his dwelling. No fence, wall, outbuilding, storage shed or similar structure, or any other kind of obstruction, except a Townhome and its party wall, shall be installed or maintained within the easement area which will obstruct access to the residential unit. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the owner shall restore the adjoining lot and Common Elements to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable. This easement is required by the Raleigh City Code.

Section 6. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Elements, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

Section 7. Declarant Easement. If any encroachment shall occur subsequent to subjecting the Property to this Declaration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding utilities, grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 8. 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 that endangers any building or any portion of the Common Elements.

ARTICLE VIII

INSURANCE

Section 1. Insurance to be Maintained by the Association. The following insurance coverage shall be maintained in full force and effect by the Association:

(a) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association, but public liability shall be an amount of at least one million dollars for each occurrence.

(b) All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.

(c) Such other insurance coverage as it may determine to be desirable and necessary, including fire and hazard insurance covering all improvements located on the Common Elements.

Section 2. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

Section 3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

Section 4. Insurance to be Maintained by the Owners. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of his Living Unit except that the amount shall not be required to exceed the replacement cost of the Living Unit. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his Lot until paid as a result of enforcement by the Association or otherwise.

ARTICLE IX

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Authority, Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

A. To be furnished with at least one copy of the Annual Financial Statement and Report of 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.

B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

C. To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.

D. To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours, and to obtain copies thereof.

E. To be given notice by the Association of any substantial damage to any part of the Common Elements.

F. To be given notice by the Association if any portion of the Common Elements, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender, guarantor or insurer desires the benefits of the provisions of this section requiring notice to be given or to be furnished a financial statement, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE X

GENERAL PROVISIONS

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

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

Section 4. No Rights in Other Lands. Nothing herein, nor any deed of conveyance of a Lot or Tract of land in Olde Raleigh Villas Subdivision, shall give any Lot Owner any rights in and to any property within said subdivision as planned, projected or schematically presented, including, but not limited to, roads, streets, access ways, Common Elements and reserved lands, except those Lots and roads abutting any Lots made subject to this Declaration as amended and any Common Elements conveyed to the Association; and specifically, until such time as any property described on Exhibit "B" is made subject to this Declaration, no Lot Owner shall have any rights in any properties described, or depicted, on that Exhibit.

Section 5. General Amendments. 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.

Section 6. Amendments Permitted Without Membership Approval. The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the members:

(A) Prior to the sale of the first Lot, this Declaration may be amended by the Declarant.

(B) Declarant may amend this Declaration at the time of annexation of additional lands as specified in Article VI, Section 2 herein.

(C) The Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction.

(D) The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls; construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

(E) The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status.

(F) The Declarant for so long as it has control of the Board may amend this Declaration to reflect any platting change of the Property as permitted herein.

Section 7. Governmental Authority Amendments. No amendment which would change or delete any provision herein shall become effective until submitted to and approved by the Raleigh City Attorney or Deputy City Attorney; provided, however, if that authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with.

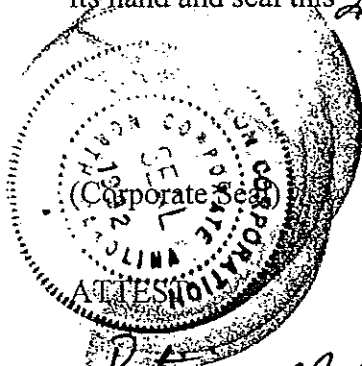
Section 8. FHA/VA Approval. As long as there is a Class B membership, and if Declarant determines to qualify this Property for Federal Housing Administration or Veterans Administration approval the following actions will require the prior written approval of the

Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of Common Elements, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 9. - Recordation. No amendment shall be effective until recorded in the County in which the Property is situate.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 22nd day of October, 1996.



THE BARTON CORPORATION, a North Carolina Corporation

By: [Signature]
____ President

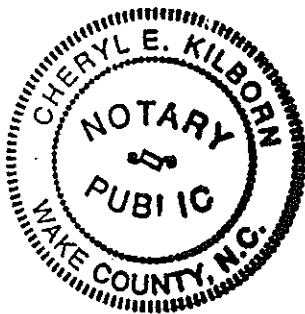
Patricia M. Mac Nair
____ Secretary

STATE OF NORTH CAROLINA :

COUNTY OF Wake :

I, the undersigned Notary Public of the County and State aforesaid, certify that Patricia M. Mac Nair personally came before me this day and acknowledged that she is Secretary of The Barton Corp., 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 her as its _____ Secretary.

Witness my hand and official stamp or seal, this 22nd day of October, 1996.



Cheryl E. Kilborn
Notary Public
My Commission Expires: 6/18/2001

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate ____ of _____

Cheryl E. Kilborn
____ Notar(y) 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 Meta W. Harris

Asst. Deputy Register of Deeds

EXHIBIT A

BEGINNING at a concrete monument located in the northern right of way line of Ebenezer Church Road, a 60 foot right-of-way, said point being the southeastern corner of that property owned by Sam W. Gray and Donna H. Gray as described in that deed recorded in Book 2756, page 41 Wake County Registry, runs thence along the eastern line of the Gray property North $00^{\circ} 14' 35''$ West 1211.20 feet to an existing iron pipe; runs thence along the southern line of that property now or formerly owned by Summit Properties Partnership as described in that deed recorded in Book 6020, page 166 Wake County Registry, North $89^{\circ} 44' 46''$ East 693.54 feet to a point; runs thence along the western right-of-way line of Duraleigh Road, a 100 foot right-of-way the following courses and distances South $07^{\circ} 33' 11''$ East 107.39 feet to a point; runs thence South $03^{\circ} 38' 22''$ East 154.75 feet to an existing iron pipe; runs thence South $02^{\circ} 57' 40''$ West 781.15 feet to an existing iron pipe; runs thence within the right of way of Duraleigh Road South $87^{\circ} 14' 04''$ East 19.73 feet to a point; runs thence South $02^{\circ} 53' 32''$ West 141.30 feet to an existing iron pipe; runs thence South $02^{\circ} 53' 32''$ West 150.02 feet to an existing iron pipe; runs thence South $87^{\circ} 07' 51''$ East 30.15 feet to a point; runs thence South $03^{\circ} 10' 15''$ West 125.00 feet to a point; runs thence along a curve to the left with a chord bearing and distance of South $02^{\circ} 51' 20''$ East 172.76 feet, a radius of 821.80 feet and a arc distance of 173.07 feet to a point; runs thence South $57^{\circ} 10' 26''$ West 107.50 feet to a point in the right of way of Ebenezer Church Road; runs thence North $54^{\circ} 19' 34''$ West 288.00 feet to a point; runs thence North $02^{\circ} 42' 33''$ East 36.55 feet to a point located in the northern right-of-way line of Ebenezer Church Road; runs thence North $54^{\circ} 54' 48''$ West 472.00 feet to a point, said point being the point and place of BEGINNING and consisting of four tracts, one containing 9.0800 acres, one containing 2.9832 acres, one containing 5.8208 acres and one containing 5.5995 acres all as shown on that survey entitled "Property Survey of Mitchell Property, Recombination Map" dated April 25, 1996 by John A. Edwards & Company.