

NORTH CAROLINA  
CRAVEN COUNTY

THIS DECLARATION OF COVENANTS AND RESTRICTIONS, made this 21<sup>st</sup> day of June, 1988, by and between OLDE TOWNE SUBDIVISION, a general partnership (hereinafter referred to as "Olde Towne" and/or "Declarant"), a partnership organized and existing under and by virtue of the laws of the State of North Carolina with its principal office and place of business in Craven County, North Carolina; 1905 CORPORATION, a North Carolina Corporation, Trustee; and RALEIGH FEDERAL SAVINGS BANK, a North Carolina banking corporation with its principal office and place of business in New Bern, Craven County, North Carolina; and ALL PROSPECTIVE PURCHASERS of the lots and land in "PLAN OF HARBOUR ISLAND, OLDE TOWNE, PLANNED UNIT DEVELOPMENT, SECTION V", a subdivision located near the City of New Bern, Number Eight Township, Craven County, North Carolina;

W I T N E S S E T H :

THAT, WHEREAS, Olde Towne has acquired title to a certain tract or parcel of land which has been divided into lots and streets according to a certain map or plat entitled "PLAN OF HARBOUR ISLAND, OLDE TOWNE, PLANNED UNIT DEVELOPMENT, SECTION V, which said map is dated January 11, 1988, and appears of record in the Office of the Register of Deeds of Craven County in Plat Cabinet E, at Slide 164 (herein called "Subdivision"); and

WHEREAS, Olde Towne intends to convey said lots as the same are shown and delineated on the above mentioned map by deeds, deeds of trust, mortgages, or other instruments, to various and sundry persons, firms and/or corporations, subject to certain restrictive covenants and conditions which are deemed to make said subdivision more desirable and to be for the benefit of all those who acquire title to any one or more of said lots to the end that such covenants and restrictions herein set out shall inure to the benefit of such person, firm, or corporation which may acquire title to any or all of said lots and which shall be

See BK 1506 pg. 329 for Easement Relocation 3-27-86 Benji Koyen & Co

binding upon each person, firm, or corporation to whom or to which the said parties above mentioned shall hereafter convey any of said lots by deed, mortgage, deed of trust, or other instrument.

NOW, THEREFORE, in consideration of the premises, Olde Towne hereby covenants and agrees that each of the aforementioned lots shall be held, sold, and conveyed subject to the hereinafter set forth conditions and restrictions, and that said conditions and restrictions shall become a part of each instrument conveying any interest in any of said lots as fully and to the same extent as if set forth therein, and that as a condition of the sale or conveyance of any interest in any of said lots, the purchasers agree and covenant to abide by and conform with said conditions and restrictions as follows:

1.

EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENTS

These Restrictions shall apply to all numbered lots, and each and every one thereof, are for single-family residential purposes only. No building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, or other multiple-family dwelling shall be erected, placed, permitted, or maintained on such premises, or on any part thereof. No improvement or structure whatever, other than a first class private dwelling house, patio walls, swimming pool, and customary outbuildings, garage, carport, servants' quarters, or guest house may be erected, placed or maintained on any lot in such premises. Nothing contained herein shall prohibit the erection, maintenance and use of attached private living quarters for the use of immediate family members, to include the parents, grandparents or lineal descendants of a lot owner.

2.

TERM

These Restrictions shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until January 1, 2008. By accepting a deed

to residential property subject to these Restrictions, the owners agreed that after January 1, 2008, these Restrictions shall be extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then fee simple owners of the lots subject thereto has been recorded, agreeing to change the covenants in whole or in part; provided, however, that at any time these Restrictions may be amended by the vote of the then record fee simple owners of two-thirds (2/3) of such residential lots to make variations, changes and deletions in the Restrictions. Provided, further, that Declarant shall have the right to amend these Restrictions in whole or in part for a period of three (3) years without the vote of anyone.

3.

MUTUALITY OF BENEFIT AND OBLIGATION

The Restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every lot in the Subdivision and are intended to create mutual, equitable servitudes upon each of said lots in favor of each and all of the other lots therein; to create reciprocal rights between the respective owners of all of said lots; to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall, as to the owner of each such lot, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other lots in the subdivision and their respective owners.

4.

PROPERTY CONTROL COMMITTEE

A. All plans and specifications for any structure or improvement whatsoever to be erected on any lot, and the proposed location and orientation in relation to streets, the construction material, the roofs and exterior color schemes, any later changes or additions after initial approval thereof and any remodeling, reconstruction, alterations, or additions thereto on any lot shall be subject to and shall require the approval in writing of the Property Control Committee (herein called "Committee"), as

the same is from time to time composed, before any such work is commenced.

B. The Committee shall be composed of three (3) members. Until July 1, 1991, Declarant shall have the right to appoint and remove for cause or without cause members of the Committee. After July 1, 1991, the Board of Directors of the Olde Towne Section V Property Owners Association, Inc. (hereinafter called "Association") shall have the right to appoint and remove members of the Committee for cause or without cause.

C. There shall be submitted to the Committee two (2) complete sets of the final plans and specifications for any and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plans, elevations, and specifications therefor have received written approval as herein provided. Such plans shall include plot plans showing the location on the lot of the building, wall, fence or other structure proposed to be constructed, altered, placed or maintained, together with the proposed construction material, color schemes for roofs and exteriors thereof and proposed landscape planting. The committee may require a filing fee of \$30.00 to accompany the submission of such plans to defray Committee expenses.

D. The Committee shall approve or disapprove plans, specifications and details within thirty (30) days from the receipt thereof. One (1) set of said plans and specifications and details with the approval or disapproval endorsed thereon shall be returned to the person submitting them and the other copy thereof shall be retained by the Committee for its permanent files.

E. The Committee shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of these Restrictions, if the design or color scheme of the proposed building or other structure is not in harmony with the general

surroundings of such lot or with the adjacent buildings or structures; if the plans and specification submitted are incomplete, or in the event the Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interests, welfare or rights of all or any part of the real property subject hereto, or the owners hereof. The decisions of the Committee shall be final and not subject to appeal or review.

F. Neither the Committee nor any agent thereof or of Declarant shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, for any structural or other defects in any work done according to such plans or specifications, nor for the placement of any structure to conform with the applicable set back lines.

G. Prior to occupancy of any dwelling, an occupancy permit must be obtained from the Committee. The Committee or its agents shall have the right to inspect all construction to insure that the structure is in accordance with the approved plans, specifications and details. No structure or improvement shall be made unless it conforms substantially to the approved plans, specifications and details.

5.

SIZE AND PLACEMENT OF RESIDENCES AND STRUCTURES

A. Building Lines. All buildings erected or constructed on the property herein described shall conform to the building set-back lines as shown on the aforesaid map.

B. Dwelling Size. Any single family residential structure erected or placed upon any numbered lot in the subdivision shall contain not less than an aggregate of 2,100 square feet of heated area (calculated by exterior dimensions). The minimum square footage described by this section shall include an allowance for outdoor living with permanently covered areas being given one-half of the actual square footage involved, and uncovered deck or defined patio areas being given one-third value of the actual square footage contained therein.

However, in no event shall any residential structure erected or placed on any of the above mentioned lots contain less than 1,700 square feet of heated area (calculated by exterior dimensions), without regard to the allowances herein-above recited for outdoor and uncovered areas.

C. The Committee, its successors or assigns, shall have the authority to establish regulations pertaining to the height and size requirements of all other types of structures, including but not limited to fences, walls and copings. Such regulations shall, in the Committee's sole discretion, conform with the general development scheme. Any such regulations shall be in writing and available at reasonable times and places to any lot owner or his designated representative.

D. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Subdivision, all property lines shall be kept free and open. No fences shall be permitted on any lot or lot lines unless, in the sole opinion of the Committee, a fence or other enclosure will contribute to and be in keeping with the character of the area.

6.

GENERAL PROHIBITIONS AND REQUIREMENTS

The following general prohibitions and requirements shall prevail as to the construction or activities conducted on any lot in the Subdivision:

(a) All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a septic tank or other sewage system constructed by the lot owner and approved by the appropriate governmental authority and Property Control Committee. No outside toilet shall be constructed or permitted on any lot except during the initial construction period as required by applicable governmental regulations.

(b) No temporary residence, mobile home, trailer (except boat trailers when the same are kept in an area enclosed on at least three sides to prevent view by other parties), camper, tent, or other building shall be placed on or erected on any lot,

provided, however that the Committee may grant permission for any such temporary structure for storage of materials during construction. Any such temporary structures as may be approved shall not be used at any time as a dwelling place.

(c) Once construction of improvements is started on any lot, the improvements must be substantially completed in accordance with plans and specifications, as approved, within one (1) year from commencement, with extensions, if necessary.

(d) No residence shall be occupied until the same has been substantially completed in accordance with its plans and specifications and a certificate of occupancy has been issued by the Committee.

(e) No animals or livestock of any description, except the usual household pets in reasonable number, shall be kept on any lot.

(f) No sign (including but not limited to "For Sale" or similar signs), billboard, or other advertising structure of any kind may be erected or maintained upon any lot except after applying to and receiving written permission from the Committee.

(g) No stripped, partially wrecked, or junk motor vehicle, or part thereof, shall be permitted to be parked or kept on any street or lot. Any vehicle parked or kept on any street or lot must bear a current motor vehicle inspection certificate.

(h) Every storage tank, including but not limited to fuel storage tanks, shall be buried below the surface of the ground or screened by fencing or shrubbery to the satisfaction of the Committee. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible from any street or waterway.

(i) All outdoor poles, clothes lines and similar equipment shall be so placed or screened by shrubbery as not to be visible from any street.

(j) No structure erected upon any lot may be used as a model exhibit or house unless prior written permission to do so shall have been obtained from the Committee.

(k) All lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.

(l) No noxious, offensive or illegal activities shall be carried on on any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.

(m) No vehicle shall be parked on any street in the Subdivision. No truck larger than a 3/4 ton pick-up truck shall be parked for storage overnight, or longer, on any lot in such a manner as to be visible to the occupants of other lots or the users of any street.

(n) Any dwelling or outbuilding on any lot which is destroyed in whole or in part by fire, windstorm or for any other cause or act of God, must be rebuilt or all debris removed and the lot restored to a sightly condition with reasonable promptness; provided, however that in no event shall such debris remain longer than six (6) months.

(o) Following initial construction of the residence, no tree over four inches in diameter shall be removed from any lot without the prior written consent of the Committee.

(p) No trash, ashes, garbage or other refuse shall be dumped in the Subdivision. No outside burning of wood, trash, leaves, garbage or household refuse shall be permitted.

7.

REFUSE AND GARBAGE COLLECTION

In order to enhance the appearance and orderliness of the Subdivision, the Declarant hereby reserves for itself, its successors and assigns, the exclusive right to operate, or from time to time to grant an exclusive license to a third party to operate a commercial scavenging service for the purpose of removing garbage, trash and other like household refuse. Such refuse collection and removal service shall be provided not less often than once each week on a day or days designated by the Declarant or its successors or assigns. When such service shall be made available, all lot owners will utilize same, the rate

therefor to be commensurate with the rates charged by commercial scavengers serving other subdivisions of high standards in the area, such rate to be subject to change from time to time.

8.

VARIANCES

The Committee may allow reasonable variances and adjustments of these Restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes of the general development scheme and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood or the Subdivision. Any such approved variance shall be in writing and delivered to the lot owner.

9.

EASEMENTS

A. Declarant reserves for itself, its successors and assigns, for purposes it deems incident to its development of real property subject to these Restrictions, adjacent to or in proximity to the subdivision, in addition to those shown on the recorded plat, the following easements and/or rights-of-way:

(a) A 10-foot wide easement adjacent and parallel with all road rights-of-way and a 7½-foot wide easement along each side property line (any lot line perpendicular to Cove Harbor road) of all other property and lot boundary lines, unless otherwise shown on the recorded plat, for the purpose of installing, operating and maintaining utility lines and mains and drainage.

(b) It also reserves the right to trim and remove any trees and brush and to locate guy wires and braces wherever necessary for the installation, operation and maintenance of utility lines, gas, water and sewer mains and other services for the convenience of the property owners and appurtenances thereto.

B. Declarant reserves for itself, its successors and assigns an exclusive easement for the installation and maintenance of radio and television transmission cables within the rights-of-way and easement areas reserved and defined above.

C. On each lot, the rights-of-way and easement areas reserved by Declarant or dedicated to public utilities purposes shall be maintained continuously by the lot owner but no structure, plantings or other material shall be placed or permitted to remain, or other activities undertaken, which may damage or interfere with the installation or maintenance of utilities; which may change the direction of flow of drainage channels in the easements; which may obstruct or retard the flow of water through drainage channels in the easements; or which damage or interfere with established slope ratios or create erosion or sliding problems; provided, however, that where the existing location of an easement or drainage channel reserved in these restrictions or shown on the recorded map would hinder the orderly development of the lot on which the easement is located, the easement or drainage channel may be relocated by Declarant. Improvements within such areas shall also be maintained by the respective lot owner except for those which a public authority or utility is responsible.

Any person, firm, or corporation acquiring title to two or more contiguous lots shall be allowed to erect a residence or other allowable structure across the interior lot lines and the easements reserved herein as on the recorded map that would be relative to such interior lot lines shall be withdrawn and not constitute an encumbrance on such lot. Any relocation or withdrawal shall be first approved by the Committee.

10.

OLDE TOWNE SECTION V PROPERTY OWNERS ASSOCIATION, INC.

Every person, firm, or corporation, upon acquiring fee simple title to any lot in the Subdivision, shall become a member of the Olde Towne Section V Property Owners Association, Inc., a North Carolina non-profit corporation, herein referred to as

"Association" (so long as the same in in existence), and as long as he is the owner of any such lot, he must remain a member of the Association and abide by the bylaws, rules and regulations thereof. Provided, however, that there shall be only one (1) regular membership per lot regardless of the manner or number of names in which title to same may be held. Such membership is not intended to apply to those persons who hold an interest in any lot merely as security for the performance of an obligation to pay money, e.g., mortgages and deeds of trust. The Association may also charge any user or member fees for the use of any amenities owned or operated by it, including charges for individual services or goods provided members through such facilities.

## 11.

ASSOCIATION'S RIGHT TO PERFORM CERTAIN MAINTENANCE

In the event an owner of any lot shall fail to maintain the premises and/or the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association shall have the right, through its agents and employees, to enter upon said lot and clear, clean, repair, maintain and restore the lot and the exterior of any building and any other improvements erected thereon. Such right shall not be exercised unless two-thirds of such Board of Directors shall have voted in favor of its being exercised. The cost of such maintenance shall be considered a legal obligation of the lot owner for which the Association may maintain an action in a court having jurisdiction, but shall not constitute a lien on said lot unless and until a final judgment of such court shall be entered in the Offices of the Clerk of Court of Craven County.

## 12.

REQUIREMENTS FOR DEDICATION OF ADDITIONAL PORTIONS OF THE DEVELOPMENT AREA TO THE PURPOSES OF THE SUBDIVISION

The Declarant, and its successors and assigns, shall have the right, at its election, without the consent of the Association or its members, or the owner or owners of Lots within the

Subdivision, to dedicate and bring within the Subdivision such additional property as it may determine to develop in the future. Before such additional properties are "dedicated" as that term is used in this Declaration of Covenants and Restrictions, the following events shall have taken place:

(A) The Declarant shall have recorded a plat of the area to be dedicated detailing thereon the Lots and Common Areas of that area.

(B) The Declarant shall deed the Common Areas depicted on the recorded plat to the Corporation.

(C) The Declarant shall have caused to be recorded a Declaration of Covenants and Restrictions covering the area to be dedicated, such Declaration of Covenants and Restrictions either to list the area covered and incorporate the covenants and restrictions contained herein by reference or to be in a form substantially similar to this Declaration of Covenants and Restrictions. The Declaration of Covenants and Restrictions specifically shall grant to all the then existing and future members of the Association and the owners of property within Plan of Harbor Island, Olde Towne, Planned Unit Development, Section V and other areas theretofore dedicated hereunder the use of, and property rights in, and Common Areas lying within that area, such grant substantially to conform with the property rights given to Lot owners within Plan of Harbor Island, Olde Towne, Planned Unit Development Section V, and contained herein.

13.

REMEDIES

A. The Declarant, Association, any property owner or any party to whose benefit these Restrictions inure may proceed at law or in equity to prevent the occurrence, continuation or violation of any of these Restrictions and the court in any such action may award the successful party reasonable expenses in prosecuting such action, including attorneys' fees.

B. The remedies hereby specified are cumulative, and this specification of them shall not be taken to preclude an aggrieved

party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of the Declarant, the Association or an aggrieved party to invoke an available remedy in respect of a violation of any of these Restrictions shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

14.

GRANTEE'S ACCEPTANCE

A. The grantee of any lot subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot, shall accept such deed or contract upon the subject to each and all of these Restrictions and the agreements herein contained, and also the jurisdiction, rights and powers of Declarant, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant, and to and with the grantees and subsequent owners of each of the lots within the Subdivision to keep, observe, comply with and perform said Restrictions and agreements.

B. Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors and assigns, all the risks and hazards of ownership or occupancy attendant to such lot, including but not limited to its proximity to any recreational facility.

C. Each such grantee whose lot is adjacent to available underground electrical service, if any, also agrees to complete the underground secondary electrical service to his residence.

15.

SEVERABILITY

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions

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and of and from every other one of the Restrictions and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the Restrictions.

16.

CAPTIONS

The captions preceding the various paragraphs and subparagraphs of these Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form or any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

IN TESTIMONY WHEREOF, Lonnie E. Pridgen, Jr., a general partner of OLDE TOWNE SUBDIVISION, a general partnership, has hereunto set his hand and has adopted as his seal the typewritten word "SEAL" appearing beside his name, the day and year first above written; and the said 1905 Corporation, a North Carolina corporation, Trustee, and Raleigh Federal Savings Bank have executed this instrument solely for the purpose of indicating their consent as lienholders under that certain Deed of Trust recorded in Book 1175, at Page 1040, in the Office of the Register of Deeds of Craven County.

OLDE TOWNE SUBDIVISION  
A GENERAL PARTNERSHIP

BY: Lonnie E. Pridgen, Jr.

Lonnie E. Pridgen, Jr.  
GENERAL PARTNER

1905 CORPORATION, a North Carolina Corporation, Trustee

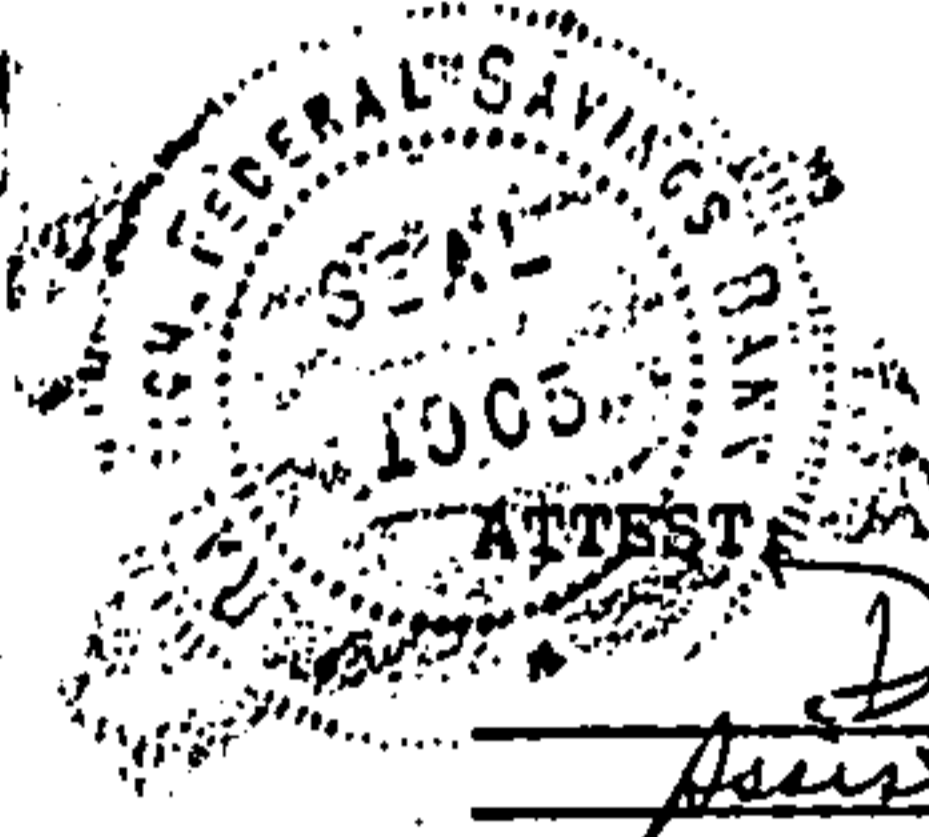
BY: W. R. Etter  
W. R. Etter PRESIDENT



D. W. [Signature]  
D. W. [Signature] SECRETARY

RALEIGH FEDERAL SAVINGS BANK

BY: W. R. Etter  
W. R. Etter PRESIDENT



D. W. [Signature]  
D. W. [Signature] SECRETARY

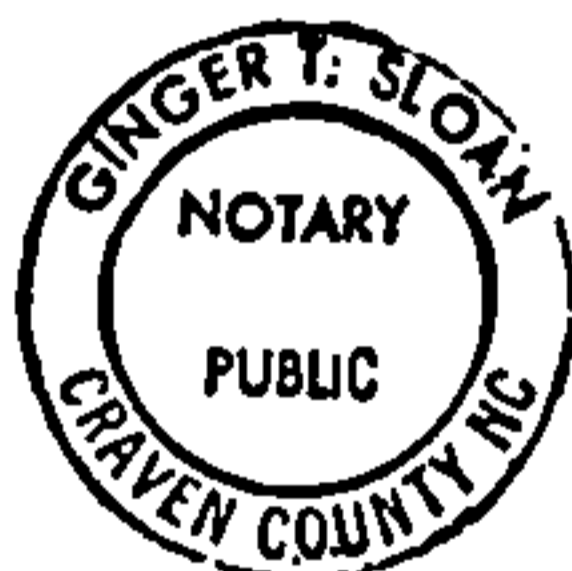
NORTH CAROLINA  
CRAVEN COUNTY

I, Ginger T. Sloan, a Notary Public of Craven County, do hereby certify that Lonnie B. Pridgen, Jr., a general partner of OLDE TOWNE SUBDIVISION, a general partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and notarial stamp or seal, this 21<sup>st</sup> day of June, 1988.

My Commission Expires:  
7-4-92

Ginger T. Sloan  
NOTARY PUBLIC



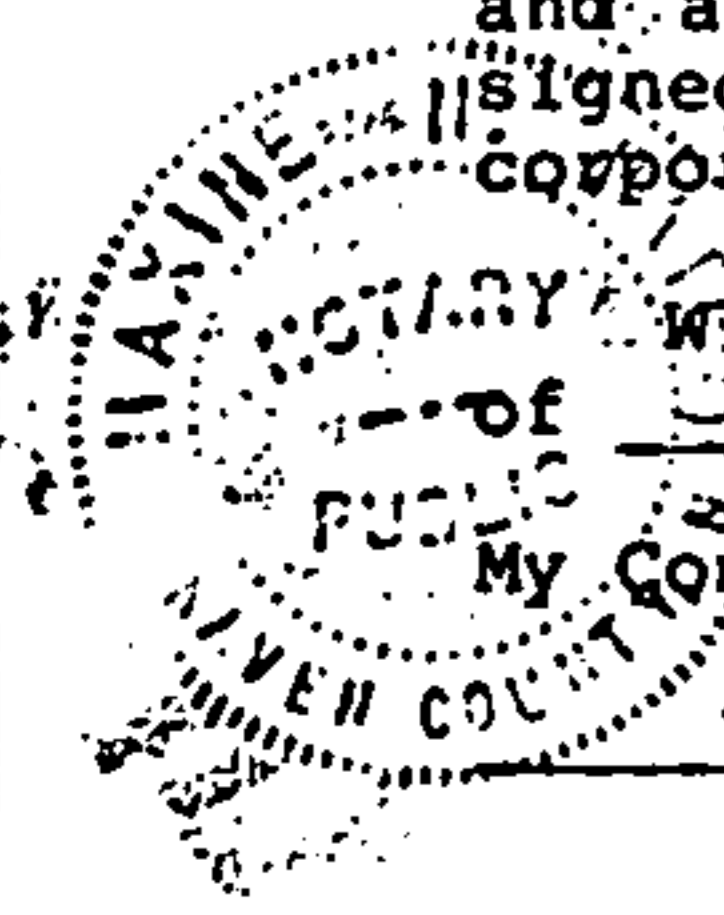
NORTH CAROLINA  
CRAVEN COUNTY

I, MAXINE PATE, a Notary Public of Craven County, North Carolina, do hereby certify that D W HATES personally appeared before me this day and acknowledged that he is ASST Secretary of 1905 Corporation, a North Carolina Corporation, Trustee, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its ASST VICE President, sealed with its corporate seal, and attested by him self as its ASST Secretary.

WITNESS my hand and notarial stamp or seal, this 21 day of JUNE, 1988.

My Commission Expires:

Maxine Pate  
NOTARY PUBLIC



NORTH CAROLINA  
CRAVEN COUNTY

I, MAXINE PATE, a Notary Public of Craven County, North Carolina, do hereby certify that D W HATES personally appeared before me this day and acknowledged that he is the ASST Secretary of Raleigh Federal Savings Bank, 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 VICE President, sealed with its corporate seal, and attested by him self as its ASST Secretary.

WITNESS my hand and notarial stamp or seal, this 21 day of JUNE, 1988.

My Commission Expires:

Maxine Pate  
NOTARY PUBLIC

