

PRESENTED
FOR
REGISTRATION

JUL 6 4 59 PM '83

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS
R.B. MCENZIE, JR.
REGISTER OF DEEDS
WAKE COUNTY, N.C.

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

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in or near the City of Raleigh, County of Wake, State of North Carolina, which is more particularly described as follows:

Being the property including Lots 1-115 inclusive, the block areas designated as A-U inclusive, all areas designated as "Homeowners Assoc. Common Area", "Common Area" and "Homeowners Association Property-Common Area" and the area of all private streets shown on map entitled "Brittany Woods, Raleigh, Wake Co., N.C.", dated May 23, 1983 and recorded in Book of Maps 1983, Page 765, Wake County Registry. (Sheets 1 and 2)

There is excluded from the above property the area of Lynn Road, Glendower Road, Newport Avenue-S.R. 1868, Chamonix Pl., the new right of way of Leesville Road, Lot 116 and the tract of land containing 21,462 square feet designated as "Recreational Facility" all as shown on map entitled "Brittany Woods, Raleigh, Wake Co., N.C.", dated May 23, 1983 and recorded in Book of Maps 1983, Page 765, Wake County Registry. (Sheets 1 and 2)

Declarant reserves the right to recombine Lots 73-78 inclusive, Lot 90 and the cul de sac of Lancashire Drive (private street) including the creation within said lots and street of additional private or public streets.

WITNESSED BY: ROBERT W. WILSON, JR.
REGISTER OF DEEDS
WAKE COUNTY, N.C. 27601-9096

Prepared By: Patricia C. Townsend
Henricard & Townsend, Attys

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, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties 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 Brittany Woods Homeowners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the

owners, together with all water and sewer lines located on and serving the properties which are located outside dedicated public easements and city rights-of-way. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All areas designated as "Homeowners Assoc. Common Area", "Common Area" and Homeowners Association Property-Common Area" and the area of all private streets shown on map entitled "Brittany Woods, Raleigh, Wake Co., N.C.", dated May 23, 1983 and recorded in Book of Maps 1983, Page 765, Wake County Registry. (Sheets 1 and 2)

Section 5. "Detached Townhome Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties upon which a Detached Townhome Dwelling is to be situated, with the exception of the Common Area.

Section 6. "Attached Townhome Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, upon which an attached Townhome Dwelling is to be situated, with the exception of the Common Area.

Section 7. "Declarant" shall mean and refer to Colonial Building Company of Raleigh, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 8. "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility leased by the Association for use by the Members.

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assess-

ment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

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

(e) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

(f) the right of the individual members to the exclusive use of parking spaces as provided in this Article.

(g) easements as provided in Article X hereof.

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

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, except utility and storm drainage easements.

Section 4. Parking Rights. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, unless a greater number is required by the Raleigh City Code at the time of initial development of Brittany Woods, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas and over any private streets leading to and from such areas. The Association shall have the right to permanently assign one vehicular parking space for each dwelling, such space to be as near the dwelling to which it is assigned as is reasonably possible. The Association may regulate the parking of boats, trailers and other such items on the Common Area. No boats or trailers of owners, members or their guest shall be parked within the right of way of any public street in or adjacent to Brittany Woods.

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

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

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

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in 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 Sub-paragraph (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 VII, Section 2, below, or

(b) August 1, 1988

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 Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote

the recreation, health, safety, and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, including the maintenance, repair and reconstruction of any storm water Impoundment Area situated on the Common Area required by the City of Raleigh to comply with its erosion and sedimentation control ordinances, such maintenance to include the cutting and removal of weeds and grass, the removal of trash and rubbish or any other maintenance necessary to keep the Impoundment Area in compliance with all applicable ordinances and statutes relative to said erosion and sedimentation control and which in the judgment of Brittany Woods Homeowners Association, Inc. is desirable to keep the Impoundment Area neat in appearance; provided, however, this covenant to maintain said area as an Impoundment Area shall terminate at such time as maintenance and preservation of the Impoundment Area as a water impoundment area is no longer required by applicable local ordinances or state statutes, services and facilities devoted to this purpose and related to the exterior maintenance of the residences situated upon the "Attached Townhome Lots" within the Properties or for the use and enjoyment of the Common Area and Water Impoundment Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the

employment of attorneys to represent the Association when necessary, the payment of lease payments on leases of recreational facilities for use by the members, and such other needs as may arise.

Section 3. Maximum Annual Assessment - Detached Townhome Lots. Until January 1 of the year immediately following the conveyance of the first Detached Townhome Lot to an Owner, the maximum annual assessment shall be Eighty-Four and No/100----- Dollars (\$ 84.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Detached Townhome Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of membership by up to twelve per cent (12%) of the previous year's maximum annual assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first Detached Townhome Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 3.(a) above by a vote of the members for the next succeeding five years and at the end of each such period of five years, for each succeeding period of five years, provided that any such charge shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than

30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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

Section 4. Maximum Annual Assessment - Attached Townhome Lots. Until January 1 of the year immediately following the conveyance of the first Detached Townhome Lot to an Owner, the maximum annual assessment shall be Three Hundred Twenty-Four and No/100----- Dollars (\$ 324.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Detached Townhome Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of membership by up to twelve per cent (12%) of the previous year's maximum annual assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first Detached Townhome Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 3.(a) above by a vote of the members for the next succeeding five years and at the end of each such period of five years, for each succeeding period of five years, provided that any such

charge shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized

Under Section 3, 4 or 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3, 4 or 5 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 sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) 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 Detached Townhome Lots, and at a uniform rate for all Attached Townhome Lots (which may not be the same rate for both Detached and Attached), and may be collected on a monthly basis. Notwithstanding any provision in this Declaration, the Articles of Incorporation and By-Laws to the contrary, no lot shall be subject to the assessment until the first day of the month following the issuance of a building permit for such lot by the City of Raleigh, and the assessment for lots for which such permits have been issued but which are not under a completed roof, may be a lesser amount as fixed by the Board of Directors of the Association, but shall not be less than twenty-five percent (25%) of the regular assessments.

Section 8. Date of Commencement of Annual Assessments:

Due Dates. The annual assessments provided for herein shall commence as to all Lots as provided in Section 7 above. The first annual assessment for each lot 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, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid.

Section 9. Effect of Nonpayment of Assessments:

Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 8 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

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 first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not

affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 12. Responsibility for Maintenance of Private Streets and Driveways. The maintenance responsibility of the private streets and driveways as shown on the aforesaid recorded map shall rest with the Association pursuant to the provisions of the Raleigh City Code Section 10-3074, which section provides substantially in part that in no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police, or other public service to the property and/or occupants when the failure is due to inadequate design or construction, blocking of access routes, or any other factor within the control of the developer, the Association, or occupants.

Section 13. Separate Books. The Association shall maintain separate books for the Attached and Detached townhome sections, or maintain one set in such a manner that separate expenses for each section can be readily determined.

ARTICLE V

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Attached Townhomes upon the Properties and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction By Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call

for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. The owner of any Attached Townhome Lot may construct, reconstruct, repair, or extend a party wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

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

owner or property owners a certificate that no contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request without charge; provided, however, that where the adjoining property owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

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

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, signs, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it,

approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VII

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property, except as provided in Section 2 of this Article VII, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half 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 seven years of the date of incorporation of this Association, the Declarant should develop additional land within the boundaries shown on the general plan

of Brittany Woods heretofore submitted to the Federal Housing Administration and the Veterans Administration, such land may be annexed by the Declarant without the consent of members provided that the Federal Housing Administration, the Veterans Administration and the City of Raleigh determine that the annexation is in accord with the general plan heretofore approved by them.

ARTICLE VIII

EXTERIOR MAINTENANCE

Section 1. Attached Townhome Lots. In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Attached Townhome which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefor), and other exterior improvements. Such exterior maintenance shall not include glass surfaces, screens, awnings, and if permitted, approved additions to dwellings made after completion of the initial dwelling (unless maintaining of such addition is affirmatively assumed by the Association) or the repair or reconstruction of any improvements on any lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect. Further, the owner of any lot may at his election plant trees, shrubs, flowers and grass in his rear yard and may also maintain portions or all of his rear yard

provided that such maintenance by the owner does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. No such maintenance by a lot owner shall reduce the assessment payable by him to the Association. If, in the opinion of the association any such owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the owner's maintenance rights for a period not to exceed one year. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

(As a matter of information to future members of this Association, the developers wish to make it known that it is a part of the original plan of development to construct a variety of dwellings with a variety of exteriors for the good of the entire subdivision. Some dwellings will require far more maintenance than others because of the types of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those connected with the conception, design, construction and financing of this subdivision as originally planned, are in accord in their belief that all members of the Association will be benefited by the variety of exteriors and, therefore, the Association should provide exterior maintenance and make a uniform rate of charge without regard to the actual cost of maintenance of each dwelling.)

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such assessment to which such lot is subject.

Section 2. Detached Townhome Lots. The Association shall have no obligation or responsibility for any maintenance of Detached Townhome Lots or any dwellings located thereon.

Section 3. Maintenance by Owner. In cases where maintenance or repair is required in this Declaration to be done or made by an Owner, and such maintenance or repair has not commenced within sixty (60) days, or if commenced, is not completed within a reasonable time thereafter, the Association may, upon thirty (30) days written notice to such owner, make or complete such maintenance or repairs, and the cost thereof shall be an additional assessment applicable only to such lot and Owner, and shall be payable as determined by the Board of Directors.

ARTICLE IX

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 front yard space of each lot and the Common Areas. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or

for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties (except for temporary office of the Declarant and/or model townhouses used by Declarant) shall be used except for residential and street purposes and for purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes.

Section 5. Dwelling Specifications. Except with prior written approval of The Architectural Committee; (a) No dwelling shall be constructed or permitted to remain on any Detached Townhome lot having an area of the main structure, exclusive of open porches and decks, of less than 750 square feet for a one-story dwelling nor less than 1,000 square feet for a dwelling of more than one-story. (b) No dwelling shall be constructed or permitted to remain on any Attached Townhome lot having an area of the main structure; exclusive of open porches and decks, of less than 700 square feet for a one-story dwelling

nor less than 1,000 square feet for a dwelling of more than one story.

Section 6. Building Setbacks - Detached Townhomes.

Except with the prior written approval of The Architectural Committee, no dwelling shall be located on any Detached Townhome Lot nearer than 30 feet to the front lot line, nor nearer than 20 feet to the rear lot line, or in such a manner that will create less than 20 feet of total side yard space.

Section 7. Additional City of Raleigh Conditions

and Restrictions. In granting its approval for the development of the property, the City of Raleigh has required that the property be subjected to additional conditions and restrictions as follows; (a) That only sixty-eight (68) building permits shall be issued for Detached Townhomes prior to the issuance of sixty-eight (68) building permits for Attached Townhomes, and (b) That there be no obligation to issue Certificates of Occupancy for Detached Townhomes constructed on lots 69-79 shown on the recorded map referred to on pages 1 and 2 hereof until building permits have been issued for all one-hundred sixteen (116) Attached Townhomes in Brittany Woods.

ARTICLE X

EASEMENTS

All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power line and

other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Areas conveyed to it, subject further easements as are requisite for the convenient use and enjoyment of the Properties.

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

All Attached Townhome lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and downspouts and walls.

ARTICLE XI

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 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners.

No amendment which would change or delete any provision herein required by the City of Raleigh shall become effective until submitted to and approved by the City; provided, however, if the City 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. Any amendment

must be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 4. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

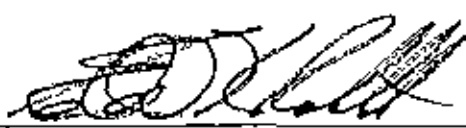
ARTICLE XII

ELECTRICAL SERVICE

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

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 6th day of July, 1983.

COLONIAL BUILDING COMPANY OF RALEIGH, INC.

By: 

President


Assistant Secretary

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Gail Houston, a Notary Public, certify that Sharon Parrish personally came before me this day and acknowledged that she is Asst. Secretary of Colonial Building Company of 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 Asst. President, sealed with its corporate seal, and attested by me myself as its Asst. Secretary.

WITNESS my hand and notarial seal this 6th day of July, 1983.



My commission expires:

8-21-85

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate _____ of Gail Houston

Notar(y)(ies) Public is

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

R. B. MCKENZIE, JR., Register of Deeds

By Charles Phillips
Asst. Deputy Register of Deeds

600
12/20/85
construction, but said funds may not be used by the Declarant as long as the purchaser is entitled to cancel.

47C-4-111 Release of Liens of Encumbrances. This Section which is identical to the UCA requires the declarant before conveying a unit to record or furnish to the purchaser releases of all liens and encumbrances affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume or shall provide a surety bond or substitute collateral for or insurance against the lien or encumbrance. This Section, however, does not apply to any real estate which the declarant has the right to withdraw.

47C-4-113 & 114 Express and Implied Warranties of Quality. These Sections of the North Carolina Act differ significantly from the corresponding Sections of the UCA. The North Carolina Act basically provides that the North Carolina law relating to express warranties and implied warranties applicable to single-family residential dwellings should also be applicable to condominiums, and the drafters decided not to extend to cover condominiums the statutory language of implied and express warranties contained in the UCA. The General Statutes Commission was persuaded that the law in North Carolina (based upon a theory of negligence as opposed to contract) provides as much protection to a purchaser as the express warranty provisions of the UCA, see Oates v. Jag, Inc., 314 NC 276 333 SE 2d 222 (1985).

47C-4-116 Statute of Limitations for Warranties. This Section of the North Carolina Act reflects the belief that the general

statute of limitations provisions of North Carolina law should apply to condominiums, and not the limitations provided in the UCA. ✓

47C-4-117 Effect of Violation on Rights of Action; Attorney's Fees. This Section provides that if a declarant or any other person subject to the Act fails to comply with any provision hereof or any provision of the declaration or by-laws, any person or class of person adversely affected by that failure has a claim for appropriate relief. It further provides that the Court may award reasonable attorney's fees to the prevailing party. This Section in the North Carolina Act differs from the UCA in that the North Carolina Act deletes the reference to punitive damages being awarded. The General Statutes Commission was of the opinion that punitive damages or other deterrent provisions of law (e.g. treble damages for unfair trade practices) should be applied within the context of the general law of the State of North Carolina, which is expressly made applicable to condominiums in Section 47C-1-108.

47C-4-118 Labeling of Promotional Material. This Section provides that if any improvement contemplated in the condominium is labeled "Need not be Built" on a plat of plan or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "Need not be Built."

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Allen,
Gary wanted this about declarants (developer)
obligations, Statute of limitations