

AA31-2444

STATE OF NORTH CAROLINA
 COUNTY OF CUMBERLAND

DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made the 9th day of April, 1981,
 by CRAFTSMEN BUILDERS, INC., a North Carolina corporation, hereinafter referred
 to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City
 of Fayetteville in Cross Creek Township, County of Cumberland, State of North
 Carolina, which is more particularly described on "Exhibit A" attached hereto;

NOW, THEREFORE, Declarant hereby declares that all of the properties
 described on "Exhibit A" attached hereto 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 said 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

Section 1. "Association" shall mean and refer to Briarwood Manor
 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 part of the Properties, including contract sellers, but excluding
 those having such interest merely as security for the performance of an obliga-
 tion.

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. The
 Common Area to be owned by the Association at the time of the conveyance of
 the first lot is described on "Exhibit A" attached hereto with the exception

of those areas designated as Lots 1 through 13 of Briarwood Manor as per map of same recorded in Plat Book 49, Page 63, Cumberland County Registry.

Section 5. "Lot shall mean and refer to each of Lots 1 through 13 as shown on plat of "Briarwood Manor" recorded in Book of Plats 49, Page 63, Cumberland County Registry.

Section 6. "Declarant" shall mean and refer to Craftsmen Builders, Inc. and its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Parking Areas. Prior to the establishment of any other use of the Common Area, the Association shall determine and establish the location of parking spaces to provide convenient access to each Lot as shown on the plat of "Briarwood Manor" recorded in Book of Plats , Page , Cumberland County Registry, and shall record a proper instrument so designating the location of the private parking spaces. The owner of each affected Lot shall be deemed to own a vested interest in the private parking spaces as originally established and recorded, and the location and existence of the private parking spaces as originally established and recorded shall not be changed, released, or modified, without the joinder in any instrument of release, change, or modification of each owner of each Lot that would be adversely affected by the release, change, or modification.

Section 2. Owners' Easements of Enjoyment. Subject to the provisions of Section 1. immediately above, 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 situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during

which any assessment against his Lot remain unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

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

Section 3. 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.

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 only one class of voting membership. Members shall be all owners of Lots 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.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. 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 assessment is made. Each such assessment, together with interest costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvements and maintenance of the Common Area including driveways and parking areas established thereon and the homes situated on the properties.

Section 3. Annual Assessment.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$180.00 per Lot.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased each year not more than 10% above the assessment for the previous year by a vote of 2/3 of the members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The annual assessment shall not be increased above the foregoing limit without the unanimous approval of all members.

(d) The Board of Directors may fix the annual assessment at an amount not in excess of the above authorized amounts from year to year.

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, repair or replacement of a capital improvement upon the Common Area, 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 the members who are voting in person or by proxy at a meeting

duly called for this purpose.

Section 5. Taxes and Liability Insurance. The Association shall make provision in its annual budget for the amounts sufficient to pay the annual cost of liability insurance premiums for such insurance on the Common Area and the amount of ad valorem property taxes levied by any lawful governmental authority on the Common Area. It shall be the duty of the Association to pay all such premiums and taxes promptly when they shall become due.

Section 5A. Default in Payment of Ad Valorem Taxes. It is provided that upon default by the Homeowners Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the common areas or assessments for public improvements to the common areas, which default shall continue for a period of six (6) months, each owner of a residential site in the development shall become personally obligated to pay to the tax assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and/or assessments due by the total number of residential sites in the development. If such sum is not paid by the owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the residential site of the then owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law against the owner personally obligated to pay the same or may elect to foreclose the lien against the property of the owner.

Section 6. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 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 membership votes 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 and 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.

Section 8. Date of Commencement of Annual Assessments: Due Dates:
The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. 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 and the Board of Directors shall have the authority to require the assessments to be paid in pro-rata monthly installments. 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 6 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. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition

to or change or alteration therein be made until the plans and 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 VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls 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 omission.

Section 4. 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 5. 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 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the dispute shall be arbitrated pursuant to the provisions of Article 45A of Chapter 1 of the General Statutes of North Carolina, and in such arbitration, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

ARTICLE VIII

USE RESTRICTIONS

Section 1. Land Use and Buildings Type. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single family townhouse dwelling not to exceed three and one-half stories in height. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article V of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

Section 2. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any Lot at any time as a residence either temporarily or permanently.

ARTICLE IX

EASEMENTS

Section 1. The Association acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance called for in Article VII of this declaration.

ARTICLE X

CONTINUING MONTHLY CHARGES

Section 1. The Declarant reserves the right to subject the real property in this subdivision to a contract with the Public Works Commission 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 the Public Works Commission by the owner of each building.

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 covenants 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, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of 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, provided that no amendment shall alter the obligations to pay ad valorem taxes, as herein provided, or affect any lien for the payment thereof established herein, or the requirements of Section 27-10 of the Fayetteville City Ordinance. Any amendment must be properly recorded.

Section 4. Additional Land. There must be consent of two-thirds (2/3) of all members for additional residential property or Common Area to be annexed to the Properties.

Section 5. FHA/VA Approval. As long as the Declarant owns one or more of Lots 1 through 13 of "BRIARWOOD MANOR" that have not once been conveyed by Declarant, the following actions will require the prior approval of the Federal Housing Administration and of the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

CRAFTSMEN BUILDERS, INC.

ATTEST:

Jo Ann Heath
Asst SECRETARY

BY Bernard Nelson
PRESIDENT

NORTH CAROLINA

CUMBERLAND COUNTY

I, Karen H. Redick (Clark), a Notary Public of said County and State, certify that Jo Ann Heath