

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR COLONY LAKE**

THIS AMENDMENT, made this fourth day of March, 1994, by Colony Lake Homeowners Association, Inc. (hereinafter, "Association").

WHEREAS, The Declaration of Covenants, Conditions and Restrictions of Colony Lake (hereinafter, "Declaration") was filed of record on April 17, 1986, in the Orange County Register of Deeds in Book 565, Page 343; and

WHEREAS, the Declaration was amended by filing of an Amendment to Declaration of Covenants, Conditions and Restrictions for Colony Lake of record in Book 1166, Page 593, Orange County Registry; and

WHEREAS, the Declaration as amended provides that it may be further amended by the vote of at least seventy-five percent (75%) of each class of members cast in person or in proxy at a meeting duly called for this purpose, written notice of which, including the subject matter of the proposed amendment, shall be sent to all Members at least thirty (30) days in advance; and

WHEREAS, on March 4, 1994, The Association of all Members did by vote of at least seventy-five percent (75%) of each class of members cast in person or by proxy at a meeting duly called for that purpose, written notice of which was sent to all members at least thirty (30) days in advance, vote to amend the Declaration; and

WHEREAS, the Association of Members desires to make this Amendment operative and binding upon all members and their properties by setting forth the Amendment and recording it, pursuant to the Declaration, in the Office of the Register of Deeds of Orange County, North Carolina.

NOW, THEREFORE, in consideration of the premises, the Association does hereby declare and set forth that the Declaration of Covenants, Conditions and Restrictions of Colony Lake of record in Book 565, Page 343, Orange County Registry, is hereby amended, superseded and restated as follows:

ARTICLE I
DEFINITIONS

Section 1. The following words when used in this Declaration or any Amendment (unless the context shall prohibit) shall have the following meaning:

(a) "Association" shall mean and refer to Colony Lake Homeowners Association, Inc., its successors and assigns.

(FOR MULTIPLE PIN ASSIGNMENT SHEETS SEE BOOK 1231 PAGES 35-62)

(b) "Properties" shall mean and refer to all such existing properties and additions thereto, as are subject to this Declaration or any Amendment under the provisions of Article II hereof.

(c) "Common Area" shall mean and refer to those areas of the Properties (including the improvements thereto) now or hereafter shown on any recorded subdivision plat of the Properties or hereafter deeded to the Association and intended to be devoted to the common use and enjoyment of the Owners of the Properties.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Area as heretofore defined and the various Lot Types shall be further defined as:

1. "Single Family Lot" shall mean and refer to any LOT, except a Duplex Lot, upon which is constructed a Living Unit not connected to any other Living Unit.
2. "Duplex Lot" shall mean and refer to any LOT upon which is constructed a Living Unit which is connected to a single other Living Unit on an adjoining LOT by virtue of a party wall placed on the dividing line of such lots. 100 Standish Drive and 103 Duchess Lane, although not connected to another Living Unit, shall be considered Duplex Lots.
3. "Townhouse Lot" shall mean and refer to Lots upon which the Living Units constructed thereon are aligned such that more than two (2) Living Units adjoin by virtue of party walls placed on the dividing lines between such Lots.

(e) "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designated and intended for use and occupancy as a residence by a single family, whether as owners or tenants.

(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot within the Properties, but excluding those having such interest merely as security for the performance of an obligation.

(g) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.

(h) "Mortgage" shall include the note holder or cestuique trust secured by a deed of trust.

(i) "Declarant" shall mean and refer to LANDWRIGHT CORPORATION, a North Carolina corporation, its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERETO

Section 1. Properties. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Orange County, North Carolina, and is more particularly described in Exhibit A attached hereto, all of which real property shall hereinafter be referred to as the "Properties".

Section 2. Additions to the Properties. Additional lands may become subject to this Declaration in the following manner:

(a) Additions. Upon approval in writing of the Association pursuant to a vote of two-thirds (2/3) of its Members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record an Amendment as herein described.

The additions authorized under this and the succeeding) subsection shall be made by filing of record an Amendment with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property or by adopting this Declaration in whole or in part by reference.

Such Amendment may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

(b) Mergers. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the Properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Properties except as hereinafter provided.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or undeveloped and undesignated land which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of a obligation shall not be a Member.

Section 2. Voting Rights. The Association shall have one class of voting membership which shall be all those Owners as defined in Section 1 of this Article. Members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1 of this Article. When more than one person holds such interest or interests in any Lot all such persons shall be Members, and 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 such Lot.

ARTICLE IV PROPERTY RIGHTS AND EASEMENTS

Section 1. Member's Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Owner shall have a right and easement of enjoyment in and to the Common Area, including rights of access, ingress and egress to and from public streets and walkways and the right to park a motor vehicle in areas specifically designated for such purposes; and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Area. The Declarant must relinquish the legal title to the Common Area described on Exhibit C attached hereto to the Association prior to the transfer of any Lot included within the Properties.

Section 3. Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to deed of trust said properties. In the event of a default upon any such deed of trust the lender's rights thereunder shall be limited to a right, after taking possession of such Common Area, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such Common Area to a wider public until the mortgage debt is satisfied whereupon the possession of such Common Area shall be returned to the Association and all rights of the Members hereunder shall be fully restored;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;

(c) The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;

(d) The right of the Association to charge reasonable admission and other fees for the use of the recreational facilities which constitute a portion of the Common Area;

(e) The legal right of an Owner of a Lot shown on the same plat to include portions of

the Common Area as may be necessary for said Owner to qualify under governmental regulations such as set back lines, open space, parking or other aspects which may be needed for inclusion for a building permit to be secured to rebuild a damaged Living Unit; and

(f) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or entity for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken thereon.

Section 4. General Easements and Associated Undertakings. All of the Properties, including Lots and Common Area, shall be subject to such easements for private roads or drives, public streets, water lines, sanitary sewers, storm drainage facilities, gas lines, cable communication transmission, telephone and electric power lines and other public utilities, whether above or below ground, as shall be established by the Declarant or by his predecessor 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 Area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties. Sight easements, if any, as may be shown upon any recorded subdivision map of the Properties are hereby reserved by the Declarant.

An easement is hereby established for the benefit of the Town of Chapel Hill and any agency or utility performing any of the following services over all Common Area and over an area of all Lots within the Properties five (5) feet from the curb line of any street or roadway established within the Properties hereby or hereafter established for the setting, removal, and reading of water and electricity meters, the maintenance and replacement of water, electricity, sewer and drainage facilities. In addition thereto, an easement is hereby established over all of the Properties for the benefit of the Town of Chapel Hill and all other agencies and personnel performing any of the following duties and services for the fighting of fires, mail delivery, collection of garbage, ambulance services and police protection.

Section 5. Temporary Construction Access and Disturbance Easement. An easement over, through and to the Common Area is hereby reserved, conveyed and established in favor of Declarant and all Owners of any Lot to be used for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials, the necessary disturbance of land for construction on any Lot, and installation of driveways, sidewalks, underground drainage and utility conduits and hookups. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Owner as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In using and taking the benefits of said easement, Declarant or its devisee and Owners shall use their best efforts to minimize any soil or land disturbance activity, and shall restore the land to a condition which is graded smooth or an Owner fail to re-
the disturbed land as required above, the Association may restore the land

to the required condition and Declarant, its designate or Owner, as the case may be, shall indemnify the Association for the reasonable expense incurred in performing such restoration. Where any Owner shall seek to take advantage of the easement herein conveyed, such Owner's rights of use shall be restricted to that Common Area which shall be reasonably servient and proximate to his Lot. Anything in the foregoing to the contrary notwithstanding, Owner shall obtain the approval of the Declarant before commencing any construction as required in Article IX of this Declaration.

ARTICLE V COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Except as hereinafter specifically provided, each Owner of any Lot, by the acceptance of title thereto, shall be deemed to covenant and agree to pay to the Association assessments as outlined in this Declaration. These assessments may be classified as (A) Annual assessments for (1) operation, maintenance, repair, replacement and improvement of Common Area; (2) maintenance and repair of the premises of an Owner in accordance with the maintenance obligations and responsibilities of the Association as set forth in Article X, Section 1 of this Declaration; (3) the payment of insurance premiums required pursuant to Article XI hereof; and (4) other purposes; and (B) Special assessments for (1) 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, however, any such Special assessment pursuant to this Article V, Section 1, (B) (1) 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 called for this purpose; and (2) maintenance, repair or improvements of the premises of an Owner as authorized in Article X, Section 1 of this Declaration without the requirement of assent of the Members as aforesaid; and (3) a special assessment relating to one Lot Type as described in Article I, Section 1.d, to be paid only by members of the Lot Type, provided that such special assessment shall have the approval of two-thirds (2/3) of the Owners of that Lot Type who are voting in person or by proxy at a meeting called for that purpose; and (4) any other purpose that 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 called for this purpose. These assessments are to be fixed, established and collected from time to time as hereinafter provided.

The Annual and Special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, 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 such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance (1) of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area

and (2) of the Lots and Living Units situated upon the Properties in accordance with Article X, Section 1 of this Declaration and (3) any other purpose that 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 called for this purpose. Without limitation, such uses shall include satisfaction of the Association's obligation regarding the Common Area to pay hazard and liability insurance, ad valorem taxes, establishment of adequate reserves for the replacement of capital improvements, if any, located within the Common Area, maintenance of recreational and other facilities located on the Common Area and payment of assessments for public and private capital improvements made to or for the benefit of the Common Area. It shall be further provided that upon default by the Association in the payment of any ad valorem taxes or assessments for public improvements to the governmental authority entitled thereto, which default shall continue for a period of six (6) months, the taxing or assessing governmental authority shall be vested with a lien on each Lot within the development in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots created within the Properties. Such liens may be foreclosed by the governmental authority in the same manner as provided for foreclosure of liens for ad valorem taxes and assessments and public improvements.

Section 3. Basis for Computing Assessments. The Board of Directors shall categorize the purpose for which it makes assessments so that each purpose will be one which is charged in the same amount to all Owners of similar kinds of LOT TYPES, as defined in Article 1, Section 1, paragraph d., unless the situation requires otherwise.

Section 4. Maximum Annual Assessment. Through December 31, 1994, the maximum annual assessment shall be Three Hundred Forty-eight and No/100 Dollars (\$348.00) per Single Family Lot, One Thousand Fifty-six and No/100 Dollars (\$1056.00) per Duplex Lot and Eight Hundred Forty and No/100 Dollars (\$840.00) per Townhouse Lot. Annual assessments may be paid on a monthly basis.

(a) The maximum annual assessment for each type of LOT may be increased each year by the Board of Directors not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the OWNERS of that type of LOT, except that for the 1995 fiscal year, the allowable increase may be 20% in order to give time for the Association to accurately determine actual maintenance costs as described in Article X Section 1.

(b) The maximum annual assessment for any type of LOT may be increased above ten percent (10%), by a vote of two-thirds (2/3) of the Owners of the type of LOT for which the assessment is being increased who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 5. Change in Criteria for Assessments. The Association may change the criteria for the assessments for EACH kind of LOT fixed by Section 3 of this Article prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the

votes of Members from the kind of LOTS whose basis is being changed, who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to such Members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 of this Article shall not apply to any change in the 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 and under Article II, Section 2, hereof.

Section 6. Notice and quorum for Any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized in Sections 4 and 5 of this Article shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 of this Article, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of the 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 in Sections 4 and 5 of this Article, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Assessments: Due Dates. The Annual assessments provided for herein shall commence and shall be due and payable as to all Lots created on the first day of the month following the conveyance of the Common Area and shall continue on the first day of each consecutive month thereafter. The first Annual assessment shall be adjusted according to the number of months remaining in the calendar year. In addition to the Annual assessment, there shall be paid at the time of the initial sale of each Lot at least two months' assessment in order to provide a working capital fund for the initial months of the Association's operation, which payment shall be exclusive of the Annual assessment otherwise due. Such working capital fund is established to insure that the Association will have funds available to meet unforeseen expenditures including, but not limited to performance of the exterior maintenance responsibilities of the Association set forth in Article X, Section 1 hereof. 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 for Special assessments, if any, 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Lots Owned by Declarant. Annual and Special assessments for all Lots owned by Declarant which are not occupied as a residence shall be as determined by the Board of Directors, but not less than twenty-five percent (25%) of such assessments for other of the same kind of Lots subject to assessments.)

Section 9. Duties of the Board of Directors. The Board of Directors of the Association

shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an Officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 of this Article), then such assessment shall be delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date or a written arrangement for payment consented to by the Association, the assessment shall bear interest from the date of delinquency at the highest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the property, and there shall be added to the amount of such assessment a charge to be determined by the Association of at least Fifty Dollars (\$50.00) for the cost of preparing and filing the complaint in such action, and in the event a judgement is obtained, such judgement shall include interest on the assessment as above provided and a reasonable attorney's fee of at least Fifty Dollars (\$50.00) to be fixed by the Court together with the costs of this action. For purposes of this Section, the amount of delinquent assessment, plus accrued interest, shall be considered evidenced by this paragraph and therefore, evidence of indebtedness shall exist hereby.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon any Lot subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a deed of foreclosure under power of sale or any other transfer in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 12. Exempt Property. The following property subject to this Declaration shall

be exempt from the assessments, charges and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; and (b) all Common Area as defined in Article I, Section 1, hereof.

**ARTICLE VI
RIGHTS OF FIRST MORTGAGEES**

Section 1. First mortgagees shall have the right, upon request and during normal business hours, to examine the books and records of the Association.

Section 2. Upon its written request, the holder of a first mortgage upon a Lot shall be entitled to written notification of any default by the Owner of said Lot in the performance of his obligations pursuant to this Declaration or the Bylaws of the Association, if such default is not cured within thirty (30) days.

Section 3. One or more first mortgagees of Lots may, jointly or singularly, in respect to the Common Area, pay taxes or other charges which are in default and have or may become a charge against same, pay overdue hazard insurance coverage after policy lapse. The parties making such expenditures shall be entitled to immediate reimbursement from the Association.

Section 4. Without having first received written approval from at least Seventy-Five percent (75%) of the first mortgagees (based upon one vote for each mortgagee) of the Lots, the Association may not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the real property which is owned, directly or indirectly, by the Association; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause;

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against the Owner of a Lot;)

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, or the upkeep of lawns and planting in the Properties;

(d) fail to maintain hazard insurance on insurable improvements upon the Common Area in an amount less than One Hundred percent (100%) of the current insurable replacement cost; or

(e) use hazard insurance proceeds from losses to any Common Area for other than the repair, replacement or reconstruction of such improvements.

**ARTICLE VII
PARTY WALLS**

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Living Units 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 negligent 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 must restore it as a party wall unless the other Owner agrees to the contrary in advance, and the other Owners thereafter making use of the wall 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 for the others under any rule of law regarding liability for negligent or willing acts of omissions.

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. Rights 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 Owners' successors intitle.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

**ARTICLE VIII
LAKE RULES AND REGULATIONS**

Section 1. Lake Use. Each Owner's use and enjoyment of the lake located upon the Properties and being a portion of the Common Area shall be subject to the following provisions:

(a) no motorized boats or any boats greater than fourteen (14) feet in length, with the exception of a boat used by the Association for maintenance, care and repair of the lake or facilities attendant thereto, shall be allowed or permitted;

(b) no boats may be stored or left unattended on the lake or upon any other Common Area;

(c) no net fishing, with the exception of minnow seines or nets, shall be allowed or permitted;

(d) no dumping or discharge of any substance into the lake shall be allowed or permitted;

(e) the Association shall not be responsible for supervision of any activities or uses of or on the lake;

(f) at all times when the lake is being utilized for any purpose by a member of his family, guest, invitee or licensee, the Owner shall be responsible for supervising such use, unless otherwise agreed to among the Owner and such members of his family, guest, invitee or licensee; and,

(g) except in cases of emergency, no spot light or search light shall be shone over or across the lake;

Section 2. Disclaimer and Standard of Liability. Neither the Association nor the Declarant assumes any responsibility for the method, manner or means by which any Owner, the members of his family, guests, invitees, licensees, tenants, contract purchasers or others acting through Owner shall use and enjoy the lake. Accordingly, neither the Association nor the Declarant shall be liable to any Owner, the members of his family, guest, invitees, licensees, tenants, contract purchasers or others acting through Owner except where physical injury to a natural person is proximately caused by the gross or wanton conduct of the Association or Declarant, as the case may be. This disclaimer and standard of liability shall be binding on the Association, the Declarant, all Owners, members of their families, guests, invitees, licensees, tenants, contract purchasers and others acting through Owner. If this disclaimer and standard of liability should be held inapplicable to or not binding upon any class or sub-class of person referenced above by a court of competent jurisdiction, it shall nonetheless survive and remain in full force and effect as to all other classes or sub-classes. Nothing contained in this Section shall be deemed a waiver or modification of any common law or statutory defenses otherwise available to the Association or Declarant, including, but not limited to, contributory negligence. Any Owner whose conduct was a concurring or a proximate cause of any injury or damage for which the Association or Declarant is sued shall indemnify and hold the Association or Declarant, or both, harmless in the event the claim on behalf of any such person injured or damaged is reduced to judgement or otherwise paid by the Association or Declarant, or both.

Section 3. Other Rules and Regulations. Pursuant to Article IV, the Association shall have the right to impose additional regulations for the use and enjoyment of the lake constructed upon the Properties.

ARTICLE IX ARCHITECTURAL and GROUNDS COMMITTEES

Section 1. Review by Committee. No building, fence, wall or other structure nor any

planting or landscaping change (other than on the inside of a fenced area) shall be commenced, erected or maintained upon the Properties by other than the Declarant 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 review committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fail to approve or disapprove such design and location within sixty (60) 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 complied with fully. The Association shall have the right to bring an action to enjoin any activity taken in violation of this Article.

ARTICLE X EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance. In addition to maintenance of the Common Area and the facilities located therein, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows:

a. Maintenance to be performed by the Association on Townhouse Lots only: Paint (including pressure washing at time of painting), repair, replace and care for roofs (including sheathing), privacy fences as installed by the builder, gutters, downspouts and exterior building surfaces. Care for and maintain trees, shrubs, grass, walks and other exterior improvements. Included in such maintenance shall be the care of decks and townhome parking areas. Such exterior maintenanceshall not include glass surfaces, windows and doors and their frames (as can normally be purchased as a single unit), storm and screen doors and windows or skylights. Nor shall maintenance include the maintenance of attic fans, skylights, electrical fixtures, plywood or other sheathing on walls, retaining walls, or the foundations of the buildings.

If there are areas inside of closed private fences, the Association shall not be responsible for the landscape maintenance thereof.

The association shall not be responsible for the repair and maintenance of any utility connections for Gas, Electric, Water, Sewer, Telephone or Cable TV or any other utility. Nor shall the Association be responsible for repair or replacement to trees, shrubs, grass, walks or any landscaping necessitated by repairs by a homeowner or utility company to any utility connection.

The obligation of the Association to provide exterior maintenance hereunder is limited to that made necessary as a result of normal wear and tear, and such obligation shall specifically exclude any repair or replacement required as a result of damage or destruction that would normally be an insured loss under an individual homeowners policy, or that is caused by a defect in materials used or that is a result of a builder defect. An example here would be the replacement of defective siding because of defective material and the subsequent painting of

newly installed siding. The Association has the authority to accept areas of maintenance which may be described from time to time in an Exterior Maintenance Policy and approved by the Board of Directors, including any maintenance that may be prohibited in this section, but all maintenance that is not specifically described by this Article, or that is not specifically accepted by the Association will be the responsibility of the owner.

Additions or improvements to lots will be maintained by the association only if they have been approved by the Architectural Review Committee, unless otherwise noted in the approval for that addition or improvement.

b. Maintenance to be performed by the Association on Duplex Lots only: Paint (including pressure washing at time of painting), repair, replace and care for roofs (including sheathing), privacy fences as installed by the builder, gutters, downspouts and exterior building surfaces. Care for and maintain trees, shrubs, grass, walks and other exterior improvements. Included in such maintenance shall be the care of decks and patios as installed by the builder. Such exterior maintenance shall not include glass surfaces, windows and doors and their frames (as can normally be purchased as a single unit), storm and screen doors and windows or skylights. Nor shall maintenance include the maintenance of attic fans, electrical fixtures, plywood or other sheathing on walls, retaining walls, or the foundations of the buildings.

If there are areas inside of closed private fences, the Association shall not be responsible for the landscape maintenance thereof.

The association shall not be responsible for the repair and maintenance of any utility connections for Gas, Electric, Water, Sewer, Telephone or Cable TV or any other utility. Nor shall the Association be responsible for repair or replacement to trees, shrubs, grass, walks or any landscaping necessitated by repairs by a homeowner or utility company to any utility connection.

The obligation of the Association to provide exterior maintenance hereunder is limited to that made necessary as a result of normal wear and tear, and such obligation shall specifically exclude any repair or replacement required as a result of damage or destruction that would **NORMALLY** be an insured loss under an individual homeowners policy, or that is caused by a defect in materials used or that is a result of a builder defect. An example here would be the replacement of defective siding because of defective material and the subsequent painting of newly installed siding. The Association has the authority to accept areas of maintenance which may be described from time to time in an Exterior Maintenance Policy and approved by the Board of Directors, including any maintenance that may be prohibited in this section, but all maintenance that is not specifically described by this Article, or that is not specifically accepted by the Association will be the responsibility of the owner.

Additions or improvements to lots will be maintained by the association only if they have been approved by the Architectural Review Committee, unless otherwise noted in the approval for that addition or improvement.

c. Maintenance to be performed by the Association on Single Family Lots only: No maintenance will be performed by the Association on any Single Family Lot. All maintenance will be the responsibility of the individual lot owners.

Section 2. Remedy for Owner's Failure to Maintain. Each Owner has the responsibility for all maintenance of his lot that is not described above in Section 1 as being the responsibility of the Association. In the event any Owner does not perform such exterior maintenance upon such Owner's Lot or the Living Unit constructed thereon, which may be deemed necessary in the opinion of the Association, the Association shall have the right, through its agents and employees, after approval by two-thirds (2/3) vote of the Board of Directors, to enter upon said Lot and to repair, maintain, and restore the Lot or exterior of the Living Unit erected thereon, and the cost of such exterior maintenance plus a surcharge of 15% for administration shall be assessed in accordance with Section 3 of this Article.

Section 3. Assessment of Cost. 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 his family, tenants, contract purchasers, guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending astride, civil commotion, aircraft, vehicles, or smoke, as the foregoing are defined and explained in North Carolina standard fire and extended coverage insurance policies, the cost of any such maintenance, replacement, or repairs that would normally be the responsibility of the Association shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the Special assessment or charge to which such Lot is subject under Article V hereof and, as part of such Special assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof.

Section 4. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance required by this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day.

ARTICLE XI INSURANCE

Section 1. Ownership of Policies. Contracts of insurance upon the Common Area shall be purchased by the Association for the benefit of the Association and its mortgagees, if any, as their interests may appear. The Association may re-evaluate its coverage from time to time and may provide, subject to Section 2 of this Article, for such insurance coverage as it deems appropriate.

Section 2. Coverage. All improvements and personal property included in the Common Area, if any, shall be insured in an amount equal to at least one hundred percent (100%) of their insurable replacement value as determined annually by the Association with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement

and such other risks as from time to time shall be customarily covered with respect thereto. In addition, the Association shall acquire and maintain in full force and effect a policy of insurance which insures against any public liability arising out of its ownership of the Common Area and the use and operation thereof with limits of liability therefor of not less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Authority, Veterans Administration or Federal National Mortgage Association. Such policies shall contain clauses providing for waiver of subrogation, if possible.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to at least one-half the annual assessment plus reserves accumulated. All costs associated with this insurance or bond will be paid by the Association

Section 4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to the Owners as an assessment according to the provisions of Article V hereof.

Section 5. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interests may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

(a) The proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.

(b) Any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

Section 7. Hazard Insurance. The Association shall not be responsible for providing any form of hazard insurance coverage for any Lot, the Living Unit thereon or for any Owner relative to his ownership of his Lot. Notwithstanding the foregoing, however, the Association may, if approved by the Board of Directors, and with approval of 2/3 of the owners of Townhouse Lots, provide hazard insurance on all Townhouse Lots to insure the areas that are normally the responsibility of the Association to maintain, or with approval of 2/3 of the owners

of Duplex Lots, provide hazard insurance on all Duplex Lots, to insure the areas that are normally the responsibility of the Association to maintain. Such coverage may only be obtained if the Association has an insurable interest in the area of the lot to be insured. The costs of providing such insurance coverage shall become part of the assessment to which that Lot Type is responsible.

**ARTICLE XII
GENERAL PROVISIONS**

Section 1. Prohibited Uses. No Lot or Living Unit shall be used for any purpose which is not permissible under applicable governmental residential zoning regulations.

Section 2. Prohibited Activities. No noxious or offensive trade or activity shall be carried on upon or in any Lot or Living Unit, nor shall anything be done thereon or therein which may be or become an annoyance or nuisance to the neighborhood.

Section 3. Temporary Structures Prohibited. No trailer, mobile home, tent, shack or garage shall at any time be used for human habitation temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

Section 4. Signs. No commercial signs, with the exception of a "For Sale" or "For Rent" sign, no more than two feet in width and three feet in height, shall be erected or maintained on any Lot or common areas without advance permission of the Board of Directors.

Section 5. Adoption of Rules. The Board of Directors shall have the authority to adopt rules for the use of the Common Area and any Lot and shall furnish a written copy of said rules to the Owners. Any violation of such rules shall be punishable by fine and/or suspension of the voting rights. The Board of Directors shall also have the power to adopt rules and regulations which prohibit or limit the types of animals or household pets which may be kept in or about the Lots or Living Units and which govern their allowance upon the Common area.

Section 6. Duration. 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.

Section 7. Amendment. This Declaration may be amended by the approval of at least seventy-five percent (75%) of the Members cast in person or by proxy at a meeting duly called for this purpose, written notice of which, including the subject matter of the proposed Amendment, shall be sent to all Members at least thirty (30) days in advance. Any such Amendment shall become operative and binding upon all Members and their properties when set forth in an Amendment and recorded in the Office of the Register of Deeds of Orange County, North Carolina.

Section 8. Addition of Recreational Facilities. The Declarant shall not add any recreational facilities as amenities for the Association without first obtaining the written consent of the Board of Directors.

Section 9. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, or otherwise delivered, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 10. Enforcement. Enforcement of this Declaration shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or 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 11. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Amendment the day and year first above written.

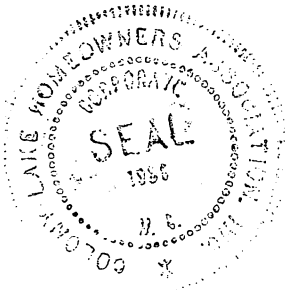
COLONY LAKE HOMEOWNERS ASSOCIATION, INC.

(seal)

By: William C. Simmons, Jr.
William C. Simmons, Jr., President

ATTEST:

Bernice Bergup
Bernice Bergup, Secretary



NORTH CAROLINA

WAKE COUNTY

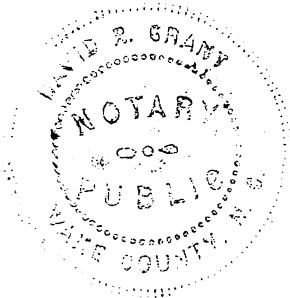
I, David R. Grant, a Notary Public for said County and State, do certify that Bernice Bergup personally appeared before me and stated that she is Secretary of Colony Lake Homeowners Association, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary.

Witness my hand and official seal, this the twenty-eighth day of March, 1994.

David R. Grant

David R. Grant, Notary Public

My commission expires 7/29/98



State of North Carolina-Orange County
The foregoing certificate(s) of _____

David R. Grant,

A Notary ~~(Notary)~~ Public for the Designated Governmental units is ~~(am)~~ certified to be correct. See Filing certificate herein.
This the 30th day of March A.D. 1994

Betty June Hayes
Register of Deeds

Betty June Hayes
By: Assistant Deputy
Register of Deeds

FILED
30 MAR 1994, at 01:50:14PM
Book 1231, Page 63 - 85
Betty June Hayes,
Register of Deeds,
Orange County, N. C.

EXHIBIT A

All that certain tract and parcel of land located in Orange County, North Carolina, more particularly described as follows:

PHASE I

BEGINNING at a stake in the southeast line of Legion Road, said stake being located at the northwest corner of the cemetery as shown on the map hereinafter referred to, and running thence along and with the southwest line of said cemetery South 39 deg. 07 min. 56 sec. East 156.24 feet to a stake; thence with the southeast line of said cemetery North 52 deg. 40 min. 21 sec. East 98.89 feet to a stake; thence South 39 deg. 47 min. 33 sec. East 293.98 feet to a stake; thence South 38 deg. 44 min. 48 sec. East 401.47 feet to a stake; thence South 38 deg. 53 min. 16 sec. East 262.15 feet to a stake; thence North 89 deg. 48 min. 12 sec. East 120.51 feet to a stake; thence South 07 deg. 54 min. 54 sec. East 316.51 feet to a stake; thence North 88 deg. 22 min. 05 sec. East 222.12 feet to a stake; thence South 48 deg. 28 min. 50 sec. East 108.80 feet to a stake in the west line of a 30 foot sewer easement; thence along and with the west line of said sewer easement the following courses and distances: South 08 deg. 48 min. 45 sec. East 63.45 feet; South 03 deg. 05 min. 57 sec. West 267.28 feet; South 07 deg. 56 min. 02 sec. East 171.10 feet; South 04 deg. 54 min. 21 sec. West 90.16 feet to a stake in the north line of a section of Colony Woods Subdivision; thence along and with the said north line of Colony Woods Subdivision North 86 deg. 10 min. 40 sec. West 416.26 feet to a stake; thence leaving the said north line of Colony Woods Subdivision and running North 28 deg. 30 min. 36 sec. West 1940.02 feet to the southeast line of Legion Road; thence along and with the southeast line of Legion Road North 52 deg. 42 min. 36 sec. East 65.91 feet to the point and place of BEGINNING, containing 17.1 acres, more or less, and being part of a 41.36 acre tract designated as the property of the J.S. McFARLING HEIRS, as per plat and survey thereof on file in the office of the Register of Deeds of Orange County in Plat Book 27, Page 108, to which plat reference is hereby made for a more particular description.

EXHIBIT B

TRACT I: BEING all of a 41.36 acre tract designated as the property of the J.S. McFARLING HEIRS, as per plat and survey thereof on file in the office of the Register of Deeds of Orange County in Plat Book 27, Page 108, to which plat reference is hereby made for a more particular description.

TRACT II: BEGINNING at an iron which iron is located 500 feet in a southerly direction from the Old Durham Road, said place of beginning being in the eastern right of way line of Cooper Street, continuing thence South 86 deg. 15 min. East 151.00 feet to an iron; thence South 0 deg. 12 min. East 81.00 feet to an iron; thence South 86 deg. 18 min. East 170.48 feet to an iron; thence South 0 deg. 07 min. East 225.24 feet to an iron; thence South 86 deg. 53 min. East along a fence for a distance of 1027.60 feet to the fence corner, continuing thence along the fence South 0 deg. 24 min. West 742.96 feet to an old iron at a fence corner, thence along the fence North 86 deg. 38 min. West 1651.03 feet to another old iron at a fence corner, thence North 4 deg. 41 min. East 367.89 feet to an iron; thence South 76 deg. 09 min. East 27.00 feet to an iron; thence North 21 deg. 35 min. East 11.00 feet to an iron; thence South 68 deg. 35 min. East 200.00 feet to an iron; thence North 21 deg. 25 min. East 300.50 feet to an iron; thence North 71 deg. 01 min. West 51.72 feet to an iron; thence along the eastern right of way line of Cooper Street North 0 deg. 12 min. West 465.00 feet to the point and place of BEGINNING, and containing 27.32 acres, according to the plat and survey of Robert J. Ayers in June, 1973 entitled "Property of M.L. Troutman and wife".

TRACT III: All that certain tract or parcel of land situated, lying and being on the south side of the Old Chapel Hill-Durham Boulevard and known as part of Tract 12 of the SPARROW PROPERTY according to survey of R.M. Pickard, Surveyor, dated April 18, 1922, plat of which is recorded in the Office of the Register of Deeds of Orange County in Book 79, Page 87, and which said tract is more particularly described as BEGINNING at a stake in the south property line of said road, the northeast corner of property conveyed to C.M. Hunt by Deed of Elmer A. Jones and wife, dated May 19, 1953, and recorded in Book 146, page 456, and running thence along the south property line of said road South 85 deg. East 115 feet to a stake, the northwest corner of property conveyed to Fred Hazzard and wife, by Deed dated January 29, 1958, and recorded in Book 165, page 403; and running thence with the said Hazzard line South 5 deg. 30 min. West 584 feet to a stake, the northeast corner of M.L. Troutman property; running thence with the said Troutman line North 87 deg. 05 min. West 175 feet to a stake in the east line of Tract 13 of the Sparrow Property; running thence with the line of the said Tract No 13 North 2 deg. East 331 feet to a stake, the southwest corner of the C.M. Hunt property; running thence with the Hunt line South 85 deg. East 100 feet to a stake and North 250 feet to the Beginning.

LESS AND EXCEPT from Tract I hereof, the parcel set forth as Phase I on the foregoing Exhibit A to this Declaration.

ADDITIONAL PHASES: Additional phases have been added to the original properties by annexation. These phase are to be considered to be fully part of the properties and may be

described as that part of the properties as recorded in the Orange County Registry as listed herein by Book and Page Number:

566-1, 598-228, 603-482, 607-320, 683-593, 702-31, 718-6, 757-98, 822-366, 841-152, 843-527, 843-531, 865-92, 865-95, 1006-1, 1167-33 and others that may herinafter be added.)

EXHIBIT C

TRACT I (Duplexes - Open Space and Rights of Way)

BEING ALL of that certain tract or parcel of land as shown on that certain plat of survey entitled "Subphase 1a -COLONY LAKE - minor Subdivision" dated March 25, 1986, by the John R. McAdams Company, Inc., as recorded in Plat Book 44, Page 40, Orange County Registry, LESS AND EXCEPT Lots 1-20, inclusive, and all public rights-of-way shown thereon, reference being hereby made to said recorded plat for a more particular description.

TRACT II (Townhouses - Common Area and Rights of Way)

BEING ALL of that certain tract or parcel of land as shown on that certain plat of survey entitled "Subphase 1b -COLONY LAKE - Minor Subdivision" dated March 25, 1986, by The John R. McAdams Company, Inc., as recorded in Plat Book 44, Page 41, Orange County Registry, LESS AND EXCEPT Lots 101, 102, 103, 104, 105, 201, 202, 203, 204, 301, 302, 303, 304, 401, 402, 403, 404, 405, 501, 502, 503, 504, 505, 601, 602, 603 and 604 and all public rights-of-way shown thereon, reference being hereby made to said recorded plat for a more particular description.