

NORTH CAROLINA
DURHAM COUNTY REGISTER OF DEEDS
DURHAM COUNTY, NC
MAY 5 3 45 PM '86

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS FOR
THE COMMONS AT BEECH HILL OWNERS, INC.

THIS DECLARATION, made on the date hereinafter set forth by ALLENTON REALTY AND INSURANCE COMPANY, 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 a parcel of real estate described in Exhibit A attached hereto and hereby incorporated, and desires to create a residential community with facilities for the benefit of said community; and

WHEREAS, nearby the property described in Exhibit A are residential communities which have been previously developed and are known as Colony Hill, Colony Hill II and Beech Hill II; and

WHEREAS, Declarant desires to merge the recreational facilities now utilized by the existing residential communities with the residential community now planned for property described in Exhibit A and additional property which has been purchased by Declarant and will be included in the overall plan of development including properties previously developed by another party under the name of Colony Hill, and properties previously developed by Declarant under the name of Colony Hill II and Beech Hill II, the property described in Exhibit A and properties to be purchased by the Declarant; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities of the existing community and for the maintenance of the recreational facilities, open spaces and other common facilities now existing and which will be developed by the Declarant; and, to this end, the Declarant desires to subject the property described in Exhibit A, together with such additions as may be hereinafter made thereto, to the covenants, restrictions, easements, charges and liens as hereinafter set forth, each and all of which is and are for the benefit of the residential community now existing and which will be developed; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities of said community, to create agencies to which should be delegated and assigned the powers of maintaining and administering the community properties and the facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges heretofore created and which may hereinafter be created; and

WHEREAS, Declarant has incorporated under the laws of the State of North Carolina a non-profit corporation called The Owners of Colony Hill, Ltd., for the purpose of owning, operating and maintaining certain recreational facilities to be utilized in common with the members of The Proprietors of Colony Hill, Inc., the members of Beech Hill Owners, Inc., the members of Beech Hill II Owners, Inc., and The Commons at Beech Hill Owners, Inc., and such other homeowners associations as the Declarant may from time to time establish.

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit A, and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings;

A. "The Commons at Beech Hill" shall mean and refer to The Commons at Beech Hill Owners, Inc.

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

C. "Common Properties" shall mean and refer to those areas of land now or hereafter shown on any recorded subdivisions plat of The Properties or hereaf-

ter deeded to The Commons at Beech Hill Owners, Inc., 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 Properties as heretofore defined, and upon which is constructed a single family residence.

E. "Owner" shall mean and refer to the record owner of a completed house located on a "Lot", whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties but, notwithstanding any applicable theory of the deed of trust, shall not mean or refer to the Trustee or cestui qui trust unless and until there has been a transfer of title pursuant to foreclosure or any proceeding in lieu of foreclosure.

F. "Member" shall mean and refer to all those Owners who are members of The Commons at Beech Hill Owners, Inc.

ARTICLE II

Property Subject to this

Declaration: Additions Thereto

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

Section 2. Additions to Existing Property. Additional land within the bounds of the property described in Exhibit B attached hereto may become subject to this Declaration in the following manner:

Additions by Declarant. The Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of its development.

The additions authorized under this and the succeeding subsection, shall be made by filing of record a supplementary Declaration of Covenants and Restrictions 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 these covenants and restrictions in whole or in part by reference.

Such supplementary Declaration 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. In no event, however, shall such supplementary Declaration revoke, modify or add to the covenants established by this Declaration with the Existing Property.

ARTICLE III

Membership and Voting Rights in The Commons at Beech Hill Owners, Inc., and Owners of Colony Hill

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 Two. 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 (1) 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.

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 subparagraph (b) below, 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; or

(b) January 1, 1990.

ARTICLE IV

Property Rights in the Common Properties

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right of easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Properties. The Declarant will convey to The Commons at Beech Hill Owners, Inc., all of the Common Properties as shown on Exhibits A and B.

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

A. The right of the Declarant and of The Owners of Colony Hill, Inc., or The Commons at Beech Hill Owners, Inc., in accordance with their Articles and By-laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and,

if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the party that executed said mortgage and all rights of the Members hereunder shall be fully restored; and

B. The right of The Owners of Colony Hill, Inc., or The Commons at Beech Hill Owners, Inc., to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and

C. The right of The Owners of Colony Hill, Inc., or The Commons at Beech Hill Owners, Inc., as provided in their Articles and By-laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

D. The right of The Owners of Colony Hill, Inc., or The Commons at Beech Hill Owners, Inc., to charge reasonable admission and other fees for the use of the Common Properties; and

E. The legal right of an Owner of property shown on the same plat to include portions of the Common Properties as may be necessary for said Owners to qualify under governmental requirements 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 building; and

F. The right of The Owners of Colony Hill, Inc., and The Commons at Beech Hill Owners, Inc., to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective

unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purposes or condition, 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.

ARTICLE V

Covenant for Assessments

Section 1. Creation of the Lien and Personal Obligations of Assessments. Each Owner of any Lot, by the acceptance of title thereto, shall be deemed to covenant and agree to pay to:

A. The Commons at Beech Hill Owners, Inc., assessments which may be necessary or desirable for the maintenance of the common areas, the exterior painting of any building located thereon, repair or replacement of a roof to any building located on The Property, and for the creation, maintenance and cleaning of all parking lots, walkways and driveways located within the bounds of The Property; and

B. The Owners of Colony Hill, Inc., assessments which may be necessary or desirable for the purpose of erecting, maintaining, preserving, decorating, painting or making capital improvements to any and all recreational facilities located on property owned by The Owners of Colony Hill, Inc., and used for recreational and cultural uses by the members of The Owners of Colony Hill, Inc., the Proprietors of Colony Hill, Inc., The Beech Hill Owners, Inc., The Beech Hill II Owners, Inc., The Commons at Beech Hill, Inc., and any other homeowners association which may be created by the Declarant.

The 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 Assessments. The assessments levied by The Owners of Colony Hill, Inc., or The Commons at Beech Hill Owners, Inc., shall be used for the purpose of promoting the recreation, health, safety and welfare of the members of The Proprietors of Colony Hill, Inc., The Owners of Colony Hill, Inc., Beech Hill Owners, Inc., Beech Hill II Owners, Inc., and The Commons at Beech Hill Owners, Inc., and the members of any other homeowners association which may be created by the Declarant all such uses including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereto, and for the costs of labor, equipment, materials, management and supervision thereof.

Section 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$ 125.00 per Lot.

(a) From and after January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds of each class of members 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 at an amount not in excess of the maximum.

Section 4. Fees for Use of Recreational Facilities. The Board of Directors of The Owners of Colony Hill, Inc., may, by written contract, permit the use of all of its facilities to

the members of The Proprietors of Colony Hill, Inc., Colony Hill Owners, Inc., or Beech Hill Owners, Inc. Each family unit of The Commons at Beech Hill, Inc., may be charged their pro rata share for the use and enjoyment of the recreational facilities owned by The Owners of Colony Hill, Inc.

Section 5. Special Assessments for Capital Improvements. In addition to the 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 or 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 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 Sectiona 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 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 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 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. 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 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 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. 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 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid 30 days after the due date shall bear interest from the due date at the rate of 6% 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 un-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 VI

Architectural Control Committee

Section 1. Review by Committee. No building, fence, wall or other structure 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 struc-

tures and topography by the Board of Directors of The Commons at Beech Hill Owners, Inc., 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 specification have been submitted to it, approval will not be required and this Article will be deemed to have been complied with fully. Beech Hill II Owners, Inc., shall have the right to bring action to enjoin any activity taken in violation of this Article. No planting, object or landscaping change or addition shall be made until approved in writing by the architectural committee.

Section 2. The requirements in Section 1 above shall not apply to the Declarant during the development of the property described in Exhibit A or any additions by the Declarant as provided in Article II, Section 2, of this Declaration.

ARTICLE VII

General Provision

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

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

Section 3. No trailer, mobile home, basement, 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. The Board of Directors of The Commons at Beech Hill Owners, Inc., or The Owners of Colony Hill, Inc., shall have the authority to adopt rules for the use of the Common Properties 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 right to use specified portions of the Common Properties. The Board of Directors of The Commons at Beech Hill Owners, Inc., or The Owners of Colony Hill, Inc.,

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 which govern their allowance upon the Common Properties.

Section 5. Duration. 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, 2004 after which time they shall be automatically extended for successive periods of ten (10) years, and shall inure to the benefit of and be enforceable by The Commons at Beech Hill Owners, Inc., or The Owners of Colony Hill, Inc., or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

Section 6. Amendment. These covenants and restrictions may be amended during the first twenty (2) year period by an instrument signed by not less than ninety-five per cent (95%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners. Any such amendment shall become operative and binding upon all members and their properties when set forth in an Amended Declaration of Covenants and Restrictions and recorded in the office of the Register of Deeds of Durham County, North Carolina.

Section 7. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 8. 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, post-paid, to the last known address of the person who appears as Member or Owner on the records of the Proprietors at the time of such mailing.

Section 9. Enforcement. Enforcement of these covenants and restrictions 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 Proprietors

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 10. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

IN WITNESS WHEREOF, Allenton Realty and Insurance Company, Inc., has caused this instrument to be duly executed as of this 25th day of April, 1986.

ALLENTON REALTY AND INSURANCE COMPANY, INC., The Declarant

BY: *Allen Aldridge Jr*
President

ATTEST:

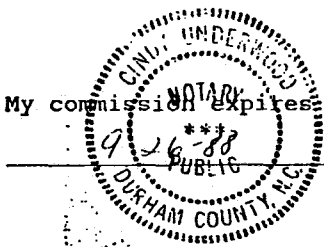
Allen Aldridge Jr
Asst. Secretary

NORTH CAROLINA

DURHAM COUNTY

I, *Cindy Underwood*, a Notary Public of *Durham* County, do hereby certify that *Allen Aldridge Jr* personally appeared before me this day and acknowledged that he is *Asst.* Secretary of ALLENTON REALTY AND INSURANCE COMPANY, 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 *him* self as its *Asst.* Secretary.

Witness my hand and notarial seal, this *25th* day of *April*, 1986.



Cindy Underwood
Notary Public

EXHIBIT A

DESCRIPTION

BEGINNING at a stake located in the property line on the north side of Pickett Road, said stake being at the southwest corner of the property owned or formerly owned by Noland E. Wiggins, Jr. (Deed Book 434, page 860), as shown on the plat hereinafter referred to, and thence from said point and place of beginning along and with the property line on the north side of Pickett Road in a westerly and counterclockwise direction along an arc with a radius of 1030.01 feet, an arc distance of 65.65 feet to a stake; thence in a northwesterly and clockwise direction along an arc with a radius of 20 feet, an arc distance of 32.10 feet to a stake located in the property line on the east side of Colony Road; thence with said property line North 24° 33' East 80.65 feet to a point; thence continuing with said property line in a northeasterly and clockwise direction along an arc with a radius of 267.45 feet, an arc distance of 184.38 feet to a point; thence continuing with said property line in a northerly and counterclockwise direction along an arc with a radius of 596.64 feet, an arc distance of 573.43 feet to a stake; thence continuing with the property line on the southeast side of Colony Road in a northeasterly and clockwise direction along an arc with a radius of 225.25 feet, an arc distance of 319.75 feet to a stake; thence along and with the property line on the south side of Colony Road South 89° 41' 0" East 255.19 feet to a stake; thence continuing with said property line in a southeasterly and clockwise direction along an arc with a radius of 550.0 feet, an arc distance of 532.60 feet to a stake; thence South 55° 48' 0" West 5.0 feet to a stake; thence along and with the property line on the west side of Colony Road in a southeasterly and clockwise direction along an arc with a radius of 244.14 feet, an arc distance of 245.01 feet to a stake; thence continuing with said property line South 23° 18' West 95.09 feet to a stake; thence South 81° 32' 30" West 64.91 feet to a stake; thence South 77° 55' 08" West 50.26 feet to a stake; thence North 58° 47' 23" West 20.32 feet to a stake; thence South 71° 57' 52" West 31.75 feet to a stake; thence North 71° 18' 0" West 143.51 feet to a stake; thence South 86° 32' 26" West 61.0 feet to a stake; thence North 82° 55' 46" West 190.75 feet to a stake; thence North 76° 30' 09" West 66.0 feet to a stake; thence North 83° 27' 41" West 60.95 feet to a stake; thence South 12° 49' 13" East 33.48 feet to a stake; thence North 89° 32' 54" West 24.10 feet to a stake; thence South 22° 50' 19" West 167.72 feet to a stake; thence with the northern line of the Noland E. Wiggins line North 57° 29' 0" West 320.50 feet to a stake located in the center of a City of Durham sanitary sewer easement; thence with said center line South 49° 45' 0" West 363.65 feet to a stake; thence continuing with said center line South 10° 58' 0" West 145.57 feet to the point and place of BEGINNING, containing 12.29 acres, according to a plat and survey of the property of Home Savings and Loan Association by J. Watts Copley, Land Surveyor, dated May 11, 1977, recorded in Durham County Registry in Plat Book 101, at page 183, to which reference is herewith made for more particular description of same.

EXHIBIT B

BEGINNING at a stake located in the property line on the south side of Colony Road, said stake being at a point located in an easterly direction approximately 106.15 feet from the point of intersection of said property line with the property line on the east side of Whitburn Place, if extended, said stake also being at the northeast corner of Lot #21 as shown on the plat hereinafter referred to; and thence from said point and place of beginning South $04^{\circ} 24' 57''$ West 181.37 feet to a stake; thence South $15^{\circ} 56' 23''$ East 171.83 feet to a stake; thence South $06^{\circ} 20' 15''$ West 41.32 feet to a stake; thence South $38^{\circ} 51' 09''$ West 53.98 feet to a stake; thence South $52^{\circ} 24' 44''$ West 69.14 feet to a stake; thence South $76^{\circ} 27' 57''$ West 56.27 feet to a stake; thence North $82^{\circ} 31' 37''$ West 71.80 feet to a stake; thence North $63^{\circ} 08' 04''$ West 64.02 feet to a stake; thence North $43^{\circ} 26' 24''$ West 84.75 feet to a stake; thence North $66^{\circ} 33' 08''$ West 288.57 feet to a stake; thence North $30^{\circ} 30' 21''$ East 119.82 feet to a stake; thence North $04^{\circ} 39' 43''$ West 98.52 feet to a stake located in the property line on the south side of Colony Road; thence in a northeasterly and easterly direction along and with said property line on the south side of Colony Road 536.14 feet to the point and place of BEGINNING, and being all of Lots #1-21 and the roadbeds of Pilton Place and Whitburn Place, all as shown on the map and survey of The Commons, Phase I, according to plat and survey thereof by Philip Post & Associates dated April 14, 1986, recorded in Durham County Registry in Plat Book 111, at page 9, to which plat reference is herewith made for a more particular description of said property.