

## DECLARATION

## OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by VALLEY, LTD., hereinafter referred to as "Declarant".

## WITNESSETH:

WHEREAS, Declarant is the owner of certain property in City of Durham, County of Durham, State of North Carolina, which is more particularly described as:

BEGINNING at a stake located in the property line on the North side of Chapel Hill Road, said stake being at the Southwest corner of the Sampson E. Harrell Property (Book 1051, page 58, Durham County Registry) and from said point and place of beginning in a Westerly and clockwise direction along an arc with a radius 2,313.94 feet, a distance of 93.76 feet; thence continuing with said property line South 87° 25' 16" West 523.90 feet to a stake, the control corner; thence with the Uzzle line North 2° 53' 59" West 299.92 feet to a stake; thence South 87° 19' 52" West 99.86 feet to a stake; thence with the Blalock line North 02° 53' 03" West 120.79 feet to a stake; thence South 87° 14' 40" West 99.82 feet to a stake; thence North 02° 51' 08" West 150.0 feet to a stake; thence North 53° 19' 10" East 293.96 feet to a stake; thence South 86° 47' 51" East 105.0 feet to a stake; thence North 3° 12' 09" East 90 feet to a stake; thence South 86° 47' 51" East 185.0 feet to a stake; thence South 77° 26' 14" East 76.36 feet to a stake in the property line on the Southwest of a proposed Archdale Drive; thence along and with said proposed property line in a Southeasterly and counterclockwise direction along an arc with a radius of 1084.0 feet a distance of 529.13 feet to a stake; thence North 79° 56' 29" West 55.73 feet to a stake; thence North 86° 38' 39" West 82.0 feet to a stake; thence along and with the Harrell line South 03° 04' 19" West 430.06 feet to the point and place of BEGINNING containing 12.146 acres more or less and being Phase I of The Valley according to plat and survey thereof by Southeastern Surveys, Inc., dated April 26, 1982 and recorded in Durham County Registry in Plat Book 101, Page 50, to which reference is herewith made for a more particular description of same.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest

PREPARED BY C.W. White

MOUNT, WHITE, KING, HUTSON, WALKER & CARDEN, P.A. ATTORNEYS AT LAW DURHAM, NORTH CAROLINA

MAIL to: C.W. White

in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to The Valley Homeowners Association, its successors and assigns.

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

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

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Areas to be owned by the Association at the time of the conveyance of the first lot is described as follows:

10.410 acres of open space as shown on the plat of Phase I of The Valley by Southeastern Surveys, Inc., recorded in Durham County Registry in Plat Book 101, Page 50, specifically excluding therefrom all of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 as shown on said plat.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Valley Ltd., 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. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the

Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable 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 remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

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

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

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

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

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

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned, specifically including additional Lots annexed by Declarant as provided in Article VIII. 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 the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on January 1, 1990.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, 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 Assessment. 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 improvement and maintenance of the Common Area, and of the homes situated upon the properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first

Lot to an Owner, the maximum annual assessment shall be Eighty Dollars (<sup>760.00</sup>~~\$80.00~~) 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 10% 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 10% by a vote of two-thirds (2/3) 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 <sup>annual</sup>~~annual~~ assessment at an amount not in excess of the maximum.

#### 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 each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. 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 Section 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 sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting.

No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. 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 7. 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 thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. 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. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid 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 9. 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.

Section 10. Assessments by Governmental Authority Upon Default by Association. 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 months, the taxing or assessing governmental authority shall be vested with a lien on each individual 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 in the development. 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.

## ARTICLE V

### ARCHITECTURAL CONTROL

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

### EXTERIOR MAINTENANCE

In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situ-

ated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

## 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 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 liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. 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, 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 VIII

##### STAGED DEVELOPMENTS

Additional land within the 31.467 acres located on the south side of the proposed Archdale Drive and on the north side of Chapel Hill Road as shown on plat and survey of the property of Allenton Realty and Insurance Company by Southeastern Surveys, Inc., dated May 10, 1982, may be annexed by the Declarant without the consent of members within 10 years of the date of this instrument.

#### ARTICLE IX

##### REFUSE COLLECTION

The Association shall provide private hand refuse collection from each individual Lot which shall then be delivered to a central location for city bulk collection of all refuse.

#### ARTICLE X

##### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term

of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. 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.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 24 day of June, 1982.

VALLEY, LTD.  
A North Carolina General  
Partnership

BY: ALLENTON REALTY AND INSURANCE  
COMPANY, MANAGING PARTNER

BY: Ann D. Dirdge  
President

ATTEST:

Ray C. Cochran  
Notary Secretary

NORTH CAROLINA

DURHAM COUNTY

BCK 1085 PAGE 1002

I, a Notary Public of the County and State aforesaid, certify that C. P. Cochran personally came before me this day and acknowledged that he is Ann Secretary of ALLENTON REALTY AND INSURANCE COMPANY, a North Carolina 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 \_\_\_\_\_ self as its Ann Secretary.

Witness my hand and official stamp or seal, this 24 day of June, 1982.

Barry W. Powell  
Notary Public

My commission expires:

06/17/86

The foregoing certificate (s) of \_\_\_\_\_

Betty D. Preece

A Notary (Notaries) Public of designated Governmental units  
is (are) certified to be correct.

This 28 day of June 19 82

Ruth C. Garrett  
Register of Deeds

By: Richard S. Dillman  
Ass't., Deputy Register of Deeds

FILED  
BOOK 101 PAGE 272-602

JUN 28 10 40 AM '82

RUTH C. GARRETT  
REGISTER OF DEEDS  
DURHAM COUNTY, N.C.

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