

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 the County of Durham, State of North Carolina, which is more particularly described as:

BEGINNING at a stake located in the property line on the southwest side of Valley Run, said stake being at the eastern corner of Lot #6, Block A, as shown on plat hereinafter referred to; and thence from said point and place of beginning South 50° 20' 00" West 198.10 feet to a stake; thence South 44° 26' 25" East 82.48 feet to a stake; thence with the northwest line of Lot #4 North 42° 37' 01" East 196.11 feet to a stake located in the property line on the southwest side of Valley Run; thence along and with said property line in a northwesterly and counter-clockwise direction along an arc with a radius of 341.56 feet a distance of 46.00 feet to a point; thence continuing with said property line North 39° 40' 00" West 10.00 feet to a point and place of BEGINNING, being all of Lot #5, Block A, Section 1 of Valley Run, according to plat and survey thereof by Southeastern Surveys, Inc., dated April 15, 1982, recorded in Durham County Registry in Plat Book 100 at page 187, to which reference is herewith made for a more particular description of same; and

WHEREAS, Kelly Construction Company of Durham, Inc., is the owner of a parcel of land located in the County of Durham, State of North Carolina, which is more particularly described as:

BEGINNING at a stake located in the property line on the southwest side of Valley Run, said stake being at the northwest corner of Lot #3, Block A as shown on plat hereinafter referred to; and thence from said point and place of beginning South 33° 48' 36" West 206.89 feet to a stake; thence North 44° 26' 25" West 84.08 feet to a stake; thence with the east line of Lot #5 North 42° 37' 01" East 196.11 feet to a stake located in the property line on the southwest side of Valley Run; thence along and with said property line in a southeasterly and counter-clockwise direction along an arc with a radius of 341.56 feet a distance of 52.50 feet to the point and place of BEGINNING, and being all of Lot #4, Block A, Section 1 of Valley Run, according to plat and survey thereof by Southeastern Surveys, Inc., dated April 15, 1982, recorded in Durham County Registry in Plat Book 100, at page 187, to which reference is herewith made for a more particular description of same; and

WHEREAS, Canterbury Homes, Inc., is the owner of certain parcels of land located in the County of Durham, State of North Carolina, which is more particularly described as:

PARCEL #1

BEGINNING at a stake located in the property line on the west side of Chapel Hill Road, said stake being at the southeast corner of Lot #2, Block C as shown on the plat hereinafter referred to; thence from said point and place of beginning along and with the property line on the west side of Chapel Hill Road in a southerly and clockwise direction along an arc with a radius of 1574.91 feet a distance of 128.10 feet to a stake; thence North 79° 56' 29" East 243.63 feet to a stake; thence North 03° 16' 54" East 98.79 feet to a stake; thence along and with the southern line of Lot #2 South 86° 46' 29" East 250.26 feet to the point and place of BEGINNING and being all of Lot #1, Block C, Section 1 of Valley Run according to plat and survey thereof by Southeastern Surveys, Inc., dated March 1982, recorded in Durham County Registry in Book 100 at page 181, to which reference is herewith made for a more particular description of same.

PARCEL #2

BEGINNING at a stake located in the property line in the north side of Valley Run, said stake being at the southwest corner of Lot #3, Block B as shown on the plat hereinafter referred to; thence from said point and place of beginning North 86° 46' 32" West 4.14 feet to a point; then continuing with said property line in a northwesterly and clockwise direction along an arc with a radius of 291.56 feet a distance of 141.70 feet to a stake; thence with the east line of Lot #6 North 31° 04' 13" East 142.64 feet to a stake; thence South 41° 33' 27" East 26.50 feet to a stake; thence with the Crocker line South 86° 47' 16" East 55.04 feet to a stake; thence with the west line of Lot #3 South 03° 13' 28" East 141.08 feet to the point and place of BEGINNING and being all of Lots #4 and 5, Block B, Section 1 of Valley Run, according to plat and survey thereof by Southeastern Surveys, Inc., dated April 15, 1982, recorded in Durham County Registry in Plat Book 100 at page 187, to which reference is herewith made for a more particular description of same.

NOW, THEREFORE, Declarant, Kelly Construction Company of Durham, Inc., and Canterbury Homes, Inc., hereby declare that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Valley Run Homeowners Association, Ltd., 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 shown on plat of Section 1, Valley Run, by Southeastern Surveys, Inc., recorded in Durham County Registry in Plat Book _____ at page _____.

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(s) 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 (\$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 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 (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% 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.

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 situated 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 40.631 acres located on the north side of the proposed Archdale Drive and on the west 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 provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

ARTICLE IX

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.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, Valley, Ltd., has caused this instrument to be executed by its General Manager in accordance with the partnership agreement, and Kelly Construction Company of Durham, Inc., and Canterbury Homes, Inc., have caused this instrument to be signed in their corporate names by their duly authorized officers and their seals to be hereto affixed by

authority of their respective Boards of Directors, the day and year first above written.

ATTEST:

C. Wallace Incoe
Secretary

ATTEST:

Judith H. Kelly
Secretary

ATTEST:

Larry Marshall
Secretary

(Seals: KELLY CONSTRUCTION COMPANY OF DURHAM, INC. CORPORATE SEAL)

VALLEY, LTD.

BY: ALLENTON REALTY AND INSURANCE COMPANY
General Partner

BY Ann Felding
President

KELLY CONSTRUCTION COMPANY OF DURHAM, INC.

BY Dana H. Kelly
President

CANTERBURY HOMES, INC.

BY [Signature]
President

NORTH CAROLINA
DURHAM COUNTY

I, C Ralph Cochran, a Notary Public, do hereby certify that C WALLACE Incoe personally came before me this day and acknowledged that he is ^{ASST} Secretary of ALLENTON REALTY AND INSURANCE COMPANY, General Partner of Valley, Ltd., 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 himself as its ^{ASST} Secretary.

Witness my hand and notarial seal, this the 27th day of MAY, 1982.

C Ralph Cochran
Notary Public

(Seal: NOTARY PUBLIC)

My commission expires:
7/4/84

NORTH CAROLINA
DURHAM COUNTY

I, C RALPH COCHRAN, a Notary Public, do hereby certify that JUDITH H. KELLY personally

came before me this day and acknowledged that She is Secretary of KELLY CONSTRUCTION COMPANY OF DURHAM, 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 notarial seal, this the 27th day of May, 1982.

Ralph Cochran
Notary Public

My commission expires:

7/4/84

NORTH CAROLINA
DURHAM COUNTY

I, C. Ralph Cochran, a Notary Public, do hereby certify that Larry MARSHAM personally came before me this day and acknowledged that he is Secretary of CANTERBURY HOMES, 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 himself as its Secretary.

Witness my hand and notarial seal, this the 27th day of MAY, 1982.

Ralph Cochran
Notary Public

My commission expires:

7/4/84

FILED
BOOK 1084 PAGE 121-132
JUN 1 3 13 PM '82
RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, N.C.

State of North Carolina - Durham County
For filing certificate(s) of
C. Ralph Cochran
A Notary (Notaries) Public of the Designated Governments
units is (are) certified to be correct.
This the 27th day of May A.D. 1982
Ruth C. Garrett Dorothy B. Bellman
Register of Deeds By Assistant Deputy
Register of Deeds