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Prepared Out of State
Return to: MANNING, FULTON & SKINNER
Post Office Box 20389
Raleigh, NC 27619-0389
File No. T. 12318 (CBM)

DECLARATION
OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
HOPE VALLEY FARMS

THIS DECLARATION, made this 27th day of MAY,

Declaration 1982 by Hope Valley Venture, a North Carolina Joint Venture,
Book 1561 hereinafter called "Declarant", with its principal office in
Page 496 Raleigh, Wake County, North Carolina.
11-27-89

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property described on Exhibit "A" attached hereto, and desires to create thereon and on other adjacent lands an exclusive residential community to be known as "Hope Valley Farms"; and,

WHEREAS, Hope Valley Farms is intended to be developed in stages or phases containing townhouses, cluster homes, apartments, condominiums and detached single family dwellings, as well as areas to be used for commercial and office purposes; and,

WHEREAS, in order to provide a coordination and continuity among the various phases and the owners of dwelling units therein, it is deemed appropriate to have an association in which all Owners in those areas within Hope Valley Farms that are subjected to the lien hereof are members; and,

WHEREAS, Declarant desires to have certain areas of the Property owned, maintained and administered by this association for the benefit of all owners within the development, which areas are hereinafter referred to as "COMMUNITY COMMON PROPERTIES"; and,

WHEREAS, Declarant has deemed it desirable for the preservation, protection and enhancement of the Property to insure the residents' enjoyment of the specific rights, privileges and easements in the Community Common Properties, and to also have this association administer and enforce these covenants and restric-

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tions, and collect and disburse the assessments and charges hereinafter created; and,

WHEREAS, Declarant has incorporated under the laws of the State of North Carolina, as a non-profit corporation, Hope Valley Farms Homeowner's Association, Inc., for the purpose of exercising the aforesaid functions.

NOW THEREFORE, Declarant declares that the lands described upon Exhibit "A" annexed hereto, and all other lands within Hope Valley Farms that are subjected by Declarant to the lien of this Declaration, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

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

(a) "Hope Valley Farms" shall mean and refer to the lands described upon Exhibit "B" attached hereto.

(b) "Corporation" shall mean and refer to Hope Valley Farms Homeowner's Association, Inc., its successors and assigns.

(c) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and any amendments hereto which are recorded in the Office of the Register of Deeds, Durham County, North Carolina.

(d) "Property" shall mean and refer to the lands described upon Exhibit "A" annexed hereto and all other lands within those described upon Exhibit "B" hereto that are subjected by Declarant to the lien hereof.

(e) "Community Common Properties" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by the Corporation such as open spaces, buf-

fers, greenways, jogging path, private streets, medians and entranceways.

(f) "Living Unit" shall mean and refer to any structure, or part of a structure designed and built for occupancy as a single family residence, other than one constructed upon a Single Family Lot, and shall include single family residences, townhouses, cluster homes, condominiums and apartments located on the Property, whether attached or detached.

(g) "Member" shall mean and refer to a member of the Corporation.

(h) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit, but shall exclude any person or entity having such interest merely as security for the performance of an obligation.

(i) "Declarant" shall mean and refer to Hope Valley Venture, its designated successors and assigns.

(j) "Lot" shall mean and refer to any numbered or lettered tract of land shown upon any plat of a portion of the Property recorded in the Office of the Register of Deeds, Durham County, North Carolina, as such plat may be amended or modified, and shall include any tract designated for commercial or office use rather than residential use, but shall not include the Community Common Properties, or any tract upon which "Recreational Facilities" have been or are intended to be constructed.

(k) "General Plan of Development" shall mean and refer to the general plan for development of Hope Valley Farms submitted by Declarant to the City of Durham, North Carolina.

(l) "Recreational Facilities" shall mean and refer to those amenities described in Section 4. of Article X hereof.

(m) "Residential Lot" shall mean and refer to any Lot upon which one or more Living Units has been, or may be, constructed.

(n) "Commercial Lot" shall mean and refer to any Lot other than a Residential Lot.

(o) "Single Family Lot" shall mean and refer to a Residential Lot upon which only one Living Unit may be constructed under applicable zoning or other limitations.

ARTICLE II

PROPERTY SUBJECT TO THE DECLARATION

Section 1. Existing Property. The real property which hereby is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration are those lands located in Durham County, North Carolina described on Exhibit "A" attached hereto, and all other lands within those described upon Exhibit "B" hereto that are subjected by Declarant to the lien hereof.

Section 2. Mergers. Upon a merger or consolidation of the Corporation with another organization as provided by its by-laws, its properties, rights and obligations may be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights and obligations of the Corporation, as a surviving corporation, pursuant to a merger. The surviving or consolidated corporation may commonly administer these Covenants and Restrictions with respect to the Property, together with the Covenants and Restrictions established upon any other lands. No such merger or consolidation, however, shall affect any revocation, change or addition to these Covenants and Restrictions with respect to the Property, except as hereinafter provided.

Section 3. Declarant may, by amendment hereto recorded with the Register of Deeds of Durham County, North Carolina, subject to the lien hereof additional lands within those described upon Exhibit "B" hereto, which additional lands shall thereupon become portions of the "Property".

ARTICLE III

MEMBERSHIP

Section 1. Those Entitled to Membership. Every person or entity who is a record Owner of a Lot or Living Unit, including contract sellers, but excluding persons or entities who hold an interest merely as security for the performance of an obligation, shall be a member of the Corporation. Membership shall be appurtenant to, and may not be separated from, the ownership of a Lot or Living Unit. Ownership of such Lot or Living Unit shall be the sole qualification for membership.

ARTICLE IV

VOTING RIGHTS

Section 1. Classes of Voting Membership. The Corporation shall have three classes of voting membership:

Class A. Class A Members shall consist of all Owners of Residential Lots except Declarant. Each Class A Member shall be entitled to one vote for each Single Family Lot owned by it, and for each Living Unit which may be constructed upon a Residential Lot other than a Single Family Lot under the more restrictive of: (a) applicable zoning or (b) issued building permits. If more than one person or entity owns an interest in any Residential Lot or Living Unit, all such persons and entities shall be Members, however, the vote for such Lot or Living Unit shall be exercised as the majority of such persons among themselves determine. At any meeting of the Members, a representation by any of such persons (or entities) that a majority of such persons (and entities) have agreed as to the vote for such Lot or Living Unit shall be conclusive, unless another of such persons (or entities) contests such representation at such meeting, prior to the casting of a vote.

Class B. Class B Members shall consist of all Commercial Lot Owners except Declarant. Each Class B Member shall be entitled to one vote for each 500 square feet of area of

each Commercial Lot owned by it. If more than one person or entity owns an interest in any Commercial Lot, all such persons and entities shall be Members, however, the votes for such Lot shall be exercised as the majority of such persons among themselves determine. At any meeting of the Members, a representation by any of such persons (and entities) that a majority of such persons (and entities) have agreed as to the votes for such Lot shall be conclusive, unless another of such persons (or entities) contests such representation at such meeting, prior to the casting of a vote.

Class C. The Class C Member shall be Declarant. The Class C Member shall be entitled to three (3) votes for: a) each Single Family Lot owned by it; b) each Living Unit which may be constructed upon a Residential Lot owned by it, other than a Single Family Lot under the more restrictive of: (1) applicable zoning or (2) issued building permits; and (c) each 500 square feet of area of each Commercial Lot owned by it. The Class C membership shall cease, and be converted to Class A membership or Class B membership, as the case may be, on the happening of the earlier of:

(a) the total votes outstanding in Class A and Class B memberships equalling the total votes outstanding in Class C membership.

(b) seven years following the conveyance of the first Living Unit to the first owner thereof, other than the entity constructing such Living Unit.

Section 2. Limitations on votes of Commercial Lot Owners.

The foregoing section notwithstanding, at no time shall the total number of votes which may be cast by Class B Members and by the Class C Member by reason of its ownership of Commercial Lots, exceed ten percent (10%) of the total number of votes which may be cast by all Members. In the event the total number of votes which may be cast by Class B members and by the Class C Member by reason of its ownership of Commercial Lots exceeds ten percent

(10%) of the total votes which may be cast, the number of votes which may be cast by each Class B member and by the Class C member by reason of its ownership of Commercial Lots shall be proportionately reduced, so that the total of votes which may be cast by Class B Members and by the Class C member by reason of its ownership of Commercial Lots will be equal to ten percent (10%) of the total votes which may be cast by all members.

ARTICLE V

TITLE TO AND USE OF THE COMMUNITY COMMON PROPERTIES

Section 1. Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Community Common Properties to the Corporation, free and clear of all financial encumbrances and liens, prior to the conveyance by Declarant of the first Lot, such conveyance however to be subject to taxes for the year of conveyance, restrictions, covenants and easements of record, including those contained herein, and encumbrances for utility service, access, storm drainage and other similar service and utility easements.

Section 2. Each Owner shall have the right to use the Community Common Properties, together with the rights of access, ingress and egress, both pedestrian (and vehicular where applicable), on and over the drives, trails, walkways and parking areas of the Community Common Properties, all of which shall be appurtenant to and shall pass with the title to each Lot and Living Unit, subject to the following provisions:

(a) the right of the Corporation to dedicate, sell or transfer all or any part of the Community Common Properties to any public agency, authority or utility, subject to such conditions as may be agreed by the Members. No such dedication, sale or transfer, nor any mortgage or other hypothecation of the Community Common Properties, shall be effective unless it has been approved by sixty-seven percent (67%) of each class of Members, and an instrument duly executed by the Corporation reflecting such transaction has been recorded

with the Register of Deeds, Durham County, North Carolina, containing a certification by the Secretary of the Corporation that a sixty-seven percent (67%) of each class of Members have approved the dedication, sale or transfer. Provided, however, that conveyances and easement for general utility purposes may be made without consent of the Members;

(b) the right of the Corporation, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Community Common Properties, and in connection therewith to encumber said properties.

(c) the right of the Corporation in accordance with its Articles of Incorporation and By-Laws to impose rules and regulations governing the use of the Community Common Properties and improvements thereon, which rules and regulation may further restrict the use of the Community Common Properties.

Section 3. Any Owner may delegate, in accordance with the By-Laws of the Corporation, his rights of enjoyment and use of the Community Common Properties to members of his family, his tenants, his guests or contract purchasers of his Lot or Living Unit who reside on the property.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, with respect to each Lot and Living Unit owned by Declarant, hereby covenants and agrees, and each Owner of a Lot and of a Living Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to have covenanted and agreed to pay to the Corporation; (1) annual assessments or charges, and (2) special assessments for extraordinary maintenance and capital improvements; and to the appropriate governmental taxing authority, a pro rata share of assessments against the Community Common Properties, if the Corporation shall default in payment thereof,

all as hereinafter provided. The annual and special assessments against each Lot and Living Unit, together with interest and costs, and reasonable attorney's fees for collection, shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interests, 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 was made. The personal obligation for a delinquent assessment shall not pass to a successor in title, unless expressly assumed by such successor.

The Corporation shall also have the authority, through the Board of Directors, to establish, fix and levy a special assessment on any Lot or Living Unit to secure the liability of the Owner thereof to the Corporation arising from breach by such Owner of any of the provisions of this Declaration, which breach shall require the expenditure of time or money, or both, by the Corporation for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Corporation on his Lot or Living Unit within ten (10) days after receipt of an invoice for the same, and further covenants that if said charge shall not be paid within thirty (30) days from the date that said invoice is deposited, postage prepaid in the United States mail, in an envelope addressed to such Owner at the address of the Lot or Living Unit, or to such other address as said Owner shall have designated to Corporation in writing received by the Corporation, the amount of such charge shall become a lien upon said Owner's Lot or Living Unit, and shall continue to be such lien, until fully paid.

Section 2. Reserves and Purpose of Assessments. The Corporation is required to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Community Common Properties and any other areas the Corporation may be obligated to maintain. The

assessments levied by the Corporation shall be used exclusively for the maintenance, repair and replacement of the Community Common Properties, including the cost of labor, equipment, materials, management and supervision, the establishment of an adequate reserve fund for such work, the payment of taxes and public assessments assessed against the Community Common Properties, the procurement and maintenance of insurance in accordance with the by-laws of the Corporation, the employment of counsel, accountants and other professionals for the Corporation when necessary, and other reasonable costs of the Corporation as may arise.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Corporation 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, restoration, repair or replacement of a capital improvement upon the Community Common Properties, or the extraordinary maintenance of any property for which the Corporation is responsible, provided that any such assessment shall have the assent of sixty-seven percent (67%) 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 4. Notice and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking action authorized under this Article 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 forty percent (40%) of the total votes which may be cast shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, but the requirement 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 5. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Single Family Lots and Living Units. With respect to Lots other than Single Family Lots:

(a) A Residential Lot other than a Single Family Lot shall be assessed for each Living Unit which may be constructed thereon pursuant to a building permit issued for construction thereon.

(b) A Commercial Lot shall be assessed as if one Living Unit had been constructed thereon for each 500 square feet of gross area of such Lot.

(c) Assessments for Lots or Living Units owned by Declarant which are not under a completed roof, may be in a lesser amount, as fixed by the Board of Directors of the Corporation, but shall not be less than twenty-five percent (25%) of the same assessments for other Lots and Living Units.

(d) Assessments shall be collected on a monthly basis unless a less frequent basis, as determined by the Board of Directors of the Corporation is approved by the Federal National Mortgage Association.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot upon the issuance of a building permit for construction thereon. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot and Living Unit 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 Corporation shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Corporation setting forth whether the assessments on a

specified Lot or Living Unit have been paid. A properly executed certificate of the Corporation as to the status of assessments on a Lot or Living Unit shall be binding upon the Corporation as of the date of issuance.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Corporation. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate then permitted by North Carolina law, or such lower rate as determined by the Board of Directors of the Corporation. The Corporation may bring an action at law against any Owner personally obligated to pay the same, or foreclose the lien against the property subject thereto. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Community Common Properties or abandonment of his Lot or Living Unit.

Section 8. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (or deed of trust) and ad valorem taxes. The sale or transfer of any Lot or Living Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Living Unit pursuant to mortgage or tax 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 or Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. Exempt Property. All lands dedicated to and accepted by a local public authority, and all properties owned by the Corporation or by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 10. Working Capital. At the closing of the first sale of any Living Unit or residence built upon a Single Family Lot after construction thereof, an amount equal to two months assessments for such unit or residence shall be paid to the Corporation for the use and benefit of the Corporation. Amounts paid pursuant to this section are not to be considered as advance payment of regular assessments. The purpose of this section is to ensure that the Corporation will have adequate working capital available to meet unforeseen costs and to acquire additional equipment or services as deemed necessary or desirable.

ARTICLE VII

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Corporation shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Property and the Community Common Properties. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants, conditions and restrictions contained in this Declaration.

Section 2. Use of Property. No portion of the Property, other than Commercial Lots, (except for the temporary offices of Declarant and other builders, model units used by Declarant and other builders, for the temporary storage of construction materials and equipment, and for signs and parking areas of Declarant and other builders) shall be used other than for residential purposes and purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be permitted upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any Living Unit, except that dogs, cats and other household pets may be kept

thereon, provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances.

ARTICLE VIII

EASEMENTS

Section 1. Utility Easements. All of the Property, including Lots, Living Units, and Community Common Properties shall be subject to such easements for water lines, sanitary sewers, storm drainage facilities, cable television lines, gas lines, telephone lines, electric power lines, and other utilities as shall be established by the Declarant or by its predecessors in title prior to the recordation of this Declaration; and the Corporation shall have the power and authority to grant and establish upon, over, under and across the Community Common Properties such further easements as are required for the convenience, use and enjoyment of the Property, without approval of the membership, as provided in the Articles of Incorporation of the Corporation.

Section 2. Adjoining Areas. Each Owner is hereby declared to have an easement, and the same is hereby granted by the Declarant, on behalf of itself, its successors and assigns, over all adjoining Lots, and the Community Common Properties for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of a building, or any other similar cause. There shall be a continuing easement for the maintenance of said encroachment, settlement or shifting; provided however, that in no event shall an easement for encroachment be created in favor of an Owner, if said encroachment occurred due to the willful act of said Owner.

Section 3. Overhanging Roofs and Eaves. Each Lot and Living Unit and the Owner thereof, shall have an easement, and the same is hereby granted by the Declarant, on behalf of itself, its successors and assigns, over each adjoining Lot and the Community

Common Properties, as the case may be, for overhanging roofs and eaves, and for the maintenance thereof.

Section 4. Easement for the Benefit of the City of Durham.

An easement is hereby established for the benefit of the City of Durham over all portions of the Property for the setting, removing and reading of water meters, for maintaining and replacing water, sewage and drainage facilities, for police protection, fire fighting and garbage collection and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property. In no case shall the City of Durham be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property or to any of its occupants, when such failure is due to the lack of access to such area as a result of inadequate design or construction, blocking of access routes, or any other factor within the control of the Developer, the Corporation, or any Owner or occupant of a Lot or Living Unit.

Section 5. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration, and shall thereafter be covenants running with the land, for the use and benefit of the Lots, Living Units, and the Community Common Properties, and their Owners, as the case may be, superior to all other encumbrances which may thereafter exist against, or in favor of the Property, or any portion thereof.

ARTICLE IX

INSURANCE AND FIDELITY BONDS

The Corporation shall acquire and maintain property damage, public liability and flood insurance and fidelity bonds in such amounts and with such provisions as are set forth below. Said insurance and Fidelity Bond coverage shall be in conformance with the requirements of the Federal National Mortgage Association Lending Guide, Chapter 3, Part 5, Insurance Requirements.

