

STATE OF NORTH CAROLINA
 COUNTY OF WAKE

DECLARATION OF COVENANTS
 for COMMON PROPERTIES which
 constitute COVENANTS running with
 certain lands of BILL ALLEN
 ENTERPRISES, INC., and others
 in BLACK HORSE RUN Subdivision
 and provisions of BLACK HORSE
 RUN Property Owners' Association
 - Raleigh, Inc.

THIS DECLARATION, made this 17th day of October,
 1973, by BILL ALLEN ENTERPRISES, INC., a North Carolina corporation
 with its principal place of business in Charlotte, North Carolina, hereinafter
 called "Company."

WITNESSETH:

WHEREAS, Company is the owner of the real property described as
 being:

All those lots and parcels of land, situate, lying and being in Lees-
 ville and Barton's Creek Townships, County of Wake, State of North
 Carolina, and various Common Properties located in the Black Horse
 Run Subdivision Sections I, II and III as shown on plats of Black Horse
 Run prepared by Landmark Engineering Company, Inc., Registered -
 Surveyors. Copies of said plats have been filed in the Office of the
 Register of Deeds for Wake County North Carolina, in Map Book 1973,
 Vol. IV, page 413 contemporaneously herewith. Reference is hereby
 made to said plats and they are incorporated herein for a more com-
 plete and accurate description of said property.

WHEREAS, Company, as owner of more than two-thirds (2/3) of the
 lots in Section I, declares that these covenants for common properties amend
 those covenants for Common Properties recorded in Book 2193, Page 421,
 Wake County Registry, as they apply to Section I of Black Horse Run Subdi-
 vision.

WHEREAS, the Company desires to create on said property certain
 recreational facilities more particularly described as Common Properties on
 the recorded map, for the benefit of said community and for the benefit of all
 the lots (tracts) of the subdivision; and

WHEREAS, the Company desires to provide for the preservation of the
 values, amenities and conceptual intent of the said community and for the main-
 tenance of the said Common Properties; and, to this end, desires to subject
 the said real property above described to the covenants, restrictions, ease-
 ments, affirmative obligations, charges and liens, hereinafter set forth, each
 and all of which is and hereby declared to be for the benefit of said property
 and each and every owner of any and all parts thereof; and Company hereby
 expressly reserves an easement for horse trails as shown on the recorded
 plat of the subdivision; and

WHEREAS, the Company has deemed it desirable for the efficient
 preservation of the values and amenities in said community to create an agency

BOOK 2197 PAGE 512

to which should be delegated and assigned the power and authority of maintaining and administering the Common Properties and Services and administering the enforcing of the covenants and restrictions governing the same and platted residential lots, and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

WHEREAS, Company has caused to be incorporated under the laws of the State of North Carolina, as a non-profit corporation, BLACK HORSE RUN PROPERTY OWNERS' ASSOCIATION - RALEIGH, INC., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth.

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the Company declares that the real property described above is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations, and liens (sometimes referred to as "The Covenants") hereinafter set forth, and said covenants shall run with the land and be binding on all persons claiming under and through the Declarant.

ARTICLE I

DEFINITIONS:

Section 1. The following words and terms, when used in this Declaration, or any Supplemental Declaration, shall have the following meanings:

(a) "Association" shall mean and refer to the BLACK HORSE RUN PROPERTY OWNERS' ASSOCIATION - RALEIGH, INC., a North Carolina non-profit corporation.

(b) "Owner" shall mean and refer to the record owner, whether one or more persons, firms, association, corporations, or other legal entities, of the fee simple title to any tract situated upon the Properties, but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee, its successors or assigns, unless and until such mortgagee has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an owner.

(c) "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, as are subjected to this Declaration or any Supplemental Declaration.

(d) "Common Properties" shall mean and refer to those areas of land with any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties." The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated as "Common Property." All common properties are to be devoted to and intended for the common use and enjoyment of the owners, subject to the fee schedules and operating rules adopted by the Association.

(e) "Lot (tract)" shall mean and refer to any improved or unimproved parcel of land, shown upon any recorded subdivision map of the Properties,

intended for the construction of a detached single family dwelling and for stable, excluding any "Common Properties," as heretofore defined.

(f) "Member" shall mean and refer to all owners as heretofore defined.

(g) "Company" shall mean and refer to Bill Allen Enterprises, Inc., its successors and assigns.

ARTICLE II

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, leased and occupied, subject to these covenants, is located in Wake County, North Carolina, and is more particularly described hereinabove. All of the real property hereinabove described shall hereinafter be referred to as "Existing Property."

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

(a) Additions. The Company, its successors and assigns, including the Association, shall have the right to bring within the plan and operation of this Declaration, additional later acquired properties as future stages of the development.

The additions authorized under this and the succeeding subsection, shall be made by filing of record of Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, and in the judgment of the Company to reflect the different character, if any, of the added properties and as are not inconsistent with the Plan of this Declaration.

(b) Other Additions. Upon approval in writing of the Association pursuant to two-thirds of the vote at a duly called meeting, the owner of the property other than the Company who desires to add it to the plan of these covenants and to subject it to the jurisdiction of the Association, may file or record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration of such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Company, to reflect the different character, if any, of the added properties and as not inconsistent with the Plan of this Declaration.

(c) Mergers. Upon a merger or consolidation of the Association with another association as provided for in the By-Laws of the Association, its properties, rights and obligations may, by operation of law, be transferred

to another surviving or consolidated association, or, in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration with the Existing Property, together with the covenants and restrictions established upon any other properties as one plan. No such merger or consolidation, however, shall effect any revocation, change of or addition to the Covenants established by this Declaration within the Existing Property as herein provided.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION:

Section 1. Membership. The company and every person or entity who is a record owner of a fee simple or undivided fee simple interest in any lot (tract) which is subject by the Covenants to assessment by the Association shall be a member of the Association, except that the Company is entitled to membership for lots owned by it whether or not subject to assessments thereon, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a member of the Association; membership shall be appurtenant to and may not be separated from ownership of any lot (tract) which is subject to assessment by the Association.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

CLASS "A" - Class A members shall be all those owners as defined in Section One (1) of this Article III, with the exception of the Company; and they shall be entitled to one vote per lot owner.

CLASS "B" - The Class B member shall be the Company. The Class B member shall be entitled to one vote per lot owned, plus three votes for each vote held by a Class "A" member; this right of additional votes for each vote held by a Class "A" member shall terminate when the Company has effective sales agreements for the sale of all the lots in the subdivision. Thereafter, the Company shall be entitled to one vote per lot owned.

The total vote of the Association shall consist of the sum of the votes of Class A Members and the votes of Class B Members. When more than one person holds an interest in any lot, all such persons shall be members; and the vote for such lot shall be exercised as they among themselves determine, but in no event may more than one vote be cast with respect to any lot owned by Class A Members. When one or more co-owners sign a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote is counted. If co-owners disagree as to the vote, it shall be split equally among the co-owners.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES:

Section 1. Member's Easements of Enjoyment. Subject to the provisions of these covenants and the rules and regulations of the Association, every member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every lot.

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

Section 3. Title to Common Properties. The Company hereby covenants, for itself, its successors and assigns that it shall convey, bargain and sell the Common Properties to the Association on or before the date the Company has acquired effective contracts for the sale of all the lots as shown on the recorded map at the subdivision subject to all restrictive covenants of record.

Section 4. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Company and of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties.

(b) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosures; and

(c) The right of the Association, as provided in its By-Laws, to suspend the enjoyment of rights of any member or any tenant of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment or any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligations to pay the assessment; and

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties and/or facilities therein; and

(e) The right of the Association to give or sell all or any part of the Common Properties including leasehold interest to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be agreed to by the members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedications, transfer and determination as to purpose and conditions shall be authorized by the vote of two-thirds (2/3) of the vote at a duly called meeting and unless written notice of the proposed agreement and action thereunder is sent to every member at least twenty (20) days in advance of any action taken. A true copy of such resolution together with a certificate of the result of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the membership.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS:

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot shall, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of these covenants and to pay to the Association: (1) Annual assessment or charges; (2) Special Assessments for the purposes set forth in Section 4 of this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments together with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on 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. In the case of co-ownership of a lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the improvement, maintenance, and operation of the Common Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereof, and for the cost of labor, equipment, materials, management and supervision thereof. The Special Assessments shall be used for the purposes set forth in Section 4 of this Article.

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 One Hundred Fifty Dollars (\$150.00) 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 (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, however, the Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any year at a lesser amount, but such action shall not constitute a waiver by the Association of its right to revert to the full assessment for the remaining year or years of the then current period fixed as provided in the preceding paragraph.

Section 4. Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by Section 3 hereof, the

Association may levy special assessments, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto or addition to the Common Properties, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote at a duly called meeting, written notice of which shall be sent twenty (20) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments Upon Merger or Consolidation. The limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under Article 2, Section 2 hereof, and under the By-Laws of the Association.

Section 6. Notice and Quorum for any Action Authorized. The presence at the meeting of members or of proxies, entitled to cast thirty (30) percent of the total vote of the membership shall constitute a quorum. If the required quorum is not forthcoming at a meeting, another meeting may be called subject to the notice requirement set forth in Section 4 of this Article; but no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessments shall be made for the balance of the calendar year and shall be payable monthly on the first day of each month commencing on the first day of the month fixed for commencement. The assessments for any year after the first year, shall similarly be payable monthly commencing on the first day of January of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3, hereto, as the remaining number of months in the year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against all lots for each assessment period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner.

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

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

Section 9. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner, the Lien; Remedies of Association. If the assessment or any monthly installment(s) thereof are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with interest thereon at the rate of eight (8) per cent per annum from the due date and cost of collection thereof as hereinafter provided, thereupon become a charge and continuing lien on the land and all improvements thereon, against which each assessment is made, in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the owner at the time of the assessment to pay such assessment, however, shall remain his personal obligation and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

If the assessment of any monthly installment thereof is not paid within thirty (30) days after the due date, the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessment which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments accruing after conveyance by mortgage owner to a subsequent owner.

Section 11. Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration shall be exempted from the assessment, charge and lien created herein:

- (a) The grantee in conveyances made for the purpose of granting utility easements;
- (b) All Common Properties as defined in Article 1, Section 1, hereof;
- (c) All properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemptions.
- (d) All properties owned by Bill Allen Enterprises, Inc.; however, Bill Allen Enterprises, Inc. agrees to subsidize at its discretion the operation of the Association in order to show good faith and to help assure the maintenance

and operation of the Common Properties up to the amount the corporation would have had to pay in assessments in accordance with these covenants if it were not exempted by this provision.

(e) All properties owned by builders or real estate agents under a statutory exemption from the Office of Interstate Land Sales Registration who acquire such lots for the purpose of engaging in the business of constructing residential buildings or for the purpose of resale of such lots to persons or companies engaged in such business, for a period of two years from the date of a sales contract.

ARTICLE VI

ARCHITECTURAL CONTROL:

Section 1. Review and Approval of Landscaping Specifications for Additions, Alterations or Changes to Structures. No building, stable, wall, fence, swimming pool, or other structure shall be commenced, erected, or maintained upon the Common Properties, nor shall any landscaping be done, nor shall any exterior addition to any such existing structure or change or alteration therein, be made until the plans and specifications therefor showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location, with the 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 VII

GENERAL PROVISIONS:

Section 1. Duration and Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Developer, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive period of ten (10) years unless two-thirds (2/3) of the vote at the annual meeting approves a change in the covenants and restrictions. The covenants may be amended at any time if two-thirds (2/3) of the vote at a duly called meeting of the Association approves the change. Provided, however, that no such agreement to change shall be effective unless made and recorded sixty (60) days in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every owner of a lot, and the Company at least twenty (20) days in advance of any action taken.

Section 2. 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, and notice thereby given, when mailed, postpaid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing. Notice to one of two or more co-owners of a lot shall constitute notice to all co-owners. It shall be the obligation of every member to immediately notify the Secretary of the Association in writing of any changes of address.

Section 3. Enforcement. Enforcement of these covenants shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and failure by the Association or any owner or the Company to enforce any covenant herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 4. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase, or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

IN WITNESS WHEREOF, BILL ALLEN ENTERPRISES, INC., has caused this instrument to be executed the day and year first above written, by its President and attested by its Secretary, and the corporate seal affixed, pursuant to a resolution duly and unanimously adopted by its Board of Directors.

BILL ALLEN ENTERPRISES, INC.

By Raymond E. Pearson
Vice President



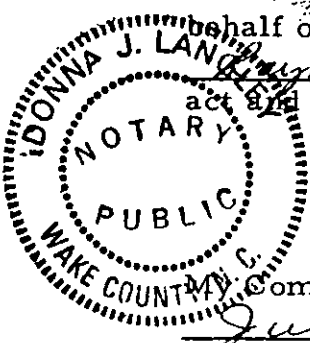
Raymond E. Pearson
Secretary

WITNESS: _____

WITNESS: _____

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

This 17 day of October, A. D. 1973 personally came before me Raymond E. Pearson, who, being by me duly sworn, says that he is the President of BILL ALLEN ENTERPRISES, INC. and that the seal affixed to the foregoing instrument in writing is the corporate seal of the Company, and that said writing was signed and sealed by him, in behalf of said Corporation, by its authority duly given. And the said Raymond E. Pearson acknowledged the said writing to be the act and deed of said Corporation.



Donna J. Langley
Notary Public

NORTH CAROLINA—WAKE COUNTY

The foregoing certificate of Donna J. Langley

Notary (ies) Public is (are) certified to be correct. This instrument was presented for registration and recorded in this office in Book 2197, Page 541.
This 17 day of Oct, 1973 at 3:30 o'clock P. M.

J. A. ROWLAND, Register of Deeds.
By Allen J. Pearson
County Register of Deeds