

## DECLARATION OF RESTRICTIONS AFFECTING "STIRRUP CREEK",

PROPERTY OF AE REALTY PARTNERS, A CALIFORNIA GENERAL PARTNERSHIP  
 DURHAM COUNTY, NORTH CAROLINA

This Declaration dated March 22, 1978, by AE Realty Partners, a California general partnership, hereinafter referred to as AE Realty.

AE Realty is now the owner of certain lands in Durham and Wake Counties, parts of which it proposes to develop and improve, in accordance with an harmonious plan for the design and relative location of dwellings, streets, walks, parks, playgrounds, garages, stores, and other structures and areas, so as to create a community to be known as "Stirrup Creek" providing the greatest possible degree of health, safety, attractiveness and amenity for the property owners and inhabitants thereof; and

AE Realty proposes to create or has created parks, playgrounds, open spaces and areas suitable for community facilities for the benefit of the property owners and inhabitants of "Stirrup Creek"; and

AE Realty, being about to sell and convey lots located in certain parts of said lands, more particularly hereinafter described, desires to assure to said purchasers and their several heirs and assigns owning such lots, the use, benefit, and enjoyment of the common amenities and facilities in accordance with said general plan, and desires to provide for the maintenance of such amenities and facilities, and to this end desires that certain parts of its lands may be subjected to certain restrictions, reservations, servitudes, covenants, agreements, easements, liens and charges, as hereinafter set forth; and

For the more efficient protection of the community and control of said amenities and facilities thereof by the property owners of the community, AE Realty has deemed it desirable to provide an agency or instrumentality to which should be delegated and assigned the powers of maintaining and administering the community amenities and facilities aforesaid, and administering and enforcing the restrictions upon or affecting the said lands or portions thereof, and collecting and disbursing the charges hereinafter created; and

There has been incorporated under the laws of the State of North Carolina a non-profit corporation, STIRRUP CREEK ASSOCIATION, for the purpose among other things of exercising such functions; and

It is the desire and intent of AE Realty that membership in and control of said STIRRUP CREEK ASSOCIATION shall ultimately be vested in the property owners of the community of "Stirrup Creek" being developed upon said lands, or in representatives of such property owners, and

Owners of other lands in Durham County may from time to time desire, with the consent of STIRRUP CREEK ASSOCIATION, to subject such lands to the restrictions and provisions hereinafter set forth; and

IN CONSIDERATION OF THE PREMISES, AE Realty hereby covenants and agrees with the purchasers of lots in the property described and referred to in Article One hereof, and with each of them, and with STIRRUP CREEK ASSOCIATION, which is hereby made a party hereto, that the property described and referred to in Article One hereof is and shall be held and shall be conveyed subject to the restrictions, reservations, covenants, conditions, servitudes, easements, agreements, liens and charges set forth in the various articles and clauses of this Declaration, which is hereby covenanted and agreed shall inure to the benefit of and be binding

upon AE Realty, its successors and assigns, STIRRUP CREEK ASSOCIATION, and the several purchasers, their heirs, successors and assigns, and binding upon all the land described in Article One hereof, and every part thereof, by whomsoever owned, to-wit:

ARTICLE ONE

PROPERTY SUBJECT TO THIS DECLARATION OF RESTRICTIONS

Section 1. AE Realty is the owner of certain real property situated in Durham County and more particularly described in Section 2 of this Article.

It is also the owner, or holds options, whereby it may become the owner, of a larger tract of land of which the property described in Section 2 is a part. It contemplates the sale or use of various parts of the lands owned by it, or to be acquired by it, in Durham County and Wake County, subject to and in accordance with the general scheme or plan set forth in this Declaration. It may from time to time, as it may at its option determine, subject additional portions of such lands to the terms of this Declaration and such modifications thereof as the circumstances may require. Such additional tracts may be rendered subject to the terms of this Declaration in the manner hereinafter provided.

Section 2. AE Realty hereby declares that the real property shown as numbered lots 1, 2, 3, 4, 5, 8, 9, 10, 11, and 12, on the map of Stirrup Creek, Section 1-A, prepared by John A. Edwards & Company, dated April 3, 1975, which lots are further shown on plat recorded in Plat Book 84, page 57, Durham County Registry, to which plat reference is hereby made, are and shall be subject to and entitled to the benefit of the restrictions set forth in this Declaration.

Section 3. AE Realty further declares that additional lands shall become subject to this Declaration upon the filing by the owner of the property therein described, in the Office of the Register of Deeds of Durham County, or Wake County when the property is located therein, from time to time of Supplementary Declarations of Restrictions, each one of which shall contain substantially the following provisions, not inconsistent with the other provisions of this Declaration:

- (a) A statement that it intended thereby to render the property therein described subject to this Declaration;
- (b) A description or designation of the real property intended to be thereby rendered subject to this Declaration;
- (c) If, and so far as desired, a specification of the uses to which such property, and the several parts thereof, may be put, and the kind or character of buildings which may be erected thereon (subject to the limitations of Section 1, of Article Six of this Declaration);
- (d) Specification of the set-back, if any, of all buildings upon each building site, the minimum size, if any, of building sites to be permitted within said property;
- (e) Such other provisions respecting the property described in such Supplementary Declaration as is proscribed by this Declaration, or as may be necessary in the judgment of the owner of such property in order adequately and properly to restrict the property described in such Supplementary Declaration;
- (f) A specification of any changes or modification of this Declaration in its application to the real property described in such

Supplementary Declaration; provided, however, that such modifications shall affect the restrictions herein contained only in their application to the property particularly described in such Supplementary Declaration;

(g) A statement of the date upon which the charge created by Article Seven of this Declaration shall become operative upon said property.

(h) Provided, that if the owner of such property is a person, firm or corporation other than AE Realty then, and in that event, the written approval of STIRRUP CREEK ASSOCIATION, duly executed and acknowledged by the officers thereof, shall be attached to and filed with any such Supplementary Declaration in the Office of the Register of Deeds of Durham County.

Upon the recording of such Supplementary Declaration, the real property therein described shall become subject to the restrictions set forth in this Declaration, as modified by such Supplementary Declaration, with the same force and effect as if said property had been originally described in this Declaration, and shall become subject to all the terms hereof and of such Supplementary Declaration.

Section 4. Nothing contained in this Declaration shall be construed as subjecting or requiring AE Realty to subject to this Declaration any property now or hereafter owned by it, other than that described in Section 2 of this Article, nor shall any other such property be in any manner deemed subjected to any of the terms hereof, except by the filing of a Supplementary Declaration, as herein provided.

#### ARTICLE TWO

##### DEFINITION

When used in this Declaration or any Supplementary Declaration (unless the context shall prohibit), the following words shall have these meanings:

(a) "The Property" shall include all lands at any time subjected to the terms of this Declaration, either by Section 2 of Article One or by any Supplementary Declaration as provided in Section 3 of Article One.

(b) "Declaration of Restrictions" or "Declaration" refer to and include not only this Declaration but also the Supplementary Declarations of Restrictions provided for in Section 3 of Article One.

(c) "Restrictions" include restrictions, reservations, servitudes, conditions, covenants, agreements, easements, liens, and charges.

#### ARTICLE THREE

##### TYPE, SIZE AND LOCATION OF STRUCTURES

Section 1. Residential Building Sites. Each lot above described shall constitute a residential building site (hereinafter called "building site") and shall be used for residential purposes only. The lay of the lots as shown on the recorded plat shall be substantially adhered to; provided, however, with the prior written approval of AE Realty, its successors or assigns, or the Architectural Committee, hereinafter referred to, the size and shape of any building site may be altered; provided further, that no building site or group of building sites may be resubdivided so as to produce a greater number of building sites than shown on the aforementioned recorded map. More than one lot may be used as one building site, provided the location of any structure permitted thereon is approved in writing by the Architectural Committee referred to in Paragraph 7 hereof; and, provided, further that AE Realty shall

have the right to make any relocations of easements that it determines to be necessary by reason of such use. Except as provided in this paragraph, no structure shall be erected, altered, placed, or permitted to remain on any building site, other than one detached single family dwelling not to exceed two and one-half stories in height, and, unless otherwise approved by the Architectural Committee, a private garage for not more than four cars. It is expressly provided, however, that in addition to the single family dwelling, there may also be constructed on any building site an efficiency apartment of not more than three rooms for use and occupancy by guests and members of the family of the occupants of the dwelling house and by domestic servants employed at said dwelling house. Such apartment shall not be used otherwise, and in no event shall such apartment be rented. No efficiency apartment shall be constructed except at the same time as or following the construction of the main dwelling house. For purposes of this paragraph, no person shall be deemed a member of the family of the occupant of the dwelling house unless his relationship to the occupant is that of descendant; ancestor; brother or sister; niece or nephew, uncle or aunt; first cousin; spouse and children (living with their parents) of the foregoing.

Section 2. Temporary Buildings Prohibited. No trailer, basement (unless said basement is a part of a residence erected at the same time), mobile home, recreational vehicle, tent, shack, barn, or other outbuilding shall be erected or placed on any building site covered by these covenants, except as specifically permitted herein.

Section 3. Fences. No fence, wall, hedge, or mass planting shall be permitted to extend beyond the minimum building setback line established herein except upon the prior approval of the Architectural Committee.

Section 4. Signs. no signs, billboards, or posters of any nature shall be erected, placed, exhibited, or maintained on any building site except with the prior approval of, and in conformity with the size, design, and format and for such time period, as is or may be prescribed from time to time by the Architectural Committee.

Section 5. Clearances. Except with the prior written approval of the Architectural Committee (or, if applicable, the STIRRUP CREEK ASSOCIATION) no building of any kind, including garages, shall be located on any building site less than thirty (30) feet from the front lot line, less than ten (10) feet from any side lot line, or less than thirty (30) feet from any rear lot line.

Section 6. Minimum Size of Residences. No two-story or split-level residential structure having a minimum finished, heated living area of less than One Thousand Five Hundred (1,500) square feet, and no one-story residential structure having a minimum finished, heated living area of less than one thousand three hundred (1,300) square feet, exclusive of subsurface areas, porches, basements, and garage, shall be erected or placed on any building site, other than efficiency apartments provided for in Paragraph 3 hereof. In the event that any question of definition or interpretation of any words or terms of this Paragraph should arise, the definition or interpretation placed thereon by AE Realty shall be conclusive.

Section 7. Architectural Committee; Approval Required. AE Realty shall designate and appoint an Architectural Committee comprised of three (3) persons. No site preparation and no construction, erection, installation of any structures, facilities, or other improvements whatsoever (including, but specifically not limited to, residences, other buildings, fences, screen plantings, mail and newspaper boxes, and outside lighting) shall be undertaken on any building site until the building plans, specifications, and plat plans have been submitted to the Architectural Committee, and the Committee has given written approval of the location of the proposed structures, facilities, and improvements with regard to topography, flowing and impounded waters, beginning and finished ground

elevation, existing trees and shrubs, trees and shrubs to be planted, and neighboring structures; and has also given written approval of the proposed structures, facilities and improvements with respect to the conformity and harmony of the external design and external materials thereof with existing structures and improvements in the area.

Note: The right of the Architectural Committee to withhold approval of any proposed initial structures, facilities, or improvements or of the location thereof is absolute and may be withheld arbitrarily.

Section 8. Existing and Additional Improvements. Following the initial constructions and installation of the dwelling house and improvements, no alteration or modification thereof shall be undertaken (other than normal maintenance and repairs), and no construction, erection, or installation of any additional new structures, facilities, or other improvements shall be undertaken without the prior express written consent of STIRRUP CREEK ASSOCIATION, and consent shall not be unreasonably withheld.

Section 9. Erosion Control. During site preparation and initial construction, the owner of the building site and the builder shall take such action as may be required by AE Realty to control, inhibit, or prevent erosion and sedimentation of streams and impoundments resulting from erosion. Each owner shall maintain his building site in such manner as to prevent erosion of soil into the Common Area. If, in the opinion of the Architectural Committee, an owner does not properly maintain his building site as herein provided, then AE Realty may have the required work done, and the costs thus incurred by AE Realty shall be paid by the owner of the building site. AE Realty shall have all easements, including the right of entry, necessary to enter upon the building site and perform such work or cause such work to be performed.

Section 10. Grading and Filling. No grading, filling, or other alteration of the topography or elevation of any building site shall be undertaken prior to or during initial construction without the prior express written approval of AE Realty, or following initial construction, without prior express written approval of the STIRRUP CREEK ASSOCIATION.

Section 11. Removal of Trees. No trees or other vegetation, except weeds, deadwood, underbrush or grass, may be cut or removed from any building site prior to or during the initial construction unless written approval of AE Realty is first secured. Following initial construction of improvements on any building site, no tree having a trunk diameter exceeding six (6) inches, four (4) feet above ground level, shall be removed therefrom without the prior express written approval of STIRRUP CREEK ASSOCIATION, unless the tree is dead or diseased or poses an imminent threat or danger to persons or property.

Section 12. Removal of Vegetation From Common Area. No owner of any building site, other than AE Realty, shall injure, cut, or remove, or suffer or cause to be injured, cut or removed, any trees, shrubs, flowers or other vegetation from the Common Area unless with the prior written permission of the STIRRUP CREEK ASSOCIATION.

Section 13. When Approval Implied. Where any owner or builder must secure prior approval of AE Realty or STIRRUP CREEK ASSOCIATION under these covenants before undertaking any activity or work, request for approval shall be submitted in writing, and failure of AE Realty or the Association to give or deny approval within thirty (30) days following receipt of the written request shall be deemed to constitute approval, unless suit has been or is instituted to enjoin the proposed activity or work on the completion thereof.

Section 14. Utility Connections. All telephone, electric, and other utility lines and connections between the main utility lines and

residence and other building located on each building site shall be concealed and located underground so as not to be visible.

587

#### ARTICLE FOUR

##### PARKING AND COMMON AREA

Section 1. Parking. Adequate off-street parking shall be provided by the owner of each building site for the parking of automobiles, boats, and other vehicles owned or controlled by such owner, members of the owner's family, or employees of the owner; and owners of building sites covenant and agree not to park their automobiles, boats, and other vehicles on the street located in the subdivision.

Section 2. Common Area. The Common Area, from the time of its conveyance to the STIRRUP CREEK ASSOCIATION shall be the exclusive property of the STIRRUP CREEK ASSOCIATION, and no building site owner in this subdivision shall have any right to use the Common Area except in accordance with the Bylaws, rules and Regulations of the STIRRUP CREEK ASSOCIATION.

#### ARTICLE FIVE

##### EASEMENTS

AE Realty on behalf of itself, STIRRUP CREEK ASSOCIATION and/or such utility companies that may service the subdivision from time to time, reserves a perpetual right, privilege and easement ten (10) feet wide on the front and rear and five (5) feet along the side lot lines to construct, maintain and operate in, upon, across and through said easement, in a proper and workmanlike manner, electric, telephone, gas, sewer, water, drainage and other conveniences and utilities and appurtenances necessary or convenient thereto, together with the right at all times to enter upon the said easement with men and equipment for the purpose of inspecting, altering and repairing the same. AE Realty reserves the right to maintain or otherwise keep clear any obstructions that may adversely affect the proper maintenance and operation of the various utility systems and further reserves a perpetual right to enter upon any lot for the purpose of constructing or maintaining drainageways for the benefit, health and safety of the neighboring residents. These reservations, however, shall not be considered an obligation of AE Realty to provide or maintain any such utilities, services or easements.

#### ARTICLE SIX

##### USES

Section 1. Nuisances. It shall be the responsibility of each lot owner to maintain the exterior of his residence and the surrounding grounds of his lot in a clean, tidy and safe manner. No lot shall be used in whole or in part for the storage of anything which might cause such lot to appear cluttered, unclean or obnoxious to the eye; nor shall any substance, thing or material be kept on any lot that might emit foul obnoxious odors, noises or other conditions that will or may disturb the serenity, safety or comfort of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to create a nuisance to the neighborhood.

Section 2. No numbered lot shall be used except for residential purposes, subject to the provision of Section 5 of this article.

Section 3. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

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ALPHIN &  
WHICHARD, P.A.  
ATTORNEYS AND  
COUNSELORS AT LAW  
DURHAM, N. C.

628

Section 4. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 5. Use. No dwelling house shall be used or occupied as a dwelling for more than the number of families for which it was originally designed, and no trade, commerce, or business shall at any time be conducted in any part of a building designed as a dwelling house; provided STIRRUP CREEK ASSOCIATION by approval in writing deposited in the permanent records of the Association and upon such conditions and limitations as it may prescribe in such approval, may permit a building designed for a dwelling to be used in whole or in part for one or more of the following purposes so far as legally permitted: day nursery, kindergarten, school, fraternal or social club or meeting-place.

Section 6. Exchange of Common Area. The STIRRUP CREEK ASSOCIATION may exchange with AE Realty or any other owner of a building site in the subdivision a portion of the Common Area for a portion of the real property owned by AE Realty or such owner. Property acquired by the Association in the exchange shall become a part of the Common Area and shall be released from all provisions of these covenants except those applicable to the Common Area. The portion of the Common Area acquired by AE Realty or the owner of a building site in the exchange shall cease to be Common Area and shall be subject to the provisions of these covenants that were applicable to the property conveyed to the Association.

ARTICLE SEVEN

CREATION OF CHARGE UPON THE PROPERTY

Section 1. AE Realty (for each parcel of property subject hereto owned by it) hereby covenants, and each purchaser of any parcel of The Property (whether purchased from AE Realty or another) by the acceptance of a deed therefor, shall, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to STIRRUP CREEK ASSOCIATION an annual assessment or charge to be fixed, established and collected from time to time as hereinafter provided, each installment of which annual assessment or charge when due shall become a lien upon the parcel of property against or on account of the ownership of which such assessment or charge is made. Each parcel of subject property (except as hereinafter mentioned) whether owned by AE Realty or others is hereby made subject and shall be subject to a continuing lien to secure the payment of each installment of such assessment or charge when due.

Such charge shall be in an amount to be fixed from year to year by the Board of Directors of STIRRUP CREEK ASSOCIATION, and may be determined upon the basis of the valuation of each parcel of the Property, and the improvements thereon as fixed by the assessing authority of Durham County, or upon the basis of the area thereof in square feet, or by any other measure determined by STIRRUP CREEK ASSOCIATION to be fair and equitable; provided that, a fixed standard equal charge per residential building lot shall be used on single family residential property.

STIRRUP CREEK ASSOCIATION may establish different rates from year to year as its Board of Directors may deem necessary to carry out the purposes of STIRRUP CREEK ASSOCIATION; and may for any one year establish different rates for various general classifications of property, according to the use or location thereof; provided, however, that the rate established for commercial or industrial property shall not exceed the rate established in the same year for similarly situated residential property using valuation as the criteria.

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DURHAM, N. C.

The charge or lien upon any parcel of The Property to be used as single family residential property shall not be assessed or commented (129) until January 1 of the year following the year in which the property is approved for residential lots by the recording of an approved Plat in the office of the Register of Deeds in Durham County or Wake County.

The amount of such charge or lien upon any parcel of the property shall not in any calendar year exceed the product of the valuation of such parcel together with the improvements thereon as determined by the said assessing authority for such calendar year multiplied by the rate of tax levied thereon by Durham County for all State, County, School and all other local purposes in the preceding calendar year; provided that, the initial (1978) annual charge or lien shall not exceed \$30 per year on residential lots and said charge shall not increase more than ten percent per annum over the previous year charge which limitation shall continue effective under the terms of this covenant.

Section 2. The charge for any year shall become due and payable on the first day of January of said year, or in twelve equal installments payable on the first day of each month, as shall be determined by STIRRUP CREEK ASSOCIATION and set forth in the resolution of the Board of Directors of STIRRUP CREEK ASSOCIATION fixing said charge; and the filing in the Minute Book of STIRRUP CREEK ASSOCIATION in the registered office of STIRRUP CREEK ASSOCIATION of the amount of the annual charge, which said place shall at all reasonable hours be open to inspection of any member of STIRRUP CREEK ASSOCIATION, shall be conclusive evidence of the amount of the charge.

Section 3. Upon the failure of the owner of any parcel of The Property to pay any such charge or installment thereof when due, STIRRUP CREEK ASSOCIATION shall have the right to collect the amount thereof by an action at law against the owner as for a debt and for interest and reasonable attorney's fees, and may bring suit for the foreclosure of the lien thereof upon said parcel of The Property, and may bring and maintain such other suits and proceedings at law or in equity as may be available (and such remedies shall be cumulative and not exclusive). Such rights and powers shall continue in STIRRUP CREEK ASSOCIATION, and the lien of such charge shall be deemed to run with the land; and the successive owners of each parcel of The Property, by the acceptance of deeds therefor shall be deemed personally to assume and agree to pay all such charges as shall become a lien thereon during their ownership thereof.

Section 4. The charges created by this Article and the lien thereof shall be subordinate to the lien of any mortgage or deed of trust now or hereafter placed upon The Property or any parcel thereof, provided, however, that such subordination shall apply only to the charges which shall have become payable prior to the sale of such parcel pursuant to a foreclosure of such instrument. Such sale shall not relieve such parcel from liability for charges thereafter becoming due hereunder nor from the lien of any charge or installment thereof thereafter becoming due, and the purchaser at such sale by the acceptance of the deed shall be deemed personally to assume and agree to pay all such charges or installments thereof thereafter becoming due.

Section 5. The following property subject to this Declaration shall be exempted from the charge created by this Article: (a) all streets, whether dedicated to any municipal authority, owned by STIRRUP CREEK ASSOCIATION, or created by easement; (b) all parks, playgrounds, and open spaces while devoted to common use, however owned; (c) all property owned or STIRRUP CREEK ASSOCIATION; (d) all land taken by or sold or granted to any public authority for public improvements or uses; (e) all property owned by or leased to a public utility operating under a certificate of convenience and necessity issued by an appropriate State or Federal agency; (f) all other property exempted from taxation



by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption; (g) all proposed residential lots not recorded on an approved plot in the office of the Register of Deeds in Durham County or Wake County.

Section 6. The moneys collected by virtue of the charges or assessments or the lien created by this Article shall be paid to STIRRUP CREEK ASSOCIATION to be used in such manner and to such extent as the Board of Directors of STIRRUP CREEK ASSOCIATION may determine to be for the benefit of the residents of The Property and for the promotion of the health, safety and welfare of residents within The Property and for the enhancement of education, recreation, social life, and community welfare within The Property; but the specific application of such moneys shall remain wholly in the absolute discretion of the said Board of Directors. STIRRUP CREEK ASSOCIATION shall not be obligated to spend for such purposes any moneys other than those received by it pursuant to this Declaration, and neither STIRRUP CREEK ASSOCIATION nor AE Realty shall be deemed to guarantee the sufficiency of said fund for the purposes stated. The liability of STIRRUP CREEK ASSOCIATION in respect thereto shall be limited to the amounts hereunder properly chargeable against the property owned by it which shall at any time be subject to the charge created by this Article.

Section 7. STIRRUP CREEK ASSOCIATION shall not be obligated to spend in any one calendar year all of the sums collected during such year by way of charges, and may carry forward to Surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of charges in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in their absolute discretion may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

Section 8. If at any time the moneys collected by virtue of the charges or assessments or the lien created by this Article shall not be sufficient to meet expenditures which STIRRUP CREEK ASSOCIATION shall deem necessary in the furtherance of the purposes of the Association, STIRRUP CREEK ASSOCIATION shall have authority in its absolute discretion to borrow money in anticipation of revenue upon such terms and security and for such periods not exceeding one year as it may determine, and in fixing the charge for the succeeding year STIRRUP CREEK ASSOCIATION shall have the power to include such sums as may be necessary to provide for the repayment of such advances with interest.

#### ARTICLE EIGHT

##### TERM

These covenants are to run with the land and shall be binding on all parties claiming under them until January 1, 2023, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of a majority of the then owners of the building sites in the entire Stirrup Creek residential development, whether covered by these or other substantially similar covenants, it is agreed to change said covenants in whole or in part.

#### ARTICLE NINE

##### VIOLATION AND ENFORCEMENT OF RESTRICTIONS

Section 1. Violation of any restriction contained or provided for herein shall give STIRRUP CREEK ASSOCIATION, in addition to all other remedies, the right to enter upon the land upon or as to which such violation exists and summarily to abate or remove, using such force as may reasonably be necessary at the expense of the owner thereof, any

erection, thing, or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof; and neither STIRRUP CREEK ASSOCIATION nor its officers, agents, or employees shall be deemed guilty or liable for any manner of trespass for such entry, abatement, or removal. The owner of the said premises agrees to pay to STIRRUP CREEK ASSOCIATION upon demand the costs and expenses of such abatement, including attorney's fees and such costs and expenses shall be a lien upon the premises enforceable in the manner provided in Article Seven hereof. In addition it shall be lawful for any other person or persons owning any real property in any single family residential area of Stirrup Creek which is subject to these or substantially similar covenants to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate such covenant, and either to prevent it, her, him or them from so doing or to recover damages or other dues for such violation. 633

Section 2. The provisions of the Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable to STIRRUP CREEK ASSOCIATION or the owner of any land included in The Property, their respective legal representatives, heirs, successors, and assigns; and failure by STIRRUP CREEK ASSOCIATION or any land owner to enforce any restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one accruing prior or subsequent thereto.

Every such violation or breach is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable thereof, and such remedies shall be deemed cumulative and not exclusive.

Neither STIRRUP CREEK ASSOCIATION nor AE Realty shall be liable in any way for failure or omission to take action of any kind for the enforcement of any restriction or violation thereof.

Section 3. No recourse under or upon any obligation, covenant or agreement contained herein on the part of AE Realty or STIRRUP CREEK ASSOCIATION shall be had against any incorporator, member, stockholder, officer, director or trustee of either of said corporations, and no personal liability shall attach to or be incurred by any such individual, other than for his individual fraud and misfeasance or other willful or tortuous act.

#### ARTICLE TEN

#### MISCELLANEOUS

Section 1. Whenever there is required under this Declaration the agreement, consent or other action of the owner or owners of record of part or all of The Property, the agreement or other action of any such owner shall bind all future owners of the same agreement or other action by the then owner of record of any part of The Property as to the amendment of any of the provisions of this Declaration shall be binding upon any mortgagee or lienor of the same premises and shall be effective to bring about such amendment as to said premises without requiring any mortgagee or lienor to join in such agreement or action. The owner or owners of record of any part of The Property shall, for the purposes of this Declaration, be deemed in all respects the owner or owners thereof, and his, their, or its signature or act shall, for the purposes hereof, be binding upon the property in question and the owner thereof. Any agreement, consent, or other instrument required by this Declaration to be signed and executed by the owners of property may be in any number of concurrent writings of similar tenet.

Section 2. Inasmuch as the enforcement of the restrictions and conditions herein provided is deemed essential for the effectuation of the general plan to improvement hereby contemplated and for the protection

POWE, PORTER,  
ALPHIN &  
WHICHARD, P.A.  
ATTORNEYS AND  
COUNSELORS AT LAW  
DURHAM, N. C.

632

of the parties hereto and of all future owners of lands within The Property, it is hereby declared that any breach of the provisions of this Declaration cannot be adequately compensated for by recovery of damages, but that any party and any such future owner may require and shall be entitled to the remedy by injunction to restrain any such breach in addition to all other remedies.

No change of condition or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration, but they shall be extinguished, terminated, or modified only by their action and in the manner provided in Article Eight of this Declaration.

Section 3. In all cases the restrictions set forth or provided for in this Declaration shall be construed together and shall be given that interpretation or construction which will best tend toward the consummation of the general plan of improvements aforesaid and toward their strict enforcement, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

Section 4. Severability. The determination by any court that any provision of this Declaration is unenforceable or void shall not effect the validity of any of the other provisions hereof.

Section 5. Rights Exclusive. All rights herein created for, held by, or reserved to AE Realty shall belong exclusively to AE Realty and to such person, firm or corporation to whom they are expressly conveyed, and none of them shall be deemed transferred to the purchaser of any property unless the instrument effecting such transfer expressly recites the transfer of such rights.

Section 6. Withdrawal. This Declaration may be amended or rescinded in part or in whole, at any time, by the written consent of all of the owners of The Property which consent must be recorded in the office of the Register of Deeds of Durham County.

IN WITNESS WHEREOF, AE Realty and STIRRUP CREEK ASSOCIATION have caused this Declaration to be signed by their duly authorized officers and in their corporate names and their seals to be hereunto affixed, and attested by their duly authorized officers as of the 22 day of March, 1978.

AE REALTY PARTNERS  
A California General Partnership

ATTEST:

By: [Signature] (SEAL)  
Delegate of Authority (Title)

\_\_\_\_\_  
(Title)

[Corporate Seal]

STIRRUP CREEK ASSOCIATION

By: [Signature] (SEAL)  
President (Title)

[Signature]  
(Title)

[Corporate Seal]



POWE, PORTER,  
ALPHIN &  
WHICHARD, P.A.  
ATTORNEYS AND  
COUNSELORS AT LAW  
DURHAM, N. C.