

1143-773

DURHAM COUNTY

THIS DECLARATION AND AGREEMENT, made and executed this 12th day of December, 1983, by STIRRUP IRON CREEK ASSOCIATES, a North Carolina Joint Venture.

W I T N E S S E T H:

That Stirrup Iron Creek Associates, the owner and developer of the lands hereinafter described and herein referred to as "Declarant", desires to declare and place the restrictions hereinafter set forth upon the lots in the real estate subdivision hereinafter described and upon the development, improvement and use thereof.

NOW, THEREFORE; the Declarant, for itself, its successors and assigns, does hereby covenant and agree with all persons, firms and corporations who or which may acquire any interest in or title to any of the property hereinafter described, and as an inducement to said persons, firms and corporations to purchase a part of the said property, that the property, and each and every lot, described below, is hereby made subject to the following restrictive covenants as to the development and improvement and use thereof, which covenants shall run with the said land and with each and every lot by whomsoever owned, the real property to which these restrictive covenants shall be applicable being described as follows:

Being all of Lots 44-65, inclusive, Lots 67-78, inclusive, Lots 87-91, inclusive, Lot 106, and Portions of Scuppernong Lane, Galax (Court), Appling Way and Muscadine (Court), all as shown on a map entitled "Stirrup Creek Subdivision, Phase II," dated November 18, 1983, by John Y. Phelps, RLS, and being more particularly described as follows:

BEGINNING at the southwest corner of Lot Number 43, Section 1-D, Stirrup Creek Subdivision, according to the plat and map of John A. Edwards & Company, Consulting Engineers, dated September 25, 1978, and recorded in the Durham County Registry in Plat Book 94 at Page 180; running thence North 80° 10' East 209.26 feet to an existing iron pipe; running thence North 81° 59' 26" East 52.04 feet to a point; running thence North 60° 40' 58" East 133.67 feet to a point; running thence South 56° 27' 02" East 70.08 feet to a point; running thence North 75° 37' 19" East 68.80 feet to an existing iron pipe marking the southwestern corner of Lot 79 as shown on a map recorded in Plat Book 91, Page 14, Durham County Registry; running thence South 65° 00' 43" East 150.0 feet to a point; running thence North 24° 12' 36" East 81.10 feet to a point; running thence North 51° 42' 26" East 81.78 feet to an existing iron pipe; running thence North 71° 37' 37" East 82.98 feet to an existing iron pipe; running thence South 42° 10' 21" East 160.41 feet to an existing iron pipe; running thence in a southwesterly direction along a curve bending to the right with a radius of 229.39 feet a distance of 34.51 feet to a point, said point lying North 11° 44' 27" West 53.93 feet from an existing iron pipe marking the westernmost corner of Lot 92 as shown on a map recorded in Plat Book 91, Page 14 of the Durham County Registry; running thence South 11° 44' 27" East 53.93 feet to said existing iron pipe; running thence South 30° 13' 46" East 143.56 feet to a point; running thence North 59° 08' 58" East 32.22 feet to an existing iron pipe; running thence North 38° 03' 46" East 284.19 feet to an existing iron pipe; running thence South 47° 39' East 127.69 feet to a point; running thence South 52° 39' East 50.0 feet to a point; running thence North 37° 17' 35" East 38.83 feet to a point; running thence South 26° 04' 06" East 449.71 feet to a point; running thence South 25° 20' 28" West 180.86 feet to a point; running thence North 88° 08' 28" West 278.91 feet to an existing iron pipe; running thence in a northwesterly direction along a curve bending to the right with a radius of 3755.64 feet a distance of 1218.7 feet to a point in the East line of the General Electric property, said point lying South 02° 29' 59" West a distance of 310.41 feet from the point of Beginning, running thence North 02° 29' 59" East 310.41 feet to the point and place of BEGINNING, containing 17.50 acres, more or less, as shown on a map of John Y. Phelps, Jr., Registered Land Surveyor, dated November 8, 1983, entitled Stirrup Creek Subdivision.

ARTICLE I

The real property hereinbefore described is subjected to the protective covenants and restrictions hereby declared to insure the best use and the most appropriate development and improvement of each lot thereof; to protect the owners of lots against such improper use of surrounding lots as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on lots; to prevent haphazard and inharmonious improvement of lots; to secure and maintain proper set-backs from streets, and adequate free spaces between structures, and in general to provide adequately for a high type and quality of improvement in said property, and thereby to enhance the values of investments made by purchasers of lots therein.

ARTICLE II

LAND USE AND BUILDING TYPE. No lot shall be used except for single family residential purposes. No building or structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed three (3) stories in height, a private garage for not more than three (3) cars, and (with the approval of the Architectural Committee) an accessory building or structure for storage or other appropriate residential uses, not in excess of 250 square feet in area, which shall be located at least 70 feet from the front property line, or, if the lot abuts two or more streets; then at least 70 feet from the right-of-way line of two streets. The term "single family" as used herein means persons who are related by blood, adoption or marriage and does not include unrelated persons living together. Nothing in this document shall be deemed to prohibit the conversion of a lot to a street.

ARTICLE III

APPROVAL OF BUILDING PLANS. No building (including an accessory building or structure and a garage) shall be erected, placed, or altered on any premises in said development until the building plans, specifications, and plot showing the location of every such building, have been approved in writing as to conformity and harmony of external design with existing structures in the development, including without limitation, proposed exterior materials and colors, and as to location of the building with respect to topography and finished ground elevation by the Architectural Committee, which shall be a committee composed of three persons designated and appointed by the Declarant or such person, firm or corporation to whom Declarant has expressly assigned this right. In the event the Committee fails to approve or disapprove such design or location within thirty days after the plans and specifications have been submitted to it, or, in any event, if no suit to enjoin the erection of any such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with.

ARTICLE IV

DWELLING SIZE. 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,

garages, steps, and breeze-ways, shall be erected or placed or permitted to remain on any lot.

ARTICLE V

BUILDING LOCATION. No building shall be located on any lot nearer to the front line than thirty (30) feet, provided, however, that on a corner lot, a dwelling may be located not nearer than twenty (20) feet to one street if it is at least thirty (30) feet from the other street. No building shall be located nearer than ten (10) feet to an interior lot line except that a five (5) foot side yard may be permitted for a garage or other permitted accessory building located eighty (80) feet or more from the minimum building set-back line. However, no building shall be located on any lot nearer to the rear line than thirty (30) feet. For the purpose of this covenant, eaves and steps shall not be considered a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. The Declarant reserves the right to waive minor violations of the setback and side line requirements set forth in this Article. (Violations not in excess of 10% of the minimum requirements shall be deemed minor.) Nothing herein shall mean that the Architectural Committee cannot withhold its approval of the location of a building regardless of the fact that such building meets the requirements of this paragraph.

ARTICLE VI

LOT, AREA AND WIDTH. All lots as shown on the map hereinbefore referred to are hereby approved. Adjustments may be made, however, in the line between any two lots so long as the area of any lot is not reduced by more than ten percent (10%) and so long as all other restrictions herein set forth are observed. Upon any recombination of lots, the setbacks and side line clearances from new lot lines shall be applicable and setbacks from former lot lines shall no longer be required. No recombination of lots may be made in a manner which results in any increase in the number of lots above those existing when these covenants became effective.

ARTICLE VII

EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat referred to above and over the rear ten (10) feet of each lot unless shown in excess of such distances on recorded plat, in which case the plat shall control. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

ARTICLE VIII

BUSINESS, MANUFACTURING, COMMERCIAL AND PROFESSIONAL USES PROHIBITED; NUISANCES PROHIBITED. No part of the said property shall be used for business, manufacturing, commercial or professional purposes. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No signs or billboards shall be erected or maintained on the premises other than temporary "for sale" signs. No business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a trade or professional office of any kind, a fraternity house, a rooming

house, a boarding house, an antique shop or gift shop, shall be carried on upon any lot. No trade materials or inventories may be stored or regularly parked on the premises.

ARTICLE IX

TEMPORARY STRUCTURES. No trailer, tent, shack, barn or other outbuilding, except a private garage for not more than three (3) cars and an accessory building or structure as authorized by the provisions of ARTICLE II, shall be erected or placed on any lot covered by these covenants. Except with the prior consent of the Architectural Committee, no detached garage shall at any time be used for human habitation temporarily or permanently.

ARTICLE X

TRUCKS, BOATS, TRAILERS. No trucks, pickups, boats, trailers or motor homes shall be parked on public streets of Stirrup Iron Creek and no boats or trailers shall be stored on any lot unless they are screened so as not to be visible from a street or another lot. Adequate offstreet parking shall be provided by the owner.

ARTICLE XI

UTILITY YARD. Garbage cans and clothes lines shall be kept in a screened utility yard and not visible from the street or an adjacent lot.

ARTICLE XII

FENCES. No fence, wall, hedge, or mass planting shall be permitted to extend beyond the minimum building setback line established herein, except upon approval by the Architectural Committee. No metal fences shall be installed on any lot unless screened in a manner approved by the Architectural Committee, which approval may be withheld arbitrarily.

ARTICLE XIII

ANIMALS. No animals or poultry of any kind, other than house pets, shall be kept or maintained on any part of said property.

ARTICLE XIV

UTILITIES. All telephone, electric and other utility lines and connections between the main utility lines and residences and other buildings located on each lot shall be concealed and located underground so as not to be visible.

ARTICLE XV

EROSION CONTROL. During site preparation and initial construction, the owner of the lot shall take such action as may be required by the Architectural Committee to control, inhibit or prevent erosion and sedimentation of streams and impoundments resulting from erosion. Each lot owner shall maintain his lot in such manner to prevent erosion of soil. If, in the opinion of the Architectural Committee, the owner does not properly maintain his building site as herein provided, then the Architectural Committee may have the required work done, and the cost thus incurred by the Architectural Committee shall be paid by the owner of the lot. The Architectural Committee shall have all easements, including the right of entry, necessary to enter upon the building site to perform such work or cause such work to be performed.

ARTICLE XVI

GRADING AND FILLING. No grading, filling, or other alteration of the topography or elevation of any lot shall be undertaken prior to or during initial construction without the prior express written approval of the Architectural Committee.

ARTICLE XVII

REMOVAL OF TREES. No trees or other vegetation, except weeds, dead wood, underbrush or grass, may be cut or removed from any building site prior to or during the initial construction unless written approval of Declarant or the Architectural Committee is first secured. Following the initial construction of improvements on any lot, no tree having a trunk exceeding six inches in diameter, four feet above ground level, shall be removed therefrom without the prior express written approval of Declarant or the Architectural Committee, unless the tree is dead or diseased or poses an imminent threat or danger to persons or property.

ARTICLE XVIII

TERM. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date on which this Declaration and Agreement is filed for registration in the Registry of Wake County, after which period said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part; provided, however, that any such instrument must be recorded within a six month period preceding the end of the twenty-five (25) year period or a ten (10) year period; and provided, further, that these covenants shall terminate on December 31, 2048.

ARTICLE XIX

ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages, or both.

ARTICLE XX

SEVERABILITY. Invalidation of any one of these covenants or any part thereof by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect, and the failure of any person or persons to take action to enforce the violation of any of these covenants and restrictions shall not be construed as a waiver of any enforcement rights and shall not prevent the enforcement of such covenant or covenants in the future.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed in its name by its managing venturer the day and year first above written.

STIRRUP IRON CREEK ASSOCIATES,
a North Carolina Joint Venture

By: THE ADAMS-BILT COMPANY
Managing Venturer

By: *[Signature]*
President

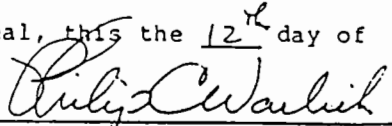
ATTEST:

James R. White
Secretary

NORTH CAROLINA
WAKE COUNTY

I, the undersigned, a Notary Public in and for said State and County, certify that ~~F. R. Adams~~ James R. Whitel III personally came before me this day and acknowledged that the foregoing instrument was executed in the name and on behalf of STIRRUP IRON CREEK ASSOCIATES, a joint venture, by THE ADAMS-BILT COMPANY, a joint venturer; that he, the said JAMES R. Whitel III is the _____ Secretary of THE ADAMS-BILT COMPANY, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed by its _____ President, sealed with its corporate seal, and attested by him self as its _____ Secretary, and that the said instrument is the act and deed of said corporation acting as a joint venturer of STIRRUP IRON CREEK ASSOCIATES.

WITNESS my hand and notarial seal, this the 12th day of December, 1983.



Notary Public

My Commission Expires:

July 11, 1988