

Prepared return to
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1150-3 Executive Circle
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NORTH CAROLINA
DURHAM COUNTY

SUPPLEMENTARY DECLARATION OF
RESTRICTIONS FOR STIRRUP CREEK
SUBDIVISION

(Subjecting Pagehurst Subdivision, Phase I) *42*

THIS SUPPLEMENTARY DECLARATION is made and entered into this 26th day of April, 1999 by STIRRUP CREEK HOMEOWNERS ASSOCIATION, a North Carolina non-corporation, hereinafter referred to as the "Association" and PERFECT CORPORATION, a North Carolina corporation, hereinafter referred to as "Perfect Corporation";

W I T N E S S E T H:

WHEREAS, An instrument entitled "DECLARATION OF RESTRICTIONS AFFECTING "STIRRUP CREEK", PROPERTY OF KAISER AETNA, A CALIFORNIA GENERAL PARTNERSHIP, DURHAM COUNTY, NORTH CAROLINA" has been recorded in Book 9-11, Page 1024, Durham County Registry, hereinafter referred to as the "Master Declaration" creates the subdivision known as "Stirrup Creek"; and

WHEREAS, Perfect Corporation is the owner of certain property, adjacent to property subject to the Master Declaration, lying within the City of Durham, Durham County, North Carolina, which is designated as Pagehurst Subdivision, Phase I, containing approximately 18 acres more or less; and

WHEREAS, Perfect Corporation desires to develop Pagehurst Subdivision, Phase I into contain approximately 57 residential lots and annex said property into the operation of the Stirrup Creek Homeowners Association; and

WHEREAS, the Association desires to allow Perfect Corporation to subject lands within the Pagehurst Subdivision, Phase I into the operation of the Association; and

WHEREAS, Article One, Section 3 of the Master Declaration allows the annexation of additional lands into the operation of the Stirrup Creek Homeowners Association and allows such other provisions as may be necessary in the judgment of the owner of the property in order to adequately and properly restrict the property; and

WHEREAS, Perfect Corporation desires to provide for the protection, preservation and enhancement of the property values and amenities (if any) of the property, and for the maintenance of the property and all improvements thereon, and in furtherance of said purposes desires to subject Pagehurst Subdivision, Phase I to the additional easements, covenants, conditions and restrictions hereinafter stated, each and all of which is and are for the benefit of the property and each owner of a portion thereof;

NOW, THEREFORE, the parties hereby declare as follows:

ARTICLE ONE

PROPERTY SUBJECT TO THE MASTER DECLARATION
AND THIS SUPPLEMENTARY DECLARATION OF RESTRICTIONS

All of Lots 1 through 57 inclusive as shown on map of Pagehurst Subdivision, Phase I within the property described on "EXHIBIT A, LEGAL DESCRIPTION" attached hereto and made a part hereof, hereinafter referred to as the "Property", shall be held, sold and conveyed subject to the easements, covenants, conditions and restrictions of the Master Declaration, said Master Declaration being incorporated by reference as if fully set out herein. The easements, covenants, conditions and restrictions of the Master Declaration shall run with the Property and all parts thereof and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof or interest therein and on their heirs, successors and assigns, and shall inure to the benefit of each owner of the Property or any part thereof or interest therein. In addition to the easements, covenants, conditions and restrictions contained in the Master Declaration the Property shall be sold and conveyed subject to the easements, covenants,

conditions and restrictions of this "SUPPLEMENTARY DECLARATION OF RESTRICTIONS FOR STIRRUP CREEK SUBDIVISION (Subjecting Pagehurst Subdivision, Phase I)", hereinafter referred to as the "Supplementary Declaration".

COVENANTS, CONDITIONS AND RESTRICTIONS
RELATING ONLY TO PAGEHURST SUBDIVISION, PHASE I

ARTICLE TWO

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 Perfect Corporation, 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 re-subdivided 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 Perfect Corporation 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.

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. Provided, however, and notwithstanding anything to the contrary that may appear herein: (i) Perfect Corporation, Perfect Corporation's agent, or any builder of homes on any Lot, subject to Perfect Corporation's approval, shall be permitted to erect and maintain sales offices, model homes and temporary construction or sales trailers or offices on any Lot owned by Perfect Corporation or such builder for the purpose of carrying on business related to the development, improvement and sale of Lots and the construction of single-family residences within the Property. Provided, however, any such sales office, model home and temporary construction or sales trailer or office must be specifically approved by Perfect Corporation and must comply with all applicable governmental laws and regulations; and (ii) Perfect Corporation and any person authorized by Perfect Corporation may conduct such business activities on any Lot as may be necessary in connection with Perfect Corporation's development and/or sales of any part or all of the Property or the Subdivision.

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. All fences on Lots shall be maintained at all times in a structurally sound and attractive manner and in a good state of repair. All fences on Lots shall be constructed of wood or masonry.

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 at a distance less than the distance required by applicable zoning laws and other governmental requirements.

Subject to approval of the City of Durham or other applicable governmental entity having jurisdiction, Perfect Corporation reserves the right at any time and from time to time to grant minor variances from and/or waive minor violations of the foregoing setback requirements, such

variances or waivers must be obtained in writing. Variances or waivers not in excess of twenty percent (20%) of the applicable requirement are deemed to be minor.

For the purpose of determining the foregoing building setback distances under this Supplementary Declaration, eaves, steps, stoops, open and screened-in porches, overhangs, bay windows, decks, patios terraces and chimneys shall not be considered as a part of the building, but the location of such improvements on a Lot shall be subject to the architectural control and approval provisions applicable to the Lots subject to this Supplementary Declaration. Provided, notwithstanding anything to the contrary that may appear herein, no dwelling or other improvement on a Lot shall encroach upon another Lot. Should any question arise under this Supplementary Declaration as to whether or not any portion of the building (other than the foregoing items specified as not being part of the building) should be considered as part of the building for the purpose of determining the foregoing building setback distances, or should any question arise as to what constitutes the front, side or rear property line of any Lot for the purposes of the required setback distances set forth in this Supplementary Declaration, the Architectural Committee shall have the authority to make such determination and the decision of the Architectural Committee shall be final.

NOTE: With respect to Perfect Corporation's rights to grant variances or waivers of building setback requirements, these rights are reserved to provide a method to grant relief from inadvertent violations and to afford an opportunity to address special, unusual or unique circumstances that may apply to any particular Lot (such as, for example, difficult topographical circumstances or unusual soil conditions). However, it is the specific intention of the parties that the exercise of such rights by Perfect Corporation not impair or destroy the rights of the Perfect Corporation, the Association or the Owners to enforce the provisions of this Declaration (subject to any such variance or waiver granted by Perfect Corporation), and that the exercise of such rights by Perfect Corporation not convert this Declaration from a real covenant running with the Property and binding on all present and future Owners of any part or all of the Property into a mere personal covenant enforceable only by Perfect Corporation.

Section 6. Minimum Size of Residences. No two-story or split-level residential structure having a minimum, heated living area of less than One Thousand Three Hundred Forty-Eight (1,348) square feet, and no one-story residential structure having a minimum, heated living area of less than one thousand three hundred (1,300) square feet shall be erected or placed on any building site. 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 Perfect Corporation shall be conclusive.

Section 7. Architectural Committee; Approval Required. Perfect Corporation 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. Limitation of Liability. Neither the Architectural Committee nor the members thereof, nor Perfect Corporation, nor the Association, shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval of disapproval or failure to approve or disapprove any plans or specifications.

Section 9. Restricted Actions by Owners. No Owner shall permit anything to be done or kept on such Owner's Lot or in the Common Area which will result in the cancellation of or increase in cost of any insurance carried by the Association, or which would be in violation of any law or any rule or regulation established by the Association. No waste shall be committed in the Common Area, except as may be necessary to enable Perfect Corporation or the Association to exercise any rights reserved to them hereunder or except as may be necessary to enable the Association to carry out its powers and duties hereunder. Each Owner shall comply with all applicable laws, regulations, ordinances (including, without limitation, zoning ordinances) and other governmental rules and restrictions in regard to such Owner's Lot(s) and the Common Area, and shall do so notwithstanding any attempted waiver or approval given by Perfect Corporation or Architectural Committee under the terms of this Declaration.

Section 10. 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 Perfect Corporation 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 Perfect Corporation may have the required work done, and the costs thus incurred by Perfect Corporation shall be paid by the owner of the building site. Perfect Corporation 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 11. 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 Perfect Corporation, or following initial construction, without prior express written approval of the Association.

Section 12. 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 Perfect Corporation 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 the Association, unless the tree is dead or diseased or poses an imminent threat or danger to persons or property.

Section 13. Removal of Vegetation From Common Area. No owner of any building site, other than Perfect Corporation, 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 Association.

Section 14. When Approval Implied. Where any owner or builder must secure prior approval of Perfect Corporation or the Association under these covenants before undertaking any activity or work, request for approval shall be submitted in writing, and failure of Perfect Corporation 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 15. Easements. Perfect Corporation on behalf of itself, the 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. Perfect Corporation 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 Perfect Corporation to provide or maintain any such utilities, services or easements

Section 16. Exchange of Common Area. The Association may exchange with Perfect Corporation 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 Perfect Corporation 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 Perfect Corporation 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 THREE CREATION OF CHARGE UPON THE PROPERTY

The Association shall not assess or collect dues against the Property until: (i) a dwelling is constructed on the lot, (ii) a certificate of occupancy is issued by the proper governmental authority, and (iii) the lot is conveyed from the homebuilder to a third party, or the a house is occupied, whichever shall first occur. Once dues become assessable by the Association, each and every Owner of a Lot shall automatically become and be a full and equal member of the Stirrup Creek Homeowners Association with all rights, privileges, and duties of such membership, including, but not limited to, the right to use the common areas and recreational facilities owned by the Association and the duty to pay dues to the Association. Such rights, privileges and duties shall not differ from those afforded to the other members of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and the Association may make reasonable rules relating to the proof of ownership of a Lot.

ARTICLE FOUR MISCELLANEOUS

Section 1. Binding Effect. This Supplementary Declaration and the terms, covenants, restrictions and provisions set forth herein shall run with and bind the Property and shall inure to the benefit of every Owner of a Lot in the Property, including Perfect Corporation, and the Association, their respective heirs, successors, and assigns, and failure by the Association, Perfect Corporation 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.

Section 2. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use or abandonment of such Owner's Lot(s) or the Common Area.

Section 3. Relation between the Master Declaration and this Supplementary Declaration. Nothing contained in this Supplementary Declaration shall be construed to limit the operation and affect of the Master Declaration on the Property which is not inconsistent with this Supplementary Declaration. In the event of a conflict between this Supplementary Declaration and the Master Declaration, this Supplementary Declaration shall control.

Section 4. Amendment of the Master Declaration. Nothing contained in this Supplementary Declaration shall be construed to amend or modify the Master Declaration as it relates to other property within Stirrup Creek Subdivision.

Section 5. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable City of Durham and other governmental entity requirements or restrictions relative to the location or construction of improvements on a Lot and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots. Provided, that in any instance in which the provisions of this Supplementary Declaration impose a more restrictive requirement than the applicable governmental requirements or restrictions, the provisions of this Supplementary Declaration shall control.

Section 6. Title to Additional Common Area. Perfect Corporation may convey to the Association fee simple title to additional real property portions of the Common Area, if any, shown on the plat of Pagehurst Phase I, which conveyance(s) shall be free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and

utility easements, other easements and encumbrances (not constituting a lien to secure the payment of money) and mineral interests outstanding and of record in Durham County, North Carolina, and the terms and conditions of this Supplementary Declaration and the Master Declaration. The Association agrees to accept such Common Area as may be conveyed by Perfect Corporation. If the Perfect Corporation conveys any Common Area to the Association and thereafter, pursuant to the rights reserved by Perfect Corporation herein, revises the boundaries of such Common Area and any Lots adjoining such Common Area, the Perfect Corporation and the Association shall execute such documents as may be reasonably required by the Perfect Corporation to correct the boundaries of the Common Area and adjoining Lots in accordance with the revisions made thereto.

Section 7. Rights Exclusive. All right herein created for, held by, or reserved to Perfect Corporation shall belong exclusively to Perfect Corporation 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 8. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 9. Number and Gender. Whenever the context of this Declaration requires, the singular shall include the plural and one gender shall include all.

Section 10. Laws of North Carolina and the United States. This Declaration shall be subject to and construed in accordance with the laws of the State of North Carolina and all applicable laws and regulations of the United States of America. Whenever there is a conflict between the provisions of this Declaration, any Supplemental Declaration or the Bylaws and any applicable laws of the State of North Carolina, the United States or any other governmental entity having jurisdiction over the Property, such laws shall control.

Section 11. Assignment. Perfect Corporation specifically reserves the right, in its sole discretion, at any time and from time to time, to assign (temporarily or permanently) any or all of its rights, privileges and powers under this Declaration.

Section 12. Invalidation. Invalidation of any one or more of the covenants contained in this Declaration by judgment or court order shall in no way affect any of the other covenants and provisions hereof, which shall remain in full force and effect.

IN TESTIMONY WHEREOF, Stirrup Creek Homeowners Association by authority of its Board of Directors hereby certifies that the foregoing instrument has been duly executed by the authority of the members of the Association and therefore constitutes, a valid agreement of the Association, and Perfect Corporation has executed this instrument by authority of its Board of Directors, all on the day and year first above written.



Attest: Ed J. Booth, III
Secretary

STIRRUP CREEK HOMEOWNERS ASSOCIATION

By Charlotte Hye
President

PERFECT CORPORATION

By [Signature]
President

Attest

Secretary

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, William H. Collier, a Notary Public of the County of Durham, State of North Carolina, do hereby certify that Earl H. Boorn III personally came before me this day and acknowledged that he is _____ Secretary of STIRRUP CREEK HOMEOWNERS ASSOCIATION, a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by h/a as its _____ Secretary.

Witness my hand and official seal this 20 day of April, 1999.

My commission expires: 6-25-2000 W. H. Collier
Notary Public

(Official Seal)

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, _____, a Notary Public of the County of _____, State of North Carolina, do hereby certify that _____ personally came before me this day and acknowledged that he is _____ Secretary of PERFECT CORPORATION, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by h _____ as its _____ Secretary.

Witness my hand and official seal this _____ day of _____, 19_____.

My commission expires: _____
Notary Public

(Official Seal)