

BK4290PG0219

NORTH CAROLINA

WAKE COUNTY

DECLARATION OF COVENANTS FOR COMMON  
PROPERTIES IN RIVER OAKS SUBDIVISION AND  
PROVISIONS OF RIVER OAKS  
HOMEOWNERS' ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS FOR COMMON PROPERTIES, made this 1st day of June, 1988, by CUPRITE DEVELOPMENT, INC., a North Carolina corporation, hereinafter called "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property described as follows:

Being all that property entitled "River Oaks Subdivision", containing 97.69 acres, according to plat by Surveying Associates, Inc., recorded in Book of Maps 1988, Pages 836, 837, 838, and 839, Wake County Registry.

WHEREAS, the Declarant desires to create certain recreational facilities more particularly described as Common Properties for the benefit of said community and for the benefit of all the lots set forth hereinabove; and

WHEREAS, the Declarant desires to provide for the preservation of the values, amenities and conceptual intent of the said community and for the maintenance of the said Common Properties; and, to this end, desires to subject the said real property above described, together with such additions as may hereafter be made, to the covenants, restrictions, easements, 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

WHEREAS, the Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the power and authority of maintaining and administering the Common Properties enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

WHEREAS, Declarant has caused or will later cause to be incorporated under the laws of the State of North Carolina, as a non-profit corporation, RIVER OAKS HOMEOWNERS' ASSOCIATION, 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 Declarant declares that the real property described

rvroaks.dec/rm10

PRESENTED  
FOR  
REGISTRATION

88 JUN 23 PM 4:12

KENNETH C. WILKINS  
REGISTER OF DEEDS

WAKE COUNTY

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Prepared by &  
Return to:  
MANNING, FULTON  
& SKINNER  
ATTORNEYS AT LAW  
RALEIGH, NORTH CAROLINA

(WER)

above, and such additions thereto as may hereinafter be made, is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, agreements, charges, assessments, affirmative obligations, and liens (sometimes referred to as "The Declaration") 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. "Association" shall mean and refer to the River Oaks Homeowners' Association, Inc., a North Carolina non-profit corporation.

Section 2. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any tract situated upon the Properties, including contract sellers but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Property" or "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.

Section 5. "Common Properties" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners. The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated as "Common Property."

Section 6. "Lot" shall mean and refer to any tract or parcel of land, shown upon any recorded subdivision map of the Properties, intended for the construction of a detached single family dwelling, excluding any "Common Properties" as heretofore defined.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;

(b) Payments or obligations to reserve accounts established and maintained pursuant to this Declaration;

(c) Expenses of administration, maintenance, repair or replacement of the Common Properties;

(d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;

(e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase;

(f) Ad valorem taxes and public assessment charges lawfully levied against Common Properties;

(g) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property, cross Common Properties of the Property that serve both the Property and lands adjacent thereto; and

(h) Expenses agreed by the members to be common expenses of the Association.

Section 9. "Declarant" shall mean and refer to CUPRITE DEVELOPMENT, INC., its successors and assigns.

# ARTICLE II MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The Declarant and every person or entity who is a record owner of a fee simple or undivided fee simple interest in any Lot which is subject by the Covenants to assessment by the Association shall be a member of the Association, 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 which is subject to assessment by the Association.

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

Class A. Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person or entity holds an interest in any Lot, all such persons or entities shall be members, but the vote for such Lot shall be exercised as they among themselves determine. In no

event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership with one vote for each Lot owned on the happening of either of the following events, whichever occurs earlier: (a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership or (b) five (5) years from the date of conveyance of the first Lot by Declarant.

Section 3. Suspension of Voting Rights. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and/or Articles and Bylaws of the Association.

### ARTICLE III 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 Bylaws, 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 Declarant hereby covenants, for itself, its successors and assigns, that it shall convey fee simple title to the Common Properties, free and clear of all liens and encumbrances, to the Association prior to the conveyance of the first Lot, except for encumbrances of restrictive covenants and drainage and utility easements.

Section 4. Television Antennas, Cablevision, Music. The Association may provide one or more central television or radio antennas for the convenience of the Members and may supply cablevision and piped-in music, and the cost of these may be included in the annual or special assessments. The Association may regulate or prohibit the erection of television, radio or other antennas, as well as satellite dishes on individual Lots.

Section 5. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Declarant and of the Association, in accordance with its Bylaws, 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;
- (c) The right of the Association, as provided in its Bylaws, 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 of 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;
- (d) The right of the Association to charge Members' guests 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, sell or lease all or any part of the Common Properties 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, sale or lease shall be effective unless authorized by the vote of two-thirds (2/3) of the vote at a duly called meeting and unless written notice of the proposed action 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 affecting the Common Properties, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the membership.

ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby

covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are common expenses, (2) special assessments for extraordinary maintenance and capital improvements, (3) special assessments for purchase, construction or reconstruction of improvements; and (4) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvements to the Common Properties and public roads if the Association shall default in payment thereof. The annual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses to promote the recreation, health, safety, and welfare of the Owners of Lots; and, in particular, but not limited to, for the acquisition, improvement and maintenance of the Property, services, amenities and facilities, and

for the use and enjoyment of the Common Properties, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Properties, the providing for security to the Property, the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board, the payment of common antenna or cablevision, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Amount of Assessment.

(a) Initial Assessment. For the calendar year 1989, the maximum annual assessment shall be Four Hundred Eighty Dollars (\$480.00).

(b) Increase by Association. From and after December 31, 1988, the annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the greater of five percent (5%) or the percentage increase reflected in the U. S. City Average, Consumer Price Index - United States and selected areas for urban wage earners and clerical workers, all items most recent index and percentage changes from selected dates, (published by the U. S. Bureau of Labor Statistics, United States Department of Labor, Washington, D. C.), or such other Index as may succeed the Consumer Price Index, for that twelve-month period ending the immediately preceding October 1.

(c) Increase by Members. From and after December 31, 1989, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative 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 such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Exception to Lot Assessment. Notwithstanding any provision herein to the contrary, the assessment for any Lot owned by Declarant upon which no dwelling has been constructed shall be twenty-five

percent (25%) of the assessment of Lots which have been conveyed by Declarant.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Properties, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. 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 assessment shall be made for the balance of the calendar year and shall be payable in full within thirty (30) days after the first day of the month fixed for commencement. The assessments for any year after the first year shall similarly be payable in full within thirty (30) days after 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. The prorating of any annual or special assessment due to change in ownership of any Lot during a calendar year shall be the responsibility of the individuals involved and not the Association.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due

date shall be delinquent, in default and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed nine percent (9%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court of Wake County in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advanced to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 7. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 8. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

#### ARTICLE V ARCHITECTURAL CONTROL

No site preparation (including, but not limited to, grading, elevation work, sloping or tree work) or initial construction, erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, bulkheads, screens, plantings or other structures shall be commenced, erected, placed, altered or maintained upon the Property or any Lot, nor shall any exterior addition to, or change, or alteration therein be made to any improvement by any Owner, other than Declarant, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, location and elevations of the proposed improvements shall have been submitted to, and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more persons 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; provided that plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding the foregoing.

Upon request the Board shall provide any Owner with a letter stating that any such work plans and specifications have been approved and the same may be relied upon by third parties.

Refusal of approval of such plans, location or specifications may be based upon any grounds, including purely aesthetic and environmental, that in the sole discretion of the Board or Architectural Committee, it shall deem sufficient. The Association shall not be responsible for any defects in the plans and specification submitted to it or in any structure erected according to such plans and specifications.

The Association, through the Board, the Architectural Committee or their appointed agents, shall have the right, at its election, but shall not be required, to enter upon any of the Property during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

#### ARTICLE VI ANNEXATION OF ADDITIONAL PROPERTIES

Declarant, its successors and assigns, including the Association, shall have the right to bring within the plan and operation of this Declaration of Covenants for Common Properties additional later acquired contiguous properties at future stages of development. Such additional properties authorized in this Declaration shall be made by filing in the Wake County Registry Supplementary Declaration of Covenants for Common Properties with respect to the additional properties and same shall extend the operation and effect of this Declaration to such additional properties.

#### ARTICLE VII USE RESTRICTIONS

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

Section 2. Use of Property. No portion of the Property (except for model home/temporary office of Declarant or purchaser from Declarant) shall be used except for single-family residential purposes and for purposes incidental or accessory thereto.

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

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in

accordance with applicable governmental ordinances and are not a nuisance to other Owners.

Section 5. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, order, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

Section 6. Business. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any part of the Property, except that the Declarant or its agents may use any unsold Lot for sales or display purposes.

Section 7. Signs. No Owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any building, or any portion of the Common Properties, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority; provided, however, that the Declarant and any mortgagee who may become the Owner of any Lot, or their respective agents, may place "For Sale" or "For Rent" signs on any unsold or unoccupied Lots provided, however, that during the development of the Property and the marketing of any Lot, the Declarant or purchaser from Declarant may maintain a sales office and may erect and display such signs as the Declarant or purchaser from Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws.

Section 8. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Properties except at the direction or with the express written consent of the Association.

Section 9. Parking. No boats, trailers, campers, motorhomes, commercial vehicles or tractors shall be parked on the Property or on any right of way of any streets adjoining the Property by any Owner, family members, tenants or contract purchasers, except as may be permitted by the

Board or Architectural Committee to be parked in a closed garage or screened area.

## ARTICLE VIII BUILDING RESTRICTIONS

Section 1. Square Footage. Except for the provisions of Section 3 of this Article, any dwelling erected on a detached single-family residential Lot shall contain a minimum enclosed dwelling area of 2,700 square feet for single level dwelling and 3,100 square feet for all dwellings of two or more levels. In addition thereto, and unless a variance is granted therefor as provided herein, all dwellings shall have an enclosed garage for a least two (2) but no more than four (4) cars attached to the main dwelling. The term "enclosed dwelling area" as used in this Section 1 shall mean the total enclosed area within a dwelling subject to heating and cooling; provided, that the term specifically does not include garages, terraces, open porches, decks, stoops and like areas regardless of heating or cooling.

Section 2. Setback Lines. No dwelling erected on a detached single-family residential Lot (including garage) shall be constructed nearer than one hundred (100) feet to the front Lot line (except Lots 12 and 37) or twenty-five (25) feet to any side Lot line unless a variance is granted therefor as provided herein. This restriction shall prevail over any lesser governmental setback standard.

Section 3. Height and Accessory Building. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any detached single-family residential Lot other than a detached single-family dwelling not to exceed two and one-half (2 1/2) stories in height, unless the Board approves in writing a variance permitting a structure of more than two and one-half (2 1/2) stories, and a garage and small accessory building (which may include a pool house, servants' quarters, or guest facilities), provided, the use of such dwelling or accessory building does not in the opinion of the Board or Architectural Committee overcrowd the site. Such accessory building may not be constructed prior to the construction of the primary dwelling. All garages must be attached to the main dwelling, unless the Architectural Committee approves in writing a variance permitting a detached garage.

Section 4. Driveways. All driveways from the street to each house shall be hard-surfaced (brick, concrete, asphalt or other material approved

in writing by the Board or Architectural Committee). This approval may be waived by the Board or Architectural Committee under unusual circumstances.

Section 5. Variances. The Board or the Architectural Committee shall be empowered with the right to grant, in writing, variances to the requirements imposed in Sections 1, 2 and 3 of this Article VIII where unintentional errors occur or topographical conditions exist that would result in a minor violation of such restriction. Violations not in excess of twenty percent (20%) of the minimum requirements shall be deemed minor.

Section 6. Multi-Family Use Prohibited. No multiplex residence or apartment house shall be erected or placed on any detached single-family residential lots, and no dwelling once approved and constructed shall be altered or converted into a multiplex residence or apartment house.

Section 7. Remedies. If the finished dwelling, garage, accessory building or other structure does not comply with the submitted and approved plans and specifications, the Board retains the right to make the necessary changes at Owner's expense to comply with the approved plans and specifications, the right to treat such charge or cost as an assessment, the right to file under the North Carolina lien laws a notice of lien for any costs incurred, and the further right to resort to all remedies provided under the laws of North Carolina for the recovery of such costs and the expenses of collection, including without limitation, reasonable attorney's fees. Any changes in plans or specifications must first be reapproved in accordance with the procedure herein specified for architectural control.

Section 8. Right to Repurchase. If an Owner fails to commence construction of the dwelling on any Lot purchased within twenty-four (24) months after purchase, the Declarant shall have the option to repurchase said Lot at the original selling price. The exterior of all dwellings and other structures approved for construction, as well as all landscaping, must be completed within eighteen (18) months after construction on the Lot shall have commenced, except where completion is impossible due to strikes, fires, calamity, national emergency or other reasonable cause beyond the control of Owner or his builder.

#### ARTICLE IX EASEMENTS

Section 1. Utility Easements. All of the Property, including Lots and Common Properties, shall be subject to such easements for driveways,

walkways, parking areas, water lines, sanitary sewers, storm drainage, gas lines, telephone and electric power lines and other utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Properties conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the membership as provided in the Articles of Incorporation and this Declaration.

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear ten (10) feet of each lot and five (5) feet on each side line 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 or 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.

The developer reserves the right to subject the real property in this subdivision to a contract with Carolina Power & Light Company for the installation of underground electric cables which may require an initial contribution and/or the installation of street lighting, which will require a continuing monthly payment to Carolina Power & Light Company by the Owner of each building.

Section 2. Easement for Benefit of Utility Company. An easement is hereby established for the benefit of any utility company for the setting, removing and reading of all utility meters as well as maintaining and replacing same.

Section 3. Easement for the Benefit of the County of Wake. An easement is hereby established for the benefit of the County of Wake or other governmental agency over the Common Properties for police protection, fire fighting and garbage collection and the rendering of such other

services as are appropriate and necessary for the use and enjoyment of the property. In no case shall the County of Wake or other responsible agency be responsible for failing to provide any emergency or regular fire, police or other public service to the Property or to any of its occupants when such failure is due to lack of access to such area due to inadequate design or construction, blocking of access routes or any other factor within the control of the Declarant, the Association, the Owners or occupants. All conveyances of any portion of the Property shall be subject to these limitations on the responsibility of the County of Wake or other agency.

#### ARTICLE X INSURANCE

Section 1. Insurance to be Maintained by the Association. The following insurance coverage shall be maintained in full force and effect by the Association:

- (a) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association, but in an amount of at least \$1,000,000.00 for each occurrence for public liability insurance.
- (b) All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.
- (c) Such other insurance coverage as it may determine to be desirable and necessary.

Section 2. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

Section 3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

#### ARTICLE XI RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association and other reputable

mortgage lenders and insurers of first mortgages. So long as any Institutional Lender or Institutional Lenders hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- (a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year.
- (b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.
- (c) To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.
- (d) To inspect the books and records of the Association during normal business hours.
- (e) To be given notice by the Association of any substantial damage to any part of the Common Properties.
- (f) To be given notice by the Association if any portion of the Common Properties is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender desires the benefits of the provisions of this Section, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts

to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

#### ARTICLE XII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. General Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. The Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners.

Section 4. Governmental Authority Amendments. No amendment which would change or delete any provision herein required by any governmental authority shall become effective until submitted to and approved by that authority; provided, however, if that authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with.

Section 5. Amendments Permitted Without Membership Approval. The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the Members: (A) Prior to the sale of the first Lot, this Declaration may be amended by the Declarant. (B) Declarant may amend this Declaration upon annexation of additional lands as specified in Article VI herein. (C) The Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction.

(D) The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property. (E) The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, to qualify the Association or the Property, or any portion thereof, for tax exempt status.

Section 6. Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, fidelity bonds shall be required for such management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three (3) month's aggregate assessments on all units plus reserve funds.

Fidelity bonds required herein shall:

1. name the Association as an obligee;
2. contain waivers by the insurers of the fidelity bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; and

3. provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Federal National Mortgage Association any loan secured by any unit.

The premiums on all such fidelity bonds for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

Section 7. Recordation. No amendment shall be effective until recorded in the Wake County Registry.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 1<sup>st</sup> day of June, 1988.

CUPRITE DEVELOPMENT, INC.,  
A North Carolina Corporation

ATTEST:

Dan C. Austin, Secretary

By: Stephen F. Kenney  
Stephen F. Kenney, President

STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

I, Vanessa Dixon, Notary Public of the County and State aforesaid, certify that Dan C. Austin personally appeared before me this day and acknowledged that he is Secretary of Cuprite Development, Inc., a North Carolina corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary.

Witness my hand and Notarial Stamp/Seal, this 1<sup>st</sup> day of June, 1988.

Vanessa Dixon  
Notary Public

My commission expires: 2-7-93

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Vanessa Dixon

Notar(y)(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

KENNETH C. WILKINS, Register of Deeds

By: Stephen C. Smith  
Asst./Deputy Register of Deeds