

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**STOWE CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS made this the 17<sup>th</sup> day of September, 2001, by Beazer Homes Corp., a Tennessee Corporation, hereinafter referred to as "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property which is described in Article II hereof, and desire to create thereon an exclusive residential community of single-family homes to be named **STOWE CREEK**; and

WHEREAS, Declarant desires to insure the attractiveness of the subdivision and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect, and enhance the values and amenities of all properties within the subdivision and to provide for the maintenance and upkeep of the entrances, landscaping easements and Common Area as hereinafter defined; and, to this end, desire to subject the said real property to the covenants, conditions, restrictions, easements, charges, and liens hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation, protection, and enhancement of the said subdivision and to provide for the maintenance and upkeep of landscaping easements and the Common Area, if any, to create an organization to which will be delegated and assigned the powers of maintaining said entrances and landscaping easements and owning and administering the Common Area, enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated or will incorporate under North Carolina law **STOWE CREEK HOMEOWNERS ASSOCIATION** as a non-profit corporation for the purpose of exercising and performing the aforesaid functions;

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions, and Restrictions, does declare that all of the property described in Article II, Section 1, hereof is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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Stamps:	
Register of Deeds Mecklenburg County	

## ARTICLE I

### DEFINITIONS

Section 1. "Homeowners Association" shall mean and refer to STOWE CREEK HOMEOWNERS ASSOCIATION, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, except Declarant, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to the property described in Article II hereof, and any additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Homeowners Association.

Section 4. "Entrance and Landscape Easement" shall mean and refer to any easement so designated on any plat of STOWE CREEK now or hereafter recorded in the Mecklenburg Public Registry.

Section 5. "Common Area" shall mean all real property owned by the Homeowners Association for the common use and enjoyment of the owners.

Section 6. "Lot" shall mean and refer to any numbered plot of land, with delineated boundary lines, appearing on any recorded subdivision map of the Properties with the exception of the Common Area, if any.

Section 7. "Declarant" shall mean and refer to BEAZER HOMES CORP. and shall also mean and refer to any person, firm, or corporation which shall hereafter become vested, at any given time, with title to two or more undeveloped Lots for the purpose of causing residence building(s) to be constructed thereon, and any such successor in title to BEAZER HOMES CORP., shall be a Declarant during such period of time as said party is vested with title to two or more such Lots (whether undeveloped or developed and unconveyed), but no longer.

Section 8. "Member" shall mean and refer to every person or entity who holds membership in the Homeowners Association.

Section 9. "Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47E, North Carolina General Statutes.

Section 10. "Special Declarant Rights:" shall mean the rights as defined in Section 47E-1-103(28) of the Act for the benefit of a Declarant, including, but not limited to the following: to complete improvements indicated on plats or plans filed with or referenced in the Declaration; to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs advertising STOWE CREEK; to use easements through the Common Area for the purpose of making improvements within STOWE CREEK or within real estate which may be

added to STOWE CREEK; and to elect, appoint or remove any officer of Board member of the Association during any period of Declarant control.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE HOMEOWNERS ASSOCIATION

Section 1. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and within the jurisdiction of the Homeowners Association is located in Mecklenburg County, North Carolina, and is more particularly described on a map recorded in Map Book 35 at Pages 847 of the Mecklenburg Public Registry.

Section 2. Additions to Existing Property. Additional land may be brought within the scheme of this Declaration in the following manner:

(a) Additional land within the area described on Exhibit "A" attached hereto and incorporated herein by reference may be annexed to the existing property by Declarant or its assigns, in future stages of development, without the consent of the Homeowners Association or its Members, provided that said annexations must occur within six (6) years after the date of this instrument.

(b) Additional residential property (and common area), outside of the area described in the aforementioned EXHIBIT A may be annexed to the Properties and brought within the scheme of this Declaration and the jurisdiction of the Association with the consent of the members entitled to at least two-thirds (2/3) of the votes appurtenant to all Class A lots and at least two-thirds (2/3) of the votes appurtenant to all Class B lots, if any, as hereinafter defined in Article III, Section 2. The Association may participate in mergers or consolidations with other non-profit corporations organized for the same or similar purposes as the Association, thereby adding to the Association, or to a surviving homes association, the properties, rights and obligations of the non-profit corporation with which it merges or consolidates. Any such merger or consolidation shall have the assent of the members as provided above in this subsection (b), and no such merger or consolidation shall revoke, change or add to any of the provisions of this Declaration except as herein provided.

(c) The additions authorized under subsections (a) and (b) above shall be made by filing of record Supplementary Declarations of Covenants, Conditions, and Restrictions with respect to the additional properties which shall extend the scheme of this

Declaration to such properties and thereby subject such additions to the benefits, agreements, restrictions, and obligations set forth herein, as may be amended by such supplementary declaration.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two classes of Lots with respect to voting rights and assessments:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Each Class A Lot shall entitle the Owner(s) of said Lot to one vote. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any one Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been converted to Class A Lots as provided in (1) or (2) below. The Declarant shall be entitled to three votes for each Class B Lot owned by it. The Class B Lots shall cease to exist and shall be converted to Class A Lots:

(1) When the total number of votes appurtenant to the Class A Lots equal the total number of votes appurtenant to the Class B Lots; provided, that the Class B Lots shall be reinstated with all rights, privileges and responsibilities of such Class, if, after conversion of the Class B Lots to Class A lots hereunder, additional land containing lots is annexed to the existing property pursuant to Article II above, thus making the Declarant the owner, by virtue of the newly created Lots and of other Lots owned by Declarant, of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversion and reconversion shall occur automatically as often as the foregoing facts shall occur); or (2) On December 31,

2001, whichever event shall first occur.

## ARTICLE IV

### PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment: Except as limited by Section 2 of this Article IV, every Owner shall have a right and easement of enjoyment in and to the Common Area established initially and in all future stages or sections of the development which right and easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions.

(a) The right of the Homeowners Association to suspend the voting rights and rights to the use of the Common Area for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(b) The right of the Homeowners Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least three fourths (3/4) of the votes appurtenant to each Class of Lots (Class A and Class B) agree to such dedication or transfer and signify their agreement by a signed and recorded written instrument, provided that this subsection shall not preclude the Board of Directors of the Homeowners Association from granting easements to public authorities or others for the installation and maintenance of sewerage, utilities, and drainage facilities upon, over, under, and across the Common Area without the assent of the membership when, in the sole opinion of such Board, such easements do not interfere with the use and enjoyment of the Properties or are necessary for the convenient use and enjoyment of the Properties;

(c) Except as provided in Subsection (b) hereinabove, Conveyance or encumbrance of Common Area shall be governed by Section 47E-3-112 of the Act which provides that portions of the Common Area may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to that action. Proceeds of the sale or financing of Common Area shall be an asset of the Association. The Association, on behalf of the Lot Owners, may contract to convey Common Area or subject Common Area to a security interest, but the contract is not enforceable against the Association until approved as hereinabove set forth. Thereafter the

Association has all powers necessary and appropriate to affect the conveyance or encumbrance, free and clear of any interest of any Lot owner or the Association in or to the Common Area conveyed or encumbered, including the power to execute deeds or other instruments. No conveyance or encumbrance of Common Area may deprive any Lot of its rights of access and support.

- (d) The right of the Association to establish rules and regulations governing the use of the common area or portions thereof.

Section 2. Delegation of Use.

(a) *Family.* The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owners' family who occupy the residence of the Owner within the Properties as their principal residence in Mecklenburg County, North Carolina.

(b) *Tenants or Contract Purchasers.* The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Mecklenburg County, North Carolina.

(c) *Guests.* Common Area situated upon the Properties may be utilized by guests of Owners, tenants, or contract purchasers subject to the rules and regulations of the Homeowners Association, as may be established by its Board of Directors, governing said use.

Section 3. Ownership of Common Areas. Declarant shall convey the Common Areas to the Association. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Area shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the properties, 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 Homeowners Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall be a charge on the land and shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but shall continue to be a lien upon the property.

Section 2. Purposes of Assessments. The assessments levied by the Homeowners Association shall be used exclusively to promote the health, safety and welfare of the residents of the Properties, the enforcement of these covenants, and the rules of the Homeowners Association, and in particular, for the improvement and maintenance of the Properties and providing the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and any improvements thereon and other areas maintained by the Homeowners Association, including, but not limited to, the cost of repair, replacement and additions thereto, the cost of labor and equipment, materials, management and supervision thereof, the payment of taxes assessed, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys to represent the Homeowners Association when necessary, and such other needs as may arise.

Without limiting the generality of the above-described purposes, the assessments levied by the Homeowners Association may be used for the acquisition, construction and improvement (including landscaping and planting) and maintenance of the facilities located or to be located in the Common Area or any easement area, entrance way, or berms.

Section 3. Maximum Annual Assessment. Until January 1, 2002, the maximum annual assessment shall be \$360.00 per Lot, except Lots owned by Declarant (s) shall be \$30.00 per Lot.

(a) Beginning January 1, 2002 the above established assessments may be increased, effective January 1 of each year, without a vote of the membership, but subject to the limitation that any such increase shall not exceed the percentage increase, if any, in the Consumer Price Index (published by the Department of Labor, Washington, D. C.) for all Cities over the immediately preceding twelve (12) month period which ended on the previous October 1, or

five (5%) percent of the maximum amount for the previous year, whichever is greater.

(b) Beginning January 1, 2002, said maximum annual assessments may be increased without limitation, if such increase is approved by Members entitled to no less than two-thirds (2/3) of the votes (appurtenant to each Class of Lots) represented in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessments at amounts not in excess of the maximum. Any annual assessment established by the Board shall continue thereafter from year to year until changed by said Board.

Section 4. Special Assessments for Capital Improvements. In addition to the monthly assessments authorized above, the Homeowners 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, repair, or replacement of a capital improvement upon the entrances and landscaping easements and the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article.

Section 5. Assessment Rate. Both annual and special assessments must be fixed at a uniform rate for all Lots except Declarant(s) shall be assessed at 25% of such Assessments, and may be collected on a yearly, quarterly or monthly basis, as determined by the Board of Directors.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) percent of the votes appurtenant to each Class of Lots (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment. The annual assessments provided for herein shall commence for all lots subject to this Declaration on the day of the closing of the first lot to an owner other than a builder, and for new lots created thereafter on the first day of the month following the recording of a new map of the properties. Declarant shall be responsible for maintenance of the easement areas and common area, if any, until such time.

At least thirty (30) days before January 1 of each year except 2001, the Board of Directors shall fix the amount of the monthly assessments against each Lot for the next year and at least fifteen (15) days before January 1 shall send written notice of such fixed assessment to every



Owner subject thereto. The due dates for the payment of monthly and special assessments shall be established by the Board of Directors. The Homeowners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Homeowners Association setting forth whether the assessments on a specified Lot have been paid.

Notwithstanding Sections 1 and 7 hereof, the Declarant may, at its election, postpone, in whole or in part, the date on which the assessment shall commence provided that the Declarant maintains the Common Areas for which no assessment is being collected during the period of such postponement.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Homeowners Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum or rate set by the Board of Directors prior to the time of such delinquency, whichever is greater. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Homeowners Association to defray the costs of late payment. The Homeowners Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, late payment fee, costs, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No owner may avoid or otherwise escape liability for payment of the assessments by abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage, mortgages, first deed of trust, or deeds of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust, or deeds of trust.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit 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 VI

### EASEMENTS

Easements for installation and maintenance of driveway, walkway, parking area, water line, gas line, cable television, telephone, electric power line, sanitary sewer and storm drainage facilities and for other utility installations are reserved as shown on the recorded plat. Further, easements ten feet in width for such purposes are reserved over, under and through and along the rear lot lines of

all lots shown on recorded plats, and easements five feet in width for such purposes are reserved over, under and through and along all side lot lines of all lots shown on recorded plats, as well as easements five feet in width along the front lot lines for sidewalk construction, maintenance and repair purposes. In the event it is determined that other and further easements are required over any lot or lots in locations not shown on the recorded plat and not along rear or side lot lines, such easements may be established by the Declarant, except that if any such further easements are reserved or established after the conveyance of a lot or lots to be affected thereby, the written assent of the Owner or Owners of such lot or lots and of the trustees and mortgagees in deeds of trust constituting a lien thereon shall be required. Within any such easements above provided for, no structure, plating or other material shall be placed or permitted to remain which may interfere with the installation, delivery and maintenance of public utilities, or which may obstruct or 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. Declarant may release any easements it determines is not needed.

## ARTICLE VII

### ARCHITECTURAL CONTROL

No building, fence, well, or other structure shall be commenced or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, including the erection of antennas, aerials, awnings, the installment or replacement of reflective or other material in the windows of a Homeowner's Unit or other exterior attachment, until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as a harmony of external design and location in relation to surrounding structures and topography by an architectural control committee composed of three (3) or more representatives appointed by the Declarant or by the Board of Directors of STOWE CREEK HOMEOWNERS ASSOCIATION, once the Declarant assigns to it the right of appointment hereunder. In the event said committee fails to approve or disapprove such design and location within thirty (30) days after a Homeowner obtains a signed receipt by the Association duly acknowledging 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. The Architectural Control Committee shall have the right to charge a reasonable fee for receiving such application in an amount not to exceed \$25.00. The Architectural Control Committee shall not approve any alterations, decorations, or modifications which would jeopardize or impair the soundness, safety, or appearance of any Lot or the Common Area. Provided that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant in

accordance with its general plan of development.

## ARTICLE VIII

### USE RESTRICTIONS

Section 1. Land Use. All Lots in the tract shall be known and described as residential Lots. No structure shall be erected, altered, placed, or permitted to remain on any residential building Lot other than one detached single-family dwelling, not to exceed two and one-half (2½) stories in height, a private attached garage and other buildings incidental to residential use of the plot. This section shall not prevent the use of model home and construction trailers during the construction of residences within the subdivision.

Section 2. Building Setbacks. No building shall be erected on any residential lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. With respect to corner lots the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner lot shall face the front lot line. No building, garage, carport, or other accessory building and structure incidental to the residential use of the lots shall be located nearer to a side lot line than permitted by the City of Charlotte and or Mecklenburg zoning ordinances as such ordinances change from time to time. For purposes of determining compliance or noncompliance with the foregoing building line requirements, porches, terraces, caves, wing-walls, and steps extended beyond the outside wall of a structure shall not be considered as part of the structure, provide, however, that this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

Section 3. Fences. No fence or wall shall be erected on any building plot closer to any street right-of-way than the building setback lines shown upon the recorded map and no fence may be higher than six (6) feet tall. Chain link or metal fencing other than wrought iron, is not permitted, except that 2"x 4" mesh may be used with split rail fencing to contain children and animals within the rear yard. Perimeter fencing shall not have more than 70% of any of its surface closed as viewed from a point on a line of sight perpendicular to the line formed by the line of the fence. A wall constructed of brick or stone masonry and used in lieu of a fence is exempt from the openness test. Fencing of a more solid or privacy nature may be used around patios, wood decks, or pools as privacy screens, said privacy fencing may be located at a distance no greater than ten (10) feet from the edge or circumference of the patio, deck or pool area being screened. The fencing restriction in this paragraph and Article VII hereof shall not be applicable to model homes owned by Developer.

Section 4. Lot Area. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width at the front building setback line permitted by the City of Charlotte and or Mecklenburg Zoning Ordinances.

Section 5. Temporary Structures and Parking. No residence of a temporary nature

shall be erected or allowed to remain on any lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any lot, either temporarily or permanently. No boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle shall be parked, stored or let (a) on any part of the Common Area, (b) in any driveway or (c) on any other part of a lot unless the same are fully enclosed within the garage located on the lot or securing appropriate approval by the Architectural Control Committee. This restriction shall not apply to sales trailers, construction trailers, or other vehicles, which may be used by Declarant and its agents and contractors in the conduct of their business. No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living or dwelling area within the Properties. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway within the Properties, except in the case of emergency.

Section 6. Nuisances. 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 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. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three in number except for newborn offspring of such household pets which are under (9) months in age. No savage or dangerous animals shall be kept or maintained on any lot or in any dwelling. If pets are allowed off the property they must be kept on a leash. Any pet deemed a nuisance by the Association may be expelled.

Section 7. Dwelling Size. The minimal heated square footage of a dwelling may not be less than 960 square feet of improved heated living.

Section 8. Metal Garages, Carports, Buildings, Accessory Structures and Above Ground Pools. NO metal carport, metal garage, metal building or metal accessory structure of any kind shall be erected on any lot or attached to any residence building located on the lot. No above ground pools may be constructed, placed or permitted to remain on any lot.

Section 9. Easements. Easements for installation, maintenance and repair of utilities and cable television (CATV) and drainage facilities are reserved as shown on the recorded map and over the rear ten (10) feet, front five (5) and each side five (5) feet of every lot. Within the easements; no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of 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 party hereto reserves the right to create and impose additional easements or rights of way over unsold lot or lots for street, drainage, sidewalks and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

Section 10. Signs. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a Declarant or its designated assigns, to advertise the property during

the construction and sales period.

Section 11. Unintentional Violations. In the event of the unintentional violation of any of the building line restrictions set forth herein Declarant, or its designated assigns, reserves the right, by and with the mutual written consent of the owner or owners for the time being of such lot, to change the building line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the City of Charlotte and or the County of Mecklenburg.

Section 12. Satellite Dishes or Discs. No radio or television transmission or reception towers antennas, or discs shall be erected on a lot unless approved by the Board or architectural control committee pursuant to Article VII hereof. Discs not exceeding one (1) meter are permitted upon approval by the Board or architectural control committee as to location.

Section 13. Maintenance of Lot. Each owner shall keep his lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any lot. No lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any lot outside an enclosed structure, provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collection by governmental or other similar garbage and trash removal units.

Section 14. Mail Boxes. No concrete mailboxes may be constructed in the street right of way. Mailbox posts must be of a breakaway material approved by North Carolina Department of Transportation.

## ARTICLE IX

### SWIM BUFFERS

"This development contains Surface Water Improvement and Management (S.W.I.M.) Stream Buffers. These buffers serve to filter pollutants from storm water runoff before it enters the creek thus improving overall water quality conditions. BE SURE to check the record plat for your property. S.W.I.M. Buffers will be clearly marked. If you have a S.W.I.M. buffer on your property, do not disturb the stream side zone in any way (includes mowing, clearing, applying fertilizers and herbicides, etc.). Disturbances of the managed use zone are allowed provided that the tree density remaining is a minimum of 8 healthy trees of a minimum 6 inch caliper per 1000 square feet. Grading and other land disturbing activities are allowed only in the upland zone; however, these activities must be performed in such a manner as to prevent damage to the roots of remaining trees. Grass or other suitable ground cover can be applied to the upland zone. No fill material can be brought into the S.W.I.M. Buffer. A disturbance of the S.W.I.M. Buffer is in violation of the Zoning Ordinance and is punishable by a fine. For questions or to report suspected S.W.I.M. Buffer violations, please contact the Mecklenburg County Department of Environmental Protection at 336-5500."

## ARTICLE X

### INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify any and all persons who may serve or whom have served at any time as directors or officers of the Association against any and all expenses, including amounts paid upon judgments, counsel fees and amounts paid in settlement (before or after suit is commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim action, suit or proceeding in which they, or any of them are made parties, or a party, which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or an officer of the Association, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in any action, suit, or proceeding guilty of willful and intentional negligence or misconduct in the performance of his or her duties to the Association. Provided, however, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association.

The provisions herein shall be in addition to and not exclusive of any and all other rights to which any director or officer may otherwise be entitled under any law, By-law, agreement, vote of Association Members or otherwise. In the event of death of any officer or director, the provisions hereof shall extend to such person's legal heirs, representatives, successors and assigns. The foregoing rights shall be available whether or not such person or persons were in fact directors or officers at the time of incurring or becoming subject to such expenses, and whether or not the proceeding, claim, suit or action is based on matters which antedate the adoption of this By-Law.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Enforcement. The Homeowners 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 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 wise affect any other provisions which shall remain in full force and effect.

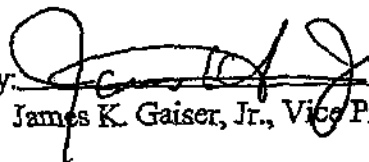
Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of seventy-five (75%) percent of a vote of the Owners after the expiration of said twenty-five (25) year period. This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by the Owners of not less than eighty (80%) percent of the lots, and thereafter by an instrument signed by the Owners of not less than seventy-

five (75%) percent of the lots. Any amendment must be properly recorded. For the purpose of this section, additions to existing property as provided in Article II, Section 2 hereof shall not constitute an "amendment".

Section 4. FHA/VA Approval. In the event the Declarant has arranged for and provided purchasers of Lots with FHA insured mortgage loans, then as long as any Class B Lot exists, as provided in Article III hereof, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans: annexation of additional properties, other than as provided in Article II, Section 2, hereof, deeding of common area to persons other than the Homeowners Association and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed, this 14<sup>th</sup> day of September, 2001.

BEAZER HOMES CORP

By:  (SEAL)  
James K. Gaiser, Jr., Vice President

NORTH CAROLINA  
~~MECKLENBURG COUNTY~~  
Union

This 14 day of September, 2001, personally came before me James K. Gaiser, Jr., who, being by me duly sworn, says that he is the Vice President of Beazer Homes, Corp., and that said writing was signed by him in behalf of said corporation by its authority duly given, on behalf of the Corporation; and the said Vice President acknowledged the said writing to be the act and deed of said corporation.

  
Notary Public

My Comm. Expires: May 12, 2006

(NOTARY SEAL)