



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
2010 DEC 23 03:49:33 PM
BK:6634 PG:518-525 FEE:\$32.00

INSTRUMENT # 2010040268

PREPARED BY & Mail To: Burns, Day & Presnell, P. A.
P. O. Box 10867, Raleigh, NC 27605

NORTH CAROLINA SUPPLEMENTARY DECLARATION OF ANNEXATION
TO DECLARATION OF COVENANTS, CONDITIONS AND
DURHAM COUNTY RESTRICTIONS FOR CARDINAL LAKE PHASES 5, 8 and 11 AND
THE AREA OF CARDINAL LAKE
(Declaration recorded in Book 4205, Page 826)

THIS SUPPLEMENTARY DECLARATION OF ANNEXATION TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CARDINAL LAKE made and entered into the 23 day of December, 2010, by **Beazer Homes Corp.**, a North Carolina corporation (hereinafter referred to as the "Declarant");

WHEREAS, Declarant has previously executed and recorded the Declaration, the same having been recorded in Book 4205, Page 826, **Durham County** Registry, as amended (hereinafter referred to as the "Declaration"); and,

WHEREAS, said Declaration provides in Article XIII that the Declarant may annex additional properties to this Declaration;

WHEREAS, said Declaration provides in Article XIV that "Notwithstanding any provision to the contrary contained herein, in no event shall any use of any portion of the property fail to conform to the development plan or any applicable law or ordinance..."; and,

WHEREAS, the City of Durham has amended and adopted a stormwater ordinance to require the execution of a Stormwater Agreement and Covenant and to require reference in the Declaration to the obligations of the Association to maintain the Stormwater Facility Replacement Fund and the payment of permit fees; and,

NOW, THEREFORE, the Declarant supplements and amends the Declaration and does hereby resubmit, publish and declare as follows:

A. All the property described on attached Exhibit A

is held and shall be held, conveyed, encumbered, used and occupied subject to the covenants, conditions, restrictions, uses, limitations and obligations of the Declaration as amended, all of which are declared and agreed to be in furtherance of an plan for the improvement of said property and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and all persons, firms, corporations and other entities acquiring or owning any interest in the real property and improvements, their grantees, heirs, executors, administrators, devisee and assigns.

B. The above described Phase is subject to the following amendments to the Declaration:

1. Article I is amended to add a new Section 14, Section 15 and Section 16 as follows:

Section 14. "Stormwater Agreement" shall mean and refer to each Stormwater Facility Agreement And Covenants (Residential Version) recorded with or after this Declaration, any Stormwater Facility Agreement and Covenants entered into and recorded in the Durham County Registry pertaining to future storm water improvements, and any other document of whatever name serving the same purpose, entered into by and among the Declarant, the Association, and the City, or any combination of any of them, concerning the maintenance of storm water drainage Facilities within the Properties and recorded in the Registry. See Article XIV below.

Section 15. "City" shall mean and refer to the City of Durham, North Carolina, a municipal corporation.

Section 16. "Code" shall mean and refer to the Code of Ordinances of the City of Durham and the Durham City-County Unified Development Ordinance, as amended from time to time.

2. Article V is amended to add a new Section 16 as follows:

Section 16. Assessments for Stormwater Facilities. It is the intent of Declarant that the Association be responsible for maintaining each and every storm water drainage Facility (as defined in the Stormwater Agreements applicable to the Subdivision) within the Subdivision. As more fully set forth in Article XIV hereof and in the Stormwater Agreement, the annual budget of the Association shall contain two (2) separate line items for the Facility/ies. The first ("inspection and maintenance fund") shall be for routine, expected Facility expenditures, e.g., annual inspections, maintenance, routine repairs, and reporting to the City. The second (the "Major Reconstruction Fund") shall be a separate, increasing reserve fund that will build over time and provide money for major repairs to and eventual reconstruction of the Facility/ies. The Major Reconstruction Fund shall be maintained in a separate account and separated from all other monies of the Master Association, and funds can only be withdrawn from the account in strict compliance with the Stormwater Agreement and this Declaration.

3. The Declaration is amended to add a new Article XIV as follows:

ARTICLE XIV

OBLIGATIONS REGARDING STORMWATER FACILITIES

The Property shall include one or more stormwater management facilities (hereafter "Facility/ies") that is/are the perpetual responsibility of the Association. Such Facilities are the subject of an agreement (the "Stormwater Agreement") between Declarant, the Association, and the City that is binding on the Association. The Stormwater Agreement is recorded in Book 6336, Page 529, Durham County Registry, which is incorporated herein by reference. As of the date of recording of this Declaration, the property subject to the aforementioned Stormwater Agreement is the "Property" referred to in this Article. If additional property is subjected to this Declaration, and if such additional property contains one or more Facilities, the Declarant, the Association and the City shall enter into, and Declarant shall record in the Registry, one or more additional Stormwater Agreements applicable to such Facilities.

The Facility/ies must be maintained in accordance with City Requirements, which include all ordinances, policies, standards, and maintenance protocols; in particular the City's current "Owner's Maintenance Guide for Stormwater BMPs Constructed in the City of Durham" (available at the time of recording this document at www.durhamnc.gov) and the operation and maintenance manual prepared specifically for the Facility/ies contain requirements that apply to the Facilities.

The provisions of this Article control over any inconsistent provisions of any other portion of this Declaration, and no subsequent amendment of any provision of this Declaration nor any other document not executed by the City may reduce the Association's or Lot Owners' obligations with regard to the Facility/ies. Such additional covenants may increase the obligations or provide for additional enforcement options.

The Stormwater Facility/ies and their location are as follows: *See the Stormwater Agreement identified in the first paragraph of this Article XIV.*

The Association's obligations with regard to the Facilities are:

Section 1. Inspections/Reports to the City. In accordance with City Requirements, the Association shall cause the Facility/ies to be inspected (i) annually, (ii) after events that cause visual damage to the Facility, and (ii) upon notification by the Director. The inspection shall be performed by a registered North Carolina Professional Engineer or a North Carolina Registered Landscape Architect certified by the City and shall be in compliance with City Requirements. The annual inspection shall occur annually during the month in which the as-built certification for the Facility/ies was accepted by the City or at such other time as may be reasonably directed by the City. The inspection shall be reported to the City as further described below.

Section 2. Repair and Reconstruction. The Association shall repair and/or reconstruct the Facility/ies as needed to allow the Facility/ies to function as designed and shall provide all necessary reports regarding repair or reconstruction to the City, all in accordance with City Requirements.

Section 3. Budget Line Items for Stormwater Expenses. The Association shall maintain two (2)

separate line items in its budget for the Facility/ies. The first (“inspection and maintenance fund”) shall be for routine, expected Facility expenditures, i.e., annual inspections, maintenance, routine repairs, and reporting to the City. The second (the “Major Reconstruction Fund”) shall be a separate, increasing reserve fund that will build over time and provide money for major repairs to and eventual reconstruction of the Facility/ies. This fund shall be maintained in a separate account as described below. At a minimum, the Association shall earmark at least the amounts set forth in the applicable Stormwater Agreement, which amounts shall be periodically increased as provided in the applicable Stormwater Agreement. The Association may set a higher amount in its discretion. The Association shall set a higher amount if the Director determines, in his/her reasonable discretion, that additional amounts are necessary to provide for adequate inspections and maintenance or for an adequate reserve fund. The Association shall set dues at a sufficient amount to fund each of the two line items in addition to the Association’s other obligations. The Association may, at its option, make the assessments applicable to each Lot in the Property equal, regardless of number or cost of the Facility/ies serving such Lot, or have the assessment for each Lot reflect only the Facility/ies serving that Lot. The Association may compel payment of dues through all remedies provided in the covenants applicable to the Property.

Section 4. Assessments/Liens. In addition to payment of dues, each Lot shall be subject to assessments by the Association for the purpose of fulfilling the Association’s obligations under this Agreement. Such assessments shall be collected in the manner set forth in the covenants, and, as provided in NCGS §47F-3-116, the Master Association may file and foreclose a lien against any Lot for unpaid assessments. Such assessments and lien may be also be imposed by the City in accordance with Section 6 of this Article XIV.

Section 5. Stormwater Expenditures Receive Highest Priority. Notwithstanding any contrary provisions of the Association’s or the Master Association’s recorded covenants, to the extent not prohibited by law, the inspection, maintenance, repair, and replacement/reconstruction of the Facility/ies shall receive the highest priority (excluding taxes and assessments and other statutorily required expenditures) of all Association expenditures.

Section 6. Separate Account for Major Reconstruction Fund: Withdrawal of Funds. The Association shall maintain the Major Reconstruction Fund for the Facility/ies in an account separate from the Association’s general account. The Association shall use the Major Reconstruction Fund only for major repairs and reconstruction of the Facility/ies. The Association shall ensure that signatures of two Association officers are required for withdrawal of funds from the Major Reconstruction Fund. Prior to withdrawing funds from this account, the Association shall (i) obtain a written report from an engineer approved in accordance with City Requirements regarding repairs or reconstruction needed and approximate cost of such repair or reconstruction; and (ii) submit such report to the Director and notify the Director of the repairs or reconstruction to be undertaken on the Facility, the proposed date, and the amount to be withdrawn from the Major Reconstruction Fund. Notwithstanding the foregoing, in the case of an emergency, withdrawal and expenditure of funds from the Major Reconstruction Fund may be made after telephone notification to the Stormwater Services Division of the Public Works Department.

Section 7. Annual Reports to City. The Association shall provide to the Director annual reports in substance and form as set forth in City Requirements. This annual report shall be signed by an officer of the Association or by an officer of an independent management agent employed by the Association to manage the day-to-day affairs of the Association, who shall attest as to the accuracy of the information in such report. The officer’s signature and attestation shall be notarized. At a minimum each report shall

include:

- (i) the annual Facility/ies inspection report described in Section 1 above;
- (ii) a bank or account statement showing the existence of and balance in the Major Reconstruction Fund at the time of submission of the report;
- (ii) other information regarding the Facility/ies as may be required under City Requirements; and
- (iv) the amount of Association dues being set aside for the current year for each of the two funds — the inspection and maintenance fund, and the Major Reconstruction Fund.

Section 8. Facility/ies to Remain with Association: Lot Owners' Liability. To the extent not prohibited by law, the Facility/ies shall remain the property of the Association and may not be conveyed by the Association. In the event the Association ceases to exist or is unable to perform its obligations under this Agreement, the Association and all Lot Owners, including but not limited to owners of any interest in the Property shall be liable for the fulfillment of the Association's obligations under this Agreement on a pro rata basis as determined on a fractional basis wherein the numerator is one and the denominator is the number of Lots in the Property.

Section 9. No Public Adoption. The City's regulation and monitoring of the Facility/ies do not constitute adoption of the Facility/ies by the City. City regulation and monitoring are not intended to impede or prohibit the Association, the Association or Lot Owners from taking all necessary actions to maintain, repair, and reconstruct the Facility/ies so that they function safely and perform the function for which they were created.

Section 10. City Rights: Liens Against Owners. In addition to rights wanted to the City by ordinance or otherwise, the City shall have the following rights:

- (a) To direct the Association in matters regarding the inspection, maintenance, repair, and/or reconstruction of the Facility/ies;
- (b) If the Association does not perform the work required by ordinance, by these covenants, and by the Stormwater Agreement referenced above, to do such work itself, upon thirty (30) days' written notice to the Association.
- (c) To access the Facility/ies for inspection, maintenance, and repair, crossing as necessary the lot(s) on which the Facility/ies are located and all other easements that exist within the property subject to these covenants.
- (d) To require reimbursement by the Association of the City's costs in inspecting, maintaining, repairing, or reconstructing the Facility/ies, as provided in the Stormwater Agreement referenced above.
- (e) To enforce any debts owed by the Association as described in the Stormwater Agreement referenced above against Lot Owners if such debts are not fully paid by the Association. The debt may be allocated to Lot Owners as provided in the Stormwater Agreement, may be made a lien on each owner's property, may be

added to each Owner's utility bills, and may result in foreclosure, as provided in Section 6 of the Stormwater Agreement referenced above.

Section 11. No Dissolution. To the extent not prohibited by law, the Association shall not enter into voluntary dissolution unless the Facility is transferred to a Person who/which has been approved by the City and has executed a Stormwater Agreement with the City assuming the obligations of the Association. Under the Stormwater Agreement referenced above, individual Lots and Lot Owners continue to be liable for the Facility/ies in the event the Association is dissolved without a new Stormwater Agreement between the City and a responsible party that is assuming the Association's obligations.

Section 12. No Amendment. Without the prior written consent of the City, which may be given by the Durham City Manager, and notwithstanding any other provisions of these restrictive covenants, neither the Association nor the Association may amend or delete this Article XIV, with the exception of supplementing its provisions in a more detailed manner where such supplementation does not reduce the obligations of the Stormwater Agreement or these covenants.

Section 13. Stormwater Agreement Supersedes. The Stormwater Agreement referenced above supersedes any limiting provisions contained elsewhere in other Articles of these covenants. However, such Articles may supplement the obligations of the Association, and/or the obligations of and remedies against individual Lot Owners bound by these covenants.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written

Beazer Homes Corp., a Tennessee corporation

By: [Signature]
K. Scott Phillips,
President - Raleigh Division

NORTH CAROLINA
WAKE COUNTY

I, the undersigned Notary Public, certify that K. Scott Phillips personally came before me this day and acknowledged that he is President - Raleigh Division, of **Beazer Homes Corp.**, a Tennessee corporation, and that he/she, as such officer, being authorized to do so, voluntarily executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this 22nd day of December, 2010.

My Commission expires: 1-10-2015

[Signature]
Notary Public - Sara S. Clifton

seal

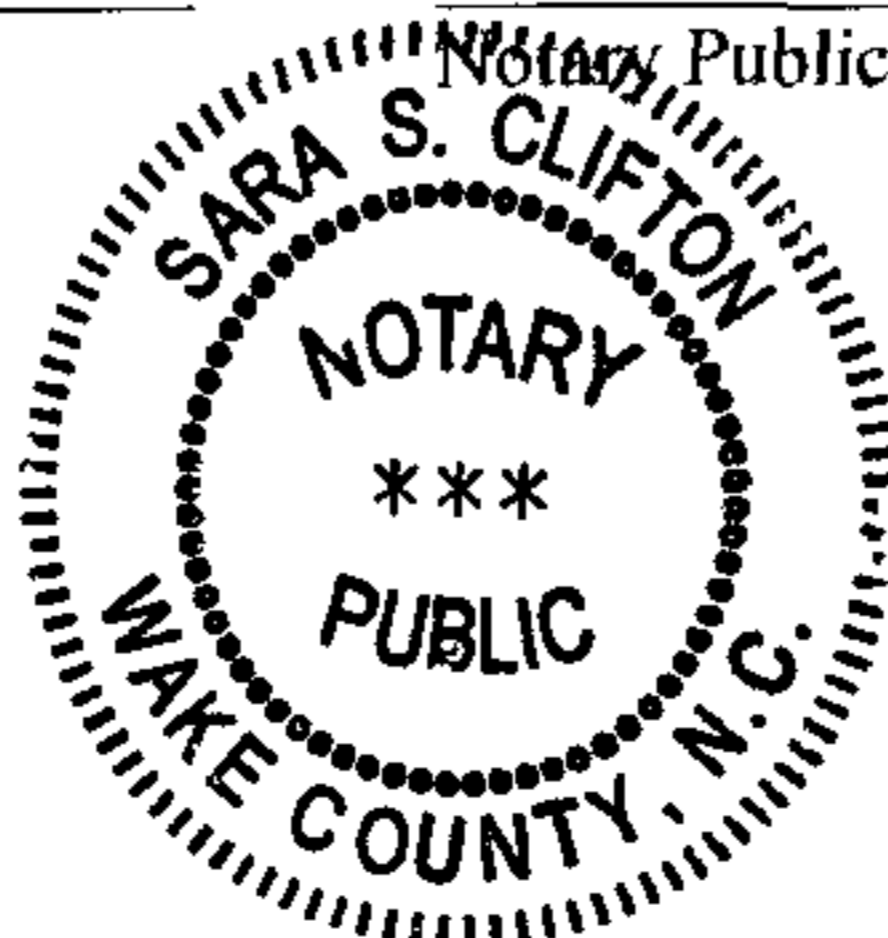


EXHIBIT A

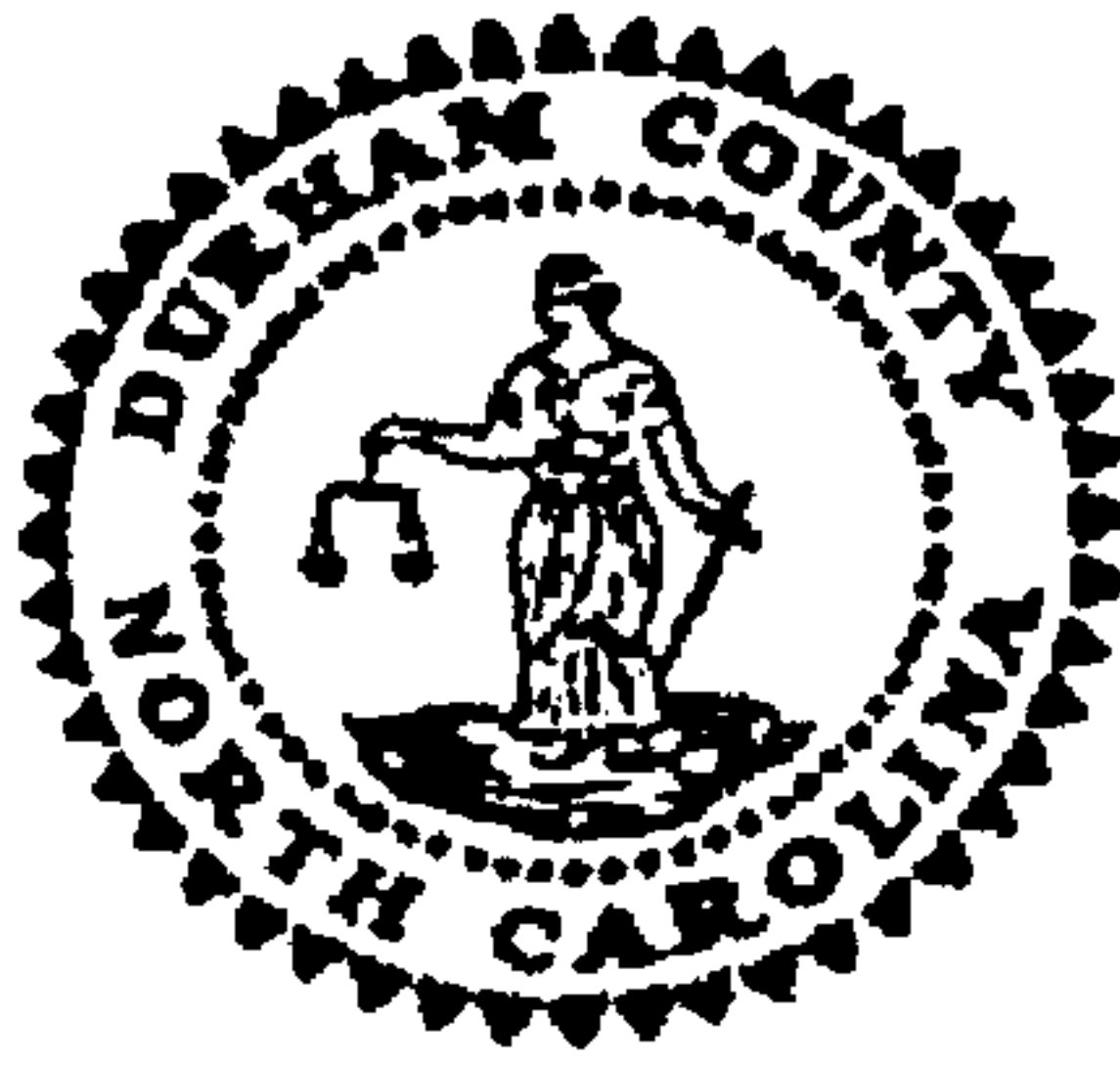
Tract 1:

Being all of the area shown as Residual Area = 35.15 AC as shown on plats recorded in Plat Book 186, Pages 189-193, Durham County Registry, and being all of Durham County PIN # 0852-04-53-5908.

Tract 2:

Being all of the area shown as Residual Area = +/- 9.80 AC as shown on plats recorded in Plat Book 186, Pages 347 and 349, Durham County Registry, and being all of Durham County PIN # 0852-02-55-7272.

Both tracts being all of the remaining acreage currently owned by Beazer Homes Corp. in the Cardinal Lake Subdivision not yet annexed into the Declaration.



WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of recorded document, and must be submitted with original for re-recording
and/or cancellation.

Filed For Registration: 12/23/2010 03:49:33 PM
Book: RE 6634 Page: 518-525
Document No.: 2010040268
SUPL-DECL 8 PGS \$32.00
Recorder: APRIL J WILLIAMS



2010040268