

**DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
THE RANCHES AT BETH HAVE**

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NORTH CAROLINA

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
THE RANCHES AT BETH HAVEN**

LINCOLN COUNTY

THIS DECLARATION, made this \_\_\_\_ day of \_\_\_\_\_, 2007, by D & S CONSTRUCTION OF NC, INC, a North Carolina Corporation, having an office and place of business in Iredell County, North Carolina, hereinafter referred to as "Declarant."

**WITNESSETH:**

Declarant is the owner of certain real property in the County of Lincoln, State of North Carolina, which is more particularly set forth in Plat Book 14, Pages 198, 199 and 200 (recorded in the office of the Register of Deeds of Lincoln County, NC), and designated as The Ranches at Beth Haven Subdivision (hereinafter the "Property," which may be hereinafter referred to individually as "Lot" and jointly as the "Lots"), and Declarant will convey the foregoing described Property subject to certain protective covenants, conditions, restrictions, reservations, and charges as hereinafter set forth.

Declarant hereby creates on the Property, described in Exhibit "A" attached hereto, a residential community to be known as The Ranches at Beth Haven (hereinafter "Beth Haven") with single family detached residences designed for sale. Declarant intends to provide for common areas. Such common areas may contain lighting, landscaping, signage, and other uses as may be deemed appropriate by the Declarant for the purpose of enhancing the aesthetics and lifestyle of Beth Haven.

Declarant desires to provide for the preservation and maintenance of the common areas and the performance of certain other responsibilities in connection with Beth Haven. To this end, Declarant desires to subject the Property described above, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, guidelines, reservations, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Lots comprising Beth Haven and each owner thereof.

Declarant has deemed it desirable for the foregoing purpose to create an entity to which shall be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities in Beth Haven, maintaining the landscaping, lighting and signage located along and within the common areas, open spaces, and street rights-of-way; administering and enforcing these covenants, conditions and restrictions; collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the owners and residents of Beth Haven; and Declarant shall incorporate under the laws of the State of North Carolina the Beth Haven Homeowners Association (hereinafter "BHHA") as a nonprofit corporation for the purpose of exercising the foregoing functions, among others.

NOW, THEREFORE, Declarant hereby declares all of the Property described above to be held, sold, and conveyed subject to the following covenants, conditions, charges, guidelines, reservations and restrictions ("Covenants"), all of which are for the purposes hereinabove set

forth, and which shall run with the real property, shall be binding on all parties having or acquiring any right, title, or interest in the described Property or any part thereof, and shall inure to the benefit of BHHA and each Member thereof.

## **PREAMBLE**

In order to accomplish orderly, pleasing and reasonably uniform subdivision development, the Lots are hereby made subject to the Covenants contained herein for the purpose of ensuring the most appropriate development and improvement of each Lot, to protect the Owners against such improper use of nearby Lots as would depreciate the value of the property of each, to preserve, insofar as practicable, the natural beauty of the Lots, to guard against the erection thereon of poorly designed or proportioned structures and structures built of improper or unsuitable materials, to encourage and secure the erection of attractive homes thereon with appropriate locations thereof on the Lots, to secure and maintain proper setbacks from streets and adequate free spaces between structures, to ensure conformance of the development with the guiding design concept of the Declarant, and in general to provide for a high quality of improvements. As set forth in these Covenants, the Declarant or the Architectural Review Committee (hereinafter "ARC") must approve all improvements placed on a Lot, and the Declarant shall serve as the ARC until such time as the said committee is duly formed.

## **ARTICLE I**

### **DEFINITIONS**

Section 1. "Amenities" shall mean and refer to the landscaping, limited irrigation, lighting, entrance treatments and any element installed or constructed by the Declarant or the Association on common areas, open spaces, and/or street rights-of-way for the purposes of enhancing the aesthetics of Beth Haven or benefitting the residents of Beth Haven.

Section 2. "Architectural Review Committee," also known as "ARC," is a committee of the BHHA which must grant its prior written approval before any Improvements are placed on a Lot or Common Area.

Section 3. \_\_\_\_\_ "Association" or "BHHA" shall mean and refer to Beth Haven Homeowners Association, a North Carolina non-profit corporation, its successors and assigns.

Section 4. "Beth Haven" shall mean and refer to that certain real property subject to this Declaration and such additions thereto as may, in the sole discretion of Declarant, be either wholly or partially brought within the jurisdiction of the Association and made a part of Beth Haven.

Section 5. "Board of Directors" or "Board" means those persons elected or appointed to act collectively as the directors of the Association.

Section 6. "Building Envelope" means that area within which Dwelling Units and other Improvements which require governmental permits for construction may be located after approval by the ARC.

Section 7.

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"Bylaws" mean the bylaws of the Association as they now or hereafter exist.

Section 8. "Common Area(s)" shall mean and refer to any and all area(s) owned or leased by the Association for the benefit of its Members.

Section 9. "Declarant" shall mean and refer to D & S Construction of NC, Inc., a North Carolina corporation, as well as its successors and assigns, if Declarant expressly transfers its rights as Declarant to a successor or assign.

Section 10. "Dwelling Unit" shall mean a single-family residence on a Lot. A Dwelling Unit shall be separated from other Dwelling Units and there shall be only one such unit per Lot.

Section 11. "Homeowner" shall mean and refer to the Owner of a Dwelling Unit but shall not include a builder who purchases a Lot and constructs a Dwelling Unit thereon in order to sell such Lot and Dwelling Unit to an Owner.

Section 12. "Improvement(s)" shall mean, but not be limited to, Dwelling Units, additions to Dwelling Units, outbuildings, patios, clotheslines, decks, driveways, fences, walls, signs, landscaping, shrubbery, antennas, mailboxes, satellite dishes, post lamps, ponds, swimming pools, play equipment, tennis courts, outdoor lighting, barbeque pits, fountains, fish ponds, parking areas, paved or otherwise, and other structures or excavation or changes in grading.

Section 13. "Lot" shall mean any separately numbered plot of land, as shown on the recorded subdivision maps of Beth Haven (or on any additional property which may be added to the subdivision) which has been approved by Declarant.

Section 14. "Member" shall mean and refer to every person or entity entitled to membership with voting rights in the Association as provided in this Declaration.

Section 15. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of Beth Haven, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

Section 16. "Phase" shall mean and refer to any phase, section or portion of the Beth Haven for which a separate Plat or Plats are recorded in the Office of the Register of Deeds of Lincoln County, North Carolina.

Section 17. "Plat" shall mean the plat of Beth Haven as recorded in the Office of the Register of Deeds of Lincoln County, North Carolina, in Plat Book \_\_\_\_, Page(s) \_\_\_\_\_ .

## **ARTICLE II COVENANTS**

Section 1. Common Area Restriction: All Common Area shall be used, improved and devoted exclusively to the welfare and benefit of the Owners and for the general benefit and enhancement of Beth Haven.

Section 2. Common Area Construction or Alteration: No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area except at the direction of and with the express written consent of the Association.

Section 3. Nuisance: No noxious or offensive activity shall be carried on in or upon the individual lots within Beth Haven, nor shall anything be done which may be or may become a nuisance or annoyance to any resident in Beth Haven. No loudspeakers or other sound producing devices shall be used outside a Dwelling Unit or in any manner which may be or become an unreasonable annoyance or nuisance to any resident in Beth Haven.

Section 4. Approved Builder: All construction shall be by an ARC-approved contractor, which approval shall not be unreasonably withheld.

Section 5. Land Use and Building Type: Each Lot shall be used for single-family residential Dwelling Unit purposes only, and no Improvements shall be erected or allowed to remain on any Lot except one detached, single family Dwelling Unit not exceeding two stories and an attic (finished or unfinished) in height, a basement (finished or unfinished), a garage and other approved Improvements. Any structure erected on any Lot must be of new materials, "stick-built" on site and must be compatible in construction, design, color and appearance with other structures erected on other Lots of Beth Haven and must be approved pursuant to Article III herein prior to being placed on a Lot. No Dwelling Unit shall be erected or allowed to remain on a Lot if the finished, heated floor area of the said Unit, exclusive of basements, unheated porches and garages, shall be less than 1,900 square feet heated living area with at least 1,300 square feet on the first floor (ground level floor). No mobile, modular, geodesic dome or log home may be erected or placed on a Lot.

Section 6. Improvements: Any Improvement (including the Dwelling Unit on any Lot) shall be prohibited unless the detailed plans for such Improvement have been approved in writing by the ARC prior to the construction thereof.

Section 7. Garages and Parking Area: Each Dwelling Unit shall have an enclosed attached garage with parking space therein of at least 400 square feet measuring at least 20 feet in width and 20 feet in length. The door(s) to said garage should open to the side of the Lot, except with the prior written consent of the ARC. In addition, each Lot shall contain sufficient off-street paved parking space outside the garage for at least two (2) and no more than four (4) motor vehicles and Owner may, with the prior written consent of the ARC, construct a detached garage or outbuilding which must be approved as any other Improvement.

Section 8. Lease of Dwelling Unit: An Owner may, in his or her absence, rent or lease by written lease available to the BHHA his or her entire Dwelling Unit for a period of not less than three hundred sixty five (365) consecutive days, but no portion of a Dwelling Unit shall be leased nor may any other building located on a Lot be leased separately from the Dwelling Unit.

Section 9. Resubdivision of Lots: No Lot shall be subdivided except with the written consent of the Declarant or the Association, and in no event shall any Lot be subdivided in order to create an additional residential Lot.

Section 10. No Business Activities: No portion of a Lot or any structure thereon shall be used for business, manufacturing or commercial purposes, nor shall activity occur on a Lot which is an annoyance to the Lot Owners. Each Lot Owner shall maintain his or her Improvements, landscaping and grounds in a safe, clean and orderly condition.

Section 11. Parking: Without specific written approval of the ARC, no Owner of a Lot or Dwelling Unit shall store or keep outside the garage or approved accessory building a motorized trail bike, motorcycle, boat, boat trailer, camper, recreational vehicle, motorized all-terrain vehicle, golf cart, tractor (including lawn and gardening equipment), truck or other such motorized riding vehicle (hereafter "vehicles") on the premises except a maximum of three (3) operational, currently licensed motor vehicles. In granting such approval, the ARC may attach specific conditions which shall be binding on the Owner and occupants of the Lot or Dwelling Unit, which may permit outside storage of the foregoing vehicles where there is sufficient screening to prevent the vehicles from being seen from the public road or adjoining Lots. No junked automobiles or any other type of salvage shall be placed or allowed to remain on any Lot, Common Area, or on any street located within Beth Haven. No motor vehicle or other above described vehicles shall be parked on any Lot unless there is a Dwelling Unit completed and occupied thereon. No motor vehicles, trailers or equipment shall be parked overnight on any public street of Beth Haven.

Section 12. Animals: No animals, other than household pets, shall be kept or allowed to remain on a Lot for any purpose. In no event shall more than three pets be permitted upon any Lot. Whenever a Lot Owner's household pet is on any property located within Beth Haven other than the Lot of such pet's owner, then such pet must be on a leash. No pets shall be allowed to constitute a nuisance or annoyance or be kept so as to violate any governmental regulation.

## **ARTICLE III**

### **ARCHITECTURAL CONTROL**

Section 1. Architectural Review Committee: An Architectural Review Committee ("ARC" as defined herein) consisting of not less than three (3) and not more than seven (7) persons shall be appointed by the Declarant. At such time as the Class B membership expires, the ARC shall be appointed by the Board of Directors of the Association. To the fullest extent permissible by law, the ARC is hereby granted by the Declarant complete and unfettered authority to enforce these Covenants as fully as the Declarant or the Association.

Section 2. Authority of ARC: The ARC shall be solely responsible for the siting of all Dwelling Units. No site preparation or initial construction, erection, or installation of any Improvements as defined herein shall be undertaken upon any Lot unless the plans and specifications therefor, showing the nature, kind, shape, height, materials, color and location of the proposed Improvements shall have been submitted to the ARC and expressly approved in writing. All building construction on any Lot shall be by a contractor whose name and credentials have been previously submitted to and approved by the ARC. No subsequent alteration or modifications of any existing Improvements or construction, erection or installation or additional Improvements may be undertaken or allowed to remain without the prior review and express written prior approval of the ARC.

Section 3. ARC Approval or Disapproval of Proposed Improvements: In the event that the ARC fails to approve or disapprove any of the foregoing within thirty (30) days after correct and complete plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully satisfied, provided, that the plans and specifications required to be submitted shall not be deemed to have been submitted to the ARC if they contain erroneous data or fail to present full and adequate information as required and/or requested and upon which the ARC can reach a decision. Under no circumstances shall the ARC be responsible or liable, directly or indirectly, for any damages or losses claimed or sustained by the Owner for any reasonable action taken by the ARC or for delays.

Section 4. Right of Inspection: The Lot Owner does herewith agree that the ARC (without any obligation to act) shall have full complete authority, and does appoint the ARC his attorney-in-fact, to enter upon the Lot and halt all construction for the failure of the Owner or his agents or contractor to comply fully with these Covenants, including the approved Improvement plans, Building Envelope and set back requirements, and the Owner does agree to indemnify and hold harmless the ARC from any damage arising from such halting of construction which may be directed by the ARC for the failure of the Owner to comply with the directives of the ARC with regard to construction. Such halting of construction shall be effective immediately upon the directive of the ARC and shall remain effective until the work stoppage is cancelled by the ARC.

Section 5. Exterior Maintenance: The exterior maintenance of Lots and the Dwelling Units located thereon and other Improvements constructed thereon shall be the duty and responsibility of the Owner of such Lot and shall not be the responsibility of the Association. If, however, in the opinion of the Association, any Owner shall fail to discharge his or its repair, maintenance or upkeep responsibilities in a reasonable and prudent manner to a standard harmonious with that of other Lots in Beth Haven, the Association or its agents, upon giving and following thirty (30) days written notice to the Owner or responsible person or entity, may enter upon the Lot or Dwelling Unit location and make or cause to be made maintenance work or repairs as may be deemed reasonably required by the Association. Without any obligation to act, the Association or its agents shall be deemed to be the attorney-in-fact of the Owner and shall have and are hereby granted a full license by any Owner of a Dwelling Unit for the purpose of accomplishing the foregoing. The costs incurred by the Association in rendering such services shall be added to and become a part of the assessments to which such Lot or Dwelling Unit is subject.

Section 6. Original Improvements by Declarant: Nothing herein contained shall in any way prevent or interfere with the right of the Declarant to construct the original Improvements desired by the Declarant on any Lot of which it retains ownership.

Section 7. Pre-Approval: All plans of the Declarant for the construction of Improvements and Dwelling Units shall be and are hereby deemed approved in all respects, and the Declarant shall not be required to seek any approval of any nature whatsoever from the Association or the ARC.

Section 8. Foundation Type: No building shall be erected unless it is completely underpinned with a brick foundation, block or concrete wall foundation covered by stone or stucco.

Section 9. Drives and Walks: All drives and walks must be paved with concrete, brick or such other materials as may be approved by the ARC before the Dwelling Unit is occupied.

Section 10. Landscaping: All Lots on which a Dwelling Unit is approved and built shall be landscaped in accordance with landscaping plans approved by the ARC prior to occupancy of the Dwelling Unit. Landscaping shall be finished upon completion of the Dwelling Unit or within thirty (30) days following occupancy of the Dwelling Unit, unless the ARC, in its sole discretion, extends the time for completion. Failure to timely complete the landscaping may result in sanctions being imposed by the ARC.

Section 11. Construction Period: Total construction time from the date of final approval of the proposed construction plans by the ARC to the completion of the Dwelling Unit ready for occupancy shall not exceed twelve (12) months, unless otherwise extended by the ARC or the Association. No residence of a temporary nature may be placed on a Lot.

Section 12. Pre-Construction Maintenance: Prior to the time any Lot Owner commences construction of a Dwelling Unit thereon, such Lot Owner shall be responsible for the weed control, mowing and general maintenance of such Lot, and in the event a Lot Owner fails to perform such activities so as to keep his Lot clean and neat in appearance to the satisfaction of the ARC, the Owner does herewith fully authorize the ARC to perform such activities as may be necessary to clean up or mow the Lot and maintain it in a neat appearance. The Lot Owner agrees to pay whatever sums the ARC incurs in order to accomplish these activities and to make payment of the same within thirty (30) days of presentation of a bill therefor; failure to do so shall constitute said charges being immediately and automatically converted to a Lot assessment.

Section 13. Mailboxes: Each Lot Owner shall comply with the mailbox requirements adopted by the ARC. The written approval of the ARC shall be required prior to altering mail boxes and newspaper boxes.

Section 14. Antennas and Satellite Dishes: No satellite dishes larger than twenty-four (24) inches in diameter and/or free-standing radio and/or television antenna shall be permitted on any Lot and each must be unobtrusively mounted or placed on the Lot, with screening if necessary, as approved by the ARC.

Section 15. Construction Damage and Sediment Control: The ARC may require from the Lot Owner who commences construction on his Lot a One Thousand Dollars (\$1,000.00) deposit to be placed with the ARC to indemnify the Association and Declarant from damage to the infrastructure of Beth Haven during construction. Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, straw bale fences, storm water inlet protection and temporary seeding, to the extent deemed reasonably necessary by the ARC or as required by any governmental authority, shall be taken by the Lot Owner or Lot Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Lot in question. All sediment control measures must be maintained until such Lot has been permanently stabilized with respect to soil erosion.

Section 16. Building Setbacks: The location of Improvements on the Lot shall be in the sole discretion of the ARC. Specific front, rear and side setback restrictions are created by the Building Envelopes as defined herein. The ARC shall determine the setback distances which may be in excess of those required by applicable zoning ordinances or other governmental authority in the course of granting site plan approval for a specific Lot and the proposed Dwelling Unit or other Improvements to be built thereon, in order to locate Improvements in a manner to benefit Beth Haven. Some of the factors which may be considered by the ARC are: Lincoln County septic system improvement permits and location maps, Lot topography, Lot size, preservation of existing vegetation, views from the Lot and nearby Lots, location of existing or proposed utilities, location of existing houses on adjoining Lots and such other reasonable factors as the ARC may determine. Placement of Improvements shall not be made so as to violate any governmental rule, ordinance, regulation or law.

Section 17. Utilities: All water, electric, telephone, cable television and other utility lines as may be available to the Lots shall be located underground.

Section 18. Easements: Easements for installation and maintenance of utilities (including septic sewer lines) and drainage facilities are reserved along each boundary line of each Lot to a depth of six feet (6'), and the Declarant further reserves an easement and right to grant rights-of-way for the installation and maintenance of public utilities along, on or under each Lot line at whatever distance from the rear and side lines of said Lot as required by the governing county or municipality (or any other utility company), or authority governing (or serving) this property. Declarant further reserves the right, to establish easements adjacent to street rights-of-way to accommodate pedestrian paths including the related grading, landscaping and lighting along such streets and paths. Once Lots have been deeded to Lot Owners, such Lot Owners shall execute any necessary documentation required by Declarant in order to allow Declarant to establish easements and rights-of-way as set forth above.

Section 19. Fences, Walls and Signs: Fences and walls ("Fences") are discouraged so as to maintain open vistas and view corridors. Accordingly, Fences shall be allowed only where a specific purpose is served thereby and all Fences must be approved in all respects by the ARC prior to construction thereof. No signs (except one [1] not to exceed two [2] feet by three [3] feet in measurement "for sale" sign) shall be erected or allowed to remain on any Lot except with the written consent of the ARC. Electronic (invisible) below-ground fences for pet control shall be exempted from these restrictions, except there shall be no electronic (invisible) fence extending beyond the front corners of the dwelling. Fences along the rear property lines of Lots may be required by the BHHA to be identical.

Section 20. Screening: Garbage and refuse containers, electrical equipment, HVAC and other mechanical equipment including solar and other alternative energy devices approved by the ARC shall be either concealed within a landscaped or approved screen or integrated with the building design so as to be unseen from any roadway of Beth Haven.

Section 21. Sanitation Services: Sanitation service shall be provided for Lots by a local contractor selected annually by the Declarant or the BHHA; all residents of Beth Haven shall be required to utilize the services of the selected contractor. The cost of individual sanitation services shall be paid by each resident monthly or as otherwise billed by the selected contractor directly or through the BHHA dues and/or assessments.

## **ARTICLE IV**

### **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Members: The Declarant, for so long as it shall be an Owner, and every person or entity who is an Owner of a fee simple or undivided fee simple interest in any Lot which is subject by covenants of record to assessments by the Association, including contract sellers, shall automatically be a member of the Association. The foregoing is not

intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership, and no Owner shall have more than one membership per Lot, except as expressly provided hereinafter. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The Association may promulgate reasonable rules relating to the proof of ownership of a Lot.

Section 2. Classes of Members and Voting Rights:

The Association shall have two (2) classes of voting Members:

**Class A:** Class A Members shall be all those Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the required ownership interest. When more than one person or entity holds the required ownership interest in a Lot, all such persons or entities shall be Members. The vote for each such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot and no fractional votes may be cast.

**Class B:** Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the required ownership interest, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- a. The total number of votes outstanding in Class A membership equals the total number of votes outstanding in the Class B membership, provided that the Class B membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B membership to Class A membership as provided above, additional lands are annexed into Beth Haven. Such an annexation may take place without the assent of the Members by virtue of the development of such additional lands by the Declarant;
- b. Until Declarant owns no more than six (6) Lots, including those Lots in additional phases which may be added from time to time by the Declarant; or
- c. August 30, 2014.

Section 3. Right of Declarant to Representation on Board of Directors of the Association: Notwithstanding anything contained herein to the contrary, until the Declarant has conveyed all but six (6) of the Lots created within the Property of Beth Haven and such other properties as may be annexed in the future, Declarant, or its successors or assigns, shall have the right to designate and select at least two-thirds (2/3) of the members of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or

persons shall be designated shall be as provided in the Articles of Incorporation and/or

Bylaws of the Association. Declarant shall have the absolute right to remove any person or persons selected by it to act and serve on the Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any Director or Directors so removed. Any Director designated and selected by the Declarant need not be an Owner. Any representative of Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest. Similarly, Declarant, as a member of the Association shall not be required to disqualify itself upon any vote upon or entrance into any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest.

## **ARTICLE V**

### **ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation for Assessments: The Declarant, for each Lot owned by it, hereby covenants, and every Owner of any Lot subject to the provisions of this Declaration, by acceptance of a deed thereof, whether or not expressed in any such deed, is automatically deemed to covenant and agrees to pay to the Association:

- a. Annual assessments or charges as herein provided;
- b. Special assessments for capital Improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

All annual and special assessments on a Lot, together with interest thereon and costs of collection thereof, as hereinafter provided, 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 and costs, and reasonable attorney's fees (as provided in North Carolina General Statute 6-21.2) incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the Owner of such Lot at the time when the assessment became due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by such successor or assign.

Section 2. Purpose of Assessments:

- a. The assessments levied by the Association shall be used exclusively for the purposes of the general enhancement and promotion of Beth Haven, including without limitation the recreation, health, safety and welfare of the Owners in Beth Haven, the enforcement of these covenants and the rules of the Association, and in particular, the improvement and maintenance of the Common Areas and facilities thereon and any lighting on or near the streets in Beth Haven (if such lighting would not be maintained by any governing authority), the maintenance of

landscaping, entrance treatments, and signage on Common Areas, the maintenance of insurance and for such other needs consistent with this Declaration as may arise.

- b. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the properties or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by an Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of Beth Haven.

Section 3. Annual Assessment: Until December 31 of the year of the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_ .00), payable as directed by the Board, the exact amount of which shall be determined from time to time by the Board in accordance with the following provisions:

- a. The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter shall be established by the Board of the Association and may be increased by the Board (but the Board is not obligated to do so) effective January 1st of each year, without the vote of the Members, by a percentage which may not exceed the percentage increase reflected in the U.S. City Average, Consumer Price Index-United States (published by the U.S. Bureau of Labor Statistics, Washington, D.C.) or such index as may succeed the Consumer Price Index for the twelve (12) month period ending the immediately preceding July 1st, or by twenty percent (20%), whichever is greater.
- b. The maximum annual assessment for the second calendar year following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased no more than fifteen percent (15%).

- c. The Board, in its discretion, may require that the annual assessment be payable in such installments as it deems appropriate whether monthly, quarterly, semiannually or annually and in advance, for each Lot.
- d. The Board, in its discretion, may require, upon the sale of each Lot, improved or unimproved, that the purchaser thereof shall pay a capital contribution to the Association for its general fund.

Section 4. Special Assessment for Repairs: In the event any portion of the Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, employees, agents, or family members, the Association shall repair such damaged area in a good and workmanlike manner. The amount necessary for such repairs, labor and material, shall be a special assessment upon the Lot of said Owner.

Section 5. Special Assessments for Capital Improvements: In addition to the annual assessment authorized above, the Association may levy one or more special assessments applicable to that year only for the purpose of defraying the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members (as defined and determined in Section 2 of Article IV) who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days in advance of the meeting.

Section 6. Uniform Rate of Assessment: Both the annual and special assessments (with the exception of the Special Assessment authorized by Article V, Section 4 above) must be fixed at a uniform rate for all Lots and shall be collected as established by the Board of Directors, except that Declarant's assessment shall be twenty-five percent (25%) of the Annual Assessment on all of its Lots shown on the Plat.

Section 7. Date of Commencement of Annual Assessment; Due Dates: The annual assessment provided for herein shall commence being collected on the first day of the month following the transfer of title to the Lot to the Owner. The Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto but failure to receive such notice shall in no way affect the obligation of each Owner therefor or the lien therefor as provided herein. The due dates and appropriate penalties for late payment shall be established by the Association. The Association, upon demand at any time, shall furnish a certificate in writing setting forth whether the assessments on a specified Lot have or have not been paid. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of the status of the assessments due.

Section 8. Remedies for Non-Payment of Assessments: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the highest rate allowed by law and the Owner shall pay a penalty of Twenty-five Dollars (\$25.00) per month or part thereof that the assessment remains unpaid. The Association may bring an action at law against the Owner personally obligated to pay any assessments and interest or foreclose the lien created herein in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of deeds of trust. Costs and reasonable attorney's fees (as set forth in Article V, Section 1 above), of any such action shall be added to the amount of such assessment. The personal obligation for the delinquent assessment shall not pass to the Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the Common Area or abandonment of his Lot.

In the event it becomes necessary to file such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then and in that event, the Association shall be further empowered to execute on that judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes: The Lien for the assessments provided for herein on any Lot shall be subordinate to the lien of any mortgage, deed of trust or purchase money deed of trust representing a first lien on said property and subordinate to ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien, provided, however, that the sale or transfer of any Lot pursuant to a decree of foreclosure on a mortgage thereon or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or liens arising from assessments thereafter becoming due.

Section 10. Reserve Fund: The Board, in establishing the annual budget for operation, management and maintenance of Beth Haven, may designate therein a sum to be collected and maintained as a reserve fund.

## **ARTICLE VI EASEMENTS**

Section 1. Walks, Drives, Utilities, Etc.: Common Areas and certain Lots may, in the sole discretion of the Declarant, be subject to such easements for water lines, sanitary sewers, septic system repair areas, septic systems, remote septic system lines, storm drainage facilities, gas lines, telephone and electric power line, cable television lines and other utilities, ingress, egress and regress and otherwise as shall have been established by the Declarant, whether by express written easement or by the recording of a plat dedicating an easement, and the Association shall have the power and authority to grant and establish such easements upon, over, under and across the Common Area as it deems fit and proper in its sole discretion.

Section 2. Easement to Governments and Utility Companies: An easement is hereby established for municipal, state or public utilities including cable television serving Beth Haven, their agents and employees over all Common Areas hereby or hereafter established for setting, removing, and reading utility meters, maintaining and replacing existing utility or drainage connections serving Beth Haven, and acting with other purposes consistent with the public safety and welfare, including, without limitations, police and fire protection.

## ARTICLE VII

### ADDITIONAL PROPERTY

#### Section 1.

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Additions to Existing Property: Additional lands may become subject to this Declaration in the following manner:

- a. Name of Additional Land: The name "Beth Haven" may be used by the Declarant to refer to other nearby or adjacent properties not subject to this Declaration.
- b. Additional Land: During the period of development, the Declarant, its successors and assigns shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration additional property. Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. The additions of such property authorized under this paragraph may increase the cumulative maximum number of Lots and Dwelling Units authorized in the Property and, therefore, may alter the maximum potential voting strength of the various types of membership of the Association, to which the Owner automatically consents upon purchase of a Lot.

The additions authorized under this and the succeeding subsection may be made by recording a Supplemental Declaration of Covenants and Restrictions with respect to the additional property. The Supplemental Declaration of the Covenants and Restrictions may contain such additions and/or modifications as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration.

- c. Mergers: Upon merger or consolidation of the Association with another association, as provided for in the Bylaws of the Association, its property rights and obligations may be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association may be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the existing Property, together with the covenants, conditions and restrictions established upon any other properties, as one plan. No merger or

consolidation shall result in any revocation, within the existing Property of the maximum limits on assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

Section 1. Enforcement of Provisions: 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. Rights of Lenders and Insurers of Mortgages: "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies, other firms or entities customarily affording loans secured by liens on residences, and eligible insurers and governmental guarantors. So long as any Institutional Lender shall hold any lien upon any Lot or shall be the Owner of any Lot, such Institutional Lender shall have, upon seven (7) days advance notice by written request therefor, the following rights:

- a. To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a qualified public accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by August 15th 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 this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or Bylaws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association.
- c. To receive notice of any condemnation loss or casualty loss which affects a material portion of the Common Area.
- d. To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- e. To have the right to approve any alienation, release, transfer, hypothecation or other encumbrance of the Common Area, other than those specific rights vested in the Association hereunder.

- f. To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender.

Section 3. Term and Amendment by Owners: The covenants, conditions, reservations and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public Improvements as herein provided. Notwithstanding anything contained in this Section, any amendment or termination of this Declaration which shall materially and adversely affect the validity or priority of the lien of or the rights of Institutional Lenders (as defined herein) holding mortgage loans on property located within Beth Haven shall be required to have the prior approval of such Institutional Lenders and must be properly recorded.

Section 4. Amendment to Achieve Tax-Exempt Status: The Declarant, for so long as it shall retain control of the Board of Directors of the Association, and thereafter, the Board, may amend this Declaration as shall be necessary, in its opinion without the consent of any Owner, in order to qualify the Association for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Lincoln County Registry.

Section 5. Amendment By Declarant. Notwithstanding any of the foregoing provisions, the covenants, conditions, reservations and restrictions of this Declaration and any restrictive covenants, which are recorded in the office of the Register of Deeds of Lincoln County by the Declarant simultaneously with, or subsequent to, the recording of this Declaration, may be amended by the Declarant as it feels appropriate in its sole discretion, but not so as to change the general character and concept of Beth Haven. This right to amend shall exist and continue until the Declarant owns no more than six (6) Lots, including those Lots in any additional phases which may be added to Beth Haven by the Declarant.

Section 6. Certification and Recordation of Amendment: Any instrument amending this Declaration shall be delivered, following approval by the Owners (to the extent that Owners' approval is required by the provisions of this Declaration), to the Board of Directors. Thereupon, the Board shall, within thirty (30) days after delivery:

a.

Reasonably assure itself that the amendment has been duly approved by the Owners as provided in Section 3 of this Article.

- b. Attach to the amendment a certification as to its validity, which certification shall be duly executed by the officers of the Association.
- c. Within the aforesaid thirty (30) day period, to cause the amendment to be recorded in the Lincoln County Registry.

Section 7. Effect and Validity of Amendments: All amendments shall be effective from the date of proper recordation in the Lincoln County Registry. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors and executed by the appropriate officers of the Association and recorded as provided in this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment.

Section 8. Exchange of Common Area: Notwithstanding any provision herein to the contrary, it is expressly provided that the Association may exchange with the Declarant, as well as any other Owner, for fair value any portion of the Common Area previously conveyed to the Association for additional property to be added to the Common Area. Upon such exchange and conveyance, the area conveyed shall cease to be Common Area and shall cease to be subject to the provisions of this Declaration relating to the Common Area. Any area acquired by the Association pursuant to the foregoing language shall automatically become Common Area and shall be subject to the provisions of these covenants relating to the Common Area.

Section 9. Conflicts: In the event of any irreconcilable conflict between this Declaration and the Bylaws of the Association, the provision of this Declaration shall control. In the event of an irreconcilable conflict between this Declaration or the Bylaws of the Association and Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

Section 10. 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 11. Contract Rights of Association: The undertakings and contracts authorized by the initial Board of Directors (including contracts for the management of Beth Haven) shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by any Board duly elected by the membership after the recording of this Declaration, so long as such undertakings and contracts are within the scope of the powers and duties which may be exercised by the Board of the Association in accordance with this Declaration, the Articles of Incorporation and the Bylaws, and provided further that any undertaking or contract entered into by the Association at a time the Declarant has the right to appoint a majority of the Board shall contain a provision reserving the right of the Association to terminate such undertaking or contract upon not more than ninety (90) days written notice to the other party(ies) thereto.

Section 12. Dissolution of the Association: The Association may be dissolved with the consent given in writing and signed by not less than two-thirds (2/3) of each class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

Section 13. Waiver of and Consent to Violations: The Declarant or ARC may waive any violation of these restrictions by an appropriate instrument where such violation is deemed insignificant, in their sole discretion.

Section 14. Term: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for the term set forth herein.

Section 15. Enforcement: Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain any violation or to recover damages for any such violation.

Section 16. Assignment by the Declarant: The Declarant shall have the right to assign its rights under this Declaration, in whole or in part, to any person or entity or Association within Beth Haven by any express transfer of such rights, including but not limited to the right to transfer its powers to the ARC elected by the Association.

Section 17. Severability: Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which remain in full force and effect.

Section 18. Notices to Declarant or ARC: Notices to the Declarant or the ARC shall be sent by certified mail, return receipt requested, to: D & S Construction of NC, Inc., 153 Henry Lane, Mooresville, North Carolina, 28117.

Section 19. Headings: Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer.

[EXECUTION PAGE FOLLOWS.]

**ARTICLE IX**

**ADOPTION and EXECUTION**

IN WITNESS WHEREOF, the undersigned D & S Construction of NC, Inc., being the Declarant herein, has caused this instrument to be executed in its name as of the day first above written.

D & S CONSTRUCTION OF NC, INC.

By:

Travis S. Drake, President

Iredell County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Travis S. Drake, as President of D & S Construction of NC, Inc., Declarant, on behalf and as the act of said corporation.

Date: \_\_\_\_\_

Official Signature of Notary Public Printed or typed name of Notary:

(Official Seal)  
Notary Public

My commission expires: \_\_\_\_\_