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[Space Above Reserved For Recording Information]

Return to: Weissman, Nowack, Curry & Wilco, P.C.  
3500 Lenox Road, 4<sup>th</sup> Floor  
Atlanta, Georgia 30326  
Attn: KCG

STATE OF GEORGIA  
COUNTY OF FULTON

Cross Reference: Deed Book 35494  
Page 87

**AMENDMENT TO THE DECLARATION OF COVENANTS  
AND RESTRICTIONS FOR WYNDHAM, FULTON COUNTY, GEORGIA**

**WHEREAS**, the Declaration of Covenants and Restrictions for Wyndham, Fulton County, was recorded on July 24, 2003, in Deed Book 35494, Page 87, *et seq.*, Fulton County, Georgia Records, as amended ("Declaration"); and

**WHEREAS**, Article XII, Section 1 of the Declaration provides that it may be amended upon the approval of such amendment by those members of Wyndham Homeowners Association, Inc. ("Association") who own, in the aggregate, no fewer than sixty-seven percent (67%) of the Town Homes not owned by the Declarant; and

**WHEREAS**, Beazer Homes Corp. is the Declarant in the Declaration; and

**WHEREAS**, if the Declarant owns any Town Homes or any other portion of the Property (as defined in the Declaration), then the approval of the Declarant shall be required for this Amendment; and

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**THIS AMENDMENT SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ. CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS/CHARGES DUE ON LOTS.**

**WHEREAS**, the Declarant does not own any Town Homes or any other portion of the Property; and

**WHEREAS**, if the Class B Membership has not terminated, then HUD and VA's approval may be required for amendments to the Declaration; and

**WHEREAS**, the Class B Membership has terminated pursuant to Article IV, Section 3(b) of the Declaration; and

**WHEREAS**, sixty-seven percent (67%) of the members of the Association desire to amend the Declaration and have approved this Amendment;

**NOW, THEREFORE**, the Declaration is hereby amended as follows:

**1.**

**Article I of the Declaration is hereby amended by adding the following definition to the end thereof:**

"Act" shall mean the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as such Act may be amended from time to time.

**2.**

**Article IV of the Declaration is hereby amended by adding the following to the end thereof as Section 11:**

**Section 11. Georgia POA Act**

The Property constitutes a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. 44-3-220, et seq. (Michie 1982), as such Act may be amended from time to time. The Association shall have all rights and powers afforded under the Act.

**3.**

**Article V of the Declaration is hereby amended by deleting Sections 1, 2, 3, 7, 8, 11, 12, and 13 and substituting the following therefor:**

**Section 1. Creation of the Lien and Personal Obligation for Assessments**

Each Owner of any Town Home, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special and specific special assessments, to be established and collected as hereinafter provided; and (iii) specific assessments levied by the Board hereunder against

any particular Town Home, including, but not limited to, reasonable fines imposed hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred shall be a charge on the Town Home and shall be a continuing lien upon the Town Home against which each assessment is made. Such amounts shall also be the personal obligation of the person who was the Owner of such Town Home at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Fulton County, Georgia records evidencing the lien created under the Act and this Declaration.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever, including, but not limited to, nonuse of the Association Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of common expenses on which the Board may base the annual assessments. The lien provided for herein shall have priority as provided in the Act.

### **Section 3. Capital Contribution Assessment Upon Transfer of Town Homes**

In addition to all other assessments and charges provided for herein, upon any conveyance or transfer of a Town Home, other than to the spouse or heir of the member, the purchaser or grantee thereof shall be assessed and be subject to a non-refundable, non-prorated capital contribution assessment ("Capital Contribution Assessment"). The assessment shall be collected at the closing of each such conveyance or transfer.

The Capital Contribution Assessment shall be an amount set yearly by the Board, provided the maximum shall be no higher than the greater of \$400 or an amount equal to six months' assessment applicable to such Town Home at the time of such conveyance or transfer.

The Capital Contribution Assessment shall not constitute an advance payment of the annual assessment. The Capital Contribution Assessment shall constitute a specific special assessment against such Town Home, a continuing lien against such Town Home, and a personal obligation of the member of such Town Home and collected in the same manner as any other assessment.

## Section 8. Delinquent Assessments

All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner of a Town Home shall be in default.

(a) If any assessments or any other charge, or any part thereof, is not paid in full within ten (10) days of the due date, or such later date as may be provided by the Board, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten percent (10%) per annum, or such higher rate as permitted by the Act, shall accrue from the due date.

If part payment of assessments and related charges is made, the amount received may be applied by the Board, in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments.

(b) If assessments, fines or other charges, or any part thereof, due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment. If the Owner fails to pay all amounts currently due within ten (10) days of the date of the notice of delinquency, the Board may then accelerate and declare immediately due all installments of the annual assessment and of any special assessment, without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in monthly installments for that fiscal year, unless reinstated in the Board's discretion.

If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorney's fees actually incurred, and suspend the Owner's and Occupant's right to use the Association Property (provided, however, the Board may not deny ingress or egress to or from the Town Home).

## Section 12. Statement of Account

Any Owner, mortgagee, or a person having executed a contract for the purchase of a Town Home, or a lender considering a loan to be secured by a Town Home, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Town Home. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the

payment of a fee, not exceeding ten dollars (\$10.00) or such higher amount as may be authorized under the Act, as a prerequisite to the assessments due on the Town Home as of the date specified therein. The Association may require an additional fee not to exceed twenty five dollars (\$25.00) if the Association provides a copy of the Declaration and Bylaws to any such person in connection with a closing or otherwise upon request.

4.

**Article XII, Section 1 of the Declaration is hereby amended by adding the following to the end thereof:**

**Default Member Approval Procedure After Nonresponse.** It is recognized that, when Class A members fail to participate in an amendment vote because of apathy or other reasons which are not based on any disagreement with a proposed amendment, vital amendments to the Declaration may have no chance of approval, with the supermajority voting requirements established under the Act. It also is recognized that supermajority voting requirements are important for member actions which are as significant as amending this Declaration. To balance these competing concerns, this subparagraph establishes a mechanism which provides every eligible Class A member an opportunity to issue a vote of approval, disapproval or abstention on proposed amendments to the Declaration, but also a realistic mechanism for approving important amendments, without the damaging consequences of member nonresponse.

When the Board proposes an amendment to the Declaration that requires member approval, the Board shall issue notice of such proposed amendment to each Class A Member. With each such notice, the Board shall include a copy of the proposed amendment, along with a consent form, ballot in lieu of a meeting, or directed proxy, each complying with any requirements of the Georgia Nonprofit Corporation Code, O.C.G.A. Section 14-3-1, *et seq.*, giving members an opportunity to vote for, vote against or abstain from voting on the proposed amendment.

If the amendment is not approved by sufficient vote or defeated by sufficient vote within 90 days of the issuance of such notice, then the Board may seek to obtain default approval from Class A members under this subparagraph. In such case the Board shall, by certified mail, send or issue a default approval notice to all Class A members who have not voted or returned consents or ballot on a proposed amendment within the 90 day period. The default approval notice shall include a consent form or ballot, as provided above, along with a statement that the member's failure to return an executed consent form or ballot, marked with a vote for, a vote against, or an abstention from voting on the amendment, within 30 days of the date of such notice, will be deemed consent to such amendment. If the Board does not receive such consent or ballot within the time specified, the member will be deemed to have consented to and approved the amendment.

5.

Article XIII, Section 4(b) of the Declaration is amended by deleting the words "fifteen percent of the aggregate amount due for attorney's fees" and substituting the following in its place: "reasonable attorney's fees actually incurred."

6.

Article XIII of the Declaration is amended by deleting Section 5 therefrom.

7.

Article XV, Section 9 of the Declaration is hereby deleted and replaced with the following Section 9:

Section 9. Duration

This Declaration, as amended, shall run with and bind the Property perpetually to the extent provided in the Act.

IN WITNESS WHEREOF, the undersigned officers of Wyndham Homeowners Association, Inc. hereby certify that the above amendments to the Declaration were adopted by the required majority of the Class A members of the Association, with any required notices duly given.

This 5<sup>th</sup> day of November, 2008.

SWORN TO AND SUBSCRIBED  
BEFORE ME this 5<sup>th</sup> day of  
November, 2008.

WYNDHAM HOMEOWNERS ASSOCIATION, INC.

Cullen Afferton  
Witness

By: [Signature] (Seal)  
President

Kathleen Brown  
Notary Public

Attest: [Signature] (Seal)  
Secretary  
Vice President

[NOTARY SEAL]

[CORPORATE SEAL]



Deed Book 47357 Pg 151  
Filed and Recorded Nov-13-2008 09:03am  
2008-0298802  
Real Estate Transfer Tax \$0.00  
Cathelene Robinson  
Clerk of Superior Court  
Fulton County, Georgia

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[Space Above Reserved For Recording Information]

Return to: Weissman, Nowack, Curry & Wilco, P.C.  
3500 Lenox Road, 4<sup>th</sup> Floor  
Atlanta, Georgia 30326  
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Article I of the Declaration is hereby amended by adding the following definition to the end thereof:

"Act" shall mean the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as such Act may be amended from time to time.

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The Property constitutes a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. 44-3-220, et seq. (Michie 1982), as such Act may be amended from time to time. The Association shall have all rights and powers afforded under the Act.

3.

Article V of the Declaration is hereby amended by deleting Sections 1, 2, 3, 7, 8, 11, 12, and 13 and substituting the following therefor:

Section 1. Creation of the Lien and Personal Obligation for Assessments

Each Owner of any Town Home, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special and specific special assessments, to be established and collected as hereinafter provided; and (iii) specific assessments levied by the Board hereunder against

any particular Town Home, including, but not limited to, reasonable fines imposed hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred shall be a charge on the Town Home and shall be a continuing lien upon the Town Home against which each assessment is made. Such amounts shall also be the personal obligation of the person who was the Owner of such Town Home at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Fulton County, Georgia records evidencing the lien created under the Act and this Declaration.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever, including, but not limited to, nonuse of the Association Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of common expenses on which the Board may base the annual assessments. The lien provided for herein shall have priority as provided in the Act.

### Section 3. Capital Contribution Assessment Upon Transfer of Town Homes

In addition to all other assessments and charges provided for herein, upon any conveyance or transfer of a Town Home, other than to the spouse or heir of the member, the purchaser or grantee thereof shall be assessed and be subject to a non-refundable, non-prorated capital contribution assessment ("Capital Contribution Assessment"). The assessment shall be collected at the closing of each such conveyance or transfer.

The Capital Contribution Assessment shall be an amount set yearly by the Board, provided the maximum shall be no higher than the greater of \$400 or an amount equal to six months' assessment applicable to such Town Home at the time of such conveyance or transfer.

The Capital Contribution Assessment shall not constitute an advance payment of the annual assessment. The Capital Contribution Assessment shall constitute a specific special assessment against such Town Home, a continuing lien against such Town Home, and a personal obligation of the member of such Town Home and collected in the same manner as any other assessment.

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(a) If any assessments or any other charge, or any part thereof, is not paid in full within ten (10) days of the due date, or such later date as may be provided by the Board, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten percent (10%) per annum, or such higher rate as permitted by the Act, shall accrue from the due date.

If part payment of assessments and related charges is made, the amount received may be applied by the Board, in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments.

(b) If assessments, fines or other charges, or any part thereof, due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment. If the Owner fails to pay all amounts currently due within ten (10) days of the date of the notice of delinquency, the Board may then accelerate and declare immediately due all installments of the annual assessment and of any special assessment, without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in monthly installments for that fiscal year, unless reinstated in the Board's discretion.

If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorney's fees actually incurred, and suspend the Owner's and Occupant's right to use the Association Property (provided, however, the Board may not deny ingress or egress to or from the Town Home).

**Section 12. Statement of Account**

Any Owner, mortgagee, or a person having executed a contract for the purchase of a Town Home, or a lender considering a loan to be secured by a Town Home, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Town Home. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the

payment of a fee, not exceeding ten dollars (\$10.00) or such higher amount as may be authorized under the Act, as a prerequisite to the assessments due on the Town Home as of the date specified therein. The Association may require an additional fee not to exceed twenty five dollars (\$25.00) if the Association provides a copy of the Declaration and Bylaws to any such person in connection with a closing or otherwise upon request.

4.

**Article XII, Section 1 of the Declaration is hereby amended by adding the following to the end thereof:**

**Default Member Approval Procedure After Nonresponse.** It is recognized that, when Class A members fail to participate in an amendment vote because of apathy or other reasons which are not based on any disagreement with a proposed amendment, vital amendments to the Declaration may have no chance of approval, with the supermajority voting requirements established under the Act. It also is recognized that supermajority voting requirements are important for member actions which are as significant as amending this Declaration. To balance these competing concerns, this subparagraph establishes a mechanism which provides every eligible Class A member an opportunity to issue a vote of approval, disapproval or abstention on proposed amendments to the Declaration, but also a realistic mechanism for approving important amendments, without the damaging consequences of member nonresponse.

When the Board proposes an amendment to the Declaration that requires member approval, the Board shall issue notice of such proposed amendment to each Class A Member. With each such notice, the Board shall include a copy of the proposed amendment, along with a consent form, ballot in lieu of a meeting, or directed proxy, each complying with any requirements of the Georgia Nonprofit Corporation Code, O.C.G.A. Section 14-3-1, *et seq.*, giving members an opportunity to vote for, vote against or abstain from voting on the proposed amendment.

If the amendment is not approved by sufficient vote or defeated by sufficient vote within 90 days of the issuance of such notice, then the Board may seek to obtain default approval from Class A members under this subparagraph. In such case the Board shall, by certified mail, send or issue a default approval notice to all Class A members who have not voted or returned consents or ballot on a proposed amendment within the 90 day period. The default approval notice shall include a consent form or ballot, as provided above, along with a statement that the member's failure to return an executed consent form or ballot, marked with a vote for, a vote against, or an abstention from voting on the amendment, within 30 days of the date of such notice, will be deemed consent to such amendment. If the Board does not receive such consent or ballot within the time specified, the member will be deemed to have consented to and approved the amendment.

5.

Article XIII, Section 4(b) of the Declaration is amended by deleting the words "fifteen percent of the aggregate amount due for attorney's fees" and substituting the following in its place: "reasonable attorney's fees actually incurred."

6.

Article XIII of the Declaration is amended by deleting Section 5 therefrom.

7.

Article XV, Section 9 of the Declaration is hereby deleted and replaced with the following Section 9:

Section 9. Duration

This Declaration, as amended, shall run with and bind the Property perpetually to the extent provided in the Act.

IN WITNESS WHEREOF, the undersigned officers of Wyndham Homeowners Association, Inc. hereby certify that the above amendments to the Declaration were adopted by the required majority of the Class A members of the Association, with any required notices duly given.

This 5<sup>th</sup> day of November, 2008.

SWORN TO AND SUBSCRIBED  
BEFORE ME this 5<sup>th</sup> day of  
November, 2008.

WYNDHAM HOMEOWNERS ASSOCIATION, INC.

Cathelene Robinson  
Witness

By: [Signature] (Seal)  
President

Kathleen Brown  
Notary Public

Attest: [Signature] (Seal)  
Secretary  
Vice President

[CORPORATE SEAL]

[NOTARY SEAL]

