

26.00

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
WALNUT CREEK UNIT 2, SECTION 1; UNIT 2, SECTION 2;  
UNIT 3 AND UNIT 4

THIS DEED OF RESTRICTIONS is made and entered into on this the 17<sup>th</sup> day of November, 2004, by CUTTER HOMES, LTD., a Kentucky corporation d/b/a BEAZER HOMES, hereinafter referred to as "DEVELOPER" of Unit 2, Section 1; Unit 2, Section 2, Unit 3 and Unit 4 of WALNUT CREEK, hereinafter referred to as the "SUBDIVISION".

WITNESSETH:

THAT WHEREAS, the Developer is the owner of real property known as Walnut Creek and as more particularly described on plat of record in Plat Cabinet L, Slide 870, and as subsequently amended in plat of record in Plat Cabinet L, Slide 904, both in the Fayette County Clerk's Office (the "Property"), a portion of the Property being known as Walnut Creek Unit 2, Section 1 and placed of record on Plat Cabinet M, Slide 109, in the aforesaid Clerk's Office; and,

WHEREAS, the Developer is the owner of real property known as Walnut Creek and as more particularly described on plat of record in Plat Cabinet L, Slide 870, and as subsequently amended in plat of record in Plat Cabinet L, Slide 904, both in the Fayette County Clerk's Office (the "Property"), a portion of the Property being known as Walnut Creek Unit 2, Section 2 and placed of record on Plat Cabinet M, Slide 216, in the aforesaid Clerk's Office; and,

WHEREAS, the Developer is the owner of real property known as Walnut Creek and as more particularly described on plat of record in Plat Cabinet L, Slide 870, and as subsequently amended in plat of record in Plat Cabinet L, Slide 904, both in the Fayette County Clerk's Office (the "Property"), a portion of the Property being known as Walnut Creek Unit 3, placed of record on Plat Cabinet M, Slide 217, and as subsequently amended by plat of record in Plat Cabinet M, Slide 333, in the aforesaid Clerk's Office; and,

WHEREAS, the Developer is the owner of real property known as Walnut Creek and as more particularly described on plat of record in Plat Cabinet L, Slide 870, and as subsequently amended in plat of record in Plat Cabinet L, Slide 904, both in the Fayette County Clerk's Office (the "Property"), a portion of the Property being known as Walnut Creek Unit 4 and placed of record on Plat Cabinet M, Slide 218, in the aforesaid Clerk's Office; and,

WHEREAS, the Developer intends to establish a general plan for the use, occupancy and enjoyment of the Subdivision; and,

WHEREAS, in an effort to maintain uniformity in said use and occupancy, the Developer desires to create certain restrictions as to the lots in the Subdivision;

RETURN TO PREPARER (MMK)

NOW, THEREFORE, the Developer does hereby establish the following covenants, conditions and restrictions as to the use and occupancy of the Subdivision as shown by plats of record in Plat Cabinet M, Slide 109; Plat Cabinet M, Slide 216; Plat Cabinet M, Slide 217; Plat Cabinet M, Slide 333; and Plat Cabinet M, Slide 218, all in the Office of the Fayette County Court Clerk, as follows:

1. PRIMARY USE RESTRICTIONS: No lot in the Subdivision shall be used except for private single family residential purposes. No structure shall be erected, placed or altered or permitted to remain on any lot except one single-family dwelling designed for the occupancy of one family (including any domestic servants living on the premises), not to exceed two and one-half stories in height and which shall contain a private attached garage large enough to accommodate at least two (2) automobiles.

No trade or business of any kind (and no practice of medicine, dentistry, chiropody, osteopathy and like endeavors) shall be conducted on any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Notwithstanding the provisions hereof, a new house may be used by the builder thereof as a model home for display or for the builder's own office, provided said use terminates within two years from completion of that house.

2. APPROVAL OF CONSTRUCTION PLANS: The Developer shall approve all house plans prior to commencement of construction. No construction activity of any kind, including excavation or lot clearing, shall begin until Developer has approved construction plans in writing. Additionally, no building, fence, wall, structure or other improvement shall be erected, placed or altered on any lot until the construction plans, specifications and a plan showing the grade elevation (including rear, front and side elevations) and location of the structure, fence, wall or improvement, the type of exterior material and the driveway shall have been approved in writing by Developer. No fence or wall of any nature may be extended toward the front or street side property line beyond the front or side wall of the residences. Developer may vary the established building lines, in its sole discretion, where not in conflict with applicable zoning regulations.

3. PRIMARY PERMANENT RESIDENTIAL STRUCTURE CONSTRUCTION PLANS; MINIMUM FLOOR AREAS:

(a) Plans submitted for approval by the Developer shall be one-fourth (1/4) inch equals one (1) foot scale. Plans shall include a plot plan and driveway location(s). The construction plans shall include front, side and rear elevations.

(b) The following are required minimum square footages for the primary permanent residential structure:

(1) All one (1) story homes shall have a minimum floor area of 1,400 square feet on the ground floor, exclusive of the garage.

(2) One and one half (1-1/2) or two (2) story homes shall have a minimum aggregate floor area of 1,500 square feet, exclusive of the garage.

(3) Any other type of home not specifically listed above shall have a minimum floor area of 1,500 square feet exclusive of the garage, and its design must first be approved by the Developer.

(c) In computing total square footage, only habitable living space shall be included, and finished or unfinished basements, garages and open porches shall not be included.

(d) No roof on any residence shall be less than a 6/12 pitch unless approved in writing by the Developer.

4. BUILDING MATERIALS: All exterior building materials shall be either brick or stone veneer. The brick or stone veneer shall be extended to the finished grade. No other exterior building material shall be used except upon approval by the Developer in writing. Any and all retaining walls extending beyond the exterior residential structure walls shall be the same material as the exterior residential structure walls. All roof shingles, including variation in the minimum specification standards, shall be approved by the Developer in writing, and shall be of the "dimensional shingle" type, and shall be "earth-tone" colors or black. For purposes of these Restrictions, "earth-tone" colors are defined as being warm, muted colors ranging in the spectrum from neutral to deep brown. By way of example and not by way of limitation, white, yellow green, orange, red, blue, pink and purple are NOT considered to be earth-tone colors. Fireplaces shall be masonry fireplaces, unless otherwise approved in writing by Developer.

5. APPURTENANCES, IMPROVEMENTS AND OTHER PERMANENT STRUCTURES: No appurtenance, improvement or other permanent structure shall be constructed or placed on any lot without prior written approval from the Developer. Such permanent structures include, but are not limited to, pools, fences, gazebos, storage facilities, tool sheds and tennis courts. No exterior alterations of any existing building may be permitted without the prior approval of the Developer. No second story additions are permitted. No additional windows, platforms, etc., which may invade the privacy of adjacent dwellings are permitted. The following requirements are applicable to such appurtenances, improvements and other permanent structures:

(a) Garages: All garages must be attached, and must be large enough to accommodate two (2) automobiles. Garages are to be given the same architectural treatment and be constructed of the same materials as the main structure. For purposes of these Restrictions, garages connected to the home by a permanent covered walkway shall be considered to be attached.

(b) Sidewalks and Driveways: Each lot owner agrees to maintain sidewalks on the lot or lots owned, at the lot owner's expense. All driveway areas must be concrete. Each lot owner shall concrete the driveway within three (3) months after completion of a single family dwelling.

(c) Flashing, Vents, Louvers, Etc.: The roof pipes, vents, louvers, flashing and utility equipment shall be painted to match the surface from which they project, or pursuant to a color scheme approved in writing by the Developer.

(d) Swimming Pools: All swimming pools shall be inground pools; no above ground pools shall be permitted. The construction of swimming pools must be approved in writing by the Developer prior to the commencement of construction. Drainage, fencing, placement and lighting plans shall be included in the construction design plan submitted to the Developer for approval. There shall be no increase in drainage to other properties permitted as a result of construction nor shall there be an increase in drainage to other properties during such construction. No swimming pool shall extend beyond the primary permanent residential structure.

No lighting of a pool or other recreation area will be installed without the approval of the Developer, and if allowed, will be designed for recreational character so as to buffer the surrounding residences from all lighting.

(e) Tennis Courts: No tennis court shall be constructed without prior approval of the Developer. Any tennis court approved by the Developer shall not extend beyond the primary permanent residential structure. Drainage, fencing, placement and lighting plans shall be included in the construction plan submitted to the Developer for approval. There shall be no increase in drainage to other properties as a result of construction nor during the construction of the tennis court.

(f) Basketball Goals: No basketball goal shall be visible to neighboring lots, streets or adjacent property, provided, however, that if the backboard is constructed of transparent material it may be visible to adjoining lots. No basketball goal shall be erected in common areas except at the direction of the Homeowners Association, as hereinafter defined.

(g) Fences: Fences on individual lots (with the exception of fences enclosing tennis courts) shall not exceed a height of six (6) feet. No fence shall extend toward the front or street-side property line beyond the front or side wall of the residence except as approved by the Developer in writing. Only picket fences will be permitted, with the space between slats not to exceed two inches (2"). Drawings of all fences shall be submitted to the Developer for approval prior to construction. There shall be no chain link fencing permitted on any lot. No board fencing (traditionally known as "horse-fencing") shall be permitted. The exterior side of all fences shall be finished. If the natural finish is to be altered by paint, stain or any other finishing technique, it must be approved by the Developer in writing prior to construction of the fence. Fencing on corner lots must comply with all applicable setback lines and will be considered by the Developer on a case by case basis. All fencing plans must be submitted for approval by the Developer in advance of construction. All plans must include a plot plan depicting the location and a diagram and/or picture describing the fence and fencing material.

(h) Air Conditioning and Utility Areas: Air conditioners, utility equipment and utility meters shall be screened from public view in a manner and at a location approved in writing by the Developer. The plans for such screening shall contemplate landscaping and/or permanent fences of solid materials and will be located as far from property lines as reasonably possible.

(i) Mailboxes: All mailboxes shall be of uniform architectural design as determined by the Developer.

(j) Satellite Dishes: No dishes larger than 18" in diameter shall be permitted on any lot, and no dish shall be placed on a lot so that it is visible from the street fronting the residence.

(k) Clotheslines: No outside clothesline shall be erected or placed on any lot.

(l) Signs: No signs of any kind shall be displayed on any lot, with the exception of For Sale or Rent signs (which shall not be greater in size than nine (9) square feet) and signs deemed acceptable or necessary by the Developer.

(m) Temporary Structures: No temporary structure shall be permitted on any lot with the exception of temporary tool sheds and/or field offices used by builders and/or Developer; any such sheds or offices shall be removed when the construction or development has been completed. No such temporary structure shall be used as a residence at any time.

(n) Lighting: No exterior lighting, including recreational and/or security lighting, shall be installed or maintained on any lot which light is found to be objectionable by the Developer. Upon being given notice by the Developer that any exterior light is objectionable, the owner of the lot on which same is located will immediately remove said light or have it shielded in such a way that it is no longer objectionable. This restriction shall not apply to decorative Christmas lights, which may be displayed between November 15<sup>th</sup> and January 10<sup>th</sup> only.

6. LANDSCAPING:

(a) Landscaping shall be completed within thirty (30) days of occupancy of the residence unless otherwise approved by Developer.

(b) All front and side yards must be completely sodded upon completion of construction. Seeding in lieu of sodding is strictly prohibited. In addition to all front and side yards, an area between the back wall of the house and a line parallel and twenty (20) feet to the rear of the back wall of the house shall also be sodded.

(c) Upon completion of construction of any residence, the owner at such time shall plant one (1) shade tree in the back yard of the lot. Additionally, the owner at the time of completion of the residence shall be responsible for planting "street trees" in accordance with the recorded plat of the Subdivision and in conformity with Lexington-Fayette Urban County Government Regulations. Unless otherwise agreed to by the Developer in writing, all of such "street trees" shall be sugar maples.

(d) No hedge shall be planted on any lot unless its placement and planting are approved in writing by the Developer.

(e) Owners shall maintain their yards, hedges, plants and shrubs in a neat and trimmed condition at all times, and shall promptly dispose of any refuse or garbage.

(f) No artificial vegetation, sculptures, flagpoles or lawn ornaments of any kind will be permitted on the exterior of any portion of the lots unless previously approved in writing by the Developer.

7. UTILITIES: Any and all utility lines or wires for communications or for transmission of electrical current outside of any residence or building will be constructed, placed and maintained underground. All other utility conduits shall similarly be constructed, placed and maintained underground, unless otherwise approved by the Developer in writing.

8. DRAINAGE: Drainage of each lot shall be in conformity with the general drainage plan of the Subdivision; no storm water drains, roof downspouts or ground water shall be integrated into the sanitary sewer system, and all lot connections shall be made with watertight joints in accordance with plumbing code requirements.

9. EASEMENTS:

(a) Utility Easements - Easements for installation and maintenance of utilities may be reserved over each lot by deed or as shown on plat. Within these easements, no structure, planting or other material shall be placed or prevented to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements. The easement area of each lot and all improvements on it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

(b) Common Open Space Easements - The Developer has included within its plan several common open space easements, for the enhancement of property and for the use of all property owners. The common open space easements may be used for locating utilities. All common open space is and shall remain private property exclusively for recreational or access purposes. The common open space shall be used exclusively by residents or guests accompanied by residents. Walnut Creek Homeowners Association, Inc. shall maintain the common open space located in The Subdivision and any other section of Walnut Creek Subdivision that Developer may by past or future deed restriction or amendment hereof designate and provide. No structure, object or plant material may be placed in the common open space without the approval of the Developer.

10. VEHICLES: No trailer, truck, commercial vehicle, camper trailer, camping vehicle or boat shall be parked or kept on any lot at any time unless said vehicle is housed in a garage or basement; no inoperable automobile shall be parked on any lot or street, unless housed in a garage; and no operable vehicle shall be parked on any street in the Subdivision for a period in excess of twenty-four (24) hours in any one calendar year.

Any and all routine automobile maintenance shall be conducted within close proximity to the garage entrance. No such routine maintenance shall be permitted on residential streets or on portions of driveways within close proximity to the residential street.

11. DISPOSAL OF TRASH: No lot shall be used as a dumping ground for rubbish, trash or garbage, and any and all such waste shall be kept in suitable sanitary containers. No vacant lot shall accrue trash, rubbish or debris at any time. Grass and/or shrubbery clippings,

dead shrubs, leaves or any other debris shall be disposed of in appropriate waste receptacles. Dumping of said materials on any other lot is strictly prohibited. Developer reserves the right to remove any trash from lots at the expense of the owner of the lot and/or at the expense of the individual who violates this section.

12. FIREWOOD STOCKPILING: Any and all firewood stockpiles shall be placed so as to not detract from the aesthetic appearance of the lot when viewed from any vantage point. If a firewood stockpile is to be covered, that covering shall be of a heavy non-plastic material and shall be black in color and securely tied down to prevent disturbance by wind.

13. ANIMALS: No pets, other than the traditional domestic animals in this geographic area (i.e., dogs, cats, birds) shall be housed or kept on any lot. No pets, including traditional domestic animals, shall be kept for any commercial or breeding purposes. Pets shall always be under the control of the owner and adhere to the ordinances set forth by the Lexington-Fayette Urban County Government. No pets shall be allowed in any landscaped common areas.

14. SUBDIVISION; ONE BUILDING PER LOT: No additional subdivision of any lot shall be made without the written consent of Developer and any appropriate governmental bodies; further, no more than one (1) building shall be built on any lot; however, this restriction shall not include pool house, gazebos or similar structures which have been approved by the Developer.

15. OBLIGATION TO CONSTRUCT OR RECONVEY: Every lot owner shall, within thirty-six (36) months after the date of execution of a sales agreement regarding the sale and purchase of a lot without a dwelling thereon, commence in good faith the construction of a single family dwelling, as approved according to Paragraph 2 above; should construction not commence within said thirty-six (36) month period, the Developer may elect to repurchase any and all lots on which construction has not commenced for a purchase price of ninety percent (90%) of the agreed purchase price of said lot or lots hereunder, in which event the lot owner shall immediately reconvey and deliver possession of said lot or lots to Developer by deed of special warranty.

No lot owner shall sell, convey or transfer his lot, if a primary permanent residential structure has not been constructed on that lot, without first offering to reconvey the lot to Developer for an amount equal to the purchase price paid by the lot owner for said lot. Whenever any lot owner receives a binding offer from a third party to purchase his lot, the lot owner shall notify Developer of such binding offer and include a copy of the binding offer with that notice. Developer shall then have 45 days to purchase the lot at an amount equal to the purchase price paid by the lot owner for the lot. If Developer fails to purchase the lot within that 45 day period or elects not to purchase the lot during that 45 day period, then the lot owner may sell the lot to the party named in the binding offer to purchase.

16. OWNER'S UPKEEP OBLIGATION PRIOR TO COMPLETION: Each owner of a lot upon which construction of a residence has not yet been completed is obligated to maintain the lot prior to completion of construction in accordance with all of the provisions referred to herein.

17. ZONE CHANGES: No zone changes for this property shall be applied for without the prior approval of Developer.

18. SEVERABILITY OF PROVISIONS: Invalidation of any one of these provisions by judgment or Court order shall not affect any other provisions which shall remain in full force and effect.

19. HOMEOWNERS ASSOCIATION/ASSESSMENTS:

(a) The Articles of Incorporation of Walnut Creek Homeowners Association, Inc. ("Association"), which may be amended from time to time, dated April 17, 2003, and registered with the Kentucky Secretary of State on April 30, 2003, are recorded in Corporate Record Book 262, Page 535, in the Office of the Fayette County Clerk, in Lexington, Kentucky.

Every owner of a lot in The Subdivision (and such other sections as Developer has provided in other deed restrictions or may provide in future deed restrictions) shall be a member of the Association and by acceptance of a deed for any lot, agrees to accept membership in and does thereby become a member of the Association. Such owner and member shall abide by the Association' by-laws, rules and regulations, shall pay the assessments provided for, when due, and shall comply with decisions of the Association' Boards of Directors.

(b) The objects and purposes of the Association are set forth in its Articles of Incorporation and shall be to promote the social welfare and serve the common good and general welfare of their members. The Association shall have jurisdiction over Unit 1 of Walnut Creek Subdivision, and its objects and purposes shall include, without limitation and unless such obligations are otherwise assumed by any municipal or governmental agency having jurisdiction thereof, the maintenance and repair of the streets, common areas, crosswalks, storm drains, basins, fences and entrances as are shown on any plat of Walnut Creek Subdivision, and acceptance of common area for purposes of operation, maintenance and repair.

(c) Any assessments levied by the Association shall be used only for purposes generally benefiting the Association, and shall constitute the personal obligation of the lot owner and shall create a lien upon the lot and improvements against which each such assessment is made. This lien shall be subordinate to the lien of any first mortgage or vendor's lien on the lot and shall be enforceable against the real estate by foreclosure or otherwise.

(d) The initial assessment by the Association shall be no higher than \$150 per year per lot beginning January 1, 2005. After December 31, 2005, the Board of Directors of the Association may, from time to time, increase or decrease the assessment. The Board of Directors of the Association shall determine the amount of and fix the due date of each assessment. The annual assessment will be dated January 1 of each year and will be due and payable on or before February 1 of that year. The assessment will be prorated in the event of occupancy for a portion of the year, with the proration to be calculated by determining the number of days of occupancy of the residence from the date of occupancy through December 31 of that year. This subparagraph should not be construed to restrict or prohibit the rights of the Association, its Board of Directors, officers or members from taking any action permitted by its Articles of Incorporation, its By-Laws, rules or regulations.



20. RESTRICTIONS RUN WITH LAND: Unless cancelled, altered or amended under the provisions of this paragraph, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of the front footage of all lots in Walnut Creek Subdivision has been recorded, agreeing to change these restrictions and covenants in whole or in part. These restrictions may be cancelled, altered or amended at any time by the affirmative action of the owners of seventy-five percent (75%) of the lots subject to these restrictions. Failure of any owner to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation or the right to seek enforcement of these restrictions.

21. GENERAL:

(a) The several approval rights retained by Developer in this instrument may be assigned to any person or association. If Developer ceases to exist as a legal entity without formally assigning its approval rights, those approval rights shall be deemed assigned to the Association.

(b) Wherever in this instrument a lot owner has an affirmative obligation to take some action or is restricted from taking some action or is restricted from taking some action without the approval of Developer, and the lot owner violates any of those requirements, Developer may notify the lot owner of his violation. If the lot owner has not complied with the Developer's notification to correct the violation within 30 days, the Developer shall have the right to re-enter cost of correcting the violation, and the cost of correcting such violation shall be paid by the lot owner to Developer immediately upon demand. To secure the payment of that obligation by the lot owner, Developer shall have a lien on such owner's lot, which lien shall be equal in priority to the lien provided for in paragraph 19 (c) above. That lien shall be enforceable against the lot by foreclosure or otherwise.

IN WITNESS WHEREOF, the Developer, Cutter Homes, Ltd., has executed these Restrictions on this the day and year first above written.

CUTTER HOMES, LTD. d/b/a BEAZER HOMES

By:  \_\_\_\_\_

COMMONWEALTH OF KENTUCKY

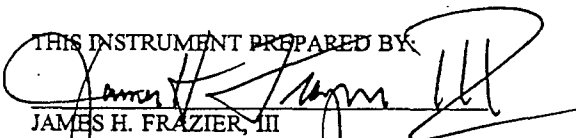
COUNTY OF FAYETTE

The foregoing instrument was subscribed and sworn to before me on this the 17<sup>th</sup> day of November, 2004, by PETER O'HANLON in his capacity as DIVISION PRESIDENT of Cutter Homes, Ltd., a Kentucky corporation d/b/a Beazer Homes, for and on behalf of said corporation.

  
NOTARY PUBLIC, STATE AT LARGE, KY

My commission expires: 8-14-07

THIS INSTRUMENT PREPARED BY:

  
JAMES H. FRAZIER, III  
McBrayer, McGinnis, Leslie & Kirkland, PLLC  
201 East Main Street, Suite 1000  
Lexington, Kentucky 40507  
(859) 231-8780

I, Donald W Blevins, County Court Clerk  
of Fayette County, Kentucky, hereby  
certify that the foregoing instrument  
has been duly recorded in my office.

*Donald W Blevins*

By: Doug BRADLEY, dc

200411170218

November 17, 2004

11:12:04 AM

Fees     \$23.00                      Tax        \$ .00

Total Paid            \$23.00

THIS IS THE LAST PAGE OF THE DOCUMENT

11 Pages

427 - 437

LIST OF RECORD PLATS OF WALNUT CREEK SUBDIVISION

Walnut Creek, Unit 1

Plat Cabinet L, Slide 905, as amended by

Plat Cabinet L, Slide 924, as amended by

Plat Cabinet L, Slide 941, as amended by

Plat Cabinet M, Slide 331, Fayette County Court Clerk's Office

Walnut Creek, Unit 2, Section 1

Plat Cabinet M, Slide 109, Fayette County Court Clerk's Office

Walnut Creek Unit 2, Section 2

Plat Cabinet M, Slide 216, Fayette County Court Clerk's Office

Walnut Creek, Unit 3

Plat Cabinet M, Slide 217, as amended by

Plat Cabinet M, Slide 333, Fayette County Court Clerk's Office

Walnut Creek Unit 4

Plat Cabinet M, Slide 218, Fayette County Clerk's Office