

**DECLARATION OF RESTRICTIVE COVENANTS
FOR
PEBBLE CREEK**

This DECLARATION OF RESTRICTIVE COVENANTS, made as of September 6, 2000, by STITZEL DEVELOPMENT CORPORATION, of Cleveland County, North Carolina, hereinafter called DEVELOPERS;

RECITALS:

A. The purpose of this Declaration is to subject all of Pebble Creek subdivision to the Covenants and Restrictions contained in this document. This document is sometimes referred to as the "Covenants." Pebble Creek subdivision is recorded in Plat Book 21, Pages 188-190 of the Cleveland County Registry.

B. Developer declares that lots within Pebble Creek shall be conveyed and occupied subject to all matters set forth in this document. These covenants shall run with the land and shall be binding upon the Developer and all parties acquiring any interest in Pebble Creek after the recording of these Covenants in the public records.

**ARTICLE I
Mutual Benefits and Obligations**

The Covenants contained in this document are for the purpose of protecting the value and desirability of Pebble Creek subdivision and made for the mutual benefit of each and every owner of a lot in the subdivision. They are intended to be nondiscriminatory. They are also intended to create enforceable rights and obligations in favor of and against each lot, its owner and the Association. Each owner, his or her family, friends, guests, and invitees shall comply with the provisions of these Covenants while present within this subdivision.

**ARTICLE II
Definitions**

Section 2.1: Pebble Creek or Pebble Creek Subdivision. These terms shall mean all the property known as Pebble Creek as depicted on the recorded Plat.

Section 2.2: Board of Directors. the Board of Directors of Pebble Creek Community Association, Inc., a North Carolina not-for-profit Corporation.

Section 2.3: Lot. Each platted Lot in the Subdivision, regardless of whether a dwelling has been constructed on such lot.

Section 2.4: Owner. Each person who owned record title to a Lot, excluding those having such title merely as security for performance of an obligation.

Section 2.5: Developer. the person(s) or other legal entity, their successors and assigns that caused the property to be subdivided and developed from acreage into platted lots.

Section 2.6: Association. The Pebble Creek Homeowner's Association, a North Carolina not-for-profit corporation.

Section 2.7: Common Property. The Association shall manage and maintain all Common Property, whether owned by the Association or individual Lot owners, for the use and benefit of all owners. The Common Property is more specifically identified as follows

- (a) Tract A (island) as depicted on the Plat shall be used for signage and landscape purposes.
- (b) Tract B (berms) located on Lots 1, 2, 3, 41, 42, 43 shall be used as a visual barrier and landscape purposes. Owners of these lots shall provide ingress & egress for upkeep and maintenance purposes in perpetuity.

The common property shall not be altered, changed or destroyed in any way by any homeowner. The Association shall determine the landscape plan for all common property, whether owned by the Association or individual Lot owners.

Section 2.8: Assessments. Annual and special assessments by the Association against Lots in the Subdivision made in accordance with the terms of these Covenants.

Section 2.9: Class A Member. A member of the Association other than the developer.

Section 2.10: Class B Member. A member of the Association which is the Developer.

ARTICLE III Subdivision Assessments

Section 3.1: General Purpose. The Association is organized for the purpose of owning and maintaining the Common Property, and maintaining non owned common property including entrance sign, and landscaping thereon; and providing for enforcement of the Covenants, and otherwise engaging in activities which provide for the mutual benefit of the Owners and for all other activities reasonably related thereto.

All owners are members of the Association. Provisions relating to the Association are contained in the By-Laws of the Association or as deemed necessary by Developer prior to turnover.

In order to pay for the services the Association will charge Assessments against the Lots and their Owners. Each Owner is personally obligated for Assessments which came due during the time such Owner owned the Lot, provided however, the Developer shall not be responsible for any assessments on Lots owned by the Developer. Developer shall have the right to sell Developer interests. Successor Developer shall assume all developer rights and responsibilities.

Section 3.2: Creation of Lien for Assessments. All Lots owned by Owners other than Developer are subject of a continuing lien to secure unpaid Assessments due to the Association in accordance with the provisions of these Covenants. This continuing lien will also accrue interest on unpaid Assessments and the costs of collecting unpaid Assessments including reasonable attorney's fees. The Association shall have the right to a lien on each Lot for unpaid Assessments commencing on the initial conveyance of the Lot to an Owner other than the Developer. The lien will be effective from and after recording a Claim of Lien in the Public Record of Cleveland County, North Carolina, stating the Lot description, the name of the record owner, the amount due, and the due date. The lien will remain in effect until all sums due the Association have been fully paid. All lots shall be sold subject to the terms and provisions of the continuing lien described in the paragraph.

Section 3.3: Assessments. The Association shall fix the amount of the assessment. The initial assessment shall be \$ 180.00 per year. The assessment shall be payable in an annual installment on January 1st of each year. The Board shall notify the Owners of each lot of the amount and the place of payment. All assessments shall be uniform in amount as to each lot.

All lots owned by the Developer shall be exempt from assessments during such time as the Developer is in control of the Association, however, the Developer shall and does hereby agree to pay all operating expenses incurred by the Association to the extent that such expenses exceed the assessments receivable from Class A members and other income of the Association.

Section 3.4: Date of Commencement of Assessments: The assessment for each Lot shall begin upon conveyance of the Lot to an Owner. At closing, the first assessment for the balance of the present year shall be paid to the association. The first assessment shall be due and payable in advance at the place established by the Association at the time of such conveyance. All future assessments shall become due and payable on January 1st of each year.

Section 3.5: Effect of Non-Payment of Assessments: Remedies of the Association: Any assessment not paid within fifteen (15) days after the due date shall bear a late fee of Twenty-five Dollars (\$25.00) and interest from the due date at the rate of eighteen percent (18%) per annum until paid. The Association may bring an action against the Owner of the Lot for amount of the Assessment and may enforce its lien for the Assessment by Foreclosure or any other means available under the law. The Association may waive payment of late fees and interest on an Assessment but may not waive payment of the Assessment. No member may waive or otherwise escape liability for the Assessments by non-use of common property or by abandonment of the Lot owned by such Owner. The Association shall be entitled to reasonable attorneys fees and costs for the enforcement of the rights herein.

Section 3.6: Penalty for Violations of Covenants and Restrictions: The Association shall have the right to impose a fine and to file a claim of lien as set forth above, in the amount of Twenty-five Dollars (\$25.00) per day for each violation of the covenants and restrictions by the Owner of a Lot which remains uncured ten (10) days after receipt of a written notice which identifies the violation, and the date by which such violations shall be cured.

Section 3.7: Subordination of Lien to Mortgages: The lien of any assessments authorized by these covenants shall be subordinate to the lien of any first mortgage on the Lot. The sole exception of assessment paid the association shall be the sale or transfer of any lot pursuant to a mortgage foreclosure proceeding or by a deed in lieu of foreclosure shall extinguish the lien for assessments which fall due after such date. The failure to pay any assessments hereunder shall not constitute a default under any mortgage insured by an agency of the United States of America.

Section 3.8: Damage by Owners. The Owner of a Lot shall be responsible for any expense incurred by the Association to repair or replace common property which is necessary by reason of his carelessness, neglect or willful action or by that of his family, his guests, agents, or invitees. Any such expense shall be a part of the Assessment to which the Owner's Lot is subject and shall be due and payable in the same manner as annual Assessments provided for these covenants.

Section 3.9: Maximum Assessment: Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$180.00 per lot for Class "A" members. The Class "B" member shall not be required to pay assessments.

ARTICLE IV **Rights and Duties of the Homeowners Association**

Section 4.1: Duty of Maintaining Entrance Way. The Association shall have the duty to maintain the entrance way to the Subdivision and the related property. Said duty shall include the obligation to cut grass, trim shrubbery and otherwise keep said property in a safe and attractive condition and maintain reasonable standards of safety and appearance. This obligation shall include the maintenance of any and all structures erected on said Tract keeping any painted surfaces clean and attractive and keeping any and all irrigation systems and fixtures in a safe and working condition. The expense of utilities shall be paid by the Association.

Section 4.2: Enforcement Rights. The Association, its agents or employees, shall have the right, but not the obligation, to enter upon any Lot to cure any violation of these covenants and restrictions, including without limitation, the right to remove any structure which is in violation of these covenants and to enforce maintenance and repair shall of Lots and improvements. any such removal, curing, maintenance or repair shall be at the expense of the Owner of the Lot on which the violation has occurred or exists which expense shall be payable by such Owner to the Association of demand. Entry shall not be a trespass and the Association shall not be liable for any damages on account of the entry.

Section 4.3: Membership

- (a) Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.
- (b) The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners, with the exception of the Developer, and shall be entitled to one for each lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. Vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Developer. The Class "B" Member shall be entitled to three (3) Votes for each Lot it owns. the Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier.

- (a) When the Developer ceases to own at least 10 lots in the Subdivision; or
- (b) on December 31, 2010

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed a Class A Member entitled to one (1) vote for each Lot in which it holds the interest required for Membership under this section.

Section 4.4: Attorneys Fees. The Association shall be entitled to recover reasonable attorneys fees and costs for the enforcement of any of its rights herein.

ARTICLE V

Rights Reserved by Developer

Section 5.1: Easements for Utilities. The Developer reserves a perpetual easement on, over and under the easements and common Property shown on the Plat for construction and maintenance of electric and telephone lines, wires, cables, conduits, water mains, drainage lines or drainage ditches, sewers, irrigation lines and other conveniences or utilities. The Owners of Lots subject to the easements reserved in this paragraph shall acquire no right or interest in utility or cable television equipment placed on, over or under the portions of the subdivision which are subject to said easements. All easements reserved by Developer are and shall remain private easements and the sole and exclusive property of the Developer.

Section 5.2: Developer Rights Regarding Temporary Structures, Etc. Developer reserves the right to authorize and approve the construction and maintenance of temporary dwellings, model houses, and/or other structures upon Lots as approved by the Developer and to erect and maintain or to permit commercial and display signs as Developer, in its sole discretion, deems advisable. Developer reserves the right to do all acts necessary in connection with the construction of improvements on the Lots. Nothing contained in these covenants shall be construed to restrict the foregoing rights of the Developer.

Section 5.3: Further Restrictions. Developer reserves the right to impose further restrictions and to grant or dedicate additional easements and right-of-ways on any Lot in the subdivision owned by Developer and on the Common Property. The easements granted by Developer shall not materially or adversely affect any improvements or unreasonably interfere with use of the subdivision property.

ARTICLE VI

Use Restrictions and Architectural Control

Section 6.1: Construction Restrictions. Construction restrictions for Pebble Creek Lots are imposed as follows:

- (a) A minimum of fifty (50) feet set back shall be required from the nearest part of the front of the building to the front Lot line. A minimum of fifteen (15) feet set back shall be required from the nearest part of the side of the building to the side property line. A minimum of forty (40) feet set back shall be maintained between the rear wall of all structures and the rear lot line.
- (b) The minimum floor area for a dwelling shall be 1500 square feet of living area with a two car garage.
- (c) A sixteen (16) foot wide concrete driveway shall be constructed from the garage door opening to the street, including a flared apron for ingress and egress.
- (d) All utilities whatsoever shall be installed underground.
- (e) Roof shingles shall be fiberglass dimensional-grade shingles with a minimum weight of 230 lbs.

Section 6.2: Maintenance of Residences and of Lots.

- (a) All Lots, residences and improvements on the Lots shall be maintained by the Owner, in a neat and attractive condition. All landscaping of Common Property will be maintained by the Association.
- (b) In the event of damage or destruction by fire or other casualty to the Residence, or improvements on any Lot, the Owner shall, upon receipt of the insurance proceeds, repair or rebuild such damaged or destroyed residence or improvements in a good workmanlike manner in strict compliance with the original plans and specifications and building layout of said improvements as constructed by the Developer within a reasonable time not to exceed six (6) months and in accordance with the provisions of these covenants. All debris must be removed and the Lot restored to a sightly condition within sixty (60) days of such damage or destruction. During said time assessment shall continue to be paid to the association.

Section 6.3: Miscellaneous Use Restrictions

- (a) Fences may be erected to the rear of the building and not to side property lines. Fencing must be made of materials in keeping with the harmony of the surrounding structures. No chainlink fencing is allowed. Fencing can be no higher than 4'. All fencing must be approved by the Architectural Review Committee. On corner lots it is understood that fencing may not extend closer to the road than the side of the residence. On Lots 1, 2, 3, 41, 42, & 43 no fencing will be any closer than 15' from the base of the berms. Due to their configuration, Lots 27 & 28 will not be allowed to have fencing.
- (b) All Lots in the subdivision are residential parcels and shall be used exclusively for single family residential purposes. Detached auxiliary buildings, including storage building are to be of like material in the subdivision (i.e., Brick or Vinyl Siding), and must be approved by the Architectural Review Committee.
- (c) Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in clean and sanitary condition, and shall be so placed or screened as not to be visible from any road or adjacent property within sight distance of the Lot at any time except during refuse collection.
- (d) No animals, except household pets, shall be kept on any Lot. Pets shall be kept only in the residence or within a fenced courtyard area. Pets are not allowed to be chained in the yard of any residence. Residents shall not breed such animals as a hobby or for profit. Owners will be required to clean up after any pet that relieves itself in any area other than their own yard.
- (e) No commercial activity shall be conducted on any Lot with the exception of the Developer's real estate sales office or agent.
- (f) All signs, billboards and advertising structures of any kind are prohibited, except building signs during construction periods that are approved by Developer, and sign to advertise the property for sale during any sales periods. No sign may be nailed or attached to trees, nor shall any signs be placed on the Common Property bordering Old Boiling Springs Road at the entrance to Pebble Creek. For Sale signs shall not exceed four (4) square feet or be taller than thirty-six (36) inches from the ground.
- (g) The parking of vehicles shall be permitted in driveways and garages only. No vehicle shall be parked on any lawn, yard, travel area of streets or other area not intended for vehicular use for an extended period of time. Recreational vehicles, boats, trailers, tractors and campers shall be parked only in a garage. All cars, boats, recreational vehicles, trailers, etc. must have current tag and inspection tags.
- (h) No antennae of any kind shall be permitted upon any lot. This restriction includes, but is not limited to, television antennas, radio antennas and satellite dishes. Architectural Review Committee is authorized to grant exceptions to accommodate cable TV and other innovative antennas as they are developed. No flag poles of any kind shall be permitted upon any lot. Decorative flag poles attached a dwelling are permitted.
- (i) Above-ground swimming pools shall not be permitted upon any Lot. No outbuilding, decks, exterior additions or in-ground swimming pool shall be erected or placed on any Lot covered by these covenants without approval being granted by the Developer or their authorized management committee, as provide below. In interest of safety, both for pool owners and residents of Pebble Creek Subdivision, all swimming pools shall be fenced with safe, secure, solid opaque fencing, having a minimum height of four (4) feet with locks on all gates and entrances.
- (j) Clotheslines will not be permitted to be visible from the street.
- (k) No solar panels shall be permitted on any portion of a roof facing the street. Solar panels may be erected on platforms constructed on the rear roof area or in a backyard.
- (l) Sidewalks (4 feet in width by the entire frontage, including corners) shall be constructed on each and every lot and will conform to specifications as established by the City of Shelby. If the sidewalk is broken after construction, the sidewalk shall be repaired immediately by the homeowner. In the event that a vacant lot is purchased from the Developer, the Purchaser agrees that one hundred fifty per cent (150%) of the estimated cost of sidewalk construction for that lot shall be paid by the purchaser and be held by the Developer at closing. Said funds will be available to the Purchaser for sidewalk construction at any time within one year of the date of closing. If the purchaser has not installed the sidewalk within the one year period, the Developer will use said funds for sidewalk construction with the understanding that any surplus shall be retained by the Developer as an administrative cost.

(m) Streets, sidewalks, light poles, waterlines up to and including the meter, sewer lines up to the property line and curbs are the property of the City of Shelby and are maintained by such.

(n) No Owner shall conduct repairs (except in an emergency), or restorations of any motor vehicle, or other vehicle upon any Lot, except in an enclosed area with the doors thereto closed at all times.

(o) No window mounted air conditioners are permitted.

(p) No home business or congregate care facilities shall be conducted within the Subdivision.

Section 6.4: Plan Review. The Architectural Review Committee shall review all construction plans prior to the commencement of any construction on any lot. The Architectural Review Committee shall review any such plans to determine whether they are in compliance with the Covenants contained herein, as well as any other restriction or covenant applying to such Lot.

Section 6.5: Duties of the Architectural Review Committee. The Architectural Review Committee (ARC) shall review plans submitted for all improvements or modifications, and shall approve or disapprove said plans. The Plans submitted to the ARC for approval shall include all plans necessary for construction and shall meet the following standards and a plan review fee of \$100.00 (One Hundred Dollars) shall be paid at the time of submission.

Plans. All plans must be drawn in a professional manner, fully dimensioned, and shall include the following as minimums:

(a) **Plot Plans.** An accurately drawn and dimensioned Plot Plan in 1" = 20' scale showing all building set back easements, fences, drives, swimming pools, patios, walks, and other architectural elements.

(b) **Elevations Plans.** Drawn to scale of 1/4" per foot, and showing the exterior elevations of buildings as they will actually appear after all back filling.

(c) **Floor Plans.** Drawn to scale of 1/4" per foot.

(d) **Specifications** of all external materials such as roofing, siding, brick, et. as well as exterior color schemes must be submitted for approval; actual samples may be required by the Architectural Review Committee.

The Architectural Review Committee shall have the right to approve or disapprove any structure, fence, wall, screened enclosure, floor, elevation plan, decorative building or other improvement change or modification and to approve or disapprove any exterior additions, changes, modification or alteration to a residence. Disapproval of any change, addition, modification or alteration may be solely on the grounds of aesthetics. It is the Developer's intent to protect the community for nuisances and maintain the aesthetic quality with substantial uniformity of the residences. The Association may adopt additional standards and criteria to effect the purposes of this section. The ARC shall reserve the right to grant variances on an individual basis based on hardship.

Section 6.6: Architectural Review Committee Membership. Architectural Review Committee shall be comprised of three (3) regular members and two (2) alternate members. A vote to two (2) is necessary to carry any decisions of the Architectural Review Committee. The alternate members shall fill any vacancies that might occur.

Section 6.7: Selection.

(a) Both regular and alternate members of the Architectural Review Committee shall be elected from among the membership of the Association. Each Architectural Review Committee member may be elected by a majority vote by the Association in five (5) successive elections. Elections shall be held annually during the month of January each year.

(b) The Developer has the right to select the membership of the Architectural Review Committee at his total discretion until the last Lot is sold. After the last Lot is sold, the Architectural Review Committee shall be elected as set out above in subpart (a) of this section.

(c) The Developer has the right to grant architectural approval of a line or series of homes to be constructed by a builder. This approval may include colors, materials and landscaping options offered to the public. This approval shall in no way imply that the builder may ignore or violate the restrictions and covenants set forth.

Section 6.8: Plan of Development. It is the plan of the Developer to develop Pebble Creek into a community of quality homes. The Architectural Review Committee shall evaluate the proposed improvements with emphasis upon their harmonious incorporation into the community as a whole and with specific emphasis on external design, location of the improvement in relation to the surrounding structures and/or improvements, topography and conformity to the Declaration.

Section 6.9: Duration and Amendment. These covenants shall run with and bind the land submitted or subject hereto and shall be and shall be and remain in effect for a period of twenty (20) years after which time they will be automatically extended for periods of ten (10) years, and shall inure to the benefit of and enforceable by the Developer, the Association, the Owners and their respective legal representatives, heirs, successors and assigns. These covenants may be amended by the developer at any time as long as he owns a lot or by a 2/3 majority of the Lot owners. Notwithstanding anything in these covenants to the contrary, the provision of these covenants affecting the rights or duties of the developer shall not be amended or terminated at any time while the Developer owns a lot, without the consent in writing of the Developer.

Section 6.10: Assignment by Developer. Developer shall have the sole and exclusive right to transfer to such persons, firms, or corporation as it shall select, any or all of the easements, and rights whatsoever given to or reserved by Developer in these Covenants. All easements and rights reserved in these Covenants shall be for the benefit of Developer, its successors and assigns. The developer or its assigns is also authorized to take any lot owned by the Developer and use it for the construction of a road right of way providing access to property that is adjacent to this subdivision and the public streets.

Section 6.11: Rights of the Developer to Modify. The Developer retains the right to change, alter or modify these restrictions in any manner, at any time prior to the sale of the last lot in the subdivision. The Developer reserves the right to subject additional property to be described as subsequent phases of Pebble Creek Subdivision to this Declaration. The owners of any lot in the Subdivision, inclusive of all phases, shall enjoy the rights and privileges and be subject to the restrictions and obligations herein imposed, provided however, nothing herein shall be deemed to require the Developer to develop additional phases of the Subdivision.

ARTICLE VII Miscellaneous

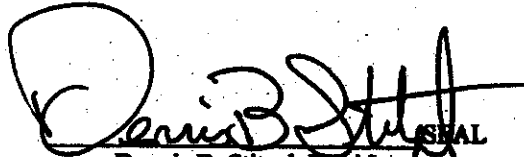
Section 7.1: Leases: Article I provides that all persons who are present in the Subdivision must comply with the covenants. In order to enforce this provision, all Owners leasing or renting their Lots shall be required to incorporate the following provision in their lease or rental agreements substantially in the following form):

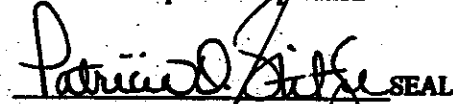
The Leased Premises are part of a Subdivision. All persons occupying property in Pebble Creek Subdivision are required to observe the Covenants and Restrictions. Copies of all Covenants and Restrictions are to be obtained from the Landlord.

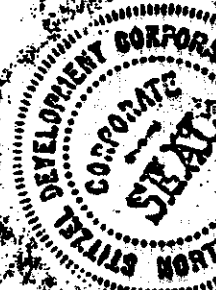
In addition, all Owners leasing their Lots are required to provide the Association with a copy of the lease and the names and addresses of the Landlord and the Tenant unless they are contained in the lease or rental agreements.

IN WITNESS WHEREOF, the undersigned, being the Developers herein, have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered
the presence of


Dennis B. Stitzel, President
Stitzel Development Corporation



Patricia O. Stitzel, Secretary
Stitzel Development Corporation



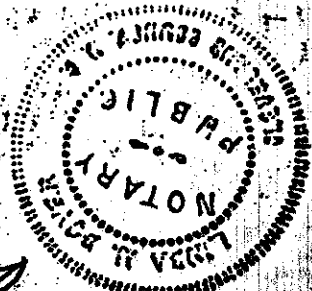
NORTH CAROLINA
Cleveland County

I HEREBY CERTIFY that on the 6 day of Sept., 2000, before me personally appeared PATRICIA O. STITZEL, Secretary of Stitzel Development Corporation, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its secretary.

WITNESS my signature and official seal on the day and year first above written.


Notary Public

My Commission Expires 11-20-2000



Filed for registration on 6 day of Sept A.D.
2000 at 12:56 o'clock P. M. and registered in the
office of Register of Deeds, Cleveland County, NC
in Book 1279 Page 368

Bonnie F. Reece By Sharon Willis
Register of Deeds Deputy

NORTH CAROLINA CLEVELAND COUNTY

The foregoing (or annexed) certificate of Linda M. Dover each a Notary Public is
certified to be correct. This 6 day of Sept A.D., 2000.
Bonnie F. Reece By Sharon Willis
Register of Deeds Deputy

CLEV. CO., NC
FILED
00 SEP -6 PM 12:56
BONNIE F. REECE
REGISTER OF DEEDS