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REGISTER OF DEEDS

By: PATSY RUTH DAVIS DPTT

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Drawn by: D. M. VonCannon
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STATE OF NORTH CAROLINA)
)
COUNTY OF FORSYTH)

**MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
BROOKBERRY FARM**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and entered into this 19th day of October, 2005, by and between BROOKBERRY FARM, L.L.C., a North Carolina limited liability company, having its principal place of business in Forsyth County, North Carolina (“Declarant”), and any and all persons, firms or corporations hereafter acquiring any of the property more particularly described herein.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property located off Meadowlark Drive, Winston Salem, Forsyth County, North Carolina, and more particularly described in Book 2439, page 3684, Forsyth County Registry, and the Declarant has caused a portion of said property to be subdivided and a plat thereof recorded in Plat Book 49, Pages 77-81, Forsyth County Registry.

Declarant owns additional property which adjoins the property which is the subject of this Declaration, and has additional property under contract, which the Declarant intends to acquire and develop, and make part of this Declaration, and if acquired and made subject to this Declaration, the properties will be hereinafter referred to as the "Property," "Properties," or "Brookberry Farm";

WHEREAS, Declarant desires to create on all or part of the Property an exclusive, mixed-use, residential community or communities, which will contain different types of residential housing. The residential communities will be a part of a larger community, which will contain different types of commercial uses, such as office space, shopping center, and other commercial property;

WHEREAS, the residential communities and the commercial property will be known as "Brookberry Farm," and the concept of the residential portion of Brookberry Farm is to be a high quality development with a distinctive architecture and design, as established by this Declaration, and pedestrian friendly environments, sidewalks, pastoral surroundings, private streets, lakes, meadows and natural areas;

WHEREAS, the residential portion of Brookberry Farm will be known as "Brookberry Farm," and when used in this Declaration, "Brookberry Farm" will mean only the residential area under the Declarant's control or subsequently controlled by the Declarant;

WHEREAS, the residential portion of Brookberry Farm may contain different types of residential uses or communities, such as single family residences, townhouse residences and condominium residencies. If created by the Declarant, each different use will be a separate incorporated property owner's association, known as a sub-association, which will be a member of this Master Association;

WHEREAS, the Declarant will create certain amenities within the residential area that will be for the general use of all residential communities or sub-associations, such as, but the Declarant is not required to provide, lakes, clubhouse, fitness center, swimming pool, tennis courts, open areas, and such other amenities. This Master Association may create, but neither the Declarant nor the Master Association is required to provide any such amenities;

WHEREAS, the amenities provided for all of the members of sub-associations will be permanent common areas and community facilities for the benefit of all of the residential communities, and will be known and designated as "General Common Area(s)," "General Open

Areas” or “General Open Space,” (hereinafter collectively referred to as “General Common Areas”) on the recorded plats of Brookberry Farm, as opposed to specific common areas, which are only for the use and benefit of a particular community within Brookberry Farm;

WHEREAS, Declarant desires to provide for the maintenance and use of the General Common Areas, and to this end, desires to subject such portions of the Property as Declarant, its successor or assigns, so designates to the terms and conditions of this Declaration;

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of values of and amenities in the Property subject to this document, to create an association to which would be delegated and assigned the powers and duties of maintaining and administering the General Common Areas located within such property and establishing a procedure for assessing its members and disbursing the charges and assessments hereinafter created and collected. To this end, Declarant has caused to be created for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of Brookberry Farm Residential Owners Master Association, Inc.

WHEREAS, Declarant anticipates that the Property subject to this Declaration will be developed with different housing styles and forms of ownership by different builders. To these ends, Declarant anticipates forming additional homeowners associations (hereinafter sometimes referred to as “Sub-Associations”), which will govern and oversee the particular development and administration of the separate and distinct communities that are anticipated within the Property. Declarant anticipates that such Sub-Associations will be responsible for control, oversight and enforcement of rules and regulations applicable to the particular community; the collection of dues and assessments within such community; and the payment of dues and assessments from such Sub-Association to the Brookberry Farm Residential Owners Master Association, Inc., the intent being that the Brookberry Farm Residential Owners Master Association, Inc. will have the responsibility for maintenance and upkeep of the General Common Areas and facilities located within the real property more particularly described hereinafter;

WHEREAS, the Sub-Associations to be formed will constitute the membership of the Brookberry Farm Residential Owners Master Association, Inc., and the individual lot, towhouse and condominium owners within any particular community will be members of a Sub-Association but will

not, individually, be members of the Brookberry Farm Residential Owners Master Association, Inc.; and

WHEREAS, Declarant will require that the Master Association enter into an agreement or agreements with the Sub-Associations so that members of Sub-Associations will have the right to use and enjoy the General Common Areas.

NOW, THEREFORE, the Declarant declares that any real property subjected to this Declaration requiring membership in the Brookberry Farm Residential Owners Master Association, Inc. and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens, which shall run with the land and be binding upon and inure to the benefit of all owners thereof, their heirs, personal representatives, successors and assigns.

ARTICLE I

Definitions

The following terms when used in this Declaration or any supplemental declaration hereto or any other Governing Document, as hereinafter defined, as capitalized terms are intended to have their natural, commonly accepted definitions (unless the context shall prohibit), and shall be specifically defined as follows:

Section 1. “Amenities” shall mean the facilities constructed, erected, or installed on the General Common Areas for the use, benefit and enjoyment of members of the Association.

Section 2. “Annual Assessment” shall mean the funds which a Member pays to the Sub-Association or Master Association, as the case may be, for the regular maintenance, upkeep and other expenses of the Sub-Association or Master Association as provided in Article V hereinafter.

Section 3. “Board of Directors” or “Board” shall mean those persons elected or appointed to act collectively as the directors of the Master Association.

Section 4. “By-laws” shall mean the By-laws of the Master Association as they now or hereafter exist.

Section 5. “Articles of Incorporation” shall mean the Articles of Incorporation of the Master Association as they are filed in the office of the Secretary of State for North Carolina, and any amendments thereto.

Section 6. “Condominium Unit” shall mean a single-family residence built for sale as a part of a larger building described in an area designated by a recorded declaration of condominium ownership and/or on a recorded plat showing the location and dimensions of individual condominium units.

Section 7. “Committee” shall mean the committee formed by the Board of Directors to enforce the architectural control described in Article VI.

Section 8. “Declarant” shall mean and refer to Brookberry Farm, L.L.C., its successors and assigns.

Section 9. “General Common Areas” shall mean that real property containing Amenities for the general use of the homeowners in Brookberry Farm, regardless of the type of residential property that the homeowner has, i.e., single family, cluster home, townhouse unit or condominium unit, and regardless of the location of the General Common Areas, since the General Common Area may be located within or without the boundaries of the Sub-Associations, but such General Common Area shall be designated as such on a recorded plat for the purpose of designating the General Common Area or on the recorded plats of the Sub-Associations. The General Common Area will be conveyed to the Master Association by the Declarant.

Section 10. “Governing Documents” shall mean this Declaration and any applicable supplements or amendments, the Articles of Incorporation, the By-Laws, and the Architectural Guidelines, all as they may be amended.

Section 11. “Common Areas” shall mean all real property owned by the Sub-Association for the common use, benefit and enjoyment of the Owners of Lots or Units in a particular Sub-Association and designated as “Common Areas,” “Common Open Space,” or “Open Space” on any recorded plat in the office of the Register of Deeds for Forsyth County, in accordance with the provisions of this Declaration or the declaration of a Sub-Association and which makes reference to this Declaration or the declaration of the Sub-Association. The term “Common Areas” does not

include the General Common Areas as defined in the Master Declaration and owned by the Master Association for the use, benefit and enjoyment of all Sub-Associations.

Section 12. “Brookberry Farm” shall mean residential portions of the Property and any additional residential properties added thereto.

Section 13 “Lot” shall mean and refer to any plot of land, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site as shown on plats for Brookberry Farm, or amendments thereto, recorded in Forsyth County Registry, and as used in this Declaration for calculating all voting matters and apportioning costs and assessments. “Lot” shall also mean a townhouse or condominium unit as defined herein. In the event any Lot is increased or decreased in size by re-subdivisions, through recordation of new subdivision plats, any such newly platted Lot shall thereafter constitute a Lot for the purposes of this Declaration.

Section 14. “Master Association” shall mean and refer to the Brookberry Farm Residential Owners Master Association, Inc., a nonprofit corporation organized and existing under the laws of the State of North Carolina, its successors and assigns.

Section 15. “Member” shall mean and refer to each Sub-Association of residential Owners in Brookberry Farm, which association holds membership in the Master Association.

Section 16. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, as herein defined, which is a part of the Property, including contract sellers and owners of an equity of redemption, but excluding those having such interest in a Lot solely as security for the performance of an obligation.

Section 17. “Property” shall mean and refer to all of the land which makes up the residential portion of Brookberry Farm including the property described in all Sub-Associations and which are subject to this Declaration and any supplementary Declaration or annexation of additional properties permitted under the provisions of Article II hereof.

Section 18. “Single-Family Home” shall mean a single-family residence upon any Lot other than a Lot lying within the area designated by a recorded plat for Townhouses, Cluster Homes and Condominiums.

Section 19. “Special Assessments” shall mean an assessment of funds against the membership of the Sub-Association or memberships of the Master Association applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any capital improvement, repairs or replacement of any capital improvement, repairs or replacement of any improvement on the General or Common Areas, and repair or replacement of the paving on any private streets and any private easements created by the Declarant to provide access to more than one (1) Lot.

Section 20. “Sub-Association” shall mean and refer to the residential-use homeowners associations, including, but not limited to, single family homeowners association(s), townhouse association(s), cluster home association(s) and condominium association(s), formed (or to be formed) within Brookberry Farm which are members of the Master Association. Each such Sub-Association shall enforce and administer separate declarations of covenants, conditions and restrictions which reflect the particular type and form of housing development subject thereto.

Section 21. “Townhouse” shall mean any single-family residence built for sale as a part of a larger building but built on a Lot in an area designated by a recorded plat for townhouse residences, located within a building which is designed to contain more than one private dwelling unit.

ARTICLE II

Property Subject to This Declaration

and

Additions Thereto

Section 1. Property Subject to This Declaration. The property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Forsyth County, North Carolina, and is more particularly described as the first phase of the Brookberry Farm subdivision known as Brookberry Farm Single Family Homes as described in Plat Book 49, Pages 77-81, Forsyth County Registry, and any additions as herein provided.

Section 2. Additions by the Declarant. Without further assent or permit, Declarant hereby reserves the right, exercisable from time to time in its sole discretion, to add properties in the

future to the terms and conditions of this Declaration without further declaration and to bring such additional properties, whether or not such additional properties are a part of the original Brookberry Farm property, within the jurisdiction of the Master Association through membership in an existing or new Sub-Association.

The additions herein authorized shall occur automatically upon the recording of a Sub-Association, and said recorded Declarations shall extend the jurisdiction of the Master Association to such properties described in the Sub-Association Declaration and thereby subject such additional Property to assessment for its just share of the Master Association's expenses. The Declarant retains the right at any time and without consent of any other party to amend or modify the covenants, conditions and restrictions contained herein if necessary to reflect the different character of the added property; provided, however, any such amendment or modification shall not revoke or otherwise amend the provisions of this Declaration as this Declaration pertains to the Properties subject hereto.

Section 3. Additions by the Association. Following the Period of Declarant Control, as defined hereinafter, the Master Association may also expand Brookberry Farm to include additional property by recording a supplementary Declaration describing the additional property and the intent to subject it to the provisions of this Declaration. Any such supplementary Declaration shall require the affirmative vote of the Members representing more than fifty percent (50%) of the Class A votes and more than fifty percent (50%) of the Class B votes represented at a meeting duly called for such purpose and the consent of the owner of the additional property. In addition, so long as the Declarant owns property subject to this Declaration, or which may become subject to this Declaration in accordance with this Article II, Declarant's consent shall be necessary. The supplementary Declaration shall be signed by the President and Secretary of the Association, by the owner of the additional property, and by the Declarant, if Declarant's consent is necessary.

ARTICLE III
Membership And Voting Rights

Section 1. Membership. Every Sub-Association, its successors and assigns, which is formed pursuant to the terms and conditions hereof to oversee and administer the different types of residential uses, shall be a member of the Master Association.

Section 2. Voting Rights. Although the Sub-Associations will constitute the membership of the Master Association, each Sub-Association shall have the number of votes in the Master Association matters as is determined by the following provisions:

(a) Class A Lots. Each Sub-Association shall have the number of votes in the Master Association matters as is determined by the number and type of Class A Lots within the area overseen and administered by the Sub-Association. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. The voting rights in the Master Association matters attributable to each Sub-Association on the basis of Class A Lots shall be as follows:

(1) Single-Family Homes. A Sub-Association, which oversees and administers single-family homes, shall be entitled to one vote for each designated Lot within such single-family subdivision, as shown on the recorded plat of such subdivision

(2) Cluster Home. A Sub-Association, which oversees and administers cluster homes, shall be entitled to one (1) vote for each designated Lot within such cluster home subdivision, as shown on the recorded plat of such subdivision

(3) Townhouses. A Sub-Association, which oversees and administers townhouses, shall be entitled to one vote for each designated Lot within such townhouse subdivision, as shown on the recorded plat of such subdivision.

(4) Condominiums. A Sub-Association which oversees and administers condominium units, shall be entitled to one (1) vote for each designated Condominium Unit within such condominium subdivision, as shown on the recorded plat or other record of ownership of such condominium development.

(b) Class B Lots. The Declarant shall have the number of votes in the Master Association matters as is determined by the number of Class B Lots within the different types of

residential uses. Class B Lots shall be all Lots within the various Sub-Associations owned by Declarant. The Declarant shall be entitled to three (3) votes for each Class B Lot designated by a recorded plat for the development of Single-Family Homes, Townhouses, Cluster Homes and Condominium Units.

(c) Each Sub-Association which is a member of The Master Association, shall elect or otherwise designate one (1) representative from such sub-association to vote on its behalf at all meetings of the Master Association and on all Master Association matters. Such representatives shall be entitled to cast the number of votes for such Sub-Association as is determined in accordance with this Article III.

(d) Notwithstanding anything in this Section 2 to the contrary, the Declarant shall retain all voting rights for all Lots in the Sub-Associations and this Master Association for a period of twenty-five (25) years from the date of closing of the first sale of a Lot in the Brookberry Farm Single Family Homes subdivisions to a third party owner (hereinafter, the "Period of Declarant Control"). It is the intent of this paragraph that the Declarant will retain the voting rights for all Lots in the Sub-Associations and the Master Association during the Period of Declarant Control in all Sub-Associations and Master Association matters and shall retain all other management responsibilities for all Associations, including, but not limited to, electing Directors and appointing or populating any committees of the Associations.

ARTICLE IV

Common Areas Property Rights

Section 1. Purpose. There shall be two types of common areas in Brookberry Farm, General Common Areas and Common Areas, as defined hereinabove, and as so designated on the recorded plats of the Property.

Section 2. General Common Areas.

A. Use of General Common Areas. Every Owner (through membership in a Sub-Association and the Sub-Association's membership in the Master Association) shall have a nonexclusive right and easement of access to and enjoyment in and to the General Common Areas, which shall be

appurtenant to and shall pass with the title for every Lot subject to the provisions of this Declaration and other Governing Documents, but such rights of enjoyment shall be subject to the following:

- (a) The right of the Master Association to limit the use of the General Common Areas to the members of the Sub-Associations which are a members of this Master Association, and their families and guests.
- (b) The right of the Master Association to suspend the enjoyment rights of an Owner for any period during which any assessment against his or her Lot by either the Sub-Association or the Master Association remains unpaid.
- (c) The right of the Master Association to mortgage, to dedicate or to transfer all or any part of the General Common Areas to any public agency, authority, utility, or other entity for such purposes and subject to such conditions as may be agreed to by a majority vote of the members of the Master Association. No such dedications or transfer shall be effective unless the action of the Members is evidenced by a signed and recorded written document, provided that this Section shall not preclude the Board of Directors of the Master Association from granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage, utilities and drainage facilities upon, over, under and across the General Common Areas without the assent of the membership when such easements are requisite for the convenient use and enjoyment of the General Common Areas or such easements are needed for the use and development of Brookberry Farm and will not materially alter the nature and character of the General Common Areas.
- (d) The foregoing notwithstanding, the Declarant expressly reserves the right for itself and any builders who purchase Lots in Brookberry Farm who have received written permission from the Declarant, to construct and maintain upon portions of the General Common Areas and Common Areas such facilities and activities as Declarant, in its sole discretion, may determine is reasonably required, convenient, or incidental to the construction or sale of residences on the Lots, including, but not limited to, construction trailers, model homes, sales offices, signs, and the storage of building materials. Declarant and those authorized by the Declarant shall have all of the necessary easements for access and use of such common areas at no charge.

B. Delegation of Use. The right and easement of enjoyment granted to every Owner in Section Two of this Article may be exercised by members of the Owner's family, and an Owner may delegate his or her rights of enjoyment in the General Common Areas to his or her tenants or contract purchasers who occupy the residence of the Owner within the Properties.

C. Title to the General Common Areas. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the General Common Areas, if any, shown on the aforementioned recorded plats to the Master Association, free and clear of all encumbrances and liens, except easements of record, easements provided for or reserved herein, and easements to governmental authorities. Similarly, Declarant will convey to the Master Association any General Common Areas which are part of this development as those portions are annexed in the future.

D. Parking Regulations for Boats, Trailers, etc. The Master Association may regulate the parking on the General Common Areas. No boats, trailers, motor homes, recreational vehicles, or trucks, unless otherwise permitted herein, shall be parked within the right-of-way of any public or private street in the Property.

E. Antennas and Satellite Dishes. The Master Association may regulate or prohibit the erection of any type of antennas, including, but not limited to, CB, TV, Video, and Short Wave, on any General Common Areas.

F. Rules and Regulations. The Board of Directors of the Master Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the General Common Areas, including all rules regarding the use of the lakes located on the General Common Areas. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, and the Book of Resolutions shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours.

G. Agreement with Sub-Associations. The Master Association hereby covenants and agrees that any Sub-Association, which becomes a member of the Master Association and the individual Owners who are members of the Sub-Associations, will have the right to use and enjoy the General Common Areas and, reciprocally, the obligation to contribute to the maintenance and upkeep of the General Common Areas.

Section 3. Common Areas.

A. Use of Common Areas. The Common Areas are reserved exclusively for the use and benefit of the Owners and tenants of a particular Sub-Association. By way of illustration, Common Areas may include entry signs and entry landscaping, recreational facilities, other landscaping and other Amenities within a particular Sub-Association. All costs associated with the maintenance, repair, replacement, and insurance of any Common Areas shall be at the sole expense of the Sub-Association and paid from the Sub-Association assessments allocated among its Owners.

B. Delegation of Use and Rules and Regulations. The delegation of use and the rules and regulations of the Common Areas shall be as set forth in the Sub-Associations Declaration of Covenants, Conditions and Restrictions.

C. Reservation by Declarant. Notwithstanding having designated certain Common Area to a particular Sub-Association, the Declarant reserves the right to later dedicate said Common Area for the non-exclusive use of other Sub-Associations, so long as said additional Sub-Associations share in the common expense of said Common Areas on a pro rata basis, based on the number of Lots in each Sub-Association.

D. Use by Others. Upon approval by a majority of the Members of the Sub-Association to which particular Common Area has been dedicated, the Sub-Association may permit Owners who are not Members of the Sub-Association, but who are Owners within Brookberry Farm, to use all or a portion of such Common Area upon payment of a reasonable user fee as established by the Sub-Association Board of Directors.

ARTICLE V

Covenants for Maintenance Assessments

Section 1. Annual Assessment for Maintenance Fund. For each Lot owned within Brookberry Farm, each Sub-Association covenants and agrees to collect and pay to the Master Association from each Owner within the subdivision overseen and administered by such Sub-Association, and every Owner covenants, and each subsequent Owner of any such Lot, by acceptance of a deed therefor, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay

to the Master Association (through payment to the applicable Sub-Association and subsequent payment to the Master Association):

- (a) Annual Assessments or charges for the creation and continuation of a maintenance fund as established by the Board; and
- (b) Special Assessments as approved by the Master Association, to be established and collected as hereinafter provided.

The Annual Assessment for the Master Association, as provided for herein, shall be payable in advance on an annual basis by every Sub-Association, unless the Master Association decides by a majority vote to have the assessment payable monthly. The Annual Assessment shall be due on January 1 of each year except for the first year of ownership by an Owner. The assessment shall begin to accrue from the date of closing the sale of a lot to an Owner or builder.

Notwithstanding anything herein to the contrary, there will be no payment of the Annual Assessment required for the remainder of the 2005 calendar year; and for the year 2006, only one-half (½) of the Annual Assessment shall be due, and it shall be paid on June 1, 2006.

Section 2. Purpose of Assessments. The assessments levied by the Master Association shall be used to provide funds for such purposes and common expenses as are for the benefit of the Master Association, the Sub-Associations, and the Owners, their tenants, guests, and invitees, which purposes may include, but are not limited to, maintenance, repair, insurance, landscaping and beautification of the General Common Areas and enforcement of the rules, regulations and restrictions provided for in the Governing Documents, and which purposes shall specifically include:

- (a) the payment of electric bills for decorative street lighting, whether or not such lighting is installed in the General Common Areas or the Common Areas or along or in the public or private streets;

- (b) maintenance of the private streets, if any.

Funds may also be used to provide other services to promote the health, safety and welfare of the Owners and, in particular, for the acquisition, improvement and maintenance of the properties, services and facilities related to the use and enjoyment of the General Common Areas, including, but not limited to, the cost of repair, replacement and additions thereto; the cost of labor, equipment, materials, management and supervision thereof; the payment of taxes assessed against all General Common Areas;

the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; the employment of security personnel to provide any service which is not readily available from any governmental authority; and such other needs as may arise. Any additional uses and purposes for assessments may be adopted by an amendment to this Declaration, as provided in Article IX herein.

Section 3. Creation of the Lien and Personal Obligation of Assessments. To secure payment of any assessment, as each assessment becomes due, there shall arise a continuing lien and charge against each Lot, the amount of which shall include costs and reasonable attorneys' fees to the extent permissible by law. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due; such personal obligation shall not pass to successors in title unless expressly assumed by them, provided such assumption shall not relieve such Owner of such obligation if the same is not paid when due by the successor assuming it.

Section 4. Exempt Property. The assessments, charges and liens created under this Article V shall not apply to the Common Areas, the General Common Areas, nor shall it apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of Department of Veterans' Affairs, or any other State or Federal governmental agency which acquires title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan; provided, however, that, upon the resale of such property by such first mortgagee or such governmental agency, the assessment herein provided shall again commence and accrue and shall be fully applicable to such Lot upon the conveyance to any subsequent Owner. Any Lot, which becomes vested in the Master Association or which Declarant may hereafter designate for common use as part of any common areas or otherwise, shall be exempt from the assessments and charges created herein. In addition, all property dedicated to and accepted by a local public authority, all land granted to or used by a utility company, all properties owned by a charitable or nonprofit organization exempt from taxation under the laws of the State of North Carolina shall be exempt from the assessments, charges and liens created hereby.

Section 5. Annual Assessment. The Annual Assessment shall be set each year by the Board of Directors of the Master Association, as provided in Section Eight hereunder and in the Master Association's Bylaws.

Section 6. Special Assessments. In addition to the Annual Assessment authorized above, the Master Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any capital improvement, the costs of any repairs or replacement of any capital improvement, and the costs of any repairs or replacement of any improvement on the General Common Areas, including the repair or replacement of the paving on the private streets and private easements created by the Declarant to provide access to more than one Lot. Any such assessment by the Master Association must have the consent of fifty-one percent (51%) of the votes of all Owners of Lots not owned by the Declarant as cast by the representatives to the Master Association at a meeting duly called for this purpose in accordance with the provisions of the By-Laws. Any such Special Assessment passed by the Master Association shall not apply to the Declarant.

Section 7. Payment of Assessment by Declarant. Notwithstanding anything in this Article V to the contrary, the Declarant shall not be required to pay, in any form, the Annual Assessment or any Special Assessment imposed by the Master Association or any Sub-Association.

Section 8. Notice and Quorum for Any Action Authorized Under Sections Five and Six. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5 and 6 of this Article shall be sent to the designated representative of each Sub-Association not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence in person or by proxy of representatives of Sub-Associations entitled to cast twenty percent (20%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held less than six (6) months following the preceding meeting.

Section 9. Date of Commencement of Annual Assessment; Due Dates; Certificate of Payment.

(a) The Annual Assessments provided for herein for the Master Association shall be payable as of January 1 of each year. The Annual Assessment shall begin to accrue as to a Lot at the

time of closing and conveyance of a Lot to any third party other than the Declarant. During the first quarter of each year, the Board of Directors shall establish the amount of the Annual Assessment imposed by the Master Association against each Lot in Brookberry Farm, which assessment shall be retroactive to January 1 of that year. In the event the Board of Directors elects not to fix such assessment rate as herein provided, the amount of the prior year's Annual Assessment shall be the fixed amount. Written notice of any changed Annual Assessment rate shall be sent to the representative of the Sub-Association.

(b) In establishing the Annual Assessment for any year, the Board of Directors shall consider all current costs and expenses of the Master Association, any accrued debts, and reserves for future needs.

(c) Notwithstanding anything in this Article V to the contrary, Declarant shall not be required to pay any dues or assessments, special or otherwise, for the Period of Declarant Control.

Section 10. Assessment Rate. The Annual Assessment for Lots within the Properties shall be fixed by dividing the annual budget amount or any Special Assessment by the number of Lots within all Sub-Associations required to pay an Annual Assessment or Special Assessment and made subject to this Declaration; the quotient of such division shall be each Lot's share of such Annual Assessment or Special Assessment.

Section 11. Effect of Nonpayment of Assessment; Remedies of the Master Association. Unless the Board of Directors of the Master Association directs otherwise, the Sub-Associations shall collect the Annual Assessment and any Special Assessments from the Owners along with the assessments for the Sub-Association, and shall remit the Annual Assessments and Special Assessments for the Master Association to the Master Association. The Sub-Associations will be primarily responsible for collecting any past due Annual Assessment or any Special Assessments. Any Annual Assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum legal rate and to the extent allowed by law. All such payments shall be the personal obligation of each Owner and a lien upon each Lot until paid in full, whether or not any notice of lien has been filed with the Office of the Clerk of Superior Court for Forsyth County, NC. The Master Association, its agent or representative, or the applicable Sub-Association, its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien

against the Lot to which the assessment relates, and interest, costs and reasonable attorneys' fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. An Owner may not waive or otherwise escape liability for the assessments provided for herein by non-use of the General Common Areas or abandonment of his or her Lot. No diminution or abatement of assessments shall be claimed or allowed for any alleged failure of the Master Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Section 12. Subordination of the Lien to Ad Valorem Taxes and Mortgages. The liens provided for herein on any Lot or unit shall be subordinate to the lien of ad valorem taxes and subordinate to the lien of any first or second deed of trust (sometimes hereinafter called "mortgage") on any Lot, if such assessments have a due date on or after the date such mortgage is filed for record. The lien and permanent charge hereby subordinated is only such lien and charge as relates to assessments authorized hereunder, having a due date subsequent to the date such mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgaged property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the mortgaged property pursuant to a sale under power contained in such mortgage. Sale or transfer of any Lot to a new Owner shall not affect any assessment lien, unless the sale or transfer of the Lot is pursuant to a foreclosure or under a power of sale or any proceeding in lieu of foreclosure, and in that event, shall extinguish the lien of such assessment as to payments which became due after the date of recording the deed of trust but prior to such sale or transfer, but the Master Association and the applicable Sub-Association shall have a lien upon the proceeds from foreclosure or of sale junior only to the said foreclosed mortgage and the equity of redemption of the mortgagor or trustor. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

ARTICLE VI

Use Restrictions

Section 1. Use Restrictions Applicable to all of Brookberry Farm.

The following use restrictions shall apply to all of the property subject to this Declaration, including property within the Sub-Associations. Any conflict between these use restrictions and the use restrictions of a Sub-Association shall be resolved in favor of the following use restrictions, it being understood that the following use restrictions shall control:

(a) All structures must be built to comply substantially with the plans and specifications as approved by the Architectural Committee of each Sub-Association, and before any house may be occupied, it must be completely finished, and a certificate of completion must have been issued by the local or state authority empowered to do so;

(b) All Lots (including condominium units and townhouses) shall be used for single-family residential use only;

(c) No Lot shall be used for the operation of any kind of timesharing, fractional-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years;

(d) No pets shall be permitted in or upon the General Common Areas or Common Areas, unless restrained by a leash. The walking of any pets on streets, General or Common Areas or Lots belonging to others, for the purposes of allowing pets to relieve themselves of bodily wastes, is prohibited, and each pet owner is responsible for retrieving any excrement deposited by his or her pet in the event of unintentional depositing of such waste.

(e) Declarant reserves an easement for, and the right at any time in the future to grant, rights-of-way for the installation and maintenance of public utilities across, on or under any Lot along the front, rear and side property lines, but such rights-of-way must be used so as to interfere as little as possible with the use of the Lot by its Owner. Further, there is reserved on behalf of Declarant and the standard utility companies for electricity, telephone, cable, natural gas, and any other standard utility company, an easement to enter upon the premises to maintain, repair, or modify existing or future underground facilities, and the Owners, or their successors in title to said Lots, shall in no way interfere with said facilities, or dig up, cut or tamper with said facilities except at their own peril and in violation of the rights of said utility companies. No public utility company or governmental entity or agency shall obtain any right in the easement reserved herein without an express written and recorded grant thereof by Declarant. In the event the Property subject to this Declaration is served by any underground public

utility facilities, the service to structures erected thereon shall be connected to the underground facility at the pedestals provided for this purpose.

Section 2. Lakes.

(a) Lakes which are shown on the recorded plat(s) of the Property, whether or not so labeled, shall be General Common Areas for the use and enjoyment of every Owner, subject to the rules and regulations of the Master Association. Use of the lakes by the Owners shall not include the use of Lots whose lot lines extend to the high water mark of the lakes, and use of the lakes shall be limited to the areas designated as "General Common Areas" adjacent to the lake or lakes.

(b) Maintenance of the lakes and dams shall be the duty of the Master Association, and no Owner by virtue of owning a Lot adjacent to the lake shall be required to assist in the maintenance of the lake except through the payment of the regular assessment paid by all Owners to the Sub-Association and the Sub-Association's payment to the Master Association.

(c) The Board of Directors shall establish rules and regulations governing the activities which are permitted in and on the lakes, but until said rules and regulations are enacted, there shall be no swimming, boating, use of personal flotation devices, or other active use of the lakes except for fishing from the banks of the lakes in designated areas.

(d) Neither the Declarant, the Master Association, nor any Sub-Association shall be responsible for any loss, damage, or injury to any persons or property arising out of the authorized or unauthorized use of the lakes, ponds, streams or other bodies of water within Brookberry Farm.

ARTICLE VII

Easements

Section 1. Walks, Drives, Parking Areas and Utilities. All of the Properties, including Lots, townhouse properties, condominium properties and General and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, and other public utilities as shall be established prior to subjecting the properties to this Declaration by the Declarant or its predecessors in title. The Master Association shall have the power and authority to grant and to establish in, over,

upon, and across the General and Common Areas such further easements as are requisite for the convenient use and enjoyment of the properties.

Section 2. Utilities and Drainage. All utility lines of every type, including, but not limited to, water, electricity, natural gas, telephone, sewage and television cables, running from the main trunk line or service locations must be underground. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, across, over and under the ground to erect, maintain, replace and use water, sewer, electric and telephone systems, wires, cables, and conduits for the purpose of bringing public services, including television cable service, to the Lots, townhouse properties, condominium properties and General Common Areas and Common Areas, said easement is to be located (i) within ten (10) feet of each lot line or other property line fronting on a street and twenty (20) feet along the rear line of each lot or other property, (ii) within the rights-of-way of any street or road shown on any recorded plat(s) of the Property, (iii) within ten (10) feet of each side line of each Lot, and (iv) within such other areas as are shown on any recorded plats of the Property; provided further, that the Declarant or Master Association may cut, at its own expense, drainways for surface water wherever and whenever such action is reasonably required in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

Section 3. Emergency. There is hereby reserved without further assent or permit, a general easement over all streets, General Common Areas and Common Areas to all policemen and security guards employed by Declarant or the Master Association or any Sub-Association, firemen, ambulance personnel and all similar law enforcement and emergency personnel to enter upon the Property, or any property or portion thereof which is now or hereafter made subject to this Declaration, in the performance of their respective duties.

Section 4. To Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, a perpetual, non-exclusive easement over any of the General Common Areas or Common Areas for the purposes of enjoyment, use, access, and development of any property brought into the Association as provided in Article II herein. This easement

includes, but is not limited to, a right of ingress and egress over any General Common Areas or Common Areas for construction of roads and for connecting and installing any and all utilities on such additional property.

Section 5. For Lake Maintenance and Flood Water. The Declarant reserves for itself, the Association, and their successors, assigns and designees, the non-exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located on any of the General Common Areas or Common Areas to (i) install, operate, maintain, and replace pumps to supply irrigation water to any of the General or Common Areas, (ii) to construct, improve, maintain, and repair structures and equipment used for retaining or draining water, and (iii) to maintain such common areas in a manner consistent with this Declaration or the directives of the Board of Directors. The Declarant, the Association, and their respective successors and assigns and designees, shall have an access easement over and across any of the Lots to the extent reasonable necessary to exercise their rights under this Section 5.

The Declarant further reserves for itself, the Association, and their respective successors, assigns and designees, a perpetual, non-exclusive right and easement of access and encroachment over the General Common Areas and Common Areas and the Lots (but not the dwellings thereon) adjacent to or within fifty (50) feet of bodies of water and wetlands within the Property, in order to (i) temporarily flood and back water upon and maintain water over such portions of the Property as is reasonably necessary, (ii) to alter in any manner and generally maintain the bodies of water and wetlands within the General Common Areas or Common Areas, and (iii) to maintain and landscape the slopes and banks pertaining to such areas. All parties entitled to exercise these easements shall use reasonable care in use of these easements and repair any damage resulting from the intentional exercise of the easements. Nothing herein shall be construed to make the Declarant or the Master Association liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

ARTICLE VIII

Insurance

Section 1. Fidelity Insurance Coverage. As a part of the common administration expense of the Association, the Master Association may provide for fidelity coverage against dishonest acts on the part of the officers, directors, management, contractor, employees or volunteers responsible for handling funds belonging to or administered by the Master Association at the discretion of the Board of Directors. The fidelity bond or insurance must name the Master Association as the named insured and shall be written in an amount set by the Master Association. In connection with such coverage, an appropriate endorsement to the policy to cover any person or persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. If requested by an Owner or mortgagee, such policies shall additionally provide that the policies cannot be canceled by either the insured or the insurance company until after ten (10) days prior written notice to all who have requested such notice.

Section 2. Other Insurance. The Board of Directors may purchase and maintain in force as a common expense, liability insurance (including liability insurance for the Board members), hazard insurance, flood insurance, debris removal insurance, plate glass or other glass insurance, fidelity bonds and other insurance or bonds that it deems necessary. The Board of Directors shall purchase and maintain workmen's compensation insurance to the extent that the same shall be required by law respecting employees of the Association. The name of the insured under each required policy must be stated in form and substance similar to the following:

“The Brookberry Farm Residential Owners Master Association, Inc., for use and benefit of the Members, individual Residential Owners and their mortgagees.”

Section 3. Proceeds. The Master Association shall receive the proceeds of any casualty insurance payments received on the policies obtained and maintained pursuant to this Article. To the extent that repairs and reconstruction are required herein and there is a determination that any improvements on the General Common Areas shall not be rebuilt, the proceeds shall be distributed to the Sub-Association on a pro-rata basis based on the number of Lots in the Sub-Association.

Section 4. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors of the Master Association to ascertain whether the coverages contained in the policies are sufficient for the upcoming year, whether any necessary repairs or

replacements of the property which occurred in the preceding year were covered by insurance, and that all possible insurance claims have been filed.

Section 5. Waivers. All such policies of insurance shall contain waivers of subrogation and waivers of any defense based on an invalidity arising out of the acts of an Owner of property in Brookberry Farm.

ARTICLE IX

General Provisions

Section 1. Duration. This Declaration and the foregoing restrictions shall be construed to be covenants running with the land and shall be binding and effective for a period of thirty (30) years from the date this Declaration is recorded in the office of the Register of Deeds for Forsyth County, North Carolina, and at the end of which time they shall be automatically extended for successive periods of ten (10) years each, unless it is agreed by a vote of two-thirds (2/3) of the votes entitled to be cast in Master Association matters to change, amend or revoke this Declaration and the restrictions contained herein in whole or in part. Every purchaser, Owner or subsequent grantee of any interest in any Property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance therefor, hereby agrees that the covenants and restrictions of this Declaration may be extended as provided in this Article.

Section 2. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Property subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Property or individual Lots subject

to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot or property, unless any such Owner shall consent thereto in writing. Further, during the Period of Declarant Control, or for the period of thirty (30) years from the date of incorporation of the Master Association, whichever is longer, the Declarant may unilaterally amend this Declaration for any other purpose so long as said amendment is not inconsistent with the common plan or scheme of development; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least seventy percent (70%) of the Owners of Lots or units in Brookberry Farm during the first thirty (30) year period and of at least sixty percent (60%) of the Owners of Lots or units in Brookberry Farm thereafter, and with the consent of the Declarant, so long as Declarant is a Class B member of any Sub-Association or the Master Association.

Every purchaser or subsequent grantee of any interest in any Lot or unit in Brookberry Farm by acceptance of a deed or other conveyance therefore, hereby agrees that the covenants and restrictions of this Declaration may be amended as provided in this Article. Amendments as used in this Article IX shall not mean the addition of properties as provided in Article II.

Section 3. Procedure for Certification and Recordation of Amendment. Any instrument amending these covenants, conditions, and restrictions (other than an amendment by the Declarant) shall be delivered, following approval by the Members, to the Board of Directors of the Master Association. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

- (a) Reasonably assure itself that the amendment has been approved by the Members of the Master Association;
- (b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Master Association in the same manner that deeds are executed; and
- (c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be executed by the Association officers and recorded in the Forsyth County Registry.

All amendments shall be effective from the date of recordation in the Forsyth County Registry, unless a later effective date is specified therein; provided, however, that no such instrument shall be

valid until it has been indexed in the name of the Master Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all lots in the Sub-Associations.

Section 4. Enforcement. If any person, firm or corporation shall violate or attempt to violate any of these restrictions, it shall be lawful for the Declarant, the Master Association, any Sub-Association, or other person, firm or corporation owning any Property subject to the terms hereof to bring an action against the violating party at law or in equity for any claim which these restrictions may create in such other Owner or interested party either to prevent said person, firm or corporation from so doing such acts or to recover damages for such violation. Any failure by the Master Association, Sub-Association, Declarant or any Owner to enforce any of said covenants and restrictions or other provisions shall in no event be deemed a waiver of the right to do so thereafter. Invalidation of any one or more of these restrictions by judgment or court order shall neither affect any of the other provisions not expressly held to be void nor the provisions so voided in circumstances or application other than those expressly invalidated, and all such remaining provisions shall remain in full force and effect together with the provisions ruled upon as they apply to circumstances other than those expressly invalidated.

Section 5. Delegation and Assignability. Declarant shall at all times and from time to time have the right to delegate any and all functions herein reserved to Declarant. Further, notwithstanding any other provision contained herein to the contrary, Declarant shall have the right at all times and from time to time to fully transfer, convey and assign all or any part of its right, title and interest (whether real or personal) in and to the General Common Areas to the Master Association. In the event of any such sale, transfer or conveyance, Declarant shall not be liable to any person for any injury or loss resulting from failure of performance or negligent performance of Declarant's obligations under these covenants arising after such sale, transfer or conveyance.

Section 6 Conflicts. In the event of any irreconcilable conflict between the Declaration and the By-Laws of the Master Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the By-Laws of the Master Association and the Articles of Incorporation of the Master Association, the provisions of the Articles of Incorporation shall control.

Section 7. Headings and Binding Effect. Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying the particular Sections to which they refer. The covenants, agreements, and rights set forth herein shall be binding upon and inure to the benefit of the respective heirs, executors, successors and assigns of the Declarant and any Owner and all persons or entity claiming by, through or under Declarant or any Owner.

Section 8. Unintentional Violation of Restrictions. In the event of unintentional violation of any of the foregoing restrictions with respect to any Lot, the Declarant or its successors reserves the right (by and with the mutual written consent of the Owner or Owners for the time being of such Lot) to change, amend, or release any of the foregoing restrictions as the same may apply to that particular Lot.

Section 9. Professional Management. Declarant reserves the right to select professional management of the Master Association for the Period of Declarant Control. Declarant is not required to engage professional management, but may, if Declarant so desires. After the Period of Declarant Control, the Members, pursuant to Article III, may vote either to engage professional management for the Master Association, or to self manage the Master Association. Any contract for professional management shall provide that the Master Association may terminate said contract on the giving of not less than ninety (90) days' notice.

ARTICLE X

Dissolution or Insolvency of the Master Association

In the event that the Master Association becomes insolvent or for any reason whatsoever loses the ownership of any of the General Common Areas, the Owners of Lots having an interest in such General Common Areas or any Member of the Master Association may, at their election as determined by majority vote of those affected, form a nonprofit corporation as provided in the Articles and Bylaws of the Master Association and assign to it the duty and authority to assess on a per lot basis all Lots having an interest in such General Common Areas, whereupon such corporation shall maintain such General Common Areas in the same manner that the Association is empowered to do by this instrument with the same right of lien for assessments provided for herein.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restrictions to be duly signed this 19th day of October, 2005.

BROOKBERRY FARM, L.L.C.

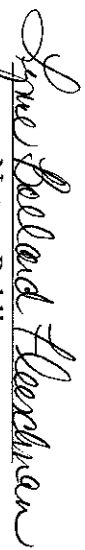
a North Carolina Limited Liability Company (SEAL)

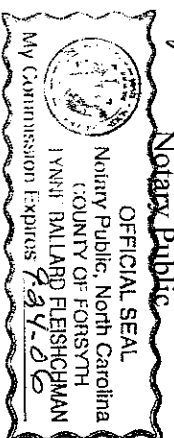

Graham Bennett, Manager

STATE OF NORTH CAROLINA)
)
COUNTY OF FORSYTH)

Signe Ballard Fleischer, a Notary Public of Forsyth County, State of North Carolina, do hereby certify that Graham Bennett, Manager of BROOKBERRY FARM, L.L.C., personally appeared before me this day and acknowledged the due execution of the foregoing instrument. WITNESS my hand and notarial seal, this 19th day of October, 2005.

My commission expires: 9-30-06


Signe Ballard Fleischer



STATE OF NORTH CAROLINA)
)
COUNTY OF FORSYTH)

The foregoing certificate of _____, a Notary Public of _____ is certified to be in due form and according to law. Let the said Declaration and certificate be registered.

This _____ day of _____, 2005

Register of Deeds,
Forsyth County