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Doc ID: 002194160022 Type: CRP
Recorded: 03/21/2005 at 02:45:47 PM
Fee Amt: \$77.00 Page 1 of 22
Franklin County North Carolina
Linda H. Stone Register of Deeds

BK 1462 PG 862-883

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STATE OF NORTH CAROLINA

COUNTY OF FRANKLIN

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR TANAGER FARMS SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by DEN-MARK CONSTRUCTION COMPANY, INC., a North Carolina corporation, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of certain Property described hereinafter located in Youngsville Township, Franklin County, State of North Carolina; and

WHEREAS, the Property is a single family development approved by the appropriate governmental authorities of Franklin County, North Carolina, now known as TANAGER FARMS SUBDIVISION; and

WHEREAS, in accordance with such approved single-family development, Declarant contemplates developing TANAGER FARMS SUBDIVISION as a residential development; and

WHEREAS, Declarant desires to impose pursuant hereto, easements, covenants, conditions and restrictions upon all of the Property;

NOW, THEREFORE, Declarant hereby declares that all of the Property described hereinafter shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of enhancing and

protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

Section 1. "Association" shall mean and refer to TANAGER FARMS HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns.

Section 2. "Board of Directors" shall mean the elected body governing the Association as provided by North Carolina corporate law.

Section 3. "Bylaws" shall mean the duly adopted bylaws of the Association, as may be amended from time to time.

Section 4. "Common Areas" shall mean those certain portions of the Property (including any improvements thereto) owned by the Association for the common use and enjoyment of the Owners, including any landscaping. The Common Areas shall include any easement rights granted to the Association.

Section 5. "Declarant" shall mean and refer to DEN-MARK CONSTRUCTION COMPANY, INC., a North Carolina corporation, its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose in the transfer thereof.

Section 6. "Entry Features" shall mean those portions of the Common Areas upon which permanent identification signs or monuments shall be initially installed and erected by Declarant at the various entrances of TANAGER FARMS SUBDIVISION, and upon conveyance of easement rights to such portions of the Common Areas to the Association, the Entry Features shall be maintained by the Association in accordance with this Declaration.

Section 7. "Lot" shall mean and refer to any numbered or lettered plot of land shown upon any recorded subdivision map of the Property which is intended for residential purposes.

Section 8. "Lot in Use" shall mean and refer to any Lot on which a residential structure has been fully constructed and is being or to be occupied as a residence.

Section 9. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Property" shall mean and refer to that certain real property shown on that plat of Tanager Farms Subdivision, a copy of which is recorded in Book of Maps 2004, Page _____, Franklin County Registry and incorporated herein by this reference.

ARTICLE II PROPERTY

The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

ARTICLE III PROPERTY RIGHTS

Section 1. Owners' Easements or Enjoyment. Every Owner shall have a right and easement of enjoyment in and to and right of ingress and egress over the Common Areas, which rights shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to permit the charge of reasonable fees for the enjoyment of any portion of the Common Areas;
- (b) the right of the Association to suspend the voting rights during which any assessment against his Lot remains unpaid;
- (c) the right of the Association to formulate, publish, impose and enforce rules and regulations for the enjoyment of the Common Areas.

Section 2. Delegation of Use. Subject to Section 1 above, any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment in and to the Common Areas, to the members of his family, his lawful tenants, or contract purchasers who reside on such Owner's Lot, and to his guests, invitees and licensees.

Section 3. General Easements and Associated Undertakings. All of the Property, including Lots and Common Areas, shall be subject to such easements for private roads or drives, public streets, water lines, sanitary sewers, storm drainage facilities, gas lines, cable communication transmission, telephone and electric power lines and other public utilities, whether above or below ground, as shall be established by the Declarant, by its predecessor in title prior to the subjecting of the Property to this Declaration, or as shown on any recorded subdivision map of any portion of the Property. The Association shall have the power and authority to grant and establish upon, over, under and across the Common Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property. Sight easements, if any, as may be shown upon any recorded subdivision map of the Property are hereby reserved by the Declarant.

An easement is hereby established for the benefit of any agency or utility performing any of the following services over all Common Areas and over an area of all Lots within the Property five (5) feet from the right-of-way line of any street or roadway established within the Property hereby or hereafter established for the setting, removal and reading of water and electricity meters, the maintenance and replacement of water, electricity, sewer and drainage facilities. In addition thereto, an easement is hereby established over all of the Property for the benefit of the County of Franklin and all other agencies and personnel performing any of the following duties and services for the fighting of fires, mail delivery, collection of garbage ambulance services and police protection.

Section 4. Title to the Common Areas. The Declarant hereby covenants for itself, its heirs and assigns that it will convey fee simple title or, as applicable, easement rights for the Common Areas to the Association, free and clear of all encumbrances and liens, except public streets, private roads or drives, utility easements and any use restrictions of record, including this Declaration, upon completion by Declarant of any initial improvements thereto, including landscaping.

Section 5. Entry Features. At all times during the term of this Declaration, the Association shall maintain and/or improve any Entry Features created within the Property in a manner at least comparable to the initial creation and construction thereof.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

Section 1. 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 a Lot which is subject to assessment.

Section 2. The Association shall have the following two classes of voting membership:

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

Class B. The Class B Member shall be the Declarant and shall be entitled to two (2) votes for each Lot owned. 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) seventy-five percent (75%) of the Lots have been sold by Declarant; or
- (b) on January 1, 2008.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the person(s) who was

the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the welfare of the residents in the Property for the improvement and maintenance of the Common Areas, including Entry Features, for the establishment of adequate reserves for the replacement of capital improvements, if any, located within the Common Areas, payment of insurance premiums for contracts of hazard and liability insurance on the Common Areas, and payment of local ad valorem taxes or governmental charges, if any, on the Common Areas.

Section 3. Assessment Amount and Due Date. Any regular assessment made for the purposes set out above must be approved by an affirmative vote of at least two-thirds (2/3rds) of the appropriate and effected class of members who are voting at a meeting duly called for this purposes. Members shall have full authority to set the amount of the annual assessment and the date that it is due. Any changes in the amount of the annual assessment may also be approved by members. On all such votes, there must be at least two-thirds (2/3rds) of the appropriate and effected class of members to vote for the amount and due date of such annual assessment.

Upon an affirmative vote of at least two-thirds (2/3rds) of the appropriate and effected class of members, the authority to establish the amount of the annual assessment and the date the annual assessment is due may be delegated to the Board of Directors of the association. The Board of Directors shall continue to exercise this authority until such time as at least two-thirds (2/3rds) of the appropriate and effected members shall vote that the Board of Directors no longer has this authority in which case it shall then go to the full association of members.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the 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 construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, provided, however, any such assessment shall

have the assent of two-thirds (2/3) of the votes of each appropriate and affected class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 or this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each appropriate and affected class of membership 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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots owned by each class of Member and annual assessments may be collected on an annual, monthly or quarterly basis; provided, however, annual and special assessments for all Lots owned by Declarant and not occupied as a residence shall be twenty-five percent (25%) of such assessments for other similarly located Lots. Special assessments may be to the contrary, the Association shall have the power, right and authority to issue a special assessment against any Lot and its Owner if such Owner shall fail to reimburse the Association or the Declarant, as the case may be, pursuant to the provisions of Article IX, Section 11 of this Declaration.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10.0%) per annum and shall be subject to a late charge of Twenty Five and No/100 Dollars (\$25.00). The Association may bring an action at law against the Owner personally obligated to pay the same for such delinquent assessment, interest, late charges, costs and reasonable attorneys' fees of any such action, or foreclose the lien against the Lot. For purposes of this Section 8, the amount of delinquent assessment, plus accrued interest and late charges shall be considered evidenced by this Section 8 and, therefore, evidence of indebtedness shall exist hereby.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI INSURANCE

Section 1. Ownership of Policies. Contracts of insurance upon the Common Areas shall be purchased by the Association for the benefit of the Association. The Association may reevaluate its coverage from time to time and may provide, subject to Section 2 of this Article, for such insurance coverage as it deems appropriate.

Section 2. Coverage. All improvements and personal property included in the Common Areas shall be insured in an amount equal to at least one hundred percent (100%) of their insurable replacement value as determined annually by the Association with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily covered with respect thereto.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to at least one-half (1/2) the annual assessment plus reserves accumulated.

Section 4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to the Owners as an assessment according to the provisions of Article IV above.

Section 5. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interests may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

- (a) The proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.
- (b) Any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

ARTICLE VII ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. General. Anything contained in this Declaration which may be construed to the contrary notwithstanding, no tree removal, site preparation on any Lot or change in grade or slope of any Lot or erection of buildings or exterior additions or alterations to any building situated upon the Property or erection of or changes or additions in fences, hedges, walls and other structures, or construction of any swimming pools or other Improvements, shall be commenced, erected or maintained on any Lot until the architectural control committee appointed as hereinafter provided (the "Architectural Control Committee"), has approved the plans and specifications therefor and the location of such Improvements.

Section 2. Composition. For so long as Declarant owns one or more Lots, Declarant shall annually appoint the members of the Architectural Control Committee, which will be composed of three (3) individuals, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's

concern for a high level of taste and design standards within TANAGER FARMS SUBDIVISION. In the event of the death or resignation of any member of the Architectural Control Committee, Declarant, for so long as it has the authority to appoint the members of the Architectural Control Committee, and thereafter, the remaining members of the Architectural Control Committee, shall have full authority to designate and appoint a successor. No member of the Architectural Control Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or willful misconduct of such member) arising out of services performed pursuant to this Declaration. Upon final termination of Declarant's membership in the Association, the Board of Directors of the Association shall appoint the members of the Architectural Control Committee on an annual basis. At any time Declarant may elect not to appoint the members of the Architectural Control Committee and may assign this right to the Board of Directors of the Association.

Section 3. Procedure. No Improvement of any kind or nature shall be erected, remodeled or placed on any Lot until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Control Committee, as to:

- (i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets.
- (ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces;
- (iii) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon and drainage arrangement; and
- (iv) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Control Committee, or matters in which the Architectural Control Committee has been vested with the authority to render a final interpretation and decision.

Any modification or change to the Architectural Control Committee approved set of plans and specifications must again be submitted to the Architectural Control Committee for its inspection and approval. The Architectural Control Committee's approval or disapproval, as required herein, shall be in writing.

The Architectural Control Committee may, but shall not be so required, from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions. Although the Architectural Control Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Architectural Control Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins, if any, shall supplement these covenants, conditions and restrictions and are incorporated herein by reference.

Section 4. Jurisdiction. The Architectural Control Committee is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on a Lot which may, in the reasonable opinion of the Architectural Control Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property.

Section 5. Enforcement. The Architectural Control Committee and/or the Association shall have the specific, nonexclusive right (but not obligation) to enforce the provisions contained in this Article and/or to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article.

Section 6. Definition of "Improvement". The term "Improvement" shall mean and include all buildings, storage sheds or areas, roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes, changes in grade or slope, site preparation, swimming pools, tennis courts, signs, exterior illumination, changes in any exterior color or shape and any new exterior construction or exterior improvement exceeding \$1,000.00 in cost which may not be included in any of

the foregoing. The definition of Improvement does not include shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. The definition of Improvements does include both original Improvements and all later changes to Improvements.

Section 7. Failure of the Architectural Control Committee to Act. If the Architectural Control Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within thirty (30) days after submittal thereof, it shall be conclusively presumed that the Architectural Control Committee has approved such conforming plans and specifications and other submittals. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.

Section 8. Limitation of Liability. Neither the Architectural Control Committee nor the members thereof nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence, except for gross negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

Section 9. Miscellaneous. No member of the Architectural Control Committee shall be entitled to compensation for services performed pursuant to this Article. The Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses.

ARTICLE VIII USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Areas.

Section 2. Use of Property. No portion of the Property shall be used except for residential purposes incidental or accessory thereto. Each Lot shall be occupied and/or used as follows:

1. Each Lot, but not to include Common Areas, will be used for residential purposes only, and each Lot shall constitute a building site. No dwelling shall be erected, altered, placed or permitted to remain on any building site other than one detached, single-family dwelling not to exceed two and one half stories in height and an attached garage for not less than two cars. More than one Lot may be used as one building site if approved in writing by Owner, or such other person designated by Owner.

2. Each dwelling shall have a heated, enclosed floor area as follows: if one story, at least 1,200 square feet; if one and one-half stories, at least 1,400 square feet; and if two or more stories, at least 1,800 square feet. Heated, enclosed floor area shall not include unfinished basements, open porches, breeze-ways, screened porches, garages, walk-up attics, carports, steps, stoops.

3. No dwelling or other approved structure shall be located on any Lot site nearer to any property line than allowed by County regulations. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of the building, PROVIDED, however, that this shall not be construed to permit any portion of a dwelling on a Lot site to encroach upon another Lot site.

4. Any vehicle which has advertising of any type, whether a display, a name or logo painting on the vehicle, an attached sign, or otherwise, must be parked in the garage, in the rear of the residence or behind a screen so that such vehicle cannot be seen from the street. Absolutely no vehicles, boats or any other type of personal property shall be placed in the front or side yard of any residence with a "for sale" sign upon it, any other such sign, or information which might indicate that the property is for sale.

5. Any boats, motor homes, or campers must be kept inside garage, at the rear of the house, or kept behind a screening so that they are not visible from the street. No boats, motorhomes or camper units whatsoever may be kept in the front yard of the dwelling. Any camper, boat, motorhome, car truck or other vehicle must be used regularly and be in operational use. If not used regularly and kept in operational use, it shall not be kept in the subdivision. Any boat, motorhome, or camper kept outside on the Lot shall be

enclosed in a screening so that it is not readily visible from Lots beside or behind the Lot upon which the unit is being kept.

6. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become any annoyance or nuisance to the neighborhood. No signs or billboards shall be erected or maintained on the premises other than real estate signs. No trade materials or inventories may be stored on the premises. No business activity or trade of any kind shall be conducted on any Lot except that an office may be maintained in a residence if there is not client or customer traffic to the office.

7. No shelter of a temporary or permanent character such as a mobile home, trailer, basement, tent, shack, garage or barn shall be used on any Lot at any time as a residence, either temporarily or permanently. No trailer, modular or mobile home shall be placed on any building site covered by these covenants.

8. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the front and rear ten feet of each Lot and five feet on each side line unless these are in excess of such distances on recorded plats, in which case the plats shall control. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities, or which may change the direction or flow of drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. In the event that any Owner of two or more adjacent Lots shall prepare plans for the construction of a house on the line separating two or more such Lots, then the easement along this Lot line shall become void.

9. No animals, livestock or poultry of any kind shall be raised, bred or kept on building site, except that dogs, cats or other household pets may be kept, provided that they are not bred or maintained for any commercial purposes. Owners with dogs, cats or other household pets will be responsible for their animals and will insure that they are not a nuisance to other Lot owners.

10. No Lot or portion thereof shall be dedicated or used for a public street unless approved by Owner.

11. Adequate off street parking shall be provided by the Owner of each Lot for the parking of automobiles owned by such Owner, and Owners of Lots shall not be permitted to park their automobiles, boats, campers, travel trailers or any other vehicles on the streets in the subdivision.

12. All telephone, electric and other utility lines and connections between the main utility lines and residence and other buildings located on each Lot shall be concealed and located underground so as not be visible.

13. Declarant shall install an irrigation system for the entry way of the subdivision. As determined by Declarant, Lot Owners will be required to pay the local utility company (or companies) a proportionate monthly service charge for the irrigation system and maintenance. In addition, Declarant reserves the right to subject each Lot to a contract with the local utility company for street lighting.

14. Roads constructed in all phases of this subdivision shall be maintained by the Declarant until the State of North Carolina takes over the streets for maintenance.

15. Driveways must be fully constructed with asphalt or concrete. Each driveway must be at least 16 feet in width at the road and no less than 10 feet in width at all other portions of the driveway. To the extent that any portion of this paragraph conflicts with the terms of paragraph 3 herein, paragraph 3 shall be deemed to prevail, and the driveway length requirements shall be adjusted to accommodate the provisions of paragraph 3. Lot 56 as shown on Plat recorded in Map Book 2004, Page 413A, Franklin County Registry shall be exempt from the requirements of this Paragraph.

16. The exterior walls of each dwelling, its garage and any outbuilding approved by the Architectural Control Committee as set forth herein shall be made of stone, brick, wood or Hardiplank or equivalent cement-based siding. Vinyl may be used as long as a sample to be used showing quality, design and color is submitted to the Architectural Control Committee and approved in writing.

17. Declarant reserves a sign easement upon Lots 1 and 45 as set out on the map of the subdivision. This easement shall be conveyed to the Association as hereinbefore set forth.

18. Any mailbox or newspaper tube shall be only as prescribed by the Architectural Control Committee. It is the intention of the Committee to create a standard

design to be used by all residences in the subdivision. The mailbox and newspaper tube shall be located at the site as set by the Architectural Control Committee.

19. During construction of the dwelling or any other type of construction being carried out on a Lot, any damage caused by such construction must be cleaned up and repaid by the party causing it. Any mud clods or other debris which get into the right-of-way area of a street must be cleaned up within 48 hours. During construction on any Lot, there shall be a gravel area of at least 40 feet in length leading from the street onto said Lot, this gravel area being the entrance to the Lot, in order to prevent mud and other debris from being tracked into the street. During construction on any Lot, the Owner shall keep all construction vehicles off the shoulder of the road. During construction, the Lot Owner may burn trash in trash barrels only if a safe distance from neighboring houses and such burning does not constitute a disregard for any local building or fire codes.

20. Each Lot Owner shall keep his Lot free of tall grass, undergrowth, dead trees, trash and rubbish. Such Lots shall be maintained so as to present a pleasing appearance. In the event an Owner does not properly maintain his Lot as set forth in this paragraph, the Architectural Control Committee has the right to do whatever work is required to give the Lot a pleasing appearance with any such cost incurred in doing this being the liability of the owner of the Lot.

21. There shall be no more than two yard sales per year for any one Lot in the subdivision. Any such yard sale shall not extend longer than six hours on the day it is held.

22. Except as outlined in Paragraph 19 herein, there shall be no burning of trash in the subdivision. All garbage and other refuse must be kept in stable, sanitary containers, and said containers shall be cleaned on a regular basis. Such garbage and refuse must be picked up and disposed of at least weekly. Storage facilities for garbage, trash and other refuse shall be out of sight of streets in the subdivision, either by placing such receptacles in the rear of the residence or providing a screening for them.

23. Motorbikes, go-carts and any other motorized vehicles must use only the paved streets of the subdivision. Any use of the shoulders of the paved streets by motorized vehicles is expressly prohibited. Any type of motorized vehicle that produces excessively loud noises shall not be allowed in the subdivision.

24. Any hobbies regularly conducted on any Lot shall not be a nuisance to the neighbors. Separate buildings for hobbies shall be constructed only when approved by the Architectural Control Committee. If a detached building is used mainly for a hobby, the Architectural Control Committee shall consider the type of hobby during the approval process. Any hobby which produces a product for sale is expressly prohibited.

25. There shall be no signs exhibited on any Lot except for a "For Sale" sign.

26. No above-ground swimming pools shall be located on any Lot.

ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. The Association, Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, Declarant or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Should any proper party undertake a legal proceeding to enforce a violation or breach of any of these restrictions, such party shall be reimbursed for any legal expenses, court costs or other financial obligations undertaken in enforcing these covenants against the violating party. It is the intention that anyone violating these covenants pay for any expenses undertaken by a proper party in seeing that these covenants are enforced. The violating party must be given a written notice of a violation and given ten days to correct such violation.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Effect and Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument approved by not less than sixty-

six and two-thirds percent (66.67%) of the Lot Owners, and thereafter by an instrument approved by not less than seventy-five percent (75%) of the Lot Owners. Notwithstanding these provisions, this Declaration may be amended by the Declarant only without the approval of any Lot Owners, as long as one Lot within the Property is owned by Declarant. Any amendment must be recorded.

Section 5. Amendment Form. If any amendment to these covenants, conditions and restrictions is so approved, each such amendment shall be delivered to the Board of Directors of the Association. Thereupon, the Board of Directors shall within thirty (30) days, do the following:

- (a) Reasonably assure itself that the amendment has been validly approved by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to any Lot to be examined).
- (b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS
CONDITIONS AND RESTRICTIONS FOR TANAGER FARMS SUBDIVISION

By authority of its Board of Directors, TANAGER FARMS HOMEOWNERS ASSOCIATION, INC. hereby certifies that the following instrument has been duly approved by the Owners of ____ percent of the Lots of TANAGER FARMS SUBDIVISION and is, therefore a valid amendment to the existing covenants, conditions and restrictions of TANAGER FARMS SUBDIVISION.

This the ____ day of _____, ____.

TANAGER FARMS HOMEOWNERS ASSOCIATION, INC.

By: _____

President

- (c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Franklin County Registry.

All amendments shall be effective from the date of their recordation in the Franklin County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association in each Registry. 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 all persons thereafter purchasing any Lots.

Section 5. Contract Rights of Association. As long as there is a Class B membership, any contract entered into by or on behalf of the Association shall contain a provision giving the Association or the other party thereto the right to terminate such contract upon the giving of not more than thirty (30) days written notice to the other party or parties.

Section 6. Lender's Notice. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer or guarantor will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.
- (b) Any sixty (60) day delinquency in the payment of assessments owed by the Owner of the Lot on which it holds the mortgage.
- (c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action that requires the consent of a specified percentage of mortgage holders.
- (e) The Association's financial statement for the immediately preceding fiscal year.

Section 7. Duty of Maintenance. The Owner of each Lot in the Property shall have the duty and responsibility, as such Owner's sole cost and expense, to keep that part of the Property so owned, including Improvements, ground and drainage easements or other rights-of-way incident thereto, in accordance with the terms and provisions of the

Declaration and in a well-maintained, safe, clean and attractive condition at all times.

Such maintenance includes, but is not limited to, the following:

- (1) Prompt removal of all litter, trash, refuse and waste;
- (2) Lawn mowing on a regular basis;
- (3) Tree and shrub pruning;
- (4) Watering by means of a lawn sprinkler system or hand watering as needed;
- (5) Keeping exterior lighting and mechanical facilities in working order;
- (6) Keeping lawn and garden areas alive;
- (7) Removing and replacing any dead plant material;
- (8) Keeping vacant land well-maintained and free of trash and weeds;
- (9) Keeping parking areas and driveways in good repair;
- (10) Complying with all governmental health and police requirements;
- (11) Repainting of Improvements; and Repair of exterior damage to Improvements

Section 10. Enforcement. If any such Owner or occupant has failed in any of the duties or responsibilities of such Owner as set forth in Article IX, Section 7 of this Declaration, then the Board of Directors of the Association or Declarant may give such person written notice of such failure and such person must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or the Declarant, acting through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owner of a Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Association or the Declarant in performing such work computed at the highest lawful rate from the date(s) such amounts are expended

until repaid to the Association or the Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder and shall reimburse the Association or the Declarant, as the case may be, on demand for such costs and expense (including interest as above provided). If such Owner shall fail to reimburse the Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expense by the Association or Declarant, the Association may issue a special assessment against such Owner pursuant to Article V, Section 6 of this Declaration. Notwithstanding anything contained in this Section 8 which may be construed to the contrary, maintenance by Declarant or the Association, as the case may be, of the area within the landscape easement created in Article III, Section 8 of the Declaration shall not subject an Owner to any reimbursement obligation or liability hereunder.

Section 11. OBLIGATION TO IMPROVE PROPERTY AND WAIVER THEREOF. IF ANY OWNER (OR ITS SUCCESSORS OR ASSIGNS) OF A LOT DOES NOT, WITHIN ONE (1) YEARS AFTER CONVEYANCE OF TITLE TO SUCH LOT FROM DECLARANT, OBTAIN A PERMIT AND BEGIN THE CONSTRUCTION OF A PERMANENT RESIDENCE ON SUCH LOT, WHICH IS APPROVED BY THE ARCHITECTURAL CONTROL COMMITTEE, DECLARANT SHALL HAVE AN OPTION (BUT NOT AN OBLIGATION) TO REPURCHASE SUCH LOT FOR A CASH PRICE EQUAL TO THE PURCHASE PRICE PAID TO DECLARANT FOR SUCH LOT. THIS OPTION TO REPURCHASE MUST BE EXERCISED IN WRITING WITHIN SIX (6) MONTHS AFTER THE EXPIRATION OF THE ABOVE-REFERENCED ONE (1) YEAR PERIOD. CLOSING OF THE REPURCHASE SHALL TAKE PLACE WITHIN NINETY (90) DAYS AFTER THE EXERCISE OF THE OPTION TO REPURCHASE AND SHALL BE HELD AT THE OFFICE OF THE DECLARANT. THE SUBJECT LOT SHALL BE RECONVEYED TO DECLARANT BY GENERAL WARRANTY DEED SUBJECT ONLY TO THE EXCEPTIONS TO TITLE INCLUDED IN THE DEED FROM DECLARANT TO THE PURCHASER OF SUCH LOT FROM DECLARANT AND SUCH OTHER EXCEPTIONS, IF ANY, AS DECLARANT MAY SPECIFICALLY APPROVE IN WRITING AT THE CLOSING OF SUCH SALE.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has
hereunto caused this Declaration to be executed, this 10th day of ~~December, 2004~~

March, 2005.

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DEN-MARK CONSTRUCTION
COMPANY, INC.,
A North Carolina Corporation

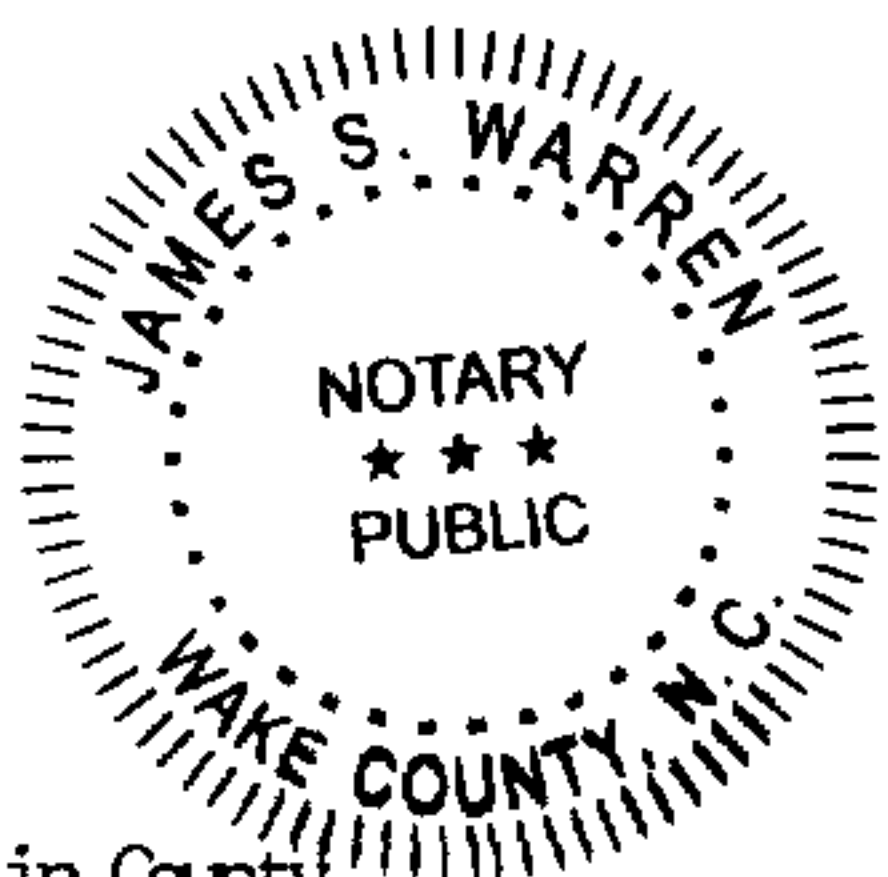
By: Mark E. Dawdy
VICE President

NORTH CAROLINA - COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that
Mark E. Dawdy, personally came before me this day and
acknowledged that he is President of DEN-MARK CONSTRUCTION COMPANY,
INC., a North Carolina corporation, and that by authority duly given and as the act of the
corporation, the foregoing instrument was signed in its name by its President. Witness
my hand and official stamp or seal, this 18th day of ~~December, 2004~~ March, 2005.

My Commission Expires: 10-3-05

James S. Warren
Notary Public



North Carolina-Franklin County

The foregoing certificate of James S. Warren, a Notary Public, is certified to be
correct and duly recorded this 21st day of March, 2005.

Linda H. Stone

Linda H. Stone, Register of Deeds

By: Linda S. Marshall, Deputy

Doc ID: 003473730004 Type: CRP
Recorded: 05/28/2009 at 10:03:24 AM
Fee Amt: \$23.00 Page 1 of 4
Franklin County North Carolina
Linda H. Stone Register of Deeds
BK 1732 PG 808-811

by: Candyn Coley, Asst.

Prepared by and return to: HARRISON & BOONE ATTORNEYS AT LAW, P.A.
8524 SIX FORKS RD., STE 103
RALEIGH, NC 27615

NORTH CAROLINA
FRANKLIN COUNTY
**FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
TANAGER FARMS SUBDIVISION**

**THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS** is entered into this 30 day of WED APRIL, 2009, between **DEN-MARK CONSTRUCTION COMPANY, INC.** (hereinafter "Declarant"), and on behalf of Tanager Farms Subdivision Association, Inc., a nonprofit corporation established by Declarant, its successors or assigns (hereinafter "Association"), and all parties hereafter acquiring any of the described property;

WITNESSETH:

WHEREAS, Declarant is the owner of at least one lot within a subdivision in the County of FRANKLIN, State of North Carolina, known as **TANAGER FARMS SUBDIVISION**; and

WHEREAS, a Declaration of Covenants, Conditions and restrictions of Tanager Farms Subdivision was recorded in Book 1462, Page 862, Franklin County Registry.

WHEREAS, the parties to this First Amendment now desire to amend the Declaration as follows:

TO AMEND THE COVENANTS BY REVISION:

1. Article IV, MEMBERSHIP AND VOTING RIGHTS, IS AMENDED to read in its entirety as follows:

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association, excluding Builders, who have purchased and own Lots for the purpose of construction only. Said Builders will not be Members, nor shall they be considered for any purposes an "appropriate and affected class of Members. Builders shall not be subject to annual or special assessments, nor shall they have voting rights. The intent of membership in the Association is to establish membership solely in Lot Owners who are also homeowners in Tanager Farms. A Lot shall also be subject to assessment if owned by a homeowner as an additional Lot. The Declarant shall also be Member of the Association as long as Declarant owns one lot in the subdivision.

Section 2. There shall be one class of voting membership. This class shall consist of the Owners, with the exception of the Builders, as previously detailed in this Article. When more than one person holds an interest in any such Lot, all such persons shall be Members. Each Lot owner in the class shall have one vote for each lot owned. The Declarant shall also have one vote for each lot owned.

2. Article V, COVENANT FOR MAINTENANCE ASSESSMENTS, IS AMENDED as expressed below.

Section 1. Creation of the Lien and Personal Obligation of Assessments. This section as expressed in the original Declaration shall remain in full force and effect with one addition:

Declarant now hereby specifically excludes Builders as being Lot Owners who are subject to annual and special assessments, and are not therefore to be considered as "an appropriate or affected class of members."

Section 2. remains intact , but **Section 3** now reads as follows:

Section 3. Assessment Amount and Due Date. Any regular assessment made for the purposes set out above must be approved by an affirmative vote of at least two-thirds of the quorum of appropriate and affected Members who are voting at a meeting duly called for these

purposes. Members shall have full authority to set the amount of the annual assessment and the date it is due. Any changes in the amount of the annual assessment must also be approved by Members.

In addition, upon an affirmative vote in the same form and manner as described in this section, of the affected class of Members, the authority to establish the amount and due dates of the annual assessment may be delegated to the Board of Directors of the association. The Board may then continue to exercise this authority until such time as a vote of the affected class of Members shall decide that the Board no longer has this authority. The power shall then revert to the affected class of Members as referred to herein.

Any meeting called for the purpose of establishing or changing a regular or annual assessment as defined in Section 3, or special assessment as defined in Section 4, must adhere to the quorum requirements of presence of Members or proxies as set out in Section 5.

Sections 4-8 of this Article remain intact, and in full force and effect as set out in the original Declaration.

Except for the amendments as set forth above, all other provisions of the Declaration of Covenants, Conditions and Restrictions as amended, shall remain in full force and effect.

30 *IN WITNESS WHEREOF*, the Declarant has caused this instrument to be executed this day of APRIL, 2009.

DECLARANT:

DEN-MARK CONSTRUCTION COMPANY, INC.
A North Carolina Corporation

BY: Mark E. Dancy
VICE, President

STATE OF NORTH CAROLINA
COUNTY OF Franklin

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that Mark E. Dawdy did personally appear before me this day and acknowledge that he is President of **Den-Mark Construction Company, Inc.**, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President.

WITNESS my hand and official stamp or seal this 30th day of April, 2009.

Jackie B. Rogers
NOTARY PUBLIC

My Commission Expires: 6-19-2013

