

DRAWN BY AND MAIL TO:
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FOR REGISTRATION JUDITH A GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
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STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)
)
 MASTER DECLARATION OF
 COVENANTS AND RESTRICTIONS
 FOR
 BRAWLEY FARMS

THIS DECLARATION is made on the date hereinafter set forth by **FIELDSTONE ASSOCIATES, LP**, a Pennsylvania limited partnership, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Mecklenburg County, North Carolina, more particularly described as follows:

All that certain piece, parcel or tract or land, located, lying and being in the County of Mecklenburg, State of North Carolina, as shown on that certain plat entitled **BRAWLEY FARMS**, recorded in the Mecklenburg County Registry in Map Book 32 at page 549 and 551; as well as additional land lying adjacent or near thereto; and

WHEREAS, Declarant intends to develop the property referenced above to be known as **BRAWLEY FARMS**, consisting of several phases which will be called Villages, each to be a planned community of attached or detached single-family residences, subject to the North Carolina Planned Community Act, North Carolina General Statutes Chapter 47F;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following restrictions and covenants, all of which are for the purpose of protecting the value, desirability and attractiveness of the property described above, and which shall run with the said property and be binding upon all persons having any right, title or interest therein, their heirs, successors and assigns, and shall inure to the benefit of each owner of any portion of the property, by sale or assignment, whether or not the instrument of conveyance specifically refers to this Declaration, or by exercise of a right of foreclosure of a deed of trust given by Declarant, or any owner, or a deed in lieu thereof. Any such person or entity shall be entitled to exercise all rights and powers conferred by this Declaration, the articles of incorporation, and the bylaws of the Brawley Farms Master Homeowners Association. Prior to the date the Master Association is formed, Declarant is empowered to perform the functions of the Master Association and its Board of Directors.

KNOW, FURTHER, that at such time as Declarant shall elect, these restrictions and covenants may be made to encumber all or part of the additional properties referenced above, by

the filing of supplemental declarations or some other such instrument referencing this Declaration and describing the additional properties.

ARTICLE I

Definitions

Unless otherwise defined herein, or unless the context otherwise requires, the terms defined in N.C.G.S. §47F-1-103 of the Planned Community Act when used in this Declaration or any amendment shall have the meaning provided therein. The following terms when used in this Declaration and Exhibits shall have the following meanings, unless the context clearly requires otherwise.

Section 1. **"Master Association"** shall mean and refer to Brawley Farms Homeowners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns. The Board of Directors of the Master Association (hereinafter the "Board") shall be formed pursuant to the Bylaws and in accordance with Article IV Section 3 herein.

Section 2. **"Village Association"** shall mean the unincorporated homeowners' association for each Village of Brawley Farms.

Section 3. **"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 Brawley Farms.

Section 4. **"Property"** or **"Properties"** shall mean and refer to that real property hereinabove described as "Brawley Farms" including Phase I, and all additional phases or Villages of Brawley Farms made subject hereto.

Section 5. **"General Common Area"** shall mean and refer to all real property (including any improvements thereon) for the common use and enjoyment of the Owners of any of the Properties.

Section 6. **"Exclusive Common Area"** shall mean and refer to all real property (including any improvements thereon) for the exclusive use and enjoyment of the Owners within any Village to the exclusion of Owners in all other Villages.

Section 7. **"Common Area"** shall mean both Exclusive and General Common Areas.

Section 8. **"Lot"** shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Properties (and any unit of ownership in a condominium as shown on a duly recorded Unit Ownership File) together with the improvements thereon, with the exception of road rights of way and the Common Areas.

Section 9. **"Member"** shall mean and refer to every person or party who is a member of any association of homeowners of any Village of Brawley Farms.

Section 10. "**Declarant**" shall mean and refer to *FIELDSTONE ASSOCIATES, LP*, or any person or entity who succeeds to the title of Declarant.

Section 11. "**Village**" shall refer to any phase of the Brawley Farms subdivision.

Section 12. "**Maintenance**" shall mean the care, repair, preservation and replacement of property, and shall include the payment of property taxes thereon and the purchase of casualty and public liability insurance with respect thereto.

ARTICLE II

Purposes of Association

Section 1. **General Common Areas.** The Master Association shall be primarily concerned with the Maintenance of all Brawley Farms' Common Areas. It shall do so with the intent of preserving the unifying features of the Properties by standardizing Maintenance throughout the development. The Master Association shall be responsible for the provision of all Maintenance services for both Exclusive and General Common Areas.

Section 2. **Determination of Dues and Assessments.** The costs of the Maintenance of the General Common Areas, and their improvements, as well as the costs of constructing and maintaining additional improvements intended directly to benefit all Villages, shall be borne equally, as much as possible, by all Owners of Brawley Farms. The costs for Maintenance of Exclusive Common Areas shall be apportioned among the Members of the Village which enjoy the exclusive benefit thereof.

Section 3. **Amendments to Restrictions and Bylaws.** The use of the Properties by the Members of each Village of Brawley Farms shall be restricted by separate covenants, all of which will be similar to all others. Each Village shall have a Village Association of Members with procedures through which they may alter or amend the restrictions of their association. It shall be a purpose of the Master Association to approve by a majority of the Board any amendment by the Members to the restrictive covenants of any Village of Brawley Farms. Such approval shall not be granted if the Master Association's Board determines in its discretion that the proposed change is detrimental to the overall unity of Brawley Farms or to the values of the Properties. Any changes to the restrictive covenants approved by the Board shall be recorded in the Mecklenburg County Registry and shall make specific reference to this provision.

ARTICLE III

Common Areas

Section 1. **Title to Property.** The Master Association shall retain exclusive ownership of all *General and Exclusive Common Areas shown on the recorded maps of each Village of Brawley Farms*. As title holder, the Master Association shall be charged with the following responsibilities:

(a) To formulate, publish and enforce rules and regulations regarding the use of the Common Areas; to approve those submitted by Village Associations; or to delegate the rule-making and enforcement powers to the Village Associations;

(b) To dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility, for such purposes and subject to such conditions as the Board may agree. No such dedication shall occur without the prior approval of the Village Association where said Common Area lies and without the prior approval of the Veterans Administration and the Department of Housing and Urban Development, or their successors, so long as required for VA or HUD-approved residential loans.

(c) To encumber or convey any part of any Common Area; provided, however, no such transfer or encumbrance shall be without the unanimous consent of the Board, and provided further, that no such dedication shall occur without the prior approval of the Village Association where said Common Area lies and without the prior approval of the Veterans Administration and the Department of Housing and Urban Development, or their successors, so long as required for VA or HUD-approved residential loans.

Section 2. **Annexation of Additional Properties.** Declarant, or the Master Association, may subject additional properties to the provisions of this document, by reference or otherwise. If necessary, no such subsection shall occur without the prior consent of the Veterans Administration and the Department of Housing and Urban Development, or their successors, so long as required for VA or HUD-approved residential loans.

ARTICLE IV

Representation in the Master Association

Section 1. **Membership.** Every Owner, including Declarant, of a Lot within Brawley Farms shall be a Member of their respective Village Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot within its Village. Individual Owners will not be members of the Master Association, but instead shall be represented on the Master Association as described in Section 2 of this Article. Until such time as Declarant has completed the development and sale of all Lots in all Villages of Brawley Farms, Declarant shall have the right to appoint a majority of the Board of Directors of the Master Association.

Section 2. **Representation of Village Association.** The Members of every Village of Brawley Farms shall be entitled to representation on the Master Association by and through their Village Association. Each Village shall have an equal number of representatives on the Board.

The representatives to the Board of Directors of the Master Association shall be appointed and serve in accordance with duly adopted procedures of each Village Association, as set forth in the individual restrictive covenants of that Village. There shall be a minimum of two (2) representatives for each Village serving at all times upon the Board.

Section 3. Formation of Board of Directors. The Board shall be formed no later than one (1) year after the conveyance of a Lot to any other person or entity from the Declarant. Until such time, Declarant shall act as the Board.

Section 4. Voting Rights of Board Members. Each Board member shall have one vote. The procedural requirements for voting by the Board, including, but not limited to, supra-majority, quorum, and proxies, shall be established in the Bylaws of the Master Association.

ARTICLE V

Dues and Assessments

Section 1. Charges by Master Association. Once the Master Association has determined the annual amount to be paid by each Member of each Village for Maintenance of the Common Areas pursuant to Article II, Section 2 hereof, it shall deliver to each Owner a statement for dues or assessments. Prior thereto, each Village Association shall have the opportunity to advise the Master Association of any additional charges or assessments which it wishes collected from its Members.

Section 2. Special Assessments. From time to time, and in accordance with the procedures set forth herein, the Board of the Master Association may elect to undertake additional improvements for the common benefit of all Owners. In that event, the Master Association shall charge and collect from each Owner a special assessment in the same manner as it collects Maintenance dues hereunder.

Section 3. Equity of Cost Sharing. The Master Association Board constantly shall be vigilant to avoid any actual or seeming inequity of the burden of the expenses imposed upon the Owners. It is not contemplated that the distribution of the Maintenance or other costs be equal among the Owners, unless equality is dictated by the nature of the expense. Where not so dictated, the Board shall use its discretion to determine the amount for each Owner which is fair under all circumstances.

Section 4. Initial Capital Contribution. Upon the first acquisition of record title to a Lot after the certificate of occupancy has been issued by Mecklenburg County, other than by the Declarant, a contribution shall be collected on behalf of the Master Association, which contribution shall be used for the initial working capital of Brawley Farms. This initial capital contribution shall be in an amount equal to half (½) the annual assessment per lot for that year, or as determined by the Board. This amount shall be in addition to, not in lieu of the annual assessment levied on the Lot, and shall not be considered an advance payment of any portion thereof. This contribution shall be non-refundable, and shall be deposited and used by the

Master Association for the payment of operating expenses or for the establishment of reserve accounts as the Master Association pursuant to the terms of this Declaration and the Bylaws determines.

Section 5. Dues and Assessments on Unimproved Lots. Upon the conveyance of any Lot from the Declarant to a developer or builder, the liability for dues and assessments shall begin; provided, however that each Lot shall be assessed at rate equal to twenty-five percent (25%) of the fully assessed dues until the first day of the first quarter following either the issuance of the certificate of occupancy, or the actual occupancy of the dwelling, whichever is earlier.

Section 6. Declarant's Obligation for Dues and Assessments. So long as Declarant retains ownership of any Lot in any Village of Brawley Farms, the Declarant may, at its sole discretion, annually elect to pay the Master Association either:

- a. an amount equal to the assessment it would be required to pay if it were a builder or developer, as described hereinabove; or
- b. an amount equal to the difference between the operating expenses, as determined by the Board of the Master Association, and the revenues from the dues and assessments paid by the Owners.

The Declarant shall notify the Board within thirty (30) days of the adoption of an the annual budget of its election.

Section 7. Method of Determining Dues and Assessments. Each Village Association shall propose a budget for its separate Village expenses anticipated for the coming fiscal year. Such budget shall include amounts necessary for the maintenance, improvements, taxes or insurance related to the Exclusive Common Areas. The Village Association shall advise the Master Association of its budget in a manner sufficiently timely to allow the preparation of the Master Association budget, copies of which shall be made available to all Owners. The Master Association shall add to said budgets received from the Village Associations the expenses for each Owner reflecting a relatively equal burden for the General Common Area expenses and an additional amount based upon the expenses for the Exclusive Common Areas which shall be the responsibility of the Owner residing in his specific Village.

Section 8. Amount of Annual Dues and Assessments. The maximum annual dues for each Lot in the Properties shall be payable annually, in advance, and the amount thereof shall be determined as follows:

- (a) Up to and including December 31, 2000 the maximum annual dues shall be \$240.00 per Lot per year for all Owners except Declarant.
- (b) The maximum annual dues of the calendar year beginning January 1, 2001, and for each calendar year thereafter, shall be established by the Master Association Board of Directors (herein "Board of Directors"). Thereafter, annual dues may not be increased, without a two-thirds (2/3) vote by the Board of Directors, and said increase shall not be more than five percent (5%) of the annual dues of the previous year.
- (c) In the event the Board of Directors seeks to raise the annual dues, exclusive of that portion attributable to maintenance of Exclusive Common Areas, greater than five

percent (5%), they must first obtain the affirmative vote of two-thirds (2/3) of the Members of each Village, by and through their representatives on the Board of Directors.

(d) When the Board of Directors fixes the annual dues for each calendar year, they shall, at the same time and in connection therewith prepare, or cause to be prepared, for each Village, and Owner an annual budget showing the services furnished by Master and Village Associations and the costs thereof per Lot.

Section 9. Special Assessments for Capital Improvements. In addition to the annual dues authorized above, each Village Association may levy, for additional collection by the Master Association, in any calendar year, a special assessment applicable to that year only, for all or part of the costs of any construction, reconstruction, repair or replacement of any capital improvement upon the Exclusive Common Area of that Village, including the necessary fixtures and personal property related thereto, or for the repair or reconstruction of residences as hereafter provided, however, any such assessment shall have the affirmative vote of two-thirds (2/3) of the Members, either cast in person or by proxy, at a Village Association meeting duly called for that purpose. All special assessments shall be fixed at a uniform rate for all Lots of the Village and may be collected on a monthly basis. The maximum amount that can be charged for a special assessment will be an amount equal to the annual assessment for the preceding year, unless otherwise agreed to by at least two-thirds (2/3) of the Members. All dues and assessments shall be collected through one management company chosen by the Master Association.

Section 10. Notice and Quorum for any Action Authorized under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3, above, shall be sent to all Village 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 present Members or proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called so as to be held after a notice of ten (10) days, but in no event more than twenty (20) after said originally called meeting, and the required quorum at the subsequent meeting shall be one-half (1/2) of required quorum at the preceding meeting.

Section 11. Uniform Rate of Assessment. Except for the costs of the maintenance of Exclusive Common Areas, both annual dues and special assessments shall be fixed at a uniform rate for all Lots and shall be collected on a basis approved by the Board of Directors of the Master Association.

Section 12. Date of Commencement and Payment History for Annual Dues. The annual dues and assessments provided for herein shall commence for each Lot as of the date it first appears on a recorded, final plat of a portion of each Village of Brawley Farms in the Mecklenburg County Registry. The first annual dues shall be prorated according to the number of days remaining in the calendar year. The Master Association, or its duly appointed management agent, upon demand, at any time, and for a reasonable charge, shall furnish a certificate in writing, setting forth whether there exist any delinquent dues or assessments on a specified Lot. A properly executed certificate as to the status of dues and assessments on any Lot is binding upon the Master Association as of the date of its issuance.

Section 13. Effect of Nonpayment of Dues and Assessments; Remedies of the Master Association. Any charge for dues or assessments not paid within thirty (30) days after the due date shall bear interest from said due date at a rate equal to that of interest then chargeable by law in the State of North Carolina on money judgments. The Master Association may bring an action at law against any Owner personally obligated to pay the same or foreclose the lien, pursuant to Chapter 47F of the North Carolina General Statutes, against the property in like manner as a deed of trust upon real property, and, in either event, interest, costs and reasonable attorneys' fees shall be added to the amount of such assessment. In the event of any such foreclosure, the Owner shall be required to pay a reasonable rental for the Lot after conclusion of the foreclosure action and the petitioner in such foreclosure shall be entitled to the appointment of a receiver to collect the same. No Owner may waive or otherwise escape liability for the dues and assessments provided for herein by non-use of the Common Areas or by abandonment of his Lot.

ARTICLE VI

General Provisions

Section 1. Amendments. Notwithstanding any other provision contained herein to the contrary, if any amendment is necessary in the judgment of the Declarant or the Board to cure any ambiguity or to correct or supplement any provisions herein that are defective, missing, or inconsistent with any other provisions hereof, or if an amendment is deemed necessary to conform this document to the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration, any secondary mortgage market lender, guarantor, insurer with respect to single family projects, or for any other legitimate purpose, then at any time, and from time to time, the Board or the Declarant may effect an appropriate amendment to this Declaration. Any such amendment duly recorded shall be binding upon all existing and future Owners of Brawley Farms to the same extent as if said amendment were in place at the time of the initial recording of this Declaration.


Section 2. Liability Insurance. The Master Association shall obtain and maintain a broad form public liability insurance policy covering of the Common Areas with the cost thereof being a part of the annual dues to be paid by the Owners.

Section 3. Severability. In the event any provision of this Declaration is determined by a Court of competent jurisdiction to be void or unenforceable, such determination shall in no manner diminish the validity of all other provisions hereof.

Section 4. Non Waiver. The failure by the Board, or any other person or entity, to enforce any provision hereof at any time shall not be deemed a waiver of the right to enforce said provision at any other time.

IN WITNESS WHEREOF, the undersigned *FIELDSTONE ASSOCIATES, LP* has caused this instrument to be executed as of the 11th day of January, 2000.


DECLARANT:
FIELDSTONE ASSOCIATES, LP

By:  (Seal)
Arthur J. Corsini, Jr.
General Partner

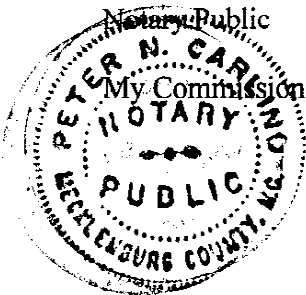
STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Peter N. Carlino, a Notary Public of the County and State aforesaid, certify that Arthur J. Corsini, Jr. personally came before me this day and acknowledged that he is a General Partner of FIELDSTONE ASSOCIATES, LP, a Pennsylvania limited partnership, and that by authority duly given and as the act of the partnership, the foregoing instrument was signed in its name by him as its General Partner.

Witness my hand and official seal, this the 11th day of January, 2000.

 (Seal)
Peter N. Carlino
Notary Public

My Commission Expires: December 9, 2002





JUDITH A. GIBSON
REGISTER OF DEEDS , MECKLENBURG COUNTY
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE NC 28202

Filed For Registration: 01/14/2000 04:14 PM
Book: RE 11031 Page: 556-565
Document No.: 2000005911
RESTR 10 PGS \$24.00

Recorder: ROBIN CANADY

State of North Carolina, County of Mecklenburg

The foregoing certificate of PETER N CARLINO Notary is certified to be correct. This 14TH of January 2000

JUDITH A. GIBSON, REGISTER OF DEEDS By: Robin Canady
Deputy/Assistant Register of Deeds



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