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DECLARATION  
 OF  
 COVENANTS, CONDITIONS AND RESTRICTIONS 99 FEB -9 PM 1:25  
 OF  
 BRIARPATCH PATIO HOMES  
 GWYNN ROUSE  
 REGISTER OF DEEDS  
 LENOIR COUNTY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into this 8th day of February, 1999, between CLAYTON DWIGHT HOWARD and wife, PATRICIA HOBBS HOWARD (hereinafter "Declarants"), and ALL PROSPECTIVE PURCHASERS OR OWNERS of the hereinafter described property.

WITNESSETH:

THAT WHEREAS, Declarants are the owners of certain property located in Kinston Township, Lenoir County, North Carolina, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference; and,

WHEREAS, Declarants desire to provide for the preservation of the values and amenities and the desirability and attractiveness of said property, and for the continued maintenance and operation of any common area; and,

WHEREAS, it is in the best interest of Declarants and to the benefit, interest and advantage of every party hereafter acquiring any of the described property that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the property be established; and,

WHEREAS, Declarants wish to subject portions of said property to the covenants, conditions and restrictions herein contained.

NOW, THEREFORE, in consideration of the premises, Declarants agree with all parties hereafter acquiring any of the property hereinafter described, that it shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to the use and occupancy thereof, which shall be construed as covenants running with the land and which shall be binding on all parties acquiring any right, title or interest in any of the properties and which shall inure to the benefit of each owner thereof.

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BK 1136PG0105

- 2 -

**ARTICLE I**

**PROPERTIES SUBJECT TO THIS DECLARATION**

The property which shall be subject to this Declaration is located in the County of Lenoir, State of North Carolina, and is more particularly described as being that property described on Exhibit "A" attached hereto and incorporated herein by reference.

**ARTICLE II**

**DEFINITIONS**

Section 1. "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 Properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "Declarants" shall mean and refer to Clayton Dwight Howard and wife, Patricia Hobbs Howard, their heirs and assigns.

Section 3. "Association" shall mean and refer to Briarpatch Homeowners' Association, Inc. its successors and assigns.

Section 4. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 5. "Lot" shall mean and refer to any tract of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area. In the event any Lot depicted on a recorded subdivision map is subdivided into two (2) smaller tracts to accommodate two (2) dwelling units, the resulting tracts shall each be considered separate Lots.

Section 6. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners.

BK1136PG0106

- 3 -

**ARTICLE III  
PROPERTY RIGHTS**

**Section 1. Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area which 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 charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and use of the recreational facilities by an Owner for any period during which any assessment against that Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

**ARTICLE IV  
MEMBERSHIP AND VOTING RIGHTS**

**Section 1.** Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

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

**Class A.** Class A members shall be all Owners, with the exception of Declarants. Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any 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 be cast with respect to any Lot.

**Class B.** The Class B member(s) shall be Declarants. Class B member(s) shall be entitled to three (3) votes for each Lot owned. The Class

BK 1136PG0107

-4-

B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on January 1, 2009.

#### ARTICLE V

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessments. 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 agrees to pay 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, costs, and reasonable attorney's 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, costs, and reasonable attorney's fees, shall also be the personal obligation of the person 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 his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and of the homes situated upon the Properties. Except as expressly stated herein, taxes, insurance and maintenance shall be expenses borne by the individual Owners and not the Association.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Seven Hundred Twenty and No/100 Dollars (\$720.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum assessment may be increased

BK 1136PG0108

- 5 -

each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% only by a vote of two-thirds (2/3) of each class of members who are voting, in person or by proxy, at a meeting duly called for this purpose.

(c) The Association may fix the annual assessment at an amount not in excess of the maximum, and shall fix the payment date of said assessment.

Section 4. Special Assessments.

(a) In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment 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 Properties or the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting, in person or by proxy, at a meeting duly called for this purpose.

(b) In the event that an Owner fails to comply with the provisions of Article VII hereof, the Association may perform such task or remedy such matter and levy the cost of such performance against the Owner as a special assessment.

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 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 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 previously scheduled meeting.

BK1136PG0109

-6-

**Section 6. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, at the discretion of the Association.

**Section 7. Due Dates for Annual Assessments.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

**Section 8. 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 twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Lot.

**Section 9. Priority Status of Lien.** The lien of any 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.

**Section 10. Exemption for Class B Member(s) and Builders.** Any Owner who takes title to an undeveloped Lot for the sole purpose of constructing a residence for sale

BK1136PG0110

-7-

shall be exempt from any obligation for annual or special assessments until such time as construction is completed and a certificate of occupancy issued for such Lot by the appropriate governmental authority. Class B member(s) shall be exempt from any obligation for annual or special assessments.

**ARTICLE VI**

**ARCHITECTURAL CONTROL**

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alternation therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Association. In the event that the Association, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Declarants, or their successors and assigns, may erect buildings upon the Lots without such approval so long as such dwellings conform in size, design and color with other dwellings existing in the subdivision.

**ARTICLE VII**

**EXTERIOR MAINTENANCE AND GROUNDS**

In addition to maintenance upon the Common Area, the Association shall be responsible for providing exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downpours, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of licensees or invitees of the Owner of the Lot needing such

BK1136PG0111

- 8 -

maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which said Lot is subject.

The care of the grounds of each Lot shall be the responsibility of the Association. Provided, however, the Association may delegate that responsibility to the individual Lot owner under such terms as they shall mutually agree.

#### ARTICLE VIII

#### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for the property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire and Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it and, if the other Owner thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful acts or omissions causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

BK 1136PG0112

- 9 -

**ARTICLE IX**

**INSURANCE OBLIGATION OF OWNERS**

Each Owner shall obtain fire, extended coverage and liability insurance to the full replacement value of all buildings constructed on such Owner's Lot. Each Owner shall submit evidence of such insurance coverage to the Association upon request. In the event any Owner fails or refuses to maintain such coverage, the Association may obtain coverage and charge it to such Owner as a special assessment against such Owner.

**ARTICLE X**

**EASEMENTS**

**Section 1. Utility.** Easements for installation and maintenance of utilities and drainage facilities may be reserved as shown on a recorded plat of the properties. Within any such easement, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

**Section 2. Abutments.** Every portion of a home contributing to the support of an abutting home shall be burdened with an easement of support for the benefit of such abutting home. Further, all attachments to the exterior walls of a home which are a part thereof, but which protrude beyond the boundaries of the Lot and which were constructed in conformity with the plans and specifications, shall be deemed to be included within said boundaries, and there is hereby reserved an easement to permit the construction of and continued existence of any such protruding attachments.

**Section 3. Roads.** Each owner of any Lot within the properties, as an appurtenance to such Lot, shall have and is hereby conveyed a perpetual, non-exclusive right-of-way and easement for the purposes of ingress, egress and regress to and from said Lot over, through and across the streets and roads shown on the recorded plat.

**Section 4. Declarant's Easements.** The owner of each Lot, by acceptance of a deed thereto, grants to Declarants, their successors and assigns, perpetual non-exclusive access and utility easement located along the streets and roads, utility lines, waterlines and sewage lines presently existing or shown on the aforesaid plat. Such easements are non-

BK 1136PG0113

- 10 -

exclusive and are for the purpose of providing utilities, water, sewage service and access to the properties. Without limiting the generality of the foregoing, Declarant reserves an easement over all the streets and road depicted on the foregoing plat and in all utility lines located within the area described on said plat for the purposes of ingress, egress, access and utilities to all the properties.

**Section 5. Association Easement.** An easement is hereby granted to the Association, its employees and designees to make any reasonable entry onto any Lot upon not less than twenty-four (24) hours notice to the Owner thereof for the purpose of performing any maintenance, repair, alteration or inspection permitted or required herein.

**Section 6. Encroachments.** In the event that any home or other improvement located on a Lot encroaches onto any other Lot, an easement appurtenant to the encroaching Lot hereby is granted over the Lot encroached upon for the natural duration of the encroachment. The intent and purpose of this paragraph is to prevent hardship and expense incurred in removing any fixture or permanent improvement mistakenly constructed by one owner on property belonging to another and which does not have a material adverse effect thereon, and this paragraph is intended to apply to such items as gutters, downspouts, eaves, joint driveways, leaning walls or walls offset a small distance. Nothing herein shall grant any easement for any encroachment unless the encroachment either (1) exists as of the date of the recordation of this Declaration or is part of the original construction or (2) the encroachment thereafter is constructed in good faith and according to plans and specifications approved by the Architectural Committee.

**Section 7. Walking Easement.** Each Owner shall have an easement over and upon the walking easement depicted upon the recorded plat. Use shall be limited to pedestrian traffic only and shall be subject to such rules and regulations as determined by the Association.

#### ARTICLE XI

#### GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, 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

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-11-

Declaration. Failure by the Association or by 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. 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 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the properties, 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 signed by not less than seventy-five percent (75%) of the Lot Owners, and must be recorded.

Section 4. Annexation. Additional residential properties and Common Areas adjacent to the Properties described herein or adjacent to property having been previously annexed hereto may be annexed to the Properties and brought within the purview of this Declaration by the Declarant at any time.

## ARTICLE XII

### USE RESTRICTIONS

Section 1. Rules and Regulations. The Association shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of each Lot and the Common Area. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties shall be used except for residential purposes and for purposes incidental or accessory thereto. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may or may become a nuisance or annoyance to the neighborhood.

BK 1136PG0115

- 12 -

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes.

Section 5. Temporary Structures. Except as set forth, no trailer, tent, shack, barn or other out building shall be erected or placed on any Lot.

Section 6. Fences and Signs. No fence or fencing-type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the community, including any lot, without the prior written consent of the Association or its designated Architectural Control Committee. The Association may issue guidelines detailing acceptable fence styles or specifications. No signs except a "For Sale" sign of standard size, shall be erected or allowed to remain on any lot except with the written consent of the Association.

Section 7. Accessory Buildings and Other Outdoor Structures. No accessory building of any nature whatsoever shall be placed on any lot without the prior written consent of the Association or its designated Architectural Control Committee. All accessory buildings must conform to the same architectural style as the residence located on the same lot. No outside clotheslines, tree houses, playhouses, motorcycles, supplies, tractors, boats, trucks (other than one pick-up truck rated one-half ton or less), trailers, vans (other than one noncommercial van owned and operated on a regular daily basis by the Owner), campers or other equipment or vehicles except for operative licensed automobiles, shall be regularly parked or stored in any area on a Lot except inside an enclosed garage, or behind screening approved by the Association or its designated Architectural Control Committee. Garbage and refuse containers, transformers, air conditioning and other mechanical equipment, including solar and other alternative energy devices shall either be concealed behind screening or integrated into the building design so as to be inconspicuous. All outdoor equipment and accessories on a Lot, such as play structures, benches, sculptures, etc., shall be concealed by approved screening or approved in writing by the Association or its designated Architectural Control Committee as compatible and harmonious with the surroundings.

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-13-

**Section 8. Appearance.** All fireplace chimneys shall be masonry construction. Communication towers are expressly prohibited. Stick-built homes are expressly required; that is, no prefabricated, modular, manufactured or mobile homes are permitted on any Lot. All primary fuel storage tanks must be placed underground. No inoperable motor vehicles may be parked on any Lot if visible from any road within the subdivision. All mailboxes shall be of the same type and shall be provided to the first permanent Owner by the builder of the dwelling unit.

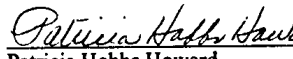
All driveways and walks must be paved with concrete, asphalt or brick. All lots on which a dwelling unit is approved and built shall be landscaped in accordance with specifications of the Association or its designated Architectural Control Committee. Landscaping must be finished upon completion of the dwelling unit for occupancy. Garage doors which open toward the front of a building shall not be allowed to remain in an open position for any extended period of time.

**Section 9. Parking** No parking shall be permitted on any street or road in the subdivision. Automobiles and other vehicles shall be parked only upon paved driveway appurtenant to each Lot.

**Section 10. Mailboxes.** The location and design of all mailboxes, paper boxes, or other receptacles of any kind for use in the delivery of mail or newspapers or magazines or similar material must be approved in writing by the Association or its designated Architectural Control Committee.

IN WITNESS WHEREOF, the undersigned have set their hands and seals to this Declaration as of the day and year first above written.

 (SEAL)  
Clayton/Dwight Howard

 (SEAL)  
Patricia Hobbs Howard

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-14-

NORTH CAROLINA

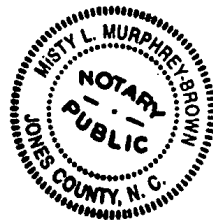
LENOIR COUNTY

I, Misty L. Murphrey-Brown, a Notary Public in and for said State and County, do hereby certify that CLAYTON DWIGHT HOWARD and wife, PATRICIA HOBBS HOWARD personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and Notarial Seal, this the 9<sup>th</sup> day of February, 1999.

Misty L. Murphrey-Brown  
Notary Public

My commission expires: 2/13/2000



WEM\YO\BRIARPAT.RC

NORTH CAROLINA: Lenoir County

The foregoing certificates of Misty L. Murphrey-Brown Jones Co.  
are certified to be correct. 1:25  
Filed for registration at 1:25 o'clock 9 M this 9 day of February, 1999.  
Bobby Cannon, Not

Kinston Printing Co.

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**EXHIBIT "A"**

**ATTACHMENT TO DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF BRIARPATCH PATIO HOMES**

**BEING all of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 32, 33, 34, 35, 36, 37 and 38 as depicted on that certain plat entitled "Map for Recordation 'Briarpatch' 'Phase 1' " prepared by Meridian Design, P.A. and recorded in Plat Cabinet 6, Page 220, Lenoir County Registry, reference to which is hereby made for a complete description.**