STATE OF NORTH CAROLINA

COUNTY OF CHEROKEE

DECLARATION OF RESTRICTIONS FOR TURKEY CREEK ACRES

The undersigned owners of the below property, by these presents hereby make, declare and impose upon the referenced parts of the described property the following conditions, restrictions and limitations which shall be and constitute covenants running with the land and shall be binding upon it, and each property or any part, parcel or portion thereof, described as follows:

All that certain tract or parcel of land containing 32.34 acres, more or less, in Notla Township, Cherokee County, North Carolina, and being described according to a plat of survey by Adams Surveying, Lloyd B. Adams, P.L.S. L-2708, dated March 18, 2005, revision #3 June 2, 2005, entitled "Beavers Property", being the same lands described in Deed Book 1168, Page 497, Cherokee County Registry, and from said plat of survey as follows:

BEGINNING at an iron rod set, said iron rod set being the southernmost point of the tract and a corner common to lands of the Grantor and a point in the boundary common to lands now or formerly owned by Clonts (Deed Book 998, Page 811), thence running with the boundary common to lands now or formerly owned by Clonts (Deed Book 998, Page 811) the following two (2) courses and distances: N 37-02 W 1385.72 feet to a steel fence post found, and N 37-02 W 59.37 feet to the center of Notlley River, thence leaving the boundary common to lands now or formerly owned by Clonts (Deed Book 998, Page 811) and running with the center of Nottley River the following seven (7) courses and distances: N 37-49 E 230.49 feet, N 29-01 E 254.81 feet, N 32-30 E 164.87 feet, N 31-18 E 275.13 feet, N 41-22 E 93.77 feet, N 48-58 E 262.30 feet, and N 50-30 E 88.90 feet, thence leaving the center of Nottley River and running with a fence line S 44-24 E 429.59 feet to the center of an old road, thence leaving the fence line and running with the center of an old road the following four (4) courses and distances: S 20-13 W 31.44 feet, S 04-10 E 32.05 feet to an angle iron found, S 22-32 E 47.43 feet, and S 28-36 E 93.31 feet, thence leaving the center of an old road and running with the boundary common to Raper Subdivision Lot 10 and a fence line the following six (6) courses and distances: S 54-59 W 74.86 feet to an iron rod found, S 54-59 W 308.94 feet to an iron rod found, S 51-54 W 133.31 feet, S 27-25 E 108.94 feet, S 25-58 E 121.97 feet, and S 27-04 E 197.95 feet to a corner common to Lots 10 and 7 of Raper Subdivision, thence leaving the boundary common to Lot 10 of Raper Subdivision and running with the boundary common to Lot 7 of Raper Subdivision and continuing with the fence line the following six (6) courses and distances: S 27-04 E 38.69 feet, S 31-48 E 77.87 feet, S 34-24 E 70.66 feet, S 21-25 E 44.49 feet, S 26-34 E 121.17 feet, and S 18 52 E 90.60 feet to a large stone witnessed by a steel fence post, said large stone witnessed by a steel fence post being a corner common to Lot 7 and Lot 5 of Raper Subdivision, thence leaving the boundary common to Lot 7 of Raper Subdivision and the fence line and running with the boundary common to Lot 5 of Raper Subdivision S 18-52 E 201.21 feet to a corner common to Lot 5 and Lot 3 of Raper Subdivision, thence leaving the boundary common to Lot 5 of Raper Subdivision and running with the boundary common to Lot 3 of Raper Subdivision S 18-52 E 173.02 feet to an iron rod set, said iron rod being a corner common to lands of the Grantor, thence running with the boundary common to lands of the Grantor the following two (2) courses and distances: S 52-58 W 306.34 feet to an iron rod set in the center of a right of way and easement having a width of forty (40') feet, and S 52-58 W 198.59 feet to the point of BEGINNING, containing 32.34 acres, more or less.

NOW, THEREFORE, the Owners hereby declare that all of the above-described property is hereby subjected to this Declaration and shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration, and to the covenants,

restrictions, and easements (sometimes referred to as the "covenants and restrictions") hereinafter set forth. Every grantee of any interest in any property now or hereafter made subject to the Declaration, by acceptance of a Deed or other conveyance, whether or not such a deed or other conveyance shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take subject to this Declaration and to the terms and conditions hereof and shall be deemed to have assented to said terms and conditions.

1. Lot Size. After the conveyance of a lot or tract by the Developer, no lot or tract shall be subdivided.

2. Temporary Structures. No structure of a temporary character, such as a camper, lean-to, tent, shack, garage, basement, barn, garage or other outbuilding will be used on any lot at any time as a residence either temporarily or permanently. Exception: Motor homes will be allowed as a temporary residence while a permanent residence is under construction. Motor homes must be stored in a garage or building if it remains on the lot after the permanent residence is completed.

3. Dwelling Type. Only site built homes will be allowed on the lot. No mobile homes, manufactured homes, modulars, doublewides, prefabs, or similar types of any kind shall be placed permanently or temporarily on any lot or subdivision road. All homes must be constructed on-site.

4. Land Use. Land shall be used for single-family residential purposes only. Only one residence shall be erected on a lot. However, the owner of such lot may erect an attached garage or on outbuilding so long as the structure is fashioned in appearance and likeness to the design of the main residence. All garages and outbuildings will be enclosed completely. No commercial activity or business of any type shall be allowed on any lot.

5. Exterior Finish. The exterior finish of all homes must be of a permanent type and be constructed of either stucco, stone, brick, wood, wood-like materials, or vinyl siding. Wood and wood-like materials must be painted in earth tones. Roofing materials must be either slate, cedar shakes, architectural shingles or factory painted metal. No white, light or bright colored roofing materials shall be allowed. All roofs shall have a minimum pitch of 6/12 excluding porches.

6. Construction. All construction shall comply with all local and state codes and be of reasonable architectural design. The exterior of all structures shall be completed within twelve (12) months from the date construction begins. Any damage to roads, adjacent properties, or other common property shall be the responsibility of the homeowner. The construction site must be kept clean of debris and waste must be disposed of properly. to prevent mud and other debris from being tracked onto the streets, a construction drive must be installed prior to beginning construction on the foundation and maintained until the permanent drive is completed. All permanent drives must be hard surfaced or graveled from the garage to the road before the house is occupied. Homeowners shall be responsible for the acts of their employees, sub-contractors, suppliers, and other persons or parties involved in construction or alteration of a home site. In this regard, homeowners shall be responsible for ensuring:

a. That the construction site is kept clean and free of debris and waste materials.
b. That stockpiles of unused materials are kept in a neat and orderly fashion.
c. That a freestanding, enclosed toilet (Port-A-Pot) be installed on the lot prior to beginning construction of the primary residence and removed as soon as the residence is completed.
d. That no lot clearing debris or waste material is disposed of by burying on any lot.

7. Dwelling Size. Each residence will be constructed with at least 1,200 square feet of heated living space, excluding carport, garage, or basement. If the house has more than one (1) story, the first floor must contain at least 1,000 square feet of heated living space, with the total house containing no less than 1,200 square feet, excluding carport, garage, or basement.

8. Setbacks. No building or any part of a building shall be erected on any lot closer than thirty (30) feet to the road right-of-way or closer than ten (10) feet to either side of the lot line. When

two (2) or more lots are acquired as a single building site, the term "lot line" shall refer to the lot lines that border adjoining property owners. All structures shall be set back from property lines and roads as set forth by any local, county, or state ordinances or statutes in effect at the time of construction.

9. **Landscaping.** Outside landscaping must be completed within twelve (12) months from the start thereof. Outside landscaping means that all areas are covered with natural growth, grass, sod, shrubs, trees, and /or mulch. No bare dirt shall be exposed except during construction.

10. **Animals.** No animals, livestock, or poultry shall be raised, bred or maintained on any subdivision lot. Dogs, cats, or other ordinary household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes. Pets must be kept on a leash while outside and shall not be permitted to annoy neighbors or run loose through the subdivision. No vicious or aggressive animals shall be permitted and any animal exhibiting such behavior shall be removed from the subdivision.

11. **Signs.** No commercial signs of any type shall be allowed on any lot or subdivision road. Exceptions: Lot owners, real estate brokers, or the Developer may place one sign no larger than 24" x 24" on any lot to advertise its sale or rental upon approval of the Developer.

12. **Maintenance.** No lot shall be used in whole or in part for any illegal activity. No lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, or the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye. No substance, thing, or material shall be kept on any lot that will emit foul or obnoxious odors or that shall cause noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding property. No trash, garbage, rubbish, or other waste shall be kept upon any lot except in closed sanitary containers.

13. **Vehicles.** No wrecked, untagged motor vehicles, utility trailers, junk, or household appliances shall be kept, stored, or repaired in plain view on any lot, except that such may be kept, stored, or repaired in an enclosed building so as not to be subjected to view by lot owners or from subdivision roads. No motorcycles, four wheelers, dirt bikes, or other vehicles with external engines shall be ridden along subdivision streets except as may be necessary to enter or exit the subdivision. All such vehicles in use on any lot shall be sufficiently muffled so as to not disturb the neighbors.

14. **Easements.** There shall be reserved easements along the subdivision roads and lot lines for the installation and maintenance of municipal and public utility facilities and for such other purposes incidental to the development of the property. All claims for damages, if any, arising out of the construction, maintenance and repair of utilities or on account of temporary or other inconveniences caused thereby against the Developer or any of its agents or servants are hereby waived by lot owners. All lots are subject to easements for installation and maintenance of utilities. All roadway easements shown on the subdivision plat shall remain for use by the subdivision owners, and the rights to the roadway are reserved by the Developer. All lots are conveyed to the centerline of the roads notwithstanding any conveyance, or same used in any deed or conveyance. No fee simple title will be conveyed to lot owners to the rights-of-way for roads as shown on the subdivision plat. Developer, at its sole discretion, shall have the right to convey the road rights-of-way to Cherokee County, a political subdivision of the State of North Carolina, or to a homeowners association. Developer reserves unto itself, its successors or assigns in interest a non exclusive, perpetual right of way and easement over and across all subdivision access roads for the purposes of ingress, egress, regress, and utilities.

15. **Roads.** The Developer shall maintain the roads in the subdivision until fifty percent (50%) of the lots have been sold. After this time the Developer may continue to maintain the roads, or the Developer may convey the road rights-of-way to Cherokee County, or the lot owners may form an association to maintain said roads, excepting any damage done to the roads by a property owner during the construction of his/her home. Said property owner shall be responsible for any such damage.

16. **Fences.** No barb wire or chain link fence shall be allowed. Fences made of wood, brick, or stone are permitted as long as they are done in earth tones and compliment the main residence.

17. **Underground Utilities.** All fuel storage tanks, outdoor pools, utility lines (including electrical, telephone, gas, water and cable television) or any wire or pipe shall be installed and maintained underground.

18. **Driveways.** Driveways that need culverts must have a minimum size of 12" with a maximum size of 15".

19. **Annual Assessments.** No later than December 1 of each calendar year the Developer or the homeowners association, as assignee of any and all rights and responsibilities of Developer, shall establish the annual assessments based upon the following considerations: (1) the cash reserve, if any, on account with a lending institution as created for the benefit of the lots of the subdivision, (2) the expenditures devoted to the benefit of the subdivision lots during the immediately preceding twelve (12) month period; and (3) the projected annual rate of inflation for the forthcoming year foreseeable for the county in which the land subject hereto is situate as determined by review of information available to any person, firm, or corporation by any governmental agency, lending institution or private enterprise which provides such statistical data upon request. The current assessment for the upkeep of the roads is One Hundred Eighty and No/100 Dollars ($180.00) per year.

Each lot owner shall further pay a water fee as established by the operator of the water system upon connection to the community water system provided that such lot owner has rights to said community water system. The current fee upon hookup to the water system is One Thousand Five Hundred and No/100 Dollars ($1,500.00). The current assessment for water is One Hundred Eighty and No/100 Dollars ($180.00) per year, payable in advance for water service, and by such payment the lot owner shall be entitled to use at least 4,000 gallons of water per month. He or she shall pay the sum of $2.50 per thousand above the 4,000 gallon monthly limit which shall be payable as billed.

Developer, or the homeowners association as assignee of the Developer as herein provided shall give written notice to each owner of each lot of the annual assessment fixed against each respective lot for such immediately succeeding calendar year.

The annual assessments shall not be used to pay for the following expenses.

a. Casualty insurance of individual owners for their lots and improvements thereon or for their possessions within any improvement thereon, any liability insurance of such owner insuring themselves and their families individually, which insurance coverage shall be the sole responsibility of the owners.

b. Telephone, gas, sewer, cable television, or electrical utility charges for each lot which expense shall be the sole responsibility of each respective lot owner; and

c. Ad valorem taxes for any lot, improvement thereon, or personal property owned by owner of any lot.

Developer reserves the right to convey the existing wells to the homeowners association and will not be responsible for the operation and/or maintenance of said wells after such conveyance.

20. **Special Assessments.** In addition to annual assessments, the Developer, or the homeowners association, as assignee of the Developer as herein provided, may levy, in any calendar year, special assessments for the purpose of supplementing the annual assessments if the same are inadequate to pay expenses and for the purpose of defraying in whole or in part the cost of any construction or reconstruction, repair or replacement of improvements on any lot or appurtenances thereto; provided, however, that any such special assessment by the homeowners association shall have the assent of the majority of the votes represented, in person or proxy, at a meeting at which a quorum is present, duly called for the express purpose of approving such expenditure(s); written

notice of which shall be sent to all lot owners not less than ten (10) days nor more than sixty (60) days in advance of such meeting, which notice shall set forth the purpose of the meeting. Any special assessments shall be fixed against the specific lot or lots for which an expenditure is appropriated. The period of the assessment and manner of payment shall be determined by the Board of Directors of the homeowners association.

21. <u>Date of Commencement of Annual Assessments - Due Dates.</u> Assessments are due in annual installments on or before January lst of each calendar year, or in such other reasonable manner as the Developer, or the Board of Directors of the homeowners association as designee of the Developer, by and through its Treasurer shall designate.

The annual assessment(s) provided for in section shall, as to each lot, commence upon either the execution and delivery of or the recordation of a deed of conveyance, whichever in time first occurs ("commencement date").

The first annual installment for each such lot shall be an amount (rounding the sum to the nearest whole dollar) equal to the annual payment divided by the number of days in the current annual payment period and multiplied by the number of days then remaining in such annual payment period.

The Developer, or the homeowners association as assignee of Developer, shall upon demand at any time, furnish any lot owner liable for any such assessment a certificate in writing setting forth whether the same has been paid. A reasonable charge may be made for the issuance of any certificate. Such certificate shall be conclusive evidence of any payment of any assessment therein stated to have been paid.

22. <u>Effect of Non-payment of Assessments, the Personal Obligation of the Owner; the Lien; Remedies of Developer and /or Its Assignees, including the Homeowners Association.</u> If an assessment is not paid on the date when due as hereinabove provided, then such assessment, together with any interest thereon and any cost of collection, including attorney fees as hereinafter provided, shall be a charge and continuing lien on the respective lot to which it relates and shall bind such property in the hands of the owner, his heirs, legal representatives, successors, and assigns for payment thereof. The personal obligation of the then owner to pay such assessment and related costs shall remain his personal obligation and if his successor in title assumes this personal obligation, such prior owner shall nevertheless remain as fully obligated as before to pay the Developer of its assignee any and all amounts which said lot owner was obligated as before to pay immediately preceding the transfer of title thereto; and such prior lot owner and his successor in title who may assume such liability shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such lot owner and his successor in title creating the relationship of principle and surety as between themselves other than one by virtue of which such prior lot owner and his successor in title would be jointly and severally liable to make any lot assessment payment.

Any such assessment not paid by the 15th day of March as herein set forth within which such assessment is due, shall bear interest at the rate of eight (8%) percent per annum from such date (delinquency date) and shall be payable in addition to the basic assessment amount then due and payable.

The Developer or its assigns, including the homeowners association, may institute legal action against any owner personally obligated to pay any assessment or foreclose its lien against any lot to which it relates or pursue either such course at the same time or successively. In such event the Developer or its assigns, including the homeowners association, shall be entitled to recover attorney's fees actually incurred but not exceeding fifteen (15%) percent of the amount of the delinquent assessment and any and all other costs of collection, including, but not limited to, court costs.

By the acceptance by owner of a deed or other conveyance for a lot in the subdivision, vests the Developer or its assigns including the homeowners association as herein provided, the right and power to institute all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in appropriate proceeding at law or in equity.

The Developer and its assigns, including the homeowners association as herein provided, shall have the power to bid on any lot at any foreclosure sale and to require, hold, lease, mortgage, and convey any lot purchased in connection therewith.

No owner shall be relieved from liability from any assessment provided for herein by abandonment of his lot or lots.

23. Subordination of the Charges and Liens to Deeds of Trust Secured by Promissory Notes. The lien and permanent charge for the annual and any special assessment together with interest thereon and any costs of collection, authorized herein with respect to any lot is hereby made subordinate to the lien of any deed of trust placed on any lot if, but only it, all assessments with respect to any such lot having a due date on or prior to the date of such deed of trust if filed for record have been paid in full. The lien and permanent. charge hereby subordinated is only such lien and charge as relates to assessments authorized hereunder having a due date subsequent to the date such lien of deed of trust is filed for record prior to the satisfaction, cancellation or foreclosure of such lien of deed of trust or sale or transfer of any mortgaged lot pursuant to any proceeding in lieu of foreclosure or the sale under power contained in any deed of trust.

a. Such subordination procedure: is merely a subordination and not to relieve any lot owner of the mortgaged property of his personal obligation to pay all assessments coming due at a time when he is a lot owner; shall not relieve such property from the lien and permanent charge provided for herein (except as to the extent the subordinated lien and permanent charge is extinguished as a result of such subordination of against the beneficiary of the lien of a deed of trust or his assignees or transferee by foreclosure or by sale or transfer in any proceeding in lieu of foreclosure or by power of sale); and no sale or transfer for such property to the beneficiary of the lien of any deed of trust or to any other person pursuant to a foreclosure sale, or pursuant to any other proceeding in lieu of foreclosure, or pursuant to a sale under power, shall relieve any existing or previous owner of such lot of any personal obligation, or relieve any subsequent lot owner from liability for any assessment coming due after such sale or transfer of title to a subdivision lot.

b. Notwithstanding: the foregoing provision, the Developer or its assigns, including the Association as herein provided may, in writing at any time, whether before or after any lien of deed of trust is placed upon a subdivision lot, waive, relinquish or quitclaim in whole or in part the right of Developer or its assigns, including the homeowners association as herein provided, to any assessment provided for hereunder with respect to such lot coming due during the period while such property is or may be held by any beneficiary of the lien of any deed of trust pursuant to the said sale or transfer.

24. Enforcement. These covenants, Restrictions, Easements, Reservations, Terms, and Conditions shall run with the land and shall be binding on all parties and all persons claiming under them. Enforcement of these Covenants, Restrictions, Easements, Reservations, Terms, and Conditions may be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. Either the undersigned Developer, or any Successor in title to the undersigned Developer, or any owner of any property affected hereby may institute such proceedings.

25. Amendment. These covenants, Restrictions, Easements, Reservations, Terms and Conditions may be altered, amended or repealed at any time by filing in the office of the Register of Deeds of Cherokee County, North Carolina, an instrument setting forth such annulment, amendment or modification, executed by either the Developer or its assigns and/or successors in interest any time during which it owns of record lots in the Development subject to this Declaration or Developer is an owner of adjacent properties which it intends or had intention to subdivide or, in the alternative, by the owner or owners of record as set forth on the records in the office of the Register of Deeds of Cherokee County, North Carolina at any time of the filing of such instruments by consent in writing of seventy-five (75%) percent of the owners of lots subject to these restrictions.

26. **Invalidation.** Invalidation of any one of the provisions of this instrument by a judgment or Order of a court of competent jurisdiction shall in no wise affect the validity of any of the other provisions which shall remain in full force and effect.

27. **Developer's Obligation(s).** In this instrument, certain easements and reservations of rights have been made in favor of the undersigned Developer. It is not the intention of the undersigned Developer in making these reservations and easements to create any positive obligations on the undersigned Developer insofar as building or maintaining roads, water systems, sewage systems, furnishing garbage disposal, beginning and prosecuting a lawsuit to enforce the provisions of this instrument, or of removing people, animals, plants, or things that become offensive and violate this instrument. Where a positive obligation is not specifically set forth herein, none shall be interpreted as existing as it relates to the Developer.

28. **Time Limits.** These covenants, restrictions, easements, reservations, terms and conditions shall be recorded in the Cherokee County Registry and shall run with said land and shall be binding upon all persons claiming under them for a period of twenty-five (25) years from the date of recording after which time said covenants shall be automatically extended for a successive period of ten (10) years unless an instrument signed by a majority of the then owners of record of the land agree to change said covenants, restrictions, easements, reservations, terms and conditions at any time deemed necessary.

IN WITNESS WHEREOF, the undersigned have caused this Declaration of Restrictions to be signed this ______ day of ________________, 2007.

K & S Land, LLC, a Georgia Limited Liability Company

By:______________________________

STATE OF NORTH CAROLINA

COUNTY OF CHEROKEE

I, ______________________________, a Notary Public of the County and State aforesaid, certify that ______________________________, personally known to me, Member/Manager of K & S LAND, LLC, a Georgia Limited Liability Company, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this ______ day of , 2007.

My Commission Expires: ______________________________
Notary Public

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