

Drawn by and mail to:
Douglas P. MacMillan, Attorney
Burris, MacMillan, Pearce & Mayer, LLP
8857 Fairview Road, Suite 100
Charlotte, NC 28210

NORTH CAROLINA

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
THERRELL FARMS**

UNION COUNTY

THIS DECLARATION, made on this ____ day of _____, 2003, by **THERRELL FARMS, LLC**, a North Carolina limited liability company, hereinafter referred to as the "Declarant".

WITNESSETH:

THAT WHEREAS, the Declarant is the owner of certain Real Estate lying within Union County, North Carolina, more particularly described as follows:

BEING all that real property shown and described on that map of **THERRELL FARMS** recorded in Plat Cabinet _____, File No. _____, in the office of the Register of Deeds for Union County, North Carolina, including Lots _____ through _____, inclusive, and all areas designated on said map as Common Elements and Limited Common Elements;

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate described above, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Planned Community. These easements, covenants, restrictions, and conditions shall run with the Real Estate and shall be binding on all parties having or acquiring any right, title or interest in the Real Estate or any part thereof, and shall inure to the benefit of each Lot Owner thereof.

1. **DEFINITIONS.** Any terms used herein which are defined in N.C.G.S. § 47F-1-103 shall have the meanings ascribed to them in said statute where the sense requires. In addition, the following terms shall have the following definitions throughout this Declaration:

1.1. "Act" shall mean the North Carolina Planned Community Act as contained in Chapter 47F of the North Carolina General Statutes.

1.2. **"Additional Properties"** shall mean all or any portion of such additional Real Estate as may be annexed to this Declaration in accordance with its terms.

1.3. **"Amenities"** means the facilities, if any, constructed, erected or installed on the Common Elements.

1.4. **"Association"** shall mean to Therrell Farms Homeowners' Association, Inc., its successors and assigns.

1.5. **"Building"** means a residential structure, constructed or erected on any Lot within the Planned Community.

1.6. **"Common Elements"** shall mean all Real Estate owned by the Association and the easements granted thereto for the common use and enjoyment of the Lot Owners. The Common Elements to be owned by the Association shall be described in deeds to the Association and designated as such on each recorded map of the Real Estate.

1.7. **"Common Expenses"** means:

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses of administration, lighting, landscaping, maintenance, repair or replacement of the Common Elements and for any improvements located on easements reserved in favor of the Association;
- (c) Expenses declared to be Common Expenses by the provisions of this Declaration or the ByLaws;
- (d) Expenses agreed by the Members to be Common Expenses of the Association;
- (e) Hazard, liability or such other insurance premiums as the Declaration or the ByLaws may require the Association to purchase;
- (f) Ad valorem taxes and public assessment charges lawfully levied against Common Elements; and

(g) Accounting, legal and other professional services, including professional management, retained by the Association; and

(h) Unpaid assessments resulting from the purchase of a Lot at a foreclosure sale (such assessment shall be collectible from all members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).

1.8. "**Common Expense Liability**" means the liability for Common Expenses allocated to each Lot as permitted by the Act, the Declaration or otherwise by law.

1.9. "**Declarant**" shall mean and refer to **THERRELL FARMS, LLC**, a North Carolina corporation, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot plus the Declarant's Special Declarant rights from the Declarant for the purpose of development.

1.10. "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions

1.11. "**Director**" means any person elected or appointed to the Executive Board.

1.12. "**Executive Board**" means those persons elected or appointed and acting collectively as the Directors of the Association.

1.13. "**Limited Common Elements**" shall mean any portion of the Common Elements allocated by this Declaration or by any recorded maps of all or any portion of the Real Estate made subject to this Declaration or by operation of law for the exclusive use of one or more, but fewer than all, of the Lots and the respective Lot Owner(s) of such Lots(s). The private drive providing common access to Lots 12, 13 and 14 shown on the recorded subdivision map described above shall be Limited Common Elements dedicated to the exclusive use of the owners of Lots 12, 13 and 14.

1.14. "**Lot**" shall mean any physical portion of the Real Estate within the Planned Community designated for separate ownership or occupancy by a Lot Owner.

1.15. "**Lot in Use**" shall mean any Lot owned by any person other than Declarant or a builder, and as to those Lots owned by a builder, any Lot on which a dwelling unit has

been fully constructed and for which a certificate of occupancy has been issued by the appropriate governmental agency and has been in effect for no less than ninety (90) days. In no event shall it mean a Lot owned by the Declarant, or a Lot owned by a builder for which a certificate of occupancy has been issued with respect to a dwelling unit constructed thereon for a period of less than ninety (90) days.

1.16. **"Lot Owner"** shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Planned Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. All Lot Owners shall be Members, as that term is defined herein, and the terms Lot Owner and Member may be used hereafter interchangeably where the sense requires.

1.17. **"Member"** shall mean and refer to every person or entity who holds membership in the Association. There shall be two classes of voting membership in the Association. All Members shall be Lot Owners, as that term is defined herein, and the terms Member and Lot Owner may be used hereafter interchangeably where the sense requires.

A. **"Class A Members"** shall be all those Lot Owners as defined in Article III herein, with the exception of the Declarant. Declarant may, however, be a Class A member upon termination of Class B membership.

B. **"Class B Member"** shall be the Declarant as defined herein.

1.18. **"Person"** means any individual, corporation, partnership, association, trustee, or other legal entity.

1.19. **"Planned Community"** shall mean that Real Estate development to be named **THERRELL FARMS** to be developed on that certain Real Estate described herein and on such Additional Properties as may be hereafter annexed to this Declaration and brought within the jurisdiction of the Association in accordance with the terms and conditions hereof.

1.20. **"Special Declarant Rights"** shall have the same meaning as defined in the Act, and, without limiting the foregoing, shall include those rights reserved unto the

Declarant under this Declaration, the Association's Articles of Incorporation and the Association's ByLaws.

2. PROPERTY RIGHTS.

2.1. **Title to Common Elements.** The Declarant shall convey fee simple title in the Common Elements to the Association, subject to this Declaration, current and subsequent years ad valorem taxes, and rights-of-way, restrictive covenants and easements of record. Conveyance of title to the Common Elements to the Association shall be done promptly after the recording of the plat reflecting that particular Common Elements and, in any event, prior to the sale by the Declarant of the first Lot included in that plat.

2.2. **Lot Owners' Easement of Enjoyment.** Every Lot Owner shall have a right and easement of use and enjoyment in and to the Common Elements (the "Lot Owners' Easement"), including specifically an easement for access, ingress and egress from and to public streets, private streets, common parking, and walkways. The Lot Owners' Easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

A. **Conveyance or Encumbrance of Common Elements:** Subject to all applicable governmental ordinances, the Association's right to convey or encumber by mortgage or deed of trust title to all or any part of the Common Elements in compliance with N.C.G.S. §47F-3-112. In addition, any conveyance or encumbrance of all or any portion of a Limited Common Element must be agreed to in writing by all Lot Owners to which such Limited Common Element is allocated. Any conveyance or encumbrance shall be made subject to that portion of the Lot Owners' Easement providing for access, ingress and egress to public streets, private streets, parking, and walkways.

B. **Borrowing for Improvements:** The Association's right, in accordance with its Articles and ByLaws, to borrow money for the purpose of improving the Common Elements and facilities and to mortgage those properties to secure those borrowings in accordance with 2.2A, above, provided the mortgage is subordinate to the Lot Owners' Easement.

C. **Rules and Regulations.** The Association's right to impose and enforce rules and regulations which may restrict the use and enjoyment of the Common Elements and/or Amenities.

D. **Additional Easements.** The Association and the Declarant shall have the authority to grant and/or establish upon, over, under and across the Common Elements further easements (including, but not limited to those provided in this Declaration) as are required for the convenient use and enjoyment of the Planned Community.

E. **Admission and Other Fees.** Subject to all applicable governmental ordinances, the right of the Association to charge reasonable admission and other fees for the use of any Amenities.

F. **Suspension of Privileges or Services.** The right of the Association as provided in this Declaration or in the Act to suspend privileges or services of any Lot Owner who violates the terms and conditions of this Declaration, the Association's ByLaws or Rules or Regulations adopted by the Association.

2.3. **Delegation of Use.** Any Lot Owner may delegate, in accordance with the ByLaws, his right of enjoyment to the Common Elements and facilities to his members of his family and tenants who reside at his Lot and to his guests.

3. MEMBERSHIP AND VOTING RIGHTS.

3.1. Lot Ownership of a Lot shall be the sole qualification for membership in the Association. The Association's Board may make reasonable rules relating to the proof of Lot Ownership of a Lot. Membership shall be appurtenant to and may not be separated from Lot Ownership of any Lot.

3.2. The Association shall have two classes of voting membership:

(a) Class A Members shall be all Lot Owners with the exception of the Declarant. Declarant may, however, be a Class A Member upon the termination of Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The vote of that Lot shall be exercised as they among themselves determine,

but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting is prohibited.

(b) The Class B Member shall be the Declarant. Class B Members shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership upon the earlier of:

(i) the date the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; provided that the Class B Membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B Membership to Class A Membership, additional lands are annexed to the Planned Community by the Declarant as provided in the Declaration; or

(ii) December 31, 2015; or

(iii) the effective date of the Declarant's written consent to termination.

(c) The Declarant's rights as a Class B Member are Special Declarant Rights which may be transferred (as may all Special Declarant Rights) in the manner prescribed by N.C.G.S. § 47F-3-104.

4. ANNEXATION OF ADDITIONAL PROPERTIES.

4.1. **Annexation by Members:** Except as provided in 4.2, Additional Properties may be added and annexed to the Planned Community only if 67% of each class of all the votes entitled to vote be cast in such class by Members are cast in favor of annexation.

4.2. **Annexation by Declarant:** Prior to December 31, 2015, the Declarant may, from time to time, annex Additional Properties to the Planned Community without the consent of the Members, if the Declarant should develop an additional tract or tracts of Real Estate contiguous to or within close proximity of the Planned Community. The annexation will be accomplished by recording with the office of the Register of Deeds for the County in which the Planned Community is located, a Supplementary Declaration,

approved by any local or municipal authority having jurisdiction thereof, if required, duly executed by Declarant, describing the Additional Properties annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. Subsequent to recordation of the Supplementary Declaration, the Declarant shall deliver to the Association one or more deeds conveying any Real Estate that will be designated as Common Elements within the Additional Properties as such Additional Properties are developed. Title to these Common Elements shall be conveyed subject to the same exceptions noted in Section 2. 1. Upon annexation, the Additional Properties shall be deemed part of the Planned Community and shall be subject to this Declaration.

4.3. Additional Special Declarant Rights. Subject to all applicable governmental ordinances, as long as Class B membership exists, the Declarant reserves the following development rights(which shall be deemed Special Declarant Rights, as defined herein and in the Act): (i) to add Real Estate to the Planned Community in accordance with Section 4.2 of this Declaration; (ii) to add Common Elements; (iii) to designate portions of the Common Elements as Limited Common Elements; (iv) to reallocate and reconfigure Lots within the Planned Community; and (v) prior to a conveyance of all or any portion of the Real Estate made subject to this Declaration to a Lot Owner, to withdraw all or any portion of such Real Estate from the Planned Community.

5. COVENANT FOR MAINTENANCE ASSESSMENTS.

5.1. Lien of Assessments:

5.1.1. The Declarant, for each Lot, covenants, and each Lot Owner of any Lot by acceptance of a deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agrees to pay the Association Annual Assessments, Special Assessments, and Initial Assessment, all as described below, (together the "Assessments"). The Association shall also have the authority, through the Association's Board, to establish, fix and levy an individual assessment on any Lot to secure the liability of that Lot Owner to the Association arising from Lot Owner's breach of any of the provisions of this Declaration.

5.1.2. The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") by the Executive Board and may be collected on a monthly or yearly basis as determined by the Executive Board. Annual Assessments shall be charged to each Lot Owner of a Lot in Use. Special Assessments shall be charged to each Lot without regard as to whether or not it is a Lot in Use. Assessments, including fees, charges, late charges, fines, interest and other charges imposed by this Declaration or permitted under N.C.G.S. §§ 47F-3-102, 47F-3-107, 47-f-107.1, 47F-3-115 and N.C.G.S. § 47F-3-116 shall, upon the filing of a claim of lien in the office(s) of the Clerk(s) of Superior Court for the county or counties within which the Planned Community is located in the manner prescribed by N.C.G.S. § 47F-3-116, be a lien on the applicable Lot continuing until paid in full, as well as a personal obligation of the Person who was the Lot Owner of the Lot at the time the Assessment became due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Lot Owner's successors in title unless expressly assumed by the successor(s).

5.2. **Purpose of Assessments:** The Assessments shall be used exclusively for the purposes of this Declaration as described in the Recitals, the payment of Common Expenses, the health, safety and welfare of the Lot Owners, and the improvement and maintenance of the Common Elements. The Association shall maintain a reserve fund for periodic maintenance, repair, and replacement of improvements to the Common Elements.

5.3. **Annual Assessments:**

5.3.1. On or before December 1st of each year preceding an Annual Assessment Period, the Association's Executive Board shall adopt the Budget (as defined below) for the upcoming Fiscal Year. The annual budget for the Association shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period (the "Anticipated Annual Assessments") and anticipated costs for the Association for the upcoming Fiscal Year (together the "Budget"). Within thirty (30) days after adoption of any proposed Budget for the Planned Community, the Executive Board shall provide to all of the Lot Owners a summary of the Budget and a notice of the meeting to consider ratification of the budget, including a statement that the Budget may be ratified without a quorum. The Executive Board shall set a date for a meeting of the Lot Owners to consider ratification of the Budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. A quorum need not be present at the meeting. The Budget shall be ratified unless at that meeting seventy-five (75%) percent of all Lot Owners reject the Budget. In the

event the proposed Budget is rejected at that meeting, the Budget for the previous Annual Assessment Period shall be continued until a subsequent Budget proposed by the Executive Board is ratified by the Lot Owners in the manner set forth above and set forth in N.C.G.S. § 47F-3-103 (c). The Anticipated Annual Assessments for the approved Budget shall be the basis for calculating the Annual Assessment to be charged each Lot Owner for the upcoming Annual Assessment Period. Annual Assessments shall be payable in two (2) equal semi-annual installments on dates fixed by the Executive Board.

5.3.2. Notwithstanding the above to the contrary, until January 1 of the year immediately following the conveyance of the first Lot to a Lot Owner, the maximum Annual Assessment shall be \$ _____ for each Lot.

5.3.3. As long as Declarant has a majority of the total votes, Declarant may loan the Association monies to the extent that Annual Assessments paid by the Lot Owners are inadequate. This advance shall be to the Association and on terms generally available to Declarant from its lending institution.

5.4. **Special Assessments:** In addition to the Annual Assessments, the Association may levy in any Annual Assessment Period a special assessment applicable to that Annual Assessment Period only (the "Special Assessment") for the purpose of defraying in whole or in part the cost of any expenditures (including capital improvements and Real Estate acquisition costs) not otherwise included in the Budget. A Special Assessment shall require the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.5. **Fines and Suspension of Privileges or Services.** In the event any Lot Owner should be in default for a period of thirty (30) days or longer with respect to the payment of any Assessment(s) due the Association under this Declaration, the Association may, after giving such Lot Owner notice and an opportunity to be heard, suspend privileges (including, but not limited to, such Lot Owner's rights to vote as a Member of the Association) or services (except rights of access to such Lot Owner's Lot) provided by the Association to such Lot Owner. In addition, in the event any Lot Owner should violate any of the terms and conditions of the Declaration or of the Association's ByLaws or any Rules and Regulations adopted by the Association, the Association may, after giving such Lot Owner notice and an opportunity to be heard, impose a reasonable fine upon such Lot Owner or suspend privileges or services (except rights of access to such Lot Owner's Lot). Prior to imposing a fine upon any Lot Owner or suspending any privileges or services

provided to such Lot Owner by the Association, the Executive Board shall give the Lot Owner notice of the charged violation, notice of a hearing and an opportunity to be heard and to present evidence at such hearing. Such hearing shall be scheduled before an adjudicatory panel appointed by the Executive Board to hear such matters, or if the Executive Board fails to appoint such an adjudicatory panel, before the Executive Board itself. After rendering a decision, the adjudicatory panel or Executive Board, as the case may be, shall give the affected Lot Owner notice of its decision. If it is decided that a fine should be imposed, a fine not to exceed One Hundred Fifty Dollars (\$150.00) may be imposed for the violation and, without further hearing, for each day after notice of the decision is given to the Lot Owner that the violation continues to occur. Such fine(s) shall be Assessment(s) secured by liens under this Declaration and under N.C.G.S. §47F-3-116. If it is decided that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

5.6. Uniform-Rate of Assessment. Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots in Use, as the case may be. Provided, however, that the Association shall also have the authority, through the Executive Board, to establish, fix and levy a Special Assessment on any Lot to secure the liability of that Lot Owner to the Association arising from that Lot Owner's breach of any of the provisions of this Declaration.

5.7. Date of Commencement of Annual Assessment/Due Dates. The Annual Assessments shall commence as to all then existing Lots in Use on the first day of the month following the conveyance of the Common Elements shown on the map(s) on which such Lots in Use are shown to the Association. Thereafter, the Annual Assessments shall commence as to a Lot on the first day of the month following the date it becomes a Lot in Use. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Lot Owner subject thereto at least fifteen (15) days in advance of each Annual Assessment Period. The due date shall be established by the Executive Board. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any Assessment as to third parties acting in reliance on the statement.

5.8. Non-Payment of Assessment; Remedies of the Association. Any Assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the outstanding balance of any Assessment due and payable if any installment thereof becomes delinquent. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall incur a late charge of \$25.00 and bear interest from the date of delinquency at the maximum rate allowed by the Act. The Association may bring an action at law against the responsible Lot Owner and/or foreclose the lien against the applicable Lot. Interest, costs, and reasonable attorney fees of any such action shall be added to the amount of the delinquent Assessment. Each Lot Owner, by the acceptance of a deed to a Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Lot Owner personally liable for the collection of a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the manner permitted under the Act. Each Lot Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article shall be in favor of the Association acting on behalf of the Lot Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed Lot. No Lot Owner may waive or otherwise escape liability for Assessments by non-use of the Common Elements or abandonment of his Lot.

5.9. Subordination of the Lien. The lien of the Assessments shall be subordinated to the lien of the first mortgage on a Lot. Except in those instances described below, the sale or transfer of a Lot shall not release or otherwise affect the lien of delinquent Assessments. Provided the Association is given prior written notice of such, the sale or transfer of a Lot pursuant to the foreclosure of a first mortgage or deed of trust or pursuant to a deed in lieu given in satisfaction of a first mortgage or deed of trust shall extinguish the lien of the delinquent Assessments for that Lot. In no event, however, shall a sale or transfer relieve the Lot from liability for any Assessments subsequently becoming due or from the lien thereof

5.10. Exempt Real Estate. All Lots dedicated to and accepted by a local public authority and the Common Elements shall be exempt from the Assessments.

6. INSURANCE.

6.1. Authority to Purchase Insurance. Insurance policies upon the Real Estate and improvements located within the Planned Community (except title insurance policies insuring Lot Owners and/or their Lenders) shall be purchased by the Association in the name of the Executive Board of the Association, as Trustees for the Lot Owners, for the benefit of the Lot Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages or deeds of trust on the Lots or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Lot Owners, the Association and their respective servants, agents or guests.

6.2. Insurance Coverage to be maintained: Use and Distribution of Insurance Proceeds. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Lots and Common Elements:

6.2.1. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain:

- (a) Property insurance on the Common Elements insuring all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of such insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement costs of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and
- (b) Liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

6.2.2. The following provisions apply to insurance coverage to be maintained by the Association pursuant to Sections 6.2.1, above:

(a) If any insurance described in Sections 6.2.1, above, is not available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners.

(b) Insurance policies carried pursuant to Sections 6.2.1 shall provide that:

(1) Each Lot Owner is an insured person under the policy to the extent of such Lot Owner's insurable interest;

(2) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;

(3) No act or omission by any Lot Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a Lot owner covering the same risk covered by the policy, the Association's policy provides primary insurance coverage.

(c) Any loss covered by the property policies provided for in Sections 6.2.1 shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any trustee designated by the Association for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lienholders as their interests may appear. Property insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Planned Community is terminated.

(d) Any portion of the Planned Community for which insurance is required under Section 6.2.1, above, which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Planned Community is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the Lot Owners decide by an eighty

(80%) percent vote not to rebuild, repair or restore the damaged property, including one hundred (100%) percent approval of the Lot Owners assigned to any Limited Common Elements not to be rebuilt, repaired or restored. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Common Elements is not repaired or replaced, (i) the insurance proceeds attributable to Limited Common Elements which are not rebuilt shall be distributed to the Lot Owners of the Lots to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and (ii) the remainder of the proceeds shall be distributed to all of the Lot Owners or lien holders, as their interests may appear, in proportion to the Common Expense Liabilities of all the Lots. Notwithstanding the foregoing, in the event the Planned Community is terminated, the distribution of insurance proceeds shall be governed by N.C.G.S. § 47F-2-118.

6.2.3. Fidelity Coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balance during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied.

6.2.4. In the event a mortgagee endorsement has been issued as to a Lot, the share of the Lot Owner shall be held for the mortgagee and the Lot Owner as their interest may appear, but no mortgagee shall have the right to participate in the determination of reconstruction or repair.

6.2.5. Each Lot Owner at his expense, may obtain such additional insurance coverage on his Lot, personal property and personal liability and any additional insurance shall contain waiver of subrogation clause.

6.2.6. Immediately after the casualty causing damage to property, the Association shall obtain reliable and detailed estimates of the cost to place the damaged real property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Executive Board of the Association deems appropriate.

6.2.7. Each Lot Owner delegates to the Executive Board of the Association his right to adjust with insurance companies all losses under policies purchased by the Association.

6.3. **Repair/Reconstruction.** Any reconstruction or repair of any improvements damaged by fire or other casualty shall be substantially in accordance with the original plans and specifications.

6.4. **Premiums.** Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be a Common Expense.

6.5. **Prohibited Acts.** No Lot Owner shall do or keep anything within the Planned Community which shall cause an increase in the premiums for or the cancellation of any insurance maintained by the Association.

7. EASEMENTS.

7.1. **Blanket Utility Easement.** A blanket easement upon, across, over, and under all of the Common Elements, and, to the extent reasonably necessary the portions of the Lots on which no portion of any Building is or is to be constructed, is reserved for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephones, electricity, and a master antenna system. Notwithstanding such, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated in the Common Elements except as approved by the Declarant or, after the termination of Class B membership, the Association. Should any utility furnishing a service covered by this general easement request a specific easement by separate recordable documents, Declarant or, after the termination of Class B membership, the Association will have the right and authority to grant such easement. The easement provided for in this Article shall in no way affect other recorded easements within the Planned Community.

7.2. **Association Easements.** An easement is granted to the Association, its officers, agents, employees, and to any management company retained by the Association to enter in or to cross over the Common Elements. An easement is also granted to the Association over such portion(s) of additional Real Estate owned by the Declarant on which improvements, including utilities, are located, which serve the Planned Community and over such portion(s) of such Real Estate which provide access to such improvements,

subject to Declarant's right to designate the exact location of such easements. Every Lot shall be subject to an easement for entry by the Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Common Elements. Lots 1 and 34 shall also be subject to easements in favor of the Association to locate and maintain entry monuments, landscaping and lighting in the areas reserved thereon on the subdivision map of the Real Estate made subject to this Declaration.

7.3. Temporary Construction Access and Disturbance Easement. An easement over, through and to the Common Elements is reserved and established in favor of Declarant and all Lot Owners for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials and the necessary disturbance of land for construction on any Lot. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Lot Owner as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In each instance, the Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should that Person fail to restore the disturbed land as required, the Association may restore the land to the required condition and that Person shall indemnify the Association for the reasonable expense incurred in performing that restoration. This easement shall be restricted to that Common Elements which shall be reasonably servient and proximate to the Lot(s) upon which the construction is taking place.

7.4. Drainage Easement. For a period of eighteen (18) months following the last conveyance of a Lot to an Lot Owner by the Declarant, that Lot shall be subject to an easement for entry and encroachment by the Declarant for the purpose of correcting any grading or drainage problems with respect to that Lot or adjoining Lots. After such an entry, the Declarant, at its expense, shall, to the extent reasonably practicable, restore the affected Lot(s) to their original condition.

7.5. Governmental Easements.

7.5.1. Declarant reserves an easement for the benefit of the appropriate governmental entity over all Common Elements and over an area five (5) feet behind the curb line of any street or roadway in the Real Estate existing now or in the future for the

setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

7.5.2. An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persons to enter upon the Subdivision's streets and the Common Elements in the performance of their duties.

7.6. **Access, Parking and /or Utility Easements.** All Lots and the Common Elements shall be subject to all such access , drainage and/or utility easements as are shown on any recorded plats of Real Estate located within the Planned Community, and any such access easements shall be considered part of the Common Elements, whether or not owned in fee simple by the Association, and the costs of maintenance, repair and upkeep of the areas within such access easements shall be Common Expenses.

8. ARCHITECTURAL COMMITTEE.

8.1. **Members.** The Architectural Committee shall consist of one (1) or more persons designated by the Declarant. At such time as Declarant no longer owns any Real Estate within the Planned Community (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), the rights, powers, duties and obligations of the Architectural Committee shall without further action pass to the Association, whereupon the Executive Board shall then appoint three (3) or more persons as the members of the Architectural Committee. Prior to December 31, 2006, this provision shall not be amended or revoked without the Declarant's written consent.

8.2. **Powers.** The Architectural Committee shall have the right to refuse to approve any plans and specifications for Improvements proposed to be constructed on a Lot (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving Plans & Specifications, the Architectural Committee shall consider the purposes of the Declaration as discussed in the Recitals, including the suitability of the proposed Improvements and materials to be used in those Improvements, the site upon which it is proposed to be erected, and the effect of the Improvements on adjacent or neighboring Real Estate. There is specifically reserved unto the Architectural Committee the right of entry and inspection upon any Lot for the purpose of determining whether there exists any construction of any Improvements which violates the terms of any approval by the Architectural Control Committee or the terms of this Declaration or of any

other applicable covenants, conditions and restrictions. The Architectural Committee and the Executive Board is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, or to remove any unapproved Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorney's fees).

9. ARCHITECTURAL CONTROL AND USE RESTRICTIONS.

9.1 Building Sites. Each Lot, as approved by the appropriate governmental entity, shall constitute a building site (a "Building Site") and shall be used for single-family residential purposes only. The lay of the Lots as shown on the recorded plat shall be substantially adhered to; provided, however, that with the prior written approval of the Declarant (as long as Class B Membership exists), or, thereafter, the Association's Executive Board or the Architectural Committee, and the appropriate governmental authority, the size and shape of any Lot may be altered. More than one Lot may be used as one Building Site provided the location of any structure permitted thereon is approved in writing by the Architectural Committee or the Declarant, its successors or assigns, and said Lot is recombined in accordance with any applicable zoning or other laws in force at the time of the change.

9.2. Setbacks. No structure shall be located on any Building Site nearer than the minimum setbacks shown on recorded plats or required by applicable zoning or other laws. For the purposes of this covenant, eaves, steps, carports and open porches shall not be considered as a part of a Building, provided, however, that this shall not be construed to permit any portion of a Building on a Building Site to encroach upon another Lot. Provided it otherwise complies with the applicable zoning ordinances and the setbacks, if any, shown on the applicable recorded plat, the Declarant and/or the Architectural Committee may approve by written waiver a violation of these requirements.

9.3. Prohibited Structures. Except as provided in Section 9.5 below, no structures of a temporary character, manufactured home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Planned Community at any time as a residence, either temporarily or permanently.

9.4. Approval of Plans & Specifications. No house, garage, fence, carport, room, building, utility shed or similar structure customarily incident to the residential use

of the lots subject to these restrictions (except as other provided below), whether attached or detached from the main dwelling, shall be erected, placed, altered, or permitted to remain on any lot unless the design, plans and location of the same shall have been approved in writing by the Architectural Committee. A failure to approve or disapprove completed Plans & Specifications within forty-five (45) days after they have been submitted shall be deemed to be an approval of those Plans & Specifications. Neither the Association, the Association's Executive Board, the Declarant, the Architectural Committee nor any officer, employee, director or members thereof shall be liable for damages to any persons by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans & Specifications. Every person who submits Plans & Specifications for approval agrees, by submission of such Plans & Specifications, that it will not bring any action or suit to recover any such damages.

9.5. Declarant Facilities. Notwithstanding any provision in this Article to the contrary, during the period of development and sale of the Lots and houses constructed thereon the Declarant, and any builder revocably permitted by Declarant, is permitted, subject to the laws of the applicable governmental authority, to maintain such facilities and conduct such sales activities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots and houses. These facilities/activities shall include but not be limited to sales tours, sales parties and promotions at the Amenities, a temporary business/sales trailer, storage trailer, and/or area, construction trailer and/or yards, model units, and signs. Prior to December 31, 2015, this provision shall not be amended or revoked without the Declarant's written consent.

9.6. Minimum Square Footage. No dwelling shall be erected or placed on any lot containing less than ³¹⁰⁰~~3,000~~ square feet (exclusive of uncovered porches, stoops, terraces, garages and carports).

9.7. Obstructions to View at Intersections. The lower branches of trees or other vegetation in sight line approaches to any street or street intersection shall not be permitted to obstruct the view of said approach.

9.8. Walls, Fences, Hedges and Delivery Receptacles.

(a) No wall, hedge, mass planting or other similar obstruction exceed three feet in height (and no fence of any type or height) shall be erected or

permitted to remain between the street right-of-way and the applicable minimum building setback line.

(b) No receptacles of any construction or height for the receipt of mail, newspapers or similar delivered materials shall be erected or permitted to remain between the front street right-of-way and the applicable minimum building setback line; provided, however, that this restrictions shall be unenforceable insofar as it may conflict with the regulations, now or hereafter adopted, of any governmental agency.

(c) No chain link fences may be erected on any lot.

9.9. **Animals and Pets.** No animals, livestock or poultry of any kind shall be raised, bred, pasture, or maintained on any lot, except household pets which may be kept thereon in reasonable numbers as pets for the sole pasture and use of the occupants, but not for any commercial use or purposes. Birds shall be confined in cages.

9.10. **Sign Boards.** No sign boards of any description shall be displayed upon or above any lot with the exception of:

(a) Signs "for rent" or "for sale", which signs shall not exceed 2 feet x 3 feet in dimensions, shall refer only to the premises on which displayed, and shall be limited to one sign to a lot; and

(b) The names of the Lot Owner and the street address, the design of which shall be furnished to the Declarant upon request, and the Declarant shall have the right to disapprove such design and prohibit the erection of such sign as does not meet with its approval. No bill boards or other advertising signs shall be permitted.

9.11. **Television Receiving Devices.** No television antennae, discs or other receivers of such nature, higher than three feet or larger than three feet square, shall be allowed to be placed or maintained on any Lot, and any such permitted device shall be reasonably screened from view.

9.12. **Nuisances and Unsightly Materials.** No noxious, offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or

become an annoyance or nuisance to the Planned Community. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever, nor for the storage of any property or thing which will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish or other debris for pickup by governmental and other similar garbage and trash removal service units. In the event any owner of any developed lot fails or refuses to keep such property free from any such unsightly items, weeds, or underbrush, five days after posting a notice thereon or mailing a notice to the owner at his property address requesting the owner to comply with the requirements of this paragraph, the Declarant or the Association may enter and remove all such unsightly items of growth at the owner's expense, and any expenses advanced by the Declarant or the Association shall be a lien on the affected Lot Owner's Lot enforceable in the manner liens for Assessments payable to the Association are. Owners by acquiring property subject to these restrictions agree to pay such costs promptly upon demand by the Declarant, its agents, assigns, or representative. No such entry as provided herein shall be deemed a trespass.

9.13. **Screening.** All equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate improvements so as to screen them from view from the street and adjoining Lots. All garbage, trash, or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate.

9.14. **Leasing.** No Lot or any portion of the Improvements thereon shall be leased for transient or hotel purposes, except that a Lot Owner may lease not less than the entire residential structure on its Lot; provided that each lease must be in writing, must be for a period of not less than one (1) year, and must provide that it is subject to this Declaration and the ByLaws and that any failure by a tenant to comply with such shall be a default under the lease. The Lot Owner shall promptly provide the Association with copies of any and all leases entered into by the Lot Owner.

9.10. **Business/Obnoxious Activity.** No business activity of any kind or any obnoxious or offensive activity shall be carried on within the Planned Community or improvements thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. Nor shall any portion of the Planned Community be used in any way or for any purpose which may endanger the health or unreasonably disturb an Lot Owner or his tenants or invitees.

9.11. **Lawn Ornaments.** No decorative lawn ornaments shall be placed on any Lot without the prior written approval of the Architectural Committee.

9.13. **Governmental Regulations.** Each Lot Owner shall comply with all laws, ordinances, governmental building codes, health regulations, zoning restrictions and the like applicable to its Lot and/or Common Elements. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

9.14. **Additional Restrictions.** The Declarant (as long as it hold Class B Membership) and thereafter, the Association, the Association's Board, or the Architectural Committee shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Real Estate within the Planned Community.

9.19. **Limited Liability.** In no case shall the Declarant or the Association be responsible for failing to provide any emergency or regular fire, police or other public service to the Planned Community, or to the Lot Owners or Lot occupants. In no case shall any local or municipal authority or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and/or Lot Owners.

9.20. **Waiver.** Notwithstanding anything above to the contrary, the Declarant (as long as Class B Membership exists), the Association's Board, or the Architectural Committee shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Lots subject to this Declaration. No waiver shall be effective if it shall cause the Lot or structures thereon to be in nonconformance with any applicable governmental ordinances.

10. GENERAL PROVISIONS.

10.1. **Enforcement.** The Declarant (as long as Class B Membership exists), the Association or any Lot Owner shall have the right to enforce, by a proceeding at law or in equity, the terms of the Declaration. Failure by the Association or by any Lot Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

10.2. **Severability.** Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

10.3. **Amendment.**

10.3.1. The Declaration shall run with the land for a term of twenty (20) years from the date of recording of the Declaration or the last Supplementary Declaration or amendment thereto, and shall inure to the benefit of the Declarant (as long as Class B Membership exists), the Association or any Lot Owner or their respective legal representatives, heirs, successors, and assigns. This Declaration shall thereafter automatically be extended for successive periods of ten (10) years. Except as specifically otherwise provided in this document, the Declaration may be amended by an instrument signed by not less than the Lot Owners of sixty-seven percent (67.0%) of the Lots.

10.3.2. If an amendment is executed, each such amendment shall be delivered to the Association's Board which shall, within thirty (30) days:

(a) Reasonably assure itself that the amendment has been executed by the Lot 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 the title to any Lot to be examined); and

(b) Attach the following certification:

CERTIFICATION

By authority of its Executive Board, Terrell Farms Homeowners' Association, Inc. certifies that the foregoing instrument has been duly executed by the Lot Owners of sixty-seven percent (67%) of the Lots in the Planned Community and is therefore a valid amendment to the Declaration recorded in Book ____ Page _____ in the office of the Register of Deeds for Union County, North Carolina.

BY: _____
President

ATTEST:

Secretary
(CORPORATE SEAL)

Within the thirty (30) day period, the Association's Board shall cause the amendment to be recorded with the appropriate Register of Deeds' office. All amendments shall be effective from the date of recordation in the appropriate Register of Deeds' office; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association.

10.4. **Disputes.** In the event of any dispute arising concerning a provision of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of that committee.

10.5. **Voting.** Voting by Members of the Association shall be in accordance with the applicable provisions set forth in this Declaration and the ByLaws.

10.6. **Member Addresses.** Each Member agrees to keep the Association informed of his address at any time and any notice sent or delivered to that address shall be sufficient. Each new Member agrees to provide the Association with evidence of his Lot Ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the Lot Ownership of each Lot.

10.7. **Gender and Grammar.** All words and phrases in this Declaration shall be construed to include the singular or plural number, and the masculine, feminine, or neuter gender, as the context requires.

10.8. **Lot Owner Responsibility.** Notwithstanding anything in this Declaration to the contrary, a Lot Owner shall be responsible for any and all violations of these Declarations by his employees, agents, tenants, guests and invitee. When a party to this Declaration consists of more than one individual or entity, such party's liability hereunder shall be joint and several.

10.9. **Construction.** This Declaration shall be construed in accordance with the laws of North Carolina without giving effect to its conflict of laws principles. In case of any conflict between the Declaration and the Articles or the ByLaws, the Declaration shall control.

10.10. **Exhibits.** All Exhibits and Schedules, if any, attached to this Declaration are hereby incorporated by reference and made a part of this Declaration. The term "Declaration" as used herein shall be deemed to include all such Exhibits and Schedules.

10.11. **Remedies.** In the event of any default in and/or breach of any of the terms, conditions and provisions of this Declaration (either actual or threatened) the party or parties who are thereby aggrieved shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. The rights and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. No delay or omission of a party to exercise any right or power arising from any default on the part of the other shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. The rights and remedies provided herein are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

10.12. **Termination.** Any termination of the Planned Community shall be effected in accordance with N.C.G.S. § 47F-3-116 by a taking of all of the Lots by eminent domain, in which case such termination will be effected in accordance with N.C.G.S. § 47F-1-107.

10.13. **Attorneys Fees.** Except as provided in N.C.G.S. § 47F-3-116, in any action brought to enforce provisions of this Declaration, the Association's Articles of Incorporation or ByLaws, or rules or regulations duly adopted by the Association, the prevailing party in such action shall be entitled to collect reasonable attorneys fees awarded by the court having jurisdiction over such action.

10.14. **Rules of Construction.** In the event of a conflict between the provisions of the Declaration and the Association's ByLaws, the Declaration shall prevail except to the extent it is inconsistent with the Act. To the extent any provisions of the Declaration, the Association's Articles of Incorporation or ByLaws violate the Act, such provisions shall

be deemed amended and shall be construed to the extent necessary to comply with the Act.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its corporate duly authorized officer by authority of its Board of Directors, this day first above written.

THERRELL FARMS, LLC

BY: _____
Manager

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public certify that _____ personally came before me this day and acknowledged that he/she is Manager of THERRELL FARMS, LLC, a North Carolina corporation, and that he/she, as Maager, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

Witness my hand and seal, this _____ day of _____, 2003.

Notary Public
My Commission Expires: _____

BRANCH BANKING AND TRUST COMPANY, as holder of Promissory Note secured by Deed of Trust recorded in Book _____, at Page _____ of the Union County Public Registry, and **BB&T Collateral Services Corporation**, as Trustee under said Deed of Trust, join in the execution hereof for the purpose of making said Deed of Trust subject to the terms and conditions of the foregoing Declaration of Covenants, Conditions and Restrictions

BRANCH BANKING AND TRUST COMPANY

BY: _____
_____ President

BB&T COLLATERAL SERVICES CORPORATION,
Trustee

BY: _____
_____ President

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public certify that
_____ personally came before me this day and acknowledged that
he/she is _____ President of **BRANCH BANKING AND TRUST COMPANY**, a
North Carolina banking corporation, and that he/she, as _____ President, being
authorized to do so, executed the foregoing instrument on behalf of said corporation.

WITNESS my hand and notarial seal, this the _____ day of _____, 2003.

Notary Public
My commission expires: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public certify that
_____ personally came before me this day and acknowledged that
he/she is _____ President of **BB&T COLLATERAL SERVICES CORPORATION,**
Tustee, a North Carolina corporation, and that he/she, as _____ President, being
authorized to do so, executed the foregoing instrument on behalf of said corporation.

WITNESS my hand and notarial seal, this the ____ day of _____, 2003.

Notary Public
My commission expires: _____