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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

Prepared by and return to:
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(File No. 06-1441) WKR

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR THE PINEBROOK FARMS COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE PINEBROOK FARMS COMMUNITY made and entered into this the 25th day of July, 2007, by and between **PINEBROOK FARMS, LLC.**, a North Carolina limited liability company (herein "Developer") and all Future Owners of Lots, Units, Homes or other property in the **PINEBROOK FARMS COMMUNITY**.

WITNESSETH:

THAT WHEREAS, Developer is the owner of certain property in Buncombe County, North Carolina, referred to as "44.031 Acres", as shown on that plat recorded in Plat Book 102, Page 8 of the records maintained by the Office of the Register of Deeds for Buncombe County, North Carolina (the "Property"); and

WHEREAS, the Developer is developing the Property into a community which shall be composed of distinct sections including but not limited to condominiums, single family homes, and townhomes, all of which will share common areas, community roads, a community center, pool, and walking trails (the property described being and comprising the "Community"); and

WHEREAS, the Developer, for the protection and benefit of all persons who may hereinafter become owners of lots, units, homes and other property located within the Community, desires that the Property be developed with limitations and restrictions. These covenants are to run with the land and be binding upon all parties purchasing lots, units, homes and other property and all persons claiming by, through or under the Developer until December 31, 2026 at which time said covenants shall automatically be extended for successive periods of (10) years unless by vote of a two-thirds majority (67%) of votes in the Community Association.

AGREEMENT:

NOW, THEREFORE, the Developer does hereby make the following declaration as to limitations and restrictions to which the Community shall be and are hereby subjected:

**ARTICLE I
Definitions**

- I.1. "Act" shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.
- I.2. "Community Association" shall mean and refer to Pinebrook Farms Community Property Owners' Association, Inc., a nonprofit corporation organized under the laws of the State of North Carolina, its successors and assigns.
- I.3. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Community Association.
- I.4. "Bylaws" shall mean and refer to Bylaws of the Community Association.
- I.5. "Common Elements" shall mean and refer to: (i) private roads designated on any Community Plat hereinafter recorded by Developer, as well as any other private road constructed by the Developer serving the Community or any property adjoining the Community; (ii) the entrance area as shown on such Plat; (iii) the community center, pool, walking trails and recreational facilities adjacent thereto as shown on such Plat; (iv) the Wetland Preserve Area and common areas bordering Reems Creek as shown on such Plat; (v) any other property designated as such by the Developer; and (vi) any real estate owned by the Community Association.
- I.6. "Community" shall mean and refer to the Community which shall be composed of distinct sections including but not limited to condominiums, single family homes, and townhomes, each of which may be governed in more detail by rules promulgated by its own Sub-Association or Committee.
- I.7. "Developer" shall mean Pinebrook Farms, LLC., or its successors and/or assigns, including any person which succeeds to any Special Developer Rights as set forth herein and in the Act. Any consent to be obtained from Developer pursuant to these restrictions must only be obtained from Pinebrook Farms LLC., or its successor(s), in its capacity as Developer.
- I.8. "Directors" shall mean and refer to the members of the Board of Directors of the Community Association.
- I.9. "Limited Common Elements" shall mean and refer to those portions of the Community designated as being either for: (i) the exclusive use by one or more but fewer than all of the Owners; (ii) designated as a Common Element exclusive to any section of the Community governed in more detail by restrictions or declarations applicable only to a section within the Community; or (iii) areas designated by Developer, in its sole and absolute discretion, as benefiting, either directly, or indirectly, one or more but fewer than all of the Lot Owners.

I.10. "Lot" shall mean and refer to any parcel of land within the Community which shall be conveyed to an Owner and as shown on any plat hereinafter recorded by Developer of any part of the Community and all other Lots which may be added pursuant to any other expansion right of Developer as described herein, and designated for separate ownership or occupancy by a Lot Owner.

I.11. "Unit" shall mean and refer to any Condominium Unit within the Community which shall be conveyed to an Owner which shall be identified in Condominium Plans and in a Declaration of Condominium hereafter recorded by Developer of any part of the Community and all other Lots which may be added pursuant to any other expansion right of Developer as described herein, and designated for condominium ownership.

I.12. "Lot Owner", "Unit Owner" and/or "Owner" shall mean and refer to the Developer or other person or entity who owns title to any Lot, Home or Unit which is part of the Community; but does not include a person having an interest solely as security for an obligation.

I.13. "Member" shall mean and refer to each owner or owners of a Lot, Home or Unit within the Community who shall also then be a member of the Community Association for such period of ownership. If a Lot, Home or Unit is owned by more than one person, then such persons collectively shall be the Member and shall be entitled to vote only those voting shares allocated to such Lot, Home or Unit. Each Lot, Home and Unit shall have one vote with respect to the Community Association.

I.14. "Restrictions" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Pinebrook Farms Community, as same may be released, amended or changed, either in whole or in part, as provided for herein.

I.15. "Special Developer Rights" shall mean and refer to those rights defined in Chapter 47F-1-103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of Developer.

I.16. "Community" and/or "Property" shall mean and refer only to that certain real property referred to as "44.031 Acres", as shown on that plat recorded in Plat Book 102, Page 8 of the records maintained by the Office of the Register of Deeds for Buncombe County, North Carolina and as shown on any Plat of such real property described as hereafter recorded by Developer. The Developer shall not be deemed to have subjected any other property which the Developer may now or hereafter own or acquire to the restrictions set forth herein until such time as a recorded instrument specifically subjecting such property is recorded in the Buncombe County Registry of Deeds. The Developer specifically reserves the right to subject any other property which the Developer may now own or which Developer may hereafter acquire to the restrictions set forth herein. It is understood that the Developer will be recording additional plats of the Community identifying specific sections and showing individual Lots, Homes or Units therein. Effective as of the date of recording of this Declaration, only that property shown on Plat Book 112, Page 85 is subject to this Declaration, and all other portions of the Community are reserved for future development and shall only become subject to this Declaration upon the recording of a Plat identifying individual Lots and Units thereupon.

I.17. "Sub-Association" shall mean and refer to a committee or board comprised of and elected only by members within a distinct section within the Community, and shall be responsible for promulgating rules applicable only to their distinct section within the Community.

I.18. "Subdivision" or "Condominium" shall mean and refer to any distinct section within the Community for which the Developer establishes and which may be governed in more detail by rules promulgated by its own Sub-Association.

ARTICLE II

Submission of Property to the Act and Creation of a Planned Community

II.1. Submission of the Property and Creation of the Community: Pursuant and subject to the terms and provisions of the Act, Developer hereby creates a planned community subdivision initially comprised of the Property. Developer hereby submits all of such Community to the Act and the terms of this Agreement.

II.2. Name: The name of the Community created hereunder is Pinebrook Farms.

II.3. Reservation of Special Developer or Developer Rights: Developer, and each of them separately, hereby reserves unto itself and its successors in interest as Special Developer or Developer Rights, the following:

- (a) Those Special Developer or Developer Rights as set forth in the Act.
- (b) The right, during the Developer's Control Period, to modify, amend, change, vary or release all or any part of these Restrictions; and
- (c) The right to redesignate a previously designated Lot as an easement or right-of-way for access adjoining property whether now or hereafter owned by such Developer.
- (d) The right to establish supplemental rules, restrictions and declarations for sections within the Community in order to govern such sections in more detail.
- (e) The right to redesignate any portion of the Property with respect to its classification as a Single Family Lot, Condominium Area, Multi-Family home area, Common Area, or otherwise.

ARTICLE III

Common Area Ownership and Maintenance

III.1. Owner's Easements of Enjoyment: Every Owner shall have the right of ingress to and egress from the Common Area, together with the right of enjoyment in and to the Common Area, which rights shall be appurtenant to and shall pass with the title to every Lot.

III.2. Delegation of Use: Any Owner may delegate his rights of enjoyment of the Common Area to the members of his family, his tenants, contract purchasers who reside on the Lot, or his guests. A Lot Owner who has delegated rights to the Common Area to his tenant shall not in addition to his tenant have rights to the Common Area.

III.3. Rules and Regulations: The Board shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area, including but not limited to: (i) the right to limit the number of guests using such improvements or to establish a maximum use capacity; (ii) the right to suspend use of such areas for failure to comply with use rules or for failure to pay Association Assessments; (iii) the right to charge reasonable admission or other use fees, to fund operational expenses; (iv) the right to permit the reasonable reservation of such facilities for exclusive use; (v) the right to assign the management and operation of such facilities; (vi) the right to renovate or remove any such improvements to the Common Areas. Such rules and regulations, along with all policy resolutions and policy

actions taken by the Board, shall be recorded in its minutes, which shall be maintained at the office of the person or entity managing the Common Area on behalf of the Community Association and available to the members for inspection during normal business hours, or at the designated office of the Community Association, if there is no property manager.

III.4. Leasing Common Area Facilities: Subject to the ordinances of Buncombe County, the Board shall have the power to lease the use of any recreational facility for functions or special events, and may charge reasonable admission or other fees for such use.

III.5. Operating Common Area Facilities: The Board shall have the power to limit the number of guests, to regulate hours of operation and behavior, and to curtail any use or uses it deems necessary for either the protection of the facilities or the peace and tranquility of adjoining residents with regard to the recreational facilities located on the Common Area. The Community Association shall promulgate rules regarding use of the swimming pool including rules regulating unsupervised use by children. All expenses relating to the maintenance and insurance of improvements to the Common Areas shall be paid by the Community Association from dues assessments. In no event shall any Owner be exempt from, or entitled to abatement of any assessments by reason of non-use of such improvements of facilities upon the Common Areas. "

III.6. Developer's Conveyance of Title to Common Areas: At such time as it deems appropriate but not later than at such time that all of the Lots, Homes and Units of all sections of Pinebrook Farms have been sold and title conveyed, Developer shall convey fee simple title to the Common Area to the Community Association. At the time of conveyance, the Common Area shall be conveyed in its "as is" condition, and the Community Association shall accept the same in its then condition and the Developer shall have no obligation to conduct repairs or maintenance to the Common Area. The Community Association shall accept the conveyance of all such Common Area pursuant to this section.

III.7. Mortgaging Common Area: The Community Association shall have the power to borrow money for the purpose of improving the Common Area, and pursuant thereto, to pledge the Common Area or any portion thereof that it owns to a Deed of Trust; provided, however, that the execution of such Deed of Trust shall require the same approval of the membership which is required for special assessments for capital improvements.

III.8. Developer Use of Clubhouse: Developer has the right to the use of the clubhouse during the Developer Control Period for public, private and exclusive functions in its exclusive discretion.

ARTICLE IV Land Use

IV.1. Restrictions: All Lots, Homes and Units and the Common Area shall be subject to the restrictions set forth herein, in addition to any other rules, restrictions or declarations which may govern in more detail.

IV.2. Residential Use: All Lots, Homes and Units shall be used for, improved for, and devoted exclusively to residential use.

IV.3. Construction or Alteration: No alteration or construction of the external area of any improvements on any Lots, Homes and Units or in or upon any portion of the Common Area shall be undertaken or allowed except at the direction of and with the express written consent of the Community Association.

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IV.4. Offensive or Annoying Activity or Nuisance: No immoral, illegal, obnoxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to any resident within the Property. In the use of the Property, all applicable governmental regulations shall be observed. The Community Association shall have exclusive discretion to determine whether any activity, including but not limited to: (i) the behavior of dogs or other animals (ii) display of signs and decorations; (iii) emissions of light, noise or odors; and (iv) parking, storage and maintenance of vehicles, shall be considered as obnoxious or offensive hereunder.

IV.5. Fences, Mailboxes and Antennas, Etc.: The Community Association may regulate or prohibit the erection of antennas, ham radio towers, fences (chainlink, stockade-type or otherwise) on any lot. In no event shall any chain link fencing be installed upon any Lot. Only mailboxes furnished or approved by the Developer or the Community Association may be used. No satellite dishes larger than one meter in diameter shall be allowed, and if reasonably feasible shall be installed on rear facing eaves or such other location such that it shall not be visible from Community roadways. No outside clothes lines are permitted.

IV.6. Animals: Only dogs, cats, birds, and fish and such other animals as approved by the Master Community Association may be kept and maintained in the dwelling unit. The Community Association shall have exclusive discretion in determining the permissible numbers, size and nature of pets hereunder. When outside, all pets must be on a leash or confined within a fenced enclosure, shall not be left unattended, and shall not become a nuisance. Pet owners are responsible for cleaning up their pet's excrement and waste.

IV.7. Parking: No parking of unlicensed, uninspected or inoperable vehicles shall be allowed on the property. No overnight parking of any motor vehicles shall be allowed on streets within the Property. All vehicles shall be parked within garages, driveways or designated parking areas. In no event shall any vehicle be parked on any Community streets. Campers and boats may be parked in driveways within twenty-four hours before and after such time they are used. Residents of dwelling units may wash motor vehicles in their driveways. In addition, no one shall store or keep a trailbike, go cart, motorized tri-wheel bike, tractor, truck, or other such motorized riding vehicle on the Property, except one pick-up truck and one or more operational automobiles and except as provided in the rules and regulations enacted by the Master Community Association. In no event shall any vehicle remain parked in parking areas adjacent to the Community Center and Pool for any period in excess of six hours, nor shall any such Community Center parking area remain occupied during any time when the Community Center and Pool are closed.

IV.8. Motor Vehicles: All motor vehicles shall be maintained in proper operating condition and in a condition so as not to be a nuisance by noise, exhaust emissions or otherwise. Any Motorcycle operated within the community shall not be driven in a manner causing excessive noise. The Community Association shall have exclusive discretion to determine whether any vehicle shall constitute a nuisance hereunder.

IV.9. Trash Receptacles: Storage, collection and disposal of trash shall be in compliance with rules set by the Community Association. The Community Association may, in its exclusive discretion designate a specific day for trash collection, and any contracts for independent collection of trash shall specify said day for collection. The Community Association or any Sub-Association may contract for collection of trash and include the expense thereof in Assessments levied thereby.

IV.10. Signs: No signs of any kind shall be displayed in public view on any lot, except one sign of not more than six (6) square feet advertising the property for sale placed in a window, and any signs placed by the Developer. This provision shall not be construed to prohibit political signs and flags displayed in accordance with the North Carolina Planned Community Act.

IV.11. Trade or Business: No trade or business shall be carried on upon any Lot, Home or Unit, but this restriction shall not prohibit a home occupation which does not cause any noxious or offensive activity and which does not significantly increase traffic within the property.

IV.12. Rentals: No dwelling unit shall be rented for a period of less than twelve (12) months. Any owner who rents a dwelling unit has an affirmative obligation to immediately report such rental, the period of the rental and the names of the tenants to the Community Association. A copy of any lease shall also be provided to the Community Association. The Community Association may grant variances to this rental restriction in cases of hardship.

ARTICLE V
Membership and Voting Rights

V.1. Every owner of a Lot, Home or Unit which is subject to assessment shall be a member of the Community Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, Home or Unit which is subject to assessment.

V.2. Every owner of a Lot, Home or Unit which is subject to assessment shall also be a member of the Sub-Association which governs their respective section of the Community, as designated by the Developer or the Community Association.

V.3. The Community Association and Sub-Associations shall have two (2) classes of voting membership:

A. Class A: Class A members shall be all Owners, with the exception of Developer. Class A Members shall be entitled to one (1) vote for each Lot, Home or Unit. When more than one person holds an interest in any Lot, Home or Unit, all such persons shall be members; the vote for such Lot, Home or Unit shall be exercised as the owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot, Home or Unit. If multiple owners owning any Lot, Home or Unit are unable to agree on their vote, their vote shall not be counted.

B. Class B: The Class B member shall be Developer and Developer shall be entitled to three (3) votes for each Lot, Home or Unit Developer owns within the Community. In the case of the Developer, the Developer shall be entitled to votes for prospective Homes or Units, as may be designated on plats or plans regardless of whether said Homes or Units have been completed. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

ARTICLE VI
Assessments

V.1. Creation of the Lien and Personal Obligation of Assessments: The Developer, for each Lot, Home or Unit owned, hereby covenants, and every other Owner of any Lot, Home or Unit subject to this Declaration, by acceptance of a deed therefor, whether or not expressed in any such deed of other covenant, is deemed to covenant and agrees to pay the Community Association:

- A. Annual assessments or charges, as determined by the Board;
- B. Special assessments for capital improvements, or unanticipated crises or contingencies, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments on a Lot, Home or Unit together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot, Home or Unit and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as provided in the Act) incurred by the Community Association in collecting delinquent assessments shall also be the personal obligations of the person or entity who was the Owner of such Lot, Home or Unit at the time when the assessment became due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by them, notwithstanding that the lien for delinquent assessments shall continue to encumber the Lot, Home or Unit. In addition, the Community Association shall have all those powers provided for in the Act, including the ability to impose fines.

VI.2. Developer Exclusion: Developer shall not be required to pay assessments for Lot, Home or Unit or common areas owned by Developer.

VI.3. Purpose of Assessments: The Assessments levied by the Community Association may be used for the following purposes:

- A. for the promotion of the recreation and welfare of the residents of the Property;
- B. for the payment of ad valorem taxes and public assessments levied on the Common Area or limited Common Area, if any;
- C. for the maintenance and operation of any utility systems owned by the Community Association;
- D. for the maintenance of Community streets, roads, walkways, creek banks, bridges, wetland areas, fences, and retaining walls within the Property, as well as all signs and Community lighting located thereon and adjacent thereto;
- E. for the maintenance of the Common Area or limited Common Area and the cost of labor, materials and equipment necessary for the proper use, enjoyment and maintenance of the Common Area, including the community center, pool and furnishings therein;
- F. for snow removal regarding all streets within the Property (removal of snow from driveway and sidewalks shall be the responsibility of the individual Owners);
- G. for maintenance of the entrance area; provided, that it is understood that in the event that a gate is installed, said gate is not to be construed as any representation or guaranty of security to residents of the Property;
- H. for the procurement and maintenance of liability and hazard insurance in accordance with the By-Laws and the regulations of the Federal National Mortgage Association, such liability insurance to insure the Master Community Association in a minimum amount of \$1,000,000.00 per occurrence, or any other appropriate insurance that the Master Community Association requires;

I. for garbage removal, in the event that the Community Association shall determine to include such in services provided to the Community. If the Community Association elects not to provide garbage removal, each Owner shall contract for their own garbage removal to be collected on a day as determined by the Community Association;

J. for the employment of professionals, such as accountants, attorneys, and management firms, to represent the Community Association when necessary;

K. to maintain a reasonable reserve for the foregoing purposes;

L. maintenance of the swimming pool, walking trails, the community center complex, and all Common Areas.

N. for all expenses relating to the maintenance, painting, and repair of the farm silo, which shall be preserved as an iconic symbol of the Community.

N. for all expenses relating to any specific section of the Community, provided that any assessments collected for such expenses must be expended exclusively within said specific section, and such sums shall not be utilized for general Community expenses nor for expenses relating to other sections.

VI.4. Limitation on Use of Assessments: The Assessments may not be used by the Community Association, Sub-Association, nor the Board to retain legal counsel or to instigate any legal action, where the total expense of such action shall exceed five thousand and no/100s dollars (\$5,000.00) without the written consent of at least sixty seven percent (67%) of the Members. Such consent shall not be required to institute an action to collect any Assessments levied pursuant to this Declaration or to foreclose a lien to collect such Assessments.

VI.5 Special Assessments for Capital Improvements: In addition to the annual assessments authorized herein, the Community Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of Class A and Class B members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting..

VI.6. Assessments for Reserves. In addition to the annual assessments and special assessments, the Community Association shall, upon closing of each transfer of property from the Developer, collect an initial reserve account containing minimum sum equal to two (2) months of regular assessment, which shall be held in a reserve account at the discretion of the Community Association. This initial reserve deposit shall be supplemented thereafter as a budget item included in the annual assessments. Any Reserves collected relating to a specific section of the Community shall be held in a separate account and disbursements from said account shall only be made for improvements, repair or maintenance to the specific section for which said reserves were collected.

VI.7. Annual Assessments: Annual assessments shall be fixed by the Board of Directors of the Community Association. At least thirty (30) days in advance of each annual assessment, the Board of Directors of the Community Association shall fix the amount of the annual assessment against each Lot, Home or Unit and send written notice of such assessment to every owner subject thereto. The due dates of

such assessments shall be established by the Board of Directors and such assessments shall be payable on the due date, but may be collected in monthly, quarterly, or annual assessments, as established by the Board. A delinquent account may be accelerated by the Community Association such that the entire year's assessment becomes immediately due. Assessments as to any Lot, Home or Unit purchased from the Developer shall be prorated for any partial month or other partial Assessment term at closing. The Community Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Community Association stating forth whether the assessment for a specified Lot, Home or Unit have been paid.

VI.8. Uniform Rate of Assessments: Both annual and special assessments must be fixed at a uniform rate for all Lot, Home or Unit, as imposed by the Community Association. It is understood and agreed that Lots, Homes or Units may have additional assessments imposed as the same shall relate to distinct sections of the Community for expenses relating to such section, and that the aggregate of section and Community assessments may not result in a uniform rate.

VI.9 Elective Assessment for Lawn and Landscaping Maintenance: The Community Association may establish a "Lawn and Landscaping Maintenance Pool", whereby any Owner may elect to join the pool and pay an Elective Assessment for the purpose of funding the maintenance of the lawn and landscaping of their Lot. The Board shall, on an annual basis (or an other term to be determined in the discretion of the Board), establish the Law and Landscaping Maintenance Pool for the following year, and all Lot Owners electing to join such shall each pay an Elective Assessment to the Community Association, and the Community Association shall undertake the lawn and landscaping of the Lots of Owners electing to join the Lawn and Landscaping Maintenance Pool for the following year. The Elective Assessment charged to each Owner, and the terms of payment thereof, shall be determined by the Board upon election of such Owner to join the Lawn and Landscaping Maintenance Pool. The amount of the Elective Assessment need not be uniform as applied to all Owners and may be determined based upon the complexity of the maintenance required for any Lot. Any Owner who shall elect to join the Lawn and Landscaping Maintenance Pool, shall be obligated to pay the Elective Assessment until the end of the term of such Pool, and the Elective Assessment may be collected in the same manner as any other Assessment levied by the Community Association. The Community Association shall not be liable for any landscaping services provided hereunder, and by joining the Lawn and Landscaping Pool, such electing Owners agree to release the Community Association from any and all liability relating to the provision of landscaping services hereunder. The Community Association shall only employ landscaping services from an insured or bonded provider for such services, and the Community Association and Owners may, individually or collectively seek damages for any acts or omissions of such landscaping provider.

VI.10. Remedies for Non-Payment of Assessments: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within sixty (60) days of the due date, the assessment shall bear interest from the date of delinquency at the rate of 18%, or the maximum rate permitted by Law. Additionally, a late fee equal to the greater of Twenty and no/100ths Dollars (\$20.00) per month or Ten percent (10%) of the amount of such Assessment shall be charged for any Assessment installment, which remains due and owing, and which remains unpaid for any period of thirty (30) days or longer. The Board may, at its sole discretion, waive the imposition of interest or a late fee to any delinquent assessment. The Community Association may bring an action in law against the owner personally obligated to pay the assessment and interest or foreclose the lien created therein in the same manner as described by the laws of the State of North Carolina for foreclosure of deeds of trust. Cost and reasonable attorney fees as provided for above for any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area, or abandonment of his Lot, Home or Unit. In the event that an action at law results in a judgment being entered against the owner of any Lot, Home or Unit and in favor of the Community Association, the Community Association shall be further empowered to obtain execution on such judgment in a manner to the extent

provided for and permitted by the laws of the State of North Carolina. The Community Association may delegate collection of delinquent assessments to a duly-appointed property manager.

VI.11. Annual Budget: By majority vote of the Directors, the Board shall adopt an annual budget for the each year of operation which shall provide for the allocation of expenses in such a manner that the obligations imposed by this declaration and any and all amendments hereto shall be met. The Annual Budget shall include allocations for expenses relating to each specific community.

VI.12. Omission of Assessments: The omission by the Board, before the expiration of any year, to fix the assessments hereunder for that or for the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any owner from the obligations to pay any assessments.

VI.13. Subordination of Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to any mortgage or deed of trust which is a first lien on a Lot, Home or Unit. Sale or transfer of any Lot, Home or Unit shall not affect the assessment lien. However, the sale or transfer of any Lot, Home or Unit 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, Home or Unit from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent, and any mortgagee may, at its option, pay any delinquent obligations of a property owner. Developer or Community Association shall notify by certified mail return receipt requested, any mortgagees of any delinquency or any default in the presence of any obligations of an owner prior to taking any action against such owner which would affect the mortgagee.

ARTICLE VII Insurance

All owners of Lot, Home or Unit on which dwelling units are located are required to have fire and extended coverage insurance in an amount sufficient to cover the full replacement cost thereof. All owners of Lot, Home or Unit on which units are located shall have an affirmative obligation to provide the Developer or the Community Association with a copy of the declaration page of their current fire and extended coverage insurance policy. In the event of damage to or destruction of any Lot, Home or Unit which would be covered by a standard fire and extended coverage insurance policy, the owner of such Lot, Home or Unit shall have the affirmative responsibility of reconstructing or repairing it regardless of whether such owner has such a standard fire and extended coverage insurance policy. In the event of the owner's failure to repair or reconstruct such Lot, Home or Unit, the Community Association may, at its discretion, clean up the debris or repair the damage and add the costs thereof to the assessment against the Lot, Home or Unit upon which said debris is located, and collect such assessments pursuant to the provisions of Article VI.

ARTICLE VIII Easements

VIII.1. Easements Established: All Lot, Home or Unit and common areas within the Community shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas, telephone, cable television and electric power lines and ingress and egress and for other purposes as shall be established by the Community Association.

VIII.2. Road Rights-of-Way: All Lot, Home or Unit within the Community are serviced by certain road rights-of-way described on plats to be recorded. Developer does hereby establish said rights of way as shown as private roadways, and make no representation with respect to whether they have been constructed in accordance with current Department of Transportation specifications. As such, said roadway may not be eligible for dedication as a public road by the North Carolina Department of Transportation for inclusion in the State highway system. As such, all future Owners, and their heirs, successors and assigns, covenant and agree that they shall be jointly responsible for the maintenance, upkeep, repair and service of such road rights of way unless and until such time as the Department of Transportation assumes the obligation for the maintenance of said road rights of way.

VIII.3. Encroachments and Developer's Easements to Correct Drainage: All Lots, Homes and Units and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots, Homes or Units by the Developer to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, steps and walls. If an encroachment is created as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be and remain a valid easement for such encroachment for the maintenance of the same. For a period of twenty-five (25) years from the date of conveyance of the first Lot, Home or Unit, the Developer reserves a blanket easement on, over and under the ground within the Community to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety, and appearance, expressly including the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, the Developer shall restore the affected property to its original condition to the extent practicable. Developer shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Developer. Nothing in this section shall be deemed to impose an obligation upon Developer to maintain and correct drainage and surface water conditions.

VIII.4. Easements to Buncombe County and Public or Private Utilities: A perpetual easement is hereby established for county, state or public or private utilities serving the area, their agents and employees over all Common Area hereby or hereafter established for postal and private mail delivery, garbage collection, setting, removing and reading utility meters, maintaining and replacing utility or drainage connections, or cable service, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

VIII.5. Easement for Construction Purposes: Developer shall have full rights of ingress and egress to and through, over and about the Common Areas in the Property during such period of time as Developer is engaged in any construction or improvement work on or within the property. Developer shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc. which are being utilized. No owner, his guests or invitees shall in any way interfere or hamper Developer, its employees, successors or assigns, in connection with such construction, it being understood and agreed that the construction activities of Developer or its contractors or subcontractors, so far as practical, not interfere with the quiet enjoyment of Lots, Homes or Units within the Property.

VIII.6. Utility Contracts: The Developer reserves the right to subject the Property to contracts with individual utility companies for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to such utility companies by the Community Association.

**ARTICLE IX
Party Walls**

IX.1. General Rules of Law to Apply: Each wall which is built as a part of the original construction of the homes upon the Property 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 property damage due to negligence or willful acts or omissions shall apply therein. Party Walls as identified herein shall only be placed within sections of the Community designated as Townhome, Multi-Family, or as Condominium use.

IX.2. Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of improvements adjoining such party wall.

IX.3. Destruction by Fire or 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 makes use of the wall, they shall equally contribute to the cost of restoration thereof 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.

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

IX.5. Right to Contribution Runs with the 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.

IX.6. Arbitration: In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose on additional arbitrator, and the decision shall be by a majority of all the arbitrators.

**ARTICLE X
Obligations to Mortgagees**

The following provisions are established for the benefit of the holders of mortgages (the definition of mortgages to include Deeds of Trust or other security instruments) encumbering any Lot, Home or Unit located within the Property:

X.1 Developer or Community Association shall be obligated to notify the holder of any first mortgage or deed of trust on a Lot, Home or Unit, upon request of such holder, of any default by the Owner and the performance of any of such owner's obligations described herein, including failure to pay assessments when due, which is not cured within sixty days from the date of such default;

X.2 First mortgagees of Lot, Home or Unit may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area;

X.3 No provision herein shall be construed to give an Owner or any other party priority over any rights of first mortgagees of Lots, Homes or Units pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of, common area property.

**ARTICLE XI
Pinebrook Farms Community Property Owners' Association**

The Developer does hereby establish a non-profit corporation which shall be known as the Pinebrook Farms Community Property Owners' Association (herein "Community Association"). The purpose of the Community Association shall be to provide for the orderly enforcement of these covenants, including, but not limited to, the

maintenance, upkeep and repair of the joint rights of way within the Community and any common elements or any other matter or area determined by the Community Association to be a common element or other area of common interest. The Board of Directors as established in the Bylaws of the Community Association shall constitute the Executive Board as defined in N.C.G.S. 47E-3-103 and shall be subject to the provisions of such statute, except as set forth in this Declaration or the terms of the Bylaws of the Community Association.

**ARTICLE XII
General Matters**

XII.1. Adjoining Properties and Governmental Actions: All purchasers of Lots, Homes and Units do hereby acknowledge that Developer has made no representations as to uses of adjoining properties and such purchasers have been advised to investigate on their own accord any particular uses of adjoining properties and acknowledge that they have assumed such responsibility. By acceptance of a deed conveying title to any Lot, Home or Unit with the Community, such Purchasers do hereby understand and agree that Developer is not responsible for any activities or actions conducted on any property adjoining the Community, or in any way relating to or arising out of any use of any property adjoining the Community. The purchaser of any Lot, Home or Unit acknowledges that they have investigated on their own accord how such uses may affect the Community and are satisfied that they do not materially or substantially affect the value, use or enjoyment of any Lot, Home or Unit.

XII.2. Enforcement: Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in Article 2 of Chapter 44A of the North Carolina General Statutes, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. Action for enforcement may be brought by the Community Association or any Lot, Home or Unit owner. In addition, the Community Association may impose reasonable fines pursuant to the Act against any property owner for violation of these Restrictions. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other property owners to exercise any or all of the other remedies or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear on or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover a reasonable attorney's fee as a part of such action.

XII.3. Amendment and Modification. The Developer does hereby declare the advantages accruing to the Property from these covenants and restrictions hereinabove set forth. All covenants, restrictions and affirmative obligations set forth herein shall run with the Property and shall be binding on all parties and persons claiming under them. Except as otherwise set forth in these Restrictions, during the Control Period, the Developer hereby reserves the absolute right to modify and/or to amend these Restrictions in whole or in part in Developer's sole and absolute discretion as the Developer deems proper and appropriate. After the Control Period, an amendment to these Restrictions shall be made and approved in the manner whereby at an annual meeting or specially called meeting of the Members, sixty-seven percent (67%) of the Members vote in favor of such amendment and once made, shall be come effective when recorded in the Buncombe County, North Carolina, Register's Office. Whenever herein the Developer has reserved a right or the discretion to decide a matter, then the exercise of such right and the decision of such matter shall be in the sole and absolute discretion of the Developer. Nothing herein shall require or shall be construed so as to require the Developer or its related persons or entities to subject all or any part of its remaining adjoining property to these Restrictions.

XII.4. Developer Control. The "Control Period" or "Developer Control Period" shall mean that period of time from the date of the recording of these restrictions through the earlier of 1) January 1, 2022, or 2) that date upon which Developer conveys the last Lot, Home or Unit as shown on the plat or any subsequent recorded plat adding property as an additional phase of the Community.

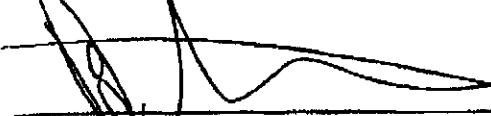
XII.5. Additional Property. Developer may add subsequently acquired contiguous property to the Community which will be developed in a similar manner and will be made subject to these covenants, conditions and restrictions.

ARTICLE XIII
Condominiums, Sections and Subdivisions within the Community

The Developer intends to develop Condominiums, Sections and Subdivisions within the Community, each of which will may a distinct set of declarations or restrictions which will govern such sections in more detail, and which will address issues relating uniquely to such sections. Each such section may have a distinct governing Association and may have dues assessments in addition to those set forth herein. All declarations, rules and restrictions for such sections within the Community shall be subordinate to the restrictions set forth herein, however, such subordinate declarations, rules and restrictions may be more restrictive and may supplement the restrictions as set forth herein.

IN WITNESS WHEREOF, the Developer has hereunto set its hand and seal the day and year first above written.

PINEBROOK FARMS, LLC.


BY: BRUCE M. ALEXANDER, President

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Cynthia G McCullers, a Notary Public of the County of Buncombe and State aforesaid, certify that BRUCE M. ALEXANDER personally came before me this day and acknowledged that he is Member/Manager of Pinebrook Farms, LLC., a North Carolina limited liability company, and that he, as Member/Manager, being authorized to do so, executed the foregoing on behalf of the company. Witness my hand and official seal this the 25th day of July, 2007.

Cynthia G McCullers
NOTARY PUBLIC

My commission expires:

1-4-2009

