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GUILFORD CO, NC FEE \$74.00

PRESENTED & RECORDED:

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JEFF L. THIGPEN

REGISTER OF DEEDS

BY: WILEY L. COUSIN

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Prepared by: Richard I. Shope, Attorneys at Law, P.A., 426 W. Friendly Avenue, Greensboro, NC 27401

NORTH CAROLINA  
GUILFORD COUNTY

AMENDED AND RESTATED  
DECLARATIONS OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR BIRKHAVEN

THIS DECLARATION is made on the date hereinafter set forth by Venn Birkhaven, LLC, a North Carolina Limited Liability Company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Guilford County, State of North Carolina, which is particularly described as follows:

All of the property surveyed and shown on those certain Plats entitled "Birkhaven, Phase 1" as shown on plats recorded in Plat Book 183 at Pages 146, 147 and 148, and "Birkhaven, Phase 2" as shown on Plats recorded in Plat Book 183 at Page 149 and 150, in the Office of the Register of Deeds of Guilford County, North Carolina.

WHEREAS, on January 10, 2013, a certain Declaration of Covenants, Conditions and Restrictions for Birkhaven was recorded in Book 7434 at Page 895-917, in the Office of the Register of Deeds of Guilford County by which Plats of Birkhaven, Phases 1 and 2, in Plat Book 183, Pages 146-150 were attempted to be subjected to a Declaration of Covenants, Conditions and Restrictions but the Declarant's name was inadvertently stated to be Venn Birkhaven Partners, LLC, rather than Venn Birkhaven, LLC; and

WHEREAS, Venn Birkhaven, LLC is the correct name of the Declarant and;

WHEREAS, Venn Birkhaven, LLC executed the above-said Plats in its correct name although the Plat lists Venn Birkhaven Partners, LLC as owner; and

WHEREAS, Declarant has recently sold and conveyed the following lots in Birkhaven Subdivision:

- a. Lots 7 and 39, Phase 2, Map 1 of 2, Plat Book 183 at Page 149 to Disney Construction Co;
- b. Lot 4, Phase 1, Map 3 of 3, Plat Book 183 at Page 148 to John R. Rock and wife, Christie L. Rock;
- c. Lot 5, Phase 1, Map 3 of 3, Plat Book 183 at Page 148, and Lot 57, Phase 2, Plat Book 183 at Page 150 to R&K Investment Properties, Inc.;
- d. Lot 42, Phase 2, Map 1 of 2, Plat Book 183 at Page 149 to Brian Thompson Homes, LLC;
- e. Lots 40 and 44, Phase 2, Map 1 of 2, Plat Book 183 at Page 149, and Lot 34, Phase 2, Map 1 of 2, Plat Book 183 at Page 150 to Friddle and Company, Inc.; and
- f. Lots 8 and 9, Phase 2, Map 1 of 2, Plat Book 183 at Page 149 to Don Mills Builders, Inc.;

WHEREAS, Declarant and the above-stated Purchasers of lots desire to subject to all the lots in Birkhaven, Phases 1 and 2, as recorded in Plat Book 183 at Pages 146-150 to the Declaration of Covenants, Conditions and Restrictions for Birkhaven as previously recorded in Book 7434 at Page 895 through 917, and as amended.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with, such real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof It is the intent of Declarant that the provisions of this Declaration in all respects conform to and comply with the requirements sets forth in the North Carolina Planned Community Act. To the extent any provision contained herein does not conform or comply with the North Carolina Planned Community Act, the provisions of the North Carolina Planned Community Act shall control.

## ARTICLE I DEFINITIONS

SECTION 1. "Association" shall mean and refer to the Birkhaven Homeowners Association, Inc., it successors and assigns.

SECTION 2. "Common Elements" shall mean all real property owned by the Association and the rights and easements reserved to the Association on any recorded plat of the Properties.

Declarant reserves the right, in its sole discretion, to convey from time to time and without the consent of the Association or its Members additional property to the Association which property may include all or any portion of the Properties, including any additional land annexed by Declarant pursuant to Article X, Section 4 hereof and the Association shall accept any such conveyance of additional property and thereafter such additional property shall be held and maintained by the Association as Common Elements. Improvements, which may include, but shall not be limited to, roadways, retention or detention ponds or erosion control devices, may be located on such additional Common Elements. Except as otherwise provided in Section 47F-3-1.13 of the Planned Community Act, the Association shall be required to promptly repair and replace any portion of the Common Elements for which the Association is required to maintain casualty insurance pursuant to the Bylaws of the Association which is damaged or destroyed.

SECTION 3. "Declarant" shall mean and refer to Venn Birkhaven Partners, LLC, as well as its successors and assigns, pursuant to an express assignment or conveyance of any special Declarant rights hereunder to such successor or assign, all of which rights, including Declarant's voting rights, are assignable and may be apportioned on a lot-by-lot basis.

SECTION 4. "Declarant's Development Period" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Guilford County, North Carolina, and continuing for so long as Declarant shall have the right to annex any portion of the Additional Property pursuant to the provisions of Article X, Section 4 hereof or Declarant or any affiliate of Declarant shall own any portion of the Properties.

SECTION 5. "FHA" shall mean and refer to the Federal Housing Administration of the Department of Housing and Urban Development and "VA" shall mean and refer to the Department of Veteran Affairs.

SECTION 6. "Lot" shall mean and refer to any separately numbered plot of land shown upon any now or subsequently recorded subdivision map of the Properties with the exception of Common Elements and dedicated streets and shall include any dwelling and other improvements constructed thereon. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant and to thereby create additional Lots, eliminate existing Lots or create additional Common Elements; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted, nor shall any Lot within the properties contain fewer square feet than the minimum number of square feet from time to time required by the appropriate local governmental authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

SECTION 7. "Master Plan" shall mean and refer to the plan(s) for the Properties and the Additional Property now or hereafter approved by Guilford County, or other appropriate governmental authority, as such plan(s) may be from time to time amended and approved.

SECTION 8. "Member" shall mean and refer to every person or entity that holds membership with voting rights in the Association.

SECTION 9. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 10. "Period of Declarant Control" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Guilford County, North Carolina, and continuing until the earlier of (i) ten (10) years from the date of this Declaration is recorded in the Office of the Register of Deeds of Guilford County, North Carolina; or (ii) such time as construction on the last house on any lot shown on the Master Plan is substantially complete, such period of time shall be reinstated and shall continue until the earlier of (i) ten (10) years from the date this Declaration is recorded in the Office of Register of Deeds of Guilford County, North Carolina; or (ii) such time as construction on the last house on any lot shown on the Master Plan is substantially complete.

SECTION 11. "Planned Community Act" shall mean and refer to the provisions of Chapter 47F of the North Carolina General Statutes.

SECTION 12. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

## ARTICLE II PROPERTY RIGHTS

SECTION 1. OWNERS EASEMENTS OR ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements;

b) the right of the Association to suspend the voting rights by an Owner for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;

c) the right of the Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes in the Association, to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Association's Executive Board; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers agreeing to such dedication or transfer, has been recorded; provided further during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances;

d) the right of the Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes in the Association, to dedicate to any public agency, authority or utility, or to transfer to any other party, fee title to all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances; and further provided during Declarant's Development Period, Declarant must also consent to such action;

e) the right of the Association to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements, and specifically including the right to establish rules and regulations concerning parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Properties, which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Executive Board;

f) the right of the Association to borrow money for the purpose of improving the Common Elements and facilities thereon and, with the assent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association) provided, however, no mortgage, encumbrances or hypothecation or foreclosure of the lien thereby created, shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances; provided further during Declarant's Development Period, Declarant must also consent to such action;

g) subject to the prior written consent of FHA or VA, in the event FHA or VA insured loans have been obtained and secured by Lots, the right of the Association to exchange portions of Common Elements with the Declarant for substantially equal areas of the Properties for the purpose of eliminating unintentional conveyances of Common Elements or unintentional encroachments of improvements onto portions of the Common Elements or for the purpose of enhancing the utility of the Common Elements to be retained by the Association.

SECTION 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment of the Common Elements and facilities to the members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

SECTION 3. LEASES OF LOTS. Any Lease Agreement between an Owner and a lessee for the lease of such Owner's Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and the Bylaws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the terms of the lease. All leases of Lots shall be in writing. Other than the foregoing there is no restriction on the right of Declarant or any Owner to lease his Lot.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

SECTION 1. MEMBERSHIP. Every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including Declarant and any affiliated entity, shall be a voting Member of the Association. The foregoing is not intended to include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation. Such Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. On all matters which the Membership shall be entitled to vote, the Member(s) owning each Lot shall be entitled to one (1) vote, except as provided in Article III, Section 2. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

SECTION 2. CLASSES OF MEMBERSHIP. The Association shall have two classes of voting membership:

Class A.: The Class A. Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant or any affiliated entity, during any Period of Declarant Control. Class A Members shall be entitled to one (1) vote for each Lot owned.

Class B.: Declarant shall be the Class B Member and Declarant shall be entitled to three (3) votes for each lot shown on the Master Plan as developed or to be developed as a part of Birkhaven which has not been conveyed by Declarant or any affiliated entity to a Class A Member. The Class B membership shall cease and be converted to Class A. membership on the happening of either of the following events, whichever occurs earlier:

- i. when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; however, the Class B membership shall be reinstated if thereafter, and before the time stated in subparagraph (ii) below, the Master Plan is amended to add additional lots developed or to be developed as a part of Birkhaven sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to three (3) votes for each lot shown on the Master Plan as developed as a part of Birkhaven which has not been conveyed by Declarant or an affiliate of Declarant to a Class A Member) greater than those of the Class A membership; or
- ii. ten (10) years from the date this Declaration is recorded in the Office of the Register of Deeds of Guilford County, North Carolina.

SECTION 3. DECLARANT RIGHT TO REPRESENTATION ON THE EXECUTIVE BOARD OF THE ASSOCIATION. During any Period of Declarant Control, Declarant shall have the right to designate and select all of the persons who shall serve as members of each Executive Board of the Association. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Executive Board which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Executive Board of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve in the place of any member or members of the Executive Board so removed for the remainder of the unexpired term of any member or members of the Executive Board so removed. Any Executive Board member designated and selected by Declarant need not be a resident of the Properties.

#### ARTICLE IV COVENANT FOR MAINTENANCE AND ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay: (a) to the Association; (i) annual and other assessments and charges provided for herein, together with interest and late fees, costs and reasonable attorney's fees; (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Elements; and (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Elements if the Association shall default in the payment of either or both for a period of six (6) months. All assessments and charges provided for herein, together with interest, any late fees, costs and reasonable attorney's fees, shall be a charge on the land and shall constitute a continuing lien upon the property against which each such assessment is made when a claim of lien is filed of record in the Office of the Clerk of Superior Court, Guilford County, North Carolina. Each such assessment and charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent shall not pass to his successors in title unless expressly assumed by them.

#### SECTION 2. PURPOSE OF ASSESSMENTS.

a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Elements; the maintenance of water and septic system lines in and upon the Common Elements, including all Common Element areas designated as off-site septic fields; the maintenance of open spaces and streets which have not been accepted for dedication for public authority, road medians and islands (including medians and islands located in dedicated rights-of-way within the Properties), drives and parking areas within the Common Elements; the procurements and maintenance of liability insurance in accordance with the Bylaws; the maintenance of dams and ponds, including retention or detention ponds, or other bodies of water, if any, located within the Common Elements; the maintenance of entrance ways, landscaping and lighting of Common Elements, road medians and islands and entrance ways; the cost of operating, maintaining and repairing any street lights erected by the Association or the Declarant in the rights-of-way of streets (whether public or private) or in any other easement provided therefor within the Properties; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the

replacement of capital improvements, without limiting the generality of the foregoing, paving, and any other major expenses for which the Association is responsible; and such other needs as may arise.

b) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Elements and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

c) All monies collected by the Association shall be treated as separate property of the Association, and such monies may be applied by the Association to the payment of any expenses of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When the Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties.

SECTION 3. ADOPTION OF BUDGET AND FIXING OF ANNUAL ASSESSMENTS;  
MAXIMUM ANNUAL ASSESSMENT.

a) At least thirty (30) days in advance of each annual assessment period, the Executive Board shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. Within thirty (30) days of the adoption of any proposed budget, the Executive Board shall provide to all of the 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. In establishing such annual budget, and in fixing the amount of such annual assessments, the Executive Board, in its direction, may consider other sources of funds available to the Association, including, without limitation, any subsidy by the Declarant, which subsidy, in the sole discretion of Declarant, may be in the form of a contribution, an advance against future assessments due, or a loan, with or without interest at market rate. Any such subsidy or contribution in the nature thereof shall be disclosed as a line item in the budget. The payment of any such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years. The Executive Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting the Owners of a majority of the Lots reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

b) Until December 31 of the year in which this Declaration is recorded, the maximum annual assessment shall be Six Hundred and no/100 Dollars (\$600.00) per Lot for lots sold to a third party other than the Declarant. For lots owned by the Declarant, the maximum annual assessment shall be \$300.00 per lot.. The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter



shall be established by the Executive Board and may be increased by the Executive Board without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year. The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased without limit by a vote of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose; however, during any Period of Declarant Control, Declarant must also consent to such action.

c) The Executive Board may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of Section 6 of this Article.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, during the Period of Declarant Control, Declarant must also consent to such action. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or semi-annual basis, as determined by the Members approving such assessments.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 of this Article shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast twenty percent (20%) of all the votes of each class of Members of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. RATE OF ANNUAL ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots; provided, however, that so long as any Lot is owned by Declarant or assignee of Declarant's development rights, Declarant or its assignee may pay, in lieu of such assessment, a subsidy with respect to such Lot as provided in Section 3 of this Article.

SECTION 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following: (i) the date such Lot is conveyed to other than Declarant or an assignee of Declarant's development rights; or (ii) the first day of the month following commencement of construction of a residence by the Declarant on a Lot owned by the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due dates shall be established by the Executive Board. Annual assessments may be collected on a monthly, quarterly, semi-annual or annual basis, as determined by the Association's Executive Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

SECTION 8. WORKING CAPITAL ASSESSMENTS. In addition to the annual assessments authorized above, at the time of the closing of the first sale of each Lot to a party other than an assignee of Declarant's development rights or the commencement of construction of a residence by the Declarant on a Lot owned by the Declarant, the purchaser(s) or Declarant thereof shall pay to the Association an amount equal to two-twelfths (2/12ths) of the then current annual assessment established by the Association. Such funds shall be used by the Association to establish a Working Capital Fund, the purpose of which is to insure that the Association will have sufficient monies available to meet its initial operational needs. No such payments made into the Working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of this Declaration and the Bylaws.

SECTION 9. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate from time to time established by the Association not to exceed eighteen (18%) per annum. In addition, the Association may charge a reasonable late fee, the amount of which shall be established from time to time by the Executive Board of the Association, for assessments not paid within thirty (30) days after the due date and after notice and an opportunity to be heard, the Association may suspend privileges or services provided by the Association (except rights to access to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer, which suspension may continue without further hearing until the delinquency is cured. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of a mortgage or deed of Trust on real estate under power of sale, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Elements or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

SECTION 10. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Elements or assessments for public improvements to the Common Elements, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

SECTION 11. FORECLOSURE OF FIRST MORTGAGES. When the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot, obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust or deed in lieu of foreclosure, such purchasers and its heirs, successors and assigns, shall not be liable for the assessments against such Lot which become due prior to the acquisition of title by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all Owners, including such purchaser, its heirs, successors and assigns. Such sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a

foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer; provided, however, no such sale or transfer shall relieve such Lot or the Owner thereof from liability for any assessments thereafter becoming due or from the lien thereof.

SECTION 12. EXEMPT PROPERTY. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE V ARCHITECTURAL CONTROL

SECTION 1. IMPROVEMENTS. No improvements, alteration, repair, change in paint color, excavation, change in grade, planting, landscaping or other work which in any way alters the exterior of any Lot or the improvements located thereon from their natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner other than Declarant or an affiliate of Declarant shall be commenced, erected or maintained upon any Lot and no building, fence, wall, residence or other structure or planting or landscaping shall be commenced, erected, maintained, improved, altered or removed until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Executive Board or by an architectural committee composed of three (3) or more representatives appointed by the Executive Board (the "Architectural Control Committee"). Notwithstanding the foregoing, landscaping improvements consisting of plant materials native to the area and commonly used in residential landscaping which do not interfere with the sight lines of motorists at intersections of the streets and/or driveways located within the Properties shall not require approval by the Executive Board or the Architectural Control Committee. Further, nothing herein contained shall prevent or interfere with the right of the Declarant to improve and develop the Properties, including the Lots, as Declarant chooses, so long as said development follows the general plan of development of the Properties previously approved by the appropriate local governmental authority. Accordingly, Declarant need not seek or obtain the approval of the Architectural Control Committee for improvements erected on the Properties by or at the direction of Declarant. In addition, during Declarant's Development Period, Declarant may approve any plans and specifications rejected by the Executive Board or the Architectural Control Committee for the construction or alteration of improvements on any Lot provided the construction or alteration approved by Declarant comport with the general scheme of development approved by Guilford County or other appropriate local governmental authority. Such approval by Declarant shall operate and have the same effect as approval by the Executive Board or the Architectural Control Committee.

### SECTION 2. PROCEDURES.

a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Executive Board of the Association or the Architectural Control Committee which shall evaluate such plans and specifications in light of the purposes of this Article.

b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for

permanent record with the Architectural Control Committee and a copy of such plans and specific action bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specifications shall not be deemed a waiver of the Architectural Control Committee's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to and compliance with, such plans and specifications, as approved, as the Association may require that the Owner(s) requesting any change under this Article be liable for any cost of maintaining, repairing and insuring the approved alteration. If such condition is imposed, the Owner(s) shall evidence consent thereto by a written document in recordable form satisfactory to the Association. Thereafter, the Owner(s), and any subsequent Owner(s) of the Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge set forth herein, and subject to the lien rights described herein.

c) Neither Declarant, nor any other member of the Association's Executive Board or Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by them, nor for any structural defects in any work done according to such plans and specifications. Further, neither Declarant, nor any member of the Association's Executive Board or Architectural Control Committee, shall be liable in damages to anyone by reason of mistake in judgment, negligence, misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications or the exercise of any other power or right provided for in this Declaration. Every person who submits plans or specifications for approval agrees, by submission of such plans and specifications, and every owner of any Lot agrees, that he or she will not bring any action or suit against Declarant, or any member of the Association's Executive Board or Architectural Control Committee, to recover any such damage.

## ARTICLE VI EXTERIOR MAINTENANCE

SECTION 1. EXTERIOR MAINTENANCE. The Association shall maintain the Common Elements. Each Owner shall be responsible for the exterior maintenance of his or her dwelling and lot, as follows: Painting, replacement and care of roofs, gutters, down spouts, exterior building surfaces, lawn, trees, shrubs, landscaping, fencing, driveways, walks and other exterior improvements. In the event that the Owner neglects or fails to maintain his or her improved Lot and/or the exterior of his or her dwelling in a manner with other improved Lots and dwellings within the Properties or fails to maintain his or her improved Lot in a safe condition and free of debris, the Association may provide such exterior maintenance. Provided, however, that the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Association intends to perform and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance himself or herself. The determination as to whether an Owner has neglected or failed to maintain his or her Lot and/or dwelling in a manner consistent with other Lots and dwellings within the Properties shall be made by the Executive Board of the Association, in its sole discretion. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article VI, Section 1. In the event the Association performs such exterior maintenance, repair or replacement,

the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject.

SECTION 2. MAINTENANCE OF OFF-SITE SEPTIC FIELDS AND SEPTIC LINES. The Association shall be responsible for the maintenance of all off-site septic fields located on the Common Elements and shall maintain and repair all septic lines located within the dedicated utility easements which serve such off-site septic fields. The Association shall comply with all state and local ordinances and regulations regarding the maintenance of the off-site fields and fines, including all required inspections and mowing of vegetation. The Owner of any Lot which is served by an off-site septic system shall be solely responsible for all maintenance and repair of that portion of the septic system, including the septic tank, pump and lines, located on the Owner's Lot to the point in which the septic line enters the dedicated utility easement on the Owner's Lot. In the event of the failure of any off-site septic field, the Owner served by such off-site septic field shall be responsible, at their sole cost and expense, for the installation of an on-site septic field on the Owner's Lot. The failed off-site septic field shall no longer be utilized for such purpose, but the area in which the failed off-site septic field is located shall remain a Common Element and Open Space to be maintained and regulated by the Association.

## ARTICLE VII RESTRICTIONS

SECTION I. CONSERVATION/MITIGATION AREAS. The areas shown as conservation areas on the recorded plat(s) for Birkhaven shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- a) Fill, grade, excavate or perform and other land disturbing activities.
- b) Cut, mow, burn, remove, or harm any vegetation.
- c) Construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures.
- d) Drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area.
- e) Dump or store soil, trash or other waste.
- f) Graze or water animals, or use for any agricultural or horticultural purpose.

This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, Action ID, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Declarant, and all parties claiming under it.

Section 1 above cannot be amended without the express written consent of the U.S. Army Corps of Engineers, Wilmington District.

SECTION 2. LAND USE AND BUILDING TYPE. No Lot shall be used except for single-family residential, street or park purposes. No building or other structure shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single family dwelling not to exceed two and one-half stories in height (excluding any basement), a private garage for not more than three cars and one accessory building erected on a permanent foundation which is incidental to the residential use of the Lot. Notwithstanding the foregoing, Declarant shall have the right to maintain (i) one or more sales offices and one or more model homes in dwellings located on Lots owned or leased by Declarant for the promotion and sales of Lots and dwellings within the Properties, and (ii) one or more temporary trailers and other temporary structures on any Lot owned by the Declarant or on the Common Elements to facilitate the construction of improvements within the Properties.

SECTION 3. DWELLING SPECIFICATIONS. No dwelling shall be erected or allowed to remain on a Lot if the heated are of the main structure, exclusive of open porches, decks and garages, shall be less than 2,600 square feet for each one story dwelling or 3,000 square feet for each one and one-half or two story dwelling.

SECTION 4. BUILDING SETBACKS. No building shall be located on any Lot nearer to the front or rear Lot line, or any side street or Lot line, than shall be permitted under applicable local ordinances in effect at the time such building is to be constructed or as permitted by appropriate local governmental, authority pursuant to a variance of such ordinances.

SECTION 5. EXTERIOR MATERIALS. Artificial stucco, concrete, composite siding, aluminum and vinyl are not appropriate exterior materials. Cement based board siding will be considered by the Architectural Control Committee for minor facade treatment and use of high quality, adequately detailed vinyl trim components will be considered by the Architectural Control Committee for boxing. Fifteen inch (15") reinforced concrete pipe ("RCP") must be used for all ditch crossings. Headwalls approved by the Architectural Control Committee must be constructed using matching brick or other material complimentary to the siding used on the residence on all exposed ends of said RCP. The Architectural Control Committee will specify permissible mailboxes.

SECTION 6. NUISANCE. No noxious or offensive activity shall be conducted upon a Lot or the Common Elements nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. In addition, no activity deemed noxious or offensive by the Architectural Control Committee shall be carried on upon any Lot or within the Common Elements, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood as determined by said Architectural Control Committee. Examples of such offensive activities shall include, but not be limited to, the origination or emission of any loud or disturbing noise or vibrations, the maintenance of an auto repair site, the maintenance of unsightly outdoor storage of personal property (including toys, motorcycles or other motor vehicles, tricycles, bicycles, wood piles or other miscellaneous items) on porches, patios, terraces or yards, or similar unsightly activity not in keeping with the aesthetic character and high level of appearance of the community. The Architectural Control Committee, with the approval of the Executive Board, may establish reasonable rules and regulations for enforcing the provisions of this Section.

SECTION 7. SIGNS. Except for signs erected by Declarant or the Association within any Common Elements and signs erected by Declarant on Lots owned or leased by Declarant advertising the sale, lease or other promotion of Lots and dwellings constructed thereon within the Properties, no sign, permanent flag or flag pole shall be placed or allowed to remain on any lot except for one (1) "For Sale" or "For Lease" sign, or one other temporary sign to advertise a yard sale or other temporary activity on the Lot and such other temporary sign shall, not be permitted to remain on any Lot for more than seventy-two (72) consecutive hours. No sign deemed by Declarant or the Association to be a nuisance or a detriment to the Properties shall be permitted or allowed to remain on any Lot within the Properties.

SECTION 8. OUTSIDE ANTENNAS. Except for "dish" and antennas designed to receive direct broadcast satellite service, including direct-to-home satellite service, one meter (39") or less in diameter, antennas designed to receive video programming services via MMDS (wireless cable) and antennas designed to receive television broadcast signals, no outside antennas or satellite dishes and no free standing transmission or receiving towers shall be erected on any Lot within the Properties without the prior written permission of the Architectural Control Committee. Except with the prior written permission of the Architectural Control Committee, any antenna or satellite dish erected on any Lot within the Properties, shall be a color which blends with its surroundings, shall have a mast only as high as reasonably necessary to receive the intended signal, shall not be visible from any street and shall not be erected on a Lot between the dwelling and the street on which the Lot fronts.

SECTION 9. RESUBDIVISION OF LOT, STREETS, FENCES AND WALLS. Except with the express written consent of Declarant during Declarant's Development Period, and thereafter except with the express written consent of the Architectural Control Committee of the Association, no Lot shall be re-subdivided into a lot smaller than or different from the Lot shown on the recorded plat and no street shall be laid out or opened across or through any Lot. Except for fences erected by Declarant or the Association, no fence, wall or other enclosure shall be erected or allowed to remain on any Lot unless the height, materials and location of the same have been approved by the Architectural Control Committee as provided in Article V of this Declaration. No fence on any Lot shall be permitted to extend nearer to any front street than the front building line of the residence located on that Lot, exclusive of any garage structure extending beyond the front of the main residence structure, and all fences shall be installed five (5) feet from all side and rear lines. The finished side of all fences shall face towards adjoining streets and Lots. Chain link, welded wire, and split rail fences with wire backing are prohibited except when the Architectural Control Committee gives written approval. In addition, chain link fencing may be erected without restriction by the Declarant or the Association on the Common Elements or anywhere within the Properties as reasonably required for purposes of safety or to meet governmentally imposed requirements.

SECTION 10. METAL STORAGE BUILDING, MOBILE HOMES, MANUFACTURED HOMES, TEMPORARY STRUCTURES, ETC. No metal storage building of a temporary or permanent character shall be permitted on any Lot. No mobile home, manufactured home, trailer, or other like structure shall be located on any Lot. No structure of a temporary character, recreational or other vehicle, trailer, tent, shack, garage, barn or other out building shall be used on any Lot at any time as a residence either temporarily or permanently.

SECTION 11. ANIMALS. No animals, livestock or poultry of any kind shall be raised or kept on any Lot, except that dogs, cats or other household pets may be kept on Lots provided that said animals are kept in compliance with applicable local ordinances are not kept for commercial purposes and further provided that they are kept and maintained in compliance with all laws and ordinances of the State of

North Carolina, Guilford County, relating thereto; and such rules and regulations pertaining thereto as the Executive Board may adopt from time to time. Each owner owning or having possession, charge, care, custody or control of any dog shall keep such dog exclusively upon his or her Lot; provided, however, that such dog may be off the Lot if it is under control of a competent person and restrained by a chain, leash or other means of adequate physical control. Each Owner will be responsible for cleaning up any and all waste deposited by any animal upon any Lot or Common Elements.

SECTION 12. GARBAGE AND REFUSE DISPOSAL. No Lot shall be used or maintained as a dumping ground for rubbish, and all trash, garbage or other waste shall be stored in sanitary containers in accordance with the rules and regulations of any health or public safety authority having jurisdiction over the property. All incinerators or other equipment shall be kept in clean and sanitary condition. No trash, garbage or other waste may be placed within the Common Elements, except in containers approved by the Executive Board.

SECTION 13. WAIVER OF MINOR VIOLATIONS. Both the Declarant and the Executive Board of the Association shall have the right to waive minor violations of, and allow minor variances from, the restrictions contained in Section 2 of this Article, where the same resulted unintentionally or without gross carelessness on the part of any Owner (including, without limitation, Declarant) and/or is not materially harmful to the Properties. Any such waiver granted shall be in writing, and any matter so waived shall no longer be deemed a violation of these covenants.

SECTION 14. PARKING. Each Lot shall contain sufficient off-street paved parking space for at least two (2) automobiles. No automobiles, trucks, motorcycles, recreational vehicles or boats shall be parked on any street within the Properties for a period in excess of 48 hours. No boats, trailers, school buses, trucks or commercial vehicles over one (1) ton capacity or more, vans (except for mini-vans), recreational vehicles, campers or other like vehicles or equipment shall be parked or stored in any area on a Lot except inside an enclosed building.

SECTION 15. SALES, LEASING AND MARKETING. No activities will be engaged in by any Owner and no sign shall be erected or displayed within the Properties that would negatively impact the sales, leasing and marketing of Properties by the Declarant.

SECTION 16. SEASONAL DECORATIONS. Temporary seasonal exterior decorations shall not require the prior approval of the Executive Board or the Architectural Control Committee, but if any such decorations are determined, in the sole discretion of the Executive Board or the Architectural Control Committee, to be distasteful or otherwise disruptive of the aesthetics or visual harmony of the community, the Executive Board or the Architectural Control Committee may require that such decorations promptly and permanently be removed. In the event that an Owner neglects or fails to remove any such decorations at the request of the Executive Board or the Architectural Control Committee, the Association may provide for such removal. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association that right to unobstructed access over and upon each Lot at all reasonable times for such purpose and the cost of such removal shall be added to and become a part of the assessment to which such Lot is subject. In no event shall seasonable decorations remain upon a Lot more than two (2) weeks following the holiday or event with which decorations are associated.



SECTION 17. FIREARM AND WEAPON DISCHARGE. Any firearm discharge other than for defense or protection of one's life or property is prohibited on all property shown on the Plat. Firearms shall include rifle, gun, pistol, shotgun, black powder gun, pellet or BB gun, bow and arrow and any other weapon from which any bullet, shot or projectile may be discharged.

## ARTICLE VIII EASEMENTS

SECTION 1. UTILITY AND DRAINAGE EASEMENTS. Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on recorded plats. In addition, Declarant reserves, for itself and on behalf of the Association, additional easements and rights-of-way for the installation and maintenance of utilities (including cable television service) and drainage facilities over the rear ten (10) feet of any Lot and over each side ten (10) feet on any Lot. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. An easement is hereby established for the benefit of the appropriate governmental entity (and any other person or firm providing services to the Properties under agreement with or at the direction of the Association) over all Common Elements as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water and off-site septic pump lines, sewer and drainage facilities, and for the fighting of fires and collection of garbage. The Association shall have the power and the authority to grant and establish upon, over and across the Common Elements such additional easements as are necessary or desirable for the providing of service or utilities to the Common Elements or Lots.

SECTION 2. SIGN EASEMENTS. Declarant and the Association shall each have the right to erect within the Common Elements subdivision signs and landscaping and lighting surrounding same. In addition, easements for the maintenance of subdivision signs and landscaping and lighting surrounding same are reserved as indicated on recorded plats. Declarant hereby reserves unto itself and grants, gives and conveys to the Association a perpetual, nonexclusive easement over the portion of Lots designated as "sign easements" on the plats of the Properties, now or hereafter recorded, to place, maintain, repair and replace subdivision signs and the lighting fixtures and landscaping surrounding same. The Association shall be responsible for maintaining, repairing and replacing any such signs, landscaping and lighting and the costs of such maintenance, repair and replacement shall be part of the common expenses of the Association, payable by the Owners as set out in Article IV hereof. In addition, Declarant, for so long as Declarant owns any lot shown on the Master Plan as that plan is from time to time amended and approved, shall have the right to erect and maintain within the Common Elements and on those portions of any Lot designated "sign easement" signs advertising and promoting the sale and/or leasing of lots and dwellings within the Properties. As to the easements reserved and granted above with respect to those portions of Lots designated "sign easement," Declarant hereby reserves unto itself and gives, grants and conveys to the Association the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or a part of the Property.

SECTION 3. EASEMENT RESERVED BY DECLARANT. Declarant hereby reserves such easements on, across and over the Common Elements as shall be reasonably necessary for (i) the exercise by Declarant of any right herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex the Additional Property, as hereinafter defined and (ii) the development by Declarant, its successors or assigns, of the Additional Property, should Declarant elect not to annex the Additional Property, including, without limitation, easements for ingress, egress and regress over private roads and streets now or hereafter erected on the Properties and easements for the use of utility lines, fixtures and/or their connections located within the Common Elements for the purpose of providing water, light, power, telephone, sewage and sanitary service to the Additional Property.

SECTION 4. ADDITIONAL DRAINAGE EASEMENTS. In order to implement effective and adequate erosion control, the Association shall have the right to enter upon any portion of the Properties before and after improvements have been constructed thereon for the purpose of performing any grading or constructing and maintaining erosion prevention devices; provided, however, no such activities shall interfere with any permanent improvements constructed on the Properties.

SECTION 5. ENCROACHMENTS. In the event that any improvements on a Lot shall encroach upon any Common Elements or upon any other Lot as a result of the initial improvements constructed by Declarant or for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Elements or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Elements into any such Lot for so long as such encroachment shall naturally exist.

## ARTICLE IX RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

SECTION 1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

SECTION 2. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

- a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Executive Board of the Association, such financial statement or report to be furnished by April 15 of each calendar year.
- b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or Bylaws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision

to terminate professional management of the Association and assume self-management by the Association.

c) To receive notice of any condemnation or casualty loss affecting the Common Elements or any portion thereof.

d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

e) To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Elements, other than those specific rights vested in the Association under Article II hereof.

f) To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

SECTION 3. REQUIREMENTS OF INSTITUTIONAL LENDER. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by certified mail at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

## ARTICLE X GENERAL PROVISIONS

SECTION 1. ENFORCEMENT. The Owner(s) of each Lot shall be governed by and shall comply with the provisions of this Declaration, the Bylaws of the Association and all rules and regulations of the Association adopted pursuant thereto, as any of the same are now constituted or as they may be amended from time to time. A default by any Owner shall entitle the Association or the Owner(s) of any of the other Lots to the following relief:

a) The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws of the Association and all rules and regulations of the Association adopted pursuant thereto. Failure to comply with any of the terms of this Declaration or other restrictions contained in the Bylaws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief, including without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

b) The Association, after notice to the Owner and a reasonable opportunity to be heard, shall have the right to assess reasonable fines against an Owner for violations of this Declaration, the Bylaws of the Association or the Association's published rules and regulations by such Owner, or such Owner's

family, guests, invitees and lessees in an amount not to exceed \$150.00 for each violation, and without further hearing, for each day after the decision that the violation occurs.

c) Such fines shall be deemed to be assessments as set forth in Article IV of the Declaration and if not paid within thirty (30) days after notice and demand therefore, the Association shall be entitled to the remedies set forth in the Declaration for the enforcement and collection of delinquent assessments.

d) The Association, after notice to the Owner and a reasonable opportunity to be heard, shall have the right to suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods of violations of this Declaration or the Bylaws, Articles or rules and regulations of the Association. If it is decided that a suspension of privileges or services provided by the Association should be imposed, the suspension may be continued without further hearing until the violation is cured.

e) If an Owner is legally responsible for damage inflicted on any Common Elements, the Association may direct such Owner to repair such damage, or the Association may itself cause the repairs to be made and recover damages from the responsible Owner. If damage is inflicted on any Lot by an agent of the Association in the scope of the agent's activities as such agent, the Association is liable to repair such damage or to reimburse the Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Owner. When any such claim for damages against an Owner or the Association is less than or equal to the jurisdictional amount established for small claims by North Carolina General Statutes Section 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the Executive Board of the Association to determine if an Owner is responsible for damages to any Common Elements or the Association is responsible for damages to any Lot. If the Executive Board fails to appoint an adjudicatory panel to hear such matters, such hearings shall be held before the Executive Board. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess liability for each damage incident against each Owner charged or against the Association not in excess of the jurisdictional amount established for small claims by North Carolina General Statutes Section 7A-210. When such claim exceeds the jurisdictional amount established for small claims by North Carolina General Statutes Section 7A-210, liability of any Owner charged or the Association shall be determined as otherwise provided by law and shall be assessments secured by lien under Section 47F-3-116 of the Planned Community Act. Liabilities of the Association determined by adjudicatory hearing or as otherwise provided by law may be offset by the Owner against sums owing to the Association and if so offset, shall reduce the amount of any lien of the Association against the Lot at issue.

f) In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall be entitled to recover the costs of the proceedings and such reasonable attorneys' fees as may be determined by the Court.

g) The failure of the Association or any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above mentioned documents shall not constitute a waiver of the right of the Association or of the Owner to enforce such right, provision, covenant or condition in the future.

h) All rights, remedies and privileges granted to the Association or the Owners, pursuant to any terms, provisions, covenants or conditions of the Declaration or other above mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

i) The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or other above mentioned document shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

SECTION 2. SEVERABILITY. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

SECTION 3. AMENDMENT. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended as hereinafter provided. This Declaration may be amended with the consent of the Owners entitled to cast at least sixty-seven percent (67%) of the votes of the Association and may be terminated with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association; provided, however, this Declaration may not be amended or terminated without Declarant's consent during Declarant's Development Period, no amendment purporting to revoke or curtail any right herein conferred to Declarant shall be effective unless executed by Declarant, and no amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection. Any amendment must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the amendment on behalf of the Association that the requisite Owner approval has been obtained and is evidenced by written acknowledgment(s) signed by the Owners approving the amendment and made a part of the Minute Book of the Association; and (3) be properly recorded in the Office of the Register of Deeds, Guilford County, North Carolina. For the purpose of this section, additions to existing property by Declarant pursuant to Section 4 of this Article shall not constitute an "amendment."

SECTION 4. ANNEXATION.

a) Except as provided in Subsection (b) of this Section 4, additional residential property and Common Elements may be annexed to the Properties only with the consent of the Members entitled to cast two-thirds (2/3) of the votes of the Association who are voting in person or by proxy at a meeting duly called for such purpose; provided, however, during the Period of Declarant Control, Declarant must also consent to such action.

b) Additional land with the area described in the metes and bounds description attached hereto as Exhibit "A" and incorporated herein by reference, together with any other property located adjacent to the Properties (collectively, the "Additional Property") may be annexed by the Declarant without the consent

of Members with ten (10) years of the date of this instrument, provided that, in the event FHA or VA insured loans have been obtained to purchase Lots, FHA and VA determine that the annexation is in accord with the general plan from time to time approved by them. For the purpose of determining whether property is adjacent to the Properties, the rights-of-way public roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise adjacent property. Declarant shall have no obligation of any kind to annex any or all of the Additional Property and, should Declarant elect to annex all or any portion of the Additional Property, Declarant shall have no obligation of any kind to annex the Additional Property in any particular sequential order. Should Declarant elect to annex all or any portion of the Additional Property and accordingly to subject such property to the terms and conditions of this Declaration, Declarant reserves the right, with regard to all or any part of the Additional Property annexed by Declarant, to make such complementary additions and/or modification of the covenants and restrictions contained in this Declaration (including, without limitation, those contained in Section 2 of Article VII hereof) as Declarant may deem necessary or convenient; provided, however, such additions and/or modifications shall not modify this Declaration with respect to the Properties previously subjected thereto, and, in the event FHA and VA insured loans have been obtained to purchase Lots, FHA and VA determine that any such complimentary additions and/or modifications are in accord with the general plan from time to time approved by them. With regard to any portion of the Additional Property not annexed by Declarant, Declarant makes no representations with regard to the use of such property or the exterior appearance, design, size or intended purpose of any improvements now or hereafter erected on such property.

SECTION 5. FHA/VA APPROVAL. During the Period of Declarant Control, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans Affairs provided that FHA or VA loans have been obtained to purchase Lots: annexation of additional properties, dedication of Common Elements and amendment of this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or the Bylaws of the Association.

SECTION 6. AMPLIFICATION. The Provisions of this Declaration are amplified by the Articles of Incorporation and Bylaws of the Association; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and Bylaws of the Association on the other be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything contained in the Articles of Incorporation or Bylaws of the Association

SECTION 7. CONSENT TO AND JOINDER IN THE DECLARATION. All of the undersigned being purchasers of lots and owners of lots in Birkhaven, Phases 1 and 2 as recorded in Plat Book 183 at Pages 146-150 in the Office of the Register of Deeds of Guilford County, North Carolina, join in the execution of this Declaration for the purpose of consenting to and subjecting lots owned by them to the foregoing Declaration of Covenants, Conditions and Restrictions for Birkhaven.

IN WITNESS WHEREOF, the undersigned being the Declarant herein and all other owners of Lots in Birkhaven have caused this instrument to be executed under seal individually or in its corporate name by its duly authorized officer, manager or individual, this the 20<sup>th</sup> day of June, 2013.

VENN BIRKHAVEN, LLC,  
a North Carolina Limited Liability Company

By: \_\_\_\_\_  
Member/Manager

DISNEY CONSTRUCTION CO.,  
a North Carolina Corporation

By: Francis Arney  
Title: PRES

John R. Rock (Seal)  
JOHN R. ROCK

Christie L. Rock (Seal)  
CHRISTIE L. ROCK

R & K INVESTMENT PROPERTIES, INC.  
a North Carolina Corporation

By: Richard Dumas  
Title: President

BRIAN THOMPSON HOMES, LLC,  
a North Carolina Limited Liability Company

By: [Signature]  
Member/Manager

FRIDDLE AND COMPANY, INC.,  
a North Carolina Corporation

By: Mark B. Friddle  
Title: VP

DON MILLS BUILDERS, INC.,  
a North Carolina Corporation

By: David R. Mills  
Title: President

North Carolina

Guilford County

I, the undersigned, a Notary Public for said County and State, do hereby certify that Shawn Cummings personally came before me this day and acknowledged that he is Member/Manager of Venn Birkhaven, LLC, a North Carolina Limited Liability Company, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and notarial seal, this the 8<sup>th</sup> day of July, 2013.

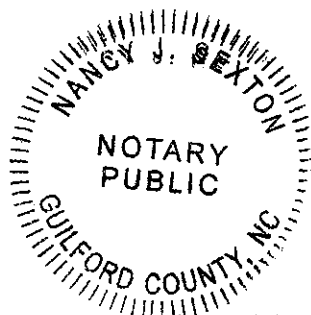
Nancy J Sexton  
Notary Public

My Commission Expires:

10-9-17

North Carolina

Guilford County



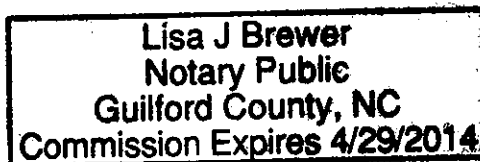
I, the undersigned, a Notary Public for said County and State, do hereby certify that Francis Disney personally came before me this day and acknowledged that he is the President of Disney Construction Co., Inc., a North Carolina Corporation, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and notarial seal, this the 9<sup>th</sup> day of July, 2013.

Lisa J Brewer  
Notary Public

My Commission Expires:

4.29.14





North Carolina

Guilford County

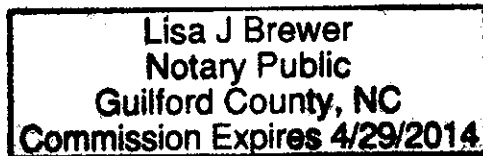
I, the undersigned, a Notary Public for said County and State, do hereby certify that John R. Rock and wife, Christie L. Rock, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally appeared before me this day, and acknowledged the voluntary due execution of the foregoing instrument by him for the purposes stated herein.

Witness my hand and notarial seal, this 9<sup>th</sup> day of July, 2013.

Notary Public: *Lisa J Brewer*

My Commission Expires:

4.29.14



North Carolina

Guilford County

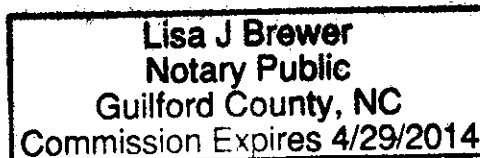
I, the undersigned, a Notary Public for said County and State, do hereby certify that Richard F. Bumas personally came before me this day and acknowledged that he is the OWNER/Pres. of R & K Investment Properties, Inc., a North Carolina Corporation, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and notarial seal, this the 9<sup>th</sup> day of July, 2013.

*Lisa J Brewer*  
Notary Public

My Commission Expires:

4.29.14



North Carolina

Guilford County

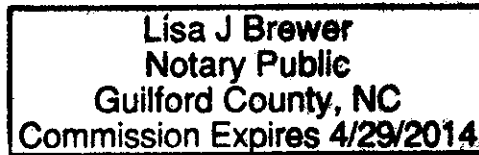
I, the undersigned, a Notary Public for said County and State, do hereby certify that Brian Thompson personally came before me this day and acknowledged that he is Member/Manager of Brian Thompson Homes, LLC, a North Carolina Limited Liability Company, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and notarial seal, this the 9<sup>th</sup> day of July, 2013.

Lisa J Brewer  
Notary Public

My Commission Expires:

4.29.14



North Carolina

Guilford County

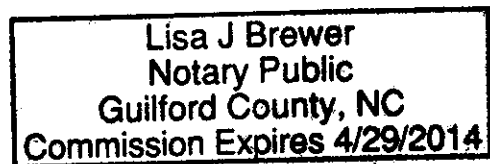
I, the undersigned, a Notary Public for said County and State, do hereby certify that Michael Friddle personally came before me this day and acknowledged that he is the President of Friddle and Company, Inc., a North Carolina Corporation, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and notarial seal, this the 9<sup>th</sup> day of July, 2013.

Lisa J Brewer  
Notary Public

My Commission Expires:

4.29.14

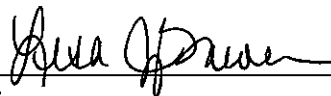


North Carolina

Guilford County

I, the undersigned, a Notary Public for said County and State, do hereby certify that Donald R Mills personally came before me this day and acknowledged that he is the President of Don Mills Builders, Inc., a North Carolina Corporation, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and notarial seal, this the 9th day of July, 2013.



\_\_\_\_\_  
Notary Public

My Commission Expires:

4.29.14

**Lisa J Brewer  
Notary Public  
Guilford County, NC  
Commission Expires 4/29/2014**