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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR CYPRESS LAKES VILLAGE  
SECTION FIVE

Prepared by/return to: Boy  
Rebecca F. Person, Esq.  
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2041 Robeson Street  
Fayetteville, NC 28305

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made the this 23 day of April, 2014 by BIRCHWOOD FARMS, INC., a North Carolina corporation, hereinafter referred to as "Declarant";

WITNESSETH:

Declarant is the owner of certain property in Cumberland County, North Carolina known as CYPRESS LAKES VILLAGE, a zero lot line subdivision. A plat of "CYPRESS LAKES VILLAGE SECTION FIVE" (hereinafter "Cypress Lakes Village Section Five") is duly recorded in Plat Book 134, Page(s) 64 (the "Plat") of the Cumberland County, North Carolina Registry. Declarant desires to provide for the preservation of the values and amenities and for the maintenance of common properties in said property and under a general plan or scheme of improvement desires to subject said property to the covenants, restrictions, easements, affirmative obligations, charges and liens hereinafter act forth, hereinafter referred to as the "Covenants" or the "Declaration", all of which is hereby declared to be for the benefit of said property and each and every owner of any and all parts thereof; and

Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which can be delegated and assigned the power and authority of maintaining and administering the common properties, administering and enforcing these covenants and restrictions and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement. Declarant has caused to be incorporated under the laws of the State of North Carolina, a non-profit corporation, CYPRESS LAKES VILLAGE OWNERS ASSOCIATION, INC., for the purpose of exercising the functions

aforesaid, which functions are hereinafter more fully set forth.

NOW THEREFORE, Declarant declares that the real property depicted on the above-described Plat shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, changes, assessments, affirmative obligations, and liens hereinafter set forth. This Declaration and the affirmative and negative burdens of these covenants, shall touch and concern and run with the land herein referred to as the "Property." All rights and easements reserved by the Declarant hereunder shall also be reserved to the assignees and successors in interest of the Declarant.

ARTICLE I  
DEFINITIONS

(a) "Association" shall mean and refer to the Cypress Lakes Village Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

(b) "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

(c) "Common Properties" or "Common Areas" shall mean and refer to those tracts of land with any improvements thereon which are deeded or leased to the Association. Both terms will include any stormwater ponds, open space, dedicated streets and roadways prior to their acceptance for public maintenance, entrance signage, and any personal property acquired by the Association, including, without limitation, the 23,737 square feet of Common Area depicted on the Plat. All Common Properties are to be devoted to and intended for the common use and enjoyment of the Owners, persons occupying dwelling places or accommodations of Owners on a guest or tenant basis, and visiting members (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association; provided, however, that any lands which are leased by the Association for use as Common Properties shall lose their character as Common Properties upon the expiration of such Lease. Reference to Common Properties in these covenants does not imply or guarantee that the Property affected by these covenants or any future section(s) of Cypress Lakes Village will have any Common Properties, except those as shown on the Plat.

(d) "Common Expenses" shall mean and include:

- (1) All sums lawfully assessed by the Association against its members;
- (2) Expenses of administration, maintenance, repair, or replacement of the Common Properties, including, without limitation, all labor, services, common utilities, materials, supplies, equipment, costs incurred in acquiring a Lot pursuant to a judicial sale, legal, accounting or managerial fees, and all expenses in connection with the Association's responsibilities under a stormwater basin operation and maintenance agreement affecting the Property, if any.
- (3) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (4) Hazard, liability, or such other insurance premiums as the Declaration or the

Bylaws may require the association to purchase or as the Association may deem appropriate to purchase;

(5) Ad valorem taxes and public assessment charges lawfully levied against Common Properties;

(6) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property;

(7) The expense of maintenance of any roads, streets, easements, landscaping, amenities, taxes or any other expense item associated with any Common Property not located on the Property but permitted to be used by the members of this Association by any adjoining landowner, association or other entity pursuant to any cross-easement, cross-access or other agreement by the Association with the adjoining land owner;

(8) Expenses for maintenance of security devices or personnel, if any;

(9) Payments into any escrow account required under any stormwater operation and maintenance agreement, which may include funding of the escrow account prior to a transfer of maintenance and operation responsibilities from Declarant to Association; and

(10) Any other expenses determined by the Board or approved by the members to be common expenses of the Association.

(e) "Declarant" shall mean Birchwood Farms, Inc., a North Carolina Corporation, and its successors and assigns.

(f) "Covenants" or "Declaration" shall mean this instrument as it may be from time to time amended, supplemented, modified or incorporated by reference.

(g) "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Property; as such map or maps may be from time to time amended or modified.

(h) "Offensive or Noxious" activity or behavior shall include but not be limited to a public nuisance or nuisance per se and shall also include any behavior or activity which *is* inconsistent with both the reasonable pleasurable use of the Property area by substantial number of the residents and overnight guests and their reasonable expectations of permanent habitation, vacation meeting, working, recreating, or enjoying sports, music, food, natural surroundings, and entertainment, free of excessively noisy behavior grossly disrespecting the rights of others, flashing or excessively bright lights, racing vehicles, significantly loud radio, hi-fi, electronic music distractions, and other unreasonable behavior curtailing the reasonable pleasure and use of the facilities within or adjacent to the Property. Public musical or other entertainment, parades, concerts, festivals, carnivals, competitions or shows conducted under permit from the Declarant shall not constitute offensive or noxious activity or behavior unless such permit is withdrawn by the Declarant, or its terms and conditions violated.

(i) "Owner" shall mean and refer to the owner as shown by the records in the Register of Deeds of Cumberland County, North Carolina, whether it be one or more persons, firms, associations, corporations, or other legal entities, including the Declarant, of fee title to any Lot depicted on the plat of Cypress Lakes Village, but, notwithstanding any applicable theory of a

mortgage, shall not mean or refer to the mortgagee or holder of a security deed, its successors or assigns, unless and until such mortgagee or holder of a security deed has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is recorded in the Office of the Register of Deeds, a long-term contract of sale covering any Lot or parcel of land within the Property, the purchaser under said contract of such Lot or parcel of land shall be the Owner and not the fee simple title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond twelve (12) months from the date of the contract, and where the purchaser does not receive title to the property until such payments are made although the purchaser is given the use of said property.

(j) "Period of Declarant Control" means the period commencing on the date hereof and continuing until ten (10) years after the date of the first conveyance of a Lot to an owner other than Declarant, unless earlier waived in writing by Declarant.

(k) "Property" shall mean and refer to the land as shown on the Plat. "Property" shall also include future sections of Cypress Lakes Village as the same may be developed from time to time except that such future sections shall become subject to these covenants only from and after the recording of the plat or plats for said future section(s) and the recording of a Supplemental Declaration which incorporates by reference this Declaration and which expressly makes the new section(s) subject to these covenants, or portions of same. The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of Declarant, to reflect the different character, if any, of the new section.

## ARTICLE II PROPERTY, UTILITIES, AND RESERVED RIGHTS

Section 1. Property. The real property which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these covenants is defined as the Property above.

Section 2. Special Declarant Rights. Declarant reserves the following special declarant rights for the entire Property during the period of Declarant Control:

- (a) To complete any and all improvements indicated on the plats and plans;
- (b) To exercise any development right reserved in this Declaration;
- (c) To construct and maintain any sales office, signs advertising the Property or any property which may be added thereto, management office or model on any of the Lots or on any of the Common Properties shown on the plat;
- (d) To use easements through the Common Properties for the purpose of making improvements within the Property, any annexed property added thereto, or any additional property owned by Declarant that is not subject to the terms of this Declaration; to enter upon the subdivision for access, including ingress and egress for both vehicles and pedestrians, to and from any public street; or to connect at Declarant's expense to any street, roadway walkway or other means of access located on the Common Properties;
- (e) To alter the size of any Lot, combine or merge two or more Lots, to subdivide Lots

or other Property into Common Property, extend streets and utilities through Lots;

(f) To appoint or remove any officer or member of the Association Board during the period of Declarant control;

(g) To annex any adjacent property developed in conformity with the plan of development, whether now owned or acquired in the future and whether presently contiguous;

(h) To transfer responsibility for any stormwater detention ponds or other BMP's to the Association pursuant to any maintenance and operation agreement affecting the Property; or

(i) To transfer and convey to the Association any Common Properties.

Section 3. Utilities. Declarant reserves the right to subject the Property to a contract with public utility provider(s) for the installation of overhead and/or 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 public utility provider by the owner of each Lot. Declarant may devote any Lot or portion thereof, not already sold, for any construction and uses which it, in its discretion, deems necessary in order to provide the subdivision with utilities.

Section 4. Easements. Easements for installation and maintenance for utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage, or which may obstruct or retard the flow of water. All areas indicated as streets and easements on the recorded plat are hereby dedicated to public use for such uses forever except stormwater ponds, open space, side yard easements and other common area which are for the use and benefit of those persons and Lots as described herein. The streets have not been accepted as public streets by any jurisdiction for maintenance and all maintenance shall remain the responsibility of the Association until such time as they are accepted for maintenance by the NC Department of Transportation. No common walls are contemplated within the Property and are not permitted.

### ARTICLE III RESTRICTIONS

Section 1. All Lots shall be used for residential purposes only and shall not be used for any business or commercial purposes, provided, however, that Declarant reserves the right to use any Lot and any improvement thereon owned by Declarant as a model home with sales office. Group family homes are prohibited.

Section 2. All Lots shall be residential lots, and no structure shall be erected, altered, placed or permitted to remain on any of said Lots except one detached single family dwelling of not more than two and one-half stories in height, a private garage for not more than three cars and other out-buildings in the rear of the dwelling house which may be incidental to normal residential use in subdivisions of similar category. No mobile home (Class A or B) or modular home will be allowed on any Lot to which these covenants apply. Manufactured buildings that conform to the style and finish of the homes may be placed on the Lot for storage to the rear of the dwelling house provided that they are approved by the Declarant per the requirements listed in Section 3 below. All driveways shall be constructed of concrete. Above-ground pools are not permitted on a Lot.

Section 3. No dwelling shall be erected or allowed to remain on any of the said Lots which shall contain a heated-area living space of less than fifteen hundred [1,500] square feet. Heated-area living space shall mean the ordinary living space in a house which is designed and constructed so as to be capable of being heated for regular living use in cold weather. In the computation of floor space, furnace room areas, garages, carports, and porches shall not be counted. No residence or other building, and no fence, wall, utility yard, driveway, swimming pool or other structure or improvement, regardless of size or purposes, whether attached to or detached from the main residence, shall be commenced, placed, erected or allowed to remain on any Lot, nor shall any addition to or exterior change or alteration thereto be made, unless and until building plans and specifications covering the same, showing the nature, kind, shape, height, size, materials, floor plans, exterior color schemes with paint samples, location and orientation on the Lot and approximate square footage, construction schedule, on-site sewage and water facilities, and such other information as the Declarant shall require, including, if so required, plans for the grading and landscaping of the Lot showing any changes proposed to be made in the elevation of surface contours of the land, have been submitted in writing to and approved in writing by the Declarant and until a copy of all such plans and specifications, as finally approved by the Declarant have been lodged permanently with the Declarant. The Declarant shall have the absolute and exclusive right to refuse to approve any such building plans and specifications and lot-grading and landscaping plans which are not suitable or desirable in its opinion for any reason, including purely aesthetic reasons connected with future development plans of the Declarant of said land or contiguous lands. In passing upon such building plans and specifications and lot-grading and landscaping plans, the Declarant may take into consideration the suitability and desirability of the proposed construction and of the materials of which the same are proposed to be built to the Lot upon which it proposes to erect the same, the quality of the proposed workmanship and materials, the harmony of external design with the surrounding neighborhood and existing structures therein, and the effect and appearance of such construction as viewed from neighboring properties. In the event the Declarant fails to approve or disapprove such building plans and specifications in writing within thirty (30) days after the same have been submitted to it as required above, the approval of the Declarant shall be presumed and the provisions of this paragraph shall be deemed to have been complied with.

Section 4. All structures shall comply with the City of Fayetteville Code with regard to all set-back requirements. When consistent with the zoning ordinances (or any variance granted), the building line set-back as provided for in this paragraph may be varied by as much as ten (10) percent with the express consent of Declarant, which said consent document need not be on record in the Office of the Register of Deeds, Cumberland County, North Carolina.

Section 5. No fence, wall, hedge or other mass planting shall be erected or permitted in front of a dwelling on any Lot, except as approved in writing by Declarant or the Association. No fences made of concrete block or what is commonly known as "chicken wire" shall be permitted anywhere on the Lot. No chain link fence may be erected closer than thirty (30) feet to any property line. No fence may be erected closer to any street than ten feet (10') from the rear corner of the heated living space and in no instance closer than thirty (30) feet from any street right of way. No fence, wall or hedge shall exceed six feet (6') in height. The finished portion of the

fence must face outward. Pursuant to Section 3 of this Article, in some instances ornamental fences may be approved for use in concealing HVAC or above ground gas tanks. No batting cages shall be permitted on any lot. In certain areas adjoining common areas and high visibility locations, the Declarant or Association may require the Owner to stain the fences or may choose to perform the work at the cost of the Declarant or Association to ensure color conformity. The Association or its designee may issue guidelines detaining acceptable fence styles and other specifications consistent with the preceding provisions.

Section 6. Television satellite or dish antennas having a diameter in excess of twenty-two inches (22") are prohibited. All dishes are to be placed to the rear of the house or to the side of the house within five feet (5') of the rear corner of the house. No clotheslines are permitted to be erected on a Lot.

Section 7. No sign or signs other than a "For Sale" or "For Rent" sign shall be displayed on the property.

Section 8. No automobile or motor vehicle may be dismantled or stored on any Lot; and no mechanically defective automobile, motor vehicle, mechanical machine, or machinery, shall be placed or allowed to remain on any Lot for over thirty-five [35] days. Notwithstanding the above, these restrictions shall not apply if such vehicle is kept in an enclosed garage. Commercial vehicles, camper trailers, trailers, and/or boats shall be stored at the rear of the residence and shall be within the yard set-backs. If more than two of the above non-private vehicles, trailers or boats are stored on any Lot, they shall be screened from view of other Lots.

Section 9. No trailer, tent, shack, garage, barn or similar type outbuilding (collectively, "Outbuilding(s)") shall be placed, erected or allowed to remain on any Lot without the written consent of Declarant; nor shall any structure of a temporary character be used as a residence temporarily, permanently or otherwise. Any Outbuilding erected, altered, placed or permitted shall be of the same quality, workmanship and material as the principal dwelling structure and must be centered along the rear Lot line. Manufactured Outbuildings shall be placed upon a Lot only with the prior written consent of the Declarant. All Outbuildings must have an asphalt shingle roof.

Section 10. It is understood and agreed that these restrictions are made for the mutual benefit of the grantors and grantees and any and all subsequent grantees, and all such parties shall be deemed to have a vested interest in these restrictions and the right to enforce same.

Section 11. The invalidation of any one or more or any part of any one or more of the covenants and conditions set forth herein shall not affect or invalidate the remaining covenants or portions thereof.

Section 12. The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within any Lot, except the keeping of not more than two (2) orderly domestic pets (dogs or cats) shall be permitted; provided, however, that such pets are not kept or maintained for commercial purposes for

breeding, and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property. All pets shall be registered and inoculated as required by law. All pets, to include cats, must be kept on a leash when outside the home. The North Carolina and Cumberland County Animal Control Regulations will be strictly adhered to. Any dog house or dog containment structure or system must be located to the rear of the principal dwelling structure and must be located within thirty feet (30') of the rear of the main structure. No such permitted dog house or dog containment structure or system shall be placed, erected or maintained closer to any street than the rear corner or side of the principal dwelling structure on improved Lots or closer to any street than the setback line on any vacant Lot, and in no event closer to any street than thirty feet (30'). On improved corner Lots, no dog house or dog containment structure or system shall be placed any closer to the street than the rear corner of the principal dwelling structure closest to the street, or, on vacant Lots, closer to any street than the setback line, and in no event closer to any street than thirty feet (30').

Section 14. Any Owner, other than Declarant, shall be responsible for erecting a sidewalk in compliance with the construction standards required by Declarant within the sidewalk area as shown on the Plat within two hundred seventy (270) days of transfer of said Lot to such Owner, regardless of whether or not said Owner commences the construction of a dwelling house within such period of time.

Section 15. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within an accessory building or within a screened area, or buried underground; provided however, that nothing contained herein shall prevent the Declarant or Association from erecting, placing or permitting the placing of tanks or other apparatus on the Property for uses related to the provision of utility or other service.

ARTICLE IV  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner, upon acquiring title, shall be a member of the Association and shall remain a member until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association shall cease. The Declarant acting through its designated officers, employees and agents shall be a member of the Association. In the case of multiple ownership of any Lot in Cypress Lakes Village subdivision, each Owner shall be a member, subject to such limitations and fees established by the Declarant and Review Board from time to time.

Section 2. Voting Rights. The Association shall have one type of regular voting membership. Each Owner shall be entitled to one (1) vote for each Lot which he owns. If a dwelling unit is constructed on more than one (1) Lot, the Owner shall have only one (1) vote so long as such Lot remains a part of the consolidated site.

When any Lot entitling the Owner to membership of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants-in-common, tenants-in-partnership or in any other manner of joint or common ownership,



or if two (2) or more persons or entities have the same fiduciary relationship respecting the same Lot, then 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 3. Composition of Board. The Association shall be governed by a Board of Directors consisting initially of three (3) persons, with the number in subsequent years to be determined as provided for in the By-Laws of the Association. The Declarant shall have the right to appoint and remove all persons on the Board and to appoint and remove all officers of the Association during the period of Declarant control.

Section 4. Cumulative Voting Prohibited. Each Owner shall be entitled to as many votes as equals the number of votes he is ordinarily entitled to multiplied by the number of Directors to be elected, but may not cast all of such votes for any one (1) Director and must distribute them among the number to be voted for, and all votes must be cast in whole numbers and not fractions thereof. It is the intent of this Section to prohibit cumulative voting.

ARTICLE V  
PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Owners' Easement of Enjoyment in Common Properties. Subject to the provisions of these Covenants, the rules and regulations of the Association, and any fees or charges established by the Association, every Owner and every tenant and guest of such Owner shall have a right of easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot. The privilege granted to guests and tenants of Owners to use and enjoy the Common Properties, subject to the rules, regulations and fees, if any, established by the Association for such use, may be denied to or withdrawn from such guests or tenants by an affirmative vote of ninety percent (90%) of the votes cast at a meeting of the Association called for the purpose of voting on such denial or withdrawal.

Section 2. Access Easement. Appurtenant to each Lot is an easement over any Common Areas for access, ingress and egress from and to public streets and walkways and easements for enjoyment of the common areas and for parking areas. Any such easement shall be upon such walkways, driveways or other ways as are designated by the Declarant and/or the Association and shall be subject to the terms of this Declaration. The rights-of-way for streets as shown on the Plats shall not be used for any purpose other than ingress and egress and placement of the one mailbox on a breakaway pole. Any shrubbery, edging, rocks, basketball goals or other objects placed in the right-of-way may be removed by Declarant or the Association without notice. Any trucks or other commercial vehicles left in the right-of-way may be removed without notice by Declarant or the Association and all towing charges shall be the responsibility of the owner or operator of such vehicle.

Section 3. Title to Common Properties. The Declarant covenants for itself, its successors or assigns, that it shall convey to the Association by limited warranty deed the Common Area prior to the end of the period of Declarant control. All said parcels of land may be conveyed to the Association subject to: (1) all restrictive covenants of record at that time, including but by no

means limited to this Declaration; (2) all existing mortgages; (3) a reservation by the Declarant of the right to substitute or add new mortgages thereon; provided, however, that in no event shall the Association be obligated to assume the payment of principal or interest on any such mortgage; (4) easements reserved by the Declarant herein for special declarant rights; and (5) any detention basin operation and maintenance agreement affecting the Property.

Section 4. Extent of Owners' Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association, in accordance with its Bylaws, to borrow money from the Declarant or any other lender for the purpose of improving and/or maintaining the Common Properties and providing services authorized herein and in aid thereof to mortgage said properties;

(b) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;

(c) the right of the Association, as provided in its By-laws to suspend the rights and easements of enjoyment of any Owner, or any tenant or guest of any Owner, for any period during which the payment of any assessment against any Lot owned by such Owner remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either nonpayment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Owner's obligation to pay the assessment; and

(d) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties and any facilities included therein;

(e) the right of the Declarant or the Association by its Board of Directors to dedicate or transfer to any public or private utility, utility easements on any part of the Common Properties; and

(f) the right of the Association to give or sell all or any part of the Common Properties, including leasehold interests, to any public agency, authority, public service district, or private concern for such other purposes and subject to such conditions as may be agreed to by the Owners, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedication, transfer and determination as to purposes and conditions shall be authorized by (i) the Declarant as long as it owns any portion of the Property and (ii) the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established herein and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Owner of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by an officer of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties prior to the recording

thereof. Such certificates shall be conclusive evidence of authorization by the membership and shall not apply to roads, water, sewer and storm drainage dedicated or deeded to the City of Fayetteville or County of Cumberland by the Declarant. The Declarant may make such dedications or conveyances without the members' consent;

(g) the right of Declarant to use Common Properties for promotional, sales, and similar purposes during the Period of Declarant Control; and

(h) the special Declarant rights reserved herein.

ARTICLE VI  
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses; (2) special assessments for extraordinary maintenance and capital improvements; (3) special assessments for purchase, construction or reconstruction of improvements; and (4) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Common Properties if the Association shall default in payment thereof. The annual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors, to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants, for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Recombination of two lots into one lot for address or tax purposes shall not reduce the assessment for both lots into only one assessment. The recombined lot shall be assessed for two lots as if uncombined.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses to promote the recreation, health, safety, and welfare of the Owners of Lots; and, in particular, but not limited to, for the acquisition, improvement and maintenance of services, amenities and facilities, and for the use and enjoyment of the Common Properties, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Properties, the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board, the employment of counsel, accountants, managers, engineers, and other professionals for the Association when necessary, payments for maintenance, operation, and escrow under any stormwater basin operation and maintenance agreement; and such other needs as may arise.

Section 3. Amount of Assessment.

(a) Criteria for establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current cost and expenses of the Association, any accrued debts, and reserves for future needs.

(b) Regular Assessments. Until such time as the Board affirmatively establishes an initial assessment, the assessment shall be \$240.00 annually based on the calendar year; such annual assessment for each Lot shall commence eight months after the conveyance of the Lot by the Declarant, or the conveyance of a Lot with a completed home to an Owner, whichever occurs first. Notwithstanding the foregoing, if Declarant has commenced construction of any clubhouse or pool by January 1, 2014, then the annual assessment shall be increased to \$360.00. If such construction has not begun by January 1, 2014, then the increase in the annual dues shall not become effective until such time as the clubhouse or pool is completed.

In addition, each Lot shall be assessed a one time or initial start-up fee of \$500.00 at the time of the conveyance of the Lot with a completed home to the Owner.

Thereafter, the Board of Directors shall fix the annual assessment. The Board of Directors, or any adjudicatory panel established by the Board, may levy a reasonable Fine Assessment as a fine or penalty for violation of this Declaration. In addition, the Board may enact additional fees for late payments, fees for providing written assessment certificates setting forth all current and delinquent assessment charges, and fees to transfer ownership of a Lot upon the Association's records.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board may levy, in any assessment, year, a special assessment for the purpose of defraying, in whole or in part the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Properties, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible provided that any such assessment shall have the assent of (i) two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose; and (ii) Declarant, as long as Declarant owns a Lot.

Section 5. Replacement Reserve. Out of the Common Expenses assessment, the Board may create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Properties which the Association may be obligated to maintain.

Section 6. Individual Assessment. In the event that the need for maintenance, repair or replacement of any improvement on the Property, for which the Association as the maintenance, repair and/or replacement obligation, is caused through the willful or negligent act of an Owner, his family, his pet(s), or tenant, the cost of such maintenance, repairs or replacements shall be paid by such Owner. The Board shall have the maintenance, repair, or replacement done, and the cost thereof shall be provided by the Board to said Owner and shall be paid by said Owner within thirty (30) days thereafter, unless an earlier date is otherwise set forth therein.

Section 7. Notice and Quorum For Any Action Authorized Under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all Owners not less than 10 days or more than 60 days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast fifty-one percent (51%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five (25%) percent of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 8. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or other periodic basis established by the Board; provided, however, that Declarant shall not be obligated to pay any annual or special assessments on any Lot owned by Declarant.

Section 9. Date of Commencement of Annual Assessments; Due Dates. Annual assessments shall not commence on any Lot until the first conveyance of that Lot by Declarant as set forth in Section 3(b) above. Thereafter annual assessments shall commence as to all Lots on the first day of the month following the passage of a resolution by the Board duly establishing same. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

Section 10. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall bear interest from the due date at the rate of ten percent (10%) per annum or at such other reasonable rate set by the Association in its minutes, not to exceed the highest rate then permitted by North Carolina law. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Chapter 47F of the Planned Community Act of North Carolina ("PCA") from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court in the County in which the Property is located in the manner provided therefore by the PCA, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. In any foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 11. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax 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, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property 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 VII FUNCTIONS OF ASSOCIATION

Section 1. Authorized Services. The Association shall be required to provide the following services:

- (a) maintenance of the Common Properties;
- (b) performance of the services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this document;
- (c) taking any and all actions necessary to enforce all covenants and restrictions affecting the Property, and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Property, including but not limited to fining Owners for violating same or for not properly maintaining their property;

(d) constructing improvements on Common Properties for use for any of the purposes or as may be required to provide the services as authorized in this ARTICLE;

(e) provision of administrative services including but not limited to insurance, legal, accounting and financial, and communication services informing Owners of activities, notice of meetings, referendums, etc., incident to the above-listed services, and payment of taxes and other expenses;

(f) any other services necessary to perform its obligations hereunder.

The powers of the Association shall be construed liberally and shall include, without limitation, all of the powers set forth in Section 47F-3-102 of the Planned Community Act.

In the event the Association is unable or unwilling to perform any of the services listed above in a manner satisfactory to the Declarant, the Declarant shall be and hereby is authorized to perform such services, at the Association's expense, as long as such expenses are reasonable and necessary to carry out the Declarant's obligations under this Declaration.

The Association shall be responsible for the provision of liability insurance, any taxes, maintenance of recreation, wet detention basins and other facilities located on the Common Properties, and payment of assessments for public and private capital improvements made to or for the benefit of the Common Properties located within the development. Upon default by the Association in the payment to the governmental authority entitled thereto of any *ad valorem* taxes levied against the Common Properties or assessments for public improvements to the Common Properties, 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 tax assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and/or assessments due by the total number of building sites 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 against the Owner personally obligated to pay the same or may elect to foreclose the lien against the property of the Owner.

Section 2. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority, to borrow money for use by the Association and to mortgage the property of the Association and to pledge the revenues of the Association as security for such loans made to the Association which loans shall be used by the Association in performing its authorized functions. The Declarant may, but shall not be obligated to, make loans to the Association, subject to approval by the Declarant of the use to which such loan proceeds will be put and the method by which such loans will be repaid and subject to a maximum of loan amount approved by the Declarant, at interest rates acceptable to the Declarant. Notwithstanding anything in this Declaration to the contrary, the Association shall not be allowed to reduce the limits of the minimum regular annual assessment at any time there is outstanding any amounts due the Declarant as repayment of any loans made by the Declarant to the Association.

Section 3. Maintenance Obligation of Owners. The responsibilities of each Lot Owner shall include the following:

- (a) To clean, maintain, keep in good order and reasonable repair, at his or her expense, all portions of his or her Lot and residence;
- (b) To perform his or her responsibilities in such manner so as not unreasonably to disturb other persons residing with the subdivision.

ARTICLE VIII  
DURATION

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of twenty-five (25) years from the date this Declaration is recorded. Upon the expiration of said twenty-five-year period this Declaration shall be automatically renewed and extended for successive ten-year periods.

ARTICLE IX  
AMENDMENTS

Declarant reserves the right to alter or amend this Declaration during the period of Declarant control. Otherwise, this Declaration may be amended as set forth in NCGS Section 47F-2-117 except that neither the Association nor the Owners may amend this Article IX to diminish or remove Declarant's powers hereunder.

ARTICLE X  
NOTICES

Section 1. How Notice Given. Any notice required to be sent to any Owner under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, to the last known address of the person or entity who appears as Owner on the Association's books, on the first day of the calendar month in which said notice is mailed.

Section 2. Notice to Co-Owners. Notice to one (1) of two (2) or more co-owners of a Lot shall constitute notice to all co-owners.

Section 3. Notice Where Address or Ownership Changed. It shall be the obligation of every Owner to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes an Owner following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor-in-title.

ARTICLE XI  
ENFORCEMENT, SEVERABILITY AND INTERPRETATION



Section 1. Means of Enforcement. Enforcement of these Covenants shall be by any proceeding at law or in equity, whether it be to restrain violation or to recover damages or to create any lien created by these Covenants.

Section 2. Severability. Should any covenants and restrictions herein contained, or any ARTICLE, Section, paragraph, sentence, clause, phrase or term in this Declaration be declared to be void, invalid, illegal, or unenforceable for any reason by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 3. Interpretation. In all cases, the provisions of this Declaration shall be given that interpretation of construction which will best result in the consummation of the general plan of development of the Property. The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning or similar ordinance which allows a less restricted use of the Property.

Section 4. Authorized Action. All action which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the By-Laws of the Association, unless the terms of this instrument provide otherwise.

Section 5. Trespass. Whenever the Association, and/or the Declarant are permitted by these Covenants to correct, repair, clean, preserve, clear out or do any action on any property or on the easement areas adjacent thereto, entering the property and taking such action shall not be deemed a trespass.

Section 6. Conflict. In the event of any conflict between the provisions of this Declaration and any applicable provisions of the Cumberland County Code Ordinances, the provisions of the Cumberland County Code of Ordinances shall control.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed the day and year first above written.

BIRCHWOOD FARMS, INC.

By: Thomas R. Prewitt  
Name: Thomas R. Prewitt  
Title: President

COUNTY OF CUMBERLAND

I certify that the following person(s) personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Name of Principal: Thomas R. Prewitt, President.

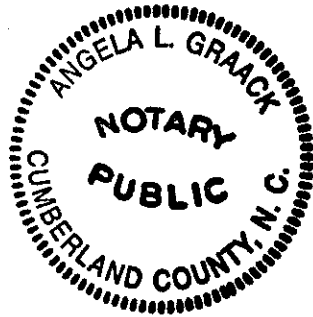
Date: 4/23/14

Angela L Graack  
Notary Public

Angela L Graack  
Printed or Typed Name of Notary Public

My commission expires: 1/14/2019

(Affix notarial stamp or seal).



(N.P. SEAL)