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Page 70

**DECLARATION OF RESTRICTIONS AND
COVENANT TO SHARE COSTS FOR
BIRKDALE MULTI-FAMILY AND NONRESIDENTIAL PROPERTIES**

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**DECLARATION OF RESTRICTIONS AND
COVENANT TO SHARE COSTS FOR
BIRKDALE MULTI-FAMILY AND NONRESIDENTIAL PROPERTIES**

THIS DECLARATION is made as of the date set forth on the signature page by Birkdale at Lake Norman, LLC, a North Carolina limited liability company ("Declarant") with the consent of the other property owners identified on the signature page hereof (the "Other Owners").

BACKGROUND STATEMENT

Birkdale is a mixed use planned community which anticipates the development of single-family residential, multi-family residential, commercial, retail, and recreational elements within the community. Declarant and the Other Owners are the owners of the property described in Exhibits "A" and "B" which are attached hereto and incorporated by reference. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of each portion of the Properties, the adjacent single-family residential property owners, and the Golf Course.

This Declaration also establishes a flexible and reasonable procedure for the administration, maintenance and preservation of certain Universal Shared Property, described in Article III, which benefits the Owners of Parcels, the single-family residential property owners within Birkdale, and the Golf Course. Article V establishes a method of sharing costs of such Universal Shared Property between the Parcels, the single-family residential property owners within Birkdale, and the Golf Course, each of whom benefit from and use the Universal Shared Property. This Declaration further establishes a procedure for the administration, maintenance and preservation of certain Multi-Party Shared Property, described in Article III, which benefits the Owners of the Parcels and the Golf Course. Article V also establishes a method of sharing costs of the Multi-Party Shared Property between the Parcels and the Golf Course, each of whom benefit from and use the Multi-Party Shared Property. All of the foregoing provisions, as further set forth in this Declaration, are made for the preservation of the general scheme of development, standard of conduct, maintenance, and activities prevailing throughout Birkdale.

Declarant and the Other Owners each hereby declare that all of the property described in Exhibit "A," any additional property subjected to this Declaration by Supplemental Declaration, property subject to the Association Declaration, and the Golf Course shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the foregoing real property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Properties, subject to the Association Declaration, or the Golf Course, their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each such person.

Article I

DEFINITIONS

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. **"Association"**: The Birkdale Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors or assigns.

1.2. **"Association Declaration"**: The Declaration of Covenants, Conditions, and Restrictions for Birkdale Residential Golf Community, recorded or to be recorded in the Public Records, as amended from time to time.

1.3. **"Birkdale"**: That certain planned community located in Mecklenburg County, North Carolina, within the general boundaries of North Carolina Highway 73 to the west, Babe Stillwell Farm Road to the south, Northcross Drive to the east, and Sam Furr Road and David Kenney Farm Road to the north, and such other lands as may be added to or subtracted from the Master Plan by Declarant.

1.4. **"Community-Wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing throughout Birkdale as established by the Declarant and may be more specifically defined in any design guidelines made applicable to the Properties.

1.5. **"Golf Course"**: That certain lot or parcel of land identified as "Tract G1" on a plat recorded in Map Book 27, Page 70 of the Public Records and described on Exhibit "D," and any improvements now or hereafter located thereon.

1.6. **"Golf Course Owner"**: The Person who holds record title to any portion of the Golf Course, but excluding any party holding an interest in any portion of the Golf Course merely as security for the performance of an obligation.

1.7. **"Declarant"**: Birkdale at Lake Norman, LLC, a North Carolina limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, there shall be only one Declarant at any time.

1.8. **"Master Plan"**: The land use plan for the development of Birkdale prepared by Land Design, Inc., and approved by Mecklenburg County, North Carolina, as it may be amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B" that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation.

1.9. "Multi-Party Assessment": Assessments levied on Parcels subject to assessment under Article V to fund Multi-Party Shared Costs, as more particularly described in Section 5.1.

1.10. "Multi-Party Shared Costs": The actual and estimated expenses incurred, or anticipated to be incurred, by the Golf Course Owner to maintain the Multi-Party Shared Property, including any reasonable reserve, or other costs which are necessary and appropriate pursuant to this Declaration.

1.11. "Multi-Party Shared Property": Areas within Birkdale jointly used by or benefiting the Owners of the Parcels and the Golf Course, including, without limitation, the Detention Pond, as more particularly described in Section 3.4.

1.12. "Owner": One or more Persons holding record title to any Parcel, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.13. "Parcel": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for apartments, commercial, or retail development, use and occupancy consistent with this Declaration, any other applicable covenants, and applicable zoning. As of the date of this Declaration, the only portion of the Properties intended for apartments, commercial or retail development, use and occupancy consistent with this Declaration, any other applicable covenants, and applicable zoning and included as Parcels hereunder is that portion of the Properties identified as Tract I, Tract II, and Tract III on Exhibit "A" attached hereto. The term shall refer to the land, if any, which is part of the Parcel as well as any improvements thereon. If any Parcel is subdivided or resubdivided, whether by plat or deed, each such subdivision shall be considered a Parcel hereunder and votes and liability for assessments shall be recomputed for each subdivision in accordance with the formulas set forth in Exhibits "E" and "F."

In the case of a portion of the Properties intended and suitable for subdivision into Parcels but as to which no recorded plat has been filed, such property shall be deemed to be a single Parcel until such time as a recorded plat is filed of record with respect to all or a portion of the property. Thereafter, the portion encompassed by such plat shall contain the number of Parcels determined as set forth in the preceding paragraph and any portion not platted shall continue to be treated as a single Parcel.

1.14. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.15. "Properties": The real property described on Exhibit "A," together with such additional property described on Exhibit "B" as is subjected to this Declaration in accordance with Section 6.1.

1.16. "Public Records": The Office of the Register of Deeds of Mecklenburg County, North Carolina.

1.17. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article VI which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.18. "Universal Assessment": Assessments levied on Parcels and the Golf Course subject to assessment under Article V to fund Universal Shared Costs, as more particularly described in Section 5.1.

1.19. "Universal Shared Costs": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association to maintain the Universal Shared Property, including any reasonable reserve, or other costs which are necessary and appropriate pursuant to this Declaration.

1.20. "Universal Shared Property": Areas within Birkdale jointly used by or benefiting the owners of single-family residential property, the Owners of Parcels, and the Golf Course, including, without limitation, rights-of-way, greenbelts and open spaces, Birkdale's entry feature, and other property, and which may be owned by the Association as "common area" or is a part of its "area of common responsibility" pursuant to the Association Declaration, and which is more particularly described in Section 3.2.

Article II

USE RESTRICTIONS

The Properties shall be used only for purposes permitted by ordinances, zoning plans and regulations of Mecklenburg County, North Carolina, and the restrictions in this Declaration and any Supplemental Declaration. Any Supplemental Declaration may impose stricter standards than those contained in this Article. The restrictions set forth herein and in any Supplemental Declaration shall be enforceable by any Owner or, in an appropriate situation, the Association.

2.1. Commercial Uses. Parcels shall be used only for commercial office use, retail, and multi-family residential purposes.

2.2. Signs. All signs placed upon any Parcel or the Golf Course which are visible from any street or any adjoining Parcel shall conform to the Community-Wide Standard.

2.3. Parking. Parking within the Properties shall be permitted only in parking lots and garages serving the Parcels and the Golf Course, areas designated for public parking, or along streets and roads, if and to the extent allowed by ordinance.

2.4. Loading Docks. All loading docks and truck parking areas within the Properties shall be located or screened so that they are not visible from neighboring streets.

2.5. Occupants Bound. All provisions of this Declaration and any applicable Supplemental Declaration governing conduct of Owners shall also apply to their employees, lessees, occupants, and invitees. All leases for any portion of the Properties shall bind lessees to the provisions of this Declaration and any applicable Supplemental Declaration. The Owner shall cause all lessees and occupants of its Parcel to comply with these provisions, and every Owner shall be responsible for all violations.

2.6. Unsightly or Unkempt Conditions. The Golf Course and all portions of a Parcel outside enclosed structures shall be maintained in accordance with the Community-Wide Standard. Nothing shall be done, maintained, stored or kept outside enclosed structures on a Parcel or on the Golf Course which causes an unclean, unhealthy, or untidy condition. Any structures, equipment or other items permitted on the exterior portions of Parcels and the Golf Course shall be kept in a neat and attractive condition and promptly be repaired or removed if fallen into disrepair.

2.7. Hazardous Materials. No Person shall use, generate, store, or dispose of hazardous materials on the Properties or discharge or release any hazardous material on, above, or under the Properties except in compliance with all applicable laws, regulations, ordinances and permits. "Hazardous materials" means materials, substances, gases, or vapors identified as hazardous, toxic, or radioactive by any applicable federal, state, or local laws, regulations or ordinances.

2.8. Mechanical Equipment, Garbage Cans, Trash Containers, Tanks, Etc. All mechanical equipment within the Properties servicing buildings, garbage cans, trash containers, above-ground tanks and similar items must be located so that they are not visible from neighboring Parcels, streets or property located adjacent to the Parcel. All rubbish, trash, and garbage shall be regularly removed from Parcels and the Golf Course and not allowed to accumulate.

2.9. Sight Distance at Intersections. Landscaping within the Properties at street intersections shall permit safe sight across the street corners. No fence, wall, hedge or shrub within the Properties may be placed or permitted to remain where it would create a traffic visibility problem.

2.10. Lighting. All exterior lights within the Properties shall be consistent with and installed in accordance with the Community-Wide Standard and any design guidelines which may be applicable to the Properties.

2.11. Fences. Hedges, walls, and fences within the Properties shall be consistent with and installed in accordance with the Community-Wide Standard and any design guidelines which may be applicable to the Properties.

2.12. Laws and Ordinances. Every Owner, lessee, and occupant of any Parcel and the Golf Course Owner, their respective guests and invitees, shall comply with all laws, statutes, ordinances, and rules of federal, state, and municipal governments applicable to the Properties. Any violation may be considered a violation of this Declaration.

2.13. Other Prohibited Uses. In addition to uses prohibited by applicable laws, ordinances or governmental regulations or other covenants, the following uses are prohibited within the Properties unless authorized in writing by Declarant or approved by amendment to this Declaration: (a) trailer courts, mobile home parks, and recreation vehicle campgrounds; (b) junk yards and automobile dismantling operations; (c) sanitary landfills; (d) dumping, disposal, incineration, treatment, processing, or reduction of garbage, sewage, offal, refuse or dead animals, including rendering of fat, distillation of bones, stockyards and slaughtering; (e) refining or reclaiming petroleum products; (f) smelting of iron, tin, zinc or other ores; (g) labor camps and migrant worker camps; (h) jails or honor farms; (i) munitions and related manufacturing and storage; (j) automobile paint and body shops; (k) community fairs or flea markets; or (l) outdoor advertising.

Article III **MAINTENANCE**

3.1. Association Responsibility for Universal Shared Property. The Association shall have the right and the obligation to maintain the Universal Shared Property, defined in Section 3.2, for which the Owners of Parcels and the Golf Course Owner covenant and agree to contribute to the cost of such maintenance. Maintenance, as such term is used in this Declaration, shall mean maintaining, repairing, replacing, insuring, and taking any and all steps to keep Birkdale neat, clean and attractive, including, without limitation, repairing and replacing fixtures and landscaping, as well as such other duties as may be necessary or appropriate to satisfy the Community-Wide Standard. In the event that any Parcel Owner or Golf Course Owner reasonably believes that the Association's maintenance does not satisfy the Community-Wide Standard, such Owner may pursue the matter only by following the procedures set forth in Section 3.7.

3.2. Universal Shared Property. The Universal Shared Property shall include, without limitation, the following elements of real and personal property located within Birkdale which may be illustrated on a diagram attached as Exhibit "C":

(a) that portion of the landscaping, landscaped medians, and rights-of-way on that portion of Birkdale Commons Parkway which is contiguous to the easterly boundaries of the property identified as "Parcel 1" and "Parcel 2" and the westerly boundaries of the property identified as "Parcel 3" and Tract "G1" on the plat recorded in Map Book 27, Page 70, of the Public Records and which serves the Association, the Golf Course, and the Properties;

(b) the main entry features, signage, and landscaping at the entrance to Birkdale located at Sam Furr Road and Birkdale Commons Parkway ;

(c) those street lights and sidewalks that benefit jointly the Association, the Golf Course, and the Properties;

(d) the Streetscape Enhancement Area on Sam Furr Road which is shown on the attached diagram; and

(e) any other property used by or which benefits jointly the Association and the Properties which is shown on the attached diagram now or by amendment.

3.3. Golf Course Responsibility for Multi-Party Shared Property. The Golf Course Owner shall have the right and the obligation to maintain the Multi-Party Shared Property, defined in Section 3.4, for which the Owners of Parcels covenant and agree to contribute to the cost of such maintenance. Maintenance, as such term is used in this Declaration, shall mean maintaining, repairing, replacing, insuring, and taking any and all steps to keep Birkdale neat, clean and attractive, including, without limitation, repairing and replacing fixtures and landscaping, as well as such other duties as may be necessary or appropriate to satisfy the Community-Wide Standard. In the event that any Parcel Owner or the Association reasonably believes that the Golf Course's maintenance does not satisfy the Community-Wide Standard, such Owner may pursue the matter only by following the procedures set forth in Section 3.7.

3.4. Multi-Party Shared Property. The Multi-Party Shared Property, as such term is used herein, includes, without limitation, the following elements of real and personal property located within Birkdale which may be illustrated on a diagram attached as Exhibit "D":

(a) the Detention Pond which benefits jointly the Golf Course Owner and the Parcel Owners, which is located within the Detention Pond Easement shown on the plat recorded in Map Book 27, Page 70 of the Public Records; and

(b) any other property used by or which benefits jointly the Parcel Owners and the Golf Course Owner and which is added to the Multi-Party Shared Property by an amendment to this Declaration and shown on an amendment to the attached diagram.

3.5. Parcel Maintenance. Each Owner shall maintain its Parcel and all structures, sidewalks, street lights, parking areas and other improvements comprising the Parcel, and any landscaping within any adjacent road right-of-way up to the curb of such road, and the Golf Course Owner shall maintain the Golf Course and improvements thereon, in a manner consistent with the Community-Wide Standard and all applicable covenants. Such maintenance shall include, but is not limited to, the following:

(a) prompt removal of all litter, trash, refuse and waste;

(b) lawn mowing and fertilizing on a regular basis;

(c) tree and shrub pruning and mulching;

- (d) watering of landscaped areas;
- (e) keeping exterior lighting and maintenance facilities in proper working order;
- (f) implementing and maintaining erosion-sedimentation control measures;
- (g) painting or staining, as appropriate, and regular maintenance and repair of the exterior of all improvements and signage;
- (h) roof repair and replacement as necessary to maintain a neat, uniform appearance over the surface of the roof;
- (i) keeping sidewalks, parking areas, driveways and roads in good repair, and free of potholes, excessive cracks and weeds;
- (j) painting paved surfaces with traffic and parking lines, signals, and directional information; and
- (k) prompt repair of any exterior damage to improvements.

3.6. Enforcement. Owners and the Golf Course Owner shall comply with the use restrictions, architectural controls, and maintenance standards set forth in this Declaration. In the event that any Owner's or Golf Course Owner's standard of conduct or performance does not satisfy this Declaration, the Declarant, the Golf Course Owner, or the Association may, after complying with the dispute procedures set forth in Section 3.7, enter a Parcel and perform such maintenance. In addition, the Declarant, the Association and the Golf Course Owner shall have the right, but not the obligation, subject to the procedures set forth herein, to enter upon a Parcel to enforce the Use Restrictions set forth in Article II. The Association and the Golf Course Owner shall each have the sole discretion to perform maintenance and to charge the cost of maintenance or remedial action as an assessment allocated among all Parcel Owners, or as an expense charged to a particular Owner or Owners.

3.7. Dispute Procedures.

(a) In the event that any Owner or the Golf Course Owner believes that the Universal Shared Property is not being maintained by the Association to the Community-Wide Standard; or any Owner or the Association believes that the Multi-Party Shared Property is not being maintained by the Golf Course Owner to the Community-Wide Standard; or the Declarant, any Owner, the Association, or the Golf Course Owner believes an Owner or Golf Course Owner subject to this Declaration is not maintaining its Parcel or property or otherwise complying with this Declaration; such complaining party ("Claimant") shall provide written notice ("Notice") to the party with the responsibility for performing such maintenance or taking appropriate action.

(b) Claimant's Notice shall state plainly and concisely:

1. the nature of the action, inaction, or maintenance deficiency, including specific problems with the appearance or conduct and offering examples of how or where action or maintenance of a similar nature, if any, is being appropriately performed within Birkdale to the Community-Wide Standard; and

2. what Claimant wants the party to do or not do to resolve the problem.

(c) The Person receiving the Notice shall have 10 business days to cure the deficiency, or, if the deficiency is not capable of being cured within such period, the Person receiving Notice shall respond to the Claimant with a detailed explanation of the steps being taken to cure the deficiency, a good faith estimate of when such deficiency shall be cured, and any other pertinent information.

(d) If the condition described in Claimant's Notice is not resolved within the time set forth in subsection (c), Claimant may file a "Claim" as provided in Article XIV of the Association Declaration, in which case the Declarant, the Parcel Owner, the Golf Course Owner, the Association, or any Person responsible for such maintenance shall be deemed "Bound Parties" and shall comply with the dispute resolution procedures set forth therein.

3.8. Limitation of Liability. Notwithstanding anything contained herein to the contrary, neither the Declarant, a Parcel Owner, the Golf Course Owner, nor the Association shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

Article IV **EASEMENTS**

4.1. Association Maintenance Easement. Declarant hereby grants to the Association easements over, under and across the Properties (but not through a structure) for access, ingress and egress, maintenance and repair to the extent reasonably necessary for the Association to perform its maintenance responsibilities of the Universal Shared Property, and for the Association to exercise its rights under this Declaration.

4.2. Golf Course Maintenance Easement. Declarant and the Owners each hereby grant to the Golf Course Owner easements appurtenant to the Golf Course over, under and across the Properties (but not through a structure) for access, ingress and egress, maintenance and repair to the extent reasonably necessary for the Golf Course Owner to perform its maintenance responsibilities of the Multi-Party Shared Property, and for the Golf Course Owner to exercise its rights under this Declaration.

4.3. Easements for Utilities, Etc. There is hereby reserved to the Declarant, its successors and assigns, and its designees (which may include, without limitation, any governmental or quasi-governmental entity and any utility company):

(a) non-exclusive perpetual easements, as shown on the plat dated July 18, 1995, as last revised October 11, 1995, entitled "Birkdale Residential Golf Course Community-Map 1" prepared by David L. Gray, RLS, GPA Professional Land Surveyors filed for registration on October 13, 1995, and recorded in Map Book 27, at Page 70 of the Public Records, for installation, repair, maintenance and removal of sanitary sewer lines and facilities, storm drainage facilities, detention pond facilities, and other facilities installed pursuant to the easements shown thereon within the areas identified on such plat as either easements or proposed easements, including, without limitation, sanitary sewer easements, a detention pond easement and proposed public storm drainage easements. The exact location of any sanitary sewer easements and public storm drainage easements identified on such plat as proposed easements shall be as finally approved by the Charlotte Mecklenburg Utility Department or other appropriate governmental agency. The Declarant reserves the right to record amendments to such plat, additional plats and deeds of easement or other recorded instruments to reflect the exact location of any easements or proposed easement shown on such plat. The Declarant, its successors and assigns, shall have the right to grant, convey and dedicate any of the easements described in this subparagraph (a) and shown on such plat as either easements or proposed easements to any governmental entity, including Mecklenburg County and Huntersville and Lemley Townships and/or to any public or private utility company.

(b) non-exclusive, permanent easements along, over, and upon strips of land 10 feet in width parallel with and contiguous to the front, rear and side lines of each Parcel for the installation, maintenance, construction and operation of underground cable television lines and underground public and private utilities, including, without limitation, gas, electric and telephone lines and meters; provided, however, no such 10-foot-wide easement shall be reserved along, over, or upon any strip of land adjacent to, or within, a buffer required by applicable zoning ordinances. Nothing in this subparagraph (b) shall operate to limit any easement which may be reserved pursuant to subparagraphs (a) or (c) of this Section 4.3.

(c) a non-exclusive easement upon, across, over, and under all of the Properties (but not through a structure), for ingress, egress, installation, monitoring, replacing, repairing, and maintaining cable television systems, master television antenna systems or other devices for sending or receiving data and/or other electronic signals; security and similar systems; walkways; street lights; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electric lines and meters.

The owner of any property to be burdened by any easement granted pursuant to subparagraph (c) of this Section shall be given written notice in advance of the grant. The location of any easement granted pursuant to this Section shall be subject to the written approval of the owner of the property burdened by that easement, which approval shall not be unreasonably withheld, delayed or conditioned. Unless the owner of the property to be burdened by an easement granted pursuant to subparagraph (c) otherwise consents in writing, all utility lines and all cable television lines shall be located underground.

4.4. Easements for Stormwater Drainage and Retention. Each portion of the Properties is hereby subjected to a non-exclusive easement appurtenant to and for the benefit of each other portion of the Properties, the Golf Course, and the Association for the purpose of

stormwater drainage and runoff, which easement shall include the right to tie into existing stormwater drainage facilities and to divert stormwater runoff to or from each Parcel into such stormwater drainage facilities at such points and in such manner as approved by the Declarant. Notwithstanding the foregoing to the contrary, neither the Association, any owner of residential property nor an Owner shall interfere with stormwater collection and other drainage measures undertaken on the Properties by the Golf Course Owner. No Owner shall alter or modify a drainage structure without the written consent of the Golf Course Owner. Notwithstanding any provision in Section 4.3 or this Section 4.4 to the contrary, storm water drainage and runoff from the Parcel identified as "Parcel 1" on the plat dated July 18, 1995, as last revised October 11, 1995, entitled "Birkdale Residential Golf Course Community-Map 1" prepared by David L. Gray, RLS, GPA Professional Land Surveyors filed for registration on October 13, 1995, and recorded in Map Book 27, at Page 70 of the Public Records shall be diverted to proposed storm drainage facilities to be located within the approximate area identified on such plat as a 40' Proposed Storm Drainage Easement which crosses Parcel 1 as shown on such plat and the north-eastern corner of Parcel 2 as shown on such plat. Such 40' Proposed Public Storm Drainage Easement shall also serve Parcel 2 as shown on such plat and each other portion of the Properties.

4.5. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees and mortgagees, and the "Declarant" under the Association Declaration, an easement over the Properties (but not through a structure) for the purposes of construction, maintenance and development of Birkdale, whether or not such property is made subject to this Declaration. This easement includes but is not limited to a right of ingress and egress for construction of roads and for tying in and installation of utilities on such property. The easement provided for herein shall be exercised at reasonable times and in a reasonable manner so as not to unreasonably interfere with the development and use of the Properties.

4.6. Rights of Access and Parking. There is hereby established for the benefit of the Golf Course and its guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all public roadways located within the Properties reasonably necessary to travel between the entrance to the Properties and the Golf Course. Without limiting the generality of the foregoing, guests and invitees of the Golf Course shall have the right to park their vehicles on the public roadways located within the Properties at reasonable times before, during, and after tournaments and other similar functions held by or at the Golf Course to the extent that the Golf Course has insufficient parking to accommodate such vehicles.

4.7. Easements for Golf Course.

(a) Errant Golf Balls. Every Parcel and the Multi-Party Shared Property and the Universal Shared Property are burdened with an easement permitting golf balls unintentionally to come upon such areas, and for golfers at reasonable times and in a reasonable manner to come upon the Multi-Party Shared Property and the Universal Shared Property or the exterior portions of a Parcel to retrieve errant golf balls; provided, however, if any Parcel is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not

relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant; the Other Owners; the Association or its Members (in their capacities as such); Birkdale Golf Associates, LLC, its successors, successors-in-title to the Golf Course, or assigns; any builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

(b) Water Overspray. Any portion of the Properties immediately adjacent to the Golf Course is hereby burdened with a non-exclusive easement in favor of the Golf Course Owner for overspray of water from the irrigation system serving the Golf Course. Under no circumstances shall the Declarant, the Other Owners, the Association, or the Golf Course Owner be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(c) Golf Ball Retrieval. The Golf Course Owner, its successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Multi-Party Shared Property and the Universal Shared Property lying reasonably within range of golf balls hit from the Golf Course.

Article V

OBLIGATION TO SHARE COSTS

5.1. Responsibility and Obligation for Assessments.

(a) Universal Shared Costs. The Parcel Owners and the Golf Course Owner covenant and agree to pay assessments to the Association to defray a portion of the Universal Shared Costs incurred by the Association in maintaining, repairing, replacing, and insuring the Universal Shared Property. The obligation to pay this Universal Assessment shall be mandatory and shall be a separate and independent covenant on the part of each Parcel Owner and the Golf Course Owner. No diminution or abatement of the Universal Assessment or setoff shall be claimed or allowed by reason of any alleged failure of the Association to perform its maintenance responsibilities to the Community-Wide Standard. A Parcel Owner's or the Golf Course Owner's sole remedy for failure of the Association to perform its maintenance responsibilities shall be the dispute procedures set forth in Section 3.7.

(b) Multi-Party Shared Costs. The Parcel Owners covenant and agree to pay assessments to the Golf Course Owner to defray a portion of the Multi-Party Shared Costs incurred by the Golf Course Owner in maintaining, repairing, replacing, and insuring the Multi-Party Shared Property. The obligation to pay this Multi-Party Assessment shall be mandatory and shall be a separate and independent covenant on the part of each Parcel Owner. No diminution or abatement of the Multi-Party Assessment or setoff shall be claimed or allowed by reason of any alleged failure of the Golf Course Owner to perform its maintenance responsibilities to the Community-Wide Standard. A Parcel Owner's or the Association's sole remedy for failure of the Golf Course Owner to perform its maintenance responsibilities shall be the dispute procedures set forth in Section 3.7.

5.2. Computation of Assessments.

(a) Universal Assessments. On an annual basis, at least 60 days before the beginning of its fiscal year, the Association shall determine an estimated budget of Universal Shared Costs. Universal Shared Costs shall include the costs for maintaining the Universal Shared Property in a manner consistent with the Community-Wide Standard during the upcoming year, including an appropriate amount to be placed in a reserve fund for capital repairs and replacements.

The budget of Universal Shared Costs shall be allocated between the Association, each Parcel Owner, and the Golf Course Owner on the basis of a formula, which is set forth on Exhibit "E."

Each Parcel Owner and the Golf Course Owner shall be responsible for payment of its share of the Universal Shared Costs determined in accordance with the foregoing formula. The balance of the Universal Shared Costs shall be a common expense of the Association allocated according to the Association Declaration.

At least 30 days before the beginning of its fiscal year, the Association shall send each Parcel Owner and the Golf Course Owner a copy of the budget of Universal Shared Costs and a notice of assessment for its share of the Universal Shared Costs based on the foregoing formula. The notice of annual assessment shall be adjusted to reflect any excess or deficiency in the budget prepared for the immediately preceding year as compared to actual expenses for that period, plus any costs incurred by the Association to correct any maintenance deficiency or enforce a use restriction on a Parcel.

The budget of Universal Shared Costs shall automatically become effective unless disapproved at a meeting by Parcel Owners and the Golf Course Owner, or any combination thereof, holding at least 80% of the Equivalent Units allocated to Parcel Owners and the Golf Course Owner pursuant to Exhibit "E." There shall be no obligation to call a meeting for the purpose of considering the budget of Universal Shared Costs except on petition of Parcel Owners and the Golf Course Owner, or any combination thereof, holding at least 25% of the Equivalent Units allocated to Parcel Owners and the Golf Course Owner pursuant to Exhibit "E." Such petition must be presented to the Association within 10 days after delivery of the budget of Universal Shared Costs and notice of any assessment.

(b) Multi-Party Assessments. On an annual basis, at least 60 days before the beginning of its fiscal year, the Golf Course Owner shall determine an estimated budget of Multi-Party Shared Costs. Multi-Party Shared Costs shall include the costs for maintaining the Multi-Party Shared Property in a manner consistent with the Community-Wide Standard during the upcoming year, including an appropriate amount to be placed in a reserve fund for capital repairs and replacements.

The budget of Multi-Party Shared Costs shall be allocated between the Golf Course and each Parcel on the basis of a formula, which is set forth on Exhibit "F." Each Parcel Owner shall be responsible for payment of its share of the Multi-Party Shared Costs determined in

accordance with the foregoing formula. The balance of the Multi-Party Shared Costs shall be payable by the Golf Course Owner.

At least 30 days before the beginning of its fiscal year, the Golf Course Owner shall send each Parcel Owner a copy of the budget of Multi-Party Shared Costs and a notice of assessment for its share of the Multi-Party Shared Costs based on the foregoing formula. The notice of annual assessment shall be adjusted to reflect any excess or deficiency in the budget prepared for the immediately preceding year as compared to actual expenses for that period, plus any costs incurred by the Golf Course to correct any maintenance deficiency or enforce a use restriction on a Parcel.

The budget of Multi-Party Shared Costs shall automatically become effective unless disapproved at a meeting by Parcel Owners holding at least 80% of the Equivalent Units allocated to Parcel Owners pursuant to Exhibit "F." There shall be no obligation to call a meeting for the purpose of considering the budget of Multi-Party Shared Costs except on petition of Parcel Owners holding at least 25% of the Equivalent Units allocated to Parcel Owners pursuant to Exhibit "F." Such petition must be presented to the Golf Course Owner within 10 days after delivery of the budget and notice of any assessment.

5.3. Payment of Assessments.

(a) Universal Assessments. Within 30 days of receipt of written notice of an Assessment, each Parcel Owner and the Golf Course Owner shall pay to the Association the entire amount due; provided, however, the board of directors of the Association may provide that such Universal Assessment may be paid in installments. The cost incurred by the Association in curing any maintenance deficiency of a Parcel Owner under Section 3.6 shall be due upon receipt of an invoice. Universal Assessments are a personal obligation of a Parcel Owner and Golf Course Owner and shall constitute a lien on the Parcel and Golf Course. Any Universal Assessment or payment delinquent for a period of more than 30 days shall incur a late charge in such amount of 10% of the principal amount (subject to the limitations of North Carolina law), interest (not to exceed the highest rate allowed by North Carolina law) on the principal amount due, all costs of collection (including attorney's fees), and any other amounts provided or permitted by law. In the event that any Universal Assessment remains unpaid after 90 days, the Association may file a lien on a Parcel or the Golf Course and/or institute suit on the personal obligation of the Parcel Owner or Golf Course Owner to collect a money judgment for such amounts. At least 10 days prior to assessing a late charge, filing a lien, or instituting suit for a delinquent Universal Assessment or payment, the Association shall give Notice to the Parcel Owner or Golf Course Owner from whom the Universal Assessment or payment is due that the Universal Assessment or payment is delinquent.

Disputes over the payment of Universal Assessments shall not be subject to the dispute procedures of Section 3.7, and any claim, grievance, or dispute shall be an Exempt Claim from the alternative dispute resolution procedures of Article XIV of the Association Declaration. All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, and then to delinquent assessments.

(b) Multi-Party Assessments. Within 30 days of receipt of written notice of a Multi-Party Assessment, each Parcel Owner shall pay to the Golf Course Owner the entire amount due; provided, however, the Golf Course Owner may provide that such Multi-Party Assessment may be paid in installments. The cost incurred by the Golf Course Owner in curing any maintenance deficiency by a Parcel Owner under Section 3.6 shall be due upon receipt of an invoice. Multi-Party Assessments are a personal obligation of a Parcel Owner and shall constitute a lien on the Parcel. Any Multi-Party Assessment or payment delinquent for a period of more than 30 days shall incur a late charge in such amount of 10% of the principal amount (subject to the limitations of North Carolina law), interest (not to exceed the highest rate allowed by North Carolina law) on the principal amount due, all costs of collection (including attorney's fees), and any other amounts provided or permitted by law. In the event that any assessment remains unpaid after 90 days, the Golf Course Owner may file a lien on the Parcel and/or institute suit on the personal obligation of the Parcel Owner to collect a money judgment for such amounts. At least 10 days prior to assessing a late charge, filing a lien, or instituting suit for a delinquent Multi-Party Assessment or payment, the Golf Course Owner shall give Notice to the Parcel Owner from whom the Multi-Party Assessment or payment is due that the Multi-Party Assessment or payment is delinquent.

Disputes over the payment of Multi-Party Assessments shall not be subject to the dispute procedures of Section 3.7, and any claim, grievance, or dispute shall be an Exempt Claim from the alternative dispute resolution procedures of Article XIV of the Association Declaration. All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, and then to delinquent assessments.

5.4. Recordkeeping.

(a) Association. The Association shall maintain or cause to be maintained full and accurate books of account with respect to the performance of its responsibilities hereunder. The books and records and related financial statements shall be made available for inspection and copying upon request by any Parcel Owner or the Golf Course Owner during normal business hours. Copying charges shall be paid by the Parcel Owner or the Golf Course Owner when requesting copies.

If an Owner or the Golf Course Owner desires to have the records audited, it may do so at its expense, and the Association shall cooperate by making available to the auditors the records, including all supporting material (e.g., check copies, invoices, etc.), for the year in question. If the amount of actual expenses for the year is disputed after the audit, the Association shall cause a second audit to be performed by a mutually acceptable auditor and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by the Association by five percent or more, the Association shall pay the entire cost of the second audit. If the amount as determined by the second auditor varies from the amount asserted by the Association by two percent or less, then the requesting party shall pay the entire cost of the second audit. Otherwise, the cost of the second audit shall be shared equally by the Association and the requesting party. Variances shall be taken into account in the following year's budget as provided in Section 5.2.

(b) Golf Course. The Golf Course Owner shall maintain or cause to be maintained full and accurate books of account with respect to the performance of its responsibilities hereunder. The books and records and related financial statements shall be made available for inspection and copying upon request by any Parcel Owner during normal business hours. Copying charges shall be paid by the Parcel Owner when requesting copies.

If an Owner desires to have the records audited, it may do so at its expense, and the Golf Course shall cooperate by making available to the auditors the records, including all supporting material (e.g., check copies, invoices, etc.), for the year in question. If the amount of actual expenses for the year is disputed after the audit, the Golf Course Owner shall cause a second audit to be performed by a mutually acceptable auditor and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by the Golf Course Owner by five percent or more, the Golf Course Owner shall pay the entire cost of the second audit. If the amount as determined by the second auditor varies from the amount asserted by the Golf Course Owner by two percent or less, then the Parcel Owner shall pay the entire cost of the second audit. Otherwise, the cost of the second audit shall be shared equally by the Golf Course Owner and the Parcel Owner. Variances shall be taken into account in the following year's budget as provided in Section 5.2.

5.5. Subordination of the Lien of Assessments to Deeds of Trust. The lien of the assessments provided for herein on the Golf Course or any Parcel shall be subordinate to the lien of any mortgage or deed of trust representing a first mortgage lien on the Golf Course or any such Parcel in favor of, or the benefit of, any bank, savings and loan association, insurance company or other financial institution. Sale or transfer of the Golf Course or any Parcel shall not affect any assessment lien. However, the sale or transfer of the Golf Course or any Parcel which is subject to any such first mortgage or first 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 became due prior to such sale or transfer. No such sale or transfer shall relieve the Golf Course or any such Parcel from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any such first mortgage or first deed of trust.

Article VI **ANNEXATION**

6.1. Annexation Without Approval of Membership. Until all property described on Exhibit "B" has been subjected to this Declaration or 20 years after the recording of this Declaration, whichever is earlier, Declarant may unilaterally subject to the provisions of this Declaration all or any portion of the real property described on Exhibit "B." Declarant may transfer or assign this right to annex property, provided such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records which describes the property to be annexed. Such Supplemental Declaration shall not require the consent of Parcel Owners or the Golf Course Owner, but shall require the

consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

6.2. Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements by Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any Supplemental Declaration annexing additional property may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.

Article VII

GENERAL PROVISIONS

7.1. Owners' Insurance. By virtue of taking title to a Parcel, each Owner covenants and agrees with all Other Owners, the Golf Course Owner, and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Parcel, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Parcel, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction. Alternatively, the Owner shall clear the damaged or destroyed structures on the Parcel and maintain the Parcel in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

7.2. Amendment.

(a) By Declarant. So long as Declarant owns any property described on Exhibit "B" or 20 years after the recording of this Declaration, whichever is earlier, Declarant may unilaterally amend this Declaration and the Exhibits to provide for the responsibilities associated with any property annexed to this Declaration pursuant to Section 6.1.

(b) By Parcel Owners and Golf Course Owner. Except as provided above, this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of Parcel Owners and the Golf Course Owner, or any combination thereof, holding at least 80% of the Equivalent Units allocated to Parcel Owners and the Golf Course Owner calculated in accordance with Exhibit "E." No amendment to this Declaration made in accordance with the preceding sentence shall abridge the rights or interests of the Association or the Golf Course Owner unless approved in writing by the board of directors of the Association or the Golf Course Owner, as the case may be. Notwithstanding the foregoing, no amendment shall be made to this Declaration which would increase the relative percentage share of Universal

Shared Costs or Multi-Party Shared Costs allocated to any Parcel or the Golf Course or the relative percentage of assessments made on the basis of such allocation without the consent of the Parcel Owner(s) or Golf Course Owner who would be adversely affected by such amendment. Notwithstanding the foregoing, no amendment may be made without the consent of the Declarant so long as the Declarant owns any portion of the property described on Exhibit "A" or Exhibit "B."

(c) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If a Person consents to any amendment to this Declaration, it will be conclusively presumed that such Person has the authority so to consent, and no contrary provision in any mortgage or contract between such Person and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee or such right or privilege.

7.3. Dedication of Universal Shared Property or Multi-Party Shared Property. Upon the affirmative vote of Parcel Owners holding at least 51% of the Equivalent Units allocated to Parcels, the Golf Course and the Association under this Declaration calculated in accordance with Exhibit "E," the consent of the Golf Course Owner, and the consent of the Association, the parties subject to this Declaration may dedicate portions of the Universal Shared Property to Mecklenburg County or to any other local, state, or federal governmental or quasi-governmental entity; provided, however, after such dedication, the Association may maintain, as Universal Shared Property, any such dedicated property for which it previously had maintenance responsibility, if the Association determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Upon the affirmative vote of Parcel Owners holding at least 51% of the Equivalent Units allocated to Parcels and the Golf Course under this Declaration calculated in accordance with Exhibit "F" and the consent of the Golf Course Owner, the parties subject to this Declaration may dedicate portions of the Multi-Party Shared Property to Mecklenburg County or to any other local, state, or federal governmental or quasi-governmental entity; provided, however, after such dedication, the Golf Course Owner may maintain, as Multi-Party Shared Property, any such dedicated property for which it previously had maintenance responsibility, if the Golf Course Owner determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

7.4. Notice. Any notice provided for in this Declaration shall be written and shall be served personally or shall be mailed by registered or certified mail to the Parcel Owner at the address of the Parcel within the Properties or at the address which the Owner has designated in writing with the secretary of the Association. Any notice to the Association shall be served personally or shall be mailed by registered or certified mail sent to the president or secretary of the Association. Notice to the Golf Course Owner shall be served personally or shall be mailed by registered or certified mail sent to the business office of the Golf Course Owner. All such notices shall, for all purposes, be deemed received (a) upon personal delivery to the party or address specified above or (b) on the third day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

7.5. Enforcement. The obligations created hereunder shall inure to the benefit of, and may be enforced by, the Declarant, each Parcel Owner, the Golf Course Owner, or the Association, by following the dispute procedures set forth in of Section 3.7, or, if exempt, any means at law or in equity.

7.6. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of 35 years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically be extended for successive periods of 10 years each. The covenants, conditions and restrictions of the Declaration may be amended during the first 35 year period or thereafter as provided in Section 7.2 hereof. After the first 35 year period, the covenants, conditions and restrictions of this Declaration may be terminated by the consent of Parcel Owners and the Golf Course Owner, or any combination thereof, holding at least 80% of the Equivalent Units allocated to Parcel Owners and the Golf Course Owner, collectively, calculated in accordance with Exhibit "E," consent of the Golf Course Owner, and the consent of the Association. Any termination of amendment must be properly recorded in the Office of the Register of Deeds of Mecklenburg County.

7.7. Interpretation. This Declaration shall be governed by and construed under the laws of the State of North Carolina.

7.8. Waiver. No failure of any Person to exercise any power under this Declaration or insist upon strict compliance with this Declaration and no custom or practice at variance with the terms of this Declaration shall constitute a waiver of the right to demand exact compliance with the terms of this Declaration.

7.9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

7.10. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

7.11. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

7.12. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

IN WITNESS WHEREOF THE Declarant and the Other Owners have executed this Declaration under seal, or caused this Declaration to be properly executed under seal by authority duly given, as of the 4th day of June, 1996.

DECLARANT:

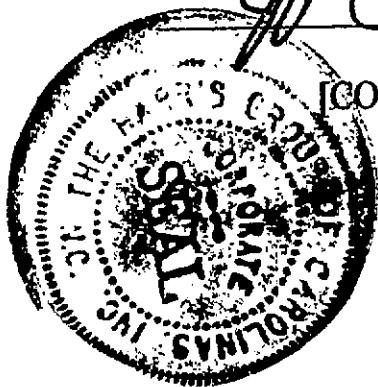
BIRKDALE AT LAKE NORMAN, LLC [SEAL]

By: The Harris Group of Carolinas, Inc.
Manager

By: 
Name: John W. Harris
Its: President

ATTEST:

 Secretary
[CORPORATE SEAL]



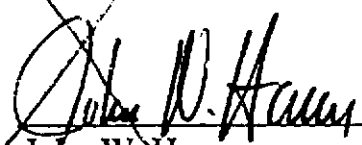
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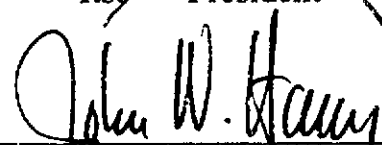
OTHER OWNERS:

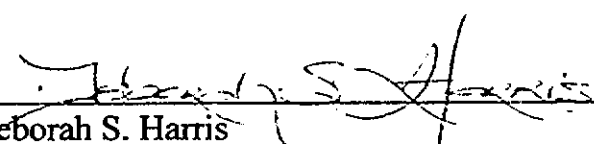
BIRKDALE GOLF ASSOCIATES, LLC [SEAL]

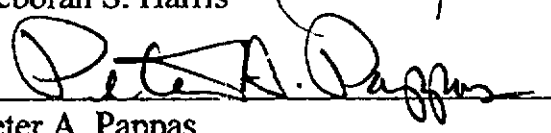
By: Harris/Birkdale Golf Associates, LLC, [SEAL]
Manager

By: The Harris Group of Carolinas, Inc.
Manager

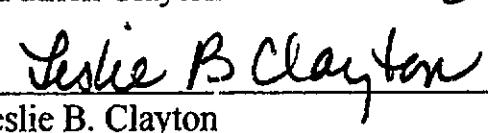
By: 
Name: John W. Harris
Its: President

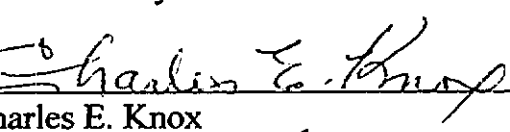

John W. Harris (SEAL)

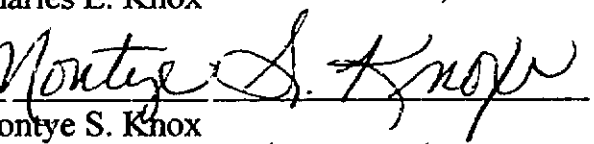

Deborah S. Harris (SEAL)

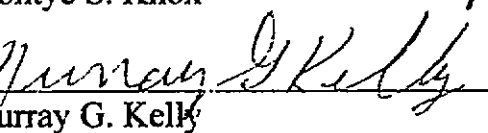

Peter A. Pappas (SEAL)

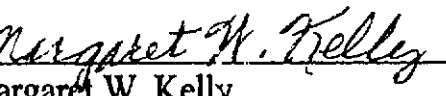

J. Patrick Clayton (SEAL)


Leslie B. Clayton (SEAL)


Charles E. Knox (SEAL)


Montye S. Knox (SEAL)


Murray G. Kelly (SEAL)

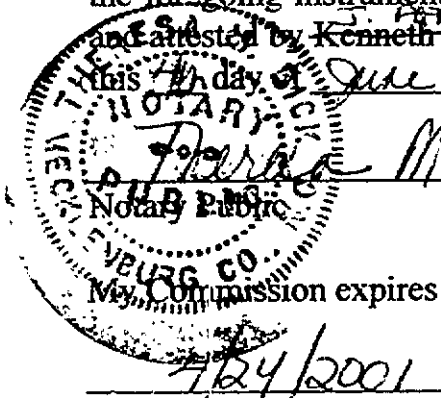

Margaret W. Kelly (SEAL)

[ACKNOWLEDGMENTS ON NEXT PAGE]

NORTH CAROLINA

MECKLENBURG COUNTY

I, Theresa M. Dick, a Notary Public of the County and State aforesaid, certify that ~~Kenneth B. Rogich~~ ^{J. Patrick Clayton}, personally came before me this day and acknowledged that he is Secretary of The Harris Group of Carolinas, Inc., a North Carolina corporation, Manager of BIRKDALE AT LAKE NORMAN, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation as Manager of BIRKDALE AT LAKE NORMAN, LLC, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by Kenneth B. Rogich as its Secretary. Witness my hand and official stamp or seal, this 4th day of June, 1996.

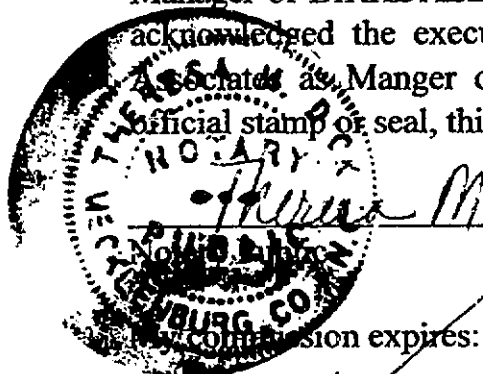


[NOTARY SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Theresa M. Dick, a Notary Public of the County and State aforesaid, certify that The Harris Group of Carolinas, Inc., as Manager of Harris/Birkdale Golf Associates, LLC, as Manager of BIRKDALE GOLF ASSOCIATES, LLC, personally came before me this day and acknowledged the execution of the foregoing instrument on behalf of Harris/Birkdale Golf Associates, LLC, as Manager of BIRKDALE GOLF ASSOCIATES, LLC. Witness my hand and official stamp or seal, this 4th day of June, 1996.



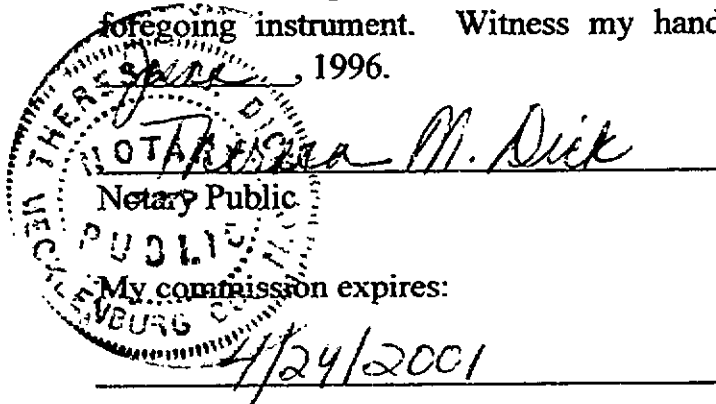
[NOTARY SEAL]

[ACKNOWLEDGMENTS CONTINUED ON NEXT PAGE]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Theresa M. Dick, a Notary Public of the County and State aforesaid, certify that John W. Harris personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 4th day of June, 1996.

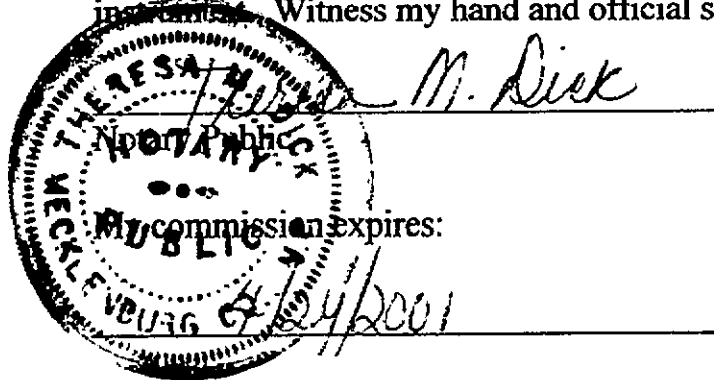


[NOTARY SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Theresa M. Dick, a Notary Public of the County and State aforesaid, certify that Deborah S. Harris personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 4th day of June, 1996.



[NOTARY SEAL]

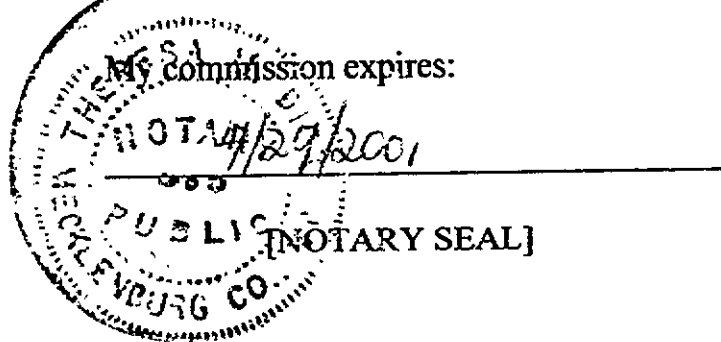
[ACKNOWLEDGMENTS CONTINUED ON NEXT PAGE]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Theresa M. Dick, a Notary Public of the County and State aforesaid, certify that Peter A. Pappas personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 4th day of June 1996.

Theresa M. Dick
Notary Public



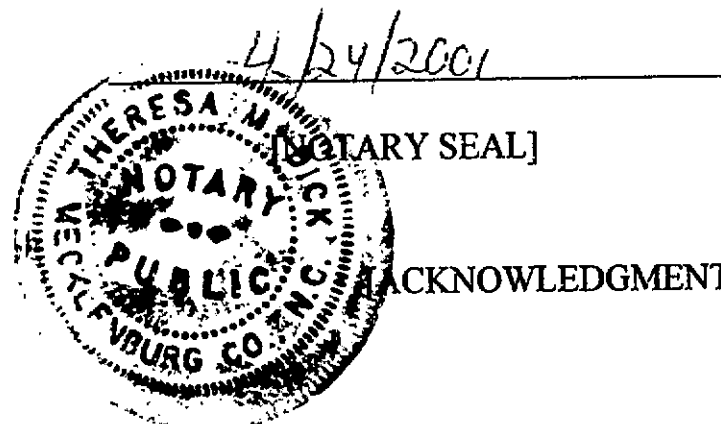
STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Theresa M. Dick, a Notary Public of the County and State aforesaid, certify that J. Patrick Clayton personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 4th day of June 1996.

Theresa M. Dick
Notary Public

My commission expires:



ACKNOWLEDGMENTS CONTINUED ON NEXT PAGE]

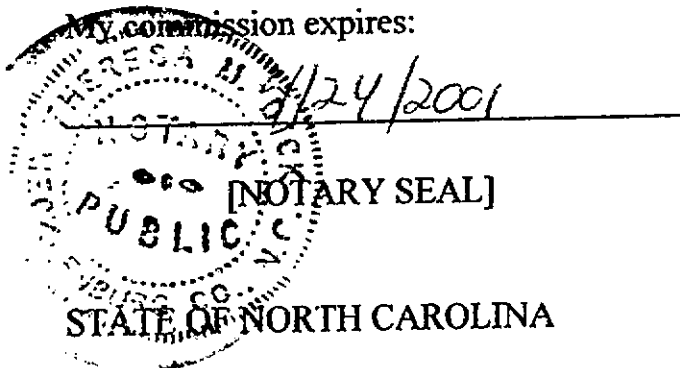
STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Theresa M. Dick, a Notary Public of the County and State aforesaid, certify that Leslie B. Clayton personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 4th day of June, 1996.

Theresa M. Dick
Notary Public

My commission expires:

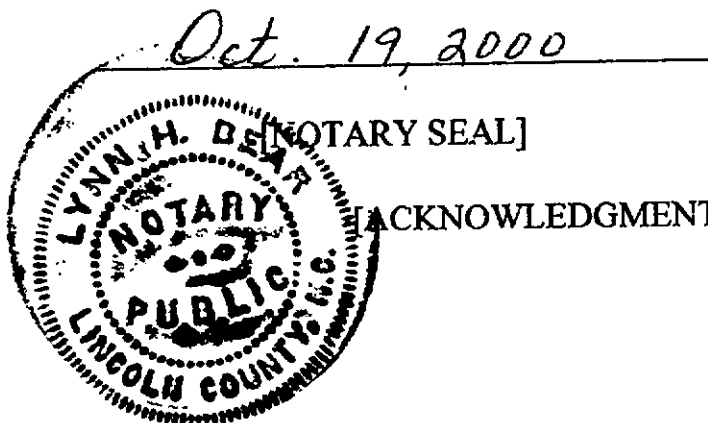


COUNTY OF MECKLENBURG

I, Lynn H. Bear, a Notary Public of the County and State aforesaid, certify that Charles E. Knox personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 21 day of MAY, 1996.

Lynn H. Bear
Notary Public

My commission expires:



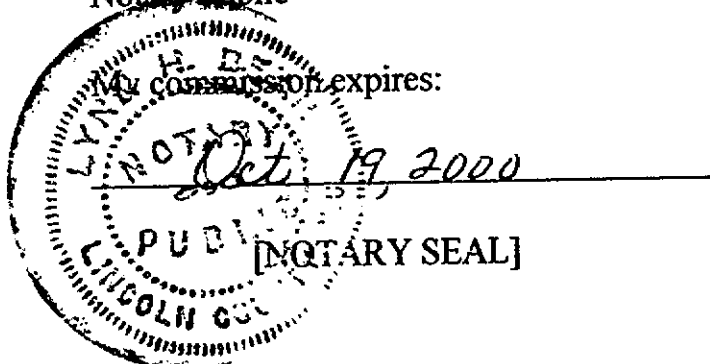
ACKNOWLEDGMENTS CONTINUED ON NEXT PAGE]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, LYNN BEAR a Notary Public of the County and State aforesaid, certify that Montye S. Knox personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 21 day of MAY, 1996.

Lynn H. Bear
Notary Public



STATE OF NORTH CAROLINA

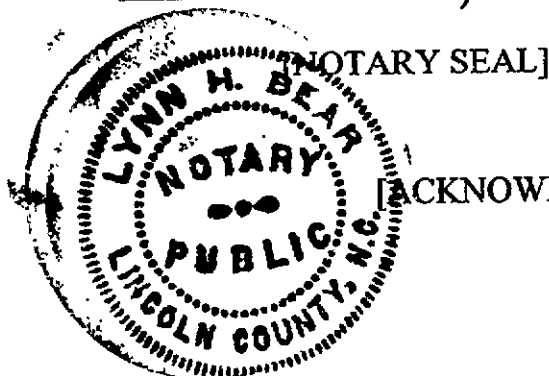
COUNTY OF MECKLENBURG

I, LYNN BEAR a Notary Public of the County and State aforesaid, certify that Murray G. Kelly personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 21 day of MAY, 1996.

Lynn H. Bear
Notary Public

My commission expires:

Oct. 19, 2000



STATE OF NORTH CAROLINA

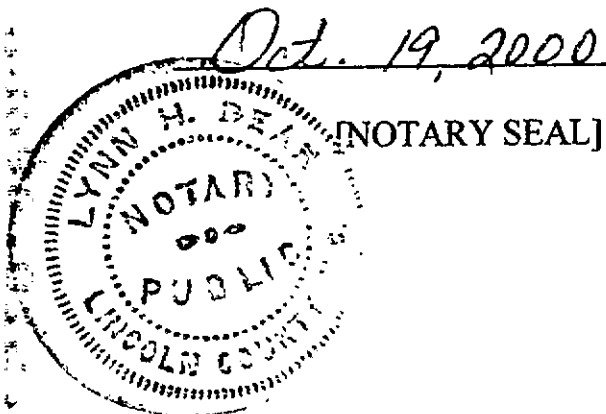
COUNTY OF MECKLENBURG

I, LYNN BEAR, a Notary Public of the County and State aforesaid, certify that Margaret W. Kelly personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 21 day of MAY, 1996.

Lynn H. Bear
Notary Public

My commission expires:

Oct. 19, 2000



STATE OF NORTH CAROLINA)

COUNTY OF MECKLENBURG)

I, _____, a Notary Public of the County and State aforesaid, certify that Kenneth B. Rogich personally came before me this day and acknowledged that he is Secretary of THE HARRIS GROUP OF CAROLINAS, INC., a North Carolina corporation, Manager of HARRIS/BIRKDALE GOLF ASSOCIATES, LLC, a North Carolina limited liability company, Manager of BIRKDALE GOLF ASSOCIATES, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation as Manager of HARRIS/BIRKDALE GOLF ASSOCIATES, LLC, Manager of BIRKDALE GOLF ASSOCIATES, LLC, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by Kenneth B. Rogich as its Secretary. Witness my hand and official stamp or seal, this ____ day of _____, 1996.

Notary Public

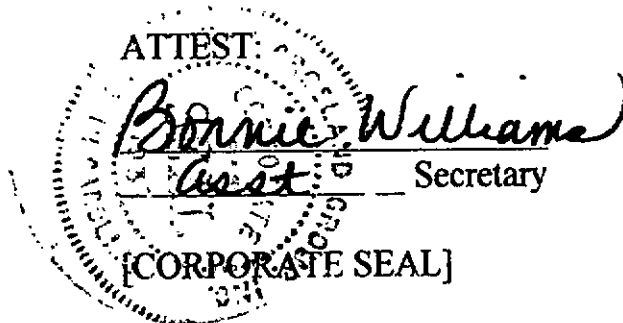
My Commission expires

[NOTARY SEAL]

OTHER OWNER:

THE CROSLAND GROUP, INC. [SEAL]

By: Justin F. Little
Wec President



NORTH CAROLINA

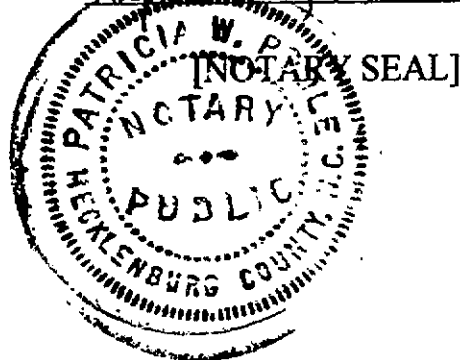
MECKLENBURG COUNTY

I, PATRICIA W. POOLE, a Notary Public of the County and State aforesaid, certify that JUSTIN F. LITTLE personally came before me this day and acknowledged that he/she is Vice-President Secretary of The Crosland Group, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by Bonnie Williams as its Assistant Secretary.

Witness my hand and official stamp or seal, this 12th day of July, 1996.
* being by me duly sworn

Patricia W. Poole
Notary Public

My commission expires
April 8th, 1997



OTHER OWNER:

BIRKDALE GOLF ASSOCIATES, LLC [Seal]

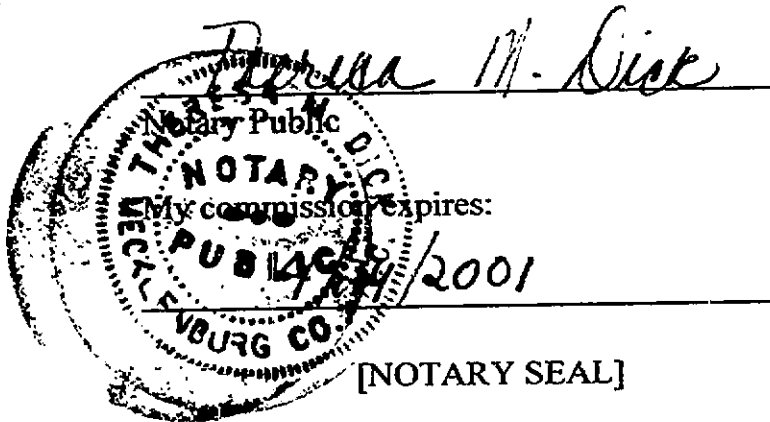
By: Harris/Birkdale Golf Associates, LLC, [Seal]
Manager

By: *John W. Harris*
John W. Harris, Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, *Theresa M. Dick*, a Notary Public of the County and State
aforesaid, certify that John W. Harris as Manager of Harris/Birkdale Golf Associates, LLC, as
Manager of BIRKDALE GOLF ASSOCIATES, LLC, personally came before me this day and
acknowledged the execution of the foregoing instrument on behalf of Harris/Birkdale Golf
Associates as Manager of BIRKDALE GOLF ASSOCIATES, LLC. Witness my hand and
official stamp or seal, this *7th* day of *July*, 1996.



CONSENT AND SUBORDINATION TO DECLARATION

FIRST CHARTER NATIONAL BANK, a national banking association ("Lender"), owner and holder of a note secured by that certain Deed of Trust and Security Agreement from Birkdale at Lake Norman, LLC, a North Carolina limited liability company, Charles E. Knox, Murray G. Kelly, Peter A. Pappas, John W. Harris and J. Patrick Clayton to Kenneth W. Caldwell, Trustee for the benefit of Lender recorded in Book 8259 at Page 480 in the Mecklenburg County Public Registry (the "Deed of Trust"), and Kenneth W. Caldwell, Trustee under said Deed of Trust ("Trustee") hereby consent to the execution, delivery and recording of the foregoing Declaration of Restrictions and Covenant to Share Costs for Birkdale Multi-Family and Nonresidential Properties by Birkdale at Lake Norman, LLC, as "Declarant" and by the other parties identified therein (the "Declaration") and agree that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration and that the Deed of Trust, the lien created thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Deed of Trust are, and shall be, subject and subordinate to the Declaration and the provisions thereof, except and provided that the lien of assessments provided for in the Declaration shall be subordinate to the lien of the Deed of Trust as provided in the Declaration.

IN WITNESS WHEREOF, the undersigned have duly executed these presents under seal as of this the 26th day of June, 1996.

FIRST CHARTER NATIONAL BANK,
Owner and Holder

By: [Signature]

Name: Robert G Fox Jr

Its: ^{Exec}
~~Vice~~ President

Attest:

By: [Signature]

Name: Cheryl P Barbee

Its: Secretary



[Signature]
Kenneth W. Caldwell, Trustee

(Seal)

[ACKNOWLEDGMENTS ON NEXT PAGE]

STATE OF NORTH CAROLINA
Cabarrus
COUNTY OF MECKLENBURG

I, Gayle S. Brinson, a Notary Public, hereby certify that Cheryl P. Barbee
personally came before me this day and acknowledged that he/she is the Secretary of FIRST
CHARTER NATIONAL BANK, a national banking association, and that by authority duly
given and as the act of said corporation, the foregoing instrument was signed in its name by its
President, sealed with its corporate seal and attested by him/her as its Secretary.

WITNESS my hand and notarial stamp or seal, this 26 day of June, 1996.

Gayle S. Brinson
Notary Public
My commission expires:
April 3, 2000
[NOTARY SEAL]

STATE OF NORTH CAROLINA
Cabarrus
COUNTY OF MECKLENBURG

I, Gayle S. Brinson, a Notary Public for said County and State, do hereby certify
that Kenneth W. Caldwell, Trustee, personally appeared before me this day and acknowledged
the due execution of the foregoing instrument.

WITNESS my hand and notarial stamp or seal, this 26 day of June, 1996.

Gayle S. Brinson
Notary Public

My commission expires:

April 3, 2000
[NOTARY SEAL]

CONSENT AND SUBORDINATION TO DECLARATION

NATIONSBANK, N.A. (CAROLINAS), a national banking association ("Lender"), owner and holder of a note secured by that certain North Carolina Deed of Trust from Birkdale Golf Associates, LLC, a North Carolina limited liability company, to TIM, Inc., Trustee for the benefit of Lender filed for registration October 31, 1995 and recorded in Book 8348 at Page 189 in the Mecklenburg County Public Registry (the "Deed of Trust"), and TIM, Inc., Trustee under said Deed of Trust ("Trustee") hereby consent to the execution, delivery and recording of the foregoing Declaration of Restrictions and Covenant to Share Costs for Birkdale Multi-Family and Nonresidential Properties by Birkdale at Lake Norman, LLC, as "Declarant" and by Birkdale Golf Associates, LLC, and the other parties identified therein (the "Declaration") and agree that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration and that the Deed of Trust, the lien created thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Deed of Trust, are and shall be, subject and subordinate to the Declaration and the provisions thereof, except and provided that the lien of assessments provided for in the Declaration shall be subordinate to the lien of the Deed of Trust as provided in the Declaration.

IN WITNESS WHEREOF, the undersigned have duly executed these presents under seal as of this the 24th day of JUNE, 1996.

NATIONSBANK, N.A. (CAROLINAS),
Owner and Holder

By: Michael G. Mayer
Name: Michael G. Mayer
Its: Senior Vice President

Attest:

By: Gordon McCarty
Name: Gordon McCarty
Its: Asst. Secretary
[Corporate Seal]

TIM, INC., Trustee

By: Algire W. Sims, III
Name: Algire W. Sims, III
Its: Vice President

Attest:

By: Candice Smith
Name: CANDICE SMITH
Its: Asst. Secretary
[Corporate Seal]

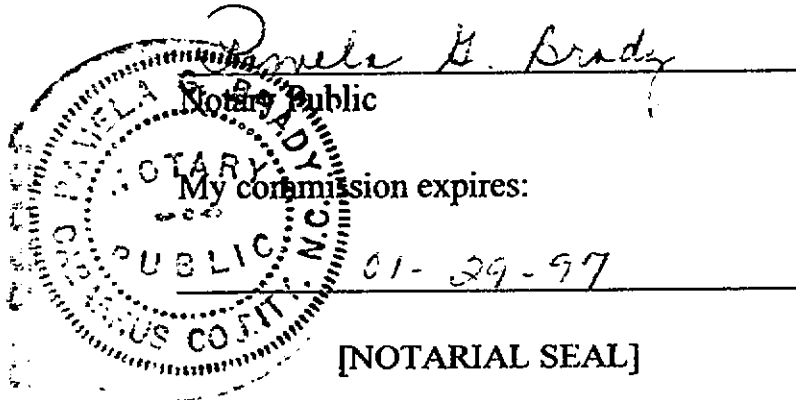
[ACKNOWLEDGMENTS ON NEXT PAGE]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Pamela Brady, a Notary Public hereby certify that C. Vaniver Smith personally came before me this day and acknowledged that he/she is the Secretary of NATIONSBANK, N.A. (CAROLINAS), a national banking association, and that by authority duly given and as the act of said corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by him/her as its Secretary.

WITNESS my hand and notarial stamp or seal, this 24th day of June, 1996.

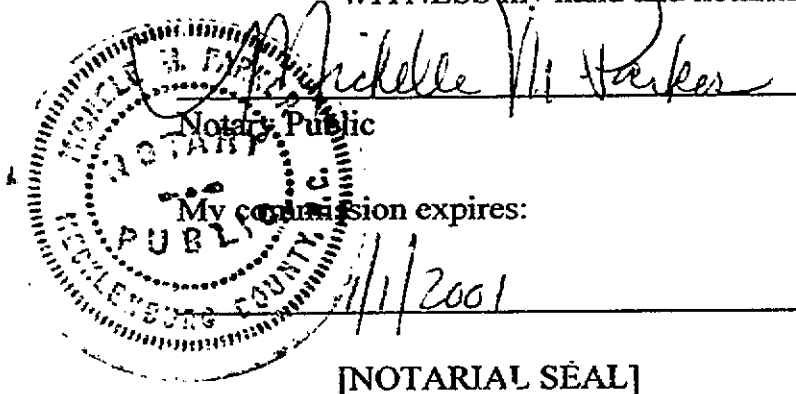


STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Michelle M. Parker, a Notary Public hereby certify that C. Vaniver Smith personally came before me this day and acknowledged that he/she is the Secretary of TIM, INC., ^{Asst.} TRUSTEE a North Carolina corporation, and that by authority duly given and as the act of said corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by him/her as its Secretary.

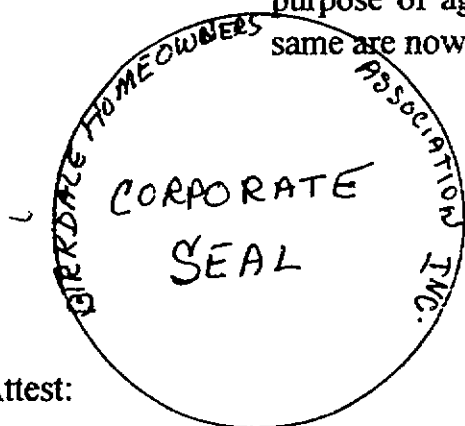
WITNESS my hand and notarial stamp or seal, this 26th day of June, 1996.



JOINDER OF BIRKDALE HOMEOWNERS ASSOCIATION, INC.

Birkdale Homeowners Association, Inc., a North Carolina nonprofit corporation, hereby joins in this Declaration of Restrictions and Covenant to Share Costs for Birkdale Multi-Family and Nonresidential Properties and agrees as follows:

1. Birkdale Homeowners Association, Inc., is the "Association" as that term is defined in the Association Declaration.
2. Birkdale Homeowners Association, Inc., joins in this Declaration for the purpose of agreeing to perform its obligations as contained herein as the same are now or hereafter amended.



Birkdale Homeowners Association, Inc.,
a North Carolina nonprofit corporation

By: _____

Name: _____

Its: President [SEAL]

Peter A. Pappas

PETER A. PAPPAS

Attest:

By: _____

Name: _____

Its: _____

Secretary

Cathryn A. Melvin

CATHRYN A. MELVIN

STATE OF NORTH CAROLINA)

COUNTY OF MECKLENBURG)

I, Theresa M. Dick a Notary Public hereby certify that Cathryn A. Melvin personally came before me this day and acknowledged that ~~he~~/she is the Secretary of Birkdale Homeowners Association, Inc., a North Carolina nonprofit corporation, and that by authority duly given and as the act of said corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by ~~him~~/her as its Secretary.

Witness my hand and notarial stamp or seal, this 8th day of July, 1996.

Theresa M. Dick
Notary Public

My commission expires:

4/24/2001

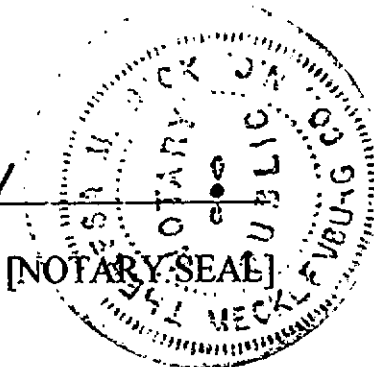


EXHIBIT "A"
Legal Description of Land Initially Submitted

All those certain tracts or parcels of land located in Mecklenburg County, North Carolina and being more specifically described as follows:

Tract I:

BEING all of Parcel 1 as shown on a Plat entitled "Birkdale Residential Golf Course Community-Map 1" recorded in Map Book 27, Page 70 of the Mecklenburg County, North Carolina Public Registry, and comprising approximately 10.64 acres as shown on such plat.

Tract II:

BEING all of Parcel 2 as shown on a Plat entitled "Birkdale Residential Golf Course Community-Map 1" recorded in Map Book 27, Page 70 of the Mecklenburg County, North Carolina Public Registry, and comprising approximately 14.55 acres as shown on such plat.

Tract III:

BEING all of Parcel 3 as shown on a Plat entitled "Birkdale Residential Golf Course Community-Map 1" recorded in Map Book 27, Page 70 of the Mecklenburg County, North Carolina Public Registry, and comprising approximately 5.33 acres as shown on such plat.

Tract IV (the Golf Course):

BEING all of Tract G1 as shown on a Plat entitled "Birkdale Residential Golf Course Community-Map 1" recorded in Map Book 27, Page 70 of the Mecklenburg County, North Carolina Public Registry, and comprising approximately 188.80 acres as shown on such plat.

EXHIBIT "B"

Legal Description of Land Subject to Annexation

All those certain tracts or parcels of land located in Mecklenburg County, North Carolina and being more specifically described as follows:

Tract 1:

BEING all of Tract 1 as shown on a Plat entitled "Birkdale Residential Golf Course Community-Map 1" recorded in Map Book 27, Page 70 of the Mecklenburg County, North Carolina Public Registry, and comprising approximately 210.20 acres as shown on such plat.

Tract 2:

BEING all of Tract 2 as shown on a Plat entitled "Birkdale Residential Golf Course Community-Map 1" recorded in Map Book 27, Page 70 of the Mecklenburg County, North Carolina Public Registry, and comprising approximately 45.71 acres as shown on such plat.

Tract 3:

BEING all of Tract 3 as shown on a Plat entitled "Birkdale Residential Golf Course Community-Map 1" recorded in Map Book 27, Page 70 of the Mecklenburg County, North Carolina Public Registry, and comprising approximately 32.28 acres as shown on such plat.

Tract 4:

BEING all of Tract 4 as shown on a Plat entitled "Birkdale Residential Golf Course Community-Map 1" recorded in Map Book 27, Page 70 of the Mecklenburg County, North Carolina Public Registry, and comprising approximately 77.60 acres as shown on such plat.

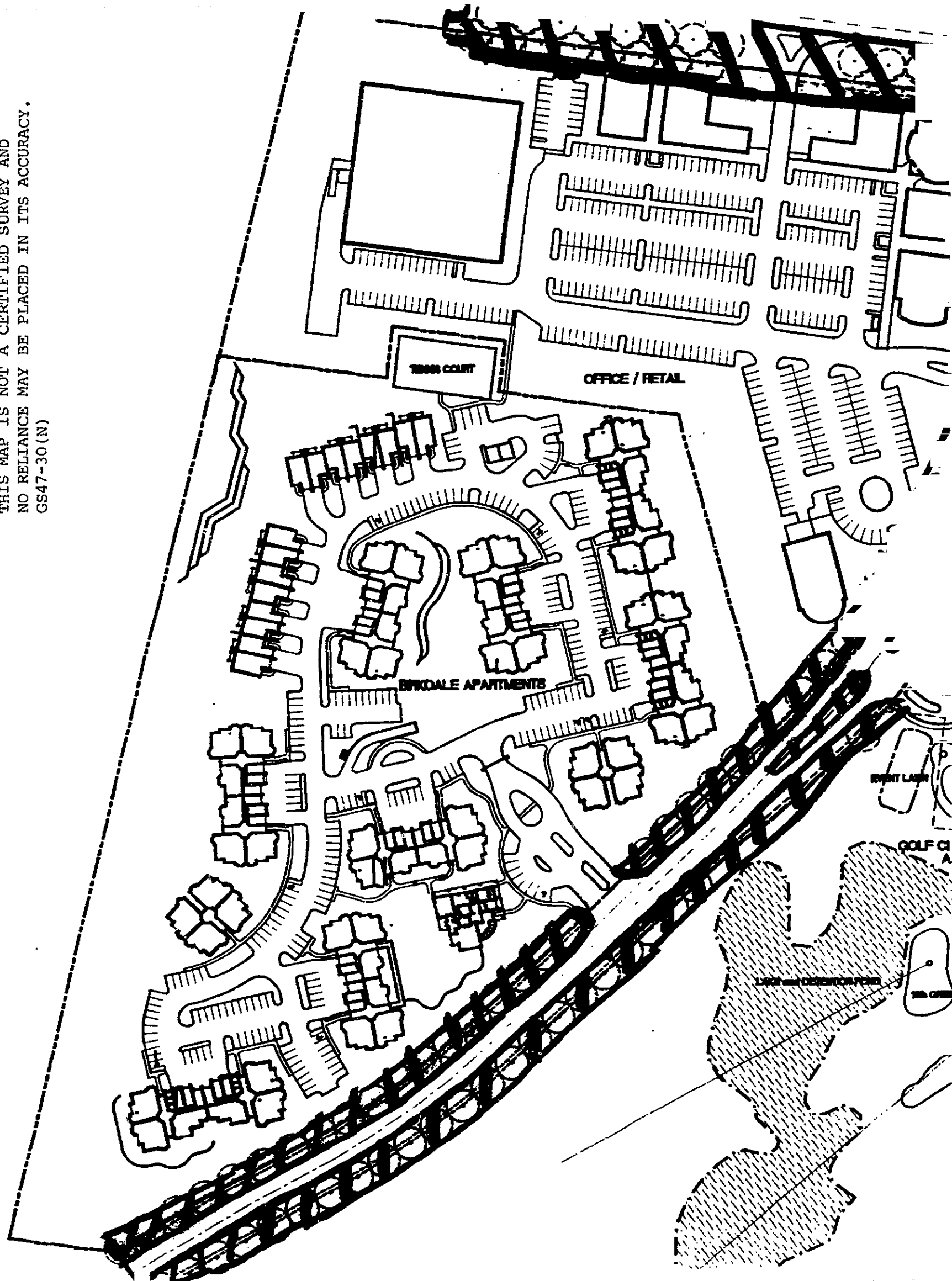
Tract 5:

BEING all of Tract 5 as shown on a Plat entitled "Birkdale Residential Golf Course Community-Map 1" recorded in Map Book 27, Page 70 of the Mecklenburg County, North Carolina Public Registry, and comprising approximately 32.36 acres as shown on such plat.

EXHIBIT "C"

Diagram of Universal Shared Property

THIS MAP IS NOT A CERTIFIED SURVEY AND
NO RELIANCE MAY BE PLACED IN ITS ACCURACY.
GS47-30(N)



13

Birkdale

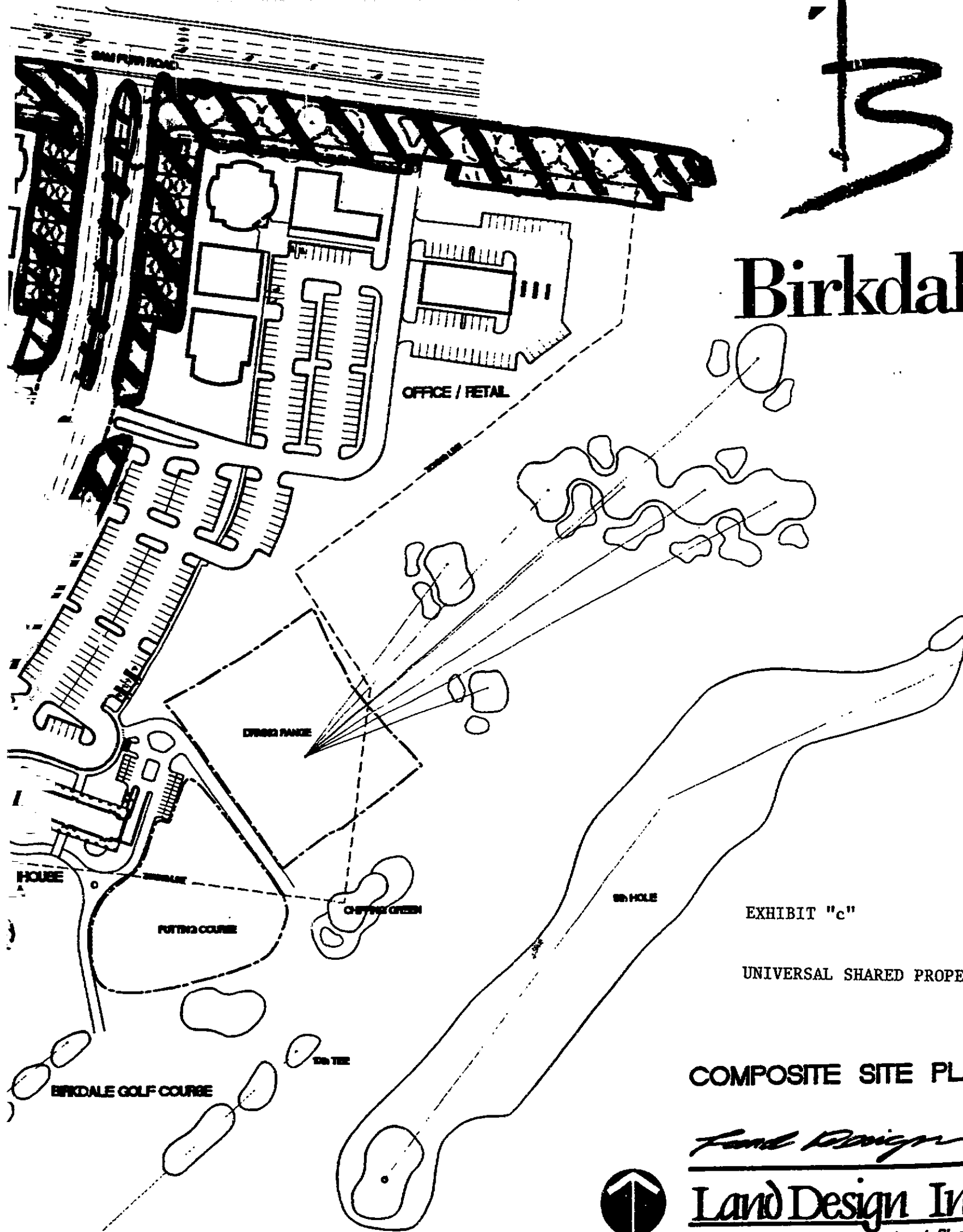


EXHIBIT "c"

UNIVERSAL SHARED PROPERTY

COMPOSITE SITE PLAN

Land Design

Land Design Inc.

Landscape Architecture Land Planning
Urban Design

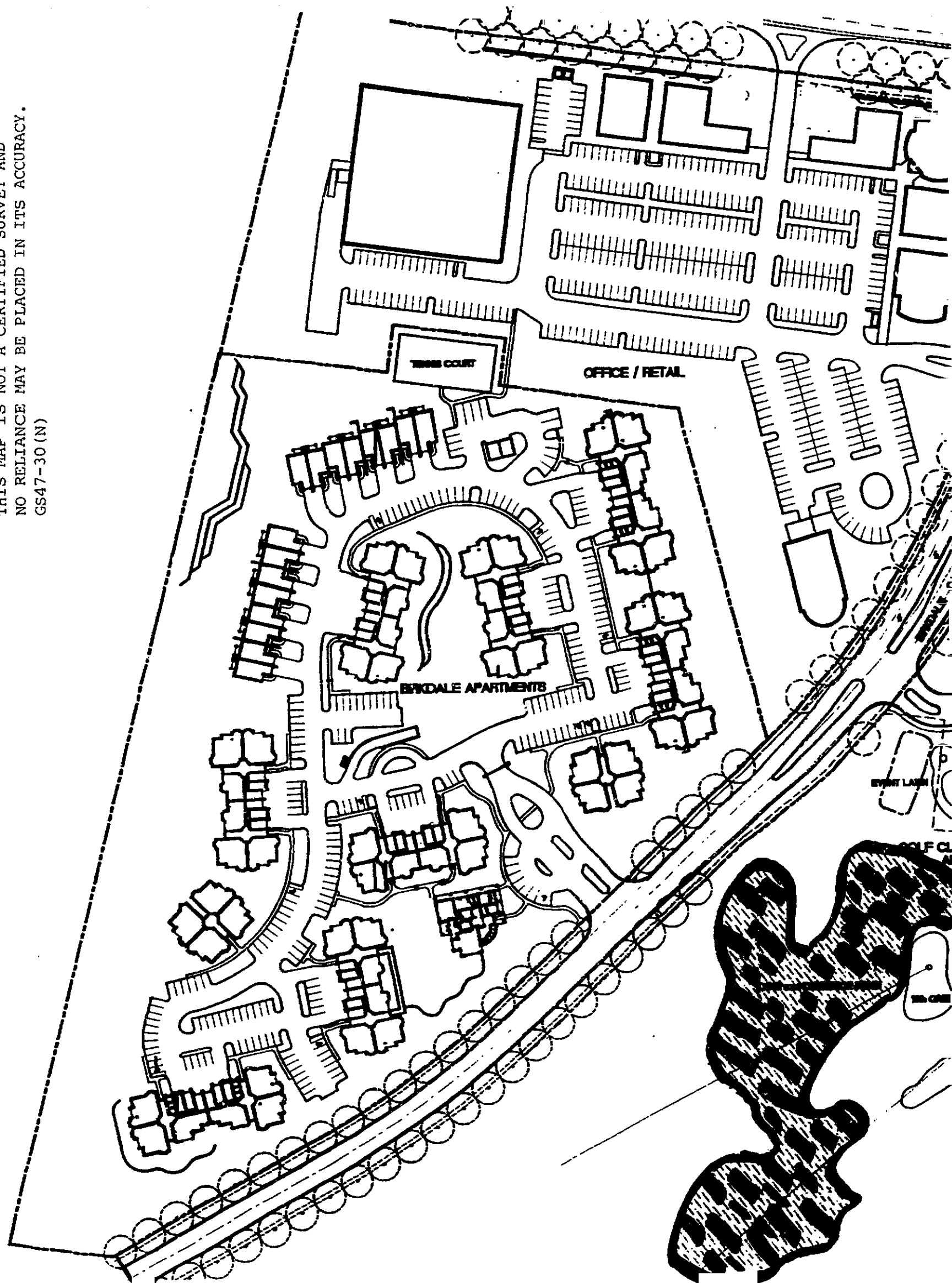
MAY 13, 1996

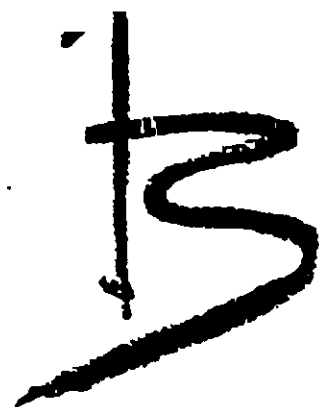
410072

EXHIBIT "D"

Diagram of Multi-Party Shared Property

THIS MAP IS NOT A CERTIFIED SURVEY AND
NO RELIANCE MAY BE PLACED IN ITS ACCURACY.
GS47-30 (N)





Birkdale

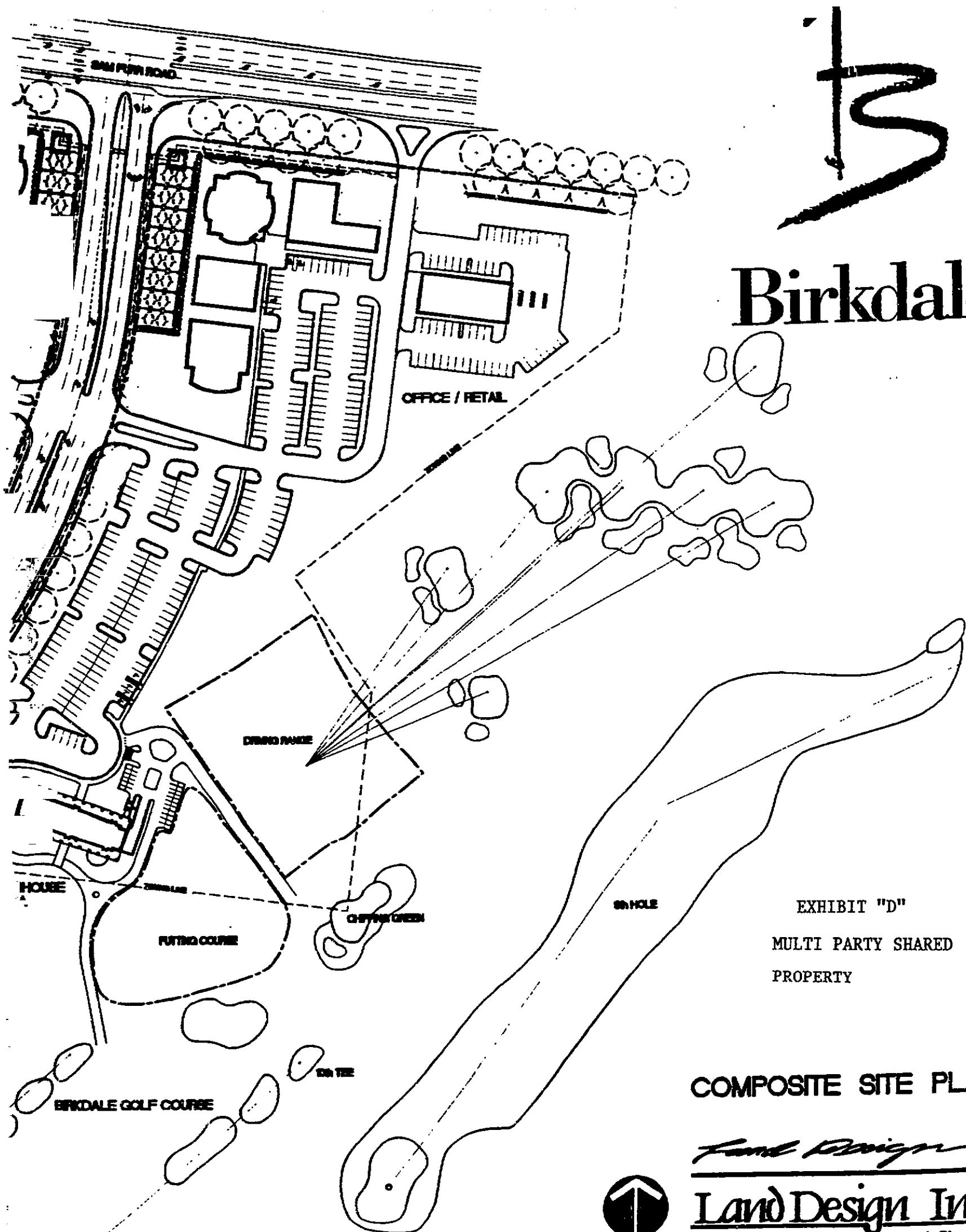


EXHIBIT "D"
MULTI PARTY SHARED
PROPERTY

COMPOSITE SITE PLAN

Land Design

Land Design Inc.

Landscape Architecture Land Planning
Urban Design

MAY 13, 1996

#18072

EXHIBIT "E"

Assignment of Equivalent Units for Universal Shared Property

E.1. Parcels. Each Parcel other than rental apartments shall be assigned 2.5 Equivalent Units for each 1,000 square feet of floor area (excluding areas for vehicular storage) permitted pursuant to applicable zoning requirements. If the floor area of a Parcel permitted pursuant to zoning requirements exceeds that increment for allocation of an Equivalent Unit by a multiple of 500 or more, such Parcel shall be allocated additional Equivalent Units up to the next full increment of 2.5 Equivalent Units. If the floor area of a Parcel permitted pursuant to zoning requirements does not exceed that increment for allocation of an Equivalent Unit by a multiple of 500, the Equivalent Units allocated to such Parcel shall be decreased to the next full increment of 2.5 Equivalent Units. Notwithstanding the foregoing, all Parcels shall be allocated at least one Equivalent Unit.

E.2. Multi-Family Parcels. Each Parcel used for rental apartments shall be assigned .75 Equivalent Units for each rental unit or dwelling located within the Parcel; provided, however, prior to build out, each Parcel shall be assigned the number of Equivalent Units equal to the product of .75, multiplied by the projected number of rental or dwelling units to be built, agreed upon at conveyance by the Declarant and the purchaser. The projected number of rental or dwelling units to be built on Tract II, which is identified as Parcel 2 on a Plat entitled "Birkdale Residential Golf Course Community-Map 1" recorded in Map Book 27, Page 70 of the Public Records, and comprising approximately 14.53 acres, agreed upon by the Declarant and the purchaser of Tract II at conveyance, is equal to 172. In the event that, upon build out, the number of rental or dwelling units is greater than 172, Tract II shall be assigned .75 Equivalent Units for each rental or dwelling unit located within the Parcel. In the event that the rental apartment building or Parcel also includes commercial or retail space, such areas also shall be assigned Equivalent Units as set forth in Section E.1.

E.3. Golf Course. The Golf Course shall be assigned 0.75 Equivalent Units for each acre of land proposed to comprise the Golf Course as shown on the plat dated July 18, 1995, as last revised October 11, 1995, entitled "Birkdale Residential Golf Course Community-Map 1" prepared by David L. Gray, RLS, GPA Professional Land Surveyors filed for registration on October 13, 1995, and recorded in Map Book 27, at Page 70 of the Public Records. If the proposed acreage of the Golf Course exceeds that increment for allocation of an Equivalent Unit by one half or more, the Equivalent Units allocated to such Golf Course shall be rounded up. If the proposed acreage of the Golf Course does not exceed that increment for allocation of an Equivalent Unit by one half, the Equivalent Units allocated to such Golf Course shall be rounded down.

E.4. Calculation of Assessments. The formula for determining the percentage of the total Universal Shared Costs to be levied on a particular Parcel and on the Golf Course shall be as follows. The percentage of the total Universal Shared Costs to be levied on a particular Parcel and on the Golf Course shall be computed by dividing the number of Equivalent Units assigned to the Parcel or to the Golf Course by the sum of: (A) the number of all Equivalent Units for all Parcels subject to assessment, (B) the number of Equivalent Units equal to the product obtained

by multiplying 0.50 and the greater of (i) Eight Hundred Eight (808), which is the number of lots proposed to be developed for single-family residential development within Birkdale or (ii) the aggregate number of single-family lots shown from time to time on recorded subdivision plats, whether now or hereafter recorded, with respect to any portion or portions of the tracts of land identified as Tracts 1 through 5 on the plat entitled "Birkdale Residential Golf Course Community-Map 1" recorded in Map Book 27, Page 70 of the Public Records, and comprising approximately 398.15 acres and (C) the number of Equivalent Units assigned to the Golf Course. As provided in Section 5.2(a), each Parcel Owner and the Golf Course Owner shall be responsible for payment of its share of the Universal Shared Costs determined in accordance with the foregoing formula. The balance of the Universal Shared Costs shall be a common expense of the Association allocated according to the Association Declaration.

The following example is included for purposes of illustration only:

A Parcel within the Properties zoned for office use has 18,000 square feet of floor area (excluding areas for vehicular storage) permitted pursuant to applicable zoning requirements. Therefore, it is assigned 45 Equivalent Units (18,000 square feet, divided by 1,000 square feet, multiplied by 2.5, equals 45). In addition, one Parcel with 172 rental apartments is located within the Properties. It is assigned 129 Equivalent Units (172 multiplied by .75 equals 129).

The sum of all Equivalent Units assigned to Parcels subject to the Declaration is 391.5 (129 Equivalent Units allocated to the Multi-Family Parcel, plus 262.5 Equivalent Units allocated to all other Parcels (105,000 square feet commercial space permitted pursuant to applicable zoning requirements, divided by 1000, multiplied by 2.5 equals 262.5)). The number of Equivalent Units assigned to the Golf Course is 141.75 (189 Multiplied by 0.75, equals 141.75). There are 808 lots proposed for single-family residential development. Therefore, the number of Equivalent Units assigned to the Association is 404 (808, multiplied by 0.50). The total number of Equivalent Units within Birkdale is, therefore, 937.25.

If the budget of Universal Shared Costs to be allocated pursuant to this Declaration totals \$64,210, the office building's Assessment is \$3082.90 (45 divided by 937.25, multiplied by \$64,210, equals \$3082.90). The rental apartment's Assessment is \$8,837.65 (129 divided by 937.25, multiplied by \$64,210, equals \$8,837.65). The Assessment for the Association is \$27,677.61 (404 divided by 937.25, multiplied by \$64,210, equals \$27,677.61). The Golf Course's Assessment is \$9,711.14 (141.75 divided by 937.25, multiplied by \$64,210 equals \$9,711.14).

E.5. Votes. Votes for each Parcel shall be computed using the same formula as set forth above for assessments.

E.6. Cutoff Date for Computation. The Equivalent Units totals for all Parcels and the Golf Course and the percentage of the total assessment to be levied on each Parcel subject to assessment and the Golf Course shall be computed annually by the board of directors of the Association as of a date which is not less than 60 days prior to the beginning of each fiscal year. Notice of the percentages for each Parcel (including a summary of the computations) and the

Golf Course shall be sent to each Owner and the Golf Course Owner together with the annual notice of any assessment and budget of Universal Shared Costs. The notices of the percentages for each Person shall include the board's estimation of when additional units or Parcels, if any, shall be made subject to this Declaration or the Association Declaration between the annual cutoff date for computation.

EXHIBIT "F"

Assignment of Equivalent Units for Multi-Party Shared Property

F.1. Parcels. Each Parcel other than rental apartments shall be assigned 1.5 Equivalent Units for each 1,000 square feet of floor area (excluding areas for vehicular storage) permitted pursuant to applicable zoning requirements. If the floor area of a Parcel permitted pursuant to zoning requirements exceeds that increment for allocation of an Equivalent Unit by a multiple of 500 or more, such Parcel shall be allocated additional Equivalent Units up to the next full increment of 1.5 Equivalent Units. If the floor area of a Parcel permitted pursuant to zoning requirements does not exceed that increment for allocation of a Equivalent Units by 500, the Equivalent Units allocated to such Parcel shall be decreased to the next full increment of 1.5 Equivalent Units. Notwithstanding the foregoing, all Parcels, other than rental apartments, shall be allocated at least one Equivalent Unit.

F.2. Multi-Family Parcels. Each Parcel used for rental apartments shall be assigned .75 Equivalent Units for each rental unit or dwelling located within the Parcel; provided, however, prior to build out, each Parcel shall be assigned the number of Equivalent Units equal to the product of .75, multiplied by the projected number of rental or dwelling units to be built, agreed upon at conveyance by the Declarant and the purchaser. In the event that the rental apartment building or Parcel also includes commercial or retail space, such areas also shall be assigned Equivalent Units as set forth in Section F.1.

F.3. Golf Course. The Golf Course shall be assigned .75 Equivalent Units for each acre of land proposed to comprise the Golf Course as shown on the plat dated July 18, 1995, as last revised October 11, 1995, entitled "Birkdale Residential Golf Course Community-Map 1" prepared by David L. Gray, RLS, GPA Professional Land Surveyors filed for registration on October 13, 1995, and recorded in Map Book 27, at Page 70 of the Public Records. If the proposed acreage of the Golf Course exceeds that increment for allocation of an Equivalent Unit by a multiple of one half or more, the Equivalent Units allocated to such Golf Course shall be rounded up. If the proposed acreage of the Golf Course does not exceed that increment for allocation of a Equivalent Units by one half, the Equivalent Units allocated to such Golf Course shall be rounded down.

F.4. Calculation of Assessments. The formula for determining the percentage of the total Multi-Party Shared Costs to be levied on a particular Parcel shall be as follows. The percentage of the total Multi-Party Shared Costs to be levied on a particular Parcel shall be computed by dividing the number of Equivalent Units assigned to the Parcel by the sum of all Equivalent Units for all Parcels subject to assessment and the number of Equivalent Units assigned to the Golf Course. As provided in Section 5.2(b), each Parcel Owner shall be responsible for payment of its share of the Multi-Party Shared Costs determined in accordance with the foregoing formula. The balance of the Multi-Party Shared Costs shall be payable by the Golf Course Owner. The following example is included for purposes of illustration only.

A Parcel within the Properties zoned for office use has 18,000 square feet of floor area (excluding areas for vehicular storage) permitted pursuant to applicable zoning

requirements. Therefore, it is assigned 27 Equivalent Units (18,000 square feet, divided by 1,000 square feet, multiplied by 1.5, equals 27). In addition, one Parcel with 172 rental apartments is located within the Properties. It is assigned 129 Equivalent Units (172 multiplied by .75 equals 129).

The sum of all Equivalent Units assigned to Parcels subject to the Declaration is 286.5 (129 Equivalent Units allocated to the Multi-Family Parcel, plus 157.5 Equivalent Units allocated to all other Parcels (105,000 square feet commercial space permitted pursuant to applicable zoning requirements, divided by 1000, multiplied by 1.5, equals 157.5)). The number of Equivalent Units assigned to the Golf Course is 141.75 (189 Multiplied by 0.75, equals 141.75). Therefore, the total number of Equivalent Units within the portion of Birkdale comprised by the Parcels and the Golf Course is 428.25.

If the budget of Multi-Party Shared Costs to be allocated pursuant to this Declaration total \$6,300, the office building's Assessment is \$397.20 (27 divided by 428.25, multiplied by \$6,300, equals \$397.20). The rental apartment's Assessment is \$1,897.72 (129 divided by 428.25, multiplied by \$6,300, equals \$1,897.72). The Assessment for the Golf Course is \$2,085.29 (141.75 divided by 428.25, multiplied by \$6,300 equals \$2,085.29).

F.5. Votes. Votes for each Parcel shall be computed using the same formula as set forth above for assessments.

F.6. Cutoff Date for Computation. The Equivalent Units totals for all Parcels and the Golf Course and the percentage of the total assessment to be levied on each Parcel subject to assessment shall be computed annually by the Golf Course as of a date which is not less than 60 days prior to the beginning of each fiscal year of the Golf Course. Notice of the percentages for each Parcel (including a summary of the computations) and the Golf Course shall be sent to each Owner together with the annual notice of any assessment and budget of Multi-Party Shared Costs. The notices of the percentages for each Person shall include the Golf Course estimation of when additional Parcels, if any, shall be made subject to this Declaration between the annual cutoff date for computation.

State of North Carolina, County of Mecklenburg

The foregoing certificate(s) of Theresa M. Dick, Lynn H. Bear, Patricia W. Poole,
Gayle S. Brinson, Pamela G. Brady and Michele M. Parker

Notary(ies) Public is/are certified to be correct. This 2th day of August 19 96.

JUDITH A. GIBSON, REGISTER OF DEEDS By Rosalie B. Nease Deputy Register of Deeds