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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR

BIRKDALE

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507501/CA Doc#CCR Birkdale Residential, Incorporated.LM

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

BIRKDALE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 23rd day of May, 1996, by Birkdale at Lake Norman, LLC, a North Carolina limited liability company (the "Declarant").

PART ONE: INTRODUCTION TO THE COMMUNITY

Article I CREATION OF THE COMMUNITY

1.1. Purpose and Intent. The Declarant, as the owner of the real property described on Exhibit "A," intends by the recording of this Declaration to create a general plan of development for the planned community known as Birkdale. This Declaration provides a flexible and reasonable procedure for the future expansion of Birkdale to include additional real property as Declarant deems appropriate and provides for the overall development, administration, maintenance and preservation of the real property now and hereafter comprising Birkdale. An integral part of the development plan is the creation of Birkdale Homeowners Association, Inc., an association comprised of all owners of real property in Birkdale, to own, operate and maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

1.2. Binding Effect. All property described on Exhibit "A," and any additional property made a part of Birkdale by filing of one or more Supplemental Declarations in the Public Records, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Properties.

This Declaration shall be enforceable by any Person having any right, title, or interest in the Properties, for a term of 20 years from the date this Declaration is recorded. After such time, this Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by a majority of the then Owners has been recorded in the Public Records within the year preceding any extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified in such instrument. Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reason of applicability of the rule against perpetuities, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit

termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents. The Governing Documents create a general plan of development for Birkdale which may be supplemented by additional covenants, restrictions, and easements. In the event of a conflict between or among the Governing Documents and any such additional covenants, restrictions, and easements, and/or the provisions of any other articles of incorporation, By-Laws, rules or policies, the Governing Documents shall control. Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants applicable to any portion of the Properties from containing additional restrictions or more restrictive provisions than the provisions of this Declaration.

If a court finally determines that any provision of this Declaration is invalid in whole or as applied, such determination shall not affect the validity of other provisions or applications.

Article II CONCEPTS AND DEFINITIONS

The terms used in the Governing Documents shall generally be given their commonly accepted definitions unless otherwise specified. Capitalized terms shall be as defined here.

2.1. "Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants or agreements.

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

2.3. "Base Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.1.

2.4. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.

2.5. "Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

2.6. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board as provided in the By-Laws.

2.7. "Common Area": All real and personal property in which the Association has possessory or use rights for the common use and enjoyment of the Owners.

2.8. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless approved by Members holding a majority of the Association's total Class "A" vote.

2.9. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall be established initially by the Declarant and may be more specifically defined in the Design Guidelines, the Use Restrictions and Rules, and in Board resolutions.

2.10. "Covenant to Share Costs": Any declaration of easements and covenant to share costs executed by Declarant and recorded in the Public Records which creates certain easements for the benefit of the Association and the present and future owners of the real property subject to such Covenant to Share Costs and which obligates the Association and such owners to share the costs of maintaining certain property described in such Covenant to Share Costs.

2.11. "Declarant": Birkdale at Lake Norman, LLC, a North Carolina limited liability company, or any successor 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.

2.12. "Design Guidelines": The architectural, design and construction guidelines and review procedures adopted pursuant to Article IV, as they may be amended.

2.13. "Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, the Declaration of Restrictions and Covenant to Share Costs for Birkdale Multi-Family and Nonresidential Properties, and the Use Restrictions and Rules, as they may be amended.

2.14. "Master Plan": The land use plan for the development of Birkdale prepared by Land Design, Inc. dated February 15, 1995, and revised March 22, 1995, and approved by Mecklenburg County and the Town of Huntersville, as it may be amended, which includes all of the property described on Exhibit "A" and may include all or a portion of the property described on Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property described on Exhibit "B" from the Master Plan bar its later submission to this Declaration as provided in Article IX.

2.15. "Member": A Person subject to membership in the Association pursuant to Section 6.2.

2.16. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument effecting title to any Unit. A "Mortgage" shall refer to a beneficiary or holder of a Mortgage.

2.17. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

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

2.19. "Private Amenities": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a daily fee basis or otherwise as the owners of the Private Amenities in their discretion may determine from time to time. The golf course and all related and supporting facilities and improvements shall be a private amenity.

2.20. "Properties" or "Birkdale": The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article IX.

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

2.22. "Special Assessment": Assessments levied in accordance with Section 8.3.

2.23. "Specific Assessment": Assessments levied in accordance with Section 8.4.

2.24. "Supplemental Declaration": An instrument filed in the Public Records for various supplementary purposes as this Declaration may authorize.

2.25. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land which is part of the Unit, and any improvements thereon. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion

encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

2.26. "Use Restrictions and Rules": The initial use restrictions and rules set forth on Exhibit "C," and as supplemented, modified, or repealed.

2.27. Voicing Member. If established by the Board as provided in Section 6.4, the Voicing Member shall be the representative selected by the Class "A" Members within each Neighborhood (as described in Section 10.5) or other geographical boundaries established by the Board to be responsible for casting all Class "A" votes attributable to Units in the Neighborhood on all matters requiring a vote of the membership (except as otherwise specifically provided in this Declaration and in the By-Laws). The term "Voicing Member" shall also refer to alternate Voicing Members acting in the absence of the Voicing Member. Unless and until a representative system of voting is established, each Owner shall be entitled to cast the votes associated with his or her Unit, and the quorum requirements set forth in Section 2.11 of the By-Laws shall apply to meetings and actions of the Class "A" Members. If a representative system of voting is adopted by the Board, a quorum shall require the presence of Voicing Members or alternate Voicing Members representing a majority of the Class "A" votes in the Association. Voicing Members must be present in person, or by a duly elected alternate, and the use of proxies by Voicing Members is prohibited.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

Article III USE AND CONDUCT

TURN TO EXHIBIT "C" FOR THE INITIAL RULES AND USE RESTRICTIONS AFFECTING THE PROPERTIES

3.1. Framework for Regulation. The Governing Documents establish, as part of the general plan of development for the Properties, a framework of affirmative and negative covenants which govern the Properties. However, within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends and technology which inevitably will affect Birkdale, its Owners and residents. Toward that end, this Article establishes procedures for modifying and expanding the initial Use Restrictions and Rules set forth on Exhibit "C."

3.2. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules. The Board shall send notice by mail to all Owners concerning any such proposed action at least 30 days

prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective, after compliance with subsection (c) below, unless disapproved at a meeting by Members holding more than 50% of the total Class "A" votes in the Association and by the Declarant, so long as the Declarant owns any property described on Exhibits "A" or "B" or has the unilateral right to annex additional property pursuant to Section 9.1. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws. Upon such petition of the Members prior to the effective date of any Board action under this Section, the proposed action shall not become effective until after such meeting is held and then subject to the outcome of such meeting.

(b) Alternatively, the Members, at an Association meeting duly called for such purpose, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules by a vote of Members holding more than 50% of the total Class "A" votes in the Association and the approval of the Declarant so long as the Declarant owns any portion of the property described on Exhibits "A" or "B" or has the right to annex additional property pursuant to Section 9.1.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the new rule or explanation of any changes to the Use Restrictions and Rules to each Owner specifying the effective date. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines. In the event of a conflict between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

3.3. Owners' Acknowledgment and Notice to Purchasers. All Owners are given notice that use of their Units and the Common Area is limited by the Use Restrictions and Rules as they may be changed in accordance with this Article. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Use Restrictions and Rules may change from time to time. All purchasers of Units are on notice that changes may have been adopted by the Association. Copies of the current Use Restrictions and Rules may be obtained from the Association.

3.4. Protection of Owners and Others. No rule shall be adopted in violation of the following provisions, except as may be specifically set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions and Rules set forth on Exhibit "C":

(a) Equal Treatment. Similarly situated Owners shall be treated similarly.

(b) Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling, regardless of whether such displays are located inside or outside of the dwelling.

No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner (including design criteria) of posting such signs.

(c) Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that are prohibited by current Mecklenburg County or the Town of Huntersville zoning requirements, that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments.

(f) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit, provided the Association or the Board may require a minimum lease term of up to twelve months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(g) Abridging Existing Rights. If any rule would otherwise require Owners to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all

rules previously in force, such rule shall not apply to any such Owners without their written consent.

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

(i) Interference with Private Amenities. No rule or action by the Association shall interfere with the use or operation of any Private Amenity.

The limitations in subsections (a) through (g) of this Section shall only limit rulemaking authority exercised under Section 3.2; they shall not apply to amendments adopted in accordance with Article XVIII.

Article IV ARCHITECTURE AND LANDSCAPING

4.1. General. No structure or anything else shall be placed, erected, installed or posted on the Properties and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Properties, except in compliance with this Article and the Design Guidelines.

No approval shall be required to repair the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of his or her Unit without approval. However, modifications to any portions of a Unit visible from outside the structure shall be subject to approval.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer unless otherwise approved by the Declarant or its designee in its sole discretion.

This Article shall not apply to the activities of the Declarant, nor to activities of the Association during the Class "B" Control Period.

4.2. Architectural Review.

(a) By Declarant. Until 100% of the Properties are completed and transferred to Owners other than Builders, the Declarant shall have exclusive control over the architectural review provisions described in this Article. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as the developer of the Properties and as an Owner of portions of the Properties as well as other real estate within the vicinity of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties enhance the Declarant's reputation as a community developer and do not

impart the Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article ("Work") shall be commenced on such Owner's Unit unless and until the Declarant or its designee has given its prior written approval for such Work which approval may be granted or withheld in the sole discretion of Declarant or its designee. However, the Declarant shall have the right to establish a program by which approved Builders of multiple Units within the Properties may submit multiple plans and specifications for similar site plans, floor plans, and layouts on similarly situated Units for pre-approval for multiple Units in lieu of seeking approval as to each Unit to be built. The Design Guidelines shall set forth the procedures for any such program.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in the interest of the Declarant and shall owe no duty to any other Person.

The Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications.

The Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) an Architectural Review Committee appointed by the Association's Board of Directors (the "ARC"), or (ii) a committee comprised of architects, engineers or other persons who may not be Members of the Association. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) the right of Declarant to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable. So long as the Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as the Declarant specifically delegates.

(b) Architectural Review Committee. Upon the Declarant's delegation or upon expiration or termination of the Declarant's rights under this Article, the Association, acting through the ARC, shall assume jurisdiction over architectural matters. The ARC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve at the pleasure of the Board. The members of the ARC need not be Members or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or the Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees; Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to such review. Such fees also may include the reasonable costs incurred in any professional review. The Declarant and the Association may employ architects, engineers, or other

professional as necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

4.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant may prepare the initial Design Guidelines, which will contain provisions applicable to the entire Properties. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewer, and compliance with the Design Guidelines does not guarantee approval of an application.

The Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Properties or has a right to expand the Properties pursuant to Section 9.1, notwithstanding a delegation of reviewing authority to the ARC, unless the Declarant also delegates the power to amend to the ARC. Upon termination or delegation of the Declarant's right to amend, the ARC shall have the authority to amend the Design Guidelines with the consent of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Prior to commencing any Work within the scope of this Article, an Owner shall submit to the appropriate Reviewer an application for approval of the proposed Work in such form as the Design Guidelines or the Reviewer may specify. Such application shall include plans and specifications ("Plans") showing, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application. Notice of application shall be deemed given on the date set forth on the certified mail receipt for the application and proved by such receipt. Personal delivery of such application shall, however, be sufficient, and shall be deemed to be notice of application given at the time of delivery to the Reviewer. A receipt for the application, issued by the Reviewer or its representative shall be deemed proof of such personal delivery.

In reviewing each submission, the Reviewer may consider any factors it deems relevant. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges

that determinations as to such matters are purely subjective and opinions may vary as to the desirability or attractiveness of particular improvements.

The Reviewer shall, within 30 days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Reviewer may, but shall not be obligated to, specify the reasons for any objections or offer suggestions for curing any objections.

in the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given if the applicant presents to the Reviewer proof of notice of application subject to the Declarant's right to veto approval by the ARC pursuant to this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

Until expiration of the Declarant's rights under this Article, the ARC shall notify the Declarant in writing within three business days after the ARC has approved any application relating to proposed Work within the scope of matters delegated to the ARC by the Declarant. The notice shall be accompanied by a copy of the application and any additional information which the Declarant may require. The Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

If construction does not commence on a project for which Plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within one year of commencement unless otherwise specified in the notice of approval, or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved Work is not completed within the required time, it shall be considered

that determinations as to such matters are purely subjective and opinions may vary as to the desirability or attractiveness of particular improvements.

The Reviewer shall, within 30 days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Reviewer may, but shall not be obligated to, specify the reasons for any objections or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given if the applicant presents to the Reviewer proof of notice of application, subject to the Declarant's right to veto approval by the ARC pursuant to this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Prompt delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

Until expiration of the Declarant's rights under this Article, the ARC shall notify the Declarant in writing within three business days after the ARC has approved any application relating to proposed Work within the scope of matters delegated to the ARC by the Declarant. The notice shall be accompanied by a copy of the application and any additional information which the Declarant may require. The Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

If construction does not commence on a project for which Plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within one year of commencement unless otherwise specified in the notice of approval, or unless the Reviewer grants an extension in writing which it shall not be obligated to do. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, the Declarant or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4. No Waiver of Future Approvals. Each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter

requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications. Plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances. The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) ~~establish~~ the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6. Liability of Liability. The standards and procedures established by this Article are intended ~~as a mechanism~~ for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications. ~~Neither shall the Reviewer bear responsibility for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work, nor for any defects in plans revised or approved hereunder, nor for any injury, damage or loss arising out of the manner or quality of approved construction~~ on or modifications to any Unit. In all matters, the ARC and all persons comprising the ARC shall be defended and indemnified by the Association as provided in Section 7.6.

4.7. Certificate of Compliance. ~~Any Owner may request that the Reviewer issue~~ a certificate of architectural compliance certifying that ~~there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall establish the Association's notice as of the date of such certificate.~~

4.8. Watershed Ordinance. Each Owner acknowledges that ~~Blickdale's~~ is subject to the Mecklenburg County Mountain Island Watershed Protection Ordinance (the "Watershed Ordinance"). All Owners shall comply with the Watershed Ordinance which, among other things, limits the amount of impervious surfaces that may be constructed on each Unit, regulates ground disturbing and vegetation removal activities within watershed buffer areas and regulates chemical storage and disposal activities. In addition, deed restrictions regarding impervious area restrictions and watershed buffer requirements shall be placed on each Unit as warranted by the Watershed Ordinance.

Article V
MAINTENANCE AND REPAIR

6.1. Maintenance of Unit. Each Owner shall maintain his or her Unit and all landscaping, drainage systems or plans, and improvements comprising the Unit in a manner consistent with the Governing Documents and the Community-Wide Standard unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

6.2. Responsibility for Repair and Replacement. Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

By taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Unit and maintain it 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.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

Article VI
THE ASSOCIATION AND ITS MEMBERS

6.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association also shall be the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of North Carolina.

6.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation.

and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws. All such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A." Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership. There shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment.

(b) Class "B." The sole Class "B" Member shall be the Declarant. The Class "B" Member may appoint members of the Board of Directors as specified in the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents.

The Class "B" membership shall terminate upon the earlier of:

(i) when 75% of the total number of Units permitted by the Master Plan for the property described on Exhibits "A" and "B" of the Declaration have certificates of occupancy issued thereon and have been conveyed to persons other than Builders;

(ii) December 31, 2005; or

(iii) when, in its discretion, the Class "B" Member so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Voting Rights. Unless a representative system of voting is established, the vote for each Unit owned by a Class "A" Member shall be exercised by the Owner of such Unit. The Board of Directors may, in its discretion, institute a representative voting system for all of the Community if it determines the number of Owners required to establish a quorum becomes difficult to accommodate. In the event such representative voting system is instituted, the vote for each Unit owned by a Class "A" Member shall be exercised by the Voting Member representing the Neighborhood or other area designated by the Board, in which case the Voting Member may cast all such votes as it, in its discretion, deems appropriate.

In situations where a Member is personally exercising the vote for his or her Unit and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior

to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

6.4. Voting Members. In the event a representative voting system has been instituted by the Board, each Neighborhood, as defined in Section 10.5 of this Declaration, and other area designated by the Board shall elect a Voting Member and one alternate who shall be responsible for casting all votes attributable to Units owned by Class "A" Members in such area on all Association matters requiring a membership vote, except as otherwise specified in this Declaration or the By-Laws. The Voting Member and alternate Voting Member from each area shall be elected on an annual basis established by the Board, either by written ballot cast by mail or at a meeting of the Class "A" Members, as the Board determines; provided, upon written petition signed by Class "A" Members holding at least 10% of the votes eligible to be cast for the Voting Member, the election shall be held at a meeting. The presence, in person or by proxy, of at least 30% of the Total Class "A" votes eligible to be cast for the Voting Member shall constitute a quorum at such meeting.

Each Class "A" Member shall be entitled to cast one equal vote per Unit owned. The candidate who receives the greatest number of votes shall be elected as Voting Member and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Member. The Voting Member and the alternate Voting Member shall serve a term of one year and until their successors are elected. Any Voting Member may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the total Class "A" votes eligible to be cast for the Voting Member.

ARTICLE VII ASSOCIATION POWERS AND RESPONSIBILITIES

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of the Board, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of Sections 15.6 and 17.4.

(b) The Declarant and its designees may convey to the Association personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described on Exhibits "A" or "B." The Association shall accept and maintain such property at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall recover to Declarant any unimproved portions of the properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

7.2. Maintenance of Area of Common Responsibility.

(a) The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all portions of and structures situated upon the Common Area;

(ii) landscaping within public rights-of-way within or abutting any (a) landscape easement created by the Declarant, so long as the Declarant owns any portion of the Properties, or by the Association, (b) area for which the Association has assumed maintenance responsibility pursuant to any agreement or covenants, or (c) Common Area;

(iii) such portions of any additional property included within the Area of Common Responsibility as may be directed by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, or any agreement for maintenance entered into by the Association;

(iv) all ponds, streams and/or wetlands located within (a) the Common Area or (b) any area for which the Association has assumed maintenance responsibility pursuant to any agreement or covenants, which serve as part of the stormwater drainage system for the Properties, including improvements and equipment installed therein or used in connection therewith; provided, however the Association shall not interfere with any stormwater drainage systems in the Properties that are maintained by the owner of the Private Arterial;

(v) all portions of the Properties designated on a recorded plat of the Properties as a "Landscape Easement" or otherwise depicted in the Public Records as a "Landscape Easement," which may be either Common Area or included within a Unit;

(vi) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and

(vii) any signs or lighting features installed by or on behalf of Declarant or by or on behalf of the Association within public rights-of-way and for which the Association has assumed maintenance responsibility pursuant to an agreement with another entity.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(b) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members

representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

The costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the Persons responsible for certain portions of the Area of Common Responsibility.

Insurance

(a) ~~Required Coverage.~~ The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) ~~Blanket property insurance~~ covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits.

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best

business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses.

(b) **Poker Requirements.** The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in North Carolina. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 3.3(e). In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized to do business in the State of North Carolina which satisfies the requirements of the Federal/National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;
- (iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgages individually;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;

(vii) provide a waiver of subrogation under the policy against any Owner or household member of a Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any building defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owner, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members holding at least 75% of the total Class "A" votes in the Association, and the Declarant, so long as the Declarant owns any portion of the property described on Exhibits "A" or "B" or has the unilateral right to annex additional property pursuant to Section 9.1, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement/as is necessary and appropriate, shall be retained by the Association for the benefit of its Members and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

7.4. Compliance and Enforcement. Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in Section 3.24 of the By-Laws. Such sanctions may include, without limitation:

- (a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(d) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(e) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(f) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of Article IV and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other service of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in the Properties; and

(h) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in Section 3.24 of the By-Laws:

(a) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations)

(b) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may record a notice of violation in the Public Records or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take any action if the Board reasonably determines that the Association's position is not strong enough to justify taking such action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

The Association, by agreement, may enforce applicable county ordinances and permit Mecklenburg County to enforce ordinances within the Properties for the benefit of the Association and its Members.

7.5. Implied Rights: Board Authority. The Association may exercise any right or privilege given it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

7.6. Indemnification of Officers, Directors and Others. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, ~~except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and North Carolina law.~~

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.7. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board and committees, and the Declarant are not insurers and

that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

7.8. Powers of the Association Relating to Neighborhoods. In the event that Declarant chooses to establish Neighborhood Associations (as described in Section 10.5) which have concurrent jurisdiction with the Association, the Declarant reserves to the Association the powers enumerated in this Section. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association and (b) require that a proposed budget include certain items and that expenditures be made therefor.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Units in such neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Section 8.4. Such assessments may be collected as a Specific Assessment hereunder and shall be subject to all liens and priorities provided for in Article VII.

7.9. Provision of Services. The Association shall be authorized but not obligated to enter into and terminate, in the Board's discretion, contracts or agreements with other entities, including Declarant, to provide services to and facilities for the Members of the Association and their guests, lessees and invitees and to charge use and consumption fees for such services and facilities. By way of example, some services and facilities which might be offered include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities.

Article VIII ASSOCIATION FINANCES

8.1. Budgeting and Allocating Common Expenses. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income

expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 8.5.

Base Assessments shall be levied equally on all Units subject to assessment; provided, each Unit shall be assessed at 3 3/4% of the Base Assessment until the first day of the first month following (a) the issuance of a certificate of occupancy for the residential dwelling thereon or (b) actual occupancy of the Unit, whichever is earlier. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

~~So long as the Class "B" Membership shall exist, the Declarant may annually elect to pay to the Association either: (i) the Base Assessment for each Unit which it owns and for each other Unit, until such time as the Owner thereof becomes obligated to pay full assessments pursuant to this Section; or (ii) the difference between the amount of assessments collected on all Units subject to assessment and the amount of actual expenditures, including budgeted contributions to reserves, required to operate the Association during the fiscal year. Unless the Declarant otherwise notifies the Board of Directors in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. After termination of the Class "B" Membership, the Declarant shall pay assessments on any Unit subject to assessment in the same manner as any other Owner. To secure this obligation, the Association shall have lien rights, as provided in Section 8.7, against Units owned by the Declarant.~~

The Association is specifically authorized to enter into subsidy contracts or contracts for services or materials or a combination of services and materials with Declarant or other entities.

The Board shall send a copy of the final budget and notice of the amount of the Base Assessment to be levied to each Owner at least 30 days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by Members holding at least 75% of the total Class "A" votes and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.2. Budgeting for Reserves. The Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility. The budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget, a capital contribution sufficient to fund reserves to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

8.3. Special Assessments. In addition to other authorized assessments, the Association may levy special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment shall be levied against the entire membership, if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members holding more than 50% of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.4. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in Section 7.9). Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with Section 3.24 of the By-Laws, before levying any Specific Assessment under this subsection (b).

8.5. Authority to Assess Owners: Time of Payment. The Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is conveyed or transferred from the Declarant to a Builder, or (b) the month in which a certificate of occupancy is issued upon the dwelling located on such Unit, whichever shall occur first. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment.

If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

8.6 Personal Obligation. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of North Carolina law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

8.7. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith.

and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right of vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

8.8. Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Area and portions of the property owned by the Declarant and included in the Area of Common Responsibility;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Any property designated by the Declarant to be used for religious purposes.

In addition, both the Declarant and the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c) or for the owners of property devoted to museums, art galleries, sports, civic purposes, education, or family centers.

8.9. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

PART FOUR: COMMUNITY DEVELOPMENT

Article IX
EXPANSION OF THE COMMUNITY

9.1. Expansion by the Declarant. Declarant may from time to time subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" by filing a Supplemental Declaration in the Public Records describing the additional property to be subjected. A Supplemental Declaration filed pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

The Declarant's right to expand the community pursuant to this Section shall expire when all property described on Exhibit "B" has been subjected to this Declaration or 15 years after the recording of this Declaration in the Public Records, whichever is earlier. Until then, the Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer shall be memorialized in a written, recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require the Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

9.2. Expansion by the Association. The Association may also subject additional property to the provisions of this Declaration by filing a Supplemental Declaration in the Public Records describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Members holding more than 50% of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, the consent of the Declarant shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property. Such additional covenants and easements may be set forth in a Supplemental Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement or modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Filing Supplemental Declaration. Any Supplemental Declaration shall be effective upon recording in the Public Records unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability.

Article X
ADDITIONAL RIGHTS RESERVED TO DECLARANT

10.1. Withdrawal of Property. The Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Section 9.1, for the purpose of removing any portion of the Properties which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Units then subjected to the Declaration by more than 10 percent. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Marketing and Sales Activities. The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

10.3. Right to Develop. The Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

Every Person that acquires any interest in the Properties acknowledges that Birkdale is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge or otherwise object to (a) changes in uses or density of the Properties, or (b) changes in the Master Plan as it relates to Properties.

10.4. Right to Approve Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

10.5. Right to Establish Neighborhoods. The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, as long as it owns any property

described in Exhibit "A" or "B," to establish separately developed residential neighborhoods ("Neighborhoods") within the Properties, to establish subassociations which have concurrent jurisdiction with the Association over such Neighborhoods ("Neighborhood Associations"), to designate portions of the Common Area for the exclusive use of one or more, but less than all, Neighborhoods ("Exclusive Common Area"), and to designate groups of Owners to vote on separate slates for the election of representatives to the Board. Every Unit situated within a designated Neighborhood may be subjected to additional covenants, conditions, easements, restrictions, maintenance responsibilities, and assessments for services provided to Units within such designated Neighborhood. Neighborhood assessments, if any, shall be subject to the lien provisions for Base Assessments provided in Article VIII. Every Unit situated within a designated Neighborhood may be subject to assessments for premiums for insurance on Exclusive Common Area. Every Unit situated within a designated Neighborhood may be subjected to additional covenants, conditions, easements, restrictions, maintenance responsibilities, and easements for services provided to Units within such designated Neighborhood.

10.6. Right to Approve Changes in Community Standards. No amendment to or modification of any Use Restrictions and Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

10.7. Right to Transfer or Assign Declarant Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.8. Exclusive Rights to Use Name of Development. No Person shall use the name "Birkdale" or any derivative of such name in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the name "Birkdale" in printed or promotional matter where such term is used solely to specify that particular property is located within Birkdale and the Association shall be entitled to use the words "Birkdale" in its name.

10.9. Termination of Rights. The rights contained in this Article shall not terminate until the earlier of (a) 40 years from the date this Declaration is recorded in the Public Records, or (b) recording by Declarant of a written statement that all sales activity has ceased.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

**Article XI
EASEMENTS**

11.1 Easements in Common Area. The Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation of the Governing Documents after notice and a hearing pursuant to Section 5.24 of the By-Laws;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
- (g) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Sections 15.6 and 17.4;
- (i) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Area," as described in Section 10.5; and
- (j) Any easement for pedestrian access from Sam Furr Road through the Properties granted to Mecklenburg County pursuant to any rezoning plan.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

11.2. Easements of Encroachment. The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit and any Private Amenity due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) The Declarant reserves for itself, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout all of the Common Areas and along, over, upon, and under strips of land 10 feet in width parallel and contiguous to the front, rear, and side lines of each Unit (but not through a structure) to the extent reasonably necessary for the purpose of:

- (i) installing utilities and infrastructure to serve the Properties, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on recorded plans;
- (ii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure and other improvements described in Section 11.3(a)(i); and
- (iii) access to read utility meters.

(b) Declarant also reserves for itself the non-exclusive right and power to grant and record in the Public Records such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" and "B." The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

(c) All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4. ~~Easements to Serve Additional Property.~~ The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit B, 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 over the Common Area for construction of roads and for connecting and installing utilities on such property.

11.5. ~~Easements for Maintenance, Emergency and Enforcement.~~ The Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6. ~~Landscape Easements.~~ There are hereby reserved to Declarant (so long as the Declarant owns any property described on Exhibits "A" or "B" to this Declaration), the Association and the designees of each, non-exclusive easements for access and installation, removal, replacement, pruning and other maintenance of landscaping including, without limitation, plant material, berms, walls, grading, and fences, over those portions of the Properties designated as a "Landscape Easement" or "Buffer" on the recorded plans of the Properties. Such easement shall include the right to disturb existing landscaping within the Landscape Easement or Buffer, to dig holes and to temporarily pile dirt and plant material upon the Landscape Easement or Buffer, provided the area is restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of the activities authorized hereunder. The Association shall maintain all Landscape Easements and Buffers within the Properties. Nothing herein shall obligate the Declarant to undertake any of the activities which such easement authorizes. Except as may otherwise be provided in any written agreement executed by the Declarant, the Declarant may, but shall not be obligated to, install landscaping within such public rights-of-way and/or these Landscape Easements and/or Buffers at its option, at such times and in such numbers and locations as it may deem appropriate in its sole discretion. These Landscape Easement and Buffer areas shall not be disturbed by any Owner without prior approval in accordance with Article IV of this Declaration.

11.7. Easements for Lake and Pond Maintenance and Flood Water. The Declarant reserves for itself, the owners of the Private Amenities, and the Association if designated by the owners of the Private Amenities, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply/irrigate water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. The Declarant, the owners of the Private Amenities, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

The Declarant further reserves for itself, the owners of the Private Amenities, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and egress over the Common Area and Units (but not the dwellings thereon) adjacent to or within 100 feet of bodies of water and wetlands within the Properties, in order to (a) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (b) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

Neither the Association nor any Owner shall interfere with the stormwater collection and other drainage measures undertaken by the owners of any Private Amenities. The owners of the Private Amenities and their designees shall have a nonexclusive easement over the Properties for the purpose of installing and maintaining drainage systems. The Association shall not modify any drainage system in the Properties without the consent of the owners of the Private Amenities.

11.8. Easements for Golf Course.

(a) Every Unit and the Common Area 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 Common Area or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit 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 Association or its Members (in their capacities as such); Birkdale at Lake Norman, LLC; its successors, or assigns; the owners of the Private Amenities and their successors; any Partner 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) The owner of any golf course within or adjacent to any portion of the Properties, its agents, successors and assigns, shall have, from time to time, and during reasonable periods of time, as determined in the sole discretion of the Board, a right and non-exclusive easement of access, ingress and egress, maintenance, and repair over those portions of the Common Area reasonably necessary to the operation, maintenance, repair and replacement of its golf course.

(c) Any portion of the Properties immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving such golf course. Under no circumstances shall the Association or the Owner of such golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner of any golf course within or adjacent to any portion of the Properties, 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 Common Area lying reasonably within range of golf balls hit from its golf course.

(e) The Common Areas and strips of land 10 feet in width parallel and contiguous to the front, rear, and side lines of each Unit immediately adjacent to any golf course (but not through a structure) are hereby burdened with easements in favor of the Private Amenities for golf cart paths, serving the Private Amenities. The owners of the Private Amenities, their agents, successors, assigns, guests, invitees, employees, and authorized users of the Private Amenities shall at all times have a right and non-exclusive easement of access and use over such golf cart paths. Under no circumstances shall the Association or the owners of the Private Amenities or their respective agents, successors, or assigns be liable for any damage or injury resulting from the exercise of this easement.

Article XII PARTY WALLS AND OTHER SHARED STRUCTURES

12.1. General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units, which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

12.2. Maintenance; Damage and Destruction. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners theretofore

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the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

12.3. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to each Owner's successors-in-title.

12.4. Disputes. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIII.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Article XIII DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

13.1. Consent to Association Litigation. Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval at least 75% of the Members. ~~This Section shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it.~~ This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

13.2. Alternative Method for Resolving Disputes. The Declarant, the Association, its officers, directors, and committee members, ~~all Persons~~ subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Sections 13.3 ("Claims") to the procedures set forth in Section 13.4 in lieu of filing suit in any court.

13.3. Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 13.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 13.4:

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article VIII;

(b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article III and Article IV;

(c) Any suit between Owners, which does not include Declarant or the Association as a party. If such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(d) Any suit in which any indispensable party is not a Bound Party; and

(e) Any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.4(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties hereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 13.4.

13.4. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (i) the nature of the Claim including the Persons involved and Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) Claimant's proposed remedy; and
- (iv) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 30 days of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of the Community Associations Institute or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the North Carolina area.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim, provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Arbitration.

(i) If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or such rules as may be required by the agency providing the arbitration. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(ii) Unless the Parties agree in writing to be bound by the arbitrator's decision (the "Award") prior to the commencement of arbitration proceedings, any Party shall be free to reject the Award and sue in any court of competent jurisdiction or initiate proceedings before any appropriate administrative tribunal.

13.5. Allocation of Costs of Resolving Claims.

(a) Subject to Section 13.5(b), each Party shall bear its own costs, including attorney's fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs, except as otherwise provided in this subsection.

If any of the Parties rejects the Award and any nonrejecting Party pursues a judicial resolution under Section 13.4(c)(2), and the final judgment is either the same as the Award or more advantageous to any nonrejecting Party, each such nonrejecting Party shall be entitled to recover its Post Mediation Costs from the rejecting Party. If there is more than one rejecting Party, such nonrejecting Party's Post Mediation Costs shall be allocated pro rata among all rejecting Parties.

13.6. Enforcement of Resolution. After resolution of any Claim if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 13.4. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorney's fees and court costs.

Article XIV
PRIVATE AMENITIES

14.1. General. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such persons and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, costs of use, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

14.2. Conveyance of Private Amenities. All Persons, including all Owners, are hereby advised that neither the Declarant, the Association, or any Builder makes any

representations or warranties regarding the continuing ownership or operation of the Private Amenities. No purported representation or warranty regarding any Private Amenity shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity.

The ownership or operation of the Private Amenities may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity; (b) the establishment of a membership structure or an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity.

14.3. View Impairment. Neither the Declarant, the Association, nor the owner of any Private Amenity, guarantees or represents that any view over and across the Private Amenity from Units adjacent to the Private Amenity will be preserved without impairment. Owners of the Private Amenities shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Private Amenities from time-to-time.

In addition, the owner of any Private Amenity which includes a golf course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees, bunkers, fairways and greens from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

14.4. Rights of Access and Parking. There is hereby established for the benefit of the Private Amenities and their members (regardless of whether such members are Owners hereunder), 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 Private Amenity and over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenity. Without limiting the generality of the foregoing, members of the Private Amenity and guests and invitees of the Private Amenity 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 Private Amenity to the extent that the Private Amenity has insufficient parking to accommodate such vehicles.

14.5. Architectural Control. Neither the Declarant, the Association, or any committee shall approve any construction, addition, alteration, change, or installation on or to any portion of the Properties which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private Amenity at least 15 days' prior written notice of its intent to approve the same together with copies of the request and all other documents and

information finally submitted in such regard. The Private Amenity shall then have 15 days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Private Amenity to respond to the notice within the 15-day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Area.

14.6. Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenity, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Private Amenity may be made without the written approval of the Private Amenity. The foregoing shall not apply, however, to amendments made by the Declarant.

14.7. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the Private Amenity shall cooperate to the maximum extent possible in the operation of the Properties and the Private Amenity. Each shall reasonably assist the other in upholding the Community-Wide Standards as it pertains to maintenance and the Design Guidelines. The Association shall have no power to promulgate Use Restrictions or Rules other than those set forth on Exhibit "C" affecting activities on or use of the Private Amenity without the prior written consent of the owners of the Private Amenity affected thereby.

Article XV MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

15.1. Notices of Action. An institution holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or Occupant which is not cured within 60 days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified Percentage of Eligible Holders.

15.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

15.4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

15.5. Construction of Article XV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or North Carolina law for any of the acts set out in this Article.

15.6. HUDVA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the Mortgage on any Unit: merger, consolidation or dissolution of the Association; annexation of additional property other than that described on Exhibit "B"; dedication, conveyance or mortgaging of Common Area; or material amendment of this Declaration. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section.

PART SEVEN: CHANGES IN THE COMMUNITY

Article XVI

CHANGES IN OWNERSHIP OF UNITS

Any Owner, other than a Builder, desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Article XVII
CHANGES IN COMMON AREA

17.1. Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members holding at least 67% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1) by any authority having the power of condemnation of eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1, and Members holding at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

17.2. Partition. Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

17.3. Transfer or Dedication of Common Area. The Association may dedicate portions of the Common Area to Mecklenburg County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by Sections 15.6 and 17.4.

17.4. Actions Requiring Owner Approval. If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs is insuring or guaranteeing the Mortgage on any Unit, then the following actions shall require the prior approval of Members holding not less than two-thirds (2/3) of the total Class "A" votes in the Association and the consent of the Class "B" Member, if such exists: merger, consolidation or

dissolution of the Association; annexation of additional property other than that described on Exhibit "B," and dedication, conveyance or mortgaging of Common Area. Notwithstanding anything to the contrary in Section 17.1 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

Article XVIII AMENDMENT OF DECLARATION

18.1. By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, ~~unit~~ termination of the Class "B" membership, the Declarant may unilaterally amend this Declaration, if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

18.2. By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding 75% of the total Class "A" votes in the Association, including 75% of the Class "A" votes held by Members other than the Declarant, and the consent of the Declarant, so long as the Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1. In addition, the approval requirements set forth in Article XV shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

18.3. Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision

in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recording 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.

18.4. ~~Exhibits~~ Exhibits "A," "B," and "D" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

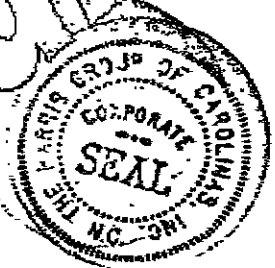
IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

Bydale at Lake Norman, LLC, a North Carolina Limited liability company [SEAL]

By: The Harris Group of Carolinas, Inc. Manager

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

Attest: *Karen B. Ropich*
Karen B. Ropich, Secretary
[CORPORATE SEAL]



ACKNOWLEDGMENT ON NEXT PAGE

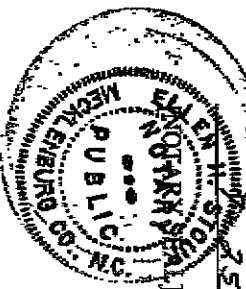
STATE OF NORTH CAROLINA)
COUNTY OF Wake)

I, Allen H. Hight 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 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 23 day of March, 1996

Allen H. Hight
Notary Public

My Commission Expires

25 - 2000



Unrecorded Document

LEGAL DESCRIPTION
"Land Initially Submitted"

Being a portion of that parcel or tract of land located in the Huntersville and Lentley Township, Mecklenburg County, North Carolina, and being more particularly described as follows:

COMMENCING at an existing iron pin located in the southern margin of Sam Furr (180 public right-of-way) having N.C.G.S. Grid Coordinates N 621.691, 51 and E 1,438,542.73 which monument is located South 84-24-23 East 4882.47 feet from N.C.G.S. Grid Monument (Tom) having coordinates N 572,472.37 and E 1,479,372.89, said iron pin being a common corner of now or formerly Huntersville Congregation of Jehovahs Witnesses as recorded in deedbook 6236, page 113, Mecklenburg County Registry and Parcel 1. Thence ~~then~~ said iron pin and with the southern right of way of Sam Furr (180 public right-of-way) the following call: (1) South 82-23-57 East, 886.97 feet to a point, said point being the POINT OF BEGINNING. Thence from said iron pin and with the southern right of way of Sam Furr (180 public right-of-way) the following call: (1) South 82-23-57 East, 144.07 feet to a point, thence leaving the southern right of way of Sam Furr and with the eastern right of way of Birkdale Commons Parkway (Vagabond right of way) and the property line of Birkdale Golf Associates, L.L.C., recorded in Map Book 27, Page 70 as recorded in Mecklenburg County Registry the following seven (7) calls; said point being point of curvature of a curve concave to the southeast having a radius of 250 feet, an arc distance of 39.31 feet (chord bearing and distance South 52-38-32 West, 35.38 feet) to a point, said point being a point of tangency, thence South 07-36-04 West 149.85 feet to a point, said point being a point of curvature of a curve concave to the west having a radius of 1047.0 feet, an arc distance of 610.61 feet (chord bearing and distance South 24-18-30 West, 601.99 feet) to a point, said point being a point of tangency, thence South 46-00-50 West 384.08 feet to a point, said point being a point of curvature of a curve concave to the west having a radius of 1010.0 feet, an arc distance of 275.24 feet (chord bearing and distance South 53-49-14 West, 274.39 feet) to a point, said point being a point of tangency, thence South 61-37-59 West, 825.20 feet to a point, said point being the most northern corner of Birkdale Phase 1, Map 3. Thence leaving the right of way of Birkdale Commons Parkway and with the eastern and southern lines of Birkdale, Phase 1, Map 3, and the property line of Birkdale Golf Associates, L.L.C., recorded in Map Book 27, Page 70 as recorded in Mecklenburg County Registry the following seven (7) calls: South 80-02-23 East 97.85 feet to a point, South 77-45-41 East 127.22 feet to a point, South 39-28-18 West 821.09 feet to a point, South 51-46-48 West 526.47 feet to a point, South 00-00-00 East 73.37 feet to a point, North 90-00-00 West 146.15 feet to a point located on the eastern right of way of Devonshire Drive (60' public right of way).

Thence with the eastern right of way of Devonshire Drive the following three (3) calls: South 00-52-40 East 324.24 feet to a point, said point being located on the north western margin of a 200' Duke Power Company Right of Way recorded in D.B. 3306 Page 085 Mecklenburg County Registry and being a corner of Birkdale, Phase 1, Map 3 and now or formerly Birkdale Golf Associates, L.L.C., recorded in Map Book 27, Page 70 Mecklenburg County Registry. Thence continuing with eastern right of way of Devonshire Drive and crossing the property of Birkdale Golf Associates, L.L.C., the following call: said point being a point of curvature of a curve concave to the east having a radius of 370.0 feet, an arc distance of 23.94 feet (chord bearing and distance South 01-41-10 East, 23.94 feet) to a point, said point being a point located on a curve and being the most northern corner of Birkdale, Phase 1, Map 6. Thence with said eastern right of way of Devonshire Drive the following call: said point being a point of curvature of a curve concave to the east having a radius of 370.0 feet, an arc distance of 88.23 feet (chord bearing and distance South 10-22-17 East, 88.02 feet) to a point. Thence leaving said right of way of eastern right of way of Devonshire Drive (60' public right of way) and continuing with the line of Birkdale Golf Associates, L.L.C., the following calls: North 54-58-36 East 170.04 feet to a point, North 40-48-32 East 732.37 feet to a point, North 53-57-16 East 276.85 feet to a point, South 36-02-44 East 170.93 feet to a point located on the south eastern side of the afore said Duke Power Company Right of Way. South 36-52-39 West 350.0 feet to a point, South 12-46-40 West 133.90 feet to a point, South 14-50-46 East 616.10 feet to a point, said point being located on the north western right of way of Devonshire Drive (60' public right of way). Thence crossing the right of way of Devonshire Drive the following (1) call: South 36-44-32 West 96.06 feet to a point said point being located on the south western right of way of Devonshire Drive (60' public right of way). Thence leaving said right of way of Devonshire Drive (60' public right of way) and continuing with the line of Birkdale Golf Associates, L.L.C., the following calls: South 11-23-17 West 480.39 feet to a point, South 26-13-06 West 140.67 feet to a point, South 42-01-18 West 305.08 feet to a point, said point being located in the north eastern right of way of Agincourt Drive (50' public right of way). Thence with the right of way of Agincourt Drive the following four (4) calls: South 47-58-42 West 6.58 feet to a point, said point being a point of curvature of a curve concave to the southwest having a radius of 275.0 feet, an arc distance of 19.31 feet (chord bearing and distance South 45-58-02 West, 19.30 feet) to a point, said point being a common corner of the tract described herein and Birkdale Golf Associates, L.L.C., as recorded in Map Book 27, Page 70 Mecklenburg County Registry. Thence continuing with said right of way of Agincourt (50' right of way) the following call: said point being located on a curve concave to the southwest having a radius of 275.0 feet, an arc distance of 184.84 feet (chord bearing and distance South 24-42-01 East, 181.38 feet) to a point, thence continuing with eastern right

of way of Agincourt Drive and crossing the property of Birkdale Golf Associates, L.L.C., the following call: said point being on a curve concave to the east having a radius of 275.0 feet, an arc distance of 15.21 feet (chord bearing and distance South 03-51-37 East, 15.21 feet) to a point, said point being a point located on a curve said point being the north east corner of Birkdale, Phase 1, Map 7. Thence continuing with the right of way of Agincourt and along the same curve having a radius of 275.0 feet, an arc distance of 16.82 feet (chord bearing and distance South 00-31-24 East, 16.82 feet) to a point, said point being a point of tangency, South 01-13-45 West, 107.32 feet to a point. Thence leaving the right of way of Agincourt ~~Bays (50' public right of way)~~ and continuing with the line of Birkdale Golf Associates, L.L.C. the following one (1) call: South 86-10-54 West, 338.81 feet to a existing iron pin, said iron pin being located in the line of Now or Formerly Louisiana C. McAulay recorded in Deed Book 3340, Page 285 Mecklenburg County Registry (Tax Parcel #009-024-07). Thence with the line of Now or Formerly Louisiana C. McAulay and Birkdale, Phase 1, Map 7, the following three (3) calls: South 09-19-26 West, 15.31 feet to a existing iron pin, South 27-14-26 West, 170.0 feet to a existing iron pin, South 37-53-52 West, 881.96 feet to a existing iron pin, said iron pin being located in the line of Now or Formerly Lizzie C. Mayberry recorded in Deed Book 2893, Page 227 Mecklenburg County Registry (Tax Parcel #009-071-08) and Now or Formerly City of Charlotte recorded in Deed Book 6685, Page 262 Mecklenburg County Registry (Tax Parcel #008-041-13). Thence with the line of Now or Formerly City of Charlotte and Birkdale, Phase 1, Map 7, the following one (1) call: North 49-22-47 West, 1185.28 feet to a point. Thence leaving the line of the City of Charlotte and with the line of Birkdale, Phase 1, Map 7 the following ten (10) calls: North 42-01-18 East, 272.28 feet to a point, said point being located on the south eastern right of way of Brentfield Road (50' public right of way). Thence crossing the right of way of Brentfield Road the following (1) call: North 05-20-20 West 54.25 feet to a point, said point being located on the north eastern right of way of Brentfield Road (50' public right of way). Thence leaving said right of way of Brentfield Road (50' public right of way) and continuing with the line of Birkdale Phase 1, Map 7 the following calls: North 39-31-37 East, 183.38 feet to a point, said point being located in the line of Birkdale, Golf Associates, L.L.C., recorded in Map Book 27, Page 70 Mecklenburg County Registry. Thence with the line of Birkdale Golf Associates, L.L.C. and Birkdale Phase 1, Map 7 the following calls: South 50-37-06 East 678.85 feet to a point, South 55-21-38 East 58.34 feet to a point, South 86-14-09 East 40.27 feet to a point, North 51-04-00 East 30.89 feet to a point, North 35-03-43 East 30.14 feet to a point, North 01-21-47 East 64.18 feet to a point, South 07-16-06 East 71.28 feet to a point, South 76-42-24 West 176.00 feet to a point. Thence crossing Birkdale Golf Associates, L.L.C. the following call: said point being located on a curve concave to the west having a radius of 225.0 feet, an arc distance of 15.31 feet (chord bearing and distance

North 01-44-08 West, 15.31 feet) to a point, said point the southeast corner of Birkdale, Phase 1, Map 6. Thence continuing with the line of Birkdale Golf Associates, L.L.C. and Birkdale, Phase 1, Map 6 the following calls: South 76-42-24 West 180.77 feet to a point; North 31-53-35 West 66.01 feet to a point, North 42-20-16 West 360.30 to a point. Thence leaving the line of Birkdale Golf Associates, L.L.C. North 45-20-35 East 159.16 feet to a point, said point being located on the southern right of way of Agincourt Drive (50' public right of way). Thence crossing the right of way of Agincourt Drive the following: (1) call: North 09-34-55 West 80.50 feet to a point said point being located on the northern right of way of Agincourt Drive (50' public right of way). Thence leaving said right of way of Agincourt Drive (50' public right of way) and continuing with the line of Birkdale, Phase 1, Map 6 the following calls: North 42-01-18 East 150.80 feet to a point, South 47-58-42 East 72.50 feet to a point, North 42-04-48 East 102.13 feet to a point, North 11-23-17 East 252.36 feet to a point, North 71-05-48 West 355.39 feet to a point, North 52-21-54 West 364.17 feet to a point, North 56-24-10 West 112.46 feet to a point, said point being located on the south eastern margin of a 200' Duke Power Company Right of Way recorded in D.B. 3306 Page 085 Mecklenburg County Registry. Thence with the southern margin of said Duke Power Company Right of Way the following one (1) call: South 54-58-36 West 359.62 feet to a point. Thence leaving said southern margin of said Duke Power Company Right of Way the following two (2) calls: North 04-53-32 East 234.68 feet to a point, North 24-58-36 East, 451.34 feet to a point, said point being located on the western right of way of Devonshire Drive (60' public right of way) and being a common corner of tract herein described and Birkdale Golf Associates, L.L.C. as recorded in Map Book 27, Page 70 Mecklenburg County Registry. Thence crossing Birkdale Golf Associates, L.L.C. and with the right of way of Devonshire Drive (60' public right of way) the following call: said point being located on a curve concave to the east having a radius of 430.0 feet, an arc distance of 22.70 feet (chord bearing and distance North 06-48-26 West, 22.70 feet) to a point, said point being located on the northern margin of a 200' Duke Power Company Right of Way recorded in D.B. 3306 Page 085 Mecklenburg County Registry. Thence with the northern margin of said Duke Power Company Right of Way and the line of Birkdale, Phase 1, Map 3 the following one (1) call: South 54-58-36 West 182.79 feet to a point, said point the southeast corner of Birkdale, Phase 1, Map 3. Thence leaving said northern margin of said Duke Power Company Right of Way the following one (1) call: North 00-52-40 West 1027.55 feet to a point, said point being located in the southern right of way of Birkdale Commons Parkway (70' public right of way). Thence with said right of way of Birkdale Commons Parkway the following four (4) calls: South 73-52-28 West, 508.23 feet to a point, said point being a point of curvature of a curve concave to the southwest having a radius of 965.0 feet, an arc distance of 566.60 feet (chord bearing and distance

South 56-27-36 West, 577.61 feet) to a point, said point being a point of tangency, South 39-02-44 West, 39.64 feet to a point, Now or Formerly William V. Hager recorded in Deed Book 4562, Page 510 Mecklenburg County Registry(Tax Parcel #009-151-11). Thence with the line of Now or Formerly William V. Hager and Birkdale, Phase 1, Map 5, the following one (1) call: North 53-36-49 West, 672.57 feet to a existing iron pin, Now or Formerly Randolph R. Mowrey recorded in Deed Book 4966, Page 763 Mecklenburg County Registry(Tax Parcel #009-151-12). Thence with the line of Now or Formerly Randolph R. Mowrey and Birkdale, Phase 1, Map 5, the following two (2) calls, South 40-52-27 West, 13.06 feet to a existing iron pin, North 84-18-26 West, 163.71 feet to a point. Thence with the line of Now or Formerly Birkdale at Lake Norman and Birkdale, Phase 1, Map 5 the following one (1) call: North 35-09-42 East, 833.30 feet to a point, said point being a common corner of Now or Formerly Birkdale at Lake Norman, Birkdale, Phase 1, Map 5 and Birkdale, Phase 1, Map 4. Thence with the line of Birkdale at Lake Norman and Birkdale, Phase 1, Map 4 the following one (1) call: North 35-09-42 East, 375.43 feet to a point, said point being located in the southern right of way of David Kenney Farm Road (60' public right of way). Thence with said right of way of David Kenney Farm Road (60' public right of way) the following six (6) calls: said point being located on a curve concave to the south, having a radius of 370.09 feet, an arc distance of 89.79 feet (chord bearing and distance South 61-53-08 East, 89.57 feet) to a point, said point being a point of compound curvature of a curve concave to the south, having a radius of 1115.91 feet, an arc distance of 176.73 feet (chord bearing and distance South 50-14-27 East 186.47 feet) to a point, said point being a point of tangency, South 45-11-23 East, 525.22 feet to a point, said point being a point of curvature concave to the north, having a radius of 405.00 feet, an arc distance of 218.22 feet (chord bearing and distance South 60-37-32 West, 215.59 feet) to a point, said point being a point of tangency, South 76-03-41 East, 147.10 feet to a point, said point being a point of curvature concave to the south, having a radius of 345.0 feet, an arc distance of 91.03 feet (chord bearing and distance South 68-30-10 East, 90.76 feet) to a point, said point being a point of tangency, South 60-56-27 East, 137.34 feet to a point, said point being located in the line of Birkdale, Phase 1, Map 2. Thence with the line of Birkdale, Phase 1, Map 2 the following call: North 29-03-63 East, 60.0 feet to a point, said point being a common corner of Breckenridge Subdivision Section 3, recorded in Map Book 22, Page 53 Mecklenburg County Registry of Deeds. Thence with the line of Breckenridge Subdivision the following call: North 61-37-39 East, 692.33 feet to an existing iron pin, said iron pin being a common corner of Breckenridge Subdivision, Birkdale, Phase 1, Map 2 and Now or Formerly Birkdale at Lake Norman, L.L.C. recorded in Deed Book 8258, Page 476 Mecklenburg County Registry. Thence South 80-54-26 East, 131.52 feet to a point, said point being located in the northern right of way of Birkdale Commons Parkway(70' public right

of way). Thence with the right of way of Birkdale Commons Parkway the following calls; North 61-37-39 East, 289.55 feet to a point, said point being a point of curvature concave to the concave to the north having a radius of 940.0 feet, an arc distance of 256.16 feet (chord bearing and distance North 53-49-14 East, 255.37 feet) to a point, said point being a point of tangency, North 48-00-50 East, 493.88 feet to a point, said point being a point of curvature concave to the north having a radius of 1050.0 feet, an arc distance of 703.29 feet (chord bearing and distance North 26-47-22 East, 690.22 feet) to a point, said point being a point of tangency, North 07-36-04 East, 135.38 feet to a point, said point being a point of curvature concave to the southwest having a radius of 25.0 feet, an arc distance of 39.30 feet (chord bearing and distance North 37-26-18 West, 35.38 feet) to a point, said point being a point of tangency and being the point or place of BEGINNING. The legal description set forth above is intended to describe that property shown on the following maps, all recorded or to be recorded in the Mecklenburg County Registry: Birkdale, Phase 1, Map 1; Birkdale, Phase 1, Map 2; Birkdale, Phase 1, Map 3; Birkdale, Phase 1, Map 4; Birkdale, Phase 1, Map 5; Birkdale, Phase 1, Map 6; and Birkdale, Phase 1, Map 7; prepared by GPA Professional Land Surveyors.

EXHIBIT 'B'

Land Subject to Annexation

ALL THAT TRACT OR PARCEL OF LAND located within 3 miles of the property described on Exhibit "A."

Figure 6. The effect of the initial concentration of the monomer on the polymerization of **1**. [AIBN] = 0.01 mol/L; [CuBr₂] = 0.001 mol/L; [Ligand] = 0.001 mol/L; [M]₀/[CuBr₂]/[Ligand] = 100/1/1; T = 70 °C; t = 2 h.

EXHIBIT "C"

Initial Use Restrictions and Rules

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article XI of the Declaration.

General. The Properties shall be used only for residential, recreational, and related purposes ~~(which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association, or business offices for the Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.~~

2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of ~~any vehicles on~~ public streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages; provided, the Board may adopt reasonable regulations regarding guest and commercial parking;

(b) Raising, breeding or keeping of animals, except that dogs, cats, or other usual and common household pets, not to exceed a total of two, may be permitted in a Unit subject to such additional rules as the Board may adopt ~~for the Properties or any Neighborhood~~. Such rules may prohibit all pets or specific types of animals. ~~Those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;~~

(c) Any activity which creates obnoxious odors, noise, or other conditions outside the Unit; tends to disturb the peace or threaten the safety of the occupants of other Units; interferes with the reasonable enjoyment of the Properties; detracts from the overall appearance of the Properties; materially disturbs the ecosystem within the Properties; ~~violates local, state, or federal laws or regulations (however, the Board shall have no obligation to take enforcement action in the event of a violation); or causes debris or potentially toxic or hazardous substances to be deposited upon any portion of the Properties;~~

- (d) Any activity or condition that interferes with the reasonable enjoyment of any part to the Properties or that detracts from the overall appearance of the Properties;
- (e) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit;
- (f) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;
- (g) Use and discharge of firecrackers and other fireworks;
- (h) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;
- (i) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups;
- (j) Obstruction or retarding of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant, the owners of the Private Amenities, and the Association shall have such right provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;
- (k) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Public Records, except that the Declarant shall be permitted to subdivide or replat Units which it owns;
- (l) Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams or other bodies of water within the Properties, except that the Declarant, the owners of the Private Amenities, and their successors and assigns shall be permitted and shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Area and to draw water from their lakes, ponds and streams within the Properties for purposes of irrigation and such other purposes as they shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams or other bodies of water within or adjacent to the Properties;
- (m) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns;

(n) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(o) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes, for the operation of lawn mowers and similar tools or equipment, for use with gas grills, and the Association shall be permitted to store fuel for operation or maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank approved pursuant to Article IV;

(p) Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct "discrete business activities" within the Unit so long as the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit, the business activity conforms to all zoning requirements for the Properties; the business activity does not involve regular visitation of the Unit or door-to-door solicitation of residents of the Properties; and the business activity is consistent with the residential character of the Properties and does not violate these User Restrictions or any other rules of the Board. Examples of "discrete business activities" include, but are not limited to, computer-based telecommunications and literary, artistic, or craft activities. The Board may restrict any business activities that it determines interfere with the enjoyment or residential purpose of the Properties in its sole and absolute discretion.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program;

(q) Any activities which materially disrupt or destroy the vegetation, wildlife, wetlands, watershed areas, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(r) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article IV;

(s) Operation of motorized vehicles on pathways or trails maintained by the Association, except that golf carts may be operated on cart paths intended for such purposes; and

(t) Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration and the restrictions and location requirements set forth in the Design Guidelines.

3. Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties;

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair; and

(c) ~~Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties or any Private Amenity, except that Declarant, the owner of any Private Amenity, and the Association if designated by the owner of the Private Amenity shall have the right to draw water from such sources.~~

Leasing of Units. "Leasing," for purposes of this paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term, which requirements may vary from Neighborhood to Neighborhood, if established, or among different product types through the Properties. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Use Restrictions and Rules.

Document

EXHIBIT "D"

Rules of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("Arbitration Notice").
2. ~~The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all the Claimants shall agree upon one (1) Party Appointed Arbitrator, and all the Respondents shall agree upon one (1) Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three (3) arbitrators.~~
3. ~~If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, any Party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Governing Documents, or the American Arbitration Association, or such other independent body providing arbitration services, for any dispute relating to the design or construction of improvements on the Properties, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.~~
4. ~~No person may serve as a Neutral in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.~~
5. ~~The Appointed Neutral or Neutral, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, if continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.~~
6. ~~Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.~~

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine any relevant legal issues, including whether all indispensable parties are Bound Parties or whether the claim is barred by the statute of limitations.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

10. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator.

11. No formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

12. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

13. There will be no posthearing briefs.

14. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

15. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

16. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

Unofficial Document

EXHIBIT "E"

**BY-LAWS
OF**

BIRKDALE HOMEOWNERS ASSOCIATION, INC.

Unofficial Document

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BY-LAWS
OF

BIRKDALE HOMEOWNERS ASSOCIATION, INC.

Article I

Name, Principal Office, and Definitions

1.1. Name The name of the corporation is Birkdale Homeowners Association, Inc. (the "Association").

1.2. Principal Office The principal office of the Association shall be located in Mecklenburg County, North Carolina. The Association may have such other offices, either within or outside the State of North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Declaration of Covenants, Conditions, and Restrictions for Birkdale filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

Article II

Association: Membership, Meetings, Quorum, Voting, Proxies

2.1. Membership The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2. Place of Meetings Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate, either within the Properties or as convenient as possible and practical.

2.3. Annual Meetings The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Meetings shall be of the Members. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

2.4. Special Meetings The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members holding at least 10% of the total Class "A" votes of the Association.

2.5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage prepaid.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9. Proxies. At all meetings of Members, each member may vote in person (if a corporation, partnership or trust, through any officer, director, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of North Carolina law.

Every proxy shall be in writing specifying the Unit for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, upon receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence of Members holding at least 20% of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association.

2.12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter.

Article III

Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

3.1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member or the Declarant, the directors shall be Members or residents; provided, however, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within the Properties. In the case of a Member which is not a

natural person, any officer, director, partner or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member or the Declarant.

3.2. Number of Directors. The Board shall consist of three to seven directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

3.3. Directors During Class "B" Control Period. The directors which the Class "B" Member is entitled to appoint pursuant to Section 3.5 of these By-Laws shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

3.4. Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by Class "A" votes. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner.

Except with respect to directors selected by the Class "B" Member or the Declarant, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairman who shall be a member of the Board, and three or more Members or representatives of Members. The members of the Nominating Committee shall be appointed by the Board not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled as provided in Section 3.5 below. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures. Elections may be held at a meeting or by mail. For all elections conducted by mail, the Secretary shall cause notice of the elections to be mailed or delivered to each Member at least 10 days prior to the closing date established by the Board for filing of ballots. Such notice shall be accompanied by a written ballot listing all candidates for each vacancy who have qualified in accordance with the procedures described in subsection (a).

above, and all candidates for each vacancy nominated by the Nominating Committee, if any. The notice shall specify the name and address to which the ballots should be returned and the date by which they must be received in order to be counted, which date shall be the "election date."

On the election date, the Board or an election committee appointed by the Board shall open and count the ballots. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

Each Member may cast the entire vote assigned to his Unit for each position to be filled from the slate of candidates on which such Member is entitled to vote. There shall be no cumulative voting.

3.5. Election and Term of Office. Until the happening of the event described in subsection (a) below, each of the directors may be appointed by the Class "B" Member. Notwithstanding any other provision of these By-Laws:

(a) Within 30 days after the time that Class "A" Members other than Builders own 25% of the Units proposed by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Class "A" Members shall be entitled to elect one of the three directors, who shall be an at-large director. The remaining two directors shall be appointees of the Class "B" Member. The director elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within 30 days after the time that Class "A" Members other than Builders own 50% of the Units proposed by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call for an election by which the Class "A" Members shall be entitled to elect two of the five directors, who shall serve as at-large directors. The remaining three directors shall be appointees of the Class "B" Member. The directors elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within 90 days after termination of the Class "B" Control Period, the President shall call for an election by which the Class "A" Members shall be entitled to elect three of the five directors, who shall serve as at-large directors. The remaining two directors shall be appointees of the Declarant. The directors elected by the Class "A" Members shall not

be subject to removal by the Declarant and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting is scheduled to occur within 90 days after termination of the Class "B" Control Period, this subsection shall not apply and directors shall be elected in accordance with subsection (d) below. The directors which the Declarant is entitled to appoint pursuant to this Section shall be appointed by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant so long as the Declarant owns any portion of the property described on Exhibits "A" or "B" or is entitled to enter additional property pursuant to Section 9.1 of the Declaration.

(b) ~~Not~~ After the first annual meeting after the termination of the Class "B" Control Period, the Board shall be increased to seven directors and an election shall be held. Six directors shall be elected by the Class "A" Members. Three directors shall serve a term of two years and three directors shall serve a term of one year, as such directors determine among themselves.

~~For so long as the Declarant owns any portion of the property described on Exhibits "A" or "B" or is entitled to annex additional property pursuant to Section 9.1 of the Declaration, the Declarant shall be entitled to appoint one director. Thereafter, the director appointed by the Declarant shall resign and the resigning directors shall be entitled to appoint a director to serve until the next annual meeting, at which time the Class "A" Members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years.~~

Upon the expiration of the term of office of each director elected by the Class "A" Members, the Class "A" Members entitled to elect such director shall be entitled to elect a successor to serve a term of two years. The directors elected by the Class "A" Members shall hold office until their respective successors have been elected.

3.6. ~~Removal of Directors and Vacancies.~~ Any director elected by the Class "A" Members may be removed, with or without cause, by the vote of Class "A" Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent for the representative of a Member who is so delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members entitled to fill such directorship may elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member or the Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or the Declarant.

B. Meetings.

3.7. Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place the Board shall fix.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the time and place of a regular meeting shall be communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) telegram, charged prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least 72 hours before the time set for the meeting.

3.10. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all

persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12. Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members holding a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.14. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15. Notice to Owners: Open Meetings. Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Properties which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members and, if required by law, all Owners, but attendees other than directors may not participate in any discussion or deliberation unless permission to speak is requested on their behalf by a director. In such case, the President may limit the time any such individual may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a

meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.17. Powers. The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things which the Declaration, Articles, these By-Laws, or North Carolina law do not direct to be done and exercised exclusively by the membership generally.

3.18. Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated

to take action to enforce any covenant, restriction or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by North Carolina law, the Articles of Incorporation or the Declaration; and

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

3.19. Right of Declarant to Discontinue Actions. So long as the Declarant owns any portion of the property described on Exhibits "A" or "B," or has the right to annex additional property as provided in Section 9.1 of the Declaration, the Declarant shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws or interfere with development or construction of any portion of the Properties.

(a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies with the requirements for Board meetings set forth in these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Declarant, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20. Management. The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority or those duties set forth in Sections 3.18(a), 3.18(b), 3.18(f), 3.18(g) and 3.18(i). The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) accounting at the end of the quarter in which the first Unit is sold and closed financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement.

3.22. **Borrowing.** The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in Section 8.3 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 25% of the budgeted gross expenses of the Association for that fiscal year. During the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members holding

at least 67% of the total Class "A" votes in the Association and the approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the Mortgage on any Unit.

3.23. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other owners or residents associations, within and outside the Properties; provided, any common management agreement shall require the consent of a majority of the total number of directors of the Association.

3.24. Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend an Owner's right to vote for violation of any duty imposed under the Declaration, these By-Laws, or any Association rules. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner's more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule and a fine is imposed, the fine shall first be assessed against the occupant, provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

(e) Notice. Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article V; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and ~~waive by any Person~~.

(f) Hearing. If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the

meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 10 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these By-Laws, or the rules of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) or, following compliance with the dispute resolution procedures set forth in Article XIII of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes of exercising the power of self-help shall not be deemed as trespass.

Article IV Officers

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.3. Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may

delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

Article V Committees

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of these By-Laws.

Article VI Miscellaneous

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. Conflicts. If there are conflicts between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of North

Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, including any amendments, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and Committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) Rule for Inspection. The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5. Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid.

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6. Amendment.

(a) By Class "B" Member. During the Class "B" Membership and subject to the approval requirements set forth in Article XV of the Declaration, if applicable, the Class "B" Member may unilaterally amend these By-Laws. Additionally, the Class "B" Member may

unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Unit; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Unit; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

(b) ~~By Members Generally.~~ Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least 51% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. In addition, the approval requirements set forth in Article XV of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) ~~Validity and Effective Date of Amendments.~~ Amendments to these By-Laws 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 these By-Laws.

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

State of North Carolina, County of Mecklenburg
The foregoing certificate(s) of Elan H. Stoop
Notary (ies) Public is/are certified to be correct. This 20th day of June 19 96
JUDITH A. GIBSON, REGISTER OF DEEDS Jane M. Quinlan Deputy Register of Deeds

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
1998 FEB 22 08:48 AM
BOOK 19229 PAGE 489-502 REC \$12.00
INSTRUMENT # 1855018598

Prepared by and return to
Anthony W. Skiles
Hyatt & Shubler, P.C.
235 Penitence Street, N.E., Suite 1200
Atlanta, Georgia 30303

Cross Reference Deed Book 08624
Page 0266

**ELEVENTH SUPPLEMENTAL DECLARATION TO THE
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR BIRKDALE**

THIS ELEVENTH SUPPLEMENTAL DECLARATION is made as of the date set forth below by Birkdale at Lake Norman, LLC, a North Carolina limited liability company ("Declarant")

WHEREAS, Declarant recorded that certain Declaration of Covenants, Conditions, and Restrictions for Birkdale in Deed Book 08624, Page 0266 *et seq.*, in the Office of the Register of Deeds of Mecklenburg County, North Carolina, on June 20, 1996 (the "Declaration"), as such Declaration has been supplemented from time to time in the foregoing records; and

WHEREAS, pursuant to the terms of Section 9.1 of the Declaration, Declarant may unilaterally subject to the Declaration all or any portion of the real property described in Exhibit "B" to the Declaration, until all property described in Exhibit "B" of the Declaration has been subjected to the Declaration or until 15 years after the recording of the Declaration in the Mecklenburg County, North Carolina Registry of Deeds, whichever occurs first, by recording a Supplemental Declaration describing the property to be subjected to the Declaration

WHEREAS, the property described in Exhibit "A" to this Supplemental Declaration is located within three miles of the property described in Exhibit "A" to the Declaration and is, therefore, described in Exhibit "B" to the Declaration.

WHEREAS, this Supplemental Declaration is recorded (a) prior to the subsection to the Declaration of all property described in Exhibit "B" of the Declaration and (b) within 15 years of the recording of the Declaration

WHEREAS, the Declarant desires to submit the property described in Exhibit "A" hereto to the Declaration and to the jurisdiction of the Association

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby submits the property described in Exhibit "A" hereto to the Declaration and to the jurisdiction of the Association. Such property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of

the Declaration, as amended and supplemented from time to time, which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

IN WITNESS WHEREOF, Declarant herein, hereby executes this instrument under seal by and through the duly authorized officers of its manager, this 15 day of December, 1998

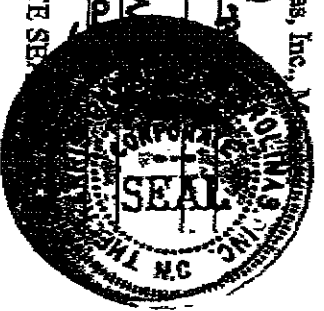
IBECARANT. Birkdale at Lake Norman, LLC, a North Carolina limited liability company [SEAL]

By The Harris Group of Carolinas, Inc.,

By Its: [Signature]
V.P.

Attest Its: [Signature]
Asst. Secretary

[AFFIX CORPORATE SEAL]



STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

I, Theresa M. Ditt, a Notary Public of the County and State aforesaid, certify that Peter H. Wapins personally came before me this day and acknowledged that he is V.P. 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 V.P. sealed with its corporate seal and attested by DANIELLE M. WILSON as its Asst. Secretary witness my hand and official stamp or seal, this 15th day of Dec., 1998

Theresa M. Ditt
Notary Public

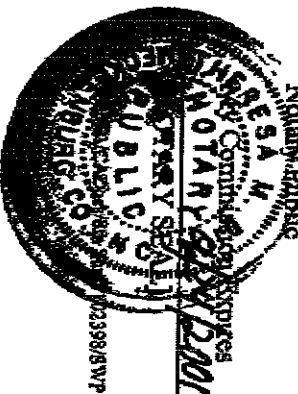


EXHIBIT "A"

Legal Description

ALL THOSE TRACTS OR PARCELS OF LAND, lying and being in Mecklenburg County, North Carolina, shown on the Final Plat of Burkdale Phase 5, Map 1, prepared by ESP Associates, P.A., recorded in the Office of the Register of Deeds of Mecklenburg County, North Carolina, in Map Book 30, Page 449, on January 25, 1999. Such plat has the metes and bounds set forth therein.