

EXHIBIT "E"  
DECLARATION OF CONDOMINIUM  
BIRCH CREEK II CONDOMINIUMS

1402 0157

BY-LAWS  
OF  
BIRCH CREEK II HOMEOWNERS' ASSOCIATION, INC.  
A North Carolina Non-Profit Corporation

ARTICLE I

GENERAL

A. Principal Office: The principal office of BIRCH CREEK II HOMEOWNERS' ASSOCIATION, INC. shall be located at 11 South Fifth Street, Wilmington, North Carolina 28401.

B. Registered Office: The registered office of the corporation, which by law is required to be maintained in the State of North Carolina, shall be located at 11 South Fifth Street, Wilmington, North Carolina 28401, or at such other place within the State of North Carolina as may, from time to time, be fixed and determined by the Board of Directors.

C. Other Offices: The corporation may have offices at such other places, either within or outside the State of North Carolina, as the Board of Directors may from time to time determine.

D. Definitions: As used herein, the term "Corporation" shall be the equivalent of the "Association" as defined in the Declaration of Condominium for the BIRCH CREEK II CONDOMINIUMS, Wilmington, North Carolina; and all definitions set forth in that Declaration, to which these By-Laws are attached, shall be applicable herein, unless otherwise defined.

As used in these By-Laws, "common areas and facilities" shall include the portion of the Condominium Property owned, in undivided interest, by all the Owners, as set forth in the Declaration, and any and all real property, together with improvements, fixtures and appurtenances thereto, all fixtures and personal property, all rights and privileges, and such other possessory or use interests in land or facilities owned by or available for use by the Association.

ARTICLE II

MEMBERS

A. General: The membership shall consist of every person, firm, corporation or entity who is an owner of a Condominium Unit of BIRCH CREEK II CONDOMINIUMS facility in Wilmington, North Carolina as defined in the Declaration of Condominium creating the BIRCH CREEK II CONDOMINIUMS which is to be recorded in the Office of the Register of Deeds, New Hanover County, North Carolina and membership in the Association shall be limited to the owners of those Condominium Units.

B. Class: There shall be only one class of members. The voting rights of the members shall be as set forth in Article III of these By-Laws.

C. Transfer of Membership and Ownership: Membership in the Corporation may be transferred only as an incident to the transfer of the transferor's Condominium Unit and his undivided interest in the common areas and facilities of the Condominium, and such transfer shall be subject to the procedures set forth in the Condominium Documents.

ARTICLE IIIMEETING OF MEMBERS

A. First Annual Meeting: The first annual meeting of the members shall take place at 9:30 a.m. on the second Saturday of November after the first condominium unit is sold.

B. Annual Meeting: The annual meeting of the members subsequent to the first annual meeting shall be held on the second Saturday of November of each year at 9:30 a.m. for the purpose of transacting such business as may be necessary or appropriate at the principal office of the Corporation. If the date of the annual meeting is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday.

C. Substitute Annual Meeting: If the annual meeting shall not be held on the day designated by these By-Laws, a substitute annual meeting may be called in the manner provided for in the call of the special meetings in accordance with the provisions of Section D of this Article III and substitute meetings so called shall be designated as and shall be treated, for all purposes, as the annual meeting.

D. Special Meetings: Special meetings of the members may be called at any time by the President or a majority of the Board of Directors, or by members having at least 1/5 of the votes entitled to be cast at such meeting.

E. Place of Meetings: All meetings of members shall be held at the principal office of the Corporation except that a meeting may be held at a place, within or outside the State of North Carolina, as may be designated in a duly executed Waiver of Notice of such meeting or as may be otherwise agreed upon in advance by a majority of the members entitled to vote at such a meeting.

F. Notice of Meetings: Written or printed notice stating the time and place of the meeting shall be delivered not less than ten nor more than fifty days before the date of any members' meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting; provided that such notice must be given not less than twenty days before the date of any meeting at which a merger or consolidation is to be considered. If mailed, such notice 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 record of members of the Corporation, with postage thereon prepaid.

The notice of meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes and any proposal to remove a director or officer.

When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than thirty days in any one adjournment, it is not necessary to give any notice of the adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

G. Voting Lists: At least ten days before each meeting of the members the Secretary of the Corporation shall prepare an alphabetical list of the members entitled to vote at such meeting, with the address of each member, which list shall be kept on file at the registered office of the Corporation for a period of ten days prior to such meeting, and shall be subject to inspection by any member. The aforementioned list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any member during the whole time of the meeting.

H. Quorum: Except as otherwise provided by the Charter of the Corporation, or by these By-Laws the presence in person or by proxy of a majority of the members entitled to vote at the meeting shall be necessary to constitute a quorum for the transaction of business. In the absence of a quorum, a majority in interest of the members entitled to vote, present in person or by proxy, may adjourn the meeting from time to time. At any such adjourned meeting, at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called if a quorum had been there present. The members present in person or by proxy at a 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.

I. Voting: There shall be appurtenant to each Condominium Unit a vote which shall be equivalent to each member's percentage ownership interest in the common areas and facilities for the members who are Owners of that Unit. If more than one person or entity owns a Unit, they shall file a certificate with the Secretary naming the person authorized to cast votes for that Unit. If the same is not on file with the Secretary, the vote of any co-owner present at the meeting shall be accepted as the vote of all co-owners of each such Unit. The vote allocated to each Unit shall not be divided among co-owners.

At any meeting of the members, every member having the right to vote shall be entitled to vote in person or by proxy. A proxy must be in writing and filed with the Secretary not later than the time that meeting is called to order. Every proxy shall be revocable and shall be revoked when the person who appointed the proxy gives written notice of revocation to the person presiding over a meeting of the Association or when the person who appointed the proxy ceases to have voting privileges in the Corporation. Otherwise the proxy shall automatically terminate one year after its date unless a shorter time is specified. A proxy must be dated to be valid. Votes represented by proxy shall be counted in determining the presence or absence of a quorum at any meeting.

Notwithstanding the foregoing, no person, persons, entity or legally qualified proxy holder shall be allowed to hold or vote more than three proxies. If any proxy holder holds more than three proxies, then all proxies over three shall be disqualified.

J. Informal Action by Members: Any action which may be taken by the members at a meeting thereof may be taken without a meeting if consent in writing, setting forth the action taken, shall be signed by all of the persons who would be entitled to vote such action at a meeting and filed with the Secretary of the Corporation. Any consent so filed with the Secretary of the Corporation shall be filed in the corporate minute book in like manner as minutes of a meeting. Any such consent shall have the same force and effect as a unanimous vote of members.

K. Order of Business: The order of meetings of the members, as far as practical, will be:

1. Roll call and Certification of Proxies.
2. Proof of Notice of Meeting or Waivers of Notice.
3. Reading of Minutes of prior Meeting.
4. Officer's Report.
5. Committee Reports.
6. Approval of Budget.
7. Election of Directors.
8. Unfinished Business.
9. New Business.
10. Adjournment.

ARTICLE IVORGANIZATION

The property, affairs and business of the Corporation shall be managed by a Board of Directors, which Board, other than the first Board of Directors, shall be elected by the members of the Corporation. The Board shall elect officers of the Corporation, including a president, vice-president, secretary and treasurer, and such other officers and assistant officers as, from time to time, may be deemed necessary, who shall carry out such functions and duties as are prescribed by these By-Laws and the Board.

ARTICLE VBOARD OF DIRECTORS

A. First Board: The first Board of Directors shall consist of three directors, who shall be Beth Pridemore, George Rountree, III and Walter Pancoe, and who shall hold office and exercise all powers of the Board until the earlier of:

- (1) 120 days after conveyance of seventy-five percent (75%) of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant;
- (2) Two years after all declarants have ceased to offer units for sale in the ordinary course of business;
- (3) Two years after any development right to add new units was last exercised; or
- (4) The declarant voluntarily surrenders the right to appoint and remove officers and members of the Board of Directors and to otherwise control the Association.

Upon the occurrence of any one of the foregoing events, the President shall call a Special Meeting of the Association, pursuant to Article III hereof, for the purpose of electing Directors to replace those Directors which were appointed or elected by the Declarant.

B. Number of Directors: The number of Directors of the Association shall be increased to five (5) as follows:

- (1) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units (including units which may be created pursuant to special rights) to unit owners other than a declarant, one additional Board position shall be created and that position shall be filled by a unit owner who was elected by a majority of the unit owners of the Condominium other than the declarant.
- (2) Not later than sixty (60) days after conveyance of fifty percent (50%) of the units (including units which may be created pursuant to special declarant rights) to unit owners other than the declarant, another new Director's position will be created (bringing a total to five (5)) which position shall be filled by the owner of the unit who was elected by a majority of the unit owners of the Condominium other than the declarant.)

Other than the initial Board of Directors, set forth above, all Directors of the Association shall be owners of an interest in units in the Condominium.

C. Term: The term of the initial Board of Directors shall be as set forth in Paragraph A. of this Article. Any members of the Board who are elected by the owners of units other than a declarant, shall serve terms of two (2) years.

D. Election of Directors: Except as provided in this Article, the Directors shall be elected at the annual meeting of members and the persons who shall receive the highest number of votes shall be elected Directors.

E. Cumulative Voting: There shall be no right of cumulative voting for the election of Directors.

F. Removal of Directors: With respect to the initial Board of Directors, until declarant control is terminated, as set forth in Paragraph A of this Article, declarant shall have the absolute right and sole discretion to remove any of the Directors which comprises the initial Board of Directors and to replace those Directors with anyone whom declarant chooses.

As to any Directors which are elected by the owners of units other than the declarant, the Board of Directors or any individual Director may be removed from office with or without cause at a special meeting of the members called for that purpose by a vote of a majority of the members entitled to vote at an election of Directors. If any or all Directors are so removed, new Directors may be elected at the same meeting.

G. Vacancies: A vacancy in the Board of Directors created by an increase in the authorized number of Directors or in the required number of Directors shall be filled only by election at an annual meeting of members or at special meeting of members called for that purpose.

Except as to those Directors appointed by declarant, any vacancy in the Board of Directors created other than by an increase in the number of Directors may be filled by a majority of the remaining Directors, though less than a quorum, or by the sole remaining Director. The members may elect a Director at any time to fill any vacancy not filled by the Directors. In the event of the resignation of a Director to take effect at a future date either the Board of Directors or the members, at any time after tender of such resignation, may elect a successor to such Director to take office as of the effective date of such resignation.

H. Compensation: No compensation shall be paid to members of the Board for services. However any Director may be reimbursed for his actual expense incurred in the performance of his duties as long as such expense receives approval of the Board and is within the approved Corporate budget.

I. Resignations: Any Director may resign at any time by giving written notice to the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, or if no time is specified therein, at the time such resignation is received by the President or the Secretary of the Corporation unless it shall be necessary to accept such resignation before it becomes effective, in which event the resignation shall take effect upon its acceptance by the Board of Directors. Unless otherwise specified therein, the acceptance of any such resignation shall not be necessary to make it effective.

J. Actions of First Board: If entered into by or on behalf of the Association before the Board elected by the unit owners pursuant to N.C.G.S. 47C-3-103(f) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the Association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without

penalty by the Association at any time after Declarant Control Board elected by the unit owners terminates and takes office upon not less than 90 days' notice to the other party. Notice of the substance of the provisions of this section shall be set out in each contract entered into by or on behalf of the Association before the Non-Declarant Controlled Board elected by the unit owners takes office. Failure of the contract to contain such a provision shall not effect the rights of the Association under this section.

Otherwise, the undertakings and contracts authorized by, and all action taken by, the first Board of Directors shall be binding upon the Corporation in the same manner as though such undertakings, contracts and motions had been authorized by a Board of Directors duly elected by the membership, so long as such undertakings, may be exercised by the Board of Directors of the Corporation in accordance with all applicable Condominium Documents and these By-Laws.

L. Powers and Duties: All of the powers and duties of the Association shall be exercised by the Board of Directors, including those existing under the common laws and statutes, the Articles of Incorporation of the Association, these By-Laws and the Declaration of Condominium and including all corporate powers not specifically prohibited by statute, the Articles of Incorporation of the Association, the Declaration and these By-Laws. Such powers and duties shall be exercised in accordance with said Articles of Incorporation, these By-Laws and the Declaration of Condominium, and shall include, without limiting the generality of the foregoing, the following powers:

- (1) To adopt the By-Laws; to amend these By-Laws only after Association approval as set forth in Article XVIII hereof; and to adopt or amend any rules and regulations governing the use of the common areas and facilities and codify and circulate said rules and regulations as they may be adopted and amended;
- (2) To make, levy and collect, regular and special assessments against the members and members' Condominium Units to defray the costs of the Condominium and its facilities and to use said proceeds in the exercise of the powers and duties of the Corporation (Association);
- (2) To establish the time within which payment of assessments are due and to impose charges for late payment of assessments as allowed by law;
- (3) To use and expend the assessments collected to manage, replace, operate, maintain, care for and preserve the Units, Condominium Property, and common areas and facilities, except those portions thereof which are required to be managed, repaired, replaced, operated, maintained, cared for and preserved by the Owners;
- (4) To maintain, care for, preserve, repair, modify replace, operate and manage the common areas and facilities, whenever the same is required to be done and accomplished by the Corporation for the benefit of its members, and further to approve any expenditure made or to be made for the same; and, to cause additional improvements to be made as a part of the Common Areas and Facilities;
- (5) To purchase the necessary equipment and tools required in the maintenance, repair, replacement, management, operation, care and preservation referred to herein;

(6) To enter into and upon the Units when necessary and at as little inconvenience to the Owner as possible in connection with such maintenance, care, preservation, repair, replacement, management and operation;

(7) To insure and keep insured the common areas and facilities against loss from fire and/or other casualty, and the Unit Owners against public liability, and to purchase such other insurance as the Board may deem advisable including insurance against Directors' liability;

(8) To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin or seek damages from Owners for violations of these By-Laws, the terms and conditions of the Condominium Documents, and the Rules and Regulations of the Association and to otherwise institute, defend, or proceed in its own name in litigation or administrative proceedings on matters affecting the Condominium;

(9) To carry out the obligations of the Association under any restrictions and/or covenants running with any land submitted to ownership of this Corporation or its members;

(10) To designate, as the Association deems appropriate, assigned parking spaces for each Unit, visitors, service vehicles, and other vehicles;

(11) To compensate, employ, designate and remove personnel necessary for the maintenance, repair, management, operation, care, preservation and replacement of the common areas and facilities;

(12) To make, amend, and enforce Rules and Regulations governing the use of the common areas and facilities and Condominium Units provided that such Rules and Regulations and amendments thereto do not conflict with the restrictions and limitations which may be placed upon the use of such property under the term of the Articles of Incorporation and Condominium Documents, to enforce by legal means or proceedings, the provisions of the Rules and Regulations so promulgated and to establish, levy and collect fines, assessments, and penalties for violations of such Rules and Regulations; the foregoing power shall be subject, however, to the provisions of Article XX hereof;

(13) To impose a special assessment (against any Owner), not to exceed \$50 for each occurrence, for the violation by the Owner or his guests of any Rules or Regulations adopted by the Board or the breach of any By-Law contained herein, or the breach of any provision of the Condominium Documents, pursuant to N.C.G.S. 47C-3-107A. (Such assessment shall be in addition to any costs incurred or to be incurred by the Corporation as a result of the violation of the rule, regulation, By-Law, or provision);

(14) If any lessee, renter or guest fails to comply with the terms of the Condominium Documents, any Rules and Regulations, or these By-Laws, then to terminate any written or oral lease or rental agreement, and to remove from a Unit, such Lessee, renter or guest;

(15) To propose and adopt an annual budget for the Association;

(16) To reconstruct any part of the common areas and facilities after casualty in accordance with Article 16 of the Declaration of Condominium, and to make further improvement to the common areas and facilities, real and personal, and to make and to enter into any and all contracts, necessary or desirable, to accomplish said purposes;

(17) To acquire, purchase, operate, rent, lease, manage and otherwise trade and deal with property, real and personal, including Condominium Units (except units previously sold and deeded to Unit Owners) in the Condominium as may be necessary or convenient;

(18) After due approval by a majority of the members of the Association, to acquire now or at any time hereafter, and to enter into leases and agreements whereby the Association acquires ownership, leaseholds, memberships, and other possessory or use interest in lands or facilities including, but not limited to, swimming pools, tennis courts, decks and other recreational facilities whether or not contiguous to the lands of the Condominium Property to provide enjoyment, recreation or other use or benefit to the Owners of Condominium Units; and to encumber and convey said properties and the Common Areas and facilities pursuant to N.C.G.S. 47C-3-112;

(19) To contract for the management of the Condominium Property and common areas and facilities and to designate to such contractor all of the powers and duties of the Association, except those which may be required by the Condominium Documents to have approval of the Board of Directors or membership of the Association;

(20) To make contracts and incur liabilities as may be reasonably necessary for the operation of the Association;

(21) To pay all taxes and assessments which are or may become liens against any part of the Condominium Property, common areas and facilities, other than Condominium Units and the appurtenances thereto, and to assess the same against the members and their respective Condominium Units subject to such liens.

(22) To grant easements, leases, licenses and concessions through or over the Common Areas and facilities in accordance with the Condominium Documents and N.C.G.S. 47C-3-112; and,

(23) Exercise any and all other powers that may be exercised in this state by legal entities of the same types as the Association.

M. Liability: The Directors shall not be liable to the members except for their own individual willful misconduct, bad faith or gross negligence.

## ARTICLE VI

### MEETINGS OF DIRECTORS

A. First Meeting: The first meeting of each Board commencing with the election of the first Director by the non-declarant unit shall be held immediately upon adjournment of the annual meeting at which they were elected, provided a quorum shall be there present, or as soon thereafter as may be practicable.



B. Annual Meeting: An annual meeting of the Board of Directors may be held immediately before the annual meeting of members.

C. Special Meetings: Special meetings of the Board of Directors may be called by or at the request of the President or any Director.

D. Place of Meetings: All meetings of the Board of Directors shall be held at the principal office of the Corporation except that such meetings may be held at such other place, within or outside the State of North Carolina, as may be designated in a duly executed Waiver of Notice of such meeting or as may be otherwise agreed upon in advance of the meeting by a majority of the Directors.

E. Notice of Meetings: The first meeting of the Board of Directors may be held without notice. Other meetings shall be called on not less than two days prior notice. Notice of a special meeting need not state the purpose thereof and such notice shall be directed to each Director at his residence or usual place of business by mail, cable, telegram or may be delivered personally. The presence of a Director at a meeting shall constitute a Waiver of Notice of that meeting except only when such Director attends the meeting solely for the purpose of objecting to the transaction of any business there at, on the ground that the meeting has not been lawfully called, and does not otherwise participate in such meeting.

F. Open Meetings: All members of this Association shall be given notice of Directors Meetings as specified in Article VI, Section E and shall be allowed to attend any and all meetings of the Board of Directors. The members of the Corporation shall be allowed to participate in the Board of Directors' Meetings only as set forth in Paragraph I. of this Article. Members of the Association shall not be allowed to participate in any of the votes of the Directors. Nor shall the members be allowed to disturb or disrupt the meeting of the Directors in any way whatsoever. However, the Board of Directors may, in its discretion, allow unit owners to participate in the discussions of the Board. This provision shall not be abrogated, amended, superceded or deleted except by a majority vote of members of the Association.

G. Quorum and Manner of Acting: A majority of the number of Directors fixed by these By-Laws as the number of Directors of the Corporation shall constitute a quorum for the transaction of any business at any meeting of the Board of Directors. Except as otherwise expressly provided in this Article, the act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

H. Informal Action of Directors: Action taken by a majority of the Directors without a meeting shall constitute Board action if written consent to the action in question is signed by all the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

I. Order of Business: The order of business at all meetings of the Board shall if practical be as follows:

1. Roll call.
2. Proof of Notice of Meeting or Waiver of Notice.
3. Reading of Minutes of last meeting.
4. Consideration of communications.
5. Election of necessary Directors and Officers.
6. Reports of Officers and Employees.
7. Report of Committees.
8. Unfinished business.

9. Original resolutions and new business.
10. Comments or Questions by Unit Owners.
11. Adjournment.

## ARTICLE VII

### OFFICERS

A. Election: The Board of Directors shall elect the following officers of the Corporation: a president, one or more vice-presidents, a secretary, a treasurer and such other officers and assistant officers, as may be deemed necessary. The election of officers shall take place at the first meeting of the Board of Directors following the annual meeting of the Members.

B. Term: Each Officer, except such officers as may be appointed in accordance with the provisions of this Article, shall hold office until his successor shall have been duly chosen and qualified or until his death or until he shall resign or shall have been disqualified or shall have been removed from office.

C. Removal and Resignation: Any Office elected or appointed may be removed by the person or persons authorized to elect or appoint such Officer whenever in their judgment the best interests of the Corporation will be served thereby. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of 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.

D. Subordinate Officers and Agents: The Board of Directors, from time to time, may appoint other officers or agents, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors from time to time may determine. The Board of Directors may delegate to any officer or agent the power to appoint any subordinate officer or agent and to prescribe his respective authority and duties.

E. Vacancies: A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

F. Multiple Offices: No person shall simultaneously hold more than one of the offices required by these By-Laws. The President cannot succeed himself after having served one full term of office.

G. Duties: The duties of the officers are as follows:

(1) President: The President shall be the principal executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Corporation. He shall, when present, preside at all meetings of the members and the Board of Directors; he shall sign, with the Secretary, or any other proper officer of the Corporation thereunto authorized by the Board of Directors any deeds of trust, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; he shall see that all orders and resolutions of the Board are carried out; he shall have general supervision and direction of the other officers and agents of the Corporation and shall see that their duties are properly performed; he shall submit a report of the operations of the Corporation for the fiscal year to the Directors whenever called for by them, and to the members at the annual meeting, and

from time to time shall report to the Board all matters within his knowledge which the interest of the Corporation may require to be brought to their notice; and, in general, he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time. The President shall cause to be prepared any amendments to the Declaration which may have been approved pursuant to the Declaration of Condominiums, BIRCH CREEK II CONDOMINIUMS, and shall execute and cause to be recorded any such amendment or amendments on behalf of the Association all as provided by and in compliance with North Carolina law.

(2) Vice-President: At the request of the President, or in the absence, or in the event of his death, disability, inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting shall have all powers of and be subject to all the restrictions upon the President. The Vice-President shall also perform such duties as from time to time may be assigned to him by the President or Board of Directors.

(3) Secretary: The Secretary shall: (a) keep the minutes of the meetings of the members and the Board of Directors; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the Corporate records and seal of the Corporation and see that the seal of the Corporation is affixed to all documents the execution of which on behalf of the Corporation under its seal is duly authorized; (d) keep a register of the post office address of each member which shall be furnished to the Secretary by such member; (e) have general charge of the membership list of the Corporation; (f) keep or cause to be kept in the State of North Carolina at the Corporation's registered office or principal place of business a record of the Corporation's members, giving the names and addresses of all members and prepare and cause to be prepared voting lists prior to each meeting of members as required by law; (g) attest the signature of the President or Vice President on such documents which require an attestation including any amendment to the Declaration of Condominium, BIRCH CREEK II CONDOMINIUMS, and shall certify the accuracy of any documents as requested by the President and Vice President; and (h) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

(4) Treasurer: The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board; shall disburse the funds of the Corporation as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Corporation, such records to be open to inspection by members at reasonable times; may, at the election of the Board, be required to give the Corporation, at the Corporation's cost, a bond in a sum and with one or more sureties satisfactory to the Board, for the faithful performance of the duties of his office, and the restoration to the Corporation, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the Corporation; shall maintain a register for the names of any mortgage holders or lien holders on Units who have requested in writing that they be registered and to whom the Corporation will give notice of default in case of non-payment of assessments, provided, however, no responsibility of the Corporation is assumed with respect to said register except that it will give notice of default of any Owner in his obligations to the Corporation to any registered mortgagee or lienor therein, if so requested by said mortgagee or lienor; shall, with the approval of

1407 1708

the Board, be authorized to delegate all or part of his responsibilities to competent accounting, collection or management personnel, pursuant to written definition of the responsibilities delegated to, and the condition of performance imposed upon, such personnel, but, in such event, the Treasurer shall retain supervisory responsibilities; shall co-sign all promissory notes with the President; shall prepare the annual budget and statement of income and expenditures which shall be approved by the Board before presentation to the members at the annual meeting; and shall perform all duties incident to the office of Treasurer and such other duties as may be prescribed by the Board of Directors or President.

H. Compensation: No compensation shall be paid to any officer for his services. However, any officer may be reimbursed for his actual expense incurred in the performance of his duties, as long as such expense receives approval of the Board and is within the approved Corporate Budget.

I. Duties of Officers and Directors May Be Delegated: In case of the absence of any officer of the Corporation or for any other reason that the Board may deem sufficient, the Board may delegate the powers or duties of such officer to any other officer or a Director for the time being, provided a majority of the entire Board of Directors concurs therein.

Any of the powers and/or duties of the Board of Directors or the officers of the Corporation may be delegated to a Management Agent except (a) the authority of the President and Secretary to execute, on behalf of the Corporation any deeds of trust, mortgages, bonds, contract and any other instruments of the Corporation; and (b) those powers set forth in Article V, Paragraph L.

## ARTICLE VIII

### FINANCES AND FISCAL MANAGEMENT

A. Fiscal Year: The fiscal year of the Association shall be the calendar year.

B. Assessments:

1. The Board shall determine from time to time the sum or sums necessary and adequate for the costs of performing the functions, objects and purposes of the Association and the common expense of the condominium and/or Association properties and shall prepare and adopt a budget for each calendar year. At the annual meeting of the members, such budget shall be submitted to the members for review but not their approval. As approved, the budget shall constitute the basis for all regular assessments against Unit Owners, which assessments shall be due and payable periodically as determined by the Board. Common expenses shall include, but not be limited to, expenses for the operation, care, preservation, management, maintenance, repair or replacement of the common areas and facilities and Association property, costs of carrying out the purposes, powers and duties of the Corporation, insurance premiums and expenses, office expense, utility services, management fees, costs of maintaining, repair, replacing, operating, managing and caring for properties owned or available for use by the Association and all other rights, privileges, and other possessory or use interests in lands or facilities whether or not contiguous to the lands of the Condominium which are owned, held or available for use by the Association, and any other expenses designated as common expense from time to time by the Board of Directors of the Corporation. Provided, however, the annual assessment may not be increased more than fifteen percent (15%) above the maximum assessment for the previous year without an affirmative vote of a majority of the membership.

2. The Board is specifically empowered on behalf of the Corporation to make and collect assessments and to care for, preserve, manage, operate, maintain, repair and replace the common areas and facilities and Association property. Funds for the payment of common expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing common expenses provided in the Declaration. Assessments shall be payable periodically as determined by the Board.

3. Special assessments for common expenses not adequately funded through the regular assessments may be required by the Board and shall be levied and paid in the same manner as hereinbefore provided for regular assessments. Notwithstanding any of the above, no special assessment of any nature may be levied by the Board without the assent of a majority of the Association members who are voting in person or by proxy, at a meeting duly called for the purpose of voting on any such assessment.

4. Special assessments against any Owner for any purpose authorized by the Condominium Documents, shall be levied at such times as is determined by the Board.

5. The Board may require that any common expense associated with the maintenance, repair or replacement of a limited common element be assessed against the units to which that limited common element or area is assigned.

6. When the Board has determined the amount of any assessment, the President or Treasurer of the Corporation (or the personnel to whom such authority has been delegated) shall mail or present a statement of assessment to each of the assessed Owners. All assessments shall be payable to the Corporation, and upon request, the President or Treasurer or their designated agent shall give a receipt for each payment made.

7. The Board may enter into a management contract with third parties to whom the Board may delegate the power to levy and collect assessments approved by the Board or required by the Condominium Documents.

8. All assessments not paid within thirty (30) days after the same shall be due shall bear interest at the rate of eighteen percent (18%) per annum until paid.

C. Excess of Assessments: In any year in which there is an excess of assessments received over amounts actually used or payable for the purposes described in these By-Laws and in the Declaration, such excess shall, in the discretion of the Board of Directors of the Association, either be allocated and used in the following year's general operating budget or, alternatively, deposited in the capital reserve account. If the Directors elect to deposit the excess of assessments into the capital reserve account, said assessments shall be used in replacement, repair or maintenance of the common areas and facilities of the Association or Association property.

## ARTICLE IX

### COMMITTEES

A. Committees: The Board may establish by resolution adopted by a majority of Directors, such committees which it deems necessary or desirable to carry out the purposes of the Corporation.

B. Committee Chairman and Members: The Chairman of all committees shall be appointed by and serve at the pleasure of the Board. Each Committee shall contain two or more members of the Board.

C. Committee Reports: The Chairman of each committee shall make a report to the President in writing of committee meetings and activities.

D. Authority: Unless specifically authorized in writing by the Board of Directors or the President, a committee Chairman or a committee shall have no authority to legally obligate the Corporation or incur any expenditure on behalf of the Corporation.

## ARTICLE X

### EASEMENTS

In the event that any Condominium Unit or any part of the building or improvements as presently constructed which are intended to be a part of the Condominium project shall encroach upon any common property, common areas or facilities, or property owned, held or used by the Association, then an easement appurtenant to such Unit, building or improvement shall exist for the continuation of such encroachment for so long as such encroachment shall naturally exist.

The Declarant, its successors and assigns, and any person, firm or corporation claiming by, through or under it, shall have a perpetual right and easement over, through, across and upon the streets and roadways shown on Exhibit "C" attached to the Declaration as that Exhibit may be amended or changes as declarant exercises development rights, for the purpose of ingress and egress to and from the property described in Exhibit "B" attached to said Declaration. Declarant, its successors and assigns, shall also have an easement in and to all utility easements shown on Exhibit "C" attached to said Declaration, as that Exhibit may be amended or changed as declarant exercises development rights.

## ARTICLE XI

### NOTICES

A. Definition: Whenever by statutory law, the Condominium Documents, the Articles of Incorporation, or these By-Laws, notice is required to be given to any officer, Director or member, it shall not be construed to mean personal notice, but such notice may be given in writing by mail, by depositing the same in a post office or letter box in a post-paid, sealed envelope, addressed as appears on the books of the Corporation, unless otherwise specifically stated herein.

B. Service of Notice - Waiver: Whenever any notice is required to be given by statutory law, the Condominium Documents, the Articles of Incorporation, or these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent to the giving of such notice.

C. Address: The address for notice to the Corporation shall be that of the Registered Agent for service of process on the Corporation.

## ARTICLE XII

### SUSPENSION OF RIGHTS

The Board may suspend, by a majority vote of the Board, the voting rights and right to hold office of a member during any period in which the member shall be in default in the payment of any dues, assessments, penalties or fines, imposed by the Corporation. Such rights may also be suspended, after notice and

hearing, for a period not to exceed sixty (60) days for a violation of the Association's Rules and Regulations, these By-Laws or the Condominium Documents.

#### ARTICLE XIII

##### BOOKS AND RECORDS

The books, records, papers, correspondence, ballots and proxies of the Corporation shall, at any reasonable time, be subject to inspection and copying by any member, or his agent or attorney, for any purpose.

#### ARTICLE XIV

##### CORPORATE SEAL

The corporate seal shall be in such form as shall be approved from time to time by the Board of Directors.

#### ARTICLE XV

##### RULES OF ORDER

All meetings of the members shall be governed procedurally by Roberts Rules of Order, Revised, unless suspended by two-thirds vote of the members present and entitled to vote.

#### ARTICLE XVI

##### ASSETS OF THE ASSOCIATION

The Association shall hold, own, maintain, manage, control, repair, preserve, replace, care for and operate any and all real property, together with appurtenances, fixtures and improvements thereto, all personal property, all fixtures, all rights and privileges, including all parts of the water, sewer and drainage systems, and other possessory or use interest in land, facilities, and roads and streets which may be conveyed to, or made available for use by the Association, the Declarant of the Condominium facility known as BIRCH CREEK II CONDOMINIUMS, or by any other person, firm, corporation or entity, or belonging to, or made available for, the Association, for the use, enjoyment, health, safety and welfare of the Owners of said Condominium units and the residents within said Condominium facility.

All such real property together with appurtenances, fixtures and improvements thereto, personal property, fixtures, rights and privileges, including riparian rights, and other possessory or use interests in land or facilities owned by, belonging to, or made available for, the Association shall be treated, except as otherwise specifically in these By-Laws provided, as common areas and facilities of BIRCH CREEK II CONDOMINIUMS project for purposes of managing, controlling, repairing, replacing, preserving, caring for, operating and otherwise dealing with for the use, health, safety, and welfare of the Owners of those Condominium Units and the residents within the Condominium facility as herein provided.

The costs and expenses of holding, owning, maintaining, managing, controlling, repairing, replacing, preserving, caring for and operating all common areas of the BIRCH CREEK II CONDOMINIUMS shall be "common expenses" and included in the budget for each fiscal year for the Association and all provisions of these By-Laws shall apply thereto.

ARTICLE XVII

QUALIFICATION FOR TAX EXEMPTION

No part of the net income, if any, or earnings of this Corporation shall inure to the benefit of any officer, member or Director of the Corporation, or any other private individual either during the Corporation's existence or in the event of its dissolution. In the event of the dissolution of the Corporation for any cause or reason, any assets remaining after the payment of creditors, debts and other costs and expenses incident to the dissolution, shall be distributed, transferred, and paid over to such qualified association or organizations having purposes similar to those set forth in Paragraph 3 of the Articles of Incorporation as shall be selected by the Board of Directors of the Corporation.

ARTICLE XVIII

CONTRACTS, LOANS, CHECKS, DRAFTS AND DEPOSITS

A. Contracts: The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Corporation, and such authority may be general or confined to specific instances.

B. Loans: No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

C. Checks and Drafts: All checks, drafts or other orders for the payment of money, issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

D. Deposits: All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories as the Board of Directors may select.

ARTICLE XIX

DEFAULT

A. Enforcement of Lien for Assessments: In the event an Owner does not pay any sums, charges, or assessments required to be paid to the Corporation within thirty (30) days of the due date, the Corporation, acting on its own behalf or through its Board, may enforce its lien for assessments, or take such other action to recover the sums, charges or assessments to which it is entitled, in accordance with the Declaration, the statutes or both.

B. Governmental Liens and Assessments: In the event that an Owner fails to pay any tax or assessment lawfully assessed by any governmental subdivision within which the Property is situated, by the date such tax or assessment is due, the Board may pay the same from the funds of the Corporation and specifically assess such Owner for the amount paid.

C. Foreclosure: If the Corporation becomes the owner of a Unit by reason of foreclosure, it shall offer said Unit for sale and at such time as a sale is consummated, it shall deduct from the proceeds of said sale all sums of money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, funds necessary to discharge any liens or mortgages of record, and any



and all expenses incurred in the resale of the Unit, which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the Unit in question. All monies remaining after deducting the foregoing items of expenses, costs and other deductions shall be returned to the former Owner of the Unit.

D. Other Remedies: In the event of violation of the provisions of the Condominium Documents as the same are defined in the Declaration, for thirty (30) days after notice from the Corporation to the Unit Owner to correct such violation, the Corporation, on its own behalf or by and through its Board of Directors, may bring appropriate action to enjoin such violation or may enforce the provisions of the Condominium Documents, or may sue for damages, or take such other courses of action, or other legal remedy as it or they may deem appropriate.

E. Legal Costs: In the event any legal action is brought against an Owner and results in a judgment for the Corporation, the Owner shall pay the Corporation's reasonable attorney's fees, costs of collection, and court costs.

F. Intent: Each Owner, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and other violations regardless of the harshness of the remedy available to the Corporation and regardless of the availability of the other equally adequate legal procedures. It is the intent of all Owners of Units to give to the Corporation a method and procedure which will enable it at all times to operate on a business-like basis, to collect those monies due and owing it from the Owners of Units, and to preserve each Unit Owner's right to enjoy his unit, free from unreasonable restraint and nuisance.

## ARTICLE XX

### RULES AND REGULATIONS

In addition to the other provisions of these By-Laws, any Rules and Regulations adopted by the Board, together with any subsequent changes, shall govern, to the extent not inconsistent with these By-Laws and the Declaration, the use of the Units and the common areas and facilities and the conduct of all owners, residents and guests. Such Rules and Regulations shall be subject to such changes, additions, or amendments as may be deemed appropriate by the Board. Any and all such Rules and Regulations, including any changes, amendments, modifications or additions thereto, shall promptly be distributed in writing to the owners of all Units in the Condominium and shall become enforceable only upon such distribution.

## ARTICLE XXI

### JOINT OWNERSHIP

Membership may be held in the name of more than one Owner. In the event ownership is in more than one person, all of the joint Owners shall be entitled collectively to only one vote which shall be proportionate to the undivided interest in common areas appurtenant to the unit, in the management of the affairs of the Corporation, and the vote may not be divided between plural Owners. The manner of determining who shall cast such vote shall be as set forth in Article II, Section I.

## ARTICLE XXII

### INDEMNIFICATION

The Corporation may indemnify any person made a party to an action, by or in the right of the Corporation to procure a

judgment in its favor by reason of his being or having been a Director or Officer of the Corporation, against the reasonable expenses including attorneys' fees actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, except in relation to such matters as to which such Director or officer is adjudged to have been guilty of gross negligence or misconduct in the performance of his duty to the Corporation or any acts or actions taken which are not within the duties or authorities, as set forth herein, of such Officer or Director.

#### ARTICLE XXIII

##### AMENDMENTS

These By-Laws may be amended in the following manner: An Amendment or Amendments may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors or by no less than 20% of the members of the Corporation entitled to vote, whether meeting as members or by instrument in writing signed by them. Upon any Amendment or Amendments to these By-Laws being proposed by said Board of Directors or members, such proposed Amendment or Amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed Amendment or Amendments. It shall be the duty of the Secretary to give to each member written or printed notice of such Special Meeting, stating the time and place thereof, and reciting the proposed Amendment or Amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail addressed to the member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member.

Notwithstanding the foregoing, these By-Laws may be amended as otherwise set forth herein, at any annual meeting of members if the proposed amendment shall have been sent to each Unit owner along with the Notice of Meeting for said annual meeting.

At any such meeting where an amendment is proposed, the Amendment or Amendments proposed must be approved by an affirmative vote, in person or by proxy, of a majority of the members having voting rights in order for such Amendment or Amendments to become adopted. Any such Amendment or Amendments so passed shall not become operative unless set forth in an Amended Declaration duly recorded in the office of the Register of Deeds of New Hanover County. All Unit Owners shall be bound to abide by any such Amendment or Amendments when the adopted Amendment or Amendments are duly recorded in the form of an Amended Declaration.

Notwithstanding any other provision of this Article XXIII, no Amendment or Amendments may be adopted which would in any way alter, amend or affect Articles XVI and X of these By-Laws without unanimous approval and vote of all members entitled to vote, and no Amendment or Amendments shall be adopted which would operate to impair or prejudice the rights and/or liabilities of any mortgagee or lender secured by any Condominium Unit.

Declarant, in his sole discretion may, prior to termination of Declarant control as defined in these By-Laws and in the Declaration, amend these By-Laws to include a provision that any amendment to the Declaration or By-Laws which proposes to annex additional property, other than that contemplated by Declarant at the time of execution of the Declaration or enactment of the By-Laws, or which abrogates the rights of any Unit Owner, shall not be valid without the prior written consent of the Administrator of Veterans Affairs, or the Secretary of Housing & Urban Development, or any other mortgage lender as may be required, and/or their successors in such office, and/or their duly appointed representatives.

ARTICLE XXIV

CONSTRUCTION

These By-Laws are set forth to comply with the requirements of the North Carolina Condominium Act, Chapter 47C of the General Statutes of North Carolina.

Should any of the covenants or provisions herein contained or imposed be void or be in conflict with the requirements of the North Carolina Condominium Act, Chapter 47C of the General Statutes of the State of North Carolina, or be or become unenforceable at law or in equity, the remaining provisions of this instrument shall, nevertheless, be and remain in full force and effect.

Wherever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the context so requires.

---

The foregoing were adopted as the By-Laws of BIRCH CREEK II HOMEOWNERS' ASSOCIATION, INC. by its First Board of Directors.

Certified to be correct, this the \_\_\_\_\_ day of \_\_\_\_\_, 1989.

---

Secretary, First Meeting of  
Board of Directors of the  
BIRCH CREEK II HOMEOWNERS'  
ASSOCIATION, INC.