

15.00
1.00

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

AMENDMENT TO BYLAWS OF
BIRCH CREEK HOMEOWNERS ASSOCIATION INC.

Date: June 4, 1993

THIS AMENDMENT TO BYLAWS OF BIRCH CREEK HOMEOWNERS ASSOCIATION INC. (hereinafter referred to as "Amendment") made pursuant to Chapter 47A of the North Carolina General Statutes and pursuant to the bylaws, as heretofore amended, of Birch Creek Homeowners Association Inc. (hereinafter the "Association").

THAT WHEREAS, Birch Creek Condominium was established by the submission of certain real property located in Wilmington, New Hanover County, North Carolina, by and through that DECLARATION OF CONDOMINIUM recorded in Book 1203 at Page 1317 of the New Hanover County Registry, as the same has heretofore been amended from time to time; and,

WHEREAS, the Association is a non-profit corporation duly organized pursuant to Chapter 55A of the North Carolina General Statutes to administer the operation and management of Birch Creek Condominium; said Association having been incorporated on 14 May 1982 with the Department of the Secretary of State of North Carolina and recorded in the New Hanover County Register of Deeds (hereinafter the "Registry") in Book 1203 at Page 1309 on 9 June 1982; and,

WHEREAS, the Association adopted bylaws, same having been duly adopted at the Organization Meeting of the Board of Directors of the Association, with a copy of said bylaws having been attached as Exhibit C to the Declaration referred to above; and,

WHEREAS, the Association has heretofore adopted amendments to the bylaws which have been duly recorded in the Registry as follows:

RECORDED AND VERIFIED
MARY SUE OOTS
REGISTER OF DEEDS
NEW HANOVER CO. NC.
'93 JUN 7 AM 10 46

<u>BOOK</u>	<u>PAGE</u>
1330	1035
1360	924
1437	298
1471	500
1476	370
1637	874

and the original bylaws attached as Exhibit C to the Declaration of Condominium as amended by the amendments hereinabove referred to

RETURNED TO
Rick Pensinger
MWG

are hereinafter referred to as the Bylaws; and,

WHEREAS, ARTICLE XXIII of the Bylaws provides a procedure for the amendment of the Association's Bylaws whereby any such amendment(s) shall not become operative until set forth in an amendment duly recorded in the Registry; that the amendments to the Bylaws as set forth in Exhibit A attached hereto and made a part hereof by this reference were proposed and approved in accordance with said ARTICLE XXIII and the Association intends to render the amendments set forth in said Exhibit A operative by the recording of this instrument in the Registry; and,

BOOK

PAGE

1672

0564

WHEREAS, the amendments set forth in said Exhibit A were duly proposed and subsequently submitted to the membership of the Association at a duly called special meeting of the membership of the Association on March 20, 1993; and,

WHEREAS, at said special meeting of the members of the Association, the members did vote, in person and by proxy, for or against the proposed amendments, whereby the amendments set forth in said Exhibit A were adopted by the requisite vote in favor thereof, said voting being set forth in Exhibit B attached hereto and made a part hereof by this reference.

NOW, THEREFORE, for and in consideration of the premises, the Bylaws of Birch Creek Homeowners Association Inc. are hereby amended and shall henceforth read and be as follows:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART
HEREOF BY THIS REFERENCE FOR A FULL TEXT OF
EACH DULY ADOPTED AMENDMENT TO THE BYLAWS OF
BIRCH CREEK HOMEOWNERS ASSOCIATION INC.

The amendments set forth in Exhibit A were approved and authorized by the Association and the Association has directed the undersigned to execute and record this Amendment as the act and deed of the Association.

Except as specifically amended by this Amendment To Bylaws of Birch Creek Homeowners Association Inc., all remaining terms and provisions of the Bylaws, as heretofore amended by duly recorded amendments, of Birch Creek Homeowners Association Inc. shall be and remain in full force and effect.

IN WITNESS WHEREOF, the party hereto has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

Birch Creek Homeowners Association Inc.

By: Robert F. Markley
President

ATTEST:

Brenda G. McDonald
Secretary

[Corporate Seal]



BOOK PAGE
1672 0565

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Rebekah Angelyn Davis, a Notary Public in and for the County and State aforesaid do hereby certify that Brenda G. McDonald personally appeared before me this day and acknowledged that he/she is Secretary of Birch Creek Homeowners Association Inc., and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself as its Secretary.

WITNESS my hand and notarial seal this the 4th day of June, 1993.

Rebekah Angelyn Davis
NOTARY PUBLIC

MY COMMISSION EXPIRES: 10-14-96



STATE OF NORTH CAROLINA
New Hanover County

The Forgoing / Annexed Certificate(s) of Rebekah Angelyn Davis

Notary (Notaries) Public is/ are certified to be correct.

This the 7 day of June 1993
Mary Sue Oots, Register of deeds

by Phyllis Lynn
Deputy/Assistant

To Amendment To Bylaws of Birch Creek Homeowners Association Inc.

First Amendment:

Amendment ARTICLE III Paragraph I by adding the following new paragraphs to read as follows:

The voting for new directors shall be handled by Special Proxy (Ballot) which will be mailed with the Notice of Annual Meeting. Even homeowners attending the meeting should return the Special Proxy for new directors to a designated proxy holder prior to meeting. This Special Ballot does not restrict nominations from the floor. The procedure for enacting this By-Law will be developed and approved by current Board and be used by all those thereafter.

The Board must include the following in the procedure mentioned above:

1. A letter from the President must be issued to the members no later than the first week of August every year requesting they send a letter directed to the Secretary in care of the Corporate office stating they are interested in being a candidate for the Board of Directors at the forthcoming annual meeting. A paragraph must be included in the letter which invites all the members to meet, talk with, and question the nominees in a planned format at a community meeting sponsored by the Board. The location shall be comfortably suited for the weather and must be held as soon as possible after the receipt of the letters from the members wishing to participate as a Director.
2. The candidates will not be screened by the Board and all persons who nominate themselves are to be included on a Special Voting Proxy (Ballot). This does not preclude nominations from the floor.

Second Amendment:

Amend ARTICLE V Paragraph B by inserting two new sentences at the end of the first sentence and in front of the second sentence of ARTICLE V Paragraph B to read as follows:

After the Special Meeting held in March 1993 for the purpose of amending this By-Law and others the number of Directors will be changed to no less than five (5) and no more than seven (7) each of whom must be either an owner or an employee of a corporate owner. The procedure required to reduce the number to seven (7) shall be as provided in the amended ARTICLE V-C.

Third Amendment:

Amend ARTICLE V Paragraph C by inserting a new sentence at the end of the first sentence and in front of the second sentence of ARTICLE V Paragraph C to read as follows:

The election of directors will be handled as follows: At the Annual Meeting of 1993 the members will elect two (2) two-year Directors; at the Annual Meeting of 1994 the members will elect four (4) two-year Directors and one (1) one year Director.

BOOK 1672 PAGE 0566

RECEIVED MAY 28 1993

MARSHALL, WILLIAMS & GORHAM

ATTORNEYS AT LAW

WILMINGTON, NORTH CAROLINA

May 27, 1993

CLIENT PICKUP

MAILING ADDRESS
P. O. DRAWER 2088
WILMINGTON, N. C.
28402-2088

TELEPHONE (919) 763-9891
TELECOPIER (919) 343-8604

OFFICES
14 SOUTH FIFTH STREET
WILMINGTON, N. C.

ALAN A. MARSHALL (1908-1979)
LONNIE B. WILLIAMS
A. DUMAY GORHAM, JR.
JERRY C. WOODPELL
WILLIAM ROBERT CHERRY, JR.
RONALD H. WOODRUFF
LONNIE B. WILLIAMS, JR.
JOHN D. MARTIN
CHARLES D. MEIER

Mr. Bob Marbry
Birch Creek Homeowners Association Inc.

Re: Amendment to Bylaws

Dear Bob:

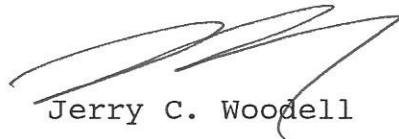
Enclosed is the original of the Amendment To Bylaws of Birch Creek Homeowners Association Inc. This document needs to be properly executed before a notary public by the president and secretary of the Association. Once that is done, please return the document to me and I will have the same recorded in the New Hanover County Registry.

I am also enclosing a memo which I have prepared to you addressing the issue of res judicata as it applies to the claim of Mr. Marapese for attorneys fees. It is my opinion that the doctrine of res judicata does apply in this instance since the Order of the Court dismissed the claim of Mr. Marapese and the other defendants with prejudice and the Order also specifically stated that each party would pay their own attorneys fees. I suggest that you take this memo with you to the arbitration. If you have any additional questions concerning this matter, please advise.

With kindest regards, I am,

Sincerely,

MARSHALL WILLIAMS & GORHAM



Jerry C. Woodell

JCW:rad
File No. 041583
Enclosures