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DECLARATION OF CONDOMINIUM  
BIRCH CREEK II CONDOMINIUMS

RECORDED AND VERIFIED  
REBECCA P. TUCKER  
REGISTER OF DEEDS  
NEW HAVEN CO. NC

JAN 3 3 24 PM '89

BIRCH CREEK PARTNERSHIP, a Limited Partnership, doing business in the State of North Carolina, hereinafter called "Declarant" being the owner in fee simple of the property hereinafter described, hereby submits said property to condominium ownership pursuant to Chapter 47C of the North Carolina General Statutes, and to that end does hereby publish and declare that all of said property is and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which shall be deemed to run with the land and shall be a burden to Declarant, its successors and assigns, and any person acquiring or owning an interest in the property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. DEFINITIONS. As used herein and in the By-Laws attached hereto and in all amendments hereto, unless the context requires otherwise:

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- A. "Act" means the "North Carolina Condominium Act" set forth in Chapter 47C of the North Carolina General Statutes, as such may be supplemented or amended from time to time.
- B. "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner by the Association.
- C. "Association" means the entity responsible for the operation of the Condominiums pursuant to the Act, whether or not incorporate, which entity includes all of the Unit Owners acting as a group in accordance with the Articles of Incorporation, By-Laws and Declaration. The "Association" shall be named BIRCH CREEK II HOMEOWNERS ASSOCIATION, INC.
- D. "Board of Directors" or "Board" means the Board of Directors of the Association and "Director" means a member of said Board of Directors.
- E. "Building" or "Buildings" shall mean all structures and improvements now or hereafter erected upon the Property, unless otherwise identified or defined herein.

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RETURNED TO *J. Hunter*

ROUNTREE & SEAGLE  
WILMINGTON, NORTH CAROLINA 28402-1409

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- F. "By-Laws" means the By-Laws for the government of the Association as they exist from time to time. A copy of the initial By-Laws are attached hereto as Exhibit F and made a part hereof by reference.
- G. "Common Areas and Facilities" means the portion of the Condominium Property owned, in undivided interest, by all the owners, as more specifically set forth herein.
- H. "Common Expenses" include the expenses of administration, maintenance, operation, repair and replacement, (including a capital reserve for repair, maintenance and replacement), of the Common Areas and Facilities, and other expenses declared by the Association to be Common Expenses, as further defined in the Act.
- I. "Common Surplus" shall mean and refer to the balance of all revenues of the Association remaining after the deduction of the Common Expenses. Any such Common Surplus shall be used to reduce the Assessments for members for the following fiscal year of the Association, based upon the proposed budget for the Association for the following fiscal year.
- J. "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common Ownership solely by the owners of those portions.
- K. "Condominium Documents" means this Declaration, the Articles of BIRCH CREEK II HOMEOWNERS ASSOCIATION, INC., By-Laws, the Rules and Regulations promulgated by the Board of Directors of the Association, and all other exhibits attached thereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended or supplemented from time to time.
- L. "Declarant" means BIRCH CREEK PARTNERSHIP, its successors and/or assigns, or any person or group of persons acting in concert who
- (1) as part of a common promotional plan offers to dispose of his or its interest in a Unit not previously disposed of, or
  - (2) reserves or succeeds to any special Declarant Right.
- M. "Declaration" means this instrument as it may be from time to time amended or supplemented.
- N. "Development Rights" means any right or combination of rights reserved by Declarant in the Declaration to add real estate to a Condominium; to create units, common elements, or limited common elements within a Condominium; to subdivide units or convert units into common elements; or to withdraw real estate from a Condominium.
- O. "Limited Common Area and Facilities" means and includes those Common Areas and Facilities which are reserved for the use of a certain Unit or Units to the exclusion of any other Unit or Units, as more specifically defined herein.



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- P. "Mortgagee" means a beneficiary under a mortgage or Deed of Trust.
- Q. "Person" means a natural person, corporation, business trust, estate, trust, partnership, Association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- R. "Plans" shall mean or refer to the plans and specifications of the Condominium prepared by Robert H. Goslee, Registered Land Surveyor, and Robert W. Sawyer, Registered Architect, recorded under the name of the condominiums in the Condominium Map Book or Unit Ownership File in the Office of the Register of Deeds in New Hanover County, in Condominium Plat Book 9 at Pages 149 through 153 and attached hereto as Exhibit "D", Sheet 1 through 6, and incorporated herein by reference.
- S. "Property" means and includes the land described in Exhibit "A", attached hereto and incorporated herein by reference, together with any Buildings and improvements located thereon.
- T. "Special Declarant Rights" means rights reserved for the benefit of Declarant to complete improvements indicated on Plats and Plans filed with the Declaration as required by North Carolina General Statutes, Section 47C-2-109; to exercise any Development Right as specified in North Carolina General Statutes, Section 47C-2-110; to maintain sales offices, management offices, signs, advertising the Condominium and models pursuant to North Carolina General Statutes, Section 47C-2-115; to use and/or reserve easements through the Common Elements for the purpose of making improvements within the Condominium or within real estate which may be added to the Condominium as allowed by North Carolina General Statutes, Section 47C-2-116; to make the Condominium part of a larger Condominium as provided for in North Carolina General Statutes, Section 47C-2-121; or to appoint or move any officer of the Association or any executive Board member during any period of Declarant control as provided in North Carolina General Statutes, Section 47C-3-103(d).
- U. "Unit" or "Condominium Unit" means a part of the Property which is to be subject to private ownership and use, as designated on the exhibits attached to this "Declaration" and as further defined in the Act.
- V. "Unit Owner" or "Owner" means a person or entity, or any combination thereof, who owns a Unit.

2. DESCRIPTION OF PROPERTY. All that certain lot, parcel, piece or plot of land with the Buildings and improvements thereon erected or to be erected situated, lying and being in the City of Wilmington, County of New Hanover, State of North Carolina, and more particularly described in Exhibit "A" attached hereto and made a part hereof.

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Declarant submits only that portion of the land described in Exhibit "A" attached hereto upon which Phase 1 of BIRCH CREEK II CONDOMINIUMS is currently constructed. The Property hereby submitted is more particularly described in that Condominium Plat recorded in the Office of the Register of Deeds of New Hanover County in Condominium Plat Book 9 at Pages 149 through 153. Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the Property subject to this Declaration by adding all or any portion or portions of the land described in Exhibit "B" and shown as the area designated "FUTURE DEVELOPMENT" in Exhibit "C", Pages 1 and 2, of this Declaration to the coverage of this Declaration.

3. EXPANSION OF THE PROPERTY SUBJECT TO THIS DECLARATION.

A. By this Declaration the Declarant submits only the land described in Exhibit "A", together with the improvements thereon, and the same shall be known as BIRCH CREEK II CONDOMINIUMS. Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the Property subject to this Declaration by adding all or any portion or portions of the land described in Exhibit "B", attached hereto and made a part hereof and as further shown as the area designated "FUTURE DEVELOPMENT" upon the Plat recorded in the Office of the Register of Deeds for New Hanover County in Condominium Book 9 at Pages 149 through 153 and shown as Exhibit "C" attached hereto. Declarant makes no assurances that the Property described in Exhibit "B" or any portion thereof will be submitted to this Condominium. Nor does Declarant make any representations about the order in which those portions or parcels may be subjected to Development Rights.

B. Such expansion shall occur, if at all, by the recordation of one or more amendments or Supplemental Declarations to this Declaration, which amendment(s) shall be executed by the Declarant or its successors and assigns. The recordation of any such amendment, and expansion of the Property subject to this



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Declaration effectuated thereby, shall not require consent or ratification of any Unit Owner nor the Association.

C. The right and option described in sub-paragraphs A and B above shall terminate on December 31, 1999, and shall be subject to the conditions, restrictions and limitations set forth in sub-paragraphs D, E, F, and G, of this paragraph 3. However, if Declarant does not complete the expansion contemplated within the time specified herein, Declarant may amend this Declaration for the sole purpose of extending the time within which to complete expansion, which said amendment shall not require the consent or ratification of any Unit Owner or the Association.

D. If the Declarant adds all the land described in Exhibit "B" hereof, the Declarant covenants and agrees that no more than 102 Units will be added to the Property subject to this Declaration by such expansion. If Declarant adds any portion or portions of the aforesaid land, the Declarant covenants and agrees that with respect to any such portion the density of Units shall not exceed an average of 17 Units per acre.

E. The Declarant covenants and agrees that all Buildings containing Units built on any portion of the land added to and made subject to this Declaration shall be not more than three stories in height above finished grade and shall use wood, vinyl siding, stucco or brick exteriors, or combination thereof.

F. It is understood and declared that the undivided fractional or percentage interest owned by each Unit Owner of Units in BIRCH CREEK II CONDOMINIUMS, PHASE 1, in the Common Areas and Facilities of BIRCH CREEK II CONDOMINIUMS, PHASE 1, is as stated hereafter. However, it is further declared that in the event the Declarant, pursuant to the provisions of this Article, adds to or expands the Property, and therefore the number of Units, Unit Owners, and Common Areas and Facilities subject to this Declaration and the jurisdiction of the Association, then consequently the fractional or percentage interest owned by each Unit Owner of Units in BIRCH CREEK II CONDOMINIUMS, all phases, in the expanded Common Areas and Facilities of BIRCH CREEK II CONDOMINIUMS, all phases,

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shall necessarily have to change from that as established hereafter. It is further understood that the Act provides that the fractional or percentage undivided interest of each Unit Owner in the Common Areas and Facilities as expressed in any Declaration shall have a permanent character and shall not be altered except with the unanimous consent of all Unit Owners expressed in an amended Declaration duly recorded. Therefore, in the event the Declarant adds to or expands the Property subject to this Declaration, pursuant to this Article, then every Unit Owner of Units in BIRCH CREEK II CONDOMINIUMS, any phase, by the acceptance of the deed for his Unit shall be deemed to have specifically agreed for himself, his heirs, devisees, successors and/or assigns that the Declarant shall have the exclusive right and power, as attorney-in-fact for every Unit Owner, to establish the undivided fractional or percentage interest of each such Unit Owner in the expanded Common Areas and Facilities of BIRCH CREEK II CONDOMINIUMS, all phases, as well as the right and power to establish the undivided fractional or percentage interest in the expanded Common Areas and Facilities of BIRCH CREEK II CONDOMINIUMS, all phases, to be appurtenant to additional Units of BIRCH CREEK II CONDOMINIUMS, and, therefore, (a) the liability of each Unit Owner for Common Expenses, not specifically assessed, (b) the interest of each Unit Owner in any Common Surplus, and (c) the voting rights in the Association of each Unit Owner; which such undivided fractional or percentage interests shall be stated in any supplement to this Declaration required to be executed and recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in order to expand or add to the Property subject to this Declaration as is provided for hereinabove. It is hereby declared and agreed that the Declarant shall establish said undivided interests without prior consultation with or consent of any Unit Owner of any Unit in BIRCH CREEK II CONDOMINIUMS, any phase or the Association; and, that, the Declarant covenants and agrees to establish such undivided fractional or percentage interests for all Units at such times as may

be necessary pursuant to this Article in the proportions that the square footage of heated floor space in each Unit bears to the total square footage of heated floor space of all Units on the date of the Supplemental Declaration, or Declarations. In determining such square footage of heated floor space for any Unit existing or added to or made subject to this Declaration, all basements, attics, garages and porches (whether open or closed in) shall not be considered in establishing the square footage of heated floor space of any Unit.

G. Declarant anticipates that all Units built in future phases will be substantially similar in architectural style, quality of construction, size and will be otherwise compatible with existing Buildings, but Declarant cannot and does not make any assurances of same. Nothing herein shall be deemed to limit or alter Declarant's right, hereby reserved, to vary the internal layout or exterior configurations of any Units hereafter constructed and Declarant makes no assurances so long as Declarant substantially conforms with the provisions of this paragraph 3.

4. DESCRIPTION OF BUILDINGS AND UNIT DESIGNATIONS.

A. DESCRIPTION OF BUILDINGS. The Declarant has constructed or will construct, upon the Property described in Exhibit "A" attached hereto, one or more multi-Unit Buildings to be used for residential and lodging accommodation purposes, as hereinafter provided. A Plat of survey of the Property by Robert H. Goslee, R.L.S., showing the location of the Buildings is attached hereto and made a part hereof as Exhibit "D". The multi-Unit Buildings are more particularly described in the Plans of those Buildings, a copy of the Plans is attached and included as a part of Exhibit "D" hereto attached, showing all particulars of the Building as required by law. Typically and in general, each Unit has either one or two stories depending on the floor plan of same, and is constructed principally of concrete block with stucco, wood, vinyl siding or brick veneer, or wood frame with wood or brick veneer. The first floor is of concrete, the second floor is of wood



construction. All interior walls are wood or steel studs with wallboard facing with stripped seams and painted. The roof is of approved asphalt shingles.

B. UNIT DESIGNATIONS.

A. Designation. The Unit designation of each dwelling Unit, its location, approximate area, and immediate Common Areas and Facilities to which it has access and other data necessary for its proper identification are set forth in Exhibit "D" attached hereto and made a part hereof. Each Unit is identified by Phase Number and Unit Number.

B. Description. Each Unit is bounded vertically from the top of the first floor slab to the underside of the finished roof shingles. Each Unit is bounded horizontally by the inside of all outside walls and the walls separating Units, which are shown on said Plans, subject to such encroachments as are contained in each Building, whether the same now exist or may be caused or created by existing construction, settlement or movement of the Building, or by permissible repairs, construction or alterations. Typically and in general each two story Unit will have three bedrooms and two and one-half baths. Each one story Unit typically will have two bedrooms and two baths. The one story and the two story Units will each contain the following rooms: living room/dining room combination, kitchen, laundry room, garage and attics.

5. COMMON AREAS AND FACILITIES.

A. The Common Areas and Facilities consist of the following:

- (1) The land on which the Building is erected and lands surrounding the Building is as more fully described in Paragraph 2 above except as may be designated Limited Common Areas in Paragraph 6 below.
- (2) All common foundations, columns, girders, beams, supports, load-bearing walls, and other structural members.
- (3) All yards, roads, driveways, parking areas, walkways and paths except as may be designated Limited Common Areas in Paragraph 6 below.



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- (4) All roofs, exterior walls and interior walls except those non-load bearing partition walls, non-common chases and suspended ceiling wholly with a Unit.
- (5) All central and appurtenant installations, apparatus and equipment for utility services, including, but not limited to, power, light, gas, water, telephone, sewer, mail, irrigation, and trash disposal, if any, supplied for the use and convenience of the Unit Owners except as may be designated Limited Common Areas in Paragraph 6 below.
- (6) All fences which are located upon any common areas, including limited common areas. Specifically, any fences constructed by Declarant which encloses any courtyard, patio, refuse receptacle and any other limited common area or common area and facility.
- (7) All other parts of the Property and all apparatus and installations existing in the Building or upon the Property for common use or necessary or convenient to the enjoyment, existence, maintenance, or safety of the Property, including, but not limited to the concrete walkways and irrigation system.

B. Declarant anticipates that a small park area will be constructed and subjected to this Condominium. The park shall consist of walking trail, benches, general common recreational areas. Declarant makes no assurances that the park will be completed or subjected to the Condominium project nor, if the park is in fact subjected, a time within which the park will be completed and made a part of the Common Areas. If the park is completed and subjected to this Condominium as Common Areas, the upkeep and maintenance of same shall be the responsibility of the Association as with the other Common Areas and Facilities of the Condominium.

C. The undivided interest of each Unit Owner in such Common Areas and Facilities at the time of filing this Declaration of Condominium is as set forth in Exhibit "E" attached hereto and incorporated herein. The undivided ownership interest of each Unit Owner in the Condominium will be subject to change as and when the Condominium is expanded, if it is so expanded, all pursuant to Article 3 of this Declaration.

6. LIMITED COMMON AREAS AND FACILITIES. The Limited Common Areas and Facilities appurtenant to each Unit are as follows:

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- A. The surface areas and railings of any decks accessible by normal means solely from the Unit;
- B. All non-load bearing walls located entirely within the Unit;
- C. All materials, including but not limited to, studs, sheet-rock, plywood, carpet, paint, paneling, tile, vinyl or brick, attached to, or on, the inside surfaces or perimeter walls, floors, and ceilings of the Unit;
- D. All doors, windows, screens, ventilation fans and vents located entirely within the Unit or extending into the Unit from the perimeter walls, floors or ceilings thereof;
- E. All porches, whether open or enclosed, patios, courtyards (whether open or enclosed), balconies, decks, door steps, stoops, shutters, awnings and window boxes which are appurtenant to and adjoin each Condominium Unit and are intended for the exclusive use of the Condominium Unit to which it adjoins. Those areas are more specifically identified by hash lines shown on Exhibit "D" attached hereto and incorporated herein by reference, a copy of same which is recorded in Condominium Map Book 9 at Page 149-153 of the New Hanover County Registry;
- F. Any area adjoining and appurtenant to any Unit which is fenced by the Declarant.
- G. All air handling Units, ducts and components including air-conditioning Units or equipment appurtenant to and used by an individual Unit (whether inside or outside of Unit) and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewer lines located in the Unit; provided, however, that the portion of said lines located in a common compartment for, or installation of, such lines shall be general Common Areas and Facilities as described above;
- H. All other areas which are depicted as Limited Common Areas on the Plats and Plans of the Condominiums which are recorded in Condominium Plat Book 9 at Page 149-153 of the New Hanover County Registry and attached hereto as Exhibit "C" and Exhibit "D".

The Limited Common Areas and Facilities which are appurtenant to any unit(s) shall not be separated therefrom and shall pass with title to any unit(s), whether or not separately described. Subject to the limitations contained herein, the owners of any unit(s) shall have exclusive (100%) use, possession and control of the Limited Common Areas and Facilities appurtenant to such Unit.

7. USE. Subject to the right of the Declarant specifically reserved hereby to construct models and a sales office to assist or facilitate the sale of Units, the Building and each of the Units



shall be used only for residential purposes, which shall include the rental of any Units by the Owners thereof for residential and lodging accommodations pursuant to rules and regulations established by the Association and other uses reasonably incidental thereto, including meetings by persons owning or occupying such Units; provided, however, that Declarant reserves the right to construct models and one or more sales offices to assist or facilitate the sale of Units. The sale offices or models may, but are not required to be, Units within any of the Condominium Buildings. If a sales office or model is a Unit within any Condominium Building, then that Unit shall be designated as a Condominium Unit on the Plats and Plans and shall carry with it the rights and responsibilities of ownership of a Unit in the Condominium, including, but not limited to, the responsibility to pay its pro rata share of Common Expenses. Further, Declarant reserves the right to use all recreational and other Common Areas for its reasonable sales efforts whether the sales office or model is a Condominium Unit or not.

The residential use contemplated by this paragraph cannot be changed, amended, or modified without the written consent of the Owners of majority of all Units.

8. PERSON TO RECEIVE SERVICE OF PROCESS. George Rountree, III, is hereby designated to receive Service of Process in any action which may be brought against or in relation to these Condominium Units. Such person's residence or place of business is 11 South Fifth Street, Wilmington, North Carolina, 28401, which is within the city and county in which the Property is located. The Board of Directors may change the Person designated to receive service of process by filing the appropriate information with the office of the Register of Deeds of New Hanover County.

9. EASEMENTS. Each Unit and all Common Areas and Facilities and Limited Common Areas and Facilities are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas,



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electricity, television, telephone, water, plumbing, sewer, utility, drainage or other lines or other Common Areas and Facilities, whether or not the cause of any or all of those activities originates in the Unit in which the work must be performed.

Each Unit Owner shall have an easement in common with the other owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and any other Common Areas and Facilities located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the owners of all other Units to use pipes, ducts, cables, wires, conduits, public utility lines and any other Common Areas and Facilities serving such other Units and located in such Unit.

The initial and subsequent Boards may grant or assume easements, leases or licenses for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits, and wires over, under, and along and on any portion of the Units, and/or Common Areas and Facilities and Limited Common Areas and Facilities; and each Unit Owner by accepting a Deed to a Unit grants to the Board, or its designee, the irrevocable power of attorney to execute, acknowledge and record for or in the name of the Association or each Unit Owner such instruments as may be necessary to effectuate the foregoing.

In the event any portion of the Common Areas and Facilities encroaches upon any Unit, or any Unit encroaches upon any other Unit, or any Unit encroaches upon the Common Areas and Facilities, (whether the same now exists or may be caused or created by existing construction, settlement or movement of the Buildings, or by permissible repairs, construction or alteration), a valid cross easement for any such encroachment, or encroachments, and maintenance of same is hereby created.

The Declarant hereby reserves unto itself and its successors and assigns, and any Person, firm or corporation claiming by, through or under it, the perpetual and alienable right and easement

over, through, across and upon all the streets or roadways in the Condominiums as shown in Exhibit "C" and Exhibit "D" hereto attached, as those Exhibits may be amended or changed as Declarant exercises development rights for the purpose of ingress and egress to the Property described in Exhibit "B" hereto attached.

Declarant further reserves for itself, its successors and assigns an easement in and to all utility easements, and facilities and services installed thereon provided by, through and with the utility easement, shown on Exhibit "C" and Exhibit "D", as those Exhibits may be amended or changed as Declarant exercises development rights, or as otherwise granted.

10. MAINTENANCE.

A. Without limiting any insurance voluntarily carried by the Association on Limited Common Areas and Facilities, all Limited Common Areas and Facilities, as described in Paragraph 6 hereof, shall be maintained (and, if Owner desires, insured) by the Owner. Any replacements or substitutions of such Limited Common Areas and Facilities shall be compatible with any Common Areas and Facilities affected thereby. The Association shall not be responsible for repairing, maintaining, or insuring such Limited Common Areas and Facilities.

B. The Owner of the dwelling Unit to which a deck or decks, patio, courtyards, or porches, or any area fenced by the Declarant which is contiguous with any Unit, are appurtenant shall be responsible for the upkeep, repair, and maintenance of the surface floor area and the railings of the deck, patio or porches and shall be responsible for the upkeep and maintenance of the courtyard areas, fences which enclose the courtyard and trash receptacles are to be considered Common Areas and Facilities. No change in color, material or finish shall be made, and no additions or fixtures shall be made without express written approval of the Board of Directors, based on actual samples and drawings of the proposed change acceptable to the Board. All remaining structural portions of the deck, patio, porch or fences shall be considered

Common Areas and Facilities as provided for in the remaining sections of this Declaration including specifically the maintenance, repair, and upkeep of same.

C. All parts of a Condominium Unit shall be kept in good condition and repair by and at the expense of the Owner. The Unit shall be maintained by the Owner in a clean and safe condition, free of nuisance. Each Unit Owner will promptly comply with any requirements of the insurance underwriters of the insurance for the Common Areas and Facilities when so requested in writing by the Board or its designated agent. Any failure of an Owner to repair, maintain or replace as may be required pursuant to the Condominium Documents or a determination by the Board or its designated agent that such failure will endanger or impair the value of the Common Areas and Facilities of any Unit, or the Limited Common Areas and Facilities belonging to another Owner, may be, upon written notice to the Owner of the nature of the required repair, maintenance or replacement, repaired or replaced by the Association at the expense of the Unit Owner, to be collected by special Assessment as provided herein and in the By-Laws. Such Assessment may include the cost to the Association incurred in the abatement of any nuisance maintained by the Unit Owner therein.

11. PARTITIONING. The Common Areas and Facilities shall not be divided nor shall any right to partition any thereof exist. Nothing herein contained, however, shall be deemed to prevent ownership of a Unit by the entirety, jointly, or in common or in any other form permitted by law.

12. LIENS.

A. Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by a Declarant, or any larger percentage the Declaration specifies, agree to that action; provided, that all the owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or



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subject it to a security interest. The Declaration may specify a smaller percentage only if all of the Units are restricted exclusively to nonresidential uses. Distribution of the proceeds of the sale of a Limited Common Element shall be as provided by agreement between the Unit Owners to which it is allocated and the Association. Proceeds of the sale or financing of a Common Element (other than a Limited Common Element) shall be an asset of the Association.

B. No labor performed or materials furnished to the Common Areas and Facilities shall be the basis for a lien against those Common Areas and Facilities but, if docketed, is a lien against all of the Units in the Condominiums. No Judgment for money against the Association shall be a lien against the Common Areas and Facilities but, if docketed, is a lien against all Units in the Condominiums.

C. Unless otherwise provided by law, in the event a lien against one or more Condominium Units becomes effective, each Owner thereof may relieve his Condominium Unit of the lien by paying the proportionate amount attributable to his Unit. Upon such payment, it shall be the duty of the lienor to release the lien of record for such Unit.

D. Assessments against Unit Owners by the Association made pursuant to the By-Laws shall, if not paid when due, bear interest at such rate as is determined by the Board, not to exceed eighteen (18) percent, and shall create a lien to the extent of such Assessment, together with interest thereon, in favor of the Association against the Unit of the defaulting Owner.

E. All liens provided for herein shall be subordinate, and are hereby subordinated, to the lien of any first mortgage or deed of trust given to any lender to secure a loan, the proceeds of which are used to finance the purchase of any Unit or Units, unless any such lien provided for herein shall have been recorded in the Office of the Clerk of Superior Court of New Hanover County prior to the recordation of such claimed first lien mortgage or deed of

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trust in the Office of the Register of Deeds of New Hanover County, North Carolina.

13. NATURE OF INTEREST IN UNIT.

A. Every Unit, together with its undivided common interest in the Common Areas and Facilities, shall for all purposes be a separate parcel of real Property and the Unit Owner thereof shall be entitled to the exclusive ownership and possession of such Unit subject only to the Condominium Documents and the covenants, restrictions, easements, regulations, resolutions and decisions adopted pursuant thereto.

B. The Owner shall be entitled to use the Common Areas and Facilities in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of the owners of other Units.

14. INSURANCE.

A. Securing Policies.

- (1) Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall maintain, to the extent available:
  - a. Property insurance on the Common Elements in Units insuring against all risks of direct physical loss commonly insured against including fire and extended perils. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and
  - b. By liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.
- (2) The insurance maintained under Subdivision A(1) above need not include improvements and betterments installed by Unit Owners. The Association may, but is in no way required, to obtain insurance coverage on all or a portion of the Limited Common Areas or Facilities.
- (3) The insurance policies described in Subsection A-1 must provide that:

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- a. Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association;
- b. The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household;
- c. No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy; and
- d. If, at the time of a loss under the policy there is other insurance in the name of the Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

B. Premiums. All insurance policy premiums on the Property and for the benefit of the Association purchased by the Board or by a Managing Agent and any deductibles payable by the Association upon loss shall be a common expense.

C. Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors and not to any mortgagee or beneficiary under a Deed of Trust. The sole duty of insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the Unit Owners and lienholders as their interest may appear.

15. DISTRIBUTION OF INSURANCE PROCEEDS. Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

A. Expense of Trust. All reasonable expenses of the insurance trustee shall be first paid or provision made therefor.

B. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, in accordance with the Act, the remaining proceeds shall be paid to defray the cost thereof as provided in Paragraph 16 hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record.



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C. Failure to Reconstruct or Repair. If it is determined, as provided in Paragraph 16 hereof, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, including lienholders of record.

16. DAMAGE AND DESTRUCTION. Any portion of the Condominium for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless

- A. The Condominium is terminated pursuant to N.C.G.S. 47C-2-118,
- B. Repair or replacement would be illegal under any state or local health or safety statute or ordinance, or
- C. The Unit Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners of Units not to be rebuilt or Owners assigned to Limited Common Elements not to be rebuilt.

The cost of repair or replacement in excess of insurance proceeds in reserves is a Common Expense. If the entire Condominium is not repaired or replaced,

- A. The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium,
- B. The insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated or to lienholders, as their interests may appear, and
- C. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders, as their interests may appear, in proportion to their Common Element interest.

If the Unit Owners vote not to rebuild any Unit, the Unit's allocated interest automatically reallocated upon the vote as if the Unit had been condemned under N.C.G.S. 47C-1-107, and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Notwithstanding the provisions of this Subsection, N.C.G.S. 47C-2-118 governs the distribution of insurance proceeds of the Condominium as terminated.

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Any reconstruction or repairs shall be in accordance with the plans and specifications of the original building and improvements, unless other plans and specifications are approved by the Board and any governmental authorities whose approval may be necessary.

17. TRANSFER OF UNITS.

A. Effective Date and Exemptions. The provisions of this paragraph shall become operative upon the transfer of title to all Units by the Declarant, or upon written notice to the Board by the Declarant to such effect. None of the above provisions restricting transfer of Units shall apply to any sale or transfer held pursuant to or in lieu of foreclosure proceedings.

B. Intra-Family Transfer An Owner may give, devise, lease, sell or bequeath his interest in any Unit to his spouse, his parents, a co-owner of record or to any lineal descendants, including adopted children, or to a corporation or partnership of which all classes of stock or partnership interests are more than eighty percent owned by such Unit Owner, his spouse, his parents, a co-owner of record and his lineal descendants, without the prior written consent of the Board of Directors.

18. MANAGEMENT AGENT.

A. Interim Management Agent and Assessments. From the date of the first conveyance of title by the Declarant to an Owner until the date of the first Annual Meeting of the Members of the Corporation, the Declarant or its designee shall serve as the interim Management Agent with responsibility for coordinating all normal management services of the Association. During the period from conveyance of title by Declarant to an Owner of a Unit until the First Annual Meeting (the time of determination by the Association of the new operating budget), the interim Management Agent shall not receive a Management fee. During such period, the Owner (including Declarant) shall pay monthly to the interim Management Agent an Assessment representing the Unit's percentage of the estimated total expenses of the Property. Any actual Association operating expenses in excess of the total Assessments received from

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owners for operating expenses prior to the first Annual Meeting of Members shall be paid by Declarant.

B. Regular Management Agent and Assessments. Upon selection by the Association of a regular Management Agent and the holding of the First Annual Meeting of Members, any excess of interim Assessments over total, actual Association operating expenses shall be deposited by Declarant to the account of the Association. The interim Management Agent shall provide to the regular Management Agent an accounting of operating revenues and expenses.

C. Time of Payment. Each Unit's monthly Assessment for the Common Expenses for the month of closing shall be payable at the time of conveyance of title to the Owner by the Declarant prorated as of the closing date. Subsequent payment shall be due on the first day of each month. Payments not received when due shall bear interest at the rate of eighteen percent (18%).

D. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the Condominium, the fiscal year shall commence with the closing of the sale of the first Condominium Unit). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account anticipated income which is to be applied in reduction of the amounts required to be collected as an Assessment each year. The Board of Directors shall keep separate, in accordance with paragraph "D" hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies shall be delivered to each Owner of a Condominium Unit and the Assessment for said year shall be established based upon such budget, although the non-delivery of a copy of it to each Owner shall not affect the liability of any Owner for such Assessment. A



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majority of the Owners must approve an increase in the yearly Assessment if this increase exceeds the previous year's Assessment by an amount greater than fifteen percent (15%).

E. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, shall designate a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Elements and Facilities (herein "Capital Improvement Fund") shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements and Facilities, and the replacement of personal Property constituting a portion of the Common Elements and Facilities held for the joint use and benefit of the Owners of the Condominium Units. The amount to be allocated to the Capital Improvement Fund may be established by the Board of Directors to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and shall be used only to make capital improvements to Common Property. Any interest earned on the Capital Improvement Fund may be expended for current operation and maintenance.

F. Initial Assessment and Working Capital. At the time of conveyance of title to the Owner by the Declarant, the Owner of each such Unit shall pay, as a special Assessment, the sum of One Hundred (\$100.00) Dollars which shall be nonrefundable and commingled with the other general funds of the Association. Additionally, the owner to whom a Unit is conveyed shall prepay an amount equal to three (3) months estimated Common Area Assessment to be commingled with the other general funds of the Association. The prepaid three (3) months' assessment shall be used as established by the budget of the Association, and shall be treated as a credit toward assessments for the first three (3) months of ownership.

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19. UNITS SUBJECT TO CONDOMINIUM DOCUMENTS. All present and future owners, tenants and occupants of Units and their guest or invitees, shall be subject to, and shall comply with the provisions of the Condominium Documents, and as the Condominium Documents may be amended from time to time, including all rules and regulations adopted by the Board of Directors of the Corporation. The acceptance of a deed of conveyance or the entering into a lease of the entering into occupancy of any dwelling Unit shall constitute an agreement that the provisions of the Condominium Documents are accepted and ratified by such Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any Person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease. Failure to comply with the provisions of the Condominium Documents shall entitle the Association or any Owner to seek legal and/or equitable relief, including costs and reasonable attorney's fees incurred in enforcing such compliance.

20. AMENDMENT OF DECLARATION. This Declaration may be amended by the vote of 67% in common interest of all Unit Owners present in Person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws. The By-Laws may be amended in accordance with the procedure set forth in such By-Laws. No such amendment shall be effective until recorded in the Office of the Register of Deeds for the County wherein the Property is located. Provided, that in no event may this Declaration be amended so as to deprive the Declarant of any rights granted herein, including, without limitation, the rights to rent any Unit. Declarant in his sole discretion may, prior to termination of Declarant control, amend the Declaration to include a provision that any amendment to this Declaration which proposes to annex additional Property, other than that contemplated by Declarant at the time of execution of this Declaration, or which abrogates the rights of any Unit Owner, shall not be valid without the prior written consent of the

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Administrator of Veterans Affairs, Secretary of Housing & Urban Development or other mortgage lender, as may be required and/or their successors in such office, as such, and/or their duly appointed representative.

21. CONDOMINIUM ASSOCIATION. A non-profit North Carolina corporation known and designated as BIRCH CREEK II HOMEOWNERS' ASSOCIATION, INC. (the "Association"), has been or will be organized to provide for the administration of the Property. The Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its By-Laws, a copy of which is attached hereto as Exhibit "F", and in accordance with the Act. Each Unit Owner shall automatically become a member of the Corporation upon his acquisition of an ownership interest in any Unit and its appurtenant undivided interest in the Common Areas and Facilities. The membership of such Unit Owners shall terminate automatically upon such Unit Owner being divested of ownership interest in the title to such Unit. In the operation and management of the Property, the Board of Directors shall have the power to enforce the provisions of this Declaration; to levy and collect assessments pursuant to the By-Laws and the Acts; to grant permits, licenses and easements over the Common Areas for utilities, roads pursuant to the Act, for purposes reasonably necessary for the proper maintenance and operation of the Condominium; and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Areas and Facilities as the Board of Directors may deem to be in the best interest of the Association in accordance with the By-Laws and the Act.

The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any Officer or Officers of the Association until such time as the first of the following events occurs: (i) 120 days after conveyance of 75% of the Units (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant; (ii) two years after all Declarants cease to offer Units for sale in the



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ordinary course of business; (iii) two years after any development rights to add new Units was last exercised; or (iv) five years following conveyance of the first Unit to a Unit Owner other than a Declarant. Declarant may voluntarily surrender this right, but in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board of Directors, as described in an express Amendment to this Declaration, duly recorded in the New Hanover County Registry, executed by the Declarant, be approved by the Declarant before they become effective.

The above-referenced Declarant control over the Board of Directors is limited as follows: Not later than 60 days after conveyance of 25% of the Units (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant, at least one member and not less than 25% of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than 60 days after conveyance of 50% of the Units (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant, not less than 33% of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Further, not later than the termination of any period of Declarant control, the Unit Owners shall elect a Board of Directors of at least three (3) members and a majority of this Board must be Unit Owners.

Whenever the Declarant shall be entitled to designate and select any person or persons to serve on the Board of Directors or Board of the Association or as Officers of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or the By-Laws of the Association; and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Executive Board or as Officers and to replace such person or persons with another person or persons to act and serve in the place of any Director or Officer so removed for the remainder of the unexpired

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term of any Director or Officer so removed. Any Director or Officer designated and selected by Declarant need not be a resident in the Property or Unit Owner.

22. INVALIDITY. The invalidity of any provision of this Declaration shall not impair or effect the validity and enforceability of the remainder of this Declaration, and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included.

23. WAIVER. No provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

24. PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON AREAS. The Common Areas and Facilities shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said Owners of Condominium Units. Notwithstanding anything above provided in this Article, the BIRCH CREEK II HOMEOWNERS' ASSOCIATION, INC., herein identified, shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his family, guests, and invitees, may be entitled to use the Common Areas and Facilities, including the right to make permanent and temporary assignments of parking spaces, and to establish rules and regulations concerning the use of any recreation area.

25. LAW CONTROLLING. This Declaration and the By-Laws attached hereto shall be construed under and controlled by the laws of the State of North Carolina.

26. WARRANTIES. Declarant acknowledges that all contractual warranties set forth in the Buildings' construction contract, of

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material and equipment in the Unit, shall accrue to the benefit of the first Owner of such Unit, along with all warranties, if any, provided by the manufacturer or supplier of appliances, air conditioning, heating and utility systems in the Unit. However, the warranties referenced herein shall extend only from the Declarant to the first time owner who purchases said Unit for Declarant.

THE CLOSING OF TITLE OR OCCUPANCY OF THE UNITS SHALL CONSTITUTE AN ACKNOWLEDGMENT BY THE UNIT OWNER THAT DECLARANT MAKES NO OTHER IMPLIED OR EXPRESS WARRANTIES RELATING TO THE UNIT OR THE COMMON AREAS AND FACILITIES, EXCEPT FOR SUCH WARRANTIES AS ARE SET FORTH IN THE GENERAL WARRANTY DEED TO THE UNIT.

27. Reference is hereby made to Condominium Plat Book 9, Pages 149-153 for survey, plot plan and sectional plans of the Condominium.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, this the 3<sup>rd</sup> day of July, 1989.

BIRCH CREEK PARTNERSHIP, A LIMITED PARTNERSHIP, DECLARANT

By: CAPER CORPORATION,  
ITS GENERAL PARTNER

By: Walter Paucol (SEAL)  
President

ATTEST:

George Dunkel  
Secretary





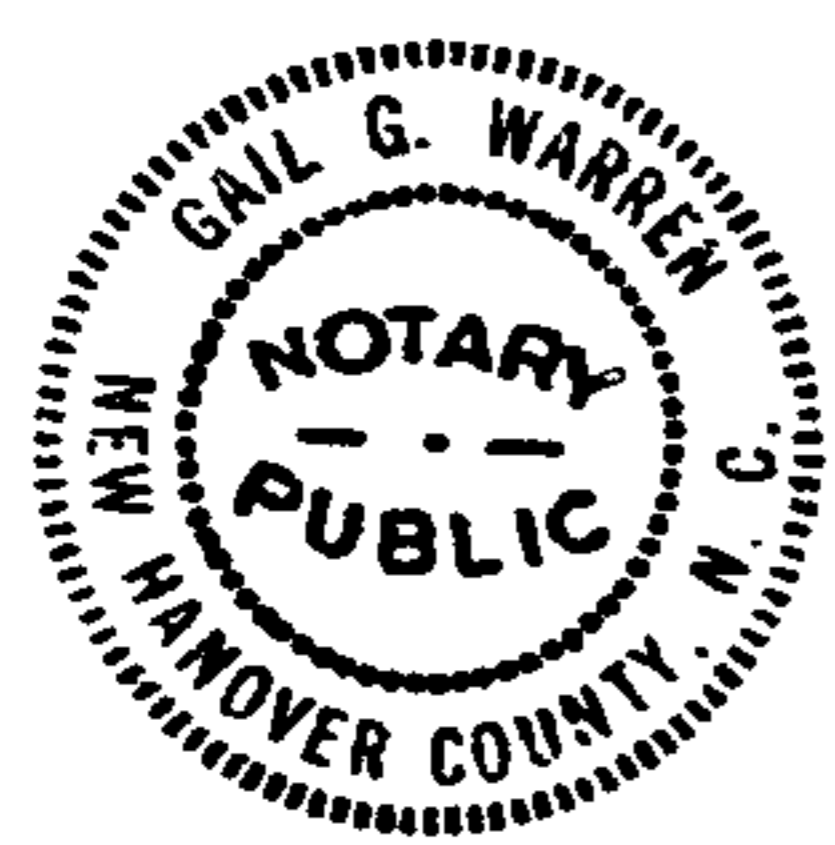
STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Gail G. Warren, a Notary Public in and for the State and County aforesaid, do hereby certify that George Rountree, III personally appeared before me this day and acknowledged that he is Secretary of CAPER CORPORATION, a corporation and general partner of BIRCH CREEK PARTNERSHIP, a Limited Partnership, 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 as its Secretary.

WITNESS my hand and notarial seal, this 3<sup>rd</sup> day of July, 1989.

Gail G. Warren  
NOTARY PUBLIC

My Commission Expires:  
July 10, 1990



STATE OF NORTH CAROLINA  
New Hanover County  
The Foregoing/Annexed Certificate of  
Gail G. Warren  
Notary(Notaries) Public is/are certified to be correct.  
This the 3 day of July 19 89  
Rebecca P. Tucker, Register of Deeds  
By [Signature]  
Deputy/REGISTRAR

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## EXHIBIT "A"

## Phase 1 - BIRCH CREEK II

Beginning at a point in the southern line of the basic Birch Creek II Condominium tract, said point being in the dividing line between the Birch Creek II tract and the Creech tract as said tract is described in Deed Book 396 at Page 327 of the New Hanover County Registry. Said point of beginning being located the following calls and distances from a concrete monument on the centerline of Jennings Drive, at its southern end, as shown on a map of Devon Park, Section 2, recorded in Map Book 5 at Page 57 of the New Hanover County Registry: North 82 degrees 31 minutes 55 seconds West - 195.77'; North 76 degrees 34 minutes 37 seconds West - 104.05'; North 80 degrees 06 minutes 08 seconds West - 169.41'; South 34 degrees 58 minutes 51 seconds West - 455.83'; South 34 degrees 48 minutes 53 seconds West - 381.57'; South 49 degrees 03 minutes 56 seconds East - 184.19'. Running thence from said point of beginning North 35 degrees 56 minutes 04 seconds East - 172.27' to a point, said point being on the centerline of the proposed access road; thence with the centerline of said access road, the Phase line, as it curves to the south to a point, said point being at the P.C. of said curve and bears South 46 degrees 27 minutes 17 seconds East - 152.98' chord distance from the preceding point (centerline curve data: delta = 135 degrees 35 minutes 00 seconds, tangent = 230.33', radius = 94.04'); thence continuing with the centerline of said access road North 79 degrees 06 minutes 55 seconds East - 60.0' to a point, said point being the P.T. of a curve to the north; thence continuing with said centerline, the Phase line, as it curves to the north to a point, said point bears North 74 degrees 18 minutes 38 seconds East - 26.96' chord distance from the preceding point (centerline curve data: delta = 14 degrees 10 minutes 10 seconds, tangent = 20.00', radius = 160.92'); thence leaving said centerline and running South 12 degrees 58 minutes 48 seconds West - 60.96' to a point; thence South 21 degrees 24 minutes 00 seconds East - 114.86' to a point; thence South 28 degrees 44 minutes 48 seconds East - 44.00' to a point; thence South 17 degrees 43 minutes 52 seconds East - 60.60' to a point; thence South 17 degrees 41 minutes 05 seconds East - 45.39' to a point; thence South 03 degrees 46 minutes 53 seconds East - 74.00' to a point; thence with a common line between the Birch Creek II basic tract and the Downey Branch Office Condo tract and Birch Creek Tract and Lancaster Tract, North 54 degrees 33 minutes 56 seconds West - 474.72' to a point; thence North 34 degrees 57 minutes 04 seconds East - 41.60' to a point; thence with a common line between the Creech tract and the Birch Creek II basic tract, North 49 degrees 03 minutes 56 seconds West - 27.0' to the point of beginning and containing 1.724 Acres, more or less, and being a portion of the Birch Creek II basic tract. The above described tract being subject to a drainage easement to the City of Wilmington accommodating Downey Branch.

## EXHIBIT "B"

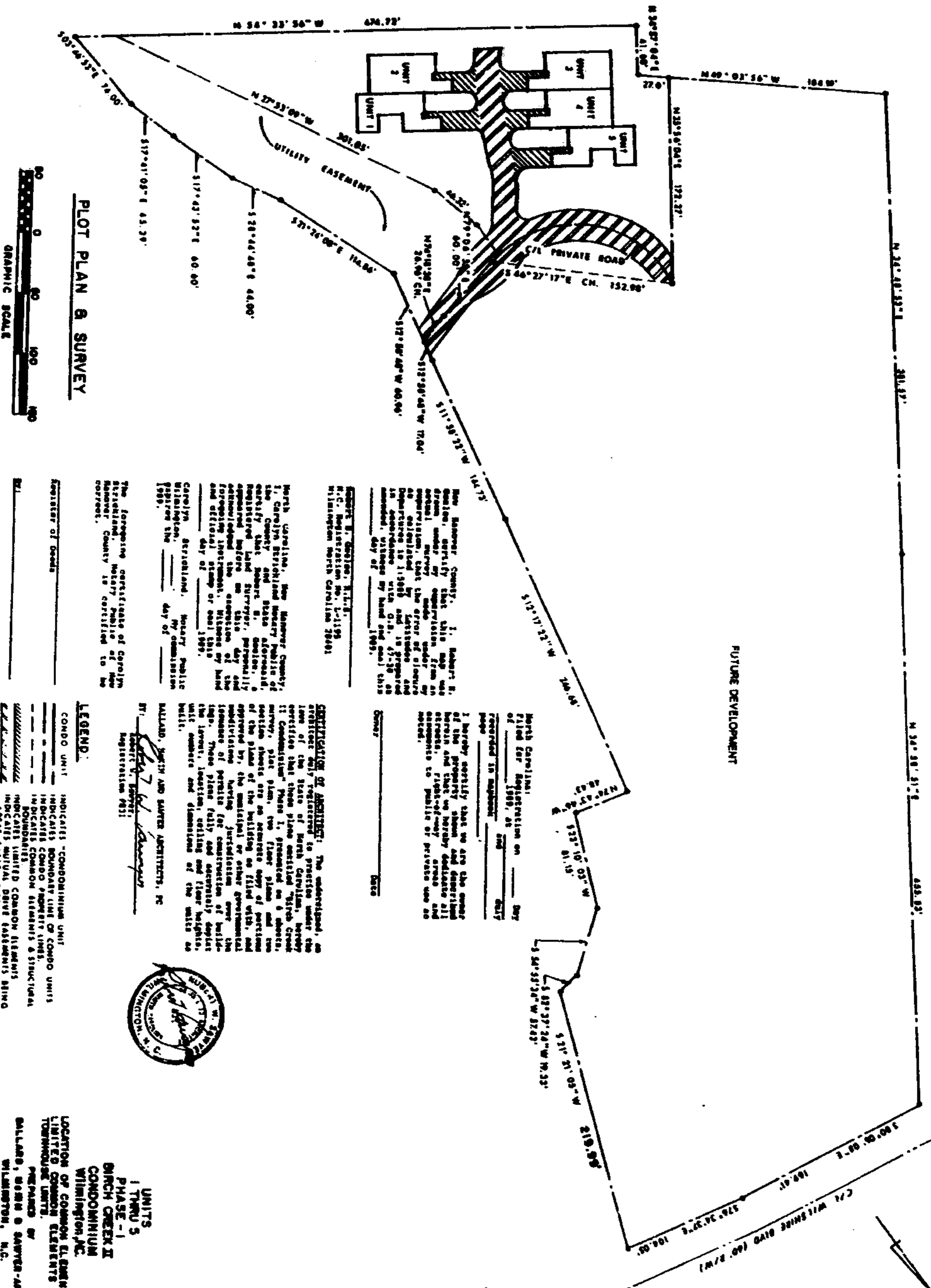
## BIRCH CREEK II - BASIC TRACT

Beginning at a point in the southern right of way line of Wilshire Blvd. (60.0' right of way), said point being located North 82 degrees 31 minutes 55 seconds West - 195.77' from a concrete monument on the centerline of Jennings Drive as shown on a map of Devon Park, Section 2, recorded in Map Book 5 at Page 57 of the New Hanover County Registry. Running thence from said point of beginning, South 21 degrees 21 minutes 05 seconds West - 219.99' to a point; thence South 82 degrees 37 minutes 24 seconds West - 19.33' to a point; thence South 54 degrees 55 minutes 34 seconds West - 57.43' to a point; thence South 23 degrees 10 minutes 03 seconds West - 81.15' to a point; thence North 74 degrees 43 minutes 46 seconds West - 48.43' to a point; thence South 12 degrees 17 minutes 22 seconds West - 246.68' to a point; thence South 11 degrees 58 minutes 22 seconds West - 144.73' to a point; thence South 12 degrees 58 minutes 48 seconds West - 17.04' to a point; thence South 12 degrees 58 minutes 48 seconds West - 60.96' to a point; thence South 21 degrees 24 minutes 00 seconds East - 114.86' to a point; thence South 28 degrees 44 minutes 48 seconds East - 44.00' to a point; thence South 17 degrees 43 minutes 52 seconds East - 60.60' to a point; thence South 17 degrees 41 minutes 05 seconds East - 45.39' to a point; thence South 03 degrees 46 minutes 53 seconds East - 74.00' to a point; thence with a common line between Downey Branch Office Condo tract, the Birch Creek II tract and the Lancaster tract, North 54 degrees 33 minutes 56 seconds West - 474.72' to a point; thence North 34 degrees 57 minutes 04 seconds East - 41.60' to a point; thence along a common line between the Birch Creek II tract and the Creech & Smith tract, North 49 degrees 03 minutes 56 seconds West - 211.19' to a point; thence along a common line between the Birch Creek II tract and the Longwood Subdivision tract, North 34 degrees 48 minutes 53 seconds East - 381.57' to a point; thence continuing along said dividing line North 34 degrees 58 minutes 51 seconds East - 455.83' to a point in the southern right of way line of Wilshire Blvd.; thence with the southern line of Wilshire Blvd. and 30.0' south of the centerline thereof, South 80 degrees 06 minutes 08 seconds East - 169.41' to a point; thence continuing with said right of way line South 76 degrees 34 minutes 37 seconds East - 104.05' to the point of beginning and containing 7.75 Acres, more or less. The above tract being subject to a drainage easement to the City of Wilmington accommodating Downey Branch.





**EXHIBIT "C"**  
**TO**  
**DECLARATION OF CONDOMINIUM**  
**BIRCH CREEK II CONDOMINIUMS** | 462 0189  
**PAGE 2 OF 2**



North Carolina, the Mayor, County, the County and State records, hereby certify that Robert B. Ballard, registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument, witness my hand and official stamp or seal this day of \_\_\_\_\_, 1999.

Carolyn Strickland, Notary Public  
 Wilmington, NC  
 My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 1999.

The foregoing certificate of Carolyn Strickland, Notary Public of New Hanover County is certified to be correct.

\_\_\_\_\_  
 Registrar of deeds

**Robert B. Ballard, S.L.S.**  
 N.C. Registration No. 1-1199  
 Wilmington North Carolina 28401

Now Mayor, County, I, Robert B. Ballard, certify that this day was duly recorded in the public records of the County of New Hanover, North Carolina, in the office of the Register of Deeds, in the year 1999, and that the same is a true and correct copy of the original as recorded in the public records of the County of New Hanover, North Carolina, in the year 1999, and that the same is a true and correct copy of the original as recorded in the public records of the County of New Hanover, North Carolina, in the year 1999.

\_\_\_\_\_  
 Mayor

North Carolina, filed for registration on \_\_\_\_\_ day of \_\_\_\_\_, 1999, at \_\_\_\_\_ day recorded in mapbook \_\_\_\_\_ page \_\_\_\_\_

I hereby certify that we are the owners of the property shown and described herein and that we hereby dedicate all streets, right-of-way areas and easements to public or private use as needed.

\_\_\_\_\_  
 Owners

**SIGNIFICATION OF ARCHITECT:** The undersigned, an architect duly registered in practice under the laws of the State of North Carolina, hereby certifies that these plans entitled "Birch Creek II Condominium" Phase I, presented on a sheet, survey, plot plan, two floor plans and two section sheets are an accurate copy of portions of the plan of the building or other governmental subdivision having jurisdiction over the same, as shown on the plans for construction of building. These plans fully and accurately depict the layout, location, setting and floor heights, unit number and dimensions of the units as built.

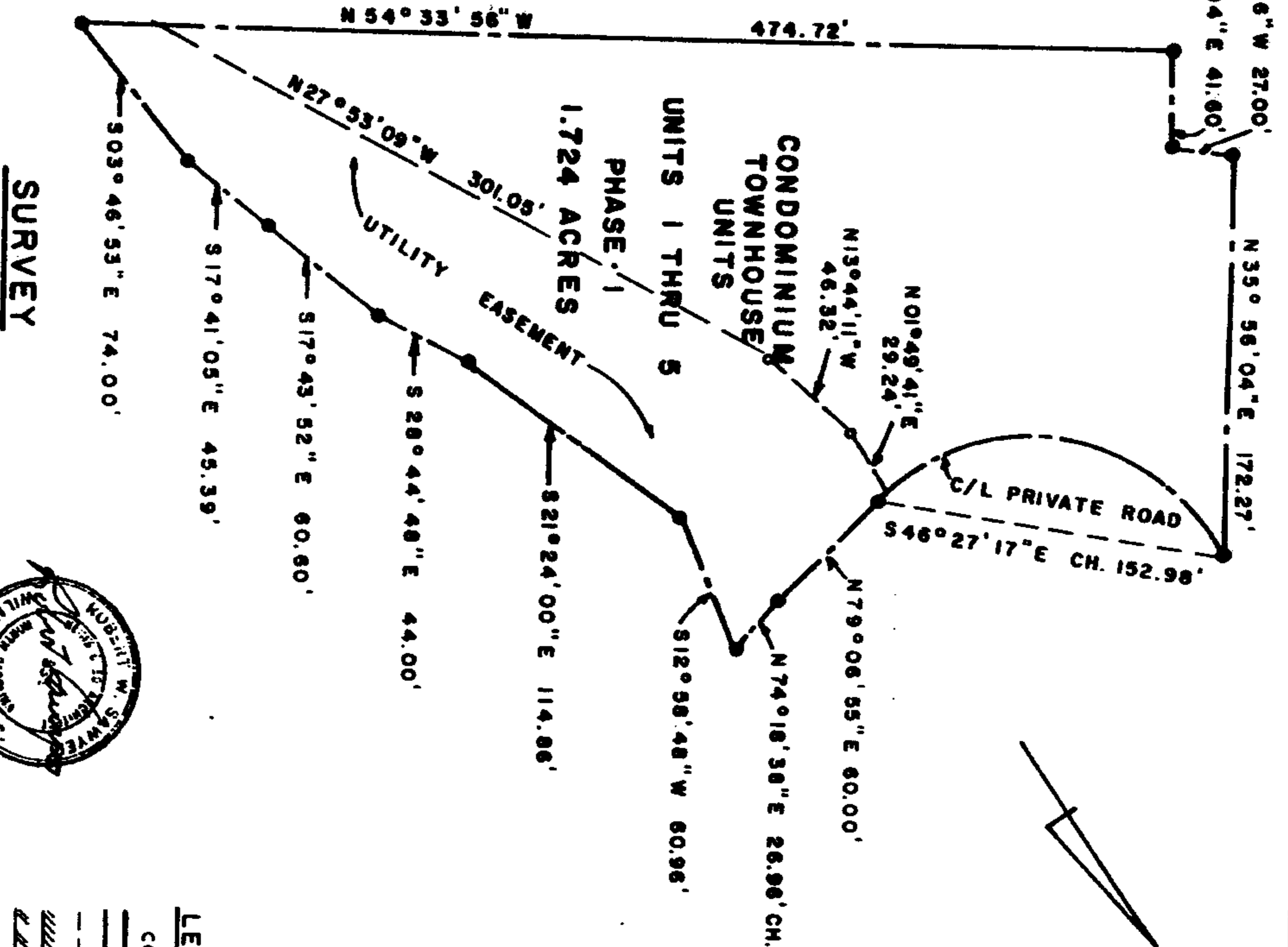
**BALLARD, BROWN AND SAWYER ARCHITECTS, PC**  
 BY: *Robert V. Sawyer*  
 Registration #211



FUTURE DEVELOPMENT

EXHIBIT "D"  
TO  
DECLARATION OF CONDOMINIUM  
BIRCH CREEK II CONDOMINIUMS  
PAGE 1 OF 6

BOOK PAGE  
1462 0190



**SURVEY**



**LEGEND:**

- CONDO. UNIT
- INDICATES BOUNDARY LINE OF CONDO. UNITS.
- INDICATES CONDO. PROPERTY LINES.
- INDICATES COMMON ELEMENTS & STRUCTURAL BOUNDARIES.
- INDICATES LIMITED COMMON ELEMENTS.
- INDICATES MUTUAL DRIVE EASEMENTS BEING AREAS & FACILITIES.
- INDICATES "AREAS & FACILITIES" USED IN THE DECLARATION OF CONDO. & THE BY-LAWS

New Hanover County. I, Robert H. Goslee, certify that this map was drawn under my supervision from an actual survey made under my supervision, that the error of closure as calculated by latitudes and Departures is 1:5000 and is prepared in accordance with G.S. 47-30 as amended, witness my hand and seal this day of \_\_\_\_\_ 1989.

Robert H. Goslee, R.L.S.  
N.C. Registration No. L-1195  
Wilmington North Carolina 28401

North Carolina, New Hanover County. I, Carolyn Strickland Notary Public of the County and State aforesaid, certify that Robert H. Goslee, a Registered Land Surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal this day of \_\_\_\_\_ 1989.

Carolyn Strickland, Notary Public  
Wilmington, \_\_\_\_\_ My commission expires the \_\_\_\_\_ day of \_\_\_\_\_ 1989.

The foregoing certificate of Carolyn Strickland, Notary Public of New Hanover County is certified to be correct.

Register of Deeds

DY:

North Carolina: I hereby certify that we are the owner of the property shown and described herein and that we hereby dedicate all streets, right-of-way areas and easements to public or private use as noted.

North Carolina: Filed for registration on \_\_\_\_\_ day of \_\_\_\_\_ 1989, at \_\_\_\_\_ and \_\_\_\_\_ day recorded in mapbook \_\_\_\_\_

Owner \_\_\_\_\_ Date \_\_\_\_\_

**CERTIFICATION OF ARCHITECT:** The undersigned, an architect duly registered to practice under the laws of the State of North Carolina, hereby certifies that these plans entitled "Birch Creek II Condominium" Phase I, presented on 6 sheets, survey, plot plan, two floor plans and two section sheets are an accurate copy of portions of the plans of the building as filed with, and approved by, the municipal or other governmental subdivisions having jurisdiction over the issuance of permits for construction of buildings. These plans fully and accurately depict the layout, location, ceiling and floor heights, unit numbers and dimensions of the units as built.

BALLARD, MCKIN AND SAWYER ARCHITECTS, PC  
BY: Robert H. Sawyer  
Robert H. Sawyer,  
Registration #8311

UNITS  
1 THRU 5  
PHASE - I  
BIRCH CREEK II  
CONDOMINIUM  
Wilmington, N.C.  
LOCATION OF COMMON ELEMENTS  
LIMITED COMMON ELEMENTS &  
TOWNHOUSE UNITS.  
PREPARED BY  
BALLARD, MCKIN & SAWYER-ARON,  
WILMINGTON, N.C.

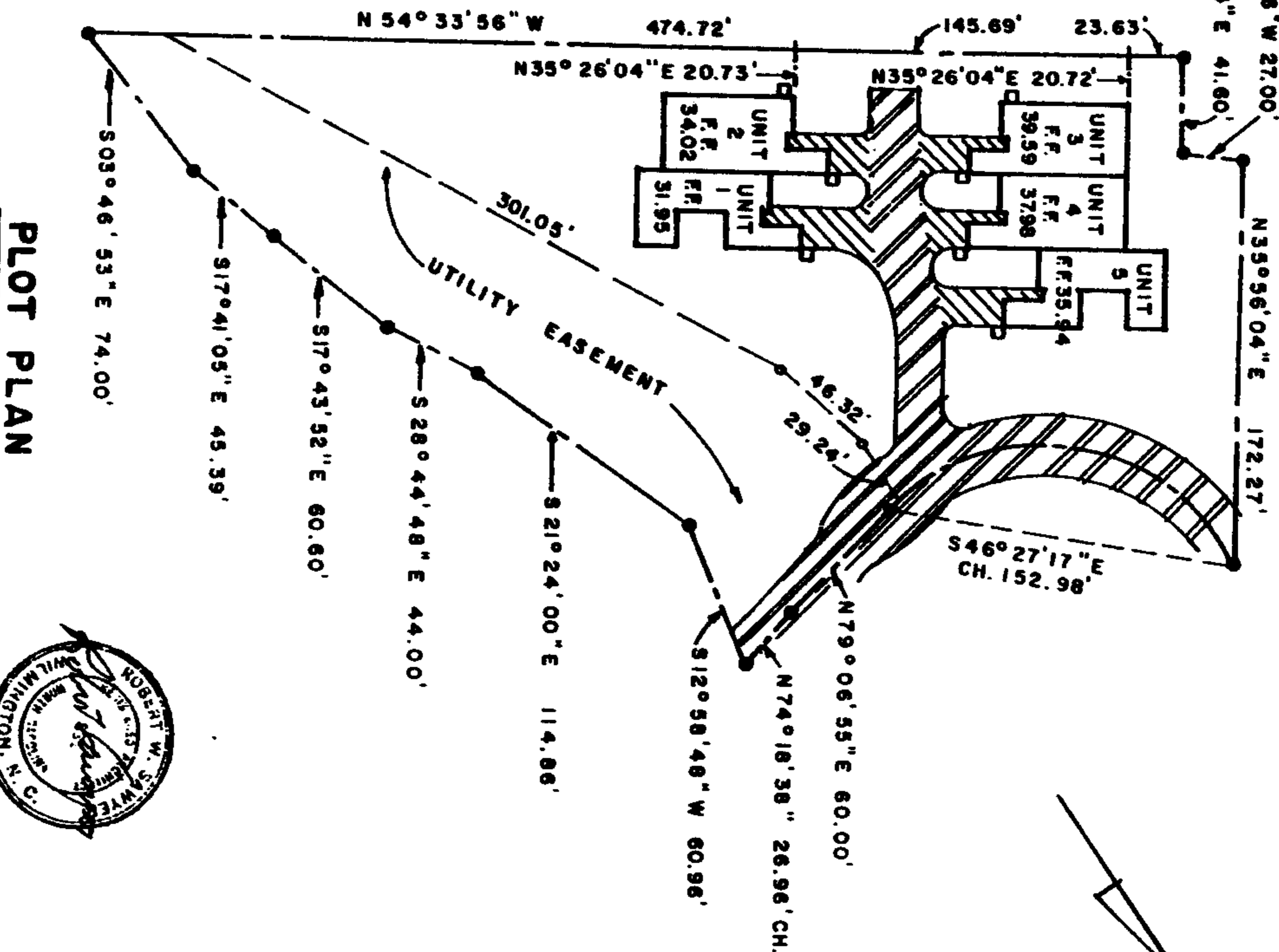


TO  
DECLARATION OF CONDOMINIUM  
BIRCH CREEK II CONDOMINIUMS  
PAGE 2 OF 6

SDUP

PAGE

1462 0191



**PLOT PLAN**



New Hanover County. I, Robert H. Goslee, certify that this map was drawn under my supervision from an actual survey made under my supervision, that the error of closure as calculated by Lacitudes and Departures is 1:5000 and is prepared in accordance with G.S. 47-30 as amended, witness my hand and seal this day of \_\_\_\_\_ 1989.

Robert H. Goslee, R.L.S.  
N.C. Registration No. L-1195  
Wilmington North Carolina 28401

North Carolina, New Hanover County. I, Carolyn Strickland and Notary Public of the County and State aforesaid, certify that Robert H. Goslee, a Registered Land Surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal this day of \_\_\_\_\_ 1989.

Carolyn Strickland, Notary Public  
Wilmington, \_\_\_\_\_  
My commission expires the \_\_\_\_\_ day of \_\_\_\_\_ 1989.

The foregoing certificate of Carolyn Strickland, Notary Public of New Hanover County is certified to be correct.

Register of Deeds

By: \_\_\_\_\_

North Carolina:  
Filed for Registration on \_\_\_\_\_ Day  
of \_\_\_\_\_ 1989, at \_\_\_\_\_ and \_\_\_\_\_ duty  
recorded in mapbook \_\_\_\_\_ page \_\_\_\_\_

I hereby certify that we are the owner of the property shown and described herein and that we hereby dedicate all streets, right-of-way areas and easements to public or private use as noted.

Owner \_\_\_\_\_ Date \_\_\_\_\_

**CERTIFICATION OF ARCHITECT:** The undersigned, an architect duly registered to practice under the laws of the State of North Carolina, hereby certifies that these plans entitled "Birch Creek II Condominium" Phase I, presented on 6 sheets, survey, plot plan, two floor plans and two section sheets are an accurate copy of portions of the plans of the building as filed with, and approved by, the municipal or other governmental subdivisions having jurisdiction over the issuance of permits for construction of buildings. These plans fully and accurately depict the layout, location, ceiling and floor heights, unit numbers and dimensions of the units as built.

BALLARD, MCKIM AND SAWYER ARCHITECTS, PC

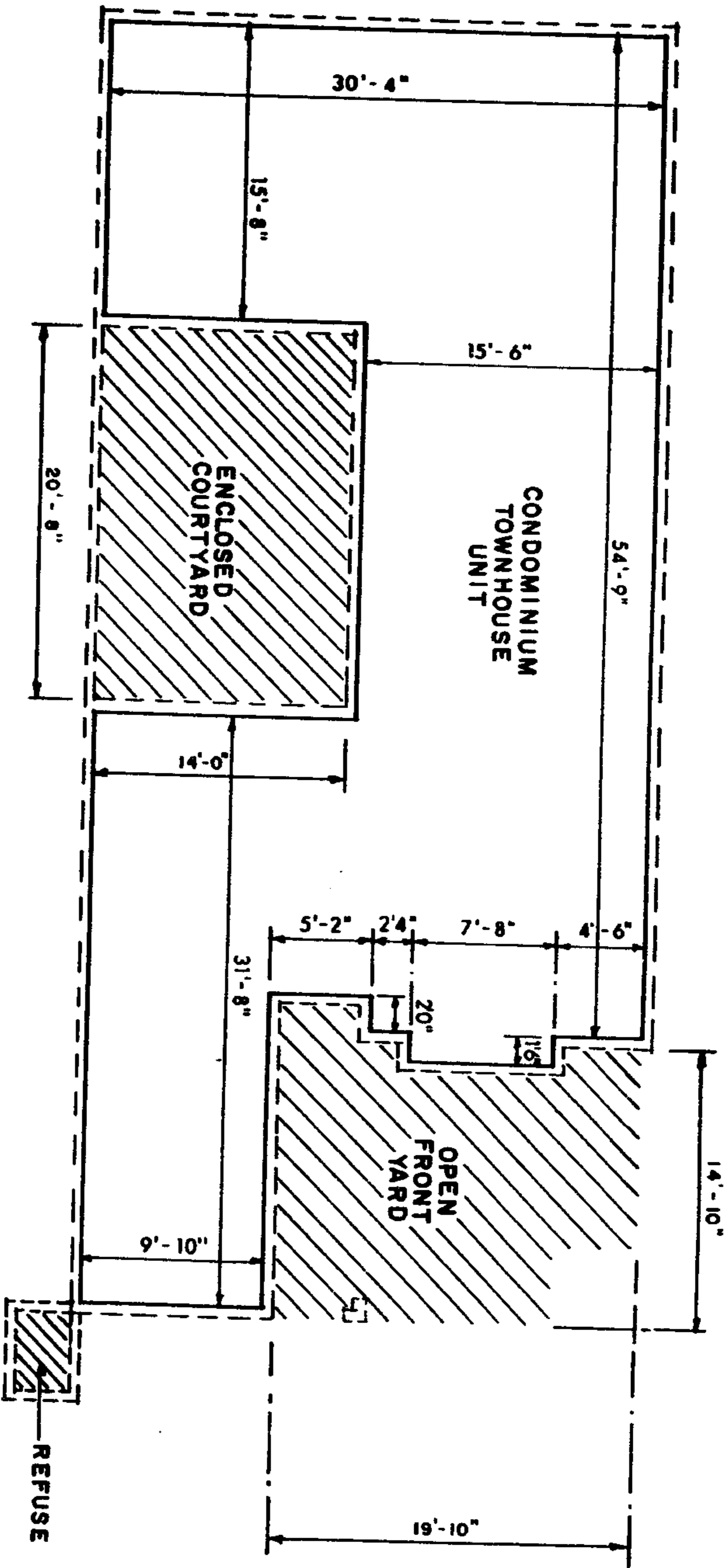
By: *Robert W. Sawyer*  
Robert W. Sawyer,  
Registration #831

**LEGEND:**

- CONDO UNIT
- INDICATES "CONDOMINIUM UNIT"
- INDICATES BOUNDARY LINE OF CONDO. UNITS.
- INDICATES CONDO. PROPERTY LINES.
- INDICATES COMMON ELEMENTS & STRUCTURAL BOUNDARIES.
- INDICATES LIMITED COMMON ELEMENTS.
- INDICATES MUTUAL DRIVE EASEMENTS BEING AREAS & FACILITIES.
- INDICATES "AREAS & FACILITIES" USED IN THE DECLARATION OF CONDO. & THE BY-LAWS ATTACHED THERE TO & THE UNIT OWNER SHIP ACT.

UNITS  
1 THRU 5  
PHASE - I  
BIRCH CREEK II  
CONDOMINIUM  
Wilmington, NC.  
LOCATION OF COMMON ELEMENTS  
LIMITED COMMON ELEMENTS &  
TOWNHOUSE UNITS.  
PREPARED BY  
BALLARD, MCKIM & SAWYER-ARCH.  
WILMINGTON, N.C.

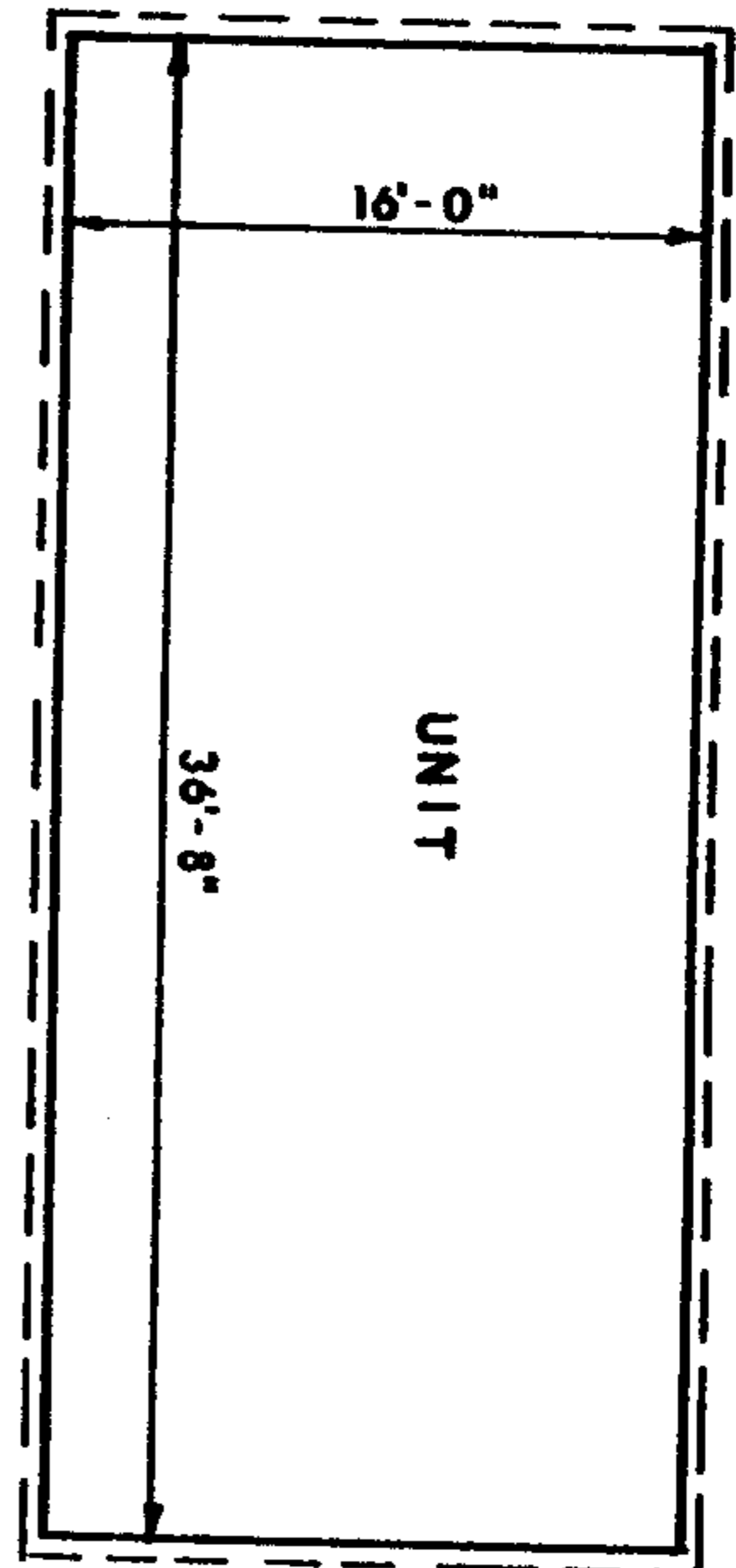
**GROUND LEVEL PLAN**



**LEGEND:**

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UNITS  
 1 THRU 5  
 PHASE - 1  
 BIRCH CREEK II  
 CONDOMINIUM  
 Wilmington, NC.  
 LOCATION OF COMMON ELEMENTS  
 LIMITED COMMON ELEMENTS &  
 TOWNHOUSE UNITS.  
 PREPARED BY  
 BALLARD, MCDONN & SAWYER-ARON.  
 WILMINGTON, N.C.



SECOND LEVEL PLAN

LEGEND:

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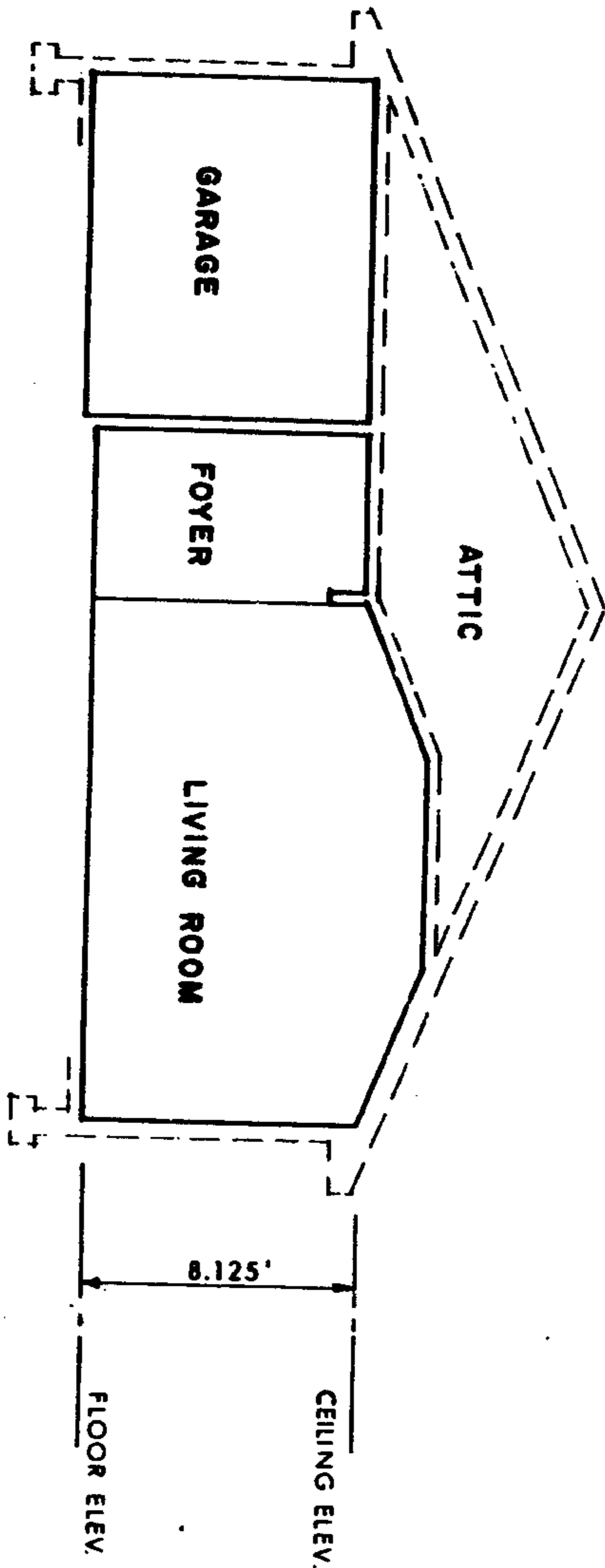
UNITS  
1 THRU 5  
PHASE - 1  
BIRCH CREEK II  
CONDOMINIUM  
Wilmington, NC.  
LOCATION OF COMMON ELEMENTS  
LIMITED COMMON ELEMENTS &  
TOWNHOUSE UNITS.  
PREPARED BY  
BALLARD, MCKIM & SAWYER-ARMSTRONG  
WILMINGTON, N.C.



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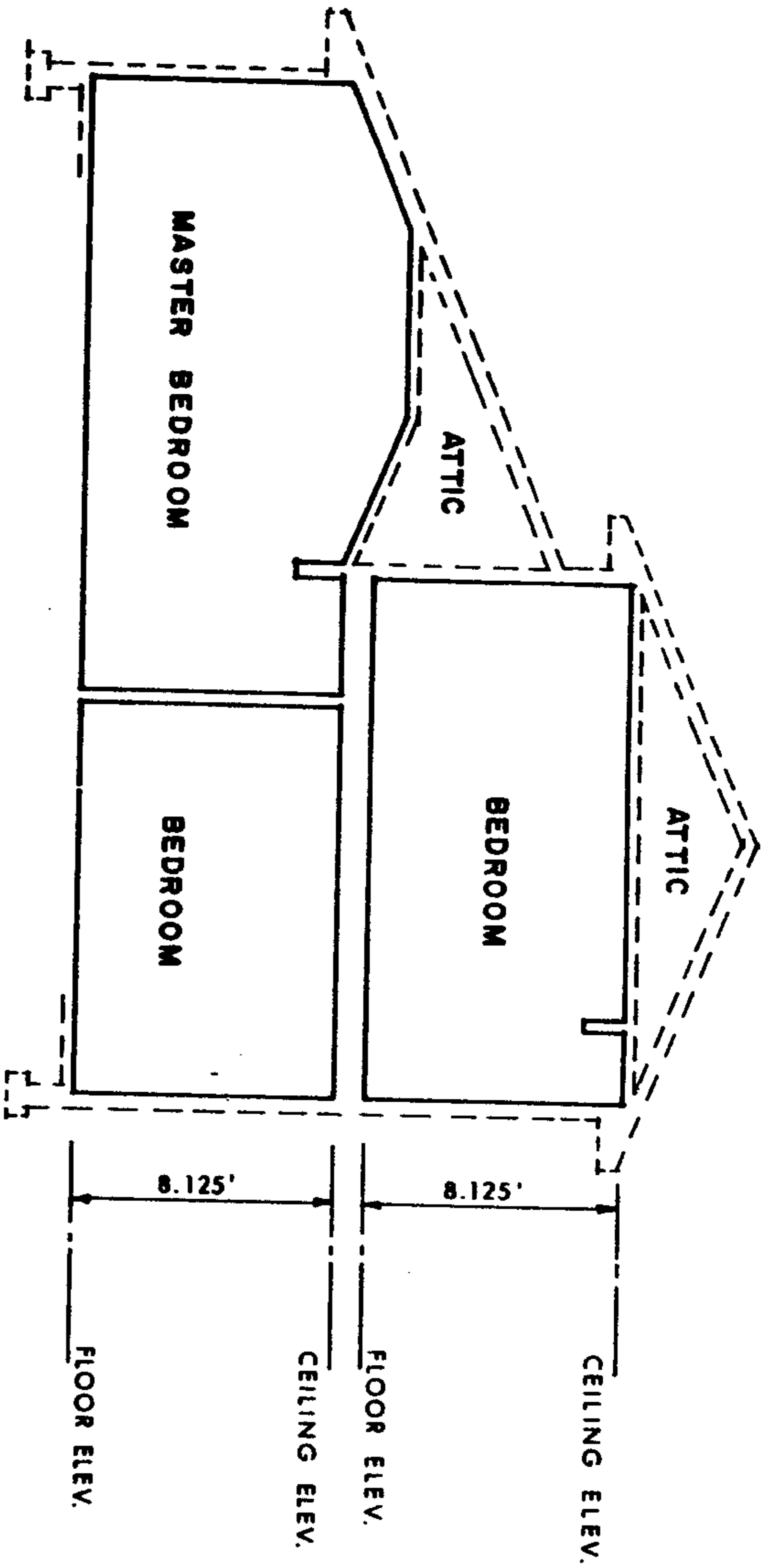
**BUILDING SECTION**

UNIT NO.	FIN. FLR. EL.	FIN. CELL. EL.
1	31.95'	40.05'
4	37.98'	46.08'
5	35.94'	44.05'

UNITS  
1 THRU 5  
PHASE - I  
BIRCH CREEK II  
CONDOMINIUM  
Wilmington, NC.

LOCATION OF COMMON ELEMENTS  
LIMITED COMMON ELEMENTS &  
TOWNHOUSE UNITS.

PREPARED BY  
BALLARD, MERRIN & SAWYER-ARMON,  
WILMINGTON, N.C.



**BUILDING SECTION**

UNIT NO. 2	1st FLR. EL. 34.02'	2nd FLR. EL. 43.23'
	CEIL. EL. 42.12'	CEIL. EL. 51.33'
UNIT NO. 3	1st FLR. EL. 39.59'	2nd FLR. EL. 48.69'
	CEIL. EL. 47.71'	CEIL. EL. 56.39'

**LEGEND:**

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INDICATES "CONDOMINIUM UNIT"  
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UNITS  
 1 THRU 5  
 PHASE - I  
 BIRCH CREEK II  
 CONDOMINIUM  
 Wilmington, NC.  
 LOCATION OF COMMON ELEMENTS & LIMITED COMMON ELEMENTS & TOWNHOUSE UNITS.  
 PREPARED BY  
 BALLARD, MCDONALD & SAWYER-ANCH  
 WILMINGTON, N.C.

EXHIBIT "E"

BIRCH CREEK CONDOMINIUMS, II, PHASE 1

UNDIVIDED INTEREST OF EACH UNIT  
IN COMMON AREAS AND FACILITIES

Unit 1	17.718
Unit 2	23.4358
Unit 3	23.4358
Unit 4	17.718
Unit 5	17.718



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 III****MEETING 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.



1462 0199

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.



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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.

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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



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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;



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- (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;

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(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.



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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



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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



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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.



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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.

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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



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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 XVIIQUALIFICATION 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 XVIIICONTRACTS, 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 XIXDEFAULT

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

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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 returning 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



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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.

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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.

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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.

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