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# BIRCH POINTE HOMEOWNERS' DOCUMENTS

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Reston Corporation  
4600 New Linden Hill Road  
Suite 102  
Brownstone Plaza  
Wilmington, DE 19808



BIRCH POINTE CONDOMINIUM

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ENABLING DECLARATION  
ESTABLISHING A PLAN FOR  
CONDOMINIUM OWNERSHIP  
FOR  
BIRCH POINTE

MADE this 28th day of June , 1984, by RESTON CORPORATION, a Delaware corporation (hereinafter called "Declarant"), for itself, its successors, grantees and assigns.

WHEREIN the Declarant makes the following declarations:

1. Purpose: The purpose of this Declaration is to submit the lands herein described, and the improvements thereon erected or to be erected on such lands, to the condominium form of ownership and use in the manner provided by Chapter 22 of Title 25 Delaware Code of 1975, as amended (therein and herein called the "Unit Property Act").

2. (a) The Land. The land which is hereby submitted to the condominium form of ownership, consists of all that certain tract, piece or parcel of land known as Birch Pointe, Phase I, Mill Creek Hundred, New Castle County, Delaware, as shown on that certain Record Major Land Development Plan recorded on December 28, 1983, in the Office of the Recorder of Deeds in and for New Castle County in Microfilm No. 7000; which land is bounded and more particularly be described as set forth in Schedule 2.1 appended hereto and incorporated herein by this reference.

TOGETHER WITH AND SUBJECT TO easements and rights-of way, declarations, restrictions and encumbrances of record, and dedicated roads, parking areas, open spaces and paths as shown on the aforesaid Record Major Land Development Plan and the condominium Declaration Plan; including also without being limited to all of

the terms and conditions of the deeds wherein Declarant has conveyed the fee interest which is hereby being submitted to the Unit Property Act, which deeds are of record in the Office aforesaid in Deed Record P, Volume 120, Page 78 and Deed Record W, Volume 109, Page 116.

2. (b) The Buildings and Improvements. The land hereinabove described is and may in the future further be improved by various buildings, appurtenant structures and improvements, of which, only the ones described on Schedule 2.2 appended hereto and incorporated herein by this reference, are herewith submitted to the Unit Property Act as constituents of Birch Pointe.

3. Name. The name by which this condominium is to be identified is BIRCH POINTE.

4. Composition of Property. The Property shall consist of units and common elements as shown in a Declaration Plan prepared by Ramesh C. Batta Associates, dated the            day of            , 1984, and recorded in the Office of the Recorder of Deeds in and for New Castle County in Microfilm No.    .

5. (a) Description of Units and Common Elements. The units and common elements composing the property are as defined in the Unit Property Act, and as more particularly described in Schedules 5.1 (Units) and 5.2 (Common Elements) appended hereto and by this reference made a part hereof.

5. (b) Statement of Proposed Undivided Interest in Common Elements Assigned to Each Condominium Apartment Unit: The Common Elements mentioned above shall initially, until the occurrence of events hereinafter specified, be owned by the Unit owners in the following proportions as undivided tenants in common, not subject to partition:

<u>Condominium Unit Number</u>	<u>Percentage Ownership Per Unit</u>
3	1.105 percent
1, 2, 4-96 (See Schedule 5.3 for street address of each Unit)	1.041 percent

In the event that BIRCH POINTE is expanded at any time or from time to time by the Declarant, pursuant to the rights of amendment and expansion set forth in Article 9(h) of this Declaration, through the submission of any additional in the land to the Unit Property Act, together with additional units and improvements thereon, in the manner provided in Article 9(h) of this Declaration, then from and after the date of such expansion, the proportionate undivided interest in the common elements assigned to each unit shall be reduced and decreased in accordance with the formula set forth in said Article 9(h) hereof, as reflected in the amendment hereto filed by the Declarant to accomplish the expansion; provided, however, in no event shall any unit have less than the percentage interest in the common elements attributed to that unit below:

<u>Condominium Unit Number</u>	<u>Percentage Ownership Per Unit</u>
1-96 (See Schedule 5.3 for street address of each Unit)	.34 percent

6. Change in Proportion of Undivided Interest of Common Elements: No change shall be made in the proportionate undivided interests set forth in Article 5 above except by instrument duly executed by all Condominium Unit Owners affected thereby and recorded in the Office for the Recording of Deeds in and for New Castle County, Delaware, the preparation and recording of which shall be paid for by such owners. Such amendment must also be executed by every holder of a lien against any unit having an assigned interest in the common elements that is changed thereby.

7. Statement of the Uses and Restrictions as to Use of Each Condominium Apartment Unit: All purchasers and/or future owners of units, by the acceptance of deeds to the same, and all unit occupants, by the use and occupancy of same covenant and agree as follows:

(a) The units shall be occupied and used by their respective owners only as a private dwelling for the owner, his family, tenants and social guests and for no other purpose. No condominium unit shall be rented for transient or hotel purposes which

is defined as rental for any period less than six (6) months or any rental where the occupants of the unit are provided customary hotel services. No owner shall lease or let a unit unless such lease is made subject to the covenants and restrictions of this Declaration, the Code of Regulations and the Rules of Conduct so that failure by the lessee to comply therewith shall constitute a default under the lease. No one bedroom unit shall be occupied by more than two (2) persons and no two bedroom unit shall be occupied by more than four (4) persons; except any unit may for the purpose of accommodating guests be occupied temporarily and for a short time by more than the designated number of persons; and any unit may be occupied by a unit owner's family whose numbers are increased to one more than the above-stated limit by the birth of an additional child, provided such increased occupancy shall not extend more than thirty (30) months after the date of such birth, and shall not violate any statute, ordinance or other governmental regulation.

7. (b) No unit owner or occupant shall willingly commit or permit either within his unit or on the common elements any act, conduct, condition or material which is illegal, immoral, unsanitary, a nuisance, reason for increasing the rates of insurance applicable to the project, or so loud as to unreasonably and repeatedly disturb other unit occupants.

7. (c) No common element which is contained within a Building shall be used except with the consent of the owner of a unit located in that building. No common element which is a balcony, patio, parking pad, storage area or lawn that has been specifically limited to a given unit by design or designation on the Declaration Plan shall be used or entered other than with the consent of the owner of that unit. Common elements so designed or allocated on the Declaration Plan shall be known as "limited common elements," shall be permanent and irrevocable, and shall encompass and include not only the horizontal surface of the common element so designed, but also the airspace



thereabove bounded by the vertical extension of such surface; provided, however, that the airspace so encompassed and included shall terminate at the underside of any other common element, limited and/or unlimited, and at the underside of any unit, but only insofar as the underside of such other common element, or the extension of the horizontal plan of unfinished floor elevation for any unit which is one or more stories above ground level, is mounted directly above all or any portion of the surface of the limited common element in question. The fact that a common element is limited shall not remove it from the regulatory powers or maintenance responsibilities of the Council. Use of balconies, patios, lawns, parking pads and every other common element shall in general be subject to such reasonable rules and regulations as may from time to time be adopted and amended by the Council.

7. (d) Without the prior written authorization of the Council, no common element shall be removed, obstructed, posted, decorated, cut down, or used other than for purposes of normal ingress and egress by owners and occupants of the appurtenant units and their invitees, unless it is clearly designed or intended for some further use, such as parking or storage. No common area shall be used for parking any form of transportation other than ordinary passenger automobiles used for non-commercial purposes, unless the Council designates otherwise. This prohibition shall extend to, but shall not be limited to, mobile homes, mobile campers, boats, boat trailers, taxicabs, trucks and other recreational, commercial, or special purpose vehicles.

8. Names of First Members of Council of Unit Owners: The Declarant designates as the first members of Council of Unit Owners, the following persons: GARY M. FARRAR, CHARLES E. JOHNSON, ROBERT A. KENDIG, HARRY E. MILLER, and RENEE MOSCH; and hereby declares that within ONE HUNDRED TWENTY (120) days of the earlier of the conveyance by Declarant of ninety (90) percent of all the units constructed on the Property when the project is fully completed or ,

1989, an organizational meeting of the Unit Owners in accordance with the provisions of the Code of Regulations shall be called in order that the Unit Owners may elect a Council in the manner provided in the Code of Regulations.

The Condominium Council shall constitute the elected officers of an Association of Owners in which each owner of a unit shall automatically, and for so long as he holds title of record to a unit, be a member having all rights, powers, duties, and obligations of membership therein including without limitation the right to cast votes equivalent in number or weight to the percentage interests in the common elements allocated to his condominium unit or units. Wherever the Declaration or Code of Regulation refers to the Council, any duty or obligation thereby imposed, or right or power thereby accorded, shall be likewise that of the Owners' Association acting by and through the Council. Whenever the Declaration or Code of Regulations refers to the Association of Owners, any duty or obligation thereby imposed, or right or power thereby accorded, shall be dischargeable and exercisable by the Council.

9. (a) Acquisition and Improvement of Property. The Council shall not, except with the consent of the unit owners having in the aggregate sixty-seven percent (67%) or more of the total votes of all the unit owners, acquire any land, building, or real estate interest other than by purchase in accordance with the original and unamended provisions of the Code of Regulations governing acquisition of units. The Council may make capital improvements and acquire personal property not required in the normal course of maintenance, replacement and repair; but except by affirmative vote of eighty per cent (80%) or more of the total votes of all the unit owners, no unit owner shall be assessed therefor in the first two (2) years after the date of the first settlement of a unit in the project an amount which exceeds ten per cent (10%) of the assessment for common expenses levied against his unit during the preceding year. This section of the Declaration shall not be amended except by unanimous consent.

9. (b) Easement Burdens and Benefits.

(i) Each unit and all common elements are subject to a perpetual easement in gross for the purpose of inspection, maintenance, repairs and replacement, demolition following substantial destruction, by fire or other calamity, and reconstruction by the Council, its employees and agents. Entrance into any unit for inspection and for repairs under circumstances which any member of the Council in good faith regards as an emergency threatening damage to other units or the common elements, or injury to any person, may be rightfully accomplished by or under the authorization of any Council member without the necessity for a meeting or vote of Council members. The owner of any unit so entered shall provide Council with a key to such unit, and the cost of repairs necessitated by any such entry shall be a common expense; however, if a unit owner's failure to provide Council with such a key has resulted in a forceful entry causing damage, the cost of repairs shall be borne by the unit owner. Each unit shall be subject to a perpetual easement in gross for the purpose of drawing water under authority of the Council for common use, but Council shall either measure such use and pay therefor at excess usage rates, or else Council shall pay all the excess usage charged to the unit or units from which water was taken during the water billing year.

(ii) All unit owners, occupants and their invitees shall have a perpetual easement for the purpose of ingress and egress to and over, and for the purpose of otherwise properly using, all the common elements subject to the aforesaid restrictions on use and to the provisions of the Code of Regulations and Rules of Council as the same may from time to time be in force, and to the rights of unit owners and occupants in and to the limited common elements appurtenant to their units.

(iii) All units and common elements described herein and shown in the Declaration Plan shall be subject to a perpetual easement for

encroachments which now or hereafter may exist by reason of as-built variations, or of the settlement or movement, or destruction and reconstruction of any part of the project, or errors in dimensions or proportions shown on the Declaration Plan, providing same do not materially affect the use and value of any unit. Such encroachments may remain undisturbed and the easement therefor shall exist so long as the encroachment exists, but no longer.

(iv) All common elements shall be subject to an easement in favor of the Declarant, and/or the Council, their respective designees, or any mortgagee in possession, for the purpose of constructing, modifying, completing, leasing, and selling units and/or common elements. This easement shall include the right to file amendments to the condominium documents reflecting same as appropriate, provided such construction shall not diminish or structurally weaken any other condominium unit. No unit owner or occupant shall have any cause of action or claim for inconvenience, annoyance, constructive eviction or other loss (except direct injury to person or property) occasioned by such construction activities, regardless of any other prohibition herein to the contrary.

(v) All units and common elements shall also be subject, at Declarant's or Council's election, to easements for the installation, use, maintenance, repair and replacement of utility lines, pipes and conduits (whether created in writing or not) in favor of other units or common elements in the Property provided only that such easements shall not permanently and materially encroach upon the net useable floor area of any unit, nor permanently harm same. All common elements shall further be subject to easements for roads, parking areas and other purposes necessary for the proper operation of the Property or any part thereof.

(vi) All units and common elements shall remain and be subject to all easements, restrictions, and other matters of record or in existence affecting the Land, Building or Improvements.

9. (c) Disposition of Property or Proceeds.

(i) Except as provided by statute as in case of condemnation or substantial loss to the units and/or common elements of the condominium project (the "Property"), unless at least fifty-one (51%) of the first institutional mortgagees\* and sixty-seven (67%) of the owners (other than the sponsor, developer, or builder) of the individual condominium units (based on aggregate percentages of interest in the common elements assigned to the units so mortgaged or owned) have given their prior written approval, or unless such greater percentage of mortgagees or owners have given their prior written approval as specifically elsewhere herein required, the Condominium Council and/or Association of Owners shall not be entitled:

(1) By act or omission, to seek to abandon or terminate the condominium project.

(2) To partition or subdivide any condominium unit;

(3) By act or omission, to seek to abandon, partition, subdivide, encumber, sell or transfer the common elements (except that the granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements of the Property shall not be deemed a transfer within the meaning of this clause); and

(4) to use hazard insurance proceeds for losses to any condominium Property (whether to units or to common elements) for other than the repair, replacement or reconstruction of any portion of the Property.

(ii) No condominium unit owner, or any other party, shall have priority over any rights of the first mortgagee of his condominium unit pursuant to its

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\* The term "mortgagee", whenever used herein or in the Code of Regulations, shall mean and include any institutional holder or insurer, of a mortgage against any unit in the Property.

mortgage in the case of a distribution to such unit owner of insurance proceeds or condemnation awards for losses to or a taking of condominium units and/or common elements.

(iii) Any restoration or repair of the project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by mortgagees which have at least fifty-one percent (51%) of the votes of units subject to such mortgages.

(iv) The Association of Owners, through the Council, shall represent the unit owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the common elements, or any part thereof. Each unit owner, by acceptance and recordation of the deed to his unit, shall be thereby deemed to have irrevocably appointed the Association of Owners, by the Council, as his attorney-in-fact for such purposes. In the event of taking or acquisition of part or all of the common elements by a condemning authority, the award or proceeds of settlement shall be payable in trust to the Association of Owners, by the Council, for the use and benefit of the unit owners and their mortgagees as their interests may appear.

9. (d) Insurance. To the extent available, the Council shall obtain and maintain insurance coverage as set forth below and all insurance affecting the Property shall be governed by the provisions of this Article. Premiums upon insurance policies purchased or obtained by Council shall constitute a condominium common expense. The Council shall be the irrevocable agent for each unit owner, occupant and mortgagee, and for the owner of any other interest in or lien against any unit, common element or other part of the condominium project to adjust all claims arising under the insurance policies purchased by the Council and to execute and deliver releases upon the payment of claims.

(i) Physical Damage Insurance — All Buildings and Improvements (including without being limited to units and common elements as defined in Article 5 of this Declaration, but excluding any and all appliances, fixtures, alterations or additions situated within a unit for the exclusive use of the occupant of such unit, which have not been installed by the Declarant pursuant to the architectural and engineering plans and specifications for the unit, nor substituted for such installation as an equivalent replacement therefor), and all personal property owned by the unit owners in common, shall be insured for the benefit of the Council, the unit owners and mortgagees of units, against risk of loss or damage by reason of fire and other hazards covered by the standard form for extended coverage, with Demolition Cost Endorsement, Contingent Liability from Operation of Building Laws Endorsement, and often endorsements concerning debris removal, cost of demolition, vandalism, malicious mischief, wind, storm, water damage, and against such other risks of physical damage as may from time to time customarily be covered with respect to buildings and improvements similar in construction, location and use as those on the condominium project, or as may from time to time be deemed appropriate by Council. Real property shall be insured for an amount equal to its current insurable replacement cost. Personal property shall be insured for an amount equal to its actual cash value. At least annually, the Council shall redetermine values for insurance purposes and shall, if necessary increase or decrease coverage accordingly. Council shall have the right to obtain an appraisal from a qualified appraiser for this purpose from time to time as a common expense. Any unit owner may insure further his own unit for his own benefit, and shall in all events, give notice of such other insurance promptly to the council.

(ii) Casualty and Liability Insurance — The Council shall also purchase a comprehensive general liability insurance covering all of the common elements and areas and public ways, with minimum limits of at least One Million Dollars

(\$1,000,000.00) per occurrence for personal injury and/or property damage. The coverage shall include, without being limited to, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common areas, and legal liability arising out of lawsuits related to employment contracts of the Association of Owners; and may include, to the extent appropriate, protection against water damage liability (i.e., from rain, broken water or sewer pipes, or sewage back-up), comprehensive automobile liability insurance, employees liability insurance, liability for property of others, contractual and all written contract insurance, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use. The Council may in its discretion purchase directors and officers liability insurance, workmen's compensation insurance, machinery insurance, plate glass insurance for common areas, termite and other wood boring insect insurance, and such other insurance and bonds, in such amounts and with such endorsements and terms, as it may deem essential or appropriate to the proper protection of the Council, unit owners, and mortgagees. The supplemental coverage must include all such coverage (whether mentioned above or otherwise) in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location, and use to the Property.

(iii) Fidelity Insurance. The Council shall also obtain adequate blanket fidelity coverage to protect against dishonest acts on the part of officers, directors, managers, trustees, and employees of the Council, volunteers, and all others who handle, or are responsible for handling funds of the Council or Association of Owners, or belonging to or administered by the Association of Owners. Such fidelity bonds or insurance shall name the Association of Owners as an obligee, and shall meet or exceed the following requirements:



(a) Such fidelity bonds or insurance shall be written in an amount which, in the Council's best business judgment, shall be not less than the estimated maximum of funds, including reserve funds, in the custody of the Association of Owners, the Council, or management agent, as the case may be, at any given time during the term of each bond, and shall in no event be less than a sum equal to three (3) month's aggregate assessments on all units plus the Council's or Association's reserve funds.

(b) An appropriate endorsement to the bond or policy of insurance covering any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or waiving all defenses by the bond issuers based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. If an independent contractor is engaged to provide management services, such contractor shall provide certification of its own fidelity insurance meeting the above requirements.

(iv) Workmen's Compensation and Other Insurance — The Council shall obtain Workman's Compensation Insurance, if necessary, to meet the requirements of the State of Delaware; and may from time to time obtain and maintain such other insurance as it shall deem advisable or desirable.

(v) General Requirements - All policies of insurance or bonds obtained by Council as hereinabove directed shall, to the extent obtainable, be subject to the following provisions and limitations:

(a) The named insured under any such policies shall be the Association of Owners of Birch Pointe, for the use and benefit of the individual owners of the condominium units (designated by name if required by law). Each such policy except fidelity and liability shall, moreover, contain the standard mortgagee clause (without contribution) which must be endorsed to provide that any proceeds shall

be paid to the Association of Owners of Birch Pointe, or any Insurance Trustee with whom the Association of Owners or Council has entered into an Insurance Trust Agreement, or any successor thereto, for the use and benefit of each unit owner and each such owner mortgagee, as their interest may appear. The mortgagee clause shall also name the Federal National Mortgage Association ("FNMA") or its servicer, if the FNMA holds one or more first mortgages on units within the Property.

(b) All such policies shall be primary, and in no event shall the insurance coverage obtained and maintained pursuant hereto be brought into contribution with insurance purchased by the owners of the condominium units or their mortgagees.

(c) Such policies shall provide that coverage shall not be prejudiced by (1) any act or omission of the owners of condominium units when such act or omission is not within the control of the Condominium Council or the Association of Owners, or (2) by any failure of such Council or Association to comply with any warranty or condition with regard to any portion of the Property over which the Council or Association has no direct (or indirect) control. Such policies shall include a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a condominium unit owner because of negligent acts of the Council or Association of Owners or other unit owners or occupants.

(d) All policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to any and all insureds named thereon, including without limitation first and second mortgagees, any Insurance Trustee, the Association of Owners, the Council, and FNMA, and each servicer on behalf of FNMA if it holds any mortgage against a unit in the condominium project. All policies shall recognize any Insurance Trust Agreement that has been entered into by the Association of Owners or Council.

(e) All such policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Council, the Association of Owners, the owner of any condominium unit and/or their respective agents, employees or tenants, and of any defenses based upon existence of other insurance or upon invalidity arising from the acts or omissions of the insured.

(f) All policies of property insurance shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Council or Association of Owners, or when in conflict with any requirement of law.

(g) No policy shall be obtained with a carrier where (1) under the terms of the insurance carrier's charter, by-laws, or policy, contributions or assessments may be made against the Association of Owners, unit owners, FNMA, the designee of FNMA, or other mortgage holders; (2) by the terms of the carrier's charter, by-laws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, other mortgage holders, or the unit owners from collecting insurance proceeds.

(h) The premiums on all insurance policies and bonds required herein (except fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association of Owners as a common expense.

(vii) Insurance Trustee — Notwithstanding any of the foregoing provisions, there may be named as an insured, on behalf of the Association of Owners, an authorized representative of the Association of Owners, including any trustee with whom such Association of Owners may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance

Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. If none such is named, the Condominium Council shall have all of the rights, powers, authorization and privileges herein created or recognized on the part of the Insurance Trustee.

Each unit owner hereby appoints the Association of Owners, by the Council, or any Insurance Trustee designated by the Association of Owners, as attorney-in-fact for the purpose of purchasing and maintaining insurance as required above, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association of Owners, by the Council, or any Insurance Trustee or successor shall hold or otherwise properly dispose of any proceeds of insurance in trust for unit owners and their first mortgage holders, as their interests may appear.

9. (d) Consequences of Eminent Domain. In the event that all or any portion of the condominium project is threatened by exercise of the power of eminent domain or becomes the subject of condemnation proceedings, each unit owner whose unit, in whole or in part, is condemned or rendered useless as a residence shall have the right to demand and receive compensation for his unit, including his interest in the common elements. No unit owner whose interest only in the common elements is threatened shall have a similar right, but the Council alone with respect to such common elements shall demand and receive compensation, which shall be applied or divided in accordance with the Code of Regulations.

9. (e) Liability for Negligence. Except to the extent that valid and collectible liability insurance exists covering the person sought to be held liable, no unit owner or occupant, and no member, agent or employee of the Council shall be liable to each other or to anyone else for any condition of the common elements which he has not

actively and intentionally caused, unless such condition is the result of gross negligence or wilful misconduct. This provision shall not create a right of action in anyone who would not otherwise have such right; nor shall it limit any action brought to abate a nuisance, or to enforce an easement, restriction, or the performance of a duty created by this Declaration the Code of Regulations, or Rule of Council.

9. (f) Priority of Liens. Assessments against each unit for common expenses shall commence on the date when the Declarant records this Declaration. From the date of assessment until paid in full, all assessments, together with interest and any allowable costs of collection, including attorney fees, shall be a lien against such unit and shall be the personal obligation of the record owner of such unit. However, no delinquent assessment shall become the personal obligation of any party later acquiring ownership of such cost for the first time (beyond that party's interest in the unit on which the assessment remains a lien) unless such obligation is expressly assumed by such party. The Council shall have those rights and remedies to enforce collection of delinquent assessments which are set forth in the Delaware Unit Property Act and in the Code of Regulations for the Property. The lien against each unit for assessment of common expenses shall have priority over all other liens except first mortgages against any unit, and except any mortgages against units owned by the Declarant, and liens which are senior to any of such mortgages regardless of priority in time; so that, with the exceptions just mentioned, the lien against each unit for assessment of common expenses shall, when reduced to judgment, have priority over all other liens, regardless of priority in time. Any first mortgagee who comes into possession of a unit pursuant to the remedies provided in the mortgage, or by deed or assignment in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged unit which accrued prior to the time such mortgagee came into possession of the unit, except for claims for a pro rata share of such assessments or charges resulting

from a pro rata reallocation of such assessments or charges to all units including the mortgagee's unit.

9. (g) Applicability of Declaration, Code and Rules. This Declaration, together with the attached Code of Regulations, the Rules of Conduct, as the same may be amended from time to time, shall run with the land and be binding upon all present or future unit owners, lessees, holders of any interest in a unit, their heirs, administrators, executors, successors, assigns, employees, agents, guests, or any other person or entity using the facilities of the project in any manner. The term "Declarant" as used in the Declaration, Code of Regulations and Rules of Conduct shall include the Declarant's respective heirs, executors, administrator, survivors and assigns; and any entity or person holding a mortgage granted by Declarant against its title to or interest in all or any portion of the Condominium shall automatically, upon foreclosure of such mortgage or upon a deed or assignment in lieu of foreclosure have all of the rights, powers and privileges of the Declarant. Notwithstanding the foregoing, no person herein shall give any unit lessee, occupant, invitee, trespasser or other third party upon the Property any rights or causes of action which he would not otherwise have under the express terms of his lease, contract, or at law.

9. (h) Amendment of Declaration and Code. Notwithstanding any other provision contained in this Declaration, Code of Regulations or Declaration Plan, and notwithstanding any law, custom, or usage to the contrary, the Declarant shall have the absolute right, power and authority to amend this Declaration, the Code of Regulations and the Declaration Plan, by filing with the Office of the Recorder of Deeds in and for New Castle County, Delaware, amendments and plans consistent therewith, the purpose

of which shall be to expand BIRCH POINTE from time to time through the submission of additional buildings, land and improvements to the Unit Property Act as a part of the condominium project. In this connection, Declarant shall submit to the Unit Property Act at least one additional two hundred ninety-fourths ( $1/294$ ) undivided and non-exclusive possessory interest in the land for each additional unit by which the condominium project is expanded. The interior and exterior design of the units being added to the project, and of the buildings in which said units are constructed, and the number of such units and buildings, shall be determined in the sole and absolute discretion of Declarant, and may (but need not) include detached residences, townhouses, garden apartment and mid-rise and high rise apartments; provided, however, that the project shall not be expanded by the addition of more than a total of another 198 units, so that the maximum possible number of units in the project after all rightful expansion shall be 294. Any additional units shall be constructed of materials and in a manner comparable to (but not necessarily identical with), on an overall basis, the materials and manner of construction utilized in constructing the first 96 units which constitute the original project. From and after each amendment expanding the condominium, the previously submitted units shall each have such proportionately lesser percentages of interest in the common elements of the project, as appears in the most recent amendment. In establishing such proportionately lesser percentages, the Declarant shall adhere to the following formula and procedure: (1) the number of new units by which the project is being expanded, shall be added to the number of the previously existing units, so as to determine the total number of units which will be in the project after the proposed expansion is accomplished; (2) the said total number of units after expansion shall be divided into the number of new units being added to the project so as to establish what percentage of said total will consist of the newly added units; and (3) the said percentage as so determined shall be used as the multiplier by which the percentage

interest in the common elements allocated to each previously existing unit prior to the proposed expansion, shall be multiplied in order to establish what its new and proportionately reduced percentage interest in the common elements of the project will be after the expansion is accomplished. The total of all the percentages of interest allocated in the aggregate to all the newly added units shall equal their percentage of the total number of units in the project after expansion, as determined in steps (1) and (2) of the above procedure; but within the limitation and requirement of this total, Declarant shall allocate and apportion to the newly added units such percentages of interest in the common elements as in Developer's sole and absolute discretion seems appropriate or desirable. Declarant shall, moreover, in establishing the proportionate reduction in the percentages of interest of previously existing units, and in establishing the percentages of interest of the newly added units, have the right, power and authority to make minor adjustments to the figures derived from the foregoing procedures and formulas, by rounding off such figures, or slightly increasing or decreasing the percentages of interest being allocated to any class of units, so that the total of all percentages of interest of all units shall always equal exactly 100.00%, without the necessity of attributing to any unit a percentage of interest which is carried out to more than three decimal places or ends in a fraction; provided, however, that such rounding off, or increase or decrease does not exceed one-tenth of one percent.

Declarant also reserves the absolute right, power and authority to change the interior design and arrangement of, or alter the boundaries between, units owned by the Declarant at any time and from time to time after this Declaration is filed, provided only that same shall not increase the number of units herewith submitted to the Unit Property Act; for the accomplishment of which, Declarant shall have the right to amend the Declaration, Declaration Plan and other documents so as to reflect such change, without previously or subsequently obtaining the consent, approval, signature or other action or nonaction of any unit owner, mortgagee or occupant.



An easement shall exist as to each unit and as to the common elements preserving and reserving this right of amendment and expansion. The right, power and authority of the Declarant to put such amendments and expansion into effect shall, unless exercised on or before December 31, 1989, expire unless extended by affirmative majority vote of the then unit holders. So long as the Declarant has the right, power and authority to thus expand the condominium project, no consent, signature or other act of any unit owner, occupant or mortgagee shall be required for the said amendments to take effect, nor shall any written or other objection thereto prevent said amendments from taking affect, and neither the unit owners nor the Council shall have any right to amend this Declaration, the Declaration Plan, Code of Regulations or Rules of Conduct without the written consent of the Declarant obtained, filed and recorded along with said amendment.

Except with respect to matters requiring more than a sixty-seven per cent (67%) vote, and except as otherwise expressly provided, this Declaration may be amended upon the affirmative vote of sixty-seven per cent (67%) or more of the total vote of all the unit owners; provided, however, that any amendment which would otherwise require a sixty-seven per cent (67%) vote to pass, will if proposed or endorsed by the Declarant at anytime during which the Declarant has the right to expand the project, be validly passed and adopted by any vote in excess of fifty per cent (50%). The Code of Regulations may be amended as therein provided and in accordance with the Unit Property Act.

In the event that any title insurance company licensed to do business in the State of Delaware, or any federally regulated lending institution desiring to furnish a mortgage loan to a condominium unit purchaser, so requires or advises, amendments correcting or clarifying one or more of the Declaration, Declaration Plan, and Code of Regulations in order to achieve compliance with the Unit Property Act may be made by Council without the consent, signature, or other action of any unit owner except the Declarant.

To implement the foregoing amendment rights, each unit owner by accepting and recording the deed to his unit irrevocably appoints the Declarant and/or members of the Condominium Council, as the case may be, as his attorney-in-fact to execute, acknowledge, deliver, and record any such amendments or other documents, with full powers of substitution, with each successive officer of Declarant or member of the Council being regarded as the valid substitute for and successor to the said attorney-in-fact.

No amendment which adversely affects the interest of an institutional first mortgagee shall be binding upon such mortgagee without its written consent, unless such amendment shall first have been approved in writing by one or more of such mortgagees holding mortgages on a majority of all mortgaged units. Nor shall any amendment be made which, by design or happenstance, adversely and materially affects the value or use of one or more units without equally, insofar as practicable, affecting all others, except with the consent of all those who are affected. There shall be a presumption in favor of the validity of any recorded amendment.

Notwithstanding anything contained herein, when unit owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Property, the eligible mortgage holders representing at least sixty-seven percent (67%) of the votes of the mortgaged units must agree.

No amendment shall be considered material if it is for the purpose of correcting technical errors, or for clarification only, or affects only the interior configuration of a unit owned by Declarant. Any unit owner or eligible mortgage holder who receives a written request to approve amendments which are not material, and who does not deliver or post to the requesting party a negative response within thirty (30) days, shall be conclusively deemed to have approved such request.

9. (i) Construction of Declaration and Code. This Declaration and the Code of Regulations shall to the extent reasonable be deemed as consistent with and supplementary to the provisions of the Unit Property Act, which provisions as presently enacted are herein incorporated by reference. Any conflicts between the Declaration and Code of Regulations shall, if not otherwise reconcilable, be resolved in favor of the Declaration. The unconstitutionality, illegality or invalidity of any portion of the Declaration or Code of Regulations shall not affect the continuing force and effect of the remaining portions thereof. No provision in the Declaration or Code of Regulations shall be deemed invalid, waived or abrogated by reason of any failure to enforce the same, irrespective of the passage of time or number of violations.

10. Arbitration. In the event of any dispute between unit owners and/or occupants, or between Council and any unit owners and/or occupants, the dispute may be submitted to arbitration at the election of any party thereto (other than an occupant who is not a unit owner), by serving a notice on the other party or parties in accordance with the Delaware Uniform Arbitration Act; provided, however, that if the dispute involves the Declarant, the dispute shall not be submitted to arbitration unless the Declarant specifically so consents in writing, separate and apart from and in addition to this Declaration, Code of Regulations, Declaration Plan, and Rules of Conduct. Such notice shall, if served within fourteen (14) days after the party electing arbitration has received a complaint, petition, or similar notice of court proceeding in connection with the same dispute, be effective to compel the party (except the Declarant) instituting the court action to stay same, pending the completion of arbitration and the awarding of a decision thereunder, which shall be final, unappealable, and binding between the parties insofar as permitted under Delaware law. The arbitration shall be conducted under the rules of the American Arbitration Association by an arbitrator from the American Arbitration Association. The costs of any arbitration shall be borne as the arbitrator or panel may

determine. However, unless the dispute is one for which the condominium documents expressly permit the recovery of attorney's fees, such costs shall not include the parties' attorneys' fees.

11. Effective Date. This Declaration shall become effective when it, the Declaration Plan, and the Code of Regulation have been duly recorded.

IN WITNESS WHEREOF, RESTON CORPORATION has executed, sealed, attested, acknowledged and delivered this Declaration the 28th day of June , 1984.

WITNESS

RESTON CORPORATION

Sharon M. Netta BY: Henry M. Farnham (SEAL)  
PRESIDENT

ATTEST: Rene Kroch (SEAL)  
SECRETARY

[CORPORATE SEAL]

STATE OF DELAWARE )  
 ) SS.  
NEW CASTLE COUNTY )

BE IT REMEMBERED that on this 28<sup>th</sup> day of June, 1984, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, GARY M. FARRAR, President of RESTON CORPORATION, a corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act and deed of said corporation, and that the signature affixed is that of the President thereto in his own proper handwriting, and the seal affixed is the common and corporate seal of said corporation, and that his attesting sealing, executing, acknowledging, and delivering said Indenture was duly authorized by a resolution of the Board of Directors of said corporation.

GIVEN under my hand and seal of office, the day and year aforesaid.

  
NOTARY PUBLIC

## SCHEDULE 2.1

All that certain piece or parcel of land situate in Mill Creek Hundred, New Castle County, State of Delaware, known as Phase I, Birch Pointe, as shown on a Major Record Land Development Plan of Birch Pointe, dated September 29, 1983, prepared by Ramesh C. Batta Associates, recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, in Microfilm No. 7000, being more particularly bounded and described in accordance with that certain survey plan prepared by Ramesh C. Batta Associates, Consulting Engineers, Planners, Land Surveyors, Plan No. 79567-B-1233, dated March 20, 1984, as follows to wit:

Beginning at a point on the northerly side of Fairmont Drive, at 60 feet wide the said point of beginning being a common corner for lands herein being described and lands of Woodlea Elderly Housing, Microfilm No. 6330; thence from the said point of beginning along said Fairmont Drive right of way, in part, south 38 degrees 00 minutes 00 seconds west 146.49 feet to a point, a common corner for lands herein being described and lands of Linden Green Apartments, Section 2, Microfilm No. 2035; thence along said Linden Green Apartments, Section 2, the two following courses and distances:

1. South 87 degrees 15 minutes 00 seconds west 145.00 feet to a point;
2. South 46 degrees 11 minutes 38 seconds west 566.22 feet to a point, a common corner for lands herein being described, Linden Green Apartments and Lands of Pike Creek Golf Course, Microfilm No. 6591;

Thence along said Pike Creek Golf Course the two following courses and distances;

1. North 48 degrees 00 minutes 00 seconds west 441.05 feet to a point;
2. North 10 degrees 00 minutes 00 seconds east 385.00 feet to a point;

Thence from the said point along a division line between lands herein being described and other lands now or formerly of Reston Corporation, Microfilm No. 7000, the following seven courses and distances:

1. South 80 degrees 00 minutes 00 seconds east 160.00 feet to a point;
2. South 10 degrees 00 minutes 00 seconds west 107.00 feet to a point;

3. South 82 degrees 00 minutes 00 seconds east 112.00 feet to a point;
4. North 10 degrees 00 minutes 00 seconds east 55.00 feet to a point;
5. North 15 degrees 00 minutes 00 seconds west 35.00 feet to a point;
6. North 10 degrees 00 minutes 00 seconds east 67.00 feet to a point;
7. North 86 degrees 54 minutes 13 seconds east 185.67 feet to a point; the said point being on a division line between lands herein being described and lands of Woodlea Elderly Housing, Microfilm No. 6330;

Thence along said lands of Woodlea Elderly Housing the following six courses and distances:

1. By an arc of a circle, curving to the left, having a radius of 70.00 feet and an arc distance of 84.91 feet to a point;
2. South 64 degrees 30 minutes 00 seconds east 57.63 feet to a point;
3. By an arc of a circle, curving to the left, having a radius of 130.00 feet and an arc distance of 62.40 feet to a point;
4. North 88 degrees 00 minutes 00 seconds east 149.95 feet to a point;
5. By an arc of a circle, curving to the right, having a radius of 160.00 feet and an arc distance of 111.70 feet to a point;
6. South 52 degrees 00 minutes 00 seconds east 64.76 feet to the point and place of beginning.

BIRCH POINTE  
SCHEDULE 2.2 - BUILDINGS AND IMPROVEMENTS

BUILDINGS

The land has been or will be improved by six (6) three story (3) building clusters containing ninety-six (96) units, thirty-two (32) of which are one (1) bedroom units and sixty-four (64) of which are two (2) bedroom units. Thirty-six (36) of the units are designated as Plan "A" units (twelve (12) one-bedroom units and twenty-four (24) two-bedroom units), and sixty (60) of the units are designated as Plan "B" units (twenty (20) one-bedroom units and forty (40) two-bedroom units). The Plan "A" units are each approximately forty-six (46) feet six (6) inches in length by thirty-three (33) feet nine (9) inches in width to the face of the side walls and the Plan "B" units are approximately fifty (50) feet six (6) inches in length by thirty-two (32) feet four (4) inches in width to the face of the side walls. Each unit shares both side walls in common with adjacent units, except for those at the end of clusters, which share only one side wall in common. Construction of the front and rear exterior walls of the units (above foundations) is of wood stud faced on the front with horizontal hardboard siding, and on the rear with horizontal hardboard siding. The sidewalls and foundation are of concrete slab and masonry block, faced on the exterior where exposed with horizontal hardboard siding. Footings are of poured concrete. Upper floors are gypsum concrete over plywood subflooring supported by floor trusses covered by carpet, vinyl asbestos, tile or hardwood. Interior walls are wood studs with one-half (1/2) inch drywall. Ceilings are five-eighths (5/8) inch firecode drywall underneath floor trusses. Roofing is asphalt shingles over felt and plywood sheathing supported by roof trusses. Exterior patio decks and stairs are of wood. Gutters and drainspouts are aluminum. Windows are typically wood; doors are wood, and exterior trim is typically wood. Each unit has a pre-fabricated metal fireplace and each third (3rd) floor unit has a skylight in the roof. Each unit and each building within a building cluster shall contain a separate electric meter, heat pump and electric heat and air conditioning units, and each building shall be served by unit/lobby intercommunication security lock systems. Moreover, each unit contains appliances, cabinetry and fixtures; see description of units.

IMPROVEMENTS

The land is or will be further improved by paved driveways, landscaping and lighting fixtures, as well as underground sanitary sewer systems, water and electrical cables, conduits and lines and other appurtenant facilities.



## BIRCH POINTE CONDOMINIUM

### SCHEDULE 5.1 - UNITS

The units in Birch Pointe consist of ninety-six (96) one (1) story residential units organized in six (6) building clusters (4 clusters of eighteen [18] units and 2 clusters of twelve [12] units) with each such building cluster containing the following number of units:

<u>Building Cluster No.</u>	<u>Number Of Units</u>
1	12 (3 one-bedroom and 9 two-bedroom)
2	18 (6 one-bedroom and 12 two-bedroom)
3	18 (6 one-bedroom and 12 two-bedroom)
4	18 (6 one-bedroom and 12 two-bedroom)
5	18 (6 one-bedroom and 12 two-bedroom)
6	12 (3 one-bedroom and 9 two-bedroom)

The units in each building cluster are organized into three (3) vertically stacked sets of horizontally adjacent one-bedroom and two-bedroom units, with the first story units being onebedroom and the second and third story units being two-bedroom, all as more particularly shown on the Declaration Plan. Thirty-six (36) of the units (twelve [12] one-bedroom units and twenty-four [24] two-bedroom units) are designated as Plan "A" units, and sixty (60) of the units (twenty (20) one-bedroom units and forty (40) two-bedroom units) are designated as Plan "B" units on the Declaration Plan. There are three (3) models of each type of the aforementioned Plans and each of the Plans is organized in the building cluster as shown on the Declaration Plan. Overall dimensions may vary slightly among units of substantial identical configuration owing to minor as-built variations. Each unit has access to an interior common area and to the building exterior via a patio or deck.

The units are the largest spaces contained in the building clusters which are separated from every other immediately contiguous such space by a vertical wall containing no through-door or by a common area such as a hall, lobby or stairwell. All units are each entirely enclosed (except for exterior patios or decks) by and between the interior unfinished surface of the concrete slab or lightweight concrete forming the floor, the interior surface of drywall separating the unit from other units, and the interior surface of the ceiling for the unit in question, all as further shown on the Declaration Plan. Each unit consists of all surfaces and nonstructural contents within the dimensions shown on the Declaration Plan, or within any applicable easement for unit encroachment, including without being limited to drywall, wood trim, finished flooring and floor covering, heat and air conditioning vents, electrical outlets and switches, lighting fixtures, plumbing fixtures and appliances, but shall not include window glass, any component of the skylights, or the stairs leading to the lofts (in the third story units) or the structural foundations of said loft. Each unit shall also include all interior sash, doors, conduits, cables, pipes, wire, utility lines, ducts, through wall heating/air conditioning elements, and the interior deck and patio surface deck and interior balcony walls, not situate within the dimensions of a given unit but connected to and exclusively serving it. Notwithstanding any indication hereinabove to the contrary, however, no unit shall include any window, door, duct, cable, conduit, pipe, light, utility line, fixture,

appliance or equipment not exclusively serving only the unit in which it is located; nor shall any supporting beam, stud or joist, regardless of whether same be located within the dimensions of any unit, be considered as part thereof, but shall constitute limited common element.

Equipment in each unit includes heating/air conditioning elements including electric heat pump, electric range and oven, range hood, refrigerator, dishwasher, double sink with garbage disposal, trash compactor heat and exhaust ceiling fan, medicine cabinet, washer and dryer, metal pre-fabricated fireplace box, which equipment by virtue of being mentioned herein, and all replacements thereto, shall constitute an integral part of the unit and shall be considered fixtures thereto.

The three models of Plans A and B may be described in terms of interior subdivision and approximate room measurements as follows:

Plan A-1      living room 12'4" x 15'7" plus fireplace, dining room 12'7" x 14'4", master bedroom 19'5" x 11'2" including walk-in closet, kitchen 10' x 11', utility room 5'2" x 7', bathroom 11'1" x 5'7", entry area containing closet, patio.

Plan A-2      living room 19' x 12'4" plus fireplace, dining room 10'5" x 11'2", kitchen 8'2" x 9'6", master bedroom 16'5" x 17'6" including walk-in closet, bedroom 13'9" x 11' including closet, bathroom 8'4" x 8'5", entry area with linen closet and utility closet, deck, storage area 4'2" x 6'2" located on lowest level.

Plan A-3      First floor-living room 12'5" x 19'3" plus fireplace, dining room 10'5" x 11', kitchen 8' x 9'6", master bedroom 16'5" x 17'8" including walk-in closet, bedroom 14'2" x 11', bathroom 8'4" x 8'5", utility closet, entry area containing linen closet and stairway, deck, storage area 4'7" x 8'9" located on lowest level.

Loft - loft area 11'3" x 27'7" with storage closet containing hot water heater.

Plan B-1      Master bedroom 19'5" x 11'2" with walk-in closet, living room 13'1" x 15'7" plus fireplace, dining room 12' x 14', bathroom 11'1" x 5'7", kitchen 8'2" x 11'7", utility room 5'8" x 11', entry area containing linen closet, patio.

Plan B-2      living room 13'1" x 19' plus fireplace, dining room 9' x 11', kitchen 9'6" x 8'2", master bedroom 22'1" x 11'7" including dressing area and master bathroom, bedroom 11' x 13'4", bathroom 5'1" x 7'9", utility closet, entry area containing linen closet, deck, storage area 11' x 15' located in lowest level.

Plan B-3      First floor - living room 13'1" x 19' plus fireplace, dining room 9' x 11', kitchen 9'6" x 8', master bedroom 22'1" x 11'7" including dressing area and master bathroom,

bedroom 11' x 13'5", bathroom 5'1" x 8', utility closet, entry area containing linen closet and leading to stairway, deck, storage area 4'2" x 8'2" located on lowest level.

Loft - loft area 10'5" x 27'4" with storage closet containing hot water heater.

## BIRCH POINTE

### SCHEDULE 5.2 - COMMON ELEMENTS

The common elements of Birch Pointe consist of all the Land, Building, and Improvements as described in Schedules 2.1 and 2.2 to this Declaration or as shown on the Declaration Plan or as actually exists on the Land whether or not described and shown, except for and excluding the units described in Schedule 5.1 to the Declaration, and as further shown on the Declaration Plan. Without limiting the foregoing, the Common Elements include:

(a) The land on which the Buildings are located and portions of the Buildings which are not included in a unit;

(b) The foundations, structural part, supports, main walls, roofs, basements, halls, corridors, lobbies, stairways and entrances and exists of the Buildings;

(c) The yards, parking areas and driveways;

(d) Portions of the land and building used exclusively for the management, operation or maintenance of the common elements;

(e) All apparatus and installations existing for common use and all meters installed for the purpose of measuring each condominium unit's consumption of electricity, gas or water;

(f) All other elements of the Buildings necessary or convenient to its existence, management, operation, maintenance and safety or normally in common use;

(g) Intercommunication and security systems contained in the lobby of the Buildings and all structural components thereof;

(h) Every component of the fireplaces including the chimneys and flue components, except the pre-fabricated metal boxes inserted into the fireplace as shown on the Declaration Plan, which boxes shall become a part of the units.

(i) Except as and to the extent that all or parts of some systems are owned by the utilities supplying the respective services involved, all installations of and systems for central services and utilities serving more than one (1) unit which are located outside of the Buildings, including, but not limited to systems for electricity, plumbing, light, water, telephone service, communities equipment, sewer and chimney, and all other apparatus and equipment and installations existing for common use, including all pipes, ducts, wires, cables and conduits used in connection therewith (except as and to the extent that the same are located within the title lines of and serve only a single unit).

(j) Such facilities as are designated in the Declaration or Declaration Plan as common elements, some of which may be limited in use as follows, namely:

Declarant and/or Council shall each have the right to assign and reassign from time-to-time, on a waiting list basis, one parking space to each unit, which assignment shall last only so long as the unit owner receiving it continues to own his unit.

In the event that any unit is held in the name of Council, or in the name of a nominee or trustee for Council, the cost of acquiring, holding, maintaining, operating, and leasing or selling such unit shall be a common expense, and the profit or gain from such unit shall be a common profit as if such unit while so held were a common element.

SCHEDULE 5.3

BIRCH POINTE  
PHASE 1 - 96 UNITS

BUILDING 1  
CLUSTER #33B

	<u>UNIT TYPE</u>	<u>UNIT NUMBER</u>
3301 BIRCH CIRCLE	A1	1
3303	B1	2
3305	A2	3
3307	B2	4
3309	A3	5
3311	B3	6

BUILDING 1  
CLUSTER #34B

3401 BIRCH CIRCLE	B1	7
3403	A1	8
3405	B2	9
3407	A2	10
3409	B3	11
3411	A3	12

BUILDING 2  
CLUSTER #35B

3501 BIRCH CIRCLE	B1	13
3503	A1	14
3505	B2	15
3507	A2	16
3509	B3	17
3511	A3	18

BUILDING 2  
CLUSTER #36B

	<u>UNIT TYPE</u>	<u>UNIT NUMBER</u>
3601 BIRCH CIRCLE	B1	19
3603	B1	20
3605	B2	21
3607	B2	22
3609	B3	23
3611	B3	24

BUILDING 2  
CLUSTER #5 37B

3701 BIRCH CIRCLE	A1	25
3703	B1	26
3705	A2	27
3707	B2	28
3709	A3	29
3711	B3	30

BUILDING 3  
CLUSTER #6 38B

3801 BIRCH CIRCLE	B1	31
3803	A1	32
3805	B2	33
3807	A2	34
3809	B3	35
3811	A3	36

<u>BUILDING 3</u> <u>CLUSTER #7</u>	39B	<u>UNIT</u> <u>TYPE</u>	<u>UNIT</u> <u>NUMBER</u>
3901 BIRCH CIRCLE		B1	37
3903		B1	38
3905		B2	39
3907		B2	40
3909		B3	41
3911		B3	42

<u>BUILDING 3</u> <u>CLUSTER #8</u>	40B		
4001 BIRCH CIRCLE		A1	43
4003		B1	44
4005		A2	45
4007		B2	46
4009		A3	47
4011		B3	48

<u>BUILDING 4</u> <u>CLUSTER #9</u>	40H		
4001 HALEY COURT		A1	49
4003		B1	50
4005		A2	51
4007		B2	52
4009		A3	53
4011		B3	54



BUILDING 4  
CLUSTER #10     39H

	<u>UNIT TYPE</u>	<u>UNIT NUMBER</u>
3901 HALEY COURT	B1	55
3903	B1	56
3905	B2	57
3907	B2	58
3909	B3	59
3911	B3	60

BUILDING 4  
CLUSTER #11     38H

3801 HALEY COURT	B1	61
3803	A1	62
3805	B2	63
3807	A2	64
3809	B3	65
3811	A3	66

BUILDING 5  
CLUSTER #12     37H

3701 HALEY COURT	A1	67
3703	B1	68
3705	A2	69
3707	B2	70
3709	A3	71
3711	B3	72

BUILDING 5  
CLUSTER #13    36H

	<u>UNIT TYPE</u>	<u>UNIT NUMBER</u>
3601 HALEY COURT	B1	73
3603	B1	74
3605	B2	75
3607	B2	76
3609	B3	77
3611	B3	78

BUILDING 5  
CLUSTER #14    35H

3501 HALEY COURT	B1	79
3503	A1	80
3505	B2	81
3507	A2	82
3509	B3	83
3511	A3	84

BUILDING 6  
CLUSTER #15    34H

3401 HALEY COURT	B1	85
3403	A1	86
3405	B2	87
3407	A2	88
3409	B3	89
3411	A3	90

BUILDING 6  
CLUSTER #16     33H

UNIT  
TYPE

UNIT  
NUMBER

3301 HALEY COURT

A1

91

3303

B1

92

3305

A2

93

3307

B2

94

3309

A3

95

3311

B3

96

FIRST AMENDMENT TO ENABLING DECLARATION  
ESTABLISHING A PLAN FOR  
BIRCH POINTE CONDOMINIUM  
AND CODE OF REGULATIONS

MADE this 2nd day of January , 1985, by RESTON CORPORATION, a Delaware corporation (hereinafter called "Declarant"), and BIRCH POINTE CONDOMINIUM COUNCIL, an organization existing pursuant to Chapter 25 of Title 22 of Delaware Code 1975, as amended (hereinafter called the "Council"), for themselves, their successors, grantees and assigns.

W I T N E S S E T H:

WHEREAS, Declarant executed that certain Enabling Declaration Establishing A Plan For Condominium Ownership For Birch Pointe, dated June 28, 1984, and recorded in the Office of the Recorder of Deeds, in and for New Castle County, Delaware, in Deed Book 179, Page 97 (hereinafter referred to as the "Declaration"), which Declaration submitted certain property located in New Castle County, Delaware, to the condominium form of ownership in the manner provided by Chapter 22 of Title 25, Delaware Code 1975, as amended;

WHEREAS, said property is more particularly bounded and described in accordance with that certain Condominium Declaration Plan of Birch Pointe Condominium, Phase One, dated June 18, 1984, prepared by Ramesh C. Batta Associates, and recorded in the Office aforesaid in Microfilm No. 7369;

WHEREAS, in connection with the Declaration, Council executed that certain Code of Regulations and Rules of Conduct,

dated June 28, 1984, recorded in the Office aforesaid, in Deed Book 179, Pages 136 and 173 respectively (said Code of Regulations and Rules of Conduct are hereinafter referred to as the "Code" and "Rules"); and

WHEREAS, Declarant and the Council desire to execute and record this First Amendment in order to insert a page in the Declaration which was not recorded and to make several additional changes to the Declaration and Code.

NOW, THEREFORE, the Declarant and/or the Council make the following Declarations:

1.

The following shall be inserted as Page 1 of the Declaration:

"ENABLING DECLARATION  
ESTABLISHING A PLAN FOR  
CONDOMINIUM OWNERSHIP  
FOR  
BIRCH POINTE

MADE this 28th day of June, 1984, by RESTON CORPORATION, a Delaware corporation (hereinafter called "Declarant"), for itself, its successors, grantees and assigns.

WHEREIN the Declarant makes the following declarations:

1. Purpose: The purpose of this Declaration is to submit the lands herein described, and the improvements thereon erected or to be erected on such lands, to the condominium form of ownership and use in the manner provided by Chapter 22 of Title 25, Delaware Code of 1975, as amended (therein and herein called the "Unit Property Act").

2. (a) The Land. The land which is hereby submitted to the condominium form of ownership, consists of all that certain tract, piece or parcel of land known as Birch Pointe, Phase I, Mill Creek Hundred, New Castle County, Delaware, as shown on that certain Record Major Land Development Plan recorded on December 28, 1983, in the Office of the Recorder of Deeds in and for New Castle County in Microfilm No. 7000; which land is bounded and more particularly described on Schedule 2.1 appended hereto and incorporated herein by this reference.

TOGETHER WITH AND SUBJECT TO easements and rights-of-way, declarations, restrictions and encumbrances of record, and dedicated roads, parking areas, open spaces and paths as shown on the aforesaid Record Major Land Development Plan and the Condominium Declaration Plan; including also without being limited to all of"

2.

Paragraph 5(b) on Page 2 of the Declaration shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"5.(b) Statement of Proposed Undivided Interest in Common Elements Assigned to Each Condominium Unit: The Common Elements mentioned above shall initially, until the occurrence of events hereinafter specified, be owned by the new Unit owners in the following proportions as undivided tenants in common, not subject to partition:

<u>Condominium Unit No.:</u>	<u>Percentage Ownership Per Unit</u>
3	1.105%
1, 2, 4 through and including 96 (See Schedule 5.3 for street address of each unit)	1.041%

In the event that BIRCH POINTE is expanded at any time or from time to time by the Declarant, pursuant to the rights of amendment and expansion set forth in Paragraph 9.(h) of this Declaration, through the submission of any additional land to the Unit Property Act, together with additional units and improvements thereon, in the manner provided in Paragraph 9.(h) of this Declaration, then from and after the date of such expansion, the proportionate undivided interest in the common elements assigned to each unit shall be reduced and increased in accordance with the formula set forth in said Paragraph 9.(h) hereof, as reflected in the Amendment hereto filed by the Declarant to accomplish the expansion; provided, however, in no event shall any unit have less than the percentage interest in the common elements attributed to that unit below:

<u>Condominium Unit No.:</u>	<u>Percentage Ownership Per Unit</u>
1 through and including 96 (see Schedule 5.3 for street address of each unit)	.34%

3.

3.

Paragraph 6 on page 3 of the Declaration shall be amended to add the following sentence to the end of said paragraph:

"For purposes of amending the condominium documents in order to expand the condominium regime created hereby pursuant to Paragraph 9.(h) with corresponding changes in each condominium units' undivided interest in the common elements of BIRCH POINTE, Declarant is authorized and empowered to execute all such amendments as the attorney-in-fact for all Unit owners and for every holder of a lien against any Unit affected thereby."

4.

Paragraph 8 beginning on page 5 of the Declaration shall be amended so that the last line of said page 5 shall be deleted and the following inserted in lieu thereof:

"comprising the condominium regime after the last expansion thereof by Declarant as provided in Paragraph 9.(h) hereof or December 31, 1989,"

5.

Paragraph 9.(b)(v) on page 8 of the Declaration shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"(v) All units and common elements shall also be subject, at Declarant's or Counsel's election, to easements for the installation, use, maintenance, repair and replacement of utility lines, pipes, and conduits (whether created in writing or not) in favor of other units or common elements in the Property, or in favor of other lands and improvements adjacent to the Property, provided only that such easements shall not permanently and materially encroach upon the net usable floor area of any unit, nor permanently harm same. All common elements shall further be subject to easements for roads, parking areas, and other purposes, necessary for the proper operation of the Property or any part thereof."

4.

Paragraph 9.(h) of the Declaration beginning on page 18 of the Declaration shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"9.(h) Amendment of Declaration and Code:

(i) Notwithstanding any other provision contained in this Declaration, Code of Regulations or Declaration Plan, and notwithstanding any law, custom, or usage to the contrary, the Declarant shall have the absolute right, power and authority to amend this Declaration, the Code of Regulations and the Declaration Plan, by filing with the Office of the Recorder of Deeds, in and for New Castle County, Delaware, amendments and plans consistent therewith, the purpose of which shall be to expand BIRCH POINTE from time to time by the submission of additional buildings, land and improvements to the Unit Property Act as a part of the condominium regime. The interior and exterior design of the units being added to the regime, and of the buildings in which said units are constructed and the number of such units and buildings, shall be determined in the sole and absolute discretion of Declarant, and may (but need not) include detached residences, townhouses, garden apartments and mid-rise and high-rise apartments; provided, however, that the regime shall not be expanded by the addition of more than the total of 198 units, so that the maximum possible number of units in the regime after all rightful expansion shall be 294. Moreover, all such additional units shall be located on additional land added and adjacent to the present condominium regime. Any additional unit shall be constructed utilizing materials and workmanship comparable to (but not necessarily identical with), on an overall basis, the materials and workmanship utilized in constructing the first 96 units which constitute the original project. From and after each amendment expanding the condominium, the previously submitted unit shall each have such proportionately lesser percentages of interest in the common elements of the regime, as appears in the most recent amendment. In establishing such proportionately lesser percentages, the Declarant shall adhere to the following formula and procedure: (1) the number of new units by which the project is being expanded shall be added to the number of the previously existing units so as to determine the total number of units which will be in the condominium regime after the proposed expansion is accomplished; (2) the said total number of units after expansion shall be divided into the number of new units being added to the project so as to establish what percentage of said total will consist of the newly added units; and (3) the said percentage so



determined shall be used as the multiplier by which the percentage interest in the common elements allocated to each previously existing unit prior to the proposed expansion, shall be multiplied in order to establish what its new and proportionately reduced percentage interest in the common elements of the regime will be after the expansion is accomplished. The total of all the percentages of interest allocated in the aggregate to all the newly added units shall equal their percentage of the total number of units in the regime after expansion, as determined in steps (1) and (2) of the above procedure; but within the limitation and requirements of this total, Declarant shall allocate and apportion to the newly added units, such percentage of interest in the common elements as in Declarant's sole and absolute discretion seems appropriate or desirable. Declarant shall, moreover, in establishing the proportionate reduction in the percentages of interest of previously existing units, and in establishing the percentages of interest of newly added units, have the right, power and authority to make minor adjustments to the figures derived from the foregoing procedures and formulas by rounding off such figures, or slightly increasing or decreasing the percentages of interest being allocated to any class of units, so that the total of all percentages of interest of all units shall always equal exactly 100%, without the necessity of attributing to any unit a percentage of interest which is carried out to more than three decimal places or ends in a fraction; provided, however, that such rounding off, or increase and decrease does not exceed 1/10 of 1%.

Declarant also reserves the absolute right, power and authority to change the interior design and arrangement of, or alter the boundaries between, units owned by the Declarant at any time from time to time after this Declaration is filed, provided only that same shall not increase the number of units herewith submitted to the Unit Property Act; for the accomplishment of which, Declarant shall have the right to amend the Declaration, Declaration Plan and other documents so as to reflect such change, without previously or subsequently obtaining the consent, approval or signature or other action or non-action of any unit owner, mortgagee or occupant.

An easement shall exist as to each unit and as to the common elements preserving and reserving this right of amendment and expansion. The right, power, and authority of the Declarant to put such amendments and expansion into effect shall, unless exercised on or before December 31, 1989, expire unless extended by affirmative majority vote of the then unit holders. So long as the Declarant has the right, power and authority to expand the condominium regime, no consent signature or other act of any Unit owner, occupant or mortgagor shall be required for the said amendments to take affect and each Unit owner by accepting and recording the Deed to his unit,

and each holder of a lien against any unit, by agreeing to such lien, irrevocably appoints the Declarant and/or members of the Condominium Council, as the case may be, as his attorney-in-fact to exercise, acknowledge, deliver, and record any such amendments or other documents, with full powers of substitution, with each successive officer of the Declarant or member of the Council being regarded as a valid substitute for and successor to the said attorney-in-fact.

To implement the expansion hereinbefore provided, the Declarant hereby retains a possibility of reverter, in and as to the undivided interest in the common elements allocated to the units created by this Declaration, such that upon the filing of any amendment as aforesaid expanding the condominium regime, a portion of such unit's percentage of interest in the common elements of the condominium regime as same exists immediately prior to the expansion shall become and/or revert to and be vested in fee simple absolute in the Declarant, which portion shall be equal to the difference between such unit's percentage interest under this Declaration as same is in force and effect immediately prior to the filing of said amendment, and its percentage as reduced and shown in the Declaration as newly amended. By filing the amendment causing such expansion, the Declarant shall be deemed to have conveyed to the record owners of the units newly being added, whom shall be deemed concurrently to have accepted, an undivided interest in the common elements being added to the condominium regime; which undivided interest, expressed as a percentage of such new or additional common elements, shall be the same for such unit as its newly reduced percentage of undivided interest in all of the common elements as reflected in the amendments filed to cause the expansion in question; and upon and after such conveyance, the lien of any mortgage against the unit herein conveyed, or against any other unit in the regime, shall be a valid lien against such unit's interest in the newly added common elements, the same as if the regime had been expanded, prior to the execution of such mortgage. Such conveyance or acceptance shall not, however, be a condition to the effective and valid amendment of the Declaration, or to the operation of the possibility of reverter, or to the effectiveness of the expansion of the condominium regime as aforesaid.

(ii) In the event that any title insurance company licensed to do business in the State of Delaware, or any federally regulated lending institution desiring to furnish a mortgage loan to a condominium unit purchaser, so requires or advises, amendments correcting or clarifying one or more of the Declaration, Declaration Plan, and Code of Regulations in order to achieve compliance with the Unit Property Act may be made by Council without the consent, signature, or other action of any unit owner except Declarant.

(iii) Except with respect to matters requiring more than a sixty-seven percent (67%) vote, and except as otherwise expressly provided, this Declaration may be amended upon the affirmative vote of 67% or more of the total vote of the total unit owners; provided, however, that no amendment shall pass before the organizational meeting of the Unit owners as described in Paragraph 8 hereof without the written consent of the Declarant obtained, filed and recorded along with said amendment and also provided, however, that the Declarant may at any time before the organizational meeting of the unit owners as described in Paragraph 8 hereof, file any amendment to the Declaration, Code of Regulations, or Declaration Plan which is necessary in the judgment of the Declarant to cure any ambiguity or to correct or supplement any provisions of the Declaration, Code of Regulations or Declaration Plan which is different or inconsistent with any other provision hereof or thereof or with the Unit Property Act without the approval of the Unit owners and each Unit owner hereby appoints Declarant as his attorney-in-fact to exercise, acknowledge, deliver and record any such amendments. In addition, any amendment which would otherwise require a sixty-seven percent (67%) vote shall if proposed or endorsed by the Declarant before the organizational meeting of the Unit owners as described in Paragraph 8 hereof, be validly passed and adopted by any vote in excess of fifty percent (50%). The Code of Regulations may be amended as therein provided, and in accordance with the Unit Property Act.

(iv) No amendment which materially and adversely affects the interest of an institutional first mortgagee shall be binding upon such mortgagee without his written consent, unless such amendment shall first have been approved in writing by one or more of such mortgagees holding mortgages on a majority of all mortgaged units. Nor shall any amendment be made which, by design or happenstance, adversely and materially affects the value or use of one or more units without equally, insofar as practicable, affecting all others, except with the consent of all those who are affected. There shall be a presumption in favor of the validity of any recorded amendment. No amendment made in accordance with this Paragraph 9.(h) for purposes of expanding the condominium regime shall be deemed adverse to any mortgagee or other lienholder. In addition, no amendment shall be considered material or adverse if it is for the purpose of correcting technical errors in this Declaration, the Code of Regulations, the Condominium Plan or any other condominium document, or for clarification only, or affects only the interior configuration of the unit owned by the Declarant.

(v) Notwithstanding anything contained herein, when unit owners are considering termination of the legal status of the condominium regime for reasons other than substantial destruction or condemnation of the Property, the eligible

mortgage holders representing at least 67% of the votes of the mortgaged units must agree."

7.

The first line of Schedule 5.1 of the Declaration shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"The units in Birch Pointe shall consist of ninety-six (96) one (1) story residential"

8.

The following sentences shall be added to the end of Schedule 5.1 of the Declaration:

"As of the time of recording of this Declaration, only Building 1 as shown and certified on the Declaration Plan is built. As the Declaration Plan is amended to certify that the other buildings and units have been constructed, then the foregoing language in this Declaration shall be deemed to apply to said building and units."

9.

Paragraph 1. of the Code shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"1. Application of Code of Regulations

This Code of Regulations governs administration and management of Birch Pointe Condominium, a condominium property located in Mill Creek Hundred, New Castle County, State of Delaware, which was submitted to the provisions of Title 25, Chapter 22 of the Delaware Code, known as the Unit Property Act, by Declaration dated June 28, 1984, recorded in the Office of the Recorder of Deeds, in and for New Castle County, Delaware, in Deed Book 179, Page 97, et seq. A detached plan of the Project appears in a Condominium Declaration Plan prepared by Ramesh C. Batta, dated June 18, 1984, recorded in the Office aforesaid in Microfilm No. 7369."

10.

The first sentence of Paragraph 2.1.3. on page 2

9.

(also shown as page 45) of the Code shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"2.1.3. Organizational Meeting

An organizational meeting of the Unit owners shall be called in accordance with the provisions governing special meetings and shall be held at the time described in Paragraph 8 of the Declaration."

11.

The following sentence shall be added to Paragraph 4.1.1 on page 7 (also shown as page 50) of the Code:

"Prior to the organizational meeting, the Condominium Council shall have all the rights and powers, including without limitation, the right to make a budget and collect assessments from the Unit owners for condominium common expenses, that the Condominium Council shall have hereunder after the organizational meeting."

12.

The first sentence of Paragraph 6.2.6 on page 13 (also shown as page 56) of the Code shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"6.2.6. Budget. From and after the organizational meeting, within fourteen (14) to forty-two (42) days after his election to the office, depending on the length of adjournment of the Council's first meeting, the Treasurer-elect, assisted by the incumbent Treasurer, shall prepare a detailed estimate of the consumer expenses for the coming year."

13.

All references to the Declaration Plan in this Declaration, the Code, the Rules or any other instruments and documents of record either heretofore or hereafter recorded, shall be deemed to include the Declaration Plan, as amended by that certain Condominium Declaration Plan, Birch Pointe Condominium, Phase One, Amendment No. 1, prepared by Ramesh

10.

C. Batta Associates, Inc., dated December 28, 1984, and recorded in the Office aforesaid in Microfilm No. 7413.

14.

Except as herein amended, the Declaration, the Code and the Rules shall remain in full force and effect.

IN WITNESS WHEREOF, RESTON CORPORATION and the COUNCIL have executed, sealed, attested, acknowledged and delivered this First Amendment the 2nd day of January , 1985.

RESTON CORPORATION

By: /s/ Gary M. Farrar (SEAL)  
President

Attest: /s/ Renee Mosch (SEAL)  
Secretary

(Corporate Seal)

BIRCH POINTE CONDOMINIUM COUNCIL

By: /s/ Gary M. Farrar (SEAL)  
Council Member

By: /s/ Renee Mosch (SEAL)  
Council Member

By: /s/ Charles E. Johnson (SEAL)  
Council Member

By: /s/ Robert A. Kendig (SEAL)  
Council Member

By: /s/ Harry E. Miller (SEAL)  
Council Member

STATE OF DELAWARE )  
                          ) SS.  
NEW CASTLE COUNTY )

The foregoing instrument was acknowledged before me this 2nd day of January, 1985 by GARY M. FARRAR, President of Reston Corporation, a Delaware corporation, on



SECOND AMENDMENT TO ENABLING DECLARATION ESTABLISHING  
A PLAN FOR BIRCH POINTE CONDOMINIUM AND CODE OF REGULATIONS

**12948** This Second Amendment made this 7th day of May, 1985, by RESTON CORPORATION, a Delaware corporation (hereinafter called "Declarant"), and BIRCH POINTE CONDOMINIUM COUNCIL, an organization existing pursuant to Chapter 25 of Title 22 of the Delaware Code 1975, as amended (hereinafter called the "Council"), for themselves, their successors, grantees, and assigns.

W I T N E S S E T H:

WHEREAS, Declarant executed a certain Enabling Declaration Establishing a Plan for Condominium Ownership for Birch Pointe, dated June 28, 1984, and recorded in the Office of the Recorder of Deeds, in and for New Castle County, Delaware, in Deed Book 179, Page 97, as amended by instrument dated January 2, 1985, and recorded in the Office aforesaid in Deed Book 192, Page 55 (said Declaration, as amended is hereinafter referred to as the "Declaration"), which Declaration submitted certain property located in New Castle County, Delaware, to the condominium form of ownership in the manner provided by Chapter 22 of Title 25, Delaware Code 1975, as amended;

WHEREAS, said property is more particularly bounded and described in accordance with that certain Condominium Declaration Plan of Birch Pointe Condominium, Phase One, dated June 18, 1984, prepared by Ramesh C. Batta Associates, and recorded in the Office aforesaid in Microfilm No. 7369, as amended by Plans dated December 28, 1984 and April 9, 1985 and recorded in the Office aforesaid in Microfilm Nos. 7413 and 7540, respectively (said Declaration Plan, as amended is hereinafter referred to as the "Declaration Plan"); and



WHEREAS, in connection with the Declaration, Council executed that certain Code of Regulations dated June 28, 1984, recorded in the Office aforesaid, in Deed Book 179, Page 136, as amended by instrument dated January 2, 1985 and recorded in the Office aforesaid in Deed Book 192, Page 55 (said Code of Regulations, as amended, is hereinafter referred to as the "Code") and those certain Rules of Conduct dated June 28, 1984, recorded in the Office aforesaid in Deed Book 179, Page 173 (said Rules are hereinafter referred to as the "Rules"); and

WHEREAS, Declarant and the Council desire to execute and record this Second Amendment pursuant to paragraph 9 (h) of the Declaration in order to expand the condominium regime.

NOW, THEREFORE, the Declarant and the Council make the following declarations:

1.

Paragraph 2. (a) entitled entitled "The Land" is hereby deleted in its entirety and the following shall be inserted in lieu thereof:

"2. (a) The Land. The land which is hereby submitted to the condominium form of ownership, consists of all that certain tract, piece or parcel of land as depicted on that certain Declaration Plan prepared by Ramesh C. Batta Associates, dated June 18, 1984, recorded in the Office of the Recorder of Deeds, in and for New Castle County, Delaware, in Microfilm No. 7369, as amended by Condominium Declaration Plan Amendment No. 1 prepared by Ramesh C. Batta Associates, dated December 28, 1984, and recorded in the Office aforesaid in Microfilm No. 7413, as further amended by Condominium Declaration Plan Amendment No. 2, dated April 9, 1985, and recorded in the Office aforesaid in Microfilm No. 7540, as further amended by Condominium Declaration Plan Amendment No. 3, dated May 2, 1985 and recorded in the Office aforesaid in Microfilm No. 7577, which land is bounded and more particularly described on Schedule 2.1 appended hereto and incorporated herein by this reference.

TOGETHER WITH AND SUBJECT TO easements and rights of way, declarations, restrictions and encumbrances of record,

and dedicated roads, parking areas, open spaces and paths, as shown on the Declaration Plan and that certain Record Major Land Development Plan of Birch Pointe, Phase 1, prepared by Ramesh C. Batta Associates, dated December 28, 1983, and recorded in the Office of the Recorder of Deeds in and for New Castle County in Microfilm No. 7000 and that certain Record Major Land Development Plan of Birch Pointe, Phases 2 and 3, dated December 15, 1984, last revised March 12, 1985, and recorded in the Office aforesaid, in Microfilm No. 7509; including also without being limited to all of the terms and conditions of the deeds wherein Declarant has conveyed the fee interest which is hereby being submitted to the Unit Property Act, of which deeds are of record in the Office aforesaid in Deed Record P, Volume 120, Page 78, and Deed Record W, Volume 109, Page 116."

2.

Paragraph 4 of the Declaration entitled "Composition of Property" shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"4. Composition of Property. The property shall consist of units and common elements as shown in a Declaration Plan prepared by Ramesh C. Batta Associates, dated the 18th day of June, 1984, and recorded in the Office aforesaid in Microfilm No. 7369, as amended by Condominium Declaration Plan Amendment No. 1 prepared by Ramesh C. Batta Associates, dated December 28, 1984, and recorded in the Office aforesaid in Microfilm No. 7413; as further amended by Condominium Declaration Plan Amendment No. 2, prepared by Ramesh C. Batta Associates, dated April 9, 1985, recorded in the Office aforesaid in Microfilm No. 7540, as further amended by Condominium Declaration Plan Amendment No. 3, prepared by Ramesh C. Batta Associates, dated May 2, 1985, and recorded in the Office aforesaid in Microfilm No. 7577."

3.

Paragraph 5. (b) of the Declaration entitled "Statement of Proposed Undivided Interest in Common Elements Assigned to Each Condominium Apartment Unit" shall be amended to provide that the percentage ownership of the Common Elements per unit shall be as follows:

Condominium  
Unit NumberPercentage Ownership  
Per Unit

3  
1, 2, 4-294

.38%  
.34%

4.

Schedule 2.1 of the Declaration shall be deleted in its entirety and shall be replaced by Schedule 2.1 attached hereto as Exhibit "A."

5.

Schedule 2.2 of the Declaration shall be deleted in its entirety and shall be replaced by Schedule 2.2 attached hereto as Exhibit "B."

6.

Schedule 5.1 of the Declaration shall be deleted in its entirety and shall be replaced by the Schedule 5.1 attached hereto as Exhibit "C."

7.

Schedule 5.3 of the Declaration shall be amended to add thereto the building and unit numbers and unit types set forth as Exhibit "D" attached hereto.

8.

All references to the Declaration, the Code of Regulations, the Declaration Plan and the Rules in any of such documents or any other instruments or documents of record either heretofore or hereafter recorded shall be deemed to include the Declaration, Code, Declaration Plan and Rules as heretofore or hereinafter amended.

9.

Except as herein amended, the Declaration, Code and the Rules shall remain in full force and effect.

IN WITNESS WHEREOF, Reston Corporation and the Council have executed, sealed, attested, acknowledged and delivered this Second Amendment this 9<sup>th</sup> day of May, 1985.

WITNESS:

RESTON CORPORATION

By:

*[Signature]*

(SEAL)  
President

Attest:

*[Signature]*

(SEAL)  
Secretary

BIRCH POINTE CONDOMINIUM COUNCIL

By:

*[Signature]*

Council Member

(SEAL)

By:

*[Signature]*

Council Member

(SEAL)

By:

*[Signature]*

Council Member

(SEAL)

By:

*[Signature]*

Council Member

(SEAL)

By:

*[Signature]*

Council Member

(SEAL)

*Will = Ward  
(2) 43 9/11*

THE FOREGOING instrument was acknowledged before me this 9<sup>th</sup> day of May, 1985, by Gary M. Farrar, President of Reston Corporation, a Delaware corporation, on behalf of the Corporation.

*William E. Wood*

\_\_\_\_\_  
Attorney-at-Law — State of Delaware

THE FOLLOWING instrument was acknowledged before me this 9<sup>th</sup> day of May, 1985, by GARY M. FARRAR, RENEE MOSCH, CHARLES E. JOHNSON, ROBERT A KENDIG and HARRY E. MILLER, Council Members, on behalf of Birch Pointe Condominium Council.

*William E. Wood*

\_\_\_\_\_  
Attorney-at-Law — State of Delaware

ALL that certain piece, parcel or tract of land, situate in Mill Creek Hundred, New Castle County and State of Delaware, as shown on a Record Major Land Development Plan of Birch Pointe, Phase II and III, dated December 15, 1984, last revised March 12, 1985, recorded in the Office of the Recorder of Deeds, in and for New Castle County, in Microfilm No. 7509, as prepared by Ramesh C. Batta Associates, and being more particularly bounded and described in accordance with that certain survey plan prepared by Ramesh C. Batta Associates entitled "Property Survey Plan A Part of Remaining Lands of Fairway Falls (Birch Pointe), Plan No. 79567-C-1234, dated March 20, 1984, and being more particularly bounded and described as follows, to-wit:

BEGINNING at a point on line of lands now or formerly of Linden Green Convenience Center, said point being located at the point of intersection of the northeast corner for said lands now or formerly of Linden Green Convenience Center, as shown on Microfilm No. 2393, and the Northeasterly side of Fairmont Drive, (at 60 feet wide); thence from said point of beginning, along the division line between Linden Green Convenience Center and the herein described premises North 52 degrees 00 minutes 00 seconds West, 300.00 ft. to a point, said point being the northwest corner for said lands now or formerly of Linden Green Convenience Center; thence along the division line between Linden Green Convenience Center and the premises herein described, South 38 degrees 00 minutes 00 seconds West, 250.00 feet to a point on line of lands now or formerly of Woodlea Elderly Housing as shown on Microfilm 6330; thence along the division line between Woodlea Elderly Housing and the premises herein described, the following ten (10) courses and distances: (1) North 52 degrees 00 minutes 00 seconds West, 38.30 feet to a point; (2) South 73 degrees 00 minutes 00 seconds West 300.63 feet to a point; (3) by an arc of a circle to the left having a radius of 100.00 feet and an arc distance of 118.68 feet to a point; (4) South 05 degrees 00 minutes 00 seconds West, 81.99 feet to a point; (5) by an arc of a circle, to the left, having a radius of 70.00 feet and an arc distance of 84.91 feet to a point; (6) South 64 degrees 30 minutes 00 seconds East, 57.63 feet to a point; (7) by an arc of a circle to the left having a radius of 130.00 feet, an arc distance of 62.40 feet to a point; (8) North 88 degrees 00 minutes 00 seconds East, 149.95 feet to a point; (9) by an arc of a circle to the right, having a radius of 160.00 feet and an arc distance of 111.70 feet to a point; and (10) South 52 degrees 00 minutes 00 seconds East, 64.76 feet to a point; thence along lands of Linden Green Apartments, Section Two, as shown on Microfilm No. 2035, the three (3) following courses and distances: (1) South 38 degrees 00 minutes 00 seconds West, 146.49 feet to a point; (2) South 87 degrees 15 minutes 00 seconds West, 145.00 feet to a point; and (3) South 46 degrees 11 minutes 38 seconds West, 566.22 feet to a point, a common corner for Linden Green Apartments, Section Two, Lands of Pike Creek Valley Golf Course and the lands herein described; thence along the said lands of Pike Creek Valley Golf Course, as shown on Microfilm No. 4737, the three (3) following courses and distances: (1) North 48 degrees 00 minutes 00 seconds West, 441.05 feet to a point;

(2) North 10 degrees 00 minutes 00 seconds East, 750.00 feet to a point; and (3) North 18 degrees 00 minutes 00 seconds West, 216.88 feet to a point, a corner for lands of Fairway Falls, Section Three and the lands herein being described; thence thereby and along Other Lands of Reston Corporation (formerly Reston Building and Development Corporation), the following six (6) courses and distances (1) North 78 degrees 49 minutes 00 seconds East, 144.95 feet to a point; (2) North 67 degrees 30 minutes 00 seconds East, 206.00 feet to a point; (3) North 89 degrees 35 minutes 00 seconds East, 185.00 feet to a point; (4) North 18 degrees 15 minutes 00 seconds East, 75.00 feet to a point; (5) South 62 degrees 30 minutes 00 seconds East, 137.15 feet to a point; and (6) North 47 degrees 00 minutes 00 seconds East, 154.66 feet to a point located on the Southeasterly side of Brookline Drive; thence along the Southeasterly side of Brookline Drive and following the curvature thereof, the five (5) following courses and distances: (1) South 43 degrees 00 minutes 00 seconds East, 92.32 feet to a point; (2) by an arc of a circle, to the left, having a radius of 83.00 feet, an arc distance of 55.77 feet to a point; (3) South 81 degrees 30 minutes 00 seconds East, 10.97 feet to a point; (4) by an arc of a circle, to the right, having a radius of 25.00 feet, an arc distance of 19.89 feet to a point; (5) by an arc of a circle, to the left, having a radius of 40.00 feet, an arc distance of 122.61 feet to a point; thence leave the Southeasterly side of Brookline Drive and run North 58 degrees 27 minutes 33 seconds East, 26.44 feet to a point on line of lands now or formerly of Pike Creek Golf Course as shown in Microfilm No. 6591, the two (2) following courses and distances: (1) South 29 degrees 00 minutes 00 seconds East, 265.86 feet to a point; (2) South 52 degrees 00 minutes 00 seconds East, 225.93 feet to a point on the Northeasterly side of Fairmont Drive; thence along the Northeasterly side of said Fairmont Drive, South 38 degrees 00 minutes 00 seconds West, 130.00 feet to the point and place of Beginning. Be the contents thereof what they may.

BIRCH POINTE  
SCHEDULE 2.2 - BUILDINGS AND IMPROVEMENTS

BUILDINGS

The land has been or will be improved by sixteen (16) three story (3) building clusters containing two hundred ninety-four (294) units, ninety-eight (98) of which are one (1) bedroom units and one hundred ninety-six (196) of which are two (2) bedroom units. Ninety-six (96) of the units are designated as Plan "A" units (thirty-two (32) one-bedroom units and sixty-four (64) two-bedroom units), and one hundred ninety-eight (198) of the units are designated as Plan "B" units (sixty-six (66) one-bedroom units and one hundred thirty-two (132) two-bedroom units). The Plan "A" units are each approximately forty-six (46) feet six (6) inches in length by thirty-three (33) feet nine (9) inches in width to the face of the side walls and the Plan "B" units are approximately fifty (50) feet six (6) inches in length by thirty-two (32) feet four (4) inches in width to the face of the side walls. Each unit shares both side walls in common with adjacent units, except for those at the end of clusters, which share only one side wall in common. Construction of the front and rear exterior walls of the units (above foundations) is of wood stud faced on the front with horizontal hardboard siding, and on the rear with horizontal hardboard siding. The sidewalls and foundation are of concrete slab and masonry block, faced on the exterior where exposed with horizontal hardboard siding. Footings are of poured concrete. Upper floors are gypsum concrete over plywood subflooring supported by floor trusses covered by carpet, vinyl asbestos, tile or hardwood. Interior walls are wood studs with one-half (1/2) inch drywall. Ceilings are five-eighths (5/8) inch firecode drywall underneath floor trusses. Roofing is asphalt shingles over felt and plywood sheathing supported by roof trusses. Exterior patio decks and stairs are of wood. Gutters and drainspouts are aluminum. Windows are typically wood; doors are wood, and exterior trim is typically wood. Each unit has a pre-fabricated metal fireplace and each third (3rd) floor unit has a skylight in the roof. Each unit and each building within a building cluster shall contain a separate electric meter, heat pump and electric heat and air conditioning units, and each building shall be served by unit/lobby intercommunication security lock systems. Moreover, each unit contains appliances, cabinetry and fixtures; see description of units.

IMPROVEMENTS

The land is or will be further improved by paved driveways, landscaping and lighting fixtures, as well as underground sanitary sewer systems, water and electrical cables, conduits and lines and other appurtenant facilities.



BIRCH POINTE CONDOMINIUM

SCHEDULE 5.1 - UNITS

The units in Birch Pointe shall consist of two hundred ninety-four (294) one (1) story residential units organized in sixteen (16) building clusters (9 clusters of eighteen (18) units, three (3) clusters of twelve (12) units and four (4) clusters of twenty-four (24) units) with each such building cluster containing the following number of units:

<u>Building Cluster No.</u>	<u>Number Of Units</u>
1	12 (4 one-bedroom and 8 two-bedroom)
2	18 (6 one-bedroom and 12 two-bedroom)
3	18 (6 one-bedroom and 12 two-bedroom)
4	18 (6 one-bedroom and 12 two-bedroom)
5	18 (6 one-bedroom and 12 two-bedroom)
6	12 (4 one-bedroom and 8 two-bedroom)
7	24 (8 one-bedroom and 16 two-bedroom)
8	18 (6 one-bedroom and 12 two-bedroom)
9	18 (6 one-bedroom and 12 two-bedroom)
10	24 (8 one-bedroom and 16 two-bedroom)
11	18 (6 one-bedroom and 12 two-bedroom)
12	12 (4 one-bedroom and 8 two-bedroom)
13	18 (6 one-bedroom and 12 two-bedroom)
14	18 (6 one-bedroom and 12 two-bedroom)
15	24 (8 one-bedroom and 16 two-bedroom)
16	24 (8 one-bedroom and 16 two-bedroom)

The units in each building cluster are organized into three (3) vertically stacked sets of horizontally adjacent one-bedroom and two-bedroom units, with the first story units being one-bedroom and the second and third story units being two-bedroom, all as more particularly shown on the Declaration Plan. Ninety-six (96) of the units (thirty-two (32) one-bedroom units and sixty-four (64) two-bedroom units) are designated as Plan "A" units, and one hundred ninety-eight (198) of the units (sixty-six (66) one-bedroom units and one hundred thirty-two (132) two-bedroom units) are designated as Plan "B" units on the Declaration Plan. There are three (3) models of each type of the aforementioned Plans and each of the Plans is organized in the building cluster as shown on the Declaration Plan. Overall dimensions may vary slightly among units of substantial identical configuration owing to minor as-built variations. Each unit has access to an interior common area and to the building exterior via a patio or deck.

The units are the largest spaces contained in the building clusters which are separated from every other immediately contiguous such space by a vertical wall containing no through-door or by a common area such as a hall, lobby or stairwell. All units are each entirely enclosed (except for exterior patios or decks) by and between the interior unfinished surface of the concrete slab or lightweight concrete forming the floor, the interior surface of drywall separating the unit from other units, and the interior surface of the ceiling for the unit in question, all as further shown on the Declaration Plan. Each unit consists of all surfaces and nonstructural contents within the dimensions shown on the Declaration Plan, or within any applicable easement for unit

encroachment, including without being limited to drywall, wood trim, finished flooring and floor covering, heat and air conditioning vents, electrical outlets and switches, lighting fixtures, plumbing fixtures and appliances, but shall not include window glass, any component of the skylights, or the stairs leading to the lofts (in the third story units) or the structural foundations of said loft. Each unit shall also include all interior sash, doors, conduits, cables, pipes, wire, utility lines, ducts, through wall heating/air conditioning elements, and the interior deck and patio surface deck and interior balcony walls, not situate within the dimensions of a given unit but connected to and exclusively serving it. Notwithstanding any indication hereinabove to the contrary, however, no unit shall include any window, door, duct, cable, conduit, pipe, light, utility line, fixture, appliance or equipment not exclusively serving only the unit in which it is located; nor shall any supporting beam, stud or joist, regardless of whether same be located within the dimensions of any unit, be considered as part thereof, but shall constitute limited common element.

Equipment in each unit includes heating/air conditioning elements including electric heat pump, electric range and oven, range hood, refrigerator, dishwasher, double sink with garbage disposal, trash compactor heat and exhaust ceiling fan, medicine cabinet, washer and dryer, metal pre-fabricated fireplace box, which equipment by virtue of being mentioned herein, and all replacements thereto, shall constitute an integral part of the unit and shall be considered fixtures thereto.

The three models of Plans A and B may be described in terms of interior subdivision and approximate room measurements as follows:

Plan A-1            living room 12'4" x 15'7" plus fireplace, dining room 12'7" x 14'4", master bedroom 19'5" x 11'2" including walk-in closet, kitchen 10' x 11', utility room 5'2" x 7', bathroom 11'1" x 5'7", entry area containing closet, patio.

Plan A-2            living room 19' x 12'4" plus fireplace, dining room 10'5" x 11'2", kitchen 8'2" x 9'6", master bedroom 16'5" x 17'6" including walk-in closet, bedroom 13'9" x 11' including closet, bathroom 8'4" x 8'5", entry area with linen closet and utility closet, deck, storage area located on lowest level as assigned by the Condominium Council.

Plan A-3            First floor-living room 12'5" x 19'3" plus fireplace, dining room 10'5" x 11', kitchen 8' x 9'6", master bedroom 16'5" x 17'8" including walk-in closet, bedroom 14'2" x 11', bathroom 8'4" x 8'5", utility closet, entry area containing linen closet and stairway, deck, storage area located on lowest level as assigned by the Condominium Council.

Loft - loft area 11'3" x 27'7" with storage closet containing hot water heater.

Plan B-1            Master bedroom 19'5" x 11'2" with walk-in closet, living room 13'1" x 15'7" plus fireplace, dining room 12' x 14', bathroom 11'1" x 5'7", kitchen 8'2" x 11'7", utility room 5'8" x 11', entry area containing linen closet, patio.

Plan B-2      living room 13'1" x 19' plus fireplace, dining room 9' x 11', kitchen 9'6" x 8'2", master bedroom 22'1" x 11'7" including dressing area and master bathroom, bedroom 11' x 13'4", bathroom 5'1" x 7'9", utility closet, entry area containing linen closet, deck, storage area located in lowest level as assigned by the Condominium Council.

Plan B-3      First floor - living room 13'1" x 19' plus fireplace, dining room 9' x 11', kitchen 9'6" x 8', master bedroom 22'1" x 11'7" including dressing area and master bathroom, bedroom 11' x 13'5", bathroom 5'1" x 8', utility closet, entry area containing linen closet and leading to stairway, deck, storage area located on lowest level as assigned by the Condominium Council.

Loft - loft area 10'5" x 27'4" with storage closet containing hot water heater.

As of the time of recording of this Declaration only Buildings 1, 4, 5 and 6 as shown and certified on the Declaration Plan, as amended, are completely built. As the Declaration Plan is amended to certify that the other buildings and units have been constructed, then the foregoing language in this Declaration shall be deemed to apply to said building and units.

SCHEDULE 5.3

BIRCH POINTE  
PHASES 2 AND 3 - 198 UNITS

	<u>Unit Type</u>	<u>Unit Number</u>
Building 7 <u>Cluster 41B</u>		
4101 Birch Circle	B1	97
4103	A1	98
4105	B2	99
4107	A2	100
4109	B3	101
4111	A3	102
Building 7 <u>Cluster 42B</u>		
4201 Birch Circle	B1	103
4203	B1	104
4205	B2	105
4207	B2	106
4209	B3	107
4211	B3	108
Building 7 <u>Cluster 43B</u>		
4301 Birch Circle	B1	109
4303	B1	110
4305	B2	111
4307	B2	112
4309	B3	113
4311	B3	114
Building 7 <u>Cluster 44B</u>		
4401 Birch Circle	A1	115
4403	B1	116
4405	A2	117
4407	B2	118
4409	A3	119
4411	B3	120
Building 8 <u>Cluster 45B</u>		
4501 Birch Circle	B1	121
4503	A1	122
4505	B2	123
4507	A2	124
4509	B3	125
4511	A3	126

	<u>Unit Type</u>	<u>Unit Number</u>
<u>Building 8</u> <u>Cluster 46B</u>		
4601 Birch Circle	B1	127
4603	B1	128
4605	B2	129
4607	B2	130
4609	B3	131
4611	B3	132
<u>Building 8</u> <u>Cluster 47B</u>		
4701 Birch Circle	A1	133
4703	B1	134
4705	A2	135
4707	B2	136
4709	A3	137
4711	B3	138
<u>Building 9</u> <u>Cluster 48B</u>		
4801 Birch Circle	B1	139
4803	A1	140
4805	B2	141
4807	A2	142
4809	B3	143
4811	A3	144
<u>Building 9</u> <u>Cluster 49B</u>		
4901 Birch Circle	B1	145
4903	B1	146
4905	B2	147
4907	B2	148
4909	B3	149
4911	B3	150
<u>Building 9</u> <u>Cluster 50B</u>		
5001 Birch Circle	A1	151
5003	B1	152
5005	A2	153
5007	B2	154
5009	A3	155
5011	B3	156

Building 10  
Cluster 51B

5101 Birch Circle	B1	157
5103	A1	158
5105	B2	159
5107	A2	160
5109	B3	161
5111	A3	162

Building 10  
Cluster 52B

5201 Birch Circle	B1	163
5203	B1	164
5205	B2	165
5207	B2	166
5209	B3	167
5211	B3	168

Building 10  
Cluster 53B

5301 Birch Circle	B1	169
5303	B1	170
5305	B2	171
5307	B2	172
5309	B3	173
5311	B3	174

Building 10  
Cluster 54B

5401 Birch Circle	A1	175
5403	B1	176
5405	A2	177
5407	B2	178
5409	A3	179
5411	B3	180

Building 11  
Cluster 53D

5301 Diana Drive	B1	181
5303	A1	182
5305	B2	183
5307	A2	184
5309	B3	185
5311	A3	186

	<u>Unit Type</u>	<u>Unit Number</u>
<u>Building 11</u>		
<u>Cluster 54D</u>		
5401 Diana Drive	B1	187
5403	B1	188
5405	B2	189
5407	B2	190
5409	B3	191
5411	B3	192
 <u>Building 11</u>		
<u>Cluster 55D</u>		
5501 Diana Drive	A1	193
5503	B1	194
5505	A2	195
5507	B2	196
5509	A3	197
5511	B3	198
 <u>Building 12</u>		
<u>Cluster 51D</u>		
5101 Diana Drive	A1	199
5103	B1	200
5105	A2	201
5107	B2	202
5109	A3	203
5111	B3	204
 <u>Building 12</u>		
<u>Cluster 52D</u>		
5201 Diana Drive	B1	205
5203	A1	206
5205	B2	207
5207	A2	208
5209	B3	209
5211	A3	210
 <u>Building 13</u>		
<u>Cluster 48D</u>		
4801 Diana Drive	B1	211
4803	A1	212
4805	B2	213
4807	A2	214
4809	B3	215
4811	A3	216

	<u>Unit Type</u>	<u>Unit Number</u>
Building 13		
<u>Cluster 49D</u>		
4901 Diana Drive	B1	217
4903	B1	218
4905	B2	219
4907	B2	220
4909	B3	221
4911	B3	222
Building 13		
<u>Cluster 50D</u>		
5001 Diana Drive	A1	223
5003	B1	224
5005	A2	225
5007	B2	226
5009	A3	227
5011	B3	228
Building 14		
<u>Cluster 49C</u>		
4901 Claremont Court	B1	229
4903	A1	230
4905	B2	231
4907	A2	232
4909	B3	233
4911	A3	234
Building 14		
<u>Cluster 50C</u>		
5001 Claremont Court	B1	235
5003	B1	236
5005	B2	237
5007	B2	238
5009	B3	239
5011	B3	240
Building 14		
<u>Cluster 51C</u>		
5101 Claremont Court	A1	241
5103	B1	242
5105	A2	243
5107	B2	244
5109	A3	245
5111	B3	246



	<u>Unit Type</u>	<u>Unit Number</u>
<u>Building 15</u> <u>Cluster 45C</u>		
4501 Claremont Court	B1	247
4503	A1	248
4505	B2	249
4507	A2	250
4509	B3	251
4511	A3	252
<u>Building 15</u> <u>Cluster 46C</u>		
4601 Claremont Court	B1	253
4603	B1	254
4605	B2	255
4607	B2	256
4609	B3	257
4611	B3	258
<u>Building 15</u> <u>Cluster 47C</u>		
4701 Claremont Court	B1	259
4703	B1	260
4705	B2	261
4707	B2	262
4709	B3	263
4711	B3	264
<u>Building 15</u> <u>Cluster 48C</u>		
4801 Claremont Court	A1	265
4803	B1	266
4805	A2	267
4807	B2	268
4809	A3	269
4811	B3	270
<u>Building 16</u> <u>Cluster 41C</u>		
4101 Claremont Court	B1	271
4103	A1	272
4105	B2	273
4107	A2	274
4109	B3	275
4111	A3	276

	<u>Unit Type</u>	<u>Unit Number</u>
Building 16		
<u>Cluster 42C</u>		
4201 Claremont Court	B1	277
4203	B1	278
4205	B2	279
4207	B2	280
4209	B3	281
4211	B3	282
Building 16		
<u>Cluster 43C</u>		
4301 Claremont Court	B1	283
4303	B1	284
4305	B2	285
4307	B2	286
4309	B3	287
4311	B3	288
Building 16		
<u>Cluster 44C</u>		
4401 Claremont Court	A1	289
4403	B1	290
4405	A2	291
4407	B2	292
4409	A3	293
4411	B3	294

REC'D FOR RECORD MAY 10 1935 3:29 PM  
 LEO J. DUGAN, Jr. Recorder

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# BIRCH POINTE CONDOMINIUM

## CODE OF REGULATIONS

### ARTICLE I IDENTIFICATION OF PROPERTY

#### 1. Application of Code of Regulations

This Code of Regulations governs administration and management of Birch Pointe Condominium, a condominium property located in the Mill Creek Hundred, New Castle County, State of Delaware, which was submitted to the provisions of Title 25, Chapter 22 of the Delaware Code, known as the Unit Property Act, by Declaration dated the            day of            , 1984, and recorded in the Office of the Recorder of Deeds, in and for New Castle County, on the            day of            , 1984, in Deed Record            , Volume            , Page            et seq. A detailed plan of the project appears in a Declaration Plan prepared by Ramesh C. Batta Associates, dated the            day of            1984, and recorded in the aforesaid Office of the Recorder of Deeds, on the            day of            , 1984, in Microfilm No.            .

### ARTICLE II MEETINGS; NOTICE THEREOF; WAIVER

#### 2.1 Meetings of Unit Owners

2.1.1 Annual Meeting. Commencing with the last Saturday in the first April which occurs after the organizational meeting of the unit owners (which organizational meeting shall be held at the time specified hereinafter) an annual meeting of the unit owners shall take place on the last Saturday in April of each year, at such generally convenient time and location as may be specified by the President of the Council in a written notice mailed or delivered to each owner no more than thirty (30) days before

and no less than ten (10) days before the date of the meeting. The purpose of the meeting shall be to elect members of the Council and to transact such other business as may then come before the unit owners.

2.1.2 Special Meetings. Special meetings of the unit owners shall be promptly called by the President of the Council whenever the Council so directs; or by any member of the Council who is presented with a petition signed by unit owners representing an aggregate of at least twenty percent (20%) of the total unit owner vote entitled to be cast, subject to the limitation in Section 2.1.3 hereof. Written notice of any such meeting shall be mailed or delivered to each unit owner at such address as each unit owner shall then have on file with the Council, no more than thirty (30) days before and no less than five (5) days before the date of the meeting, except that special meetings called under circumstances designated in good faith by the Council as constituting an emergency may be held as soon after a good faith effort has been made to give each unit owner notice in person or by telephone as the Council shall decide. The notice shall specify a generally convenient date, time, and location of the meeting, and shall state with particularity the business to be transacted. No special meeting shall be called except for the purpose of transacting a particular item or items of business. No business shall be transacted except that specified in the notice unless at least sixty-seven percent (67%) of all unit owners are either present or represented at the meeting.

2.1.3 Organization Meeting. An organizational meeting of the unit owners shall be called in accordance with the provisions governing special meetings and shall be held no later than one hundred and twenty (120) days after Declarant (as identified in the aforesaid Declaration) has conveyed ninety percent (90%) of the units in the entire condominium project, which said construction shall not exceed 294 units, or June 29 , 1989, whichever first occurs. Prior to the organizational meeting, the Council may create a transitional committee on which the unit owners shall be invited

and encouraged to serve by way of preparing to assume control of the condominium project from the Declarant. The purpose of the organizational meeting shall be to elect new Council members to serve until the next annual meeting, and to conduct such other business as may be specified in the notice of meeting. No special meetings shall be called by unit owners' petition until after the organizational meeting of unit owners has been held.

## 2.2 Meetings of Council

2.2.1 Annual Meeting. An annual meeting of both the incumbent and the newly elected Council members shall take place immediately after the annual meeting of the unit owners. The first item of business at such meeting shall be the election of officers among and by the newly elected Council members. This election shall be conducted by the incumbent President. Thereafter, the incumbent Council members together with the newly elected members shall proceed under the newly elected officers to conduct any other business which may be brought before the Council. This annual meeting shall then be adjourned for no less than fourteen (14) days nor more than forty-two (42) days, to a generally convenient date, time, and place as determined by majority vote of newly elected Council members. During the period of adjournment, the incumbent officers shall assist the newly elected officers in becoming familiar with the responsibilities, problems, procedures, and techniques of their office. Upon the resumption of the meeting following the period of adjournment, the incumbent officers shall make a final report to the Council. The incumbent Council members and officers shall then be regarded as having concluded their responsibilities and the newly elected Council members and officers shall alone constitute the Council, and shall proceed to set dates for the regular meetings of Council, and to transact such other business as may then come before the Council, including consideration of a budget for the coming year.

2.2.2 Special Meeting. Special meetings of Council members shall be called whenever the President deems appropriate, or whenever he is presented with the written request of another Council member. Written notice of any such meeting shall be mailed or delivered to each Council member not more than thirty (30) days before and not less than three (3) days before the date of the meeting. The notice shall specify a generally convenient date, time, and location of the meeting, and shall state with particularity the business to be transacted. No special meeting shall be called except for the purpose of transacting a particular item or items of business. No business shall be transacted except that specified in the notice unless all Council members either are present or subsequently waive the necessity for notice.

2.2.3 Regular Meetings. Regular meetings of the Council shall take place at intervals of six (6) months or less. The date, time, and location of such meetings shall be set at the annual meeting of the Council by a majority agreement of the members. Written notice shall be mailed or delivered to each member not more than thirty (30) days before and not less than ten (10) days before the date of each such meeting. The purpose of the regular meetings shall be the transaction of such business as may come before the Council.

2.2.4 Minutes. A copy of all minutes of Council meetings shall be promptly mailed or delivered to each unit owner.

## 2.3 Notice; Waiver

2.3.1 Address for Notice. Each unit owner shall furnish the Condominium Council with an address where notices should be sent, if other than the unit to which such owner holds title. Notices shall be deemed sufficiently given if delivered or mailed by certified mail, return receipt requested, to such address, in the absence of any other address, to the unit of the owner who is entitled to receive such notice.

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2.3.2 Attendance. Attendance at any meeting by a unit owner or Council member who has not been given notice thereof shall constitute a waiver of the necessity for such notice, but not of the necessity for notice of special business to be transacted.

2.3.3 Written Waiver. Any unit owner or Council member may waive in writing the necessity for notice of any meeting or special business before or after the occurrence of such meeting.

ARTICLE III  
QUORUM; EFFECTIVE VOTE; PROXIES; CONDUCT OF MEETINGS

3.1 Requisites for a Quorum

3.1.1 Unit Owners' Meeting. The presence in person or by proxy of any number of unit owners who hold in the aggregate sixty-seven percent (67%) or more of the total unit owner vote entitled to be cast, shall constitute a quorum for the transaction of business by the unit owners, except as herein elsewhere expressly provided.

3.1.2 Council Meetings. The presence in person of a majority of Council members shall constitute a quorum for the transaction of business by the Council, except that for the purposes of the annual meeting a majority of the incumbent members and a majority of the newly elected members, separately tallied, must be present.

3.1.3 Adjourned Meetings. If any meeting of unit owners or Council members cannot be convened because a quorum has failed to attend, the meeting may be adjourned to a time not less than forty-eight (48) hours from the time for which it was originally called. An effort shall be made to give each unit owner notice by telephone of the time and place of the adjourned meeting. When the meeting is reconvened, the unit owners or Council members present validly may conduct any business properly before them, regardless of whether or not a quorum is attending the meeting.

### 3.2 Vote Necessary for Resolution

3.2.1 Unit Owner Vote. Except as otherwise specifically provided in the Declaration, or elsewhere in these Regulations, the vote of a majority of the aggregate percentage of the total vote present at a meeting shall be sufficient to adopt any duly proposed resolution. The voting power represented by each unit shall be cast as a unit, and may be cast by any person in whose name all or part of record title to the unit is held unless the Secretary of Council is notified in writing to the contrary by other persons in whose name all or part of title to the same unit is held. Votes of units standing in the name of the Council are not entitled to be cast.

3.2.2 Council Member Votes. The vote of a majority of Council members present and voting as a Council member shall be sufficient for the transaction of business by the Council.

3.2.3 Vote Without Meeting. Any business which could be conducted at a meeting may be conducted without a meeting provided (i) that the same notice of such business is given as would be required to conduct such business at a special meeting, (except that such notice shall indicate an intention that the business be conducted without a meeting actually being called); (ii) that no valid petition or request to call a special meeting for the conduct of such business is presented or made within five (5) days after said notice has been given; and (iii) that all such business is reduced to written resolutions signed, if the vote is of the unit owners, by owners or proxies of units having a majority of the aggregate percentage of the total vote entitled to be cast; or signed, if the vote is by Council members, by a majority of such members. The foregoing shall not, however, be utilized as a substitute for any annual meeting, nor may it be used to affect adversely the rights of any unit mortgagee.

### 3.3 Proxies

Unit owners may be represented and may vote at any meeting by proxy. Proxies must be in writing on a form (if any) prescribed by the Secretary of the Council

and filed with such Secretary prior to or at the commencement of the meeting at which the proxy is to be used. No proxy shall be for greater duration than one (1) year. Proxies may be cancelled at will, provided the Secretary is timely notified in writing by the person who gave the proxy. Units standing in the name of a corporation, partnership, trust, or other entity not a natural person, may only be voted by a duly executed proxy.

### 3.4 Order and Conduct of Business

3.4.1 Customary Order. The order of business at all meetings insofar as pertinent or necessary shall be as follows:

- Roll call
- Proof of notice of meeting or waiver of notice
- Reading of and action on minutes of preceding meeting
- Reports of officers
- Reports of committees
- Removal of members or officers of Council
- Election of inspectors of election
- Election of members of Council
- Election of officers of Council
- Unfinished business
- New business
- Adjournment

3.4.2 Roberts' Rules. Meetings shall be conducted in accordance with the latest edition of "Roberts' Rules," as reasonably modified by decision of Council (if any) made prior to the meeting and conspicuously posted or distributed at the meeting.

## ARTICLE IV ELECTION OF COUNCIL MEMBERS; TERM AND LIABILITY

### 4.1 Number, Qualification, and Compensation

4.1.1 Appointed by Declarant. Prior to the organizational meeting of unit owners there shall be five (5) members of Council who shall be appointed by the Declarant, and who shall serve as such until the organizational meeting of the unit owners is held.

4.1.2 Elected by Unit Owners. After the organizational meeting there shall be seven (7) members of Council, all of whom shall be elected at large by the unit owners.

4.1.3 Qualification. All Council members shall be residents of the State of Delaware and unit owners.

4.1.4 Compensation. Council members shall receive that compensation, if any, for their services in such capacity, as the unit owners may provide by majority vote at their annual meeting.

#### 4.2 Term of Office

4.2.1 Duration. The Council members who are first elected shall serve only until the next annual meeting. Thereafter, each elected Council member shall be elected for a term of one (1) year. Appointed Council members shall serve for the balance of the term of the member whom they replace, or for such other term as may elsewhere be provided herein.

4.2.2 Early Termination. The term of each elected member of the Council shall be subject to the right of the unit owners to remove him, after he has had an opportunity to be heard, with or without cause at any meeting held for that purpose, but no Council member shall be removed by less than three-fifths (3/5) of the total unit owner vote entitled to be cast. A Council member who was a unit owner or occupant at the time of his election shall automatically be incapacitated from continuing as a Council member and an officer of the Council at any time during his term that he ceases to be a unit owner or occupant.

#### 4.3 Vacancies

4.3.1 Caused by Removal. Vacancies on the Council caused by removal shall be filled by vote of the unit owners at a special meeting held for that purpose as soon as practicable after the vacancy has occurred.



4.3.2 Caused by Death or Incapacity. Vacancies caused by death or incapacity shall be filled by Council appointment as determined by majority vote of the remaining Council members, except that Declarant may fill the vacancy of any member appointed by it. Any successor Council member shall hold office for the duration of the unexpired term.

#### 4.4 Election Procedures

4.4.1 Majority Vote. Election of Council members shall take place each year at the annual meeting of the unit owners. A member shall be elected to Council by a majority of the total unit owner votes entitled to be cast for him.

4.4.2 Successive Balloting. If no candidate for a given seat on the Council obtains such a majority on the first ballot, then the candidate receiving the least portion of the vote shall be eliminated and a second ballot shall be taken. This procedure shall be repeated as often as required to obtain a majority vote.

4.4.3 Written Secret Ballot. The voting shall be by written and secret ballot, supervised by an election inspector elected by the unit owners at the annual meeting or any special meeting at which a Council member is being elected.

4.4.4 Cumulative Voting. In the event that unit owners holding in the aggregate at least twenty percent (20%) of the total interest in the common elements so petition the Council in writing more than sixty (60) days prior to the next annual unit owners' meeting, voting for Council members shall be cumulative, i.e., any unit owner may apply the total number of votes which he is entitled to cast for all candidates, towards the election of one candidate, or may apportion such votes among fewer than all candidates, as he may determine.

#### 4.5 Liability of Council Members

4.5.1 Disclosed Agents. The status of Council members in exercising their powers as established under the Declaration, Code of Regulations, Rules of Conduct, and

the Delaware Unit Property Act, all as amended from time to time, shall be that, and solely that, of disclosed agents. No property collected, acquired, held, invested, spent, or divested by Council shall be regarded as belonging to Council; rather, at all times such property shall belong to the unit owners, subject only to the application and management of same by Council as required by the condominium documents and by Delaware law.

#### 4.5.2 Limitations on Council Members' Liabilities.

The members of the Council shall not be liable to the unit owners for any mistake of judgment, negligence, or other reason, except for their own individual willful misconduct or bad faith.

4.5.3 Indemnification by Unit Owners. The unit owners shall defend, indemnify, and hold harmless each of the Council members against all contractual, tort or other liability arising out of their actions or responsibilities undertaken on behalf of the unit owners, except and unless such action or responsibility reflects willful misconduct or gross negligence, or is clearly contrary to the Declaration or this Code of Regulations.

4.5.4 Unit Owner Liability. The liability of any unit owner arising out of any contract made by the Council or out of the aforesaid indemnity in favor of the Council members shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interests of all the unit owners in the common elements, except that the amount of such liability may be increased by ten percent (10%) thereof in the event of default by other unit owners. Council shall so notify those with whom it contracts; and shall have the power to levy special assessments against the unit owners to implement the foregoing provisions.

#### 4.6 Bond

The Treasurer of the Council shall be bonded in an amount and to the extent necessary to provide the unit owners, occupants, and mortgagees with adequate protection.

ARTICLE V  
ELECTIONS AND KINDS OF OFFICERS

5.1 Officers

The Council shall elect each year at its annual meeting, by majority vote from among its members, a president, a secretary, and a treasurer. A vice president and assistant officers may also be elected.

5.2 Simultaneous Duties

Any Council member may hold more than one (1) office at any time.

ARTICLE VI  
TERM, DUTIES, COMPENSATION OF OFFICERS

6.1 Term; Removal and Vacancies

6.1.1 One Year Term. Each officer shall serve for a term of one (1) year (except those appointed by Declarant; and except those elected at the organizational meeting who shall serve until the next annual meeting).

6.1.2 Early Termination. Each officer's term (except an officer appointed by Declarant) shall be subject to the Council's right to remove him or her from office, after he or she has had an opportunity to be heard, with or without cause at any meeting called for that purpose.

6.1.3 Vacancies. Vacancies shall be filled at a meeting of the Council called for that purpose and held as soon as practicable after the vacancy has occurred.

6.2 Duties of Officers

6.2.1 Professional Manager. The officers of Council may select and hire the services of a professional management company regularly engaged in the business of condominium management to assist them in the discharge of the Council's responsibilities in general and their duties in particular. The delegation of responsibilities and duties to the manager shall be by written contract, signed by the President and Secretary. The

cost of such management shall be a common expense, and the management contract shall be binding upon all unit owners and occupants, present and future, and upon all succeeding Councils and officers, for the duration of the term of such contract; except no contract shall be made for a term longer than one (1) year, and any such contract shall be subject to cancellation by Council for cause upon thirty (30) days' written notice to the management company, and without cause and without payment of a termination fee upon ninety (90) days' written notice.

6.2.2 President. The President shall preside at all meetings of the unit owners and at all meetings of the Council. He shall have the powers and duties generally associated with the office of the President of an association of individuals, including but not limited to the power to appoint committees from time to time from among Council members and any unit owners willing to assist in the conduct of the project's affairs. The President shall hire, supervise, discharge, and be ultimately responsible to the unit owners for the performance of, persons employed by the Council for management, maintenance, accounting, or any other purposes. He shall oversee all arrangements for water service, gas, electricity, trash disposal, insurance, security, maintenance, repairs, reconstruction, and all other contracts relating to the common elements or to the project as a whole. Insofar as practicable and possible, the President shall endeavor to include in every contract binding on the unit owners as a whole, a provision limiting each unit owner's liability therefor to the same percentage thereof as his percentage interest in the common elements.

6.2.3 Vice President. The Vice President (if any) shall serve as an ex officio member on all committees appointed by the President. He shall also fulfill the responsibilities of the President in the event of the latter's incapacity, absence, removal, or refusal to serve.

6.2.4 Secretary. The Secretary shall keep or cause to be kept minutes of all meetings of the unit owners and of the Council. He shall receive and send out notices and correspondence on behalf of the Council. He shall have charge of such books, papers, and documents as the Council may direct; and shall in general perform all the duties incident to the office of Secretary of an association of individuals. He shall promptly inform any institutional lender holding a first mortgage against one or more units, which has registered as such with the Council, of any delinquency extending thirty (30) days or more in the payment of any general or special assessment on such unit or units, and of any other matter regarding which mortgagees are entitled under the provisions of the Declaration or Code of Regulations to receive notice.

6.2.5 Treasurer. The Treasurer shall comply with the requirements made of him by the Delaware Unit Property Act, and by this Code of Regulations as hereinafter set forth. He shall have custody of all personal property jointly owned by the unit owners including funds, securities, and evidences of indebtedness. The Treasurer shall give the Secretary all information required to inform each unit owner of the monthly and special assessments due. The Treasurer shall be responsible for collecting all assessments from the unit owners, and all other income, rents, or proceeds due to the Council for the common benefit of the unit owners. He shall deposit and keep funds so collected in such account or accounts as the Council may direct. No withdrawals shall be made from said accounts except on the signature of two Council members.

6.2.6 Budget. Within fourteen (14) to forty-two (42) days after his election to the office, depending on the length of adjournment of the Council's first meeting, the Treasurer-elect, assisted by the incumbent Treasurer, shall prepare a detailed estimate of the common expenses for the coming year. A copy of the estimate as approved by Council shall be promptly mailed or delivered to every unit owner by the Secretary. The unit owners shall have ten (10) days thereafter in which to demand that a special meeting

be called for the purpose of discussing and approving the estimate. If no such meeting is demanded, the estimate shall be deemed acceptable and the Treasurer shall form a budget and calculate the monthly assessment needed from each unit owner. Each and every item of cost, expense, or reserve shown on the budget thus accepted or approved shall be deemed a valid common expense of the condominium project.

6.2.7 Special Assessments. The Treasurer shall within ten (10) days after being directed and authorized by the Council to make additional assessments for expenses not included or accurately forecast in the initial estimate, prepare an explanation of same for prompt mailing or delivery by the Secretary to each unit owner. The unit owners shall have ten (10) days after such delivery in which to demand that a special meeting be called for the purpose of discussing and approving the additional assessments. If no such meeting is demanded, the assessment shall be deemed acceptable.

### 6.3 Compensation and Delegation

6.3.1 Council's Approval for Delegation. The performance of, but not the responsibility for, any officer's duties may be delegated by the Council if the officer so requests to any suitable person employed or approved by the Council.

6.3.2 Unit Owner's Vote for Compensation. No officer shall be paid any compensation for his services in such capacity, except as may be provided for by vote of the unit owners at their annual or any special meeting.

## ARTICLE VII WORK ON COMMON ELEMENTS AND UNITS

### 7.1 Common Elements - Upkeep Procedures

7.1.1 Limitations Against Unit Owners. Repair, maintenance, and replacement of the common elements shall be undertaken only by employees or agents of the Council and at the Council's direction, unless Council fails to respond to an

emergency as hereinafter provided in subparagraph 7.1.5. No unit owner or occupant shall paint or otherwise adorn any of the common elements; place fans, air-conditioning units, or other devices in any exterior window; permit any wires to be installed for telephone, television, radio, or otherwise along any exterior or interior common element walls, or install any antenna on the exterior of any structure; or change the color of balcony carpeting, or remove such carpeting, or screen the balcony to his unit or otherwise change the exterior appearance of the Building without first receiving written permission of the Council, which permission if given may at any time thereafter on ten (10) days' written notice be withdrawn for reasonable cause.

7.1.2 Easement for Upkeep. The employees or agents of the Council shall have the unhindered right to enter, leave, and move about in the unit as frequently and to whatever extent necessary to accomplish the required work. They shall also have the right to inspect each unit once every year to ascertain its condition.

7.1.3 Notice. Any need or suspected need for repair, maintenance, or replacement of any common element from within a unit shall be promptly brought to the attention of the Council by the owner or occupant of that unit. Emergency work within a unit may be accomplished at any time and without advance notice. All other work and the annual inspection shall be accomplished at such time or times as the Council, after ascertaining the desires of the unit owners and occupants and with due regard for their convenience, may specify by written notice delivered to the unit involved at least fifteen (15) days in advance.

7.1.4 Outside Contractor. The Council may delegate to a full or part-time project engineer or manager employed for such purpose all or any part of its duties and powers with respect to upkeep of the common elements but may not delegate its responsibilities therefor. Council may from time to time contract with any firm, person, or corporation for the performance of any maintenance, replacement, repair, or reconstruction.

7.1.5 Right of Self-help. In the event that the Council fails to maintain the project in accordance with its duties hereunder, any unit owner, occupant, or institutional first mortgagee shall have the right to compel the specific performance of the Council in a court of equity. Should the Council fail to make emergency repairs within twenty-four (24) hours of receiving notice of the need therefor, the unit owner, occupant, or institutional first mortgagee may cause the same to be made and seek reimbursement from the Council. All doubts shall be resolved by the court or arbitrator in favor of the good faith judgment and decision of the Council.

7.2 Common Elements - Upkeep and Costs

7.2.1 Common Expenses. The costs of materials, labor, services, supplies, and any other expense incurred to repair, maintain, replace, or reconstruct the common elements shall be paid by the Treasurer from assessments collected and reserves created or funds received for such purpose. Costs and expenses forecast in the Treasurer's annual estimate may be paid without further authorization of the Council. All other costs and expenses must be separately authorized.

7.2.2 Borrowing by Council. The Council shall have the power to borrow funds for maintenance, repairs, or replacements if necessary to prevent waste or meet an emergency. Otherwise, the Council shall first seek the authorization of the unit owners. No bank or other lender shall be required to ascertain if the Council has proper authority to borrow, but any bank or lender which has first obtained the written assurances of each Council member that the borrowing is proper shall be entitled to presume conclusively that such assurances are true.

7.2.3 Council's Liability for Incidental Damage. Any damage to a unit owner's or occupant's personal property or unit which occurs in the course of repair, maintenance, or replacement of the common elements by the Council shall be reported to the Council as soon as discovered. If satisfied that the damage was so caused, and not



as the result of any carelessness on the part of the unit owner or occupant, the Council shall make a reasonable reimbursement therefor.

⑧ 7.2.4 Unit Owner's Liability for Damage Caused. Any maintenance, replacement, or repair to the common elements made necessary by an act or acts of a unit owner, occupant, or invitee other than such as occur in the course of normal, careful usage resulting in ordinary wear and tear, shall be assessed solely to and paid by the unit owner involved.

7.2.5 Limited Common Elements. Notwithstanding the foregoing, in the event that the Declarant or Council limits the use of any common element to a specific unit, thereby making it a limited common element, then unless all units receive substantially comparable treatment in having the exclusive use of a portion of the same or similar common elements, the cost of maintaining and repairing such limited common elements shall be solely assessed against and collected from the units and unit owners benefitted thereby. Failure to pay any such assessment shall entitle the Council to cancel any assigned exclusive use of a common element benefitting the unit against which such assessment has been made and is delinquent.

### 7.3 Maintenance of Units by Unit Owners

⑧ 7.3.1 Liability for Failure to Maintain. Each unit owner must promptly, at his own expense, perform all maintenance and repair work within his unit, exclusive of common elements, which if not performed would or might cause damage to any portion of the common elements or to any portion of any other unit including the contents thereof. Each unit owner shall be strictly liable for damage to property and personal injury caused by his failure so to perform.

7.3.2 Unit Maintenance by Council. Notwithstanding that all repairs, maintenance, and replacements required in connection with any unit exclusive of common elements shall be the responsibility of the various unit owners, the Council may,

at its option, undertake to arrange for repairs, maintenance, and replacements which are the unit owner's responsibility if the unit owner so requests and deposits with the Council in advance an amount of money estimated by the Council as being sufficient to meet the cost of the work to be done. Any excess will be refunded, and any deficiency will be assessed, to the unit owner. The Council shall also have the right to make repairs to units which are the responsibility of the owners under Section 7.3.1 but which the owner has neglected or refused to perform. The cost of any work performed by the Council shall be borne by the owner of the unit to which the work has been done.

7.3.3 Structural Alterations. No unit owner or occupant shall make any structural installation or alteration to which the Council objects. A unit owner or occupant desiring to make a structural installation or alteration shall first so notify the Council in writing. He shall furnish the Council with such further information and drawings as may be requested. The Council shall have thirty (30) days from its receipt of the notification within which to deliver to the unit owner, at the unit involved, its written objection. The Council shall be justified in resolving all doubts regarding duress, damage to, and safety of the common elements against the proposed installation or alteration.

7.3.4 Withdrawal of Prior Approval. In the event that no objection is made the installation or alteration may proceed, subject to the right of the Council at any time thereafter to conclude that an objection should have been made. If the Council so concludes, the owner of the unit in question shall cause the installation to be removed or the alteration to be changed back, and the Council shall reimburse the unit owner for the resulting diminution in the value of the unit or for the original cost of the installation or alteration, without depreciation, whichever amount is greater; provided, however, that the unit owner shall bear all costs of, and shall receive no reimbursement for, removing

or changing back any installation or alteration which materially varies from the plans submitted to the Council.

7.3.5 Exception for Declarant's Units. The foregoing provisions shall neither apply to, nor limit, the Declarant in rehabilitating or completing any unit to which it holds title.

7.4 Construction Using Insurance or Condemnation Proceeds

7.4.1 Restoration by Council. In the event of damage to or destruction of all or any part of a building or other improvement as a result of any casualty against which the Council has obtained insurance, or as the result of taking under power of eminent domain, the Council shall arrange for the prompt repair and restoration thereof, including without limitation, nonsupporting partition walls, wallboard, paint, finished floor surfaces, electrical outlets, lighting fixtures, plumbing fixtures, doors, windows, hot water heaters, appliances, and heating and air-conditioning units, and other common elements and unit elements, but only to the extent that the same were considered in determining the replacement value of a building for insurance purposes, or are otherwise covered by the insurance proceeds or condemnation award. (Carpeting, furniture, household equipment, and other improvements, furnishings and decorations which are not standard shall be the responsibility of the unit owners, to the extent not covered by the Council's insurance.) The insurance trustee or Council, as the case may be, shall disburse the insurance proceeds or condemnation award to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the Declaration. In the event that the insurance or condemnation proceeds are not sufficient for repair and restoration, the Council shall nevertheless accomplish same and shall collect the deficiency by special assessment.

7.4.2 Suit for Partition. The foregoing provisions are subject to the condition that no such work shall be begun or continued nor shall any disbursements be

made if the condominium or any part thereof is validly the subject of any suit in partition by reason of the damage or destruction. Such suit to be effective must be brought within seven (7) days after the occurrence of the damage or destruction, otherwise the right to partition shall be conclusively deemed waived.

7.4.3 Distribution of Unused Proceeds. Any insurance proceeds not otherwise spent in repair or reconstruction shall be distributed in accordance with the Delaware Unit Property Act, subject, however, to the rights of mortgagees to receive any proceeds otherwise payable to the owners of mortgaged units. Any condemnation proceeds not needed for repair and restoration shall be divided among the unit owners in the same manner as insurance and salvage proceeds would be divided after a casualty and as the result of a suit for partition; provided, however, that where the taking of a common element under power of eminent domain disproportionately and materially diminishes the value of any unit or units in comparison with any others, as determined in the sole but good faith, reasonable discretion of Council, then the proceeds shall be divided and distributed so as to equalize such disproportionate diminution.

7.5 Appearance Regulations. In the event that any unit owner desires to change the color or appearance of any portion of his unit or any limited common element visible to third parties from outside of his unit (including but not limited to balcony carpeting or screen installation), such owner shall first seek and obtain the Council's written approval for such change, which approval Council may withhold for the sake of uniformity. This provision is subject to all of the foregoing limitations and does not create any right to make changes not otherwise herein granted.\* Council shall have the right, power, and authority to regulate by rules all matters affecting the exterior appearance of the Building, including but not limited to drapery colors and blinds, and use and contents of balconies.

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ARTICLE VIII  
COLLECTION OF COMMON EXPENSES

8.1 Budget and Assessments in Advance

8.1.1 Scope and Validity. The Council through its Treasurer shall have the power and authority to prepare a budget for each year in advance and to make assessments each month in advance for the common expenses anticipated in such budget, subject only to the right of the unit owners to call a meeting for the purpose of discussing and approving or disapproving the budget when the Treasurer presents his annual estimate of common expenses. No objection shall be made to any assessment on the basis that the expenses which such assessment is intended to meet have not yet been incurred. Nor shall objections be made to assessment for expenses which by statute are common expenses necessary for Council to discharge its duties and responsibilities to the condominium property and unit owners, occupants, and mortgagees. Any and all expenses provided for in the budget shall be deemed valid common expenses on which all unit owners have agreed, unless said budget is disapproved and rejected by unit owner vote as provided elsewhere herein.

8.1.2 Reserves. The budget and assessments therefor may provide an adequate reserve fund for the maintenance, repair and replacement of those common elements of the condominium project that must be replaced on a periodic basis; such fund, if any, shall be established by separate regular monthly assessments payable monthly in regular installments by the unit owners, maintained in trust separately from all other funds. The budget may provide as part of this same trust fund for the creation of reserves to meet unforeseen contingencies or to provide for expenses which may not be incurred until an undetermined time in the future beyond the one year period during which the budget will be in force.

8.1.3 Working Capital. At the time of the first conveyance of each unit, the grantee named in the first deed to such unit shall contribute to the Council a working

capital fund equal to two (2) month's estimated common expense assessment against such unit, to be held by and for the Association of Owners in a separate account to meet unforeseen contingencies and to provide capital for equipment or services deemed necessary by the Council. Such working capital shall not constitute advance payment of assessments, nor shall it be refunded to any unit owner upon conveyance of his unit, but shall be deemed automatically assigned to each successive unit owner as an appurtenance of the unit until such time, if any, as the condominium regime is terminated or until such fund is otherwise exhausted. Declarant shall not be responsible for contributing its share of the working capital fund for unconveyed units.

## 8.2 Default and Enforcement

8.2.1 Due Date. Assessments shall be paid by check, cash, or money order delivered to the Treasurer on the first day of the month for which the dues are assessed. Failure to pay any assessment within fifteen (15) days of the due date shall subject the unit owner to a late charge of five percent (5%) of the amount owed and shall constitute a default and subject the unit owner responsible therefor to the Council's enforcement procedures.

8.2.2 Suspension of Privileges. The Treasurer may require cash or a certified or local bank's treasurer check from any unit owner whose personal check has not been honored by his bank, which requirement may in the Treasurer's discretion remain in effect for up to six (6) months following receipt of the first dishonored check, and for up to twelve (12) months following receipt of the second or more dishonored checks.

~~8.2.3 Acceleration of Assessment Upon Default.~~ In the event that the monthly or any special assessment of any unit owner remains unpaid, regardless of the amount which he has on deposit, or in the event that the amount on deposit remains deficient, for a period of more than sixty (60) days, the Council shall have the right to

call in writing for immediate payment of all sums past due and all assessments scheduled to become due during the remainder of the fiscal year, as if this aggregate amount had originally been due and payable in full. ~~The Council may take any and all steps available within the law to collect the amount due plus interest and attorneys' fees.~~

8.2.4 Effect of Unpaid Assessment. So long as any general or special assessment is due and unpaid, the unit subject to such assessment (with the exception of units owned by the Declarant) shall not be sold or encumbered, nor shall any lease thereon be entered or assigned, nor shall any existing lien or encumbrance be extended or increased, except with the Council's written consent, and any rents, common profits, or other income rights with respect to such unit shall be deemed assigned to the Council as security. This paragraph shall be subject to such rights as may be then vested in the institutional first mortgagee of such unit, if any.

8.2.5 Suspension of Utilities as Penalty. So long as any general or special assessment is due and unpaid, ~~the Council shall have the right to suspend any centrally supplied utility or service for the unit subject to such assessment, with the exception of~~ units owned by the Declarant, or units as to which a first mortgagee has taken a deed by foreclosure or in lieu of foreclosure. No such suspension shall reduce the affected unit's liability for common expenses during the time of such suspension or thereafter. Nor shall any unit owner or occupant be denied free and unburdened access to his unit prior to foreclosure sale thereof.

8.2.6 Settlement; Expenses of Collection. Every unit owner, except the Declarant, against whom legal action is taken to collect an assessment or enforce any covenant, condition, obligation, or restriction shall, if judgment is rendered against him, be liable for all court costs and for a reasonable attorneys' fee, the same as if such costs and fee were part of the original amount due, except that no interest shall be calculated

on the costs and fee. The Council shall have the right to settle any claim against a unit owner, occupant, or other person or legal entity for such amount and on such terms as the Council believes to be in the project's best interests.

8.3 Declarant's Responsibility for Common Expenses Notwithstanding any other provision to the contrary, no lawsuit, suspension of utilities, or other action shall be taken by or on behalf of the condominium Council, or any unit owner, occupant, mortgagee, or other lienor, to collect any assessment against any unit owned by Declarant, or its successors or assigns, which relates to any period of time or times during which the unit was not actually being occupied as a residence (and the performance of work on Declarant's units to rehabilitate or improve same shall not constitute occupancy thereof) unless and except to the extent that such assessment is for expenditures actually made by the condominium Council for the cost of electricity, gas, oil, water, sewer, insurance protection, trash disposal, or maintenance personnel, in fact directly consumed or utilized by such unit, independently of and apart from its interest in the common elements. It shall be a presumption that the Declarant's share of common expenses for unsold units shall equal the difference between the actual operating expenses of the condominium project (less any amount collected for reserve funds) and the amount collected as common expenses from the other unit owners. Declarant shall be entitled, when any unit to which Declarant has theretofore held title is for the first time being conveyed, to receive from the Council a credit or reimbursement for all common assessments against said unit during any period of time while it was not being occupied as a residence as above provided, except for such portion of the assessments as have been actually expended by Council for Declarant's use and benefit as above specified; and such reimbursement shall be a common expense of the condominium project. To the extent that Declarant owes any assessment on a unit at the time when



that unit is being conveyed, the amount due shall be reimbursed to the Council without interest, from the net proceeds of sale received by the Declarant, but only insofar as such net proceeds are adequate. Any deficiency shall be allocated to the Declarant's unsold units in proportion to the percentages of interest attributed to each such unit. In no event, however, shall Declarant receive the benefit of the foregoing provision for more than two (2) months after conveyance of the first unit if a deficit occurs in the condominium budget for the year in which such benefit occurs, but Declarant shall make up such deficit to the extent, and only to the extent, of any such benefit.

8.4 Exceptions for Mortgages. Any first mortgagee or other party who obtains title to a condominium unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage shall not be liable for such unit's unpaid dues or charges (including late charges and attorney's fees) which accrue prior to the acquisition of title to such unit by the mortgagee, except insofar as any delinquent assessments for which the lien is extinguished pursuant to the foregoing provision may be reallocated to all units as a common expense assessment.

## ARTICLE IX PROMULGATION AND AMENDMENT

### 9.1 Rules of Conduct

The Council may from time to time promulgate and amend rules governing the use and operation of the project facilities and common elements in general.

### 9.2 Amendments to Code of Regulations

The Council may from time to time amend the Code of Regulations, subject to the requirements for amendments set forth in the Declaration.

### 9.3 Unit Owner Approval

Except as hereafter provided, no Rule of Council, and no Amendment to the Code of Regulations, shall be recorded or become effective until a copy thereof has been

made available for inspection by all unit owners at some convenient place in the project for a period of at least fifteen (15) days following written notification of each unit indicating the general purpose of the rule or amendment and the location of the copy. Any time before or after the effective date of the rule or amendment, the unit owners may cause a special meeting to be held at which the same may be rescinded by a majority of the total vote cast. Rescission shall automatically revive the previous status of the Rules or Code as the case may be. The unit owners shall not have the power themselves directly to promulgate or amend any rule or regulation.

#### 9.4 Declarant Approval

So long as the Declarant holds title to one (1) or more units, whether in the Declarant's name or in the name of a nominee, which units continue to be offered for sale as part of the original marketing effort, no Rule of Conduct, or amendment, addition to or deletion from the Code of Regulations or Declaration or Declaration Plan shall be effective without the Declarant's written consent.

#### 9.5 Declarant's Rights

The foregoing provisions or amendments are subject to the rights of the Declarant to make and file amendments as more particularly set forth in the Declaration.

### ARTICLE X ACQUISITION OF UNITS BY COUNCIL

10.1 Unit Liened by Council. The Council may, if authorized by unit owner vote of a majority of the votes cast, acquire by purchase as a common expense any unit offered for sale under circumstances making its acquisition necessary or advisable in order to protect the Council's lien for unpaid assessments thereon.

10.2 Unit Not Liened. The Council may, if authorized by a unit owner vote of at least sixty-seven percent (67%) or more of the votes cast, seek to purchase as a common expense any unit or interest therein.

10.3 Power to Borrow on and Dispose of Units

The Council may, if authorized by the unit owners, borrow money to accomplish any of the aforesaid acquisitions. Management and disposition of any unit or units standing in the Council's name may be accomplished by the Council without prior authorization of the unit owners.

ARTICLE XI  
SUIT BY AND AGAINST UNIT OWNERS

11.1 Unit Owners as a Quasi-class

11.1.1 Council as Agent. The Council, whether acting directly or through an incorporated condominium homeowner's association, shall have the sole and exclusive right, as a common expense, to bring, prosecute, settle, arbitrate, and defend claims, suits, governmental proceedings, and other actions of a legal nature brought by or against all of the unit owners of the Council, or which could have been brought by or against all of the unit owners or the Council; except that Council shall not have the right, power, authority, or standing to bring any suit against the Declarant without the Declarant's prior written consent.

11.1.2 Service of Process. Any person or entity wishing to bring suit against all of the unit owners is authorized to effectuate service thereon by serving any member of the Council, provided, however, that the person or entity so making service shall thereby be deemed to consent and agree that the liability of each unit owner as to any judgment subsequently rendered against the unit owners shall be limited to his percentage interest in the common elements multiplied times the judgment, and further, as to any unit owner not a resident of the State of Delaware, that such service shall be

sufficient to establish only in rem jurisdiction and not personal jurisdiction, the same as if the unit of such nonresident had been attached to compel his appearance.

11.1.3 Waiver by Council. Council shall within seven (7) days after being requested to sue or defend by any unit owner, either consent to such request in writing or else waive the exclusive right to sue or defend in writing; except that said seven (7) day period may be extended to fourteen (14) days if Council desires to and does call a meeting of the unit owners to consider such request. Upon waiver by Council of its exclusive right to sue or defend with respect to any particular situation, any unit owner may proceed, alone or with others, to sue or defend on his own or their own behalf.

11.1.4 Effect of Judgment. Any judgment which is rendered against one or more, but less than all, of the unit owners for a liability which would have supported entry of judgment against the Council or all unit owners, shall be deemed a common expense and shall be borne by all of the unit owners.

#### 11.2 Actions to Enforce Condominium Documents

Failure of any unit owner or occupant to comply with the provisions of the Declaration, Code of Regulations, or Rules of conduct will give rise to a cause of action in the Council and in any aggrieved unit owner, occupant, or mortgagee for damages, injunctive relief, or both.

11.3 Fictitious Name Certificate The Council shall file and refile as necessary a fictitious name certificate so that the Association of Owners shall be and remain in compliance with Delaware law governing the right of unincorporated associations to do business, and to sue and be sued, in a fictitious name.

### ARTICLE XII MORTGAGES AND MORTGAGEES

#### 12.1 Notice to Association

Every unit owner who mortgages his unit, or the mortgagee thereof, shall notify the Council of the name and address of the mortgagee and shall file a conformed

copy of the mortgage with the Council. The Council shall maintain such information in a book entitled "Mortgages of Units." The term "mortgagee" wherever used in the Declaration or Code of Regulations shall include and mean every holder, insurer, or guarantor of a mortgage against a unit or units in the condominium.

#### 12.2 Notice to Mortgagees

Provided that Council has previously been furnished with the name and address of the holder, insurer or guarantor of any mortgage against a unit in the Project, and with the number or address of such unit, the Council shall give such holder, insurer, or guarantor timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any unit on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by an owner of a unit subject to the first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association of Owners;

(d) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in Section 9.9 (e) of the Declaration.

12.2.2 Destruction or Condemnation. Council shall also give to all such mortgagees, with the same proviso, written notice of any damage or destruction to, or taking or proposed taking of, the common elements of the condominium project.

12.2.3 Financial Statement. Council shall give any holder, insurer, or guarantor of a first mortgage on a unit, upon request, a copy of an audited financial

statement of the condominium project for the preceding fiscal year within ninety (90) days following the end of such year.

12.2.4 Meetings. Council shall give any holder, insurer, or guarantor of a first mortgage on a unit, upon request, advance written notice of all meetings of unit owners. Such holders shall each be permitted to designate a representative who shall be entitled to attend any and every such meeting.

12.3 Examination of Books. Council shall maintain at all times current copies of the Declaration, Code of Regulations, Declaration Plan, Rules of Conduct, and its own books, records and financial statements. Each unit owner and each holder, insurer and guarantor of any mortgage secured by a unit shall be permitted to examine all the condominium documents, plans, books, accounts, budget records, and financial statements of the Council and of the condominium project at a reasonable time, on business days, or under other reasonable circumstances.

WITNESS:

Sharon M. Natta

Sharon M. Natta

Sharon M. Natta

Sharon M. Natta

Sharon M. Natta

BIRCH POINTE CONDOMINIUM COUNCIL

By: Laurey M. Freeman  
Council Member

By: Paul E. John  
Council Member

By: W. E. Se G.  
Council Member

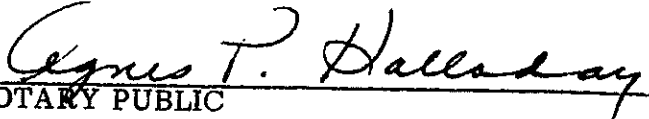
By: Rene Throck  
Council Member

By: Hay E. Muck  
Council Member

STATE OF DELAWARE )  
 ) SS.  
NEW CASTLE COUNTY )

BE IT REMEMBERED that on this 28th day of June, 1984,  
personally came before me, the Subscriber, a Notary Public for the State and County  
aforesaid, GARY M. FARRAR Council Member of BIRCH POINTE  
CONDOMINIUM, party to this Indenture, known to me personally as such, and  
acknowledged this Indenture to be his act and deed.

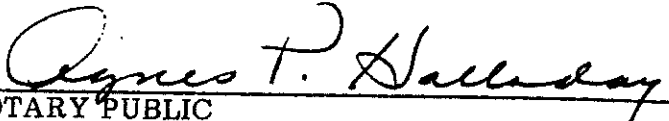
GIVEN under my Hand and Seal of Office, the day and year aforesaid.

  
NOTARY PUBLIC

STATE OF DELAWARE )  
 ) SS.  
NEW CASTLE COUNTY )

BE IT REMEMBERED that on this 28th day of June, 1984,  
personally came before me, the Subscriber, a Notary Public for the State and County  
aforesaid, CHARLES E. JOHNSON Council Member of BIRCH POINTE  
CONDOMINIUM, party to this Indenture, known to me personally as such, and  
acknowledged this Indenture to be his act and deed.

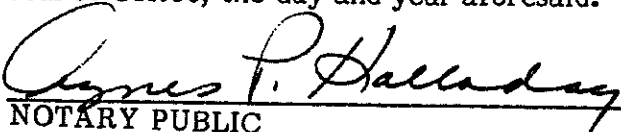
GIVEN under my Hand and Seal of Office, the day and year aforesaid.

  
NOTARY PUBLIC

STATE OF DELAWARE )  
 ) SS.  
NEW CASTLE COUNTY )

BE IT REMEMBERED that on this 28th day of June, 1984,  
personally came before me, the Subscriber, a Notary Public for the State and County  
aforesaid, ROBERT A. KENDIG Council Member of BIRCH POINTE  
CONDOMINIUM, party to this Indenture, known to me personally as such, and  
acknowledged this Indenture to be his act and deed.

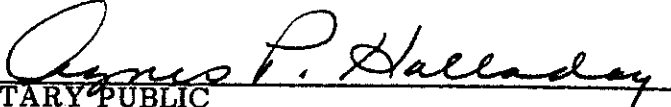
GIVEN under my Hand and Seal of Office, the day and year aforesaid.

  
NOTARY PUBLIC

STATE OF DELAWARE )  
 ) SS.  
NEW CASTLE COUNTY )

BE IT REMEMBERED that on this 28th day of June, 1984,  
personally came before me, the Subscriber, a Notary Public for the State and County  
aforesaid, RENEE MOSCH Council Member of BIRCH POINTE  
CONDOMINIUM, party to this Indenture, known to me personally as such, and  
acknowledged this Indenture to be his act and deed.

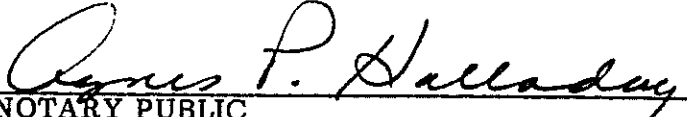
GIVEN under my Hand and Seal of Office, the day and year aforesaid.

  
NOTARY PUBLIC

STATE OF DELAWARE )  
 ) SS.  
NEW CASTLE COUNTY )

BE IT REMEMBERED that on this 28th day of June, 1984,  
personally came before me, the Subscriber, a Notary Public for the State and County  
aforesaid, HARRY E. MILLER Council Member of BIRCH POINTE  
CONDOMINIUM, party to this Indenture, known to me personally as such, and  
acknowledged this Indenture to be his act and deed.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

  
NOTARY PUBLIC



BIRCH POINTE  
RULES OF CONDUCT

1. Grounds

(a) The Council's maintenance responsibilities for the grounds shall, unless expanded by vote of the unit owners, be confined to cutting of grass, snow removal, and repair of walks and entrance steps and landing. No unit owner or occupant shall till, seed, plant, cultivate, or permit same to be done, except in accordance with the instructions issued from time to time by Council, or, in the absence of applicable instructions, except with the Council's permission. Each unit owner, occupant, employee and guest shall refrain from littering the common areas.

(b) No signs, lamp posts, fences, birdbaths, or other improvements or adornments shall be erected or placed upon the lands of the project except pursuant to the Council's unanimous written permission. No existing fences or enclosures, walks, or curbs shall be painted, written or drawn upon, used to mount a sign, removed, marked or otherwise defaced. Lawn chairs, tables, barbecues, game equipment, toys and other such items shall be placed upon the grounds only at such times and places as the Council may from time to time prescribe; and shall be removed from the grounds when not in use unless otherwise permitted in writing by Council.

*electric*  
(c) No fires shall be caused or permitted on the grounds, except for the lighting of ~~gas or coal~~ in an elevated, safe, enclosed grill used on a patio or other area designated by Council, if any. No activity shall be carried on upon the grounds which will cause unreasonable wear and tear to the grounds or damage to the landscaping.

(d) All garbage and other refuse shall be deposited in covered containers and in accordance with such instruction as may be furnished from time to time by Council. Each unit owner or occupant shall take all reasonable steps to prevent his garbage and refuse from omitting odors sufficient reasonably to annoy any other unit owner or occupant.

2. Pets

No pets shall be permitted upon any common element or in any unit except pets owned by unit owners. Dogs, cats, and other ambulatory pets shall, when not on a leash, be kept within its owner's unit. No dog, cat, or other animal shall be permitted to relieve itself on any shrub, patio, building, fence, or car, or other items of personal property. Any solid waste left on any common area shall be promptly placed in a bag and put in the pet owner's refuse container. Every pet owner shall take all reasonable steps to prevent the noise, waste or odors of his pet from annoying other unit owners. No animal, insect, fish or reptile of any kind shall be bred, born, or buried in a unit or common element over the objection of any other unit owner or occupant; and in no event shall more than two ambulatory pets or birds be kept in any unit. Unit owners or occupants shall be strickly liable for the actions of same. The Council shall have the right to require that any habitually diseased, infested, unclean or noisy animal, bird, reptile, fish, or insect, be removed from the condominium project.

### 3. Units

(a) No unit owner or occupant shall cause or permit any sign to be displayed, or any rug, laundry, aerial, fan, air-conditioner, wire, or other object to hang or protrude, from any window or door. All screens or screening not installed by the Developer shall be subject to Council's written approval as to appearance, design, materials, and manner of installation. No shades, awnings, shutters, or window guards shall be used except with the Council's written approval. No sign or other object shall be displayed on any wall or rooftop without the Council's written approval.

The foregoing shall not prohibit the display of customary holiday decorations, subject to such specific limitations on type, manner of display, and duration as the Council may from time to time fix and determine.

(b) No rugs shall be beaten on patios, balconies, or outdoor living areas, nor shall dust, rubbish or litter be shaken, swept or thrown from any window, door, patio, balcony, or outdoor living area. No laundry shall be aired from any balcony, or on any other common area.

(c) No bicycles, toys, barbecue sets, tires, tools, ladders, or any other items shall be stored or left outside of any units.

(d) No unit owner or occupant shall place his name, or any sign, ad, or notice, in any common area or on any common element except as permitted by Council. No unit owner shall paint, decorate, or adorn any common area except pursuant to rules of Council governing holiday decorations. All entrances and exits, stairwells, and landings shall be kept free of all objects whatsoever.

(e) No one-bedroom unit shall be occupied by more than two (2) people; no two-bedroom unit shall be occupied by more than four (4) people.

### 4. Noise

No unit owner or occupant shall play or be allowed to play any musical instrument, radio, television, phonograph, sound movie projector, tape recorder or like device, or shall practice singing or vocal exercises, or shall use any tool or engage in any noisy activity, earlier in the morning than eight o'clock a.m. Monday through Saturday, inclusive, and eleven o'clock a.m. Sunday; or later in the evening than eleven o'clock p.m. Sunday through Thursday, and twelve o'clock mid-night Friday and Saturday; or for longer (except for television, radio or phonograph) than two hours in any given day, if the same shall disturb and annoy the owners or occupants of any other unit. No unit owner or occupant shall engage in any altercation at any time, or otherwise shout, yell, or disturb the peace if the same shall annoy and disturb the owners or occupants of any other unit. Television, radio and other electrical devices subject to volume control shall not be played above moderate levels if any unit owner or occupant objects, regardless of time of day.

### 5. Cleanliness

All unit owners or occupants shall be responsible for the cleanliness of their respective units and appurtenant limited common elements. The cost of exterminating

any rodent or insect infestation resulting from the uncleanness of any unit shall be charged to the owner of that unit.

#### 6. Water and Plumbing

(a) The water shall not be left running any unreasonable or unnecessary length of time in any unit. Use of water for shrubs and lawn care, or any other purpose than necessary human consumption, shall be subject to regulations and limitation by the Council.

(b) Toilets and drains shall be used for no other purpose than that for which they were designed. No sweepings, rubbish, rags, papers, ashes, or other substances shall be deposited therein. Any repairs necessitated by the misuse of such facilities shall be charged to the offending unit owner or occupant, or both.

(c) No unit owner or occupant shall cause or permit any tampering with, alteration to or new connection into any water or sewer pipe.

#### 7. Equipment and Installations

No unit owner or occupant shall tamper or interfere with, attempt to repair, alter, or make a connection with, any electrical, gas, or other cable, line, pipe, apparatus or equipment. Before installing and operating any machinery, refrigerating or heating device, washing machine, dryer, air conditioning or other equipment not installed by the Developer-Builder, and before using any illumination other than electric light or decorative candles, each unit owner or occupant intending to install or operate same shall in each and every instance obtain the written consent of Council, which shall be promptly given or denied based on considerations of safety. In no event, however, shall the Council's consent render the Council liable for any resulting unsafe conditions.

#### 8. Explosives and Inflammables

No explosive or highly inflammable material shall be brought into any portion of the condominium project, except under the supervision of Council.

#### 9. Developer's Privileges

To the extent reasonably necessary or convenient for completion of construction and sale of the condominium project and all units therein, the Developer (i.e., Declarant), its successors, and assigns shall not, as to unsold units which remain unsold and are offered for sale as part of the original marketing effort, be bound to observe the foregoing Rules.

#### 10. Motor Vehicles Abandonment and Repairs

No unit owner or occupant shall repair or perform any maintenance on any automobile, boat, motorcycle or other motor vehicle on any portion of the condominium project, nor shall any unit owner or occupant abandon any such motor vehicle on any portion of the condominium project. Any such motor vehicle left abandoned for more than seven (7) consecutive days may be removed at the abandoning unit owner's expense by the condominium Council, which such expense shall be added to and become part of the council fee of that particular unit.

**11. Enforcement of Rules**

Council or any unit owner shall have the right to enforce these rules against any occupant violating them, and Council shall recover its attorneys' fees from any occupant who fails to abide by these rules without court action.