

DECLARATION CREATING UNIT OWNERSHIP  
FOR

RIVER CREEK, A CONDOMINIUM  
At Sea Trail Plantation

Prepared by  
Mason H. Anderson  
Anderson & McLamb  
Attorneys at Law  
Shallotte, NC 28459

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DECLARATION CREATING UNIT OWNERSHIP  
PURSUANT TO THE PROVISIONS OF NCGS 47C, THE UNIT  
OWNERSHIP ACT FOR RIVER CREEK, A CONDOMINIUM

THIS DECLARATION, made this the \_\_\_\_ day  
of \_\_\_\_\_, 1989, by SEA TRAIL CORPORATION, a  
corporation organized and doing business under the laws of the  
State of North Carolina, with an office and place of business  
located at Sunset Beach, Brunswick County, North Carolina,  
hereinafter referred to as the "DECLARANT", pursuant to the  
provisions of Chapter 47C, North Carolina General Statutes,  
entitled "North Carolina Condominium Act" .

ARTICLE ONE

DEFINITIONS

Certain terms and provisions as used in this  
Declaration with its attached and incorporated exhibits shall  
be defined as follows, unless the context clearly requires and  
indicates a different meaning:

(1) Allocated Interest: means the undivided  
interests in the Common Elements, the Common Expense Liability,  
and votes in the Association allocated to each Unit.

(2) Association: means the Unit Owners Association  
which is organized to administer this Condominium.

(3) Common Elements: means all portions of the  
Condominium other than the Units and Limited Common Elements.

(4) Common Expenses: means expenditures made by or  
financial liabilities of the Association, together with any  
allocations to reserves.

(5) Declaration: means this instrument which creates

this Condominium, and any amendments to this instrument.

(6) Limited Common Elements: means a portion of the Common Elements allocated by this Declaration or by the operation of law for the exclusive use of one or more but fewer than all of the Units. The Limited Common Elements as shown on the plans are the entrance, stairways, foyers, landings located in the building, decks and/or porches.

(7) Master Association: means the Sea Trail Plantation Property Owners Association which is organized to administer the entire Sea Trail Plantation Development in which this Condominium is located.

(8) Unit: means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are established by the walls, floors and ceilings as shown on the plans; therefore, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit; and all other portions of such walls, floors, or ceilings are a part of the Common Elements.

All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. In this connection, pipes, ducts, wire, conduits and other facilities for the furnishing of water, electrical, cable T.V., telephone, sewage facilities and other services to the Unit and Common Elements from the point of entry through the interior surface, material for the walls, ceilings and floors

are a part of the Unit.

Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit but located outside the Unit's boundaries are Limited Common Elements allocated exclusively to that Unit.

Notwithstanding the foregoing, however, heating and air conditioning systems which serve only a particular Unit shall be considered a part of the Unit even though a portion thereof lies outside of the boundaries of the Unit.

All other technical words which may be used in this Declaration, unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall, as used herein, have the meaning set out in NCGS 47C-1-103.

## ARTICLE TWO

### ESTABLISHMENT OF THE CONDOMINIUM

Declarant is the owner of a certain tract or parcel of land located near Sunset Beach, and in Shallotte Township, Brunswick County, North Carolina, as more particularly described on Exhibit A attached hereto and incorporated herein by reference, and on which property there has been constructed one building containing a total of six Condominium Units and their supporting facilities and appurtenant improvements. The building is of frame construction with a combination of wood and stucco exterior siding as more particularly shown on the plans and specifications which appear in Unit Ownership File \_\_\_\_\_, Pages \_\_\_\_\_-\_\_\_\_\_ recorded in the office of

the Register of Deeds of Brunswick County which are fully incorporated herein by reference as a part of this Declaration of Condominium. The Declarant does hereby submit the above described property and improvements to Condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act) and does hereby declare the same to be a Condominium to be known and identified as "RIVER CREEK, A CONDOMINIUM".

### ARTICLE THREE

#### RESERVATION OF "DEVELOPMENT RIGHTS"

#### AND "SPECIAL DECLARANT RIGHTS"

The Declarant hereby reserves the right to add the real estate constituting Phases 2 - 9 which is shown on the general schematic map attached hereto as Exhibit B to the Condominium and to create additional Units, Common Elements and Limited Common Elements to be located thereon. Further, the Declarant hereby reserves the "Special Declarant Rights" to (a) complete any improvements on any plats or plans filed with this Declaration or any amendment thereto; and (b) to exercise the foregoing Development Rights; and (c) to maintain sales offices, management offices, signs advertising the Condominium and models; (d) the use of easements through the Common Elements for the purpose of making improvements within the Condominium or within the real estate which may be added to the Condominium; and (e) to make the Condominium part of a larger Condominium; and (f) to appoint or remove any officer of the Association or any member of the Board of Directors during the

period of Declarant control of the Association.

The Development Rights and Special Declarant Rights herein reserved shall expire on December 31, 1999. The Development Rights may be exercised with respect to the different phases at different times. The definite boundaries of these phases cannot now be established nor can the order in which these various phases may be subjected to and incorporated in the Condominium be determined at this time. Exercise of the Development Rights as to any particular phase does not require that it must be exercised as to any future phase or any other portion of the remainder of the real estate which may be added to the Condominium. The maximum number of Units which may be added to the Condominium pursuant to the exercise of these Development Rights is forty-eight, thereby creating a maximum number of fifty-four Units in the Condominium. The additional phases if incorporated into the Condominium will contain the number of Units indicated.

<u>Phase No.</u>	<u>Number of Units</u>
2	6
3	6
4	6
5	6
6	6
7	6
8	6
9	6

The buildings to be located on these additional phases, if they are added to the Condominium, shall be of substantially the same design, construction and materials, as the building presently constituting the Condominium (that is as located in Phase 1). The formula for assigning the appurtenant Allocated Interest for the Units in Phase 1 and for Units which will be contained in the future phases, should they be added pursuant to the Development Rights retained by this Article, are set out in Article 5. The procedure for exercising the Development Rights contained in this Article are set out in Article Seventeen.

#### ARTICLE FOUR

##### DESCRIPTION OF IMPROVEMENTS

##### AND UNIT DESIGNATIONS

A graphic description of the Condominium appears in the Unit Ownership File described in Article Two. The plans and specifications for the improvements constituting the Condominium identifies the Condominium Units, Common Elements, Limited Common Elements, respective locations, dimensions and building materials. Each Unit is identified by a code number consisting of three digits. The first digit will be the phase number and the last two digits will be the unit number.

The present building constituting Phase 1 and the individual Units located therein are identified as Unit 101 on the left as you enter the building from the front entrance and Unit 102 on the right. The Unit on the left on the second floor is designated as Unit 103 and the Unit on the right is

designated as Unit 104. The Unit on the left on the third floor is designated as Unit 105 and the Unit on the right is designated as Unit 106. Likewise, if additional phases are incorporated into the Condominium, there designations will be the same except the building number digit will change according to the order in which the phases are incorporated into the Condominium.

The verified statement of Joseph G. Johnson, a North Carolina Licensed Architect certifying that such plats and plans fully and accurately depict the layout, location, ceiling and floor elevations, Unit numbers and dimensions of the Units "as built", appears on the plans which are incorporated herein by reference as identified in Article Two. The Certificate of Completion prepared by the same Architect is attached hereto as Exhibit C.

#### ARTICLE FIVE

#### OWNERSHIP OF UNITS

#### AND

#### APPURTENANT ALLOCATED

#### INTEREST TO EACH UNIT

Each Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit shall also own, as an appurtenance to the ownership of each said Unit, an undivided interest in the Common Elements, votes in the Association and Common Expense Liabilities. The Allocated Interest appurtenant

to each Unit as of the date of this Declaration is as set out on Exhibit D attached hereto and made a part hereof. The Allocated Interest that is appurtenant to each Unit as shown in said exhibit, has been determined by a ratio formulated by the value of "1" as the numerator for each Unit over the aggregate number of Units constituting the Condominium, as the denominator. Thus since Phase 1 consists of six Units, the formula is "1" over "6" or a 1/6 undivided interest allocated as an appurtenant to each Unit. Likewise, if Phase 2 is added and that building contains six Units, the formula will be "1" over "12" or a 1/12 undivided Allocated Interest appurtenant to each Unit. The addition of subsequent phases shall be treated in the same manner in assigning the undivided Allocated Interest appurtenant to each Unit. Except through the incorporation of additional phases and the Units located therein, the undivided Allocated Interest and appurtenant to each Unit, may not be changed.

#### ARTICLE SIX

#### RESTRICTION AGAINST FURTHER SUBDIVIDING OF UNITS; SEPARATE CONVEYANCE OF APPURTENANT COMMON ELEMENTS PROHIBITED

No Unit may be divided or subdivided into a smaller Unit or Units than is shown in the Unit Ownership File for this Condominium referred to in Article Two, nor shall any Unit or portion thereof be added to or incorporated into any other Unit. The undivided interest in Common Elements appurtenant to each Unit shall be deemed conveyed, devised, encumbered or

otherwise included with the Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Unit shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit and its appurtenant undivided interest in Common Elements, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the numerical designation assigned thereto in Article Four without limitation or exception, shall be deemed and construed to affect the entire Unit and its appurtenant undivided interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety.

#### ARTICLE SEVEN

##### ADMINISTRATION OF THE CONDOMINIUM ASSOCIATION

A. A non-profit North Carolina corporation known and designated as ST, River Creek Homeowners Association, Inc., (the "Association"), has been organized to provide for the administration of the property; and said corporation shall administer the operation and maintenance of the property and

undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and Bylaws. Each Unit Owner shall automatically become a member of the corporation upon his acquisition of an ownership interest in any Unit and its appurtenant undivided interest in the Common Elements; and the membership of such Unit Owner shall terminate automatically upon such Unit Owner being divested of ownership interest in the title to such Unit. In the operation and management of the property, the Board of Directors shall have the power to enforce the provisions of this Declaration; to levy and collect assessments in the manner herein provided; to grant permits, license and easements over the Common Elements for utility, roads and other purposes reasonably necessary for the proper maintenance or operation of the Condominium; and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Board of Directors may deem to be in the best interest of the Association.

B. Subject to the provisions of Section C of this Article Seven, the Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any Officer or Officers of the Association until such time as the first of the following events occurs: (i) 120 days after conveyance of 75% of the Units (including Units which may be created pursuant to the Development Rights Reserved in Article Three) to Unit Owners other than the Declarant; or (ii) 2 years after the Declarant has ceased to offer the Units for sale in the ordinary course of business; or (iii) 2 years after the

Development Right to add new Units was last exercised. Any member of the Board of Directors or Officer of the Association designated and selected by the Declarant need not be a Unit Owner or a resident of the property.

C. Not later than 60 days after conveyance of 25% of the Units (including Units which may be created by the incorporation of the additional phases) to Unit Owners other than the Declarant, at least one member and not less than 25% of the members of the Board of Directors shall be elected by Unit Owners other than the Declarant. Not later than 60 days after conveyance of 50% of the Units (including Units which may be created by the incorporation of the additional phases), to Unit Owners other than the Declarant, not less than 33% of the members of the Board of Directors shall be elected by Unit Owners other than the Declarant. Upon termination of the period of the Declarant control of the Association, the Unit Owners shall elect a three member Board of Directors, at least two of which must be Unit Owners. The Board of Directors shall elect the officers of the Association. Board of Director members and Officers shall take their office upon election.

#### ARTICLE EIGHT

##### ASSESSMENTS:

##### LIABILITY, LIEN AND ENFORCEMENT

The Association is given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Units. To administer

properly the operation and management of the Condominium, the Association will incur, for the mutual benefit of all of the owners of Units, costs and expenses as necessary for such proper operation, management and capital improvement; therefore, the Association is granted the right to make, levy and collect assessments against the Unit Owners and their Units. In furtherance of this grant of authority to the Association to make, levy, and collect assessments to pay the costs and expenses of the operation and management of the capital improvements to the Condominium, the following provisions shall be operative and binding upon the Owners of all Units.

A. Unless specifically provided for otherwise in this Declaration, Common Expenses must be assessed against all Units in accordance with the allocations set forth in Article Five of this Declaration.

B. Subject to the provisions of Section C of this Article Seven, assessments provided for herein shall be payable in monthly installments as determined by the Board of Directors of the Association. Such assessments shall commence for each Unit on the first day of the first month following the recordation of this Declaration in the Brunswick County Public Registry.

C. In addition to the annual assessment authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purposes of:

1. Funding any shortage caused by increase in insurance premiums on the premises and
2. Defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Elements, including fixtures and personal property related thereto.

D. In order to insure that the Association will have sufficient monies available to meet operational needs during the initial months of the Condominium's existence, a Working Capital Fund is hereby established. At the time of closing of the first sale of each Unit, the purchaser thereof shall pay into such Fund an amount equal to two-twelfths (2/12ths) of the current annual assessment established by the Association. No such payments made into the Working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of this Declaration and the Bylaws.

E. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year. Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, and the budget shall take into account anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep

separate, in accordance with paragraph "F" hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of the Annual Budget by the Board of Directors of the Association, copies shall be delivered to each owner of a Unit and the assessment for the year shall be established based upon the Budget, although the failure to deliver a copy of the Budget to each owner shall not affect the liability of any owner for the assessment.

F. All monies collected by the Association shall be treated as separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operation and management of the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration of Condominiums, the Articles of Incorporation or the Bylaws of the Association. As monies for any assessment are paid unto the Association by any owner of a Unit, the same may be commingled with monies paid to the Association by the other owners of Units. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Elements, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his ownership interest therein, except as an appurtenance to his Unit. When the Owner of a Unit ceases to be a member of the Association by reason of his divestment of ownership of such Unit, by whatever means, the

Association shall not be required to account to such owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such owner, as all monies which any owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Condominium.

G. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due the Association shall bear interest at the highest rate allowed by law until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Association. All monies owing to the Association shall be due and payable at the main office of the Association in the State of North Carolina.

H. The owner or owners of each Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Units while such party or parties are owner or owners of a Unit. In the event that any Unit Owner is in default in payment of any assessment or installment thereof owed to the Association, such Unit Owner or Owner shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such

assessment or installment thereof and interest thereon, including reasonable attorneys fees, whether suit be brought or not.

I. No owner of a Unit may exempt himself from liability for any assessment levied against him or his Unit by waiver of the use of enjoyment of any of the Common Elements, or by abandonment of the Unit or in any other way.

J. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and management results in benefit to all of the owners of Units, and that the payment of such Common Expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Unit Owner, upon an assessment remaining unpaid for thirty (30) days the Association is hereby granted a lien effective on the Unit when filed of record in the office of the Brunswick County Clerk of Superior Court in the manner provided in Article 8, Chapter 44 of the North Carolina General Statutes, upon each Unit and its appurtenant undivided interest in Common Elements, which lien shall secure and does secure the monies due for all assessments then or thereafter levied against the owner of each such Unit, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien shall also secure all costs and expenses, including reasonable attorney fees, which may be incurred by the Association in enforcing

this lien upon said Unit and its appurtenant undivided interest in Common Elements. The lien granted to the Association may be foreclosed in the same manner as a mortgage on real estate with the power of sale under Article 2A, Chapter 45 of the North Carolina General Statutes. The lien granted to the Association shall further secure any advances for taxes, and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the highest rate allowed by law on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit, or who may be given or acquire a mortgage, lien or other encumbrances thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Unit expressly subject to such lien rights.

K. The lien herein granted to the Association shall be enforceable from and after the time of recording a Claim of Lien in the Public Records of Brunswick County, North Carolina, which claim shall state the description of the Unit encumbered thereby, the name of the record owner, the amount due and the date when due. The Claim of Lien shall be recordable any time after default (thirty (30) days past due), but shall be extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the Clerk of Superior Court of Brunswick County.

Such claims of lien shall include assessments which are due and payable when the claim of lien is recorded, plus interest, fees, charges, late charges, fines, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

The lien provided for herein is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the Office of the Clerk of Superior Court and (ii) liens for real estate taxes and other governmental assessments or charges against the Unit. Any person, firm or corporation acquiring title to any Unit and its appurtenant undivided interest in the Common Elements by virtue of any foreclosure of a first deed of trust or judicial sale relating to a first deed of trust, shall be liable and obligated only for assessments as shall accrue and become due and payable for said Unit and its appurtenant undivided interest in Common Elements subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a Unit by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as

to which the party so acquiring title shall not be liable shall be absorbed and paid by all owners of all Units as a part of the Common Expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

In the event a Unit is leased, sold or mortgaged at the time when payment of any assessment is past due (whether or not a claim of lien has been recorded by the Association), then the rent, proceeds of sale or mortgage shall be applied by the lessee or purchaser first to payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of sale or mortgage to the owner who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Unit, the purchaser thereof shall be jointly and severally liable with seller for all unpaid assessments against the seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the purchaser to recover from seller the amounts paid by purchaser therefor.

Institution of a suit at law to attempt to affect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the

institution of a suit at law to collect any sum then remaining owing to Association.

ARTICLE NINE

COMMON SURPLUS

Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of reserves shall be paid to the Unit Owner in proportion to their Common Expense Liabilities or credited to them to reduce their future Common Expense Assessment.

ARTICLE TEN

USE OF COMMON ELEMENTS

Each Unit Owner, his lessees, invitees, or guests shall have the right to use the Common Elements in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his Unit, and such right shall be appurtenant to and run with his Unit; provided, however, that no person shall use the Common Elements or any part thereof in such a manner as to interfere with or restrict or impede the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the Bylaws, and such rules and regulations as may be established from time to time by the Board of Directors.

ARTICLE ELEVEN

RIGHT OF ASSOCIATION TO ALTER AND  
IMPROVE COMMON ELEMENTS AND ASSESSMENTS THEREFOR

The Association shall have the right to make or cause

to be made such alterations or improvements to the Common Elements (including the right to grant and establish upon, over and across the Common Elements such easements as are necessary or desirable for providing service or utilities to the Units and the Common Elements) which do not materially prejudice the rights of the owner of any Unit in the use and enjoyment of his Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association, and the cost of such alterations or improvements shall be Common Expenses to be assessed and collected from all of the owners of Units. However, where any alterations and improvements are exclusively or substantially for the benefit of the owner or owners of certain Unit or Units requesting the same (excluding the sewer system which shall always be a Common Expense to be assessed and collected from all of the Unit Owners), then the cost of making, maintaining, repairing and insuring such alterations or improvements shall be assessed against and collected solely from the owner or owners of the Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

#### ARTICLE TWELVE

#### MAINTENANCE AND REPAIR BY OWNERS OF

#### UNITS

Every owner shall perform promptly all maintenance and repair work within his Unit which, if omitted would affect the Condominium, either in its entirety or in a part belonging to

other owners, every owner being expressly responsible for the damages and liability which his failure to do so may engender. The owner of each Unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all of the Unit's air conditioning and heating equipment, including compressors, ducts, wiring, pipes and so forth. He shall also be responsible for the upkeep for any utility fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Unit from the point of entry into his Unit. Such owner shall further be responsible and liable for the maintenance, repair and replacement of the exterior surfaces of any and all walls, ceilings and floors within his Unit including painting, decorating and furnishings, and all other accessories which such owner may desire to place or maintain in his Unit. Whenever the maintenance, repair and replacement of any item for which the owner of a Unit is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the owner of such Unit shall be, in such instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair

or replacement. The owner of a Unit who has exclusive use of any Limited Common Element shall maintain such at his own expense. All glass, doors, window frames, panes and screens are a part of the respective Units and shall be maintained by the respective Unit Owners.

#### ARTICLE THIRTEEN

##### EASEMENTS

A. Each Unit Owner shall have a perpetual nonexclusive easement in common with all other Unit Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to a perpetual non-exclusive easement in favor of all other Unit Owners to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Board of Directors shall have the right of access to each Unit to remove violations therefrom and to maintain, repair or replace the Common Elements contained therein.

B. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, a valid easement for the encroachment is hereby granted pursuant to N.C.G.S. 47C-2-114. The Declarant further hereby reserves such easements through the Common Elements as may be reasonably necessary for the exercise of the Special Declarant Rights pursuant to N.C.G.S. 47C-2-116.

C. The Board of Directors may hereafter grant

easements for utility purposes for the benefit of the property including the right to install, lay, maintain, repair and replace water lines, pipes, ducts, sewer lines, gas mains, telephone wires and equipment and electrical conduits, and wires over, under, along and on any portion of the Common Elements; and each Unit Owner hereby grants to the Board of Directors an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Unit Owner such instruments as may be necessary to effectuate the foregoing and said Unit Owner hereby binds himself, his grantee(s), heirs, devisees, executors, administrators, successors, and assigns.

D. In case of emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Unit Owners are present at the time of such emergency, the Board of Directors, or any other person authorized by it, shall have the right to enter any Unit for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Unit Owners, and such right of entry shall be immediate.

E. The Declarant reserves for itself, its successors and assigns the right to grant easements for utility purposes for the benefit of the property including the right to install, lay, maintain, repair and replace water lines, pipes, ducts, sewer lines, gas mains, telephone wires and equipment and electrical conduits, and wires over, under, along and on any portion of the Common Elements.

ARTICLE FOURTEEN

PARTITIONING

Recognizing that the proper use of a Unit by an owner or owners is dependent upon the use and enjoyment of the Common Elements with the owners of all other Units, and that it is in the interest of all owners that the ownership of the Common Elements be retained in common by the owners, it is hereby declared that the Allocated Interest in the Common Elements appurtenant to each Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partitioning or division.

ARTICLE FIFTEEN

LIENS ON THE COMMON ELEMENTS

A judgment for money against the Association is not a lien on the Common Elements, but if docketed at the Brunswick County Clerk of Courts Office, shall be a lien in favor of the judgment lienholder against all of the Units in the Condominium at the time the judgment was entered. No other property of a Unit Owner is subject to the claim of creditors of the Association. Notwithstanding this statement however, if the Association grants a security interest in the Common Elements to a creditor of the Association, the holder of the security interest must exercise its right against Common Elements before its judgment lien on any Unit may be enforced. If a lien (other than a deed of trust) becomes effective against two or more Units, the Unit Owners of any effected Unit may pay the lienholder the amount of the lien attributable to his Unit and

obtain a release of the lien on his Unit.

## ARTICLE SIXTEEN

### INSURANCE

A. Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall maintain, to the extent available:

1. Property insurance on the Common Elements and Units insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than one hundred percent (100%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and
2. Liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

B. The insurance maintained under subsection (A)(1) need not include improvements and betterments installed by Unit Owners.

C. If the insurance described in subsection (A) is not reasonably available, the Association promptly shall cause

notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners. The Declaration may require the Association to carry any other insurance, and the Association in any event may carry any other insurance it deems appropriate to protect the association or the Unit Owners.

D. Insurance policies carried pursuant to subsection (A) must provide that:

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

E. Any loss covered by the property policy under subsections (A)(1) and (B) shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or

beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear. Subject to the provisions of subsection (H), the proceeds shall be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Condominium is terminated.

F. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his own benefit.

G. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and upon written request, to any Unit Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

H. Any portion of the Condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or

safety statute or ordinance, or (3) the Unit Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners of Units not to be rebuilt or owners assigned to Limited Common Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (2) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the owners of those Units and the owners of the Units to which those Limited Common Elements were allocated or to lienholders, as their interest may appear, and (3) the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interest may appear, in proportion to their Common Element interest. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned under N.C.G.S. 47C-1-107(a), and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, N.C.G.S. 47C-2-118 governs the distribution of insurance proceeds if the Condominium is terminated.

ARTICLE SEVENTEEN

AMENDMENTS

A. To exercise the Development Rights reserved under Article Three, the Declarant shall record an amendment to this Declaration together with plans and specifications which comply with the requirements of N.C.G.S. 47C-2-109. The amendment shall also set out the new appurtenant allocated Interest in the Common Elements appurtenant to the units as a result of the addition of the new phase or phases being added.

B. Except for an amendment to the Declaration to exercise the Development Rights retained by the Declarant pursuant to Article Three or as otherwise permitted by N.C.G.S. 47C-2-117, this Declaration may only be amended by the affirmative vote of or written agreement signed by, the Unit Owners of 67% of the votes in the Association.

ARTICLE NINETEEN

TIME SHARE

No Unit may be owned or occupied in a time share form of ownership.

ARTICLE TWENTY

WATER AND SEWER

A. Water will be furnished to the Condominium by the Sunset Beach Municipal Water Department.

B. The sewer system serving the Condominium and the Units are a part of the Common Elements as described in Article One Section 3. The Association is therefore responsible for the maintenance and operation of the sewer system and the

expense thereof shall be paid from the assessments and special assessments as may be necessary from time to time to properly maintain the system in compliance with the Brunswick County Board of Health's Rules and Regulations. Notwithstanding any other provision of this Declaration, there shall be no limit on the amount of any special assessment which is for the sole purpose of maintaining, operating and repairing the sewer disposal system.

ARTICLE TWENTY-ONE

MASTER ASSOCIATION

The Property is a part of Sea Trail Plantation and as such is subject to the Master Declaration for Sea Trail Plantation as appears in Deed Book \_\_\_\_ Page \_\_\_\_ of the Brunswick Registry and each property owner is a member of the Sea Trail Plantation Property Owners Association (Master Association). The assessment against each Unit Owner by the Master Association shall be considered as a Common Expense of the Association governing the Condominium and the Association shall be responsible for collection of such assessment and remitting the same to the Master Association.

ARTICLE TWENTY-TWO

STATEMENT OF PURPOSES, USE AND RESTRICTIONS

The Units and Common Elements shall be occupied and used as follows:

A. This is a residential Condominium and the Units therefore shall be used only for residential purposes including rental thereof.

B. There shall be no obstruction of the Common Elements. Nothing may be stored in the Common Elements without the prior written consent of the Board of Directors.

C. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Common Elements or any other Unit without the prior written consent of the Board of Directors. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which would result in the cancellation of insurance on any Unit or any part of the Common Elements, or which would be in violation of any law. No waste of the Common Elements shall be permitted or committed.

D. No sign of any kind except in connection with the Declarant's sales model shall be displayed to the public view from any Unit or from the Common Elements without the prior written consent of the Board of Directors.

E. No animals, livestock or poultry of any kind (except household pets) shall be raised, bred or kept in any Unit or in the Common Elements except in accordance with the promulgated rules of the Board of Directors.

F. No noxious, offensive, unlawful, immoral, or improper activity shall be carried on in any unit, or in the Common Elements; nor shall anything be done therein which will be an annoyance or nuisance to other owners.

G. Nothing shall be altered or constructed in or removed from the Common Elements except with the prior written consent of the Board of Directors.

H. The Board of Directors of the Association is authorized to adopt rules for the use of the Common Elements, said rules to be furnished in writing to the Unit Owners.

I. Any lease or temporary rental of any unit shall be in all respects subject to the Condominium documents and any rules and regulations promulgated by the Board of Directors.

J. Except with the written consent of the Board of Directors, no natural barriers in the form of trees, bushes or shrubs; and no man-made structures shall be permitted on or about the Common Elements, except such natural barriers and man-made structures existing on the date of this Declaration.

#### ARTICLE TWENTY-THREE

##### REMEDIES IN EVENT OF DEFAULT

The Owner or Owners of each Condominium Unit shall be governed by and shall comply with the provisions of this Declaration of Condominium, the Articles of Incorporation and Bylaws of the Association, as any of the same are now constituted or as they may be amended from time to time. A default under the provision of any one of these documents by the Owner of any Condominium Unit shall entitle the Association or the Owner of other Condominium Units to the following relief:

A. An action to recover sums due for damages, injunctive relief, foreclosure of liens, or any combination thereof, which action may be brought by the Association or, if appropriate, by an aggrieved Unit Owner.

B. Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by

his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Condominium Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

C. In any proceeding arising because of an alleged default by a Unit Owner, the Association, or any Unit Owner adversely affected, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the Court.

D. The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration of Condominium or the other above mentioned documents shall not constitute a waiver of the right of the Association or of the Unit Owner to enforce such right, provision, covenant or condition in the future.

E. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Condominium Unit, pursuant to any terms, provisions, covenants or conditions of the Declaration of Condominium or the other above mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus

exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

F. The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration of Condominium or other above mentioned document shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provisions, covenant or condition in the future.

G. The failure of an Institutional Lender or Institutional Lenders to enforce any right, provision, privilege, covenant or condition which may be granted to it or them by this Declaration of Condominium or other above mentioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

#### ARTICLE TWENTY-FOUR

##### USE OF UNITS AND COMMON ELEMENTS

##### FOR SALES PURPOSES

The Declarant reserves the right to maintain a sales office and model sales Units during the period of time that it is actively selling Units in the Condominium. The Declarant

further reserves the right to make use of the Common Elements for the purpose of maintaining sales booths, placing advertising material and otherwise as it deems expedient. The Declarant may use any Unit it chooses for this purpose and may make whatever use of the Common Elements it chooses for these purposes.

#### ARTICLE TWENTY-FIVE

##### INVALIDITY

The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Declaration; and in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

#### ARTICLE TWENTY-SIX

##### WAIVER

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

#### ARTICLE TWENTY-SEVEN

##### CAPTIONS

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

ARTICLE TWENTY-EIGHT

LAW CONTROLLING

This Declaration and the Bylaws shall be construed and controlled by and under the laws of the State of North Carolina.

ARTICLE TWENTY-NINE

MINERALS AND OIL

The minerals, hydrocarbons and gases located beneath the earths surface of the land constituting this Condominium is owned by the International Paper Company pursuant to the deed to Sea Trail Corporation which appears in Deed Book 381 Page 298 of the Brunswick Registry.

ARTICLE THIRTY

LIBERAL CONSTRUCTION

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of Condominium ownership as provided in the North Carolina Condominium Act. Throughout this Declaration, wherever appropriate, the singular shall include the plural and the masculine gender, the feminine or neuter, as the context permits or requires.

CORPORATE  
SEAL

BY: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary/Treasurer

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

I, Notary Public, do hereby certify  
that \_\_\_\_\_ personally came before me this day  
and acknowledged that he/she is the Secretary/Treasurer  
of \_\_\_\_\_, a North Carolina Corporation, and that  
by authority duly given and as the act of the corporation, the  
foregoing instrument was signed in its name by its President,  
sealed with its corporate seal and attested  
by \_\_\_\_\_ as its Secretary/Treasurer.

WITNESS my hand and official seal this \_\_\_\_ day  
of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_(SEAL)  
Notary Public

My Commission Expires:

\_\_\_\_\_

EXHIBIT A

TO THE DECLARATION CREATING UNIT OWNERSHIP  
FOR RIVER CREEK, A CONDOMINIUM

A Legal Description for the Phase  
Constituting the First Phase

This can be either a meets and bounds description or it can be by reference to a recorded survey plat. But in any event, it must be a full legal description of the first phase.

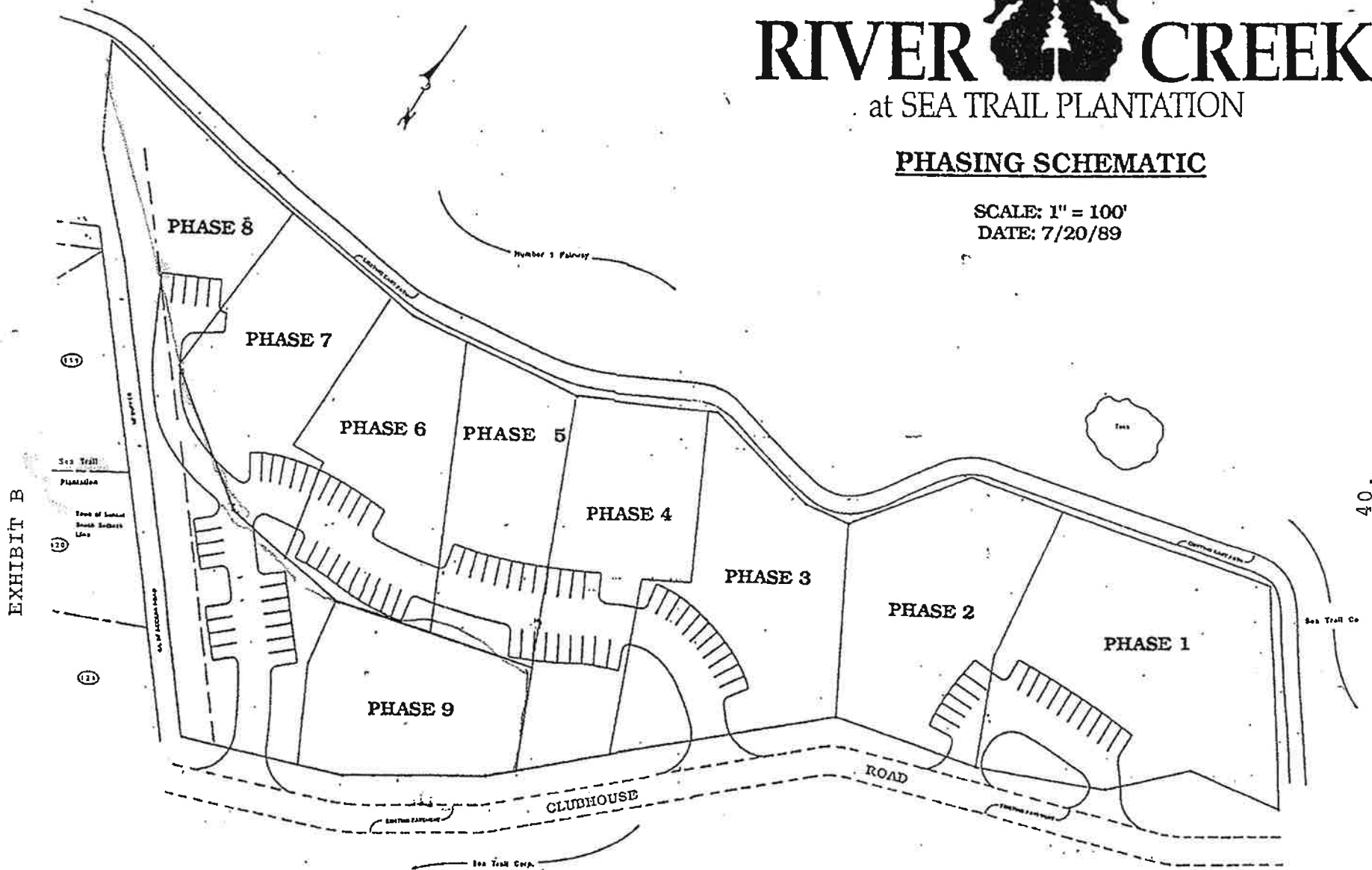
# RIVER CREEK

at SEA TRAIL PLANTATION

## PHASING SCHEMATIC

SCALE: 1" = 100'

DATE: 7/20/89



HOUSTON AND ASSOCIATES, P.A.  
CONSULTING ENGINEERS

4918 Main Street P.O. Box 2927 Charlotte, North Carolina 28459 (919) 754-6324

EXHIBIT C

TO THE DECLARATION CREATING UNIT OWNERSHIP  
FOR RIVER CREEK, A CONDOMINIUM

CERTIFICATE OF SUBSTANTIAL COMPLETION

I, \_\_\_\_\_, a Licensed  
Architect in the State of North Carolina hereby certify that I  
inspected the Condominium Building as it exists as of the \_\_\_  
day of \_\_\_\_\_, 1989 and hereby certify that it is  
substantially complete according to the plans and  
specifications thereof.

This \_\_\_ day of \_\_\_\_\_, 1989.

\_\_\_\_\_  
Sworn to and subscribed  
before me this \_\_\_ day of  
\_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

EXHIBIT D

TO THE DECLARATION CREATING UNIT OWNERSHIP  
FOR RIVER CREEK, A CONDOMINIUM

APPURTENANT ALLOCATED INTEREST  
PHASE 1

<u>Unit Number</u>	<u>Allocated Interest</u>
101	1/6
102	1/6
103	1/6
104	1/6
105	1/6
106	1/6