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RECORDED & VERIFIED
IN THE OFFICE OF THE
CLERK OF DEEDS
WILMINGTON, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
HOLTON PLACE CONDOMINIUM
PHASES 1, 2 AND 3
AND
BYLAWS OF
HOLTON PLACE HOA, INC.**

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THIS DECLARATION AND BYLAWS, made on 17 day of February, 1999, by **HOLTON PROPERTIES, LLC**, a North Carolina Limited Liability Company, hereinafter called "**Declarant**";

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the City of Wilmington, New Hanover County, North Carolina, and more particularly described as follows:

BEING all of those certain tracts or parcels of land, with improvements thereon, to be known as **Holton Place Condominium, Phases 1, 2 and 3**, and the common areas to be dedicated therewith, more particularly described upon Exhibit A hereto attached and incorporated by reference.

ESTABLISHMENT OF CONDOMINIUM

WHEREAS, Declarant proposes to establish a condominium to be known as **HOLTON PLACE CONDOMINIUM**, in which the property described upon Exhibit A shall be developed as the initial phases; and

WHEREAS, the Declarant also owns, and intends to develop and annex to the Condominium, the areas designated as Phase 4, Phase 5, Phase 6, Phase 7 and Phase 8, upon the plat entitled "A Phase Map of Holton Place Condominium" recorded in Condominium Plat Book 11 at Page 233 of the New Hanover County Registry, reference to which is hereby made for a more particular description, a reduced copy of which plat is hereto attached as Exhibit B-1 and incorporated by reference; and

WHEREAS, the Declarant reserves the right, without any obligation, to develop all or any part of the property shown on the exhibit designated as Exhibit "B-2" hereto attached, in

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a series of fifteen or more phases, and to annex the same to said condominium by the execution and recordation of Supplemental Declarations; and upon the execution and recordation of such Supplemental Declarations, such additional land shall automatically be annexed to and included within the Condominium created by this Declaration and such action shall require no approval or other action by either the unit owners, the Board of Directors, or the members of the Association, or by any other person or entity as hereinafter more particularly provided.

In order to facilitate the operation and administration of the condominium the Declarant shall form a non-profit corporation to be known as Holton Place HOA, Inc., which shall have the general authority and responsibility for the operation and administration of the condominium pursuant to this Declaration, the bylaws and its articles of incorporation.

The additional phases, if developed, shall be developed under a common plan which includes this Declaration, the features of which include common recreating facilities and the providing of maintenance and other services through a common administration.

The Declarant reserves the right, without any obligation, to annex to the Condominium any other adjacent lands located in the City of Wilmington, New Hanover County, North Carolina, located within one mile of the Property (as herein defined).

NOW, THEREFORE, Declarant hereby declares that the real property described upon Exhibit A hereto attached, shall be dedicated to condominium ownership pursuant to Chapter 47C of the General Statutes of North Carolina as amended, as hereinafter provided, and to that end does hereby publish and declare that all of the said property to be known as **Holton Place Condominium, Phases 1, 2, and 3**" shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, uses and obligations which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties having any right, title or interest in the described premises or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

PART I

DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following words and terms shall have the following meanings:

Section 1: Act. The North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

Section 2: Additional Real Estate. The real estate described in Exhibit B-2, and Exhibit B-2, or any other lands located within one mile of the lands described in Exhibit A, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate, all or portions of which

may be annexed to this Condominium by Supplemental Declarations, as herein provided, without the consent or joinder of the Members of the Association.

- Section 3: Allocated Interests.** The undivided interests in the Common Elements, the common expense liability, and in the Association allocated to each unit.
- Section 4: Assessment.** A share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner by the Association.
- Section 5: Association.** The non-profit Corporation to be known as **Holton Place HOA, Inc.**, the entity responsible for the operation of the condominium pursuant to the Act, which entity includes all of the unit owners acting as a group in accordance with the By-Laws and Declaration.
- Section 6: Building or Buildings.** The building or buildings constructed or to be constructed upon the real estate in any phase of the development. Each phase shall consist of a separate building. Each Building in the first eight phases, will contain eight (8) units on two floors with four (4) units on each floor all of which shall be for residential purposes as herein provided. The buildings in first eight phases will be of wood frame construction with vinyl siding. The location of the buildings in Phase 1, Phase 2 and Phase 3, are shown upon the survey prepared by Clifford C. Byrd Land Surveying, attached hereto as Exhibit "B" and made a part hereof. Subsequent phases will be shown upon the plats of the as-built surveys of the same to be recorded, as subsequent phases are developed and annexed. All the particulars of the buildings in Phase 1, Phase 2 and Phase 3, are shown diagrammatically upon the plans thereof hereto attached as Exhibit C and also recorded in the Condominium Plat Book in the New Hanover County Registry. Each building will identified by an alphabetical letter. The buildings in the first eight phases, if developed, shall be designated as Buildings A, B, C, D, E, Q, R, and S. The units are designated on the plats to be recorded by the letter designation of the Building followed by a three digit number (the first digit will designating the floor; the second and third digits designating the location of the unit). For example, Phase I will contain Building A which will consist of Units A-101 through A-104 located on the first floor and Units A-201 through A-204 located on the second floor. Each unit is bounded as to horizontal and vertical boundaries as follows: by the exterior surfaces of its interior walls, floor and ceiling.
- Section 7: Bylaws.** The bylaws of the association.
- Section 8: Common Elements.** All portions of the condominium other than the units.
- Section 9: Common Expenses.** Expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

- Section 10:** ~~Common Expense Liability~~²⁵²⁸ ~~The liability for common expenses allocated to each unit pursuant to the Act and this Declaration.~~⁰²⁷⁶
- Section 11:** **Condominium.** Means **Holton Place Condominium**, and any additions thereto annexed by Supplemental Declarations. Upon the recording of this Declaration, it includes only the real estate described in Exhibit A, together with the buildings and improvements shown upon the survey by Clifford C. Byrd Land Surveying, hereto attached as Exhibit B, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions, all of which are submitted to condominium ownership by this Declaration, but it also includes any additions annexed hereto by Supplemental Declarations.
- Section 12:** **Condominium Documents.** This Declaration, the By-laws, the Rules and Regulations and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended and supplemented from time to time.
- Section 13:** **Declarant** means **HOLTON PROPERTIES, LLC.**, its successors and assigns.
- Section 14:** **Declaration.** This Declaration of Covenants, Conditions and Restrictions, as it may be from time to time amended or supplemented.
- Section 15:** **Development Rights.** Those rights hereby reserved by the **Declarant** to add real estate to the Condominium, to create units, common elements or limited common elements within the Condominium.
- Section 16:** **Eligible Mortgage Holder or Eligible Holders.** The holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.
- Section 17:** **Executive Board.** The body designated in the declaration to act on behalf of the Association.
- Section 18:** **Limited Common Elements.** A portion of the common elements allocated by the declaration for the exclusive use of one or more but fewer than all of the units.
- Section 19:** **Member.** Every person or entity who holds membership in the Association.
- Section 20:** **Owner.** The record owner, whether one or more persons or entities, of a fee simple title to any unit which is a part of the Property, together with an undivided interest in the common elements as hereinafter set forth, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- Section 21:** **Period of Declarant Control.** The period commencing on the date hereof and continuing until the earlier of (i) five (5) years after the date of the first conveyance of a unit to an owner other than a declarant; (ii) 120 days after conveyance of seventy-five percent (75%) of the units (including any units which may be created pursuant to special declarant rights) to a unit owner other

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than declarant; (iii) two years after declarant has ceased to offer units for sale in the ordinary course of business; (iv) two years after any development right to add new units was last exercised, or (v) the date upon which declarant voluntarily surrenders control of the condominiums.

Section 22. Phased Development. The Declarant reserves the right, but without any obligation, to add, by supplemental declarations, additional phases to the condominium by the development and annexation of all or any portion of the Additional Real Estate described in Exhibit B-1 or B-2, and any other lands within one mile of the Condominium now owned or hereafter acquired by Declarant for purposes of development. It is contemplated that each new building developed, if annexed, will constitute a separate phase.

Section 23: Plat. The plat or plats of the condominium recorded or to be recorded in the Office of the Register of Deeds of New Hanover County.

Section 24: Property. All that certain tract or parcel of land with the buildings and improvements thereon erected or to be erected, described in Exhibit "A", attached hereto and incorporated herein by reference; also, all that certain real property described in Exhibit "B-1" or "B-2" or any part thereof, together with any buildings and improvements thereon, if annexed to the Condominium by supplemental declaration; also, any other lands located within one mile of the Condominium now owned or hereafter acquired by Declarant which may be so annexed.

Section 25: Supplemental Declaration. A document filed by Declarant to annex to this Condominium (i) all or a portion of the Additional Real Estate, and/or the buildings or improvements located thereon, described in Exhibit B-1 or B-2, or (ii) any other real estate located within one mile of the Condominium now owned or hereafter acquired by Declarant in the manner provided herein.

Section 26: Unit or Condominium Unit. A physical portion of the condominium designated for separate ownership or occupancy.

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**PART II - DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

**ARTICLE I
GENERAL**

- Section 1:** Declarant hereby submits the Property to the provisions of the North Carolina Condominium Act, codified as Chapter 47C of the General Statutes of North Carolina, as amended (the "Act"). The Property will be administered in accordance with the provisions of the Act, the declaration, and the bylaws.
- Section 2:** The name of the condominium shall be "**HOLTON PLACE CONDOMINIUM**".
- Section 3:** The Property is located in the City of Wilmington, New Hanover County, North Carolina.
- Section 4:** The maximum number of units which Declarant reserves the right to create is 186, in multiple phases, but Declarant reserves the right to increase the maximum number of units if Declarant should acquire other lands within one mile of the Condominium and annex the same to this Condominium by Supplemental Declaration.
- Section 5:** Declarant does hereby establish within the Property twenty four (24) units in Phases 1, 2 and 3, comprised of Buildings A, B and Q, and does hereby designate all such units for separate ownership. Reference is hereby made to the plat for a separate description of the boundaries of each unit, identified by number, said plat being by this reference incorporated herein.
- Section 6:** Each owner shall be a member of the Association. An owner shall be entitled to one (1) vote in the Association for each unit owned.
- Section 7:** There are no limited common elements with the exception of the limited common elements created under Article II.
- Section 8:** Easements and licenses appurtenant to or included in the condominium are set forth in ARTICLE VIII below. These Easements, upon the recording of this instrument, shall be deemed to grant to owners, as property owners in the Condominium, nonexclusive easements in and to the common areas, parking areas, open spaces, located within the real property described upon Exhibit A hereto attached.
- Section 9:** Declarant reserves the following special declarant rights for the entire Property, which shall be exercisable during the period of declarant control:
- (a) To complete any and all improvements indicated on the plats and plans;
 - (b) To maintain any sales office, management office or model in any of the units or on any of the common elements shown on the plat;

- (c) To alter the size of any unit, combine or merge two or more units, and subdivide any unit;
- (d) To change the design of unsold units and to move or relocate buildings prior to commencement of construction thereof;
- (e) To appoint and remove any executive board members during the period of declarant control; provided, however, (i) that not later than 60 days after conveyance of twenty-five percent (25%) of the units to owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board shall be elected by owners other than the declarant; and (ii) that not later than 60 days after conveyance of fifty percent (50%) of the units to owners other than a declarant, not less than thirty-three percent (33%) of the members of the executive board shall be elected by owners other than the declarant.

**ARTICLE II
PROPERTY RIGHTS**

Section 1: Ownership of a unit shall vest fee simple title to such unit in the owner.

Section 2: Every owner shall own an undivided interest in the common elements and shall have a right and easement of enjoyment in the common elements which shall be appurtenant to and shall pass with the title to every unit. The undivided interest of every unit owner in the common elements shall be proportionate to the total number of units in the condominium: Upon the recording of this Declaration, each of the 24 units in Phases 1, 2 and 3, located in Buildings A, B and Q, shall own a one/twenty-fourth (1/24) undivided interest in the common elements. The interest of the unit owners shall decrease proportionately if and when additional phases are added. The undivided interest in the common elements and the right and easement of enjoyment in such common elements are subject to the following:

- (a) the Association shall have the right to charge reasonable admission and/or other fees for the use of any recreational facility situated upon the common elements; such fees to be in an amount sufficient to maintain or repair any common element recreational facilities in a reasonable and good condition;
- (b) the Association shall have the right to suspend the voting rights and right of use of any recreational facilities situated upon the common elements or upon the adjoining Holton Place property not dedicated to condominium ownership, by any owner for any period during which any assessment against his unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

- (c) the Association shall have the right to adopt such rules and regulations as may be needed to regulate the use and enjoyment of the common elements;
- (d) the special Declarant rights as set forth in Article I, Section 9.
- (e) the Association shall have the right to dedicate or transfer, or encumber all or any part of the common elements subject to approval by the owners as provided in G.S. § 47C-3-112.

Section 3: All finish flooring and any other materials constituting any part of the walls, floors, or ceilings are a part of the common elements, pursuant to G.S. § 47C-2-102(1).

To the extent any duct, wire, conduit, or any other fixtures lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated exclusively to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements, pursuant to G.S. § 47C-2-102(2).

Any decks, porches, balconies, patios and all other exterior doors and windows or other fixtures designated to serve a single unit but located outside the unit's boundaries are limited common elements allocated exclusively to that unit, pursuant to G.S. § 47C-2-102(4).

Section 4: Any owner may delegate his right of enjoyment to the common elements to members of his family or tenants.

ARTICLE III COVENANT FOR MAINTENANCE AND OTHER ASSESSMENTS

Section 1: The Declarant, for each unit owned within the Property, and each owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, hereby covenants and agrees to pay the Association: (1) annual assessments or charges, (2) special assessments for capital improvements, and (3) a one time working capital assessment, such assessments to be established and collected as hereinafter provided. The liability of each owner for the common expenses of the Association shall be proportionate to the total number of units in the condominium, i.e: one-eighth (1/8) for each unit owned in Phase 1. The proportion of each unit owner's liability for such assessments shall be adjusted proportionately if and when additional units are annexed to the Condominium. Any assessment levied against a unit remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that unit when filed of record in the office of the Clerk of Superior Court of New Hanover County and shall accrue interest at a rate set by the Association not to exceed 18% per annum. The Association may bring an action at law against the owner, or foreclose the lien against the Property. Fees (including attorneys' fees),

charges, late charges, fines, and interest are also enforceable as assessments.

Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any unit shall not affect the assessment lien. The sale or transfer of any unit pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, however, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 3: The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents and in particular for the acquisition, improvement and maintenance of the Condominium, services and facilities devoted to this purpose, and for the use and enjoyment of the common elements, and to insure the same against all perils normally insured against.

The Association may also levy a special assessment payable in a manner as specified by the Association for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the members.

Nothing herein shall prevent any unit owner from obtaining insurance for his own benefit against any risks or perils not covered under the master policy maintained by the association (including, without limitation, personal property of owner).

Section 4: Until January 1 of the year immediately following the conveyance of the first unit to an owner, the maximum annual assessment shall be \$1,500.00 per unit, prorated for the remainder of said year.

(a) From and after January 1 of the year immediately following the conveyance of the first unit to an owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership by up to five percent (5%) of the previous year's maximum annual assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first unit to an owner, the maximum annual assessment for the next succeeding two (2) years may be increased above the increase permitted in Section 4(a), provided that any such

assessment shall receive the affirmative vote of two-thirds (2/3) of the votes of the owners who are voting in person or by proxy, at a meeting duly called for this purpose. Written notice setting forth the purpose of such meeting shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. No quorum shall be required.

(c) The executive board may fix the annual assessment at an amount not in excess of the maximum.

Section 5: Both annual and special assessments must be fixed at a uniform rate for all units and may be collected on a monthly basis.

Section 6: The annual assessments provided for herein shall commence at a date established by the Association. Once such annual assessments are established, written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the executive board.

ARTICLE IV PARTY WALLS

Section 1: The walls and flooring connecting adjacent units are "party walls" and are situated on or about the boundary line separating such units.

Section 3: Each wall which is built as a part of the original construction of a unit and placed on the dividing line between the units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 4: The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 5: Notwithstanding any other provisions of this Article, an owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6: The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 7: If any owner desires to sell his unit, such owner may, in order to assure a prospective purchaser that no adjoining unit owner has a right of contribution as provided in this Article IV, request of the adjoining unit owner a certification that no right of contribution exists, whereupon it shall be the duty of the adjoining unit owner to make such certification immediately upon request and

without charges; provided, however, that where the adjoining unit owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8: In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina as then existing.

ARTICLE V EXTERIOR MAINTENANCE

Section 1: In addition to maintaining the common elements, the Association shall provide exterior maintenance for each unit, subject to assessment hereunder, including the performance of the following, as needed: Paint, repair, replace and care of roofs, exterior building surfaces, trees, shrubs, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

Section 2: In the event that the need for maintenance, repair, or replacement is caused through the willful or negligent act of an owner, his family, guests, invitees, or tenants, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the assessment to which such unit is subject.

ARTICLE VI ARCHITECTURAL CONTROL

No building, fence, wall, or other structure or improvement shall be commenced, erected or maintained upon the condominium, nor shall any exterior addition or change therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Executive Board. Patios and decks serving individual units may be screened in at the request of and at the expense of individual unit owners in accordance with a uniform plan to be submitted to and approved by the Declarant or the Executive Board, as the case may be, and provided that each request must be individually approved as stated above.

The exterior color of a unit cannot be changed unless the color scheme of the entire condominium is similarly changed. Any such change requires the approval of two-thirds of the owners at a duly called meeting at which a quorum is present.

ARTICLE VII USE RESTRICTIONS

Section 1: Each of the units shall be used and occupied for residential purposes only. No unit may be divided or subdivided into a smaller unit nor any portion thereof sold or otherwise transferred, except as herein provided.

Section 2: No noxious or offensive activity shall be conducted upon any unit nor shall

anything be done thereon which may be or may become an annoyance or nuisance.

- Section 3:** No animals of any kind shall be kept or maintained in any unit except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. All household pets shall be kept on a leash at all times when outside the units.
- Section 4:** No outside radio or television antennas, including satellite dishes or receivers, shall be erected on any unit unless and until permission for the same has been granted by the executive board.
- Section 5:** No signs shall be permitted on or about the units.
- Section 6:** All window coverings (i.e., curtains, blinds, draperies, shades, etc.) shall appear white or off-white from the exterior.
- Section 7:** Owners shall not park or store any motorcycle, camper, trailer, boat trailer, trailer vehicle, or similar vehicle anywhere on the premises. No trucks shall be permitted except for standard 2-ton pickup trucks, or smaller sized truck.

ARTICLE VIII EASEMENTS

In addition to easements and rights established and/or reserved elsewhere in this Declaration, the following easements, rights and limitations are hereby established as covenants and burdens running with the real property and the improvements thereon:

- Section 1:** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may obstruct or change the flow of drainage channels in the easements.
- Section 2:** All units and common elements shall be subject to easements for the encroachment of improvements constructed on adjacent units by the declarant to the extent that such improvements actually encroach, including, but not limited to, such items as overhanging eaves, stoops, misaligned common wall foundation footings and walls, provided such encroachment does not interfere with the reasonable use of the common elements or units so encroached upon.
- Section 3:** Declarant shall have a reasonable construction easement across the common elements for the purpose of constructing improvements on the units. Declarant shall also have such easements through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights as provided herein.
- Section 4:** The Association shall have a right of entry upon the units and any limited

common elements to effect emergency repairs, and a reasonable right of entry upon the units to effect other repairs, improvements, replacement or maintenance as necessary.

- Section 5.** The Declarant reserves the right to grant easements for utilities to service the project which may or may not be recorded prior to sale and conveyance of the first unit. The Declarant also reserves, for itself, its successors and assigns, non-exclusive and alienable easements over all common areas for access to undeveloped areas described in Exhibit A-1 or to other lands located within one mile of the Condominium now owned or hereafter acquired by Declarant for purposes of development.
- Section 6:** All easements granted herein are appurtenant to and shall run with the land, and shall inure to the benefit of and be binding upon the declarant, the Association, owners, occupants, and mortgage holders, and any other person or entity having an interest in the condominium.

ARTICLE IX GENERAL PROVISIONS

- Section 1:** All powers granted in the declaration or the bylaws to the Association shall be exercisable by the executive board, except as expressly provided in the declaration, the bylaws, or the Act.
- Section 2:** The Association may adopt and enforce reasonable rules and regulations not in conflict with the declaration and supplementary thereto, as more fully provided in the bylaws.
- Section 3:** The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration, the bylaws and articles of incorporation of the Association. Failure by the Association to enforce any covenant or restrictions therein shall in no event be deemed a waiver of the right to do so thereafter.
- Upon notice to the Association of a violation hereunder and a failure of the Association to take action upon said violation within 90 days, any unit owner, or other holder of an interest in the condominium may undertake the enforcement of the provisions of the declaration at his own expense.
- Section 4:** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
- Section 5:** The covenants and restrictions of this declaration shall run with and bind the land, for a term of twenty (20) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Except as otherwise provided herein, this declaration may be

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amended during the first 20-year period only by an instrument signed by not less than seventy (70) percent of the unit owners, and thereafter by an instrument signed by not less than sixty-five (65) percent of the owners. Any amendment must be recorded.

Section 6: The fiscal year of the Association shall begin on the first day of January and end the 31st day of December of each year, except that the first fiscal year shall begin on the date of incorporation.

**PART III - BYLAWS of
HOLTON PLACE HOA, INC.**

**ARTICLE I
MEETINGS OF MEMBERS**

Section 1: The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day and the same month of each year thereafter.

Section 2: Special meetings of the members may be called at any time by the president or the executive board, or upon written request of 20% of the members, pursuant to G.S. § 47C-3-108.

Section 3: Written notice of each meeting shall be given by, or at the direction of, the secretary or person(s) authorized to call the meeting, by hand delivering or mailing a copy of such notice, postage prepaid, at least 10 days and not more than 50 days before such meeting to each member as provided in § 47C-3-108.

Section 4: Within 30 days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners. The budget shall be considered at a meeting of the unit owners as set forth in G.S. § 47C-3-103(c).

Section 5: The presence at the meeting of members or proxies entitled to cast ten percent (10%) of the votes shall constitute a quorum for any action except as otherwise provided by law.

Section 6: Every unit owner shall be entitled to one vote for each unit owned.

Section 7: Pursuant to G.S. § 47C-3-110, votes allocated to a unit may be cast pursuant to a dated written proxy signed by a unit owner. A unit owner may not revoke a proxy except by written notice delivered to the person presiding over a meeting of the Association. A proxy terminates one year after its date, unless it specifies a shorter term.

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**ARTICLE II
OFFICERS AND EXECUTIVE BOARD; SELECTION; TERM OF OFFICE**

- Section 1:** During the period of Declarant Control, the affairs of the Association shall be managed by an executive board of three (3) members, who shall be entitled to act on behalf of the Association. Thereafter, the number of members of the executive may be increased to not more than seven (7) members, by the Association at its annual meeting.
Subject to the initial period of declarant control as set forth in Article I of the Declaration, nomination for election of the executive board shall be made from the floor at the annual meeting. Election shall be by secret written ballot and by a majority of the unit owners when a quorum is present. Cumulative voting is not permitted.
- Section 2:** At the first annual meeting following the termination of declarant control, at least five (5) executive board members shall be elected to serve until the following annual meeting.
- Section 3:** Any executive board member, except those appointed by the declarant, may be removed in accordance with G.S. § 47C-3-103(b). In the event of death, resignation or removal of a director, his successor shall be selected by a majority of the members voting at a meeting when a quorum is present.
- Section 4:** No executive board member shall receive compensation for any service he may render to the Association. However, with the prior approval of the executive board, any executive board member may be reimbursed for actual expenses incurred in the performance of his duties.
- Section 5:** The executive board shall have the right to take any action in the absence of a meeting which they could take at a duly held meeting by obtaining the written consent of all the executive board members to the action. Any action so approved shall be filed in the corporate books and records and shall have the same effect as though taken at a meeting of the executive board.

**ARTICLE III
MEETINGS OF EXECUTIVE BOARD**

- Section 1:** Meetings of the executive board shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the board. Special meetings of the executive board may be called by any member of the executive board, after not less than five (5) days notice to each executive board member.
- Section 2:** A majority of the executive board members shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the executive board members present at a duly held meeting shall be regarded as the act of the board.

**ARTICLE IV
POWERS AND DUTIES OF THE EXECUTIVE BOARD**

Section 1: Subject to the provisions contained herein and applicable law, the executive board shall have the power and authority to exercise all the rights of the Association, including, but not limited to:

- (a) Adopt rules and regulations governing the use of the common area and facilities, the personal conduct of the members and their guests thereon, and establish penalties for the infraction thereof;
- (b) Suspend the voting rights and right of use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;
- (c) Declare the office of a member of the executive board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the executive board;
- (d) Employ a manager, an independent contractor, or other employees as they deem necessary, and prescribe their duties; provided always, any contract for professional management must contain a clause requiring not more than 90 days termination notice;
- (e) Procure, maintain and pay premiums on an insurance master policy(s) and equitably assess the owners of the same for their prorata portion of such expense.
- (f) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than for service provided to unit owners; and
- (g) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;
- (h) Exercise any other powers necessary and proper for the governance and operation of the Association; and
- (i) Have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of North Carolina by law may now or hereafter have or exercise.

Section 2: It shall be the duty of the executive board to:

- (a) cause the common elements to be maintained, insured, repaired, and replaced as necessary, and to assess the unit owners to recover the cost of the insurance and upkeep of the common elements.

- (b) serve as the architectural committee;
- (c) keep a complete record of all its acts and corporate affairs and present a statement thereof to the members at the annual meeting, or at any special meeting when such statement is requested in writing by 20% of the members;
- (d) supervise all officers, agents and employees of the Association, and see that their duties are properly performed;
- (e) fix the amount of the annual assessment at least thirty (30) days in advance of each annual assessment period pursuant to the provisions set forth in the declaration and G.S. § 47C-3-103(c);
- (f) send written notice of each assessment to every owner at least thirty (30) days in advance of each annual assessment period;
- (g) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- (h) issue, or have issued, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (i) procure and maintain, at all times, adequate hazard insurance on the property owned by the Association and all property for which the Association has the duty to maintain, and sufficient liability insurance to adequately protect the Association as provided in G.S. § 47C-3-113; and
- (j) cause all officers or employees, including officers and employees of professional management, having fiscal responsibilities to be bonded, as it may deem appropriate.

**ARTICLE V
OFFICERS AND THEIR DUTIES**

Section 1: The officers of this Association shall be a president, vice-president, and secretary/treasurer. The officers shall be appointed by the executive board from among the members of the executive board.

Section 2: (a) The president shall preside at all meetings of the executive board; see that orders and resolutions of the executive board are carried out; sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

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- (b) The vice-president shall act in the place of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the executive board.
 - (c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the executive board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the executive board and of the members; keep appropriate current records showing the members of the Association together with their addresses; prepare, execute, certify, and record amendments to the declaration on behalf of the Association; and perform such other duties as required by the executive board.
 - (d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by the executive board; sign all checks and promissory notes (such checks and promissory notes to be co-signed by the president) of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and prepare an annual budget and a statement of income and expenditures to be presented to the membership at its annual meeting, and deliver a copy to each member.

**ARTICLE VI
BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member or a mortgagee of any member. The articles of incorporation and the declaration and bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

**ARTICLE VII
CORPORATE SEAL**

The Association shall have a seal in circular form having within its circumference the words: "HOLTON PLACE HOA, INC." and the words: "CORPORATE SEAL - 1999" in the center thereof.

**ARTICLE VIII
AMENDMENTS TO BYLAWS**

Section 1: These bylaws may be amended, at a regular or special meeting of the members, by a vote of the majority of the members.

IN WITNESS WHEREOF, HOLTON PROPERTIES, LLC, has caused this instrument to be executed in its company name by its duly authorized member(s)/manager(s), this 17th day of February, 1999.

HOLTON PROPERTIES, LLC

By: *Frederick M. Sturm* (SEAL)
FREDERICK M. STURM, Member

By: *John R. Lancaster* (SEAL)
JOHN R. LANCASTER, Member

By: *Allan T. Schroeder* (SEAL)
ALLAN T. SCHROEDER, Member

By: BNTAS, LLC, Member
A North Carolina Limited Liability Company (SEAL)

By: *Vassilios A. Saffo* (SEAL)
VASSILIOS A. SAFFO, Member

By: *Argiro S. Franck* (SEAL)
ARGIRO S. FRANCK, Member

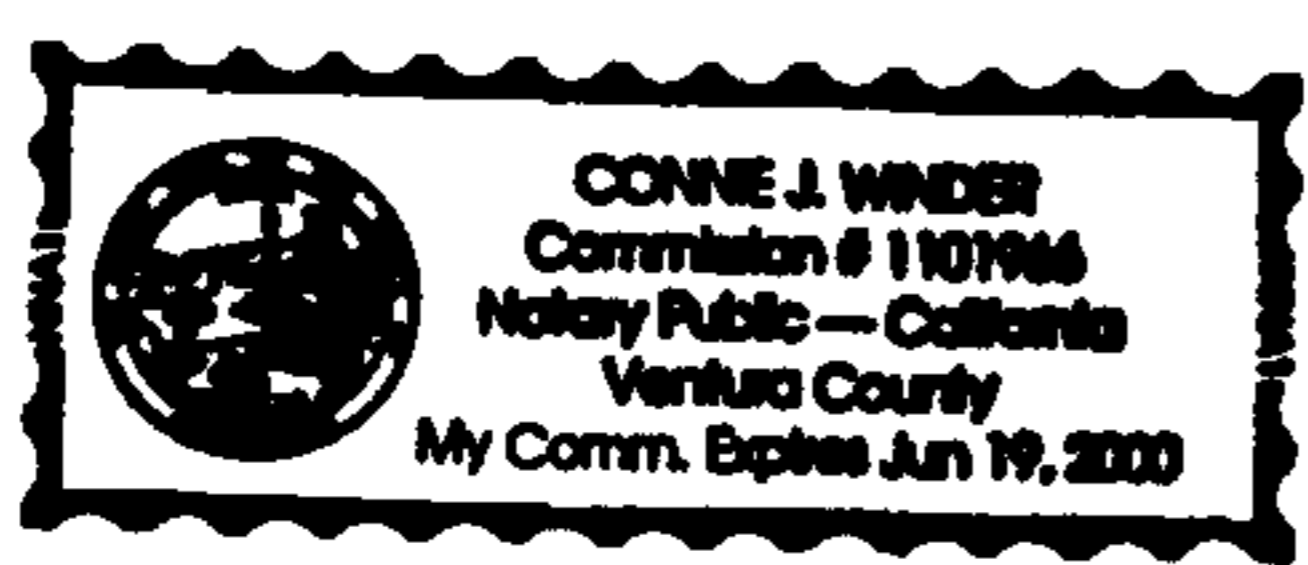
STATE OF CALIFORNIA
COUNTY OF VENTURA

I, CONNIE J. WINDER a Notary Public in and for the aforesaid County and State do hereby certify that FREDERICK M. STURM personally appeared before me this day and acknowledged that he is a Member of HOLTON, LLC, a North Carolina limited liability company and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company.

WITNESS my hand and notarial seal, this the 17th day of February, 1999.

Connie J. Winder
Notary Public

My Commission Expires:
June 19, 2000
(NOTARIAL SEAL)

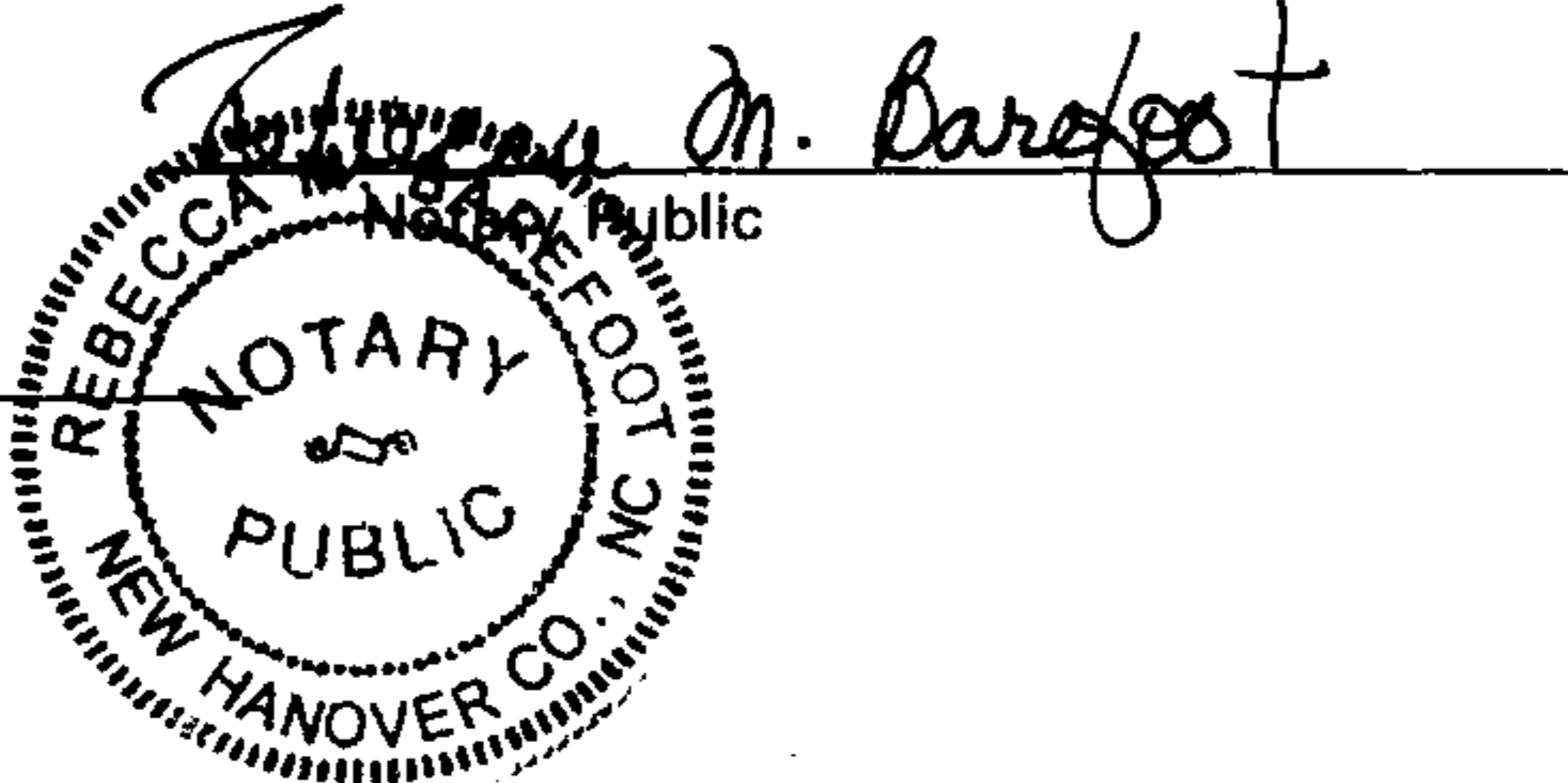


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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Rebecca M. Barefoot a Notary Public in and for the aforesaid County and State do hereby certify that **JOHN R. LANCASTER** and **ALLAN T. SCHROEDER** personally appeared before me this day and acknowledged that they are Members of **HOLTON, LLC**, a North Carolina limited liability company and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company.

WITNESS my hand and notarial seal, this the 19th day of February, 1999.

My Commission Expires:
9/16/2003
(NOTARIAL SEAL)

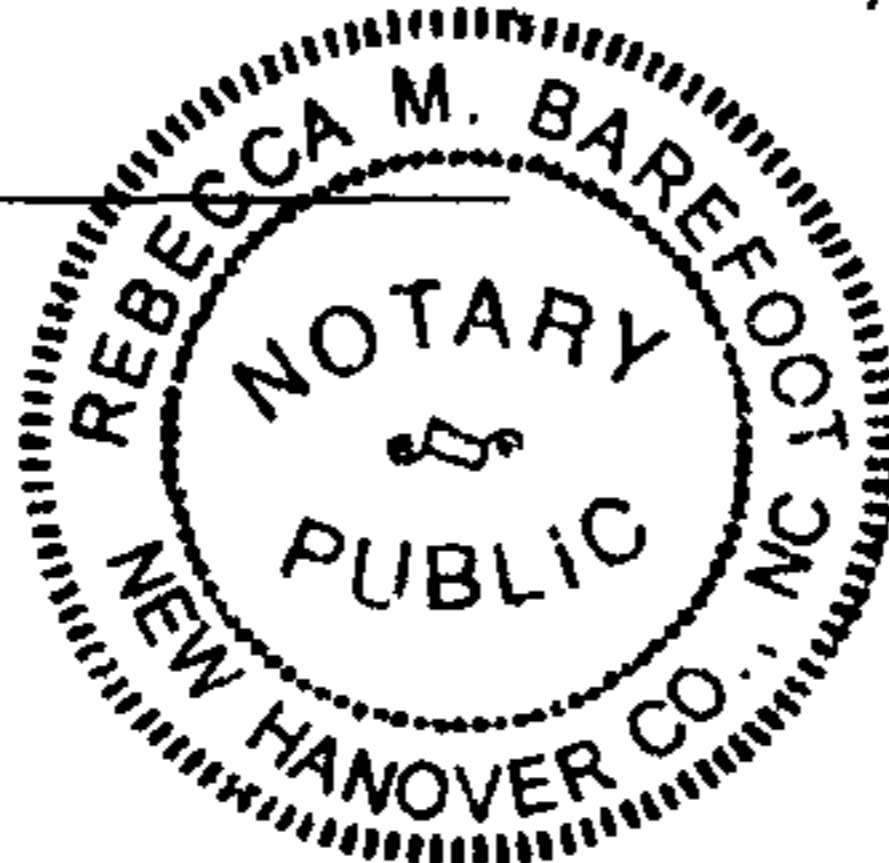


STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, Rebecca M. Barefoot a Notary Public in and for the aforesaid County and State do hereby certify that **VASSILIOS A. SAFFO** and **ARGIRO S. FRANCK**, personally appeared before me this day and acknowledged that they are Members of **BNTAS, LLC**, a North Carolina limited liability company, which is a member of **Holton Properties, LLC**, and acknowledged the due execution of the foregoing instrument on behalf of said **BNTAS, LLC**, in its capacity as a member of **Holton Properties, LLC**.

WITNESS my hand and notarial seal, this the 19th day of February, 1999.

My Commission Expires:
9/16/2003
(NOTARIAL SEAL)



Rebecca M. Barefoot
Notary Public

STATE OF NORTH CAROLINA
New Hanover County

The Foregoing/ Annexed Certificate(s) of
Rebecca M. Barefoot
& Connie J. Winder

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

This the 23 day of February 1999
Mary Sue Oots, Register of Deeds

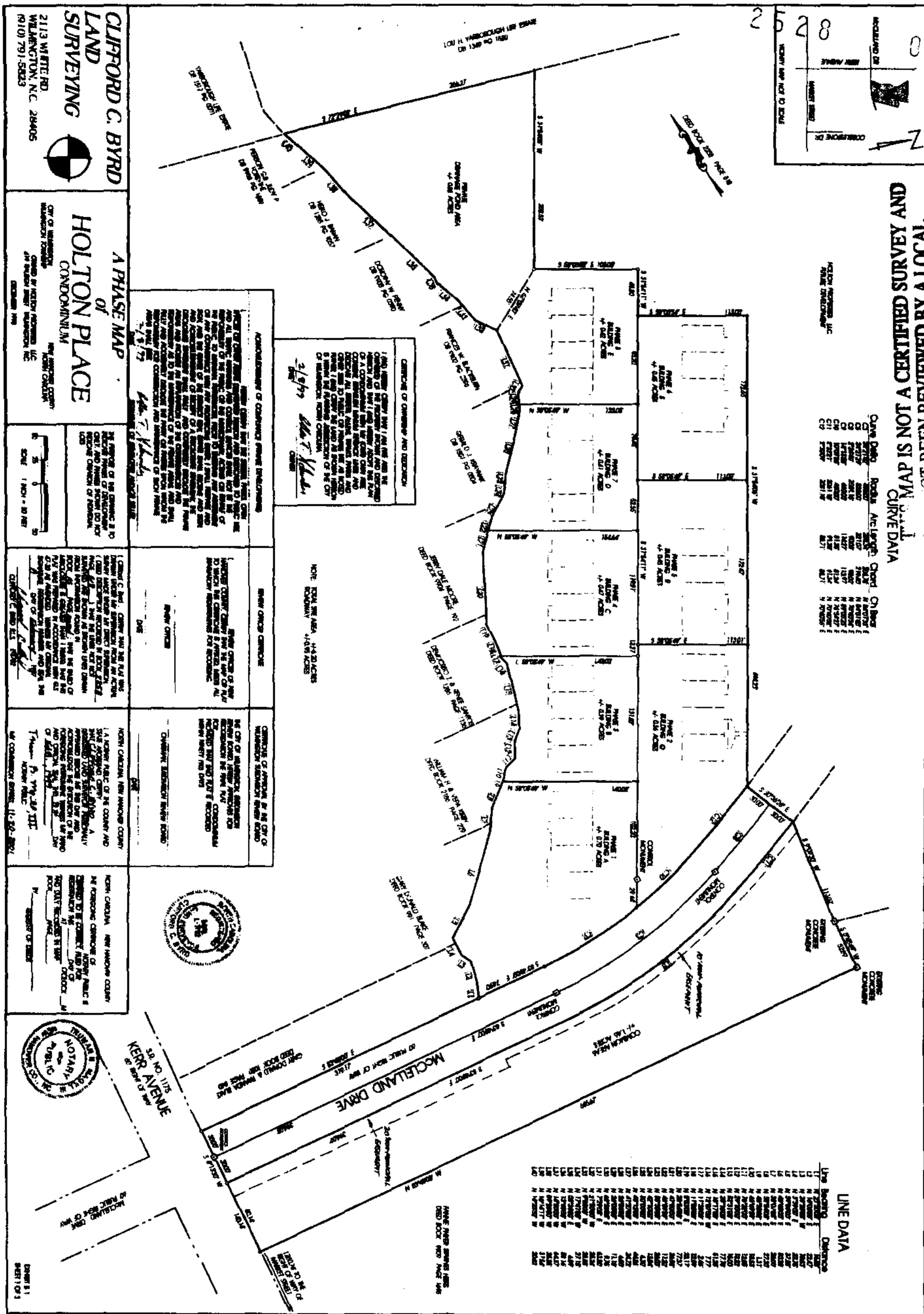
by [Signature]
Deputy [Signature]

BOOK PAGE
2528 0293

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
HOLTON PLACE CONDOMINIUM**

LEGAL DESCRIPTION - PHASES 1, 2 AND 3

- Tract One:** Being all of that certain tract or parcel of land designated as PHASE 1 BUILDING A, as shown upon the Plat entitled "A SITE PLAN OF PHASE 1, PHASE 2, AND PHASE 3, HOLTON PLACE CONDOMINIUM, recorded in Condominium Plat Book 11 at Page of the New Hanover County Registry, reference to which is hereby made for a more particular description.
- Tract Two:** Being all of that certain tract or parcel of land designated as PHASE 2 BUILDING Q, as shown upon the Plat entitled "A SITE PLAN OF PHASE 1, PHASE 2, AND PHASE 3, HOLTON PLACE CONDOMINIUM, recorded in Condominium Plat Book 11 at Page 234 of the New Hanover County Registry, reference to which is hereby made for a more particular description.
- Tract Three:** Being all of that certain tract or parcel of land designated as PHASE 3 BUILDING B, as shown upon the Plat entitled "A SITE PLAN OF PHASE 1, PHASE 2, AND PHASE 3, HOLTON PLACE CONDOMINIUM, recorded in Condominium Plat Book 11 at Page 234 of the New Hanover County Registry, reference to which is hereby made for a more particular description.
- Tract Four:** Being all of that certain tract or parcel of land designated as "PRIVATE DRAINAGE POND AREA \pm 0.88 ACRES" upon the plat entitled "A PHASE MAP OF HOLTON PLACE CONDOMINIUM, recorded in Condominium Plat Book 11 at Page 233 of the New Hanover County Registry, reference to which is hereby made for a more particular description.
- Tract Five:** Being all of that certain tract or parcel of land designated as "COMMON AREAS \pm 1.46 ACRES" upon the plat entitled "A PHASE MAP OF HOLTON PLACE CONDOMINIUM, recorded in Condominium Plat Book 11 at Page 233 of the New Hanover County Registry, reference to which is hereby made for a more particular description.



**MAP IS NOT A CERTIFIED SURVEY AND
OF BEEN REVIEWED BY A LOCAL
MENT AGENCY FOR COMPLIANCE
NY APPLICABLE LAND DEVELOPMENT
REGULATIONS**

CURVE DATA

Curve Data	Radius	Arc Length	Chord	Chord
1	100.00	1.5708	1.5708	1.5708
2	100.00	3.1416	3.1416	3.1416
3	100.00	4.7124	4.7124	4.7124
4	100.00	6.2832	6.2832	6.2832
5	100.00	7.8540	7.8540	7.8540
6	100.00	9.4248	9.4248	9.4248
7	100.00	10.9956	10.9956	10.9956
8	100.00	12.5664	12.5664	12.5664
9	100.00	14.1372	14.1372	14.1372
10	100.00	15.7080	15.7080	15.7080

LINE DATA

Line	Station	Distance
1	0+00	100.00
1	100.00	100.00
1	200.00	100.00
1	300.00	100.00
1	400.00	100.00
1	500.00	100.00
1	600.00	100.00
1	700.00	100.00
1	800.00	100.00
1	900.00	100.00
1	1000.00	100.00

**CLIFFORD C. BYRD
LAND
SURVEYING**
2113 WITTEN RD
WILMINGTON, N.C. 28405
(910) 791-5823

**A PHASE MAP
of
HOLTON PLACE
CONDOMINIUM**
CITY OF WILMINGTON
APPROVED FOR RECORDATION
BY THE CITY ENGINEER
ON 11/15/19

SCALE: 1" = 30' (AS SHOWN)

1. THE CITY OF WILMINGTON HAS REVIEWED THIS MAP AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF WILMINGTON ZONING ORDINANCE AND THE CITY OF WILMINGTON SUBDIVISION MAP ACT.

2. THE CITY OF WILMINGTON HAS REVIEWED THIS MAP AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF WILMINGTON ZONING ORDINANCE AND THE CITY OF WILMINGTON SUBDIVISION MAP ACT.

3. THE CITY OF WILMINGTON HAS REVIEWED THIS MAP AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF WILMINGTON ZONING ORDINANCE AND THE CITY OF WILMINGTON SUBDIVISION MAP ACT.

4. THE CITY OF WILMINGTON HAS REVIEWED THIS MAP AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF WILMINGTON ZONING ORDINANCE AND THE CITY OF WILMINGTON SUBDIVISION MAP ACT.

5. THE CITY OF WILMINGTON HAS REVIEWED THIS MAP AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF WILMINGTON ZONING ORDINANCE AND THE CITY OF WILMINGTON SUBDIVISION MAP ACT.

ACKNOWLEDGMENT OF CONDOMINIUM DEVELOPMENT
I, CLIFFORD C. BYRD, LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS MAP IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY AND THAT THE SAME IS IN ACCORDANCE WITH THE CITY OF WILMINGTON ZONING ORDINANCE AND THE CITY OF WILMINGTON SUBDIVISION MAP ACT.

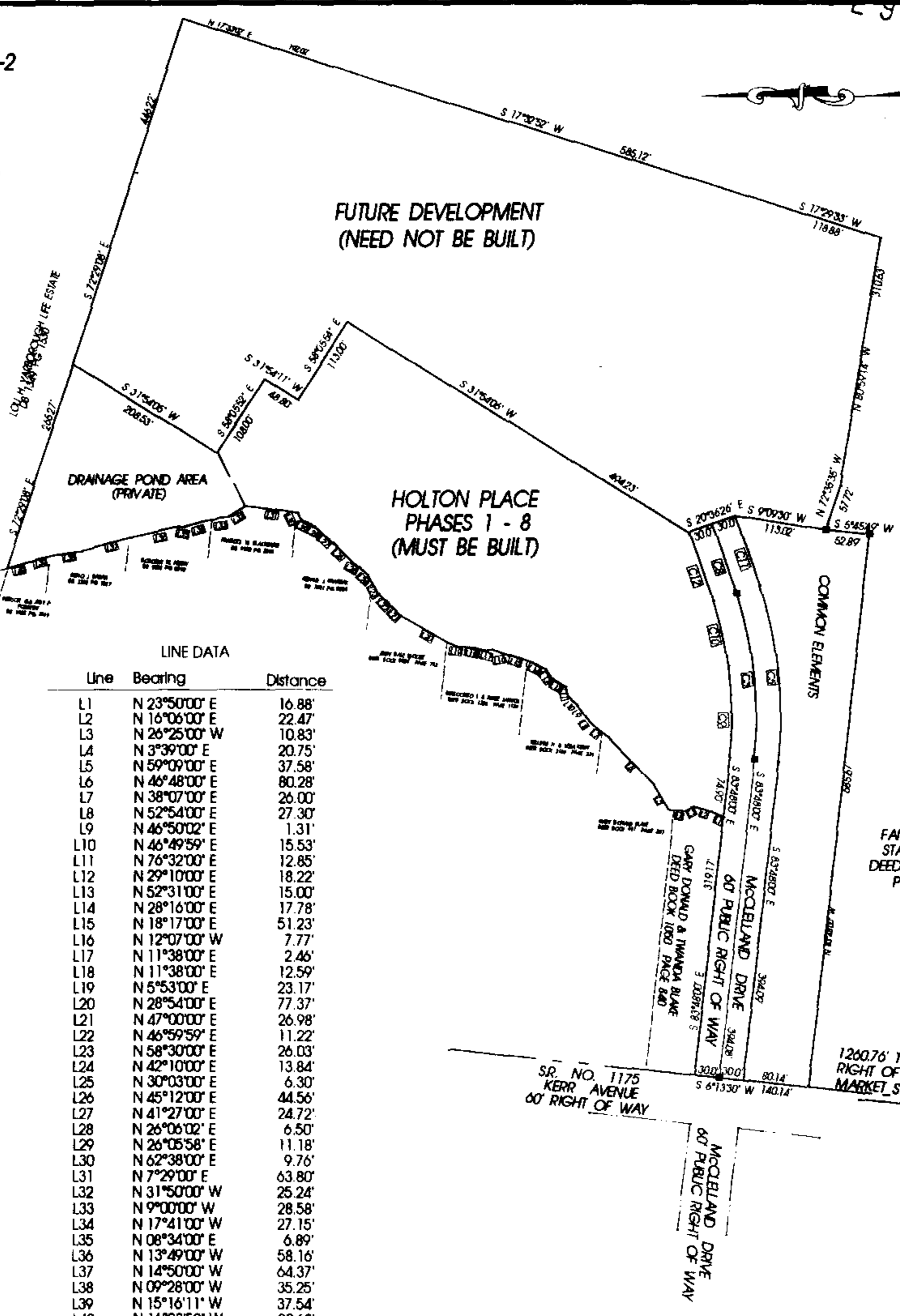
CITY OF WILMINGTON AND RECORDATION
I, [Signature], CITY ENGINEER, DO HEREBY CERTIFY THAT THIS MAP IS IN ACCORDANCE WITH THE CITY OF WILMINGTON ZONING ORDINANCE AND THE CITY OF WILMINGTON SUBDIVISION MAP ACT.



SHEET 11
SHEET 12 OF 3

EXHIBIT B-2

THIS MAP IS NOT A CERTIFIED SURVEY AND
 HAS NOT BEEN REVIEWED BY A LOCAL
 GOVERNMENT AGENCY FOR COMPLIANCE
 WITH ANY APPLICABLE LAND DEVELOPMENT
 REGULATIONS



LINE DATA

Line	Bearing	Distance
L1	N 23°50'00" E	16.88'
L2	N 16°06'00" E	22.47'
L3	N 26°25'00" W	10.83'
L4	N 3°39'00" E	20.75'
L5	N 59°09'00" E	37.58'
L6	N 46°48'00" E	80.28'
L7	N 38°07'00" E	26.00'
L8	N 52°54'00" E	27.30'
L9	N 46°50'02" E	1.31'
L10	N 46°49'59" E	15.53'
L11	N 76°32'00" E	12.85'
L12	N 29°10'00" E	18.22'
L13	N 52°31'00" E	15.00'
L14	N 28°16'00" E	17.78'
L15	N 18°17'00" E	51.23'
L16	N 12°07'00" W	7.77'
L17	N 11°38'00" E	2.46'
L18	N 11°38'00" E	12.59'
L19	N 5°53'00" E	23.17'
L20	N 28°54'00" E	77.37'
L21	N 47°00'00" E	26.98'
L22	N 46°59'59" E	11.22'
L23	N 58°30'00" E	26.03'
L24	N 42°10'00" E	13.84'
L25	N 30°03'00" E	6.30'
L26	N 45°12'00" E	44.56'
L27	N 41°27'00" E	24.72'
L28	N 26°06'02" E	6.50'
L29	N 26°05'58" E	11.18'
L30	N 62°38'00" E	9.76'
L31	N 7°29'00" E	63.80'
L32	N 31°50'00" W	25.24'
L33	N 9°00'00" W	28.58'
L34	N 17°41'00" W	27.15'
L35	N 08°34'00" E	6.89'
L36	N 13°49'00" W	58.16'
L37	N 14°50'00" W	64.37'
L38	N 09°28'00" W	35.25'
L39	N 15°16'11" W	37.54'
L40	N 16°23'52" W	20.62'

CURVE DATA

Curve Delta	Radius	Arc Length	Chord	Ch Bear
C3	24°21'42"	490.00'	208.34'	206.78' N 84°01'33" E
C5	24°21'29"	520.00'	221.07'	219.40' N 84°01'40" E
C8	2°34'40"	2001.18'	90.03'	90.02' N 70°40'54" E
C9	14°13'58"	460.00'	114.27'	113.97' N 89°05'25" E
C10	10°07'58"	460.00'	81.35'	81.24' N 76°54'27" E
C11	2°32'21"	2061.18'	91.35'	91.34' N 70°40'52" E
C12	2°30'09"	2031.18'	88.71'	88.71' N 70°40'56" E

HOLTON PLACE CONDOMINIUM
 CITY OF WILMINGTON NEW HANOVER COUNTY
 WILMINGTON TOWNSHIP NORTH CAROLINA
 OWNED BY HOLTON PROPERTIES LLC.
 419 RALEIGH STREET WILMINGTON, N.C.
 DECEMBER 1998

CLIFFORD C. BYRD LAND SURVEYING
 2113 WHITE RD.
 WILMINGTON, N.C. 28405
 (910) 791-5823



BOOK
 2528
 PAGE
 0297

FLOOR PLAN
 AND
 ELEVATIONS
 OF
 BUILDINGS A, B, AND Q
 OF
 HOLTON PLACE
 CONDOMINIUM
 CLIFFORD C. BYRD
 LAND
 SURVEYING
 2125 WASHINGTON
 WASHINGTON, D.C. 20036
 202-778-1233



THIS MAP IS NOT A CERTIFIED SURVEY AND
 HAS NOT BEEN REVIEWED BY A LOCAL
 GOVERNMENT AGENCY FOR COMPLIANCE
 WITH ANY APPLICABLE LAND DEVELOPMENT
 REGULATIONS

