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DECLARATION OF CONDOMINIUM
THE GARDENS, A CONDOMINIUM COMMUNITY
PHASE I

Prepared By:
RETURN TO JACKSON MILLS CARTER

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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

DECLARATION OF CONDOMINIUM
THE GARDENS, A CONDOMINIUM COMMUNITY
PHASE I

THIS DECLARATION, made this the 17th day of September, 2007, by H & S DEVELOPMENT OF WILMINGTON, LLC, hereinafter referred to as "DECLARANT";

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, the Declarant is the owner of record of the fee simple title of certain real property located entirely in the County of New Hanover, State of North Carolina, which is more particularly described in Exhibit "A" hereto attached and incorporated herein by reference; and

WHEREAS, the Declarant is the owner of a multi-unit building, and certain other improvements heretofore constructed upon the aforesaid property; and

WHEREAS, it is the desire and the intention of the Declarant to market, sell and convey interests in the property and the improvements thereon as a condominium project pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled "The North Carolina Condominium Act"; and

WHEREAS, it is the desire and intention of the Declarant in the recordation of this DECLARATION in the Office of the Register of Deeds of New Hanover County, North Carolina, to submit said condominium project to the provisions of the said Chapter 47C;

NOW, THEREFORE, THE DECLARANT DOES HEREBY DECLARE THAT ALL OF THE REAL PROPERTY DESCRIBED IN EXHIBIT "A" HERETO ATTACHED AS WELL AS ALL OF THE IMPROVEMENTS CONSTRUCTED THEREON, IS HELD AND SHALL BE HELD, CONVEYED, HYPOTHECATED, ENCUMBERED, USED, OCCUPIED, AND IMPROVED SUBJECT TO THE FOLLOWING ARTICLES OF COVENANTS, CONDITIONS, RESTRICTIONS, USES, LIMITATIONS AND OBLIGATIONS, ALL OF WHICH ARE DECLARED TO BE IN FURTHERANCE OF A PLAN FOR THE IMPROVEMENT OF SAID PROPERTY AND THE DIVISION THEREOF INTO CONDOMINIUM UNITS AND SHALL BE DEEMED TO RUN WITH THE LAND AND SHALL BE A BURDEN AND A BENEFIT TO THE DECLARANT, ITS SUCCESSORS AND ASSIGNS, AND ANY PERSON OR ENTITY ACQUIRING OR OWNING AN INTEREST IN THE REAL PROPERTY AND IMPROVEMENTS, OR ANY UNIT THEREOF, THEIR GRANTEEES, SUCCESSORS, HEIRS, EXECUTORS, ADMINISTRATORS, DEVISEES AND ASSIGNS.

ARTICLE I
Definitions

For the purposes of this Declaration and the By-Laws of the Association, hereinafter defined, the following definitions for the term used herein and therein shall apply unless otherwise defined by the context thereof:

a) "Act" shall mean and refer to The North Carolina Condominium Act, Chapter 47C of the General Statutes of the State of North Carolina, as such may be supplemented or amended from time to time.

b) "*Assessment*" shall mean and refer to a share or all of the funds required for the payment of the common expenses, hereinafter defined, of the Association which from time to time shall be levied or assessed against a unit owner(s) by the Association, all as provided for hereinbelow.

c) "*Allocated Interests*" shall mean and refer to the undivided interest(s) in the common elements, the common expense liability and votes in the Association allocated to each unit.

d) "*Association*" shall mean and refer to THE GARDENS CONDOMINIUMS OWNERS ASSOCIATION, INC., the mandatory association of all unit owners, as is more particularly described in Article VI hereinbelow and organized or to be organized pursuant to North Carolina General Statutes 47C-3-101, et seq.

e) "*Building*" shall mean and refer to any of the building(s) which the Declarant has constructed in Phase I upon the real property described in Exhibit "A" or will construct in future phases (if built) upon the real property described in Exhibit "B", to be used for residential purposes, as hereinafter provided. Attached hereto and made a part hereof by reference is Exhibit "C", a survey of the real property showing the location of the building thereon and other improvements and Exhibit "D" which consists of a full and exact copy of the plans of the buildings. Said building is more particularly described in the plans of said building, showing all particulars as required by law. In general, the building has two (2) stories above the ground level. There are no basements. There are ten (10) two-bedroom units with two (2) baths each, six (6) of which have handicap accessibility.

The building is principally constructed of wood on a concrete slab.

f) "*Board*" shall mean and refer to the Executive Board or Board of Directors of the Association and "*Director*" shall mean and refer to a member of said Board.

g) "*By-Laws*" shall mean and refer to those By-Laws of the Association providing for the government of the Association as they are duly adopted and amended from time to time by the Association. A copy of the initial By-Laws are attached hereto as Exhibit "E" and made a part hereof by reference.

h) "*Common Elements*" generally shall mean and refer to all of the real property, described on Exhibit "A", and all of the present or proposed improvements and facilities (including a clubhouse and swimming pool) if built in future phases. Common elements shall specifically include all components of the wastewater disposal system and appurtenances thereto, as set forth under that permit issued by the State of North Carolina, permit number WQ0031430, which are not units, as defined hereinafter.

i) "*Common Expenses*" shall mean and refer to the expenditures, costs and expenses incurred by the Association for the administration, maintenance, operation, enjoyment, safety, repair, and replacement (including a capital reserve for repair, maintenance, and replacement) of the common elements as well as any other financial liability incurred by the Association pursuant to the fulfillment of its obligations and purposes as stated herein or by law and designated as common expenses. Common expenses are additionally intended to mean and refer to any expense incurred by the Association as shall be hereinafter agreed upon by the Association of unit owners as common expenses of the Association.

j) "*Common Expense Liability*" shall mean the liability for common expenses allocated to each unit (allocated interests) pursuant to North Carolina General Statutes 47C-2-107.

k) "*Common Surplus*" shall mean and refer to the balance of all revenues of the Association remaining after the deduction of the common expenses.

l) "*Condominium*" shall mean and refer to the entire proposed development created pursuant to this Declaration consisting of all the real property including all phases or sections, all units, all improvements and structures thereon, all common areas and facilities, and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for common use in connection therewith, which are intended to be submitted to the provisions of the act by this Declaration, and the supplements and amendments hereto, as are provided for hereinbelow.

m) "*Declarant*" shall mean H & S DEVELOPMENT OF WILMINGTON, LLC, its successors and assigns, as the owner of the property and who as a part of a common promotional plan offers to dispose of its interest in a unit not previously disposed of or reserves or succeeds to any special declarant right.

n) "*Declaration*" shall mean the Declaration of Condominium for THE GARDENS, A CONDOMINIUM COMMUNITY, PHASE I and any and all amendments.

o) "*Development Rights*" shall mean any right or combination of rights reserved by the Declarant in this Declaration to add real estate, units and common areas to the condominium; to create units, common elements or limited common elements within a condominium; to subdivide units or convert units into common elements or to withdraw real estate from a condominium.

p) "*Dispose or Disposition*" shall mean the voluntary transfer to a purchaser of any legal or equitable interest in a unit, but not a transfer or release of a security interest.

q) "*Executive Board*" shall mean the body, regardless of name, designated in this Declaration to act on behalf of the Association. It generally shall be designated herein as the "Board of Directors" or "Board".

r) "*Identifying Number*" means the letter, symbol or address that identifies only one specific unit in the Condominium.

s) "*Person*" shall mean and refer to an individual, corporation, partnership, association, trustee, or other legal entity.

t) "*Purchaser*" shall mean any person, other than the Declarant or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest (including renewal options) of less than five (5) years, or (ii) as security for an obligation.

u) "*Real Property or Real Estate*" shall mean and refer to all of the real property described in Exhibit "A" attached hereto as well as any leasehold or other estate or interest in, over, or under land, including structures, fixtures and other improvements and interest which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance.

v) "*Singular, Plural, Gender*" whenever the context so permits the use of the plural, it shall include the singular, the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

w) "*Special Declarant Rights*" shall mean rights reserved herein for the benefit of the Declarant to complete improvements indicated on plats and plans filed with the Declaration under General Statutes 47C-2-109; to exercise any development rights under General Statutes 47C-2-110; to maintain sales offices, management offices, signs advertising the condominium and models under General Statutes 47C-2-115; to rent units owned by Declarant or assigns; to use easements through the common elements for the purpose of making improvements within the Condominium or within real estate which may be added to the Condominium under General Statutes 47C-2-116; to make the

Condominium part of a larger Condominium under General Statutes 47C-2-121; to add additional real property and additional units and appurtenant Common Areas to the Condominium, or to appoint or remove any officer of the Association or any executive board member during any period of Declarant control under General Statutes 47C-3-103(d).

x) "*Unit or Condominium Unit*" shall mean and refer to any one of the units of enclosed space within a building, together with any additional areas or spaces accompanying the same as defined hereinbelow, and which are intended to or will be sold as dwelling units or separate ownership pursuant to the Act and this Declaration. The Declarant reserves the right, but not the obligation, to build and sell a total of one hundred twenty-two (122) units. The deed for any particular unit shall convey such unit by its unit identifying number and the same shall be deemed to include all that is defined as a part of that unit as stated specifically in this definition, as well as the privileges and appurtenances accompanying any such unit and subject to the covenants, conditions, restrictions and obligations applicable to unit owners as all are more generally stated and described throughout this Declaration.

All units, as well as the additional areas defined as part of each unit hereinbelow, are bounded both as to horizontal and vertical boundaries by the interior finished surface of the units' perimeter walls, ceilings and floors and additional areas conveyed as part of each unit as defined hereinbelow, all of which are shown on said plans, subject to the easement reserved hereinbelow for such encroachments as are contained in the buildings whether the same now exist or may be caused or created by existing construction, settlement, or movement of the buildings, or by permissible repairs, construction, or alteration.

Each unit is hereby defined also to include:

- (i) All non-load bearing partition walls located entirely within the unit;
- (ii) All materials, including, but not limited to, carpet, paint, and vinyl attached to, or on, the interior finished surfaces of the perimeter walls, floors, and ceilings of the unit; and all window panes, frames, panes and exterior doors; and
- (iii) All air handling and condensing units, ducts and components, and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewage lines, located within the unit; provided, however, that the portion of said lines located within a common compartment for, or installation of, such lines shall be common areas and facilities as defined hereinabove.

Each unit is hereby defined to exclude all pipes, ducts, wires, conduits and other facilities for the furnishing of utility services and other services to the units up to and including the point of entry of such pipes, ducts, wires, conduits and other facilities through the interior finished surface material for perimeter walls, ceilings and floors of the units. All such pipes, ducts, wires, conduits, and other such facilities are defined as a part of the unit at and from their point of entry into the unit.

The definition stated hereinabove for "Unit" is complete and all other aspects of the condominium not hereinabove defined as a part of the units is defined hereby as a part of the common areas, elements and facilities of the condominium.

y) "*Unit Owner*" shall mean and refer to a person, corporation, partnership, association, trust, other legal entity including the Declarant, or any combination thereof, in whose name or names the title to or an interest in the title to any unit is vested, excluding those who own or hold such title or interest under the terms of any mortgage or deed of trust or other similar instrument for the purposes of securing the payment of an indebtedness or the performance of an obligation.

ARTICLE II
Submission of Property

Pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, the Declarant does hereby submit all of the real property described in Exhibit "A" attached hereto together with all improvements thereon and described herein, to the provisions of the "North Carolina Condominium Act" of the State of North Carolina, which is codified as Chapter 47C of the General Statutes of the State of North Carolina. The Condominium created hereunder shall be known as THE GARDENS, A CONDOMINIUM COMMUNITY, PHASE I.

Declarant has filed with the New Hanover County Register of Deeds the plat and plans to THE GARDENS, A CONDOMINIUM COMMUNITY, PHASE I and shall be considered a part of this Declaration. Said plats and plans are recorded in Condominium Plat Book No. 17 at Page 159 in the New Hanover County Register of Deeds Office.

Declarant reserves the right, but not the obligation, to develop additional phases located on the real property described in Exhibit "B". Declarant shall the right to develop such future phases without the joinder or consent of anyone, by the filing of a Supplemental Declaration for such additional phases.

ARTICLE III
The Nature and Incidents of Unit Ownership

Section 1. Each unit shall be conveyed and treated as an individual real 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 areas and facilities of THE GARDENS, A CONDOMINIUM COMMUNITY, PHASE I. The undivided interest in the common areas and facilities of THE GARDENS, A CONDOMINIUM COMMUNITY is set forth on Exhibit "F" attached hereto. Said proportional interest in the common areas and facilities that is appurtenant to each unit has been determined in a manner consistent with the Act. Upon the completion of additional units, which the Declarant reserves the right, but not the obligation, to do, the undivided interest in the Common Areas and facilities for each unit shall change.

Section 2. No unit may be divided or subdivided into a smaller unit or units than as shown on Exhibits "C" and "D" hereto. The undivided interest in the common areas and facilities declared to be an appurtenance to each unit shall not be conveyed, devised, encumbered, or otherwise dealt with separately from said unit, and the undivided interest in common areas and facilities 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 a 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 areas and facilities, 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 described said unit by the identifying number assigned thereto in the Exhibits attached hereto without limitation or exception, shall be deemed and construed to affect the entire unit and its appurtenant undivided interest in the common areas and facilities. Nothing herein contained shall be construed as limiting or preventing ownership of any unit and its appurtenant undivided interest in the common areas and facilities by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety; provided, however, no unit shall be sold, or transferred under a time-share or interval ownership concept, as those terms are commonly used in the home building/real estate industry.

Section 3. The common areas and facilities shall be, and the same are hereby declared to be subject to a perpetual nonexclusive easement in favor of all of the owners of units in THE GARDENS, A CONDOMINIUM COMMUNITY, PHASE I, for their use and the use of their immediate families, guests or invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said owners of units.

Section 4. The Condominium is not subject to any zoning, subdivision, building code or other real estate use law, ordinance or regulation (i) prohibiting the Condominium form of ownership or (ii) imposing any requirement upon a Condominium which it would not impose upon a substantially similar development under a different form of ownership. This statement is made pursuant to N.C.G.S. 47C-1-106 for the purpose of helping provide marketable title to the units in the Condominium.

ARTICLE IV **Use Restrictions**

Section 1. Each unit is hereby restricted to single-family residential use by the owner hereof, his immediate family, guests, invitees and lessees. No owner of any unit shall permit the use of his unit for transient hotel, time-share or interval ownership of commercial purposes. Nothing herein shall be construed to prevent or prohibit the renting of any unit for residential purposes.

Section 2. No immoral, improper, offensive or unlawful use shall be made of any unit or of the common areas and facilities, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the unit shall be observed. No owner of any unit shall permit or suffer anything to be done or kept in his unit, or on the common areas and facilities, which will increase the rate of insurance on the condominium, or which will obstruct or interfere with the rights of other occupants of the other units or annoy them by unreasonable noises, nor shall any owner undertake any use or practice which shall create and constitute a nuisance to any other owner of a unit, or which interferes with the peaceful possession and proper use of any other unit or the common areas and facilities.

Section 3. The use of common areas and facilities, by the owner or owners of all units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Association.

Section 4. No owner of a unit shall permit any structural modification or alteration to be made to such unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion, that such structural modifications or alterations would adversely affect or in any manner endanger the condominium in part or in its entirety. No owner shall cause any improvements or changes to be made on the exterior of the condominium (including painting or other decoration, or the installation of electrical wiring, television or radio antennas or any other objects, machines or air conditioning units which may protrude through the walls or roof of the condominium or windows or doors) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first obtained. No unit owner shall cause any object to be fixed to the common areas and facilities (including the location or construction of fences and the planting or growing of flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the common areas and facilities or limited common areas and facilities without the written consent of the Association being first obtained.

Section 5. The use of the condominium may be further restricted under the By-Laws of the Association, or its Rules and Regulations.

ARTICLE V
Easements

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

Section 1. In case of any emergency, as determined by the Board or its agent, originating in or threatening any unit, regardless of whether the owner is present at the time of such emergency, the Board, or any other person authorized by it, or the managing agent, shall have the right to enter such unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

Section 2. Each unit owner shall have an easement in common with the other owners of all units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Board of Directors of the Association or their designee shall have the right of access to each unit to inspect the same, to remove or correct violations therefrom and to maintain, repair, or replace the common facilities contained therein or elsewhere in the building.

Section 3. The initial and subsequent Boards may grant or assume easements, leases, or licenses for utility purposes for the benefit of the condominium, including the right to install, lay, maintain, repair, and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits and wires over, under, along and on any portion of the units and/or common areas and facilities; and, each unit owner hereby grants to the Board, or its designee, the irrevocable power of attorney to execute, acknowledge, and record for or in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

Section 4. Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the common areas and facilities and for vehicular traffic over, through and across the portions of the common areas as may be designated for such purposes, to be used exclusively by unit owners, their guests, families, invitees, lessees, the Association, its successors and assigns.

Section 5. In the event that any unit shall encroach upon any of the common areas and facilities, or any other unit or units, for any reason not caused by the purposeful or negligent act of the unit owner, or agents of such owner, then an easement appurtenant to such unit shall exist for the continuance of such encroachment upon the common areas and facilities or upon a unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the common areas and facilities shall encroach upon any unit, then an easement shall exist for the continuance of such encroachment of the common areas and facilities upon any unit for so long as such encroachment shall naturally exist. If any unit or common areas and facilities shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings and if upon reconstruction of such unit and/or common areas and facilities in accordance with this Declaration, there exist encroachments of portions of the common areas and facilities upon any unit, or of any unit upon any other unit or upon any portion of the common areas and facilities, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

Section 6. The Declarant has such easements to the common elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising special Declarant rights whether arising under the Act or reserved in this Declaration.

Section 7. Access to and from the Condominiums shall be as shown on the recorded plat and may include over and across an easement running from South College Road, NC Highway 132.

ARTICLE VI
The Owners Association

Section 1. Organization of Association: To efficiently and effectively provide for the administration and maintenance of THE GARDENS, A CONDOMINIUM COMMUNITY, PHASE I by the unit owners, an incorporated association known and designated as THE GARDENS OWNERS ASSOCIATION, INC., (hereinafter the "Association"), has been organized pursuant to N.C.G.S. 47C-3-101 et seq. The Association shall administer the operation and management of the Condominium and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its duly adopted By-Laws. A true copy of the original By-Laws is attached hereto as Exhibit "E" and expressly made a part hereof by reference. The membership of the Association at all times shall consist exclusively of all the unit owners. Except as may be limited by the terms of this Declaration, each unit shall be allocated one vote in the Association to be used by the unit owner or unit owners of each respective unit. The property, affairs and business of the Association shall be managed by the Declarant until such time as ninety percent (90%) of all units in all sections have been sold and conveyed by Declarant or until December 31, 2010, whichever first occurs. The Declarant shall have four (4) votes for each unit it owns.

Section 2. Powers: The Association shall have the power to: adopt and amend By-Laws and rules and regulations; adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners; hire and terminate employees, agents and independent contractors; institute, defend or intervene in its own name in litigation or administrative proceedings on matters affecting the Condominium; make contracts and incur liabilities; regulate the use and provide for maintenance, repair, replacement and modification of common elements, specifically including the retention pond shown on the recorded plat and the wastewater disposal system, and appurtenances thereto; cause additional improvements to be made as a part of the common elements; acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112; grant easements, leases, license and concessions through and over the common elements; impose and receive any payments, fees or charges for the use, rental or operation of the common elements and for services provided unit owners; impose charges for late payment of assessments, and after notice and an opportunity to be heard, levy reasonable fines not to exceed \$150.00, or the maximum allowed by law, whichever is greater, per violation for violation of the Declaration, By-Laws and rules and regulations of the Association; impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates or statements of unpaid assessments; provide for the indemnification of and maintain liability insurance for the officers, the Board, its employees and agents; exercise all other powers that may be exercised in North Carolina by legal entities of the same type as an Association; and exercise any other powers necessary and proper for the governing and operation of the Association. Specifically, the Association shall have the authority to assess dues as necessary, at any time, to operate, maintain, repair and replace the wastewater disposal system and appurtenances thereto.

Section 3. The Board of Directors may not act on behalf of the Association to amend the Declaration, to terminate the Condominium or elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Board members except upon the approval of the unit owners in accordance with North Carolina law.

Section 4. Common Expenses: The common expenses of the Association shall be shared equally by the unit owners which is the same proportion that the undivided interest in the common areas and facilities appurtenant to each owner's unit bears to the total of all undivided interests in the common areas and facilities appurtenant to all units. The Association shall create a separate fund

for monies necessary to repair, maintain, replace and operate the wastewater disposal system and appurtenances thereto.

Section 5. Management and Maintenance: The Association, as a common expense, shall be responsible for the maintenance, repair and replacement as necessary of all of the common elements, including those portions thereof which contribute to the support of the building or buildings, and the retention pond and the wastewater disposal system and appurtenances thereto located on the Condominium property. Specifically, the wastewater disposal system shall be operated and maintained in conformity with North Carolina law and the provisions of the permit issued by the State of North Carolina. All pipes, conduits, ducts, plumbing, wiring, and other facilities located in the common areas and facilities for the furnishing of utility and other services to the units and said common areas and facilities are to be maintained, repaired and replaced as necessary, and should any incidental damage be caused to any unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any common areas and facilities, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair, and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a unit owner, his immediate family, guests, or invitees, and such loss or damage 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 unit owner who is responsible for the act causing the damage (whether done by himself or by his family, guests, or invitees) shall be required to pay such portion of the cost 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. If insurance proceeds are not available then the unit owner responsible for the loss or damage (whether done by the owner or the owner's family, guests or invitees) shall be solely responsible for the costs of repair.

Section 6. Unit Owners Maintenance: 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 air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his unit. Such owner shall further be responsible and liable for the maintenance, repair, and replacement of the surfaces of any and all walls, ceilings, and floors which are a part of 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 said 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. All glass doors, window frames, panes and screens are a part of the respective units and shall be maintained by the respective unit owners.

Section 7. Except as expressly provided herein, N.C.G.S. 47C-3-107 shall govern the procedure to be followed by the Owners Association in the event of damage to a unit or to any common elements.

Section 8. Insurance Acquisition: Commencing not later than at the time of the first conveyance of a unit to a person other than the Declarant, the Association shall maintain, to the extent available: (i) property insurance on the common elements and units insuring against all risk of direct physical loss, commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductible shall not be less than eighty percent

(80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and (ii) liability insurance in reasonable amounts, covering all occurrences commonly insured against including death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements. Further, the policies purchased hereunder shall provide that 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 if, at the 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.

a) Insurance policies upon the condominium (other than title insurance) shall be purchased by the Association in the name of the Board of the Association, as Trustee for all of the unit owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the units or any of them, and the policies shall provide that:

(i) 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;

(ii) The insurer waives its right to subrogation under the policy against any unit owner or members of his household;

(iii) 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

(iv) If, at the 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.

Each unit owner may obtain insurance, at his own expense, affording coverage upon his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

b) Notice of Non-Coverage: If the insurance described in Section 6.8.1 above is not reasonably available, the Association shall promptly cause notice of that fact to be hand-delivered or sent prepaid by United States Mail to all unit owners. The Association may carry any other insurance it deems appropriate to protect the Association or the unit owners.

c) Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association and each and every unit owner and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The Board of the Association is hereby irrevocably appointed agent for each unit owner and his mortgagee as their interests may appear for the purpose of adjusting, compromising and settling claims arising under insurance policies purchased by the Board for the benefit of the Association and the unit owners. Said Board or its designee is hereby further empowered to execute and deliver releases to the insurance carrier upon the payment of claims. The Board's duty or its designee's duty upon receipt of such proceeds shall be to hold the same in trust for the purposes elsewhere stated herein or in the By-Laws, for the benefit of the Association and the unit owners, their mortgagees and lienholders, as their interests may appear.

d) Distribution of Insurance Proceeds: The insurance proceeds payable under any policy purchased hereunder shall be payable to the Association as Trustee, or its designee. The Association as Trustee, or its designee, shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions set forth hereinafter, 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.

e) Insurance Policies: An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon their 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 a policy until thirty (30) days after notice of the proposed cancellation or renewal 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.

f) Damage, Reconstruction or Repair: 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 a 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 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, G.S. 47C-2-118 governs the distribution of insurance proceeds if the Condominium is terminated.

Section 9. Register of Owners and Mortgagees: The Association shall at all times maintain a Register setting forth the names of the owners of all of the units and their addresses. In the event of the sale or transfer of any unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such unit together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any suit. Further, the owner of each unit shall notify the Association of the names of the parties holding any mortgage or mortgages on any unit, the amount of such mortgage or mortgages and the recording information which shall be pertinent to identify such mortgagee(s). The holder of any mortgage or mortgages upon any unit may, if he so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any unit and, upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto.

Section 10. Assessments: Liability, Lien and Enforcement: The Association has been 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 properly administer 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 which are sometimes herein referred to as "common expense". Said common expenses shall include funds to not only maintain and manage the condominium but shall also include funds adequate to create a capital reserve to defray major repairs and replacements and a fund for the maintenance, repair and replacement of the wastewater disposal system as same may become necessary in the future. The Association shall establish such a capital reserve fund and shall fund same on a regular basis through assessments determined and levied by the Association. To provide the funds necessary for such proper operation, maintenance, management, and capital improvement, the Association has heretofore been granted the right to make, levy and collect assessments against the unit owners and their units.

a) Any assessment levied against a unit remaining unpaid for a period of 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 the county in which the unit is located in the manner provided therefor by Chapter 44A of the General Statutes. The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines and interest charged pursuant to G.S. 47C-3-192(10), (11), and (12), G.S. 47C-3-107(d), and 47C-3-107A, are enforceable as assessments under this section.

b) The lien under this section 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 line 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.

c) A lien for unpaid assessments is 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.

d) The provisions herein do not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

e) A judgment, decree or order in any action brought under this article shall include costs and reasonable attorney's fees for the Association.

Section 11. *Dissolution of Association*: the Association shall not voluntarily dissolve itself without first transferring the wastewater disposal system or right to manage, operate and maintain same, to a person, corporation or other entity approved by the North Carolina Environmental management Commission, or its successor agency.

ARTICLE VII **Termination**

Subject to the rights of the Declarant herein, the condominium shall be terminated, if at all, by the agreement of eighty percent (80%) of the unit owners of all units and in accordance with G.S. 47C-2-118.

ARTICLE VIII **Amendment of Declaration of Condominium**

This Declaration shall only be amended in accordance with the provisions of G.S. 47C-2-117 and shall require the written agreement of sixty-seven percent (67%) of the owners of units.

ARTICLE IX **Remedies in Event of Default**

Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the By-Laws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, arbitration or any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved unit owner.

ARTICLE X **Rights Reserved Unto Institutional Lenders**

"Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, or other reputable mortgage lenders. So long as any institutional lender or institutional lenders shall hold any mortgage upon any unit or units, or shall be the owner of any unit or units, such institutional lender or institutional lenders shall have the following rights:

A. To approve the company or companies with whom casualty insurance is placed said approval not to be unreasonably withheld.

B. To examine, at reasonable times and upon reasonable notice, the books and records of the Association and to be furnished at least one copy of the annual financial statement and report of the Association, prepared by a certified public accountant, the cost of preparation of said financial statement to be born by the unit owner whose mortgagee or lender requires same.

C. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment, to this Declaration, or the By-Laws of the Association, which notice shall state the nature of the amendment being proposed.

D. To be given notice of default by any owner owning a unit encumbered by a mortgage held by the institutional lender or institutional lenders, such notice to be given in writing and to be sent to the principal office of such institutional lender or institutional lenders, or to the place which it or they may designate in writing. Whenever any institutional lender or institutional lenders desire the provisions of this Article to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by registered mail or certified mail addressed to the Association and sent to its address stated herein, identifying the unit or units upon which any such institutional lender or institutional lenders hold any mortgage or mortgages, or identifying any units owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such institutional lender or institutional lenders.

ARTICLE XI **Severability**

In the event that any of the terms, provisions, or covenants of this Declaration are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify, or impair in any manner whatsoever any of the other terms, provisions, or covenants hereof or the remaining portions of any terms, provisions, or covenants held to be partially invalid or unenforceable.

ARTICLE XII **Liberal Construction**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership. The Article headings are for convenience of reference only and shall not be considered terms of this Declaration.

ARTICLE XIII. **Declaration of Condominium Binding on Assigns and Subsequent Owners**

The restrictions, covenants and burdens imposed by the Articles of this Declaration are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each unit and its appurtenant undivided interest in common elements; this Declaration shall be binding upon the Declarant, its successors and assigns, and upon all parties who may subsequently become owners of units in the condominium, and their respective heirs, devisees, legal representatives, successors and assigns. This Declaration and the exhibits attached hereto and amendments hereof shall be construed and controlled by and under the laws of the State of North Carolina.

ARTICLE XIV **Eminent Domain**

In the event of a taking by eminent domain (or condemnation or a conveyance in lieu of condemnation) of part or all of a unit or the common elements, then G.S. 47C-1-107 shall govern.

ARTICLE XV

Process

The following named individual is designated as the person to receive service of process for the Association:

John Hutchings
P. O. Box 1683
Carolina Beach, NC 28428

ARTICLE XVI

Warranties and Representations

The Declarant specifically disclaims any intent to have made any warranty or representation in connection with the condominium, except as specifically set forth herein, and no person shall rely upon any warranty or representation not so specifically made therein. Any estimates of common expenses, taxes, or other charges are only estimates and are subject to change, but no warranty or guaranty is made or intended, nor may one be relied upon.

IN WITNESS WHEREOF, the Declarant has caused this document to be executed and seals set forth, the day and year first above written.

H & S DEVELOPMENT OF WILMINGTON, LLC

By:

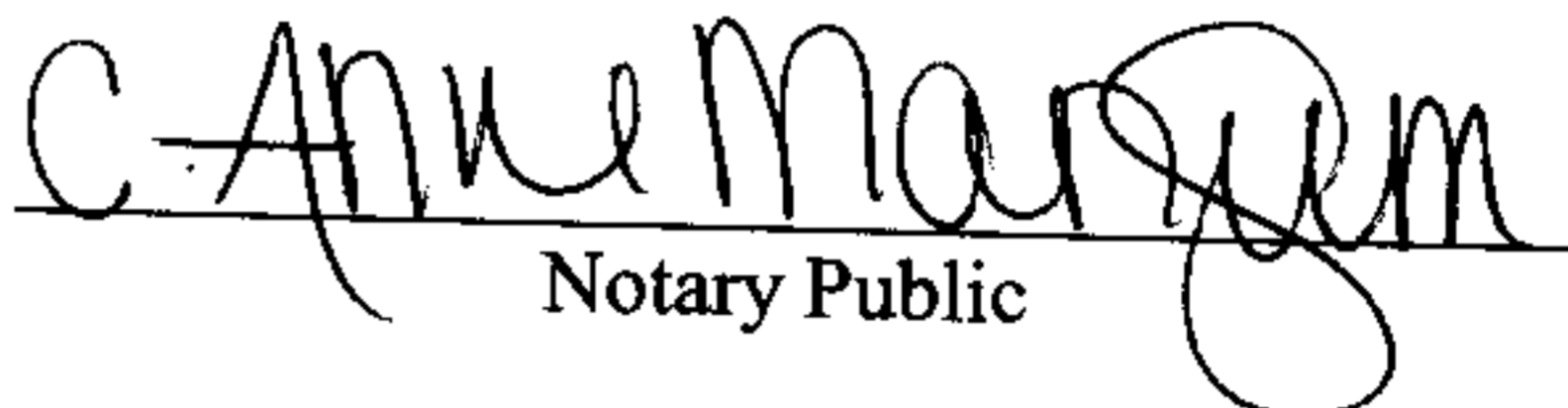

JOHN HUTCHINGS, Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, C. Anne Mangum, a Notary Public for the County of Chatham and the State aforesaid, do hereby certify that **JOHN HUTCHINGS** personally appeared before me this day and acknowledged that he is a Member/Manager of H & S DEVELOPMENT OF WILMINGTON, LLC, a North Carolina Limited Liability Company, and further acknowledged the due execution of the foregoing instrument on behalf of the Limited Liability Company.

Witness my hand and notarial seal, this the 17th day of September, 2007.


Notary Public

My Commission Expires:

04 May 2011

(AFFIX NOTARIAL SEAL)

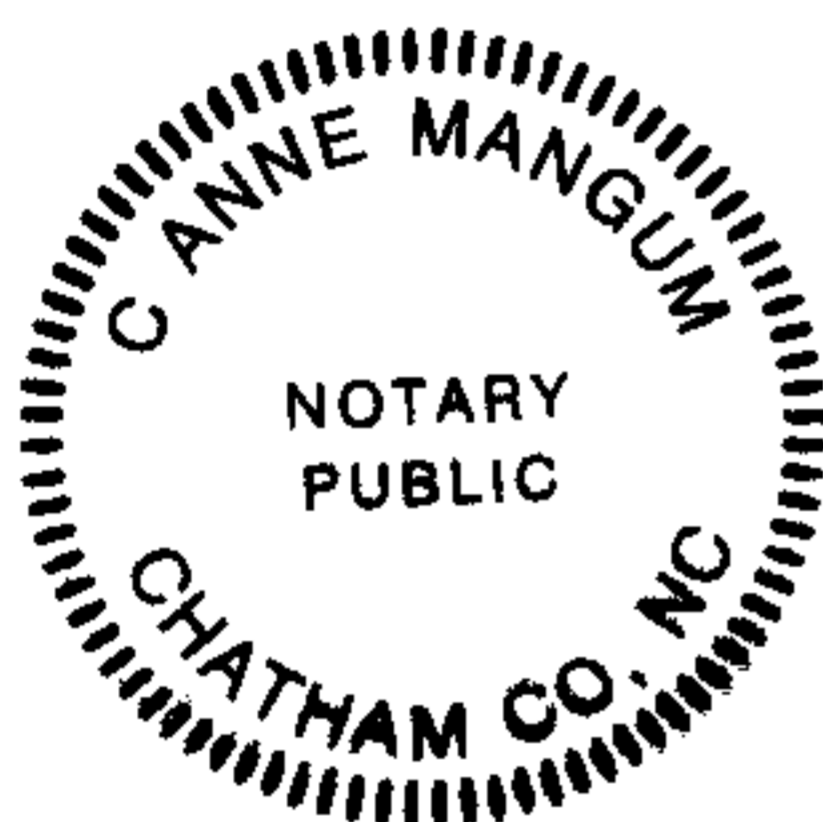


EXHIBIT A

BEGINNING at a point in the Western Right of Way line of NC Highway #132 (200 foot Right of Way), said point being located 963.76 feet as measured Southwardly along the Western Right of Way line on NC Highway #132 from its point of intersection with the centerline of Trombay Drive (60 Right foot Right of Way): running thence, from said beginning point, along the Western Right of Way line of NC Highway #132 South 5 degrees 12 minutes West 633.6 feet to a point; running thence, North 74 degrees 58 minutes 45 seconds West 837.27 feet to a point; running thence, North 5 degrees 12 minutes East 633.6 feet to a point; running thence, South 74 degrees 58 minutes 45 seconds East 837.27 feet to the point of beginning, containing 12 acres, more or less.

SUBJECT to Carolina Power and Light Company's right of way along the front of the above described tract.

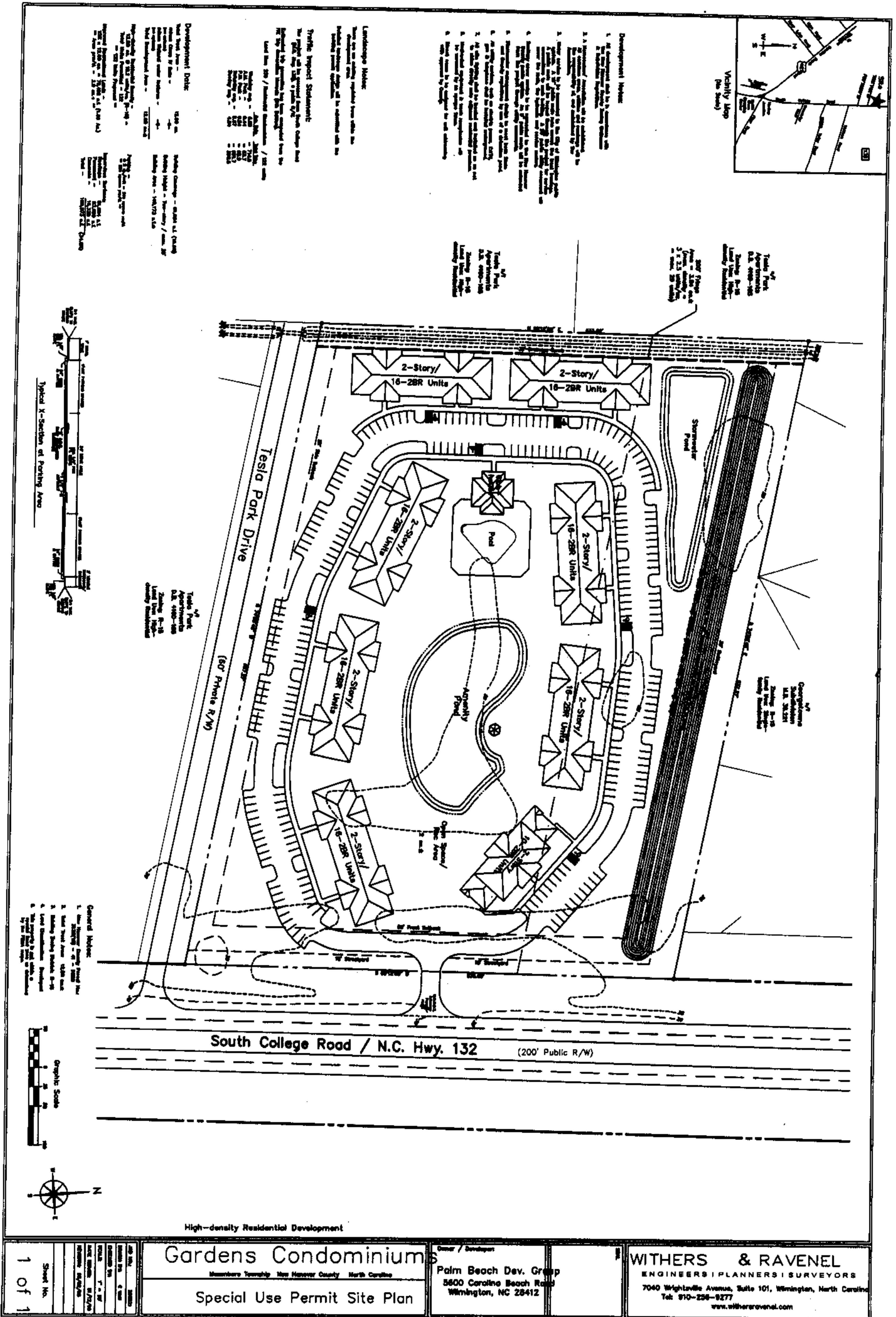
EXHIBIT B

BEGINNING at a point in the Western Right of Way line of NC Highway #132 (200 foot Right of Way), said point being located 963.76 feet as measured Southwardly along the Western Right of Way line on NC Highway #132 from its point of intersection with the centerline of Trombay Drive (60 Right foot Right of Way): running thence, from said beginning point, along the Western Right of Way line of NC Highway #132 South 5 degrees 12 minutes West 633.6 feet to a point; running thence, North 74 degrees 58 minutes 45 seconds West 837.27 feet to a point; running thence, North 5 degrees 12 minutes East 633.6 feet to a point; running thence, South 74 degrees 58 minutes 45 seconds East 837.27 feet to the point of beginning, containing 12 acres, more or less.

SUBJECT to Carolina Power and Light Company's right of way along the front of the above described tract.

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

EXHIBIT C



Development Notes:

1. All development shall be in accordance with the applicable zoning ordinance.
2. All buildings shall be constructed in accordance with the applicable building code.
3. All parking spaces shall be constructed in accordance with the applicable zoning ordinance.
4. All landscaping shall be installed in accordance with the applicable zoning ordinance.
5. All utility lines shall be installed in accordance with the applicable utility codes.
6. All site-specific details shall be in accordance with the applicable zoning ordinance.

Development Details:

Lot Area: 100,000 sq. ft.
 Building Coverage: 25,000 sq. ft.
 Parking Spaces: 100
 Landscaping: 10,000 sq. ft.
 Utility Lines: 10,000 sq. ft.

Typical X-Section of Parking Area

This diagram shows a cross-section of a parking space with a width of 10 feet and a depth of 20 feet. It includes details for the parking surface, curbs, and drainage.

General Notes:

1. The site plan is based on the information provided by the applicant.
2. The site plan is subject to change without notice.
3. The site plan is not a certified survey.
4. The site plan is not a legal document.
5. The site plan is not a guarantee of performance.

Graphic Scale:

1" = 100'

North Arrow:

N

High-density Residential Development

Gardens Condominiums

Members Township, New Hanover County, North Carolina

Special Use Permit Site Plan

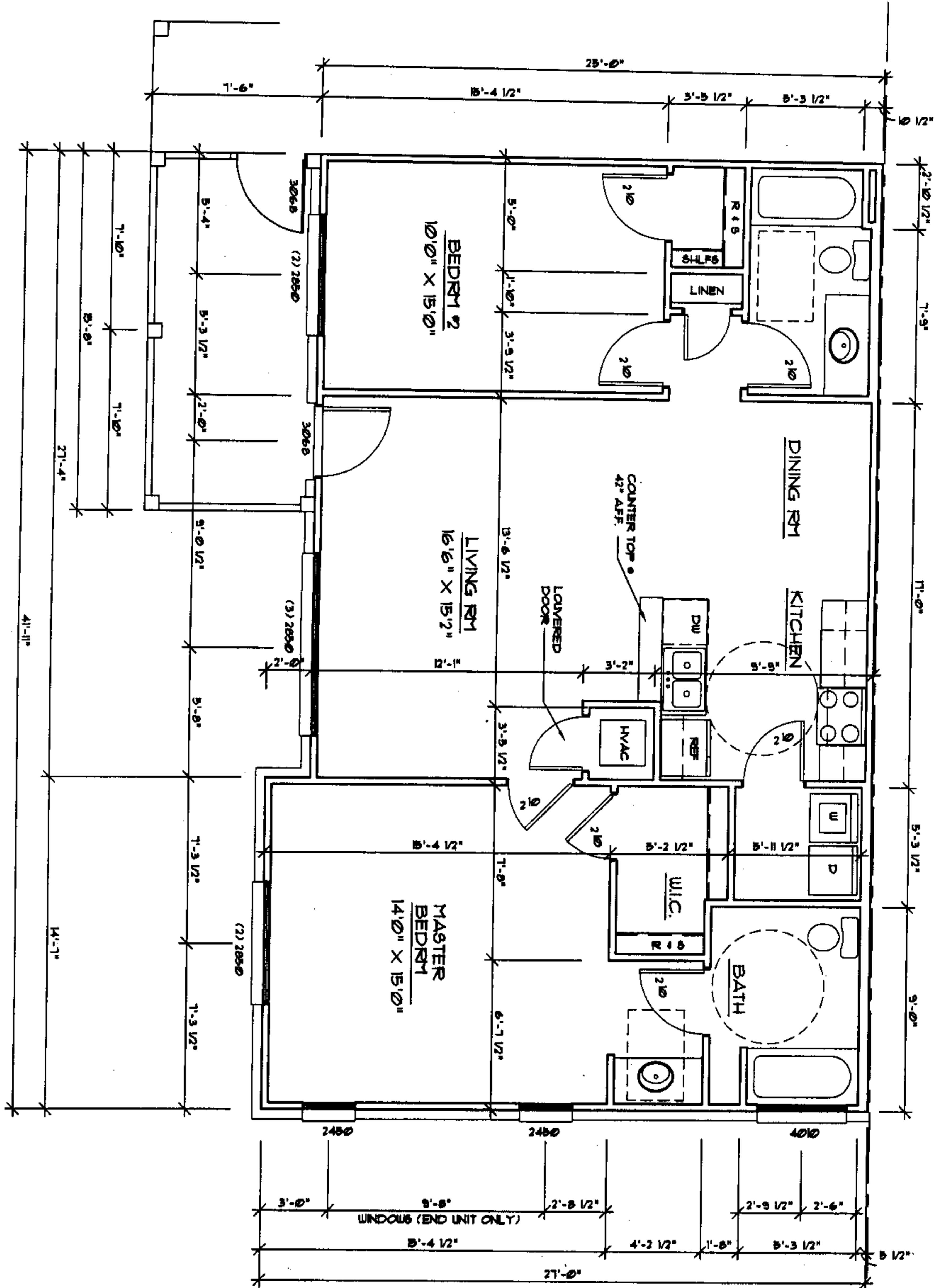
Owner / Developer
Palm Beach Dev. Group
 5800 Carolina Beach Road
 Wilmington, NC 28412

WITHERS & RAVENEL
 ENGINEERS | PLANNERS | SURVEYORS
 7040 Wrightville Avenue, Suite 101, Wilmington, North Carolina
 Tel: 910-256-9277
 www.witherandravenel.com

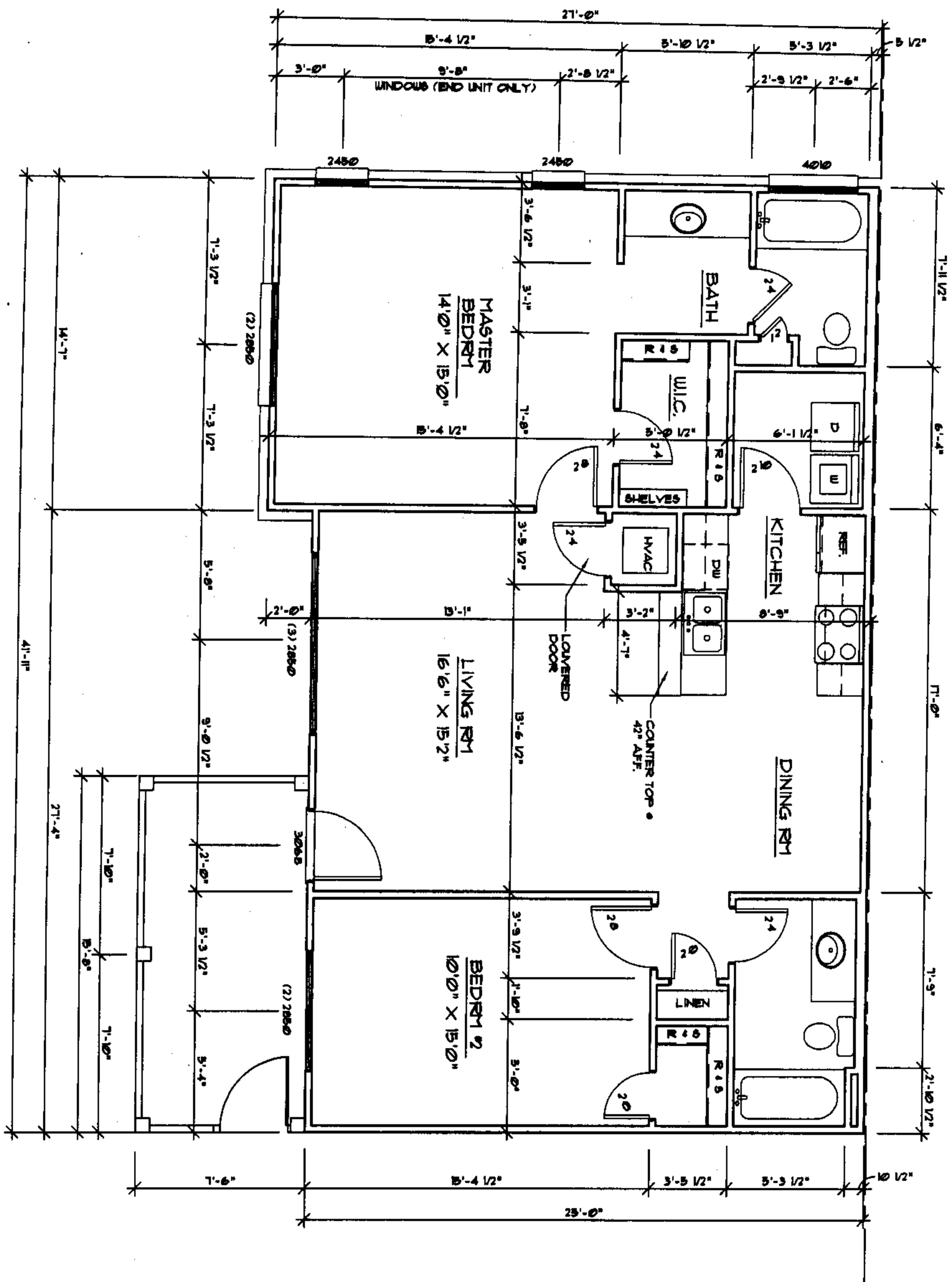
Sheet No.
1 of 1

EXHIBIT D

1
 SCALE: 1/4" = 1'-0"
 1071 SQFT.
TWO BEDROOM UNIT - GROUND FLOOR
FULLY ACCESSIBLE



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



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

2
 SCALE: 1/4" = 1'-0"
 1077 SQFT.
 TWO BEDROOM UNIT - SECOND FLOOR
 END UNITS