

SUNDUNE VILLAGE, A CONDOMINIUM

DORRIS L. FRY
REGISTER OF DEEDS
DARE COUNTY, N.C.

THIS DECLARATION and the exhibits which are attached hereto and made a part hereof by this reference, are made and executed this 8th day of July, 1988, by SUNDUNE ASSOCIATES (the "Declarant"), a Virginia general partnership, (hereinafter referred to as "the Declarant"), for itself, its successors, grantees, and assigns, pursuant to the provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

ARTICLE I

STATEMENT OF SUBMISSION

Section 1.1 Submission of Property

The Declarant is the owner in fee simple of certain real property situated in the Town of Kill Devil Hills, Dare County, North Carolina, and more particularly described in Attachment 1, which Attachment 1 is attached hereto and incorporated herein by reference. It is the intention of the Declarant to submit by this declaration that property described in Attachment 1, (hereinafter referred to as "property"), together with improvements, easements, rights and appurtenances thereunto belong, in accordance with Chapter 47C of the General Statutes of North Carolina, entitled North Carolina Condominium Act (hereinafter referred to as the "Act"), thereby creating a Condominium known as SUNDUNE VILLAGE, A

CONDOMINIUM, (hereinafter referred to as "SVAC"). The Declarant, pursuant to the Act, will establish a plan of condominium unit ownership for SVAC and will divide the property into twenty-three (23) units and does hereby designate all such units for separate unit ownership subject, to the provisions of Section 1.2 herein. The Declarant shall sell and convey condominium units to purchasers subject to the covenants, conditions, obligations, and restrictions herein reserved with the maximum land that may be included in this declaration being that described in Attachment 1 and 2, and the minimum land subject to this declaration being that described in Attachment 1. The property described in Attachment 1 shall also be referred to herein as Phase I of SVAC.

NOW, THEREFORE, the Declarant does hereby publish and declare that all the property described in Attachment 1 subject to this declaration is held, and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved, subject to the following restrictions, covenants, conditions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of the improvement of such property and the division thereof into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to the Declarant, its successors and assigns and any person acquiring and owning an interest in the real property and improvements, their grantees, successors, heirs, administrators, devisees and assigns. Every grantee of any interest in such property by the acceptance of a deed or other conveyance of such interest, whether or not such deed or other conveyance of such interest shall be signed by the grantee or whether or not such person shall otherwise consent in writing,

shall be subject to provisions of the Act, and shall be deemed to have assented to the same.

Section 1.2 Notice of Intention for Future Submission

The Declarant is the owner of that property described in Attachment 2 and it is the intention of the Declarant to submit said property at a later date as Phase II to this declaration and the Act by an amended declaration. The total combined property shall continue being known as SVAC. At such time as Phase II is submitted to this declaration, all unit owners in all phases subject to the declaration shall have the rights and privileges in all the common elements located within all Phases subject to this declaration. Applicable percentages of interest of such unit that is or may become subject to this declaration are determined in accordance with Article V.

Section 1.3 Name

The property shall be known as Sundune Village, A condominium (SVAC).

Section 1.4 Condominium Ordinances

The condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulation (i) prohibiting the condominium form of unit ownership, or (ii) imposing conditions or requirements upon developments under a different form of unit ownership. This statement is made pursuant to Section 47C-1-106 of the Act for the purpose of providing marketable title to the units in the condominium.

Section 1.5 Alterations of units

Subject to the provisions of the by-laws, a unit may be altered pursuant to the provisions of Section 47C-2-113(a) and (b) of the Act.

Section 1.6 Limited Common Elements

The limited common elements serving or designed to serve each unit are hereby allocated solely and exclusively to each such unit. The limited common elements are defined in Section 2.1(15) and are further described in Section 4.3.

Section 1.7 Unit Allocations

The allocations to each Unit of a percentage of undivided interest in the common elements, of votes in the Association, and of a percentage of the common expenses, are as stated in Section 5.1.

Section 1.8 Encumbrances

The liens, defects and encumbrances on the property to which the rights of unit owners and occupants are hereby made subject are set out in Exhibit E of the Public Offering Statement.

Section 1.9 Reservation of Special Declarant Rights/Declarant's Right to Add Additional Real Estate.

The Declarant hereby reserves all special rights, including the right to additional real estate described in Attachment 2 to be added to SVAC as Phase II. The Declarant expressly reserves the right until the fifth

anniversary of the recordation of this declaration to expand SVAC to include Phase II as set forth in Attachment 2.

ARTICLE II

DEFINITIONS

Section 2.1 Defined Terms

As provided in Section 47C-1-103 of the North Carolina Condominium Act, terms that are not otherwise defined herein shall have the meaning provided therein. The following words, when used in this declaration, shall have the following meanings:

1. "Act" means the North Carolina Condominium Act, Chapter 47C, of the North Carolina General Statutes.
2. "Additional Real Estate". The real estate described in Exhibit A-1 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.
3. "Assessment" means an owner's share of the common expenses assessed against such owner and his unit from time to time by SVAC, in the manner hereinafter provided.
4. "Association" means SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION, INC., a non-profit organization organized under Chapter 55A of the North Carolina General Statutes.
5. "Board" or "Board of Directors" means the Board of Directors

of the SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION, INC., a corporation not for profit under the laws of the State of North Carolina, created hereunder. The "Director" or "Directors" means a member or members of the Board.

6. "By-Laws" means the by-laws for the administration of SVAC, contained in Exhibit C, attached hereto and made a part hereof by this reference.

7. "Common Elements" means all portions of a condominium other than the units. Limited common elements are common elements.

8. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

9. "Common Expenses Liability" means the liability for common expenses allocated to each unit pursuant to Section 47C-2-107.

10. "Condominium" means the Condominium created by this declaration.

11. "The Declarant" means the Developer and (i) any other person who has executed this Declaration, or who hereafter executes an amendment to this Declaration to add additional real estate, except security holders and except persons whose interests in the property will not be conveyed to unit owners, and (ii) any person who succeeds to any special declarant rights pursuant to Section 47C-3-104 of the Act.

12. "The Declarant Control Period" means the period commencing on the date hereof and continuing until the earlier of (i) the date five (5) years after the date of the first conveyance of a unit to a unit owner other than the Declarant, or (ii) the date upon which the Declarant surrenders control of the condominium, or (iii) the date one hundred twenty (120) days

after the Declarant has conveyed seventy-five percent (75%) of the unit to unit owners other than Declarant.

13. "Declaration" means this declaration creating unit ownership and establishing by-laws with covenants, conditions and restrictions for SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION, INC..

14. "Floor Plans". The floor plans of the condominium recorded with, and by the Act made a part of this Declaration, as the same may hereafter be amended.

15. "Limited Common Elements" means a portion of the common elements allocated by the declaration or by the operation of Section 47C-2 102(2) or (4) for the exclusive use of one or more but fewer than all of the units and also any limited common elements specifically allocated to Units.

16. "Limited Common Expenses" means expenses separately assessed against more than one but less than all the condominium units generally in accordance with use of said services.

17. "Member" means a unit owner.

18. "Mortgage" means any deed of trust, mortgage, security agreement, and financing statement of any and all other similar instruments given to secure the payment of a debt, by granting a security interest in a unit, its fixtures or contents.

19. "Mortgagee" means any secured party under a security agreement or mortgage, and the beneficiary under or a holder of a deed of trust.

20. "Occupant". Any person or persons in possession of a unit, including unit owners, the family members, lessees, guests and invitees of

such person or persons, and family members, guests and invitees of such lessees.

21. "Person" means any individual, corporation, partnership, association, trustee, fiduciary, or other legal entity, and shall mean the plural or combination of the same where applicable.

22. "Phase I" means all that land described in Attachment 1 which has been submitted to this declaration.

23. "Phase II" means that portion of land described in Attachment 2, which the Declarant has expressed intentions to add at a future date to SVAC, and which represents the maximum amount of land together with Phase I which will be subjected to this declaration.

24. "Plans" means the plans of the building, units and site plan as set forth by _____
 _____ dated _____, 1988
 consisting of _____ pages and filed in Unit Ownership Book 3, Sheets _____, in the office of the Register of Deeds of Dare County, North Carolina and shown as Attachment 3 to this Declaration.

25. "Property" means the real estate described in Attachment 1, and the real estate described in Attachment 2, if added by the Declarant pursuant hereto, 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.

26. "Security for an Obligation". The vendor's interest in a contract for deed, mortgagee's interest in a mortgage, trustee's interest in

a deed of trust, purchaser's interest under a sheriff's certificate of sale during the period of redemption, or the holder's interest in a lien.

27. "Security Holder". Any person owning a Security for an Obligation in a Unit.

28. "Special Declarant Rights" means those rights reserved for the benefit of the Declarant to complete improvements indicated on the plats and plans filed with the declaration and to exercise developmental rights of maintaining sales offices, management offices, and signs advertising SVAC; to operate a model unit, 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 as referred to herein as Phase II; to make SVAC, a part of a larger condominium by adding Phase II; and to appoint or remove any officer of the Association or any Board member during any period of the Declarant Control Period.

29. "Supplementary Declaration" or "Amended Declaration" means the document filed by the Declarant to include Phase II within the condominium property, in the manner provided hereinafter.

30. "Unit" means a physical portion of the condominium, whether or not contained solely or partially within a building designated for separate unit ownership or occupancy, the boundaries of which are described pursuant to Section 47C-2-105(a)(5) of the Act.

31. "Unit Boundaries" means the boundaries of each unit, both as to vertical and horizontal planes, as shown on the floor plans, including the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the unit; the undecorated surfaces

of the ceiling facing the interior of the unit; the topmost surfaces of the subflooring; all decoration such as interior panelling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof; and all spaces, interior partitions and other fixtures and improvements within such boundaries.

32. "Unit Owner" means the Declarant or other person or persons who own a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include any person or persons having an interest in a unit solely as security for an obligation.

ARTICLE III

BUILDINGS ON THE LAND AND UNIT BOUNDARIES OF PHASE I

ADDITIONAL LAND-PHASE II

Section 3.1 Location and Dimensions of the Building

The location and dimensions of the building on the land for Phase I are depicted on the site plat prepared by _____

 dated _____ 198__, said plat being the first page of _____ pages filed in Unit Ownership Book 3, Sheets _____ - _____, in the office of the Register of Deeds of Dare County, North Carolina and shown as Attachment 3 to this Declaration.

Section 3.2 Brief Description of Building and Improvements for Phase I

SVAC shall contain a minimum of two and a maximum of four three story buildings, built of wood-frame construction upon raised pilings in Phase I. The first three buildings shall be constructed parallel to Martin Street and the fourth building shall be constructed parallel to Memorial Avenue. The buildings will be constructed to meet or exceed minimum standards established by the United States Department of Housing and Urban Development (and employed by the Federal National Mortgage Association) and local building and zoning laws.

Section 3.3 Units for Phase I

The location of units within the building and their dimensions are shown on the "plans", as set forth by _____

_____ dated, _____, 198__ consisting of _____ pages and filed in Unit Ownership Book 3 _____ - _____, in the office of the Register of Deeds of Dare County, North Carolina, and shown as Attachment 3 to this Declaration. All units, identifying numbers, location, and type are fully depicted on the plats and plans of the aforereferenced. The "size" of each unit is the total number of square feet contained therein determined by reference to the dimensions shown on the plats and plans to which reference should be made for a more particular description.

Phase I of the Condominium will be comprised of three general types of one-bedroom or two-bedroom units. Unit Nos. 101, 102, 111, 112, 113, 114,

202, 212, 302, 312 and 314 will be one-story, one-bedroom units with approximately 650 square feet of living space. These units will contain a living/dining room, kitchen, bedroom and bath. However, Unit Nos. 111, 112, 113, 114, 212, 214, 312 and 314 need not be built. Unit Nos. 103-110, 115, 116, 203-210, 215, 216, 303-310, 315 and 316 will be one-story, two-bedroom units with approximately 960 square feet of living space. These units will contain a living/dining room, kitchen, two bedrooms and two baths. However, Unit Nos. 109, 110, 115, 116, 209, 210, 215, 216, 309, 310, 315 and 316 need not be built. Unit Nos. 201, 211 and 213 will be two-story, two bedroom units with approximately 1060 square feet of living space. These units will also contain a living/dining room, kitchen, two bedrooms and two baths. However, Unit Nos. 211 and 213 need not be built.

Section 3.4 Unit Boundaries for Phase I

Each unit shall include all the space within the boundaries thereof and all those items set forth in Section 47C-2-102 of the Act. A more particular description of the unit boundaries is as follows:

(a) Upper and Lower (horizontal) Boundaries: The upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the vertical (parametric) boundaries:

(1) Upper Boundary: The horizontal plane of the under side of the wood floor joists or the roof trusses or rafters where there is not another unit above (to include the loft and vaulted ceiling area).

(2) Lower Boundary: The horizontal plane of the top surface of the undecorated gypsum concrete floor underlayment.

(b) Vertical (parametric) Boundaries: The vertical boundaries of the unit shall be the vertical plane which includes the back surface of the plasterboard of all walls bounding the unit extended to intersections with each other and with the upper and lower boundaries.

(c) Any portion of a utility system or other apparatus serving more than one unit (e.g., pipes, conduits, ducts) which is partially within and partially without the unit, is part of the common elements. Any portion of a utility system serving only one unit which is located outside the unit is a limited common element appurtenant to that unit.

(d) Private balconies are bound horizontally from the top of wood decking to the underside of the balcony framing above. Private balconies are bound vertically from the outside face of the rail to the exterior face of the building.

(e) Consistent with the intent of Section 47C-2-102 of the Act, it is the intent hereof that a unit will include all interior drywall, panelling and molding, any surface finish, or wallpaper, and all finished flooring, such as vinyl or ceramic tile floor covering, matting and carpeting.

Section 3.5 Units as Built for Phase I

For a more particular description of the units as built, see that filing of the Unit Ownership Act, Book 3 Sheets _____ - _____, in the office of the Register of Deeds of Dare County, North Carolina, which description is controlling over any discrepancies with the units as described herein.

Section 3.6 Maintenance Responsibilities for Phase I

Notwithstanding the unit ownership of the various portions of the common elements and the units by virtue of the foregoing boundary description, the provisions of the By-Laws shall govern the division of maintenance and repair responsibilities between the unit owner and the Association.

Section 3.7 Relocation of Unit Boundaries and Subdivision of Units

Relocation of boundaries between units and subdivision of units is permitted subject to compliance with the provisions of Article IX of the By-Laws and Section 47C-2-113(a) & (b) of the Act.

Section 3.8 Additional Real Estate, Phase II

The Declarant has reserved the right to add that property described in Attachment 2 as Phase II of SVAC. The condominium units of the Phase II will be substantially similar in style and design as those condominium units of Phase I. Therefore, the brief description of building and improvements set forth in Section 3.2 will be similar to the additional units for Phase II.

The unit boundaries for the units in Phase II will be similar to the unit boundaries as described in Section 3.4 for Phase I, Sections 3.6 "Maintenance Responsibilities" and 3.7 "Relocation of Unit Boundaries and Subdivision of Units" will also be applicable to the units of Phase II.

ARTICLE IV
COMMON ELEMENTS

Section 4.1 Location of Common Elements

Locations of the common elements to which each unit has direct access are shown on the "plans"; pursuant to Section 47C-2-109(b) of the Act and include all paved areas not specifically designated as Limited Common Elements, swimming pool, pool decks, putting green, landscaped areas, stairs and corridors, and ground level showers.

Section 4.2 Use of Common Elements

Each unit owner shall have the right to use the common elements in accordance with the purpose for which they are intended without hindering the exercise of or encroaching upon the rights of other unit owners. The Board shall, if any question arises, determine the use of the common elements.

In accordance with the provisions of this declaration and by-laws and reasonable rules and regulations of the Board, any unit owner may delegate the right to use common elements to immediate family living in the unit, to a limited number of guests or to tenants who reside in the condominium unit.

Section 4.3 Limited Common Elements

A unit owner shall be entitled to the exclusive use, or use with others necessarily served thereby, of the limited common elements appurtenant to such unit and so designated in the plans. Limited common elements shall not

be construed or interpreted to be separate and apart from the common elements in general, being limited only with respect to the reserved use thereof by the unit or units served. Limited common elements shall include all doors, windows and other closures, ground level parking spaces, and if appropriate, all balconies, storage space, fireplaces and flues.

Exclusive use of the limited common elements may be delegated by a unit owner to immediate family members, guest, or tenants who reside in the unit. Unit owners may place plants, furniture, or other similar items within the limited common elements adjacent or appurtenant to the unit, subject to reasonable rules and regulations duly adopted by the Board with respect thereto. No unit owner shall build or construct any type of storage or workshop facility or similar structure within the limited common elements unless prior approval is obtained from the Board of Directors.

Section 4.4 Additional Limited Common Elements

The Board shall have the right to approve, from time to time, changes in existing limited common elements, and to approve additional or new limited common elements, provided that such additional limited common elements shall be immediately adjacent to the unit to which it shall appertain, subject to approval of two-thirds (2/3) of the votes present and voting at any regularly scheduled meeting of the Association or at any special meeting of the Association.

ARTICLE V

ALLOCATION OF COMMON ELEMENTS, COMMON INTERESTS,
COMMON VOTES AND COMMON EXPENSE LIABILITIES

Section 5.1 Allocation of Common Elements, Common Interests, Common Votes and Common Expense Liabilities.

The allocations to each unit of a percentage of undivided interest in the common elements, of a percentage of the common expenses, and of votes in the Association are as hereinafter set forth. The first table reflects the allocations if only the first two buildings (23 units) are constructed. The second table reflects the allocations if the four buildings comprising Phase I (45 units) are constructed.

TABLE I (23 UNITS)

<u>Unit No.</u>	<u>Percentage of Undivided Interest in Common Elements</u>	<u>Percent of Common Expenses</u>	<u>Votes In Association</u>
101	3.104%	3.104%	.71/23
102	3.104%	3.104%	.71/23
103	4.585%	4.585%	1.05/23
104	4.585%	4.585%	1.05/23
105	4.585%	4.585%	1.05/23
106	4.585%	4.585%	1.05/23
107	4.585%	4.585%	1.05/23
108	4.585%	4.585%	1.05/23
201	5.062%	5.062%	1.26/23
202	3.104%	3.104%	.71/23
203	4.585%	4.585%	1.05/23
204	4.585%	4.585%	1.05/23
205	4.585%	4.585%	1.05/23
206	4.585%	4.585%	1.05/23
207	4.585%	4.585%	1.05/23
208	4.585%	4.585%	1.05/23
302	3.104%	3.104%	.71/23
303	4.585%	4.585%	1.05/23
304	4.585%	4.585%	1.05/23

305	4.585%	4.585%	1.05/23
306	4.585%	4.585%	1.05/23
307	4.585%	4.585%	1.05/23
308	4.585%	4.585%	1.05/23

TABLE II (45 UNITS)

The table below reflects the allocations to each unit of a percentage of undivided interest in the common elements, a percentage of common expenses and a vote in the Association if only the units in Phase I are constructed.

<u>Unit No</u>	<u>Percentage of undivided interest in common elements</u>	<u>Percentage of common expenses</u>	<u>Votes in Association</u>
101	1.634%	1.634%	.73/45
102	1.634%	1.634%	.73/45
103	2.413%	2.413%	1.09/45
104	2.413%	2.413%	1.09/45
105	2.413%	2.413%	1.09/45
106	2.413%	2.413%	1.09/45
107	2.413%	2.413%	1.09/45
108	2.413%	2.413%	1.09/45
109 (need not be built)	2.413%	2.413%	1.09/45
110 (need not be built)	2.413%	2.413%	1.09/45
111 (need not be built)	1.634%	1.634%	.73/45
112 (need not be built)	1.634%	1.634%	.73/45
113 (need not be built)	1.634%	1.634%	.73/45
114 (need not be built)	1.634%	1.634%	.73/45
115 (need not be built)	2.413%	2.413%	1.09/45
116 (need not be built)	2.413%	2.413%	1.09/45
201	2.685%	2.685%	1.18/45
202	1.634%	1.634%	.73/45
203	2.413%	2.413%	1.09/45
204	2.413%	2.413%	1.09/45
205	2.413%	2.413%	1.09/45
206	2.413%	2.413%	1.09/45
207	2.413%	2.413%	1.09/45
208	2.413%	2.413%	1.09/45
209 (need not be built)	2.413%	2.413%	1.09/45
210 (need not be built)	2.413%	2.413%	1.09/45

211 (need not be built)	2.685%	2.685%	1.18/45
212 (need not be built)	1.634%	1.634%	.73/45
213 (need not be built)	2.685%	2.685%	1.18/45
214 (need not be built)	1.634%	1.634%	.73/45
215 (need not be built)	2.413%	2.413%	1.09/45
216 (need not be built)	2.413%	2.413%	1.09/45
302	1.634%	1.634%	.73/45
303	2.413%	2.413%	1.09/45
304	2.413%	2.413%	1.09/45
305	2.413%	2.413%	1.09/45
306	2.413%	2.413%	1.09/45
307	2.413%	2.413%	1.09/45
308	2.413%	2.413%	1.09/45
309 (need not be built)	2.413%	2.413%	1.09/45
310 (need not be built)	2.413%	2.413%	1.09/45
312 (need not be built)	1.634%	1.634%	.73/45
314 (need not be built)	1.634%	1.634%	.73/45
315 (need not be built)	2.413%	2.413%	1.09/45
316 (need not be built)	2.413%	2.413%	1.09/45

Section 5.2 Formula Used to Establish Allocations.

The allocation of undivided interest in the common elements, the common expenses and the votes in the Association are based on the fraction (expressed as a percentage) formed by dividing the area of each individual unit by the total area of all the units. This applies to Phase I and also to Phase II in the event that Phase II is submitted.

Section 5.3 Consent to Allocations as Set Forth in Sections 5.1 and 5.2.

By acceptance of a deed of a condominium in SVAC, each unit owner for himself, his heirs, successors and assigns, agrees and consents that the Declarant, without need for further consent or joinder of any unit owner, may add Phase II as described in Exhibit B to SVAC, upon the recording by the Declarant of a supplementary declaration.

Section 5.4 No Obligations.

Nothing contained in this declaration shall be deemed to impose upon the Declarant or its successors or assigns any obligation of any nature to build, construct, or provide any building except for the first two buildings located in Phase I.

ARTICLE VI

EASEMENTS

Section 6.1 Use and Enjoyment

Every unit owner, the unit owner's family living in the unit, tenants and permitted guests shall have a right and easement of use and enjoyment in and to the common elements, (including the right of access, ingress, and egress to and from his unit over those portions of the property designated for such purposes), and such easement shall be appurtenant to and shall pass with the title to every unit, subject to the following provisions:

(a) The right of the Association to control the use and enjoyment thereof as provided in this declaration, and in the duly adopted rules and regulations of the Association, which shall include, but not be limited to, the right of the Board to limit use and enjoyment thereof to the unit owners, and their respective families living in the unit, tenants, and guests, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a unit owner, his family, tenants, and guests;

(b) The right of the Association to limit the number of guest of unit owners; and

“(c) The right of the Association to suspend the voting rights and rights to use the recreational facilities by a unit owner, his tenants and guests, for any period of time during which an assessment against his unit remains unpaid or any separate charge incurred by such unit owner for use of the recreational facilities remains unpaid, or for infraction of its published rules and regulations.

Section 6.2 Maintenance and Repair

There shall be an easement through the units and the common elements for the installation, maintenance, repair and replacement of units and the common elements. Use of this easement shall be only during normal business hours, except that access may be had at any time in case of emergency.

Section 6.3 Structural Support

Every portion of a unit or the common elements which contributes to the structural support of another unit shall be burdened with an easement of structural support.

Section 6.4 Encroachments

An easement for encroachment shall be granted pursuant to the provisions of Section 47C-2-114 of the Act.

Section 6.5 Utilities

There shall be a general easement upon, across, above and under all the property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, the construction,

operation and maintenance of all utility lines, pipes, sewage lines, septic tanks, waste treatment facilities, pumps, drain lines, and facilities related thereto, water, telephone, electricity, cable television, which said utilities shall inure to the benefit of all unit owners. Should any party furnishing any service covered by this general easement require a specific easement by separate, recordable document, the Declarant, or the Board of Directors of the Association, as the case may be, shall have the right to grant such easement under the terms hereof.

Section 6.6 INGRESS AND EGRESS

A non-exclusive easement for ingress and egress is hereby created for pedestrian traffic over, through and across sidewalks, paths, walks, driveways, passageways and lanes as the same, from time to time, may exist upon the Common Elements; and for vehicular traffic over, through and across such portions of the Common Elements as, from time to time, may be paved and intended for such purposes.

Section 6.7 Easement to Facilitate Sales

The Declarant reserves the right to use any units owned by the Declarant as models, management offices or sales offices until such time as the Declarant conveys the title thereto to unit owners. The Declarant reserves the right to relocate the same from time to time within the property; upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the property such advertising signs as may

location on the property and may be relocated or removed, all at the sole discretion of the Declarant.

Section 6.8 The Declarants' Right to Grant Easements

The Declarant shall have the right, prior to the termination of the Declarant Control Period, to grant and reserve easements and rights-of-way through, under, over and across the property shown in Attachment 1 for construction purposes and for the installation, maintenance and inspection of the lines and appurtenances of public water, sewer, drainage, electricity, telephone, cable television and other utilities. The Declarant also reserves the right, prior to the termination of the Declarant Control Period, to grant and reserve any other easements and rights-of-way required to facilitate sharing of services between the condominium and any portion of the property not then part of the condominium; provided, however, that the unit owners of such other portions bear a pro-rata share of the cost thereof in proportion to the relative number of dwelling units on such portion and on the condominium. The Declarant expressly reserves the right-of-way and easement across all properties, roads, common areas, facilities, limited common areas and facilities necessary for the construction of Phase I of SVAC.

Section 6.9 Easements To Run With Land.

All easements and rights described in this Article VI are appurtenant easements running with the land, and except as otherwise expressly provided

in this Article VI shall be perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, Unit Owners, Occupants, Security Holders and any other person having any interest in the condominium or any part of any thereof. The condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article VI, whether or not specifically mentioned in any such conveyance or encumbrance.

ARTICLE VII

MAINTENANCE, REPAIR AND REPLACEMENT

Section 7.1 Responsibilities the Association.

The Association shall be responsible for the maintenance, repair and replacement (unless, if in the opinion of not less than eighty percent (80%) of the Board of Directors such expense was necessitated by the negligence, misuse or neglect of a unit owner) of all of the common elements, the cost of which shall be charged to all unit owners as a common expense.

Section 7.2 Responsibility of the Unit Owner.

Every owner shall perform promptly all maintenance and repair work within his condominium unit which, if omitted would affect the condominium, either in its entirety or in part belonging to other owners, every owner being expressly responsible for engender. The owner of each condominium 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 condominium unit. Such owner shall further be responsible and liable for the maintenance, repair, and replacement of any item for which the owner of a condominium 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 condominium 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. The owner of a condominium unit who has exclusive use of any limited common element shall maintain such at his own expense.

Section 7.3 Manner of Repair and Replacement.

All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with compatible building materials and equipment. The method of approving payment vouchers for all repairs and replacements shall be determined by the Board of Directors.

Section 7.4 Right of Entry

The Association, and any person authorized by the Association, may enter any unit or any of the limited common elements in case of any emergency or dangerous condition or situation originating in or threatening that unit or any of the limited common elements. The Association, and any person authorized by the Association, after reasonable notice to a unit owner or occupant, may enter that unit or any of the limited common elements for the purposes of performing any of the Association's duties or obligations or exercising any of the Association's powers under the Act, this Declaration or By-laws with respect to that or any other unit, any limited common elements, or the common elements. The Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered unit, and the cost thereof shall be a common expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the unit owner and occupant of the entered unit or any portion of the limited common elements allocated to the unit owner.

ARTICLE VIII

RESTRICTIONS ON USE OF UNITS AND COMMON ELEMENTS; RULES AND REGULATIONS

Section 8.1 Restrictions.

Each unit and the common elements shall be occupied and used as follows:

- (a) Nothing shall be done or kept in any unit or in the common

elements which will increase the rate of insurance for the property or any part thereof applicable for residential use. No unit owner shall permit anything to be done or kept in his unit or in the common elements which will result in the cancellation of insurance on the property or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste shall be committed on the common elements.

(b) The common elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the units for residential purposes only.

(c) No "For Sale" or "For Rent" signs or other window displays or advertising shall be maintained or permitted by any unit owner or occupant on any part of the condominium, except for locations designated by the Board of Directors. However, the Declarant may maintain signs on the common elements advertising the condominiums until all of the units have been conveyed to unit owners other than the Declarant.

(d) No trailers, campers, mobile-homes, recreational vehicles, and other large vehicles may be parked on the property. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any of the common elements. Vehicle repairs other than ordinary washing and waxing are not permitted on the property.

(e) The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within the unit or upon the common elements, except that the keeping of small, orderly domestic pets (e.g., dogs, cats) not to exceed three animals per unit is permitted, subject to the Rules and

Regulations adopted by the Association; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon ten (10) days written notice from the Board of Directors. Such pets shall not be permitted upon the common elements unless accompanied by an adult and unless carried or leashed. Pets shall not be permitted on the common elements designated as recreational facilities. Any unit owner who keeps or maintains any pet upon any portion of the property shall be deemed to have indemnified and agreed to hold the Association, each unit owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the condominium.

(f) No person shall do any act to modify or change the landscaping of the common elements including the planting or removing of any shrubbery or trees, without the express written authority of the Association. The Association, at its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the property.

(g) Each unit owner shall be responsible for maintaining a minimum heat of fifty-five (55) degrees in his unit for the purpose of preventing the freezing of water pipes and resulting damage therefrom. If the unit owner is a non-resident during the winter months, then said unit owner shall be responsible for appointing someone to make periodic

inspections for the purpose of insuring that the heating unit within said unit is properly working and maintaining a minimum heat temperature of fifty-five (55) degrees.

(h) No person shall obstruct, alter or in any way modify the established drainage from, on, or over, any unit, common element, or limited common element.

(i) Refuse and bagged garbage shall be deposited only in the area provided therefor.

Section 8.2 Use of Recreational Facilities.

The Use of the recreational facilities shall be in accordance with the Rules and Regulations adopted by the Association.

Section 8.3 Changes to Rules and Regulations.

Each unit and the common elements shall be occupied and used in compliance with the Rules and Regulations which may be promulgated by the Board of Directors and changed by the Association upon approval of two-thirds (2/3) of the votes present and voting at any regularly scheduled meeting of the Association or at a special meeting of the Association. Copies of the Rules and Regulations shall be furnished by the Board of Directors to each unit owner.

ARTICLE IX

INSURANCE

Section 9.1 Authority to Purchase; Notice.

Except as otherwise provided in Section 9.5, all insurance policies relating to the property shall be purchased by the Board of Directors prior to the conveyance of a condominium unit to any party other than Declarant. The Board of Directors shall not be liable for failure to obtain any coverages required by this Article IX or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available only at a demonstrably unreasonable cost.. The Board of Directors shall promptly furnish to each unit owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association.

Section 9.2 Casualty Insurance.

The Association shall maintain casualty insurance upon the property in the name of, and the proceeds thereof shall be payable to, the Association, as trustee for all unit owners and security holders as their interests may appear, and be disbursed pursuant to the Act. Such insurance shall be in an amount equal to not less than the full insurable value of the property on a replacement cost basis and shall insure against such risks and contain such provisions as the Board from time to time shall determine, but at a minimum shall conform in all respects to the requirements of the Act, and shall

provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making a cash settlement, such option shall not be exercisable if such restoration is prohibited pursuant to Section 47C-3-112(g) of the Act.

Section 9.3 Public Liability Insurance.

The Association shall maintain public liability insurance for the benefit of unit owners, occupants and holders of a vendor's interest in a contract for deed on a unit, the Association, the Board, the manager, if any, the Declarant, and their respective officers, directors, agents and employees, in such amounts and with such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least One Million Dollars (\$1,000,000) per occurrence for death, bodily injury and property damage. Said insurance shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefited parties against such liability arising out of or in connection with the use, ownership or maintenance of the common elements, and the streets, sidewalks and public spaces adjoining the condominium; and insure the Association, the Board, the manager, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the units.

Section 9.4 Other Insurance.

The Association may procure such other insurance including workmen's compensation insurance, as it may from time to time deem appropriate to

protect the Association or the Unit Owners. If at least one unit is subject to FNMA/FHLMC financing, the Association shall obtain and keep in force such insurance as the standards for FNMA/FHLMC approved loans shall require from time to time.

Section 9.5 Insurance Trustee.

The Board may engage, and pay as a common expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the Board shall determine, consistent with the provisions of the Act and this declaration.

Section 9.6 Individual Policy for Unit Owners.

Each unit owner may obtain insurance, at his own expense, affording personal property, additional living expense, condominium assessment, personal liability, and any other coverage obtainable, to the extent and in the amounts such unit owner deems necessary to protect his own interest; provided that any such insurance shall contain waivers and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to the proration of insurance purchased by a unit owner under this Section, such unit owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assigns the proceeds of his insurance, to the extent of such reduction, to the Association.

ARTICLE X

REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

Section 10.1 When Repair and Reconstruction are Required.

Except as otherwise provided in Section 10.4, in the event of damage to or destruction of all or any part of the building as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the building, including any damaged units, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the unit owners in the units. Notwithstanding the foregoing, each unit owner shall have the right to supervise the interior redecorating of his own unit.

Section 10.2 Procedure for Reconstruction and Repair.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of the building, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion (including any damaged units and any floor coverings and kitchen and bathroom fixtures and appliances initially installed by Declarant, but not including any other furniture, furnishings, fixtures or equipment installed by the unit owner in the unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors as Insurance Trustee determines to be necessary.

(b) Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon

completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a common expense and a special assessment therefore shall be levied.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the property, subject to any modifications required by changes in applicable government regulations, and using compatible building materials and technology to the extent feasible.

Section 10.3 Disbursements of Construction Funds.

(a) The proceeds of insurance collected on account of casualty, and the sums received by the Board of Directors as Insurance Trustee from collections of assessments against unit owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(1) If the estimated cost of reconstruction and repair is less than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, that upon request of twenty percent of the Mortgagees (based upon one vote for each mortgage owned), such fund shall be disbursed pursuant to paragraph (2).

(2) If the estimated cost of reconstruction and repair is Fifty Thousand Dollars (\$50,000.00) or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified

to practice in North Carolina and employed by the Board of Directors as Insurance Trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(b) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance. After the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all unit owners in proportion to their percentage interests and shall be distributed in accordance with the provisions of Section 3-113 of the Act.

(c) Common Elements. When the damage is to both common elements and units, the insurance proceeds shall be applied first to the cost of repairing those portions of the common elements which enclose and service the units, then to the cost of repairing the other common elements and thereafter to the cost of repairing the units.

(d) Certificate. The Board of Directors as Insurance Trustee shall be entitled to rely upon a certificate executed by the President or Vice President, and the Secretary certifying:

- [1] Whether the damaged property is required to be reconstructed and repaired.
- [2] The name of the payee and the amount to be paid with respect to disbursement from any construction fund whether surplus funds to be distributed are less than the assessments paid by the unit owners; and
- [3] All other matters concerning the holding and disbursing of any construction fund.

Any such certificate shall be delivered to the Board of Directors as Insurance Trustee promptly after request.

Section 10.4 When Reconstruction is Not Required.

In the event the Board of Directors elects not to repair insubstantial damage to the common elements, the Board of Directors shall remove all remains of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the condominium and the balance of any insurance proceeds received on account of such damage shall be distributed among all unit owners in proportion to their respective percent interest. If the condominium shall be terminated pursuant to the "Act", the net assets of the condominium together with the net proceeds of insurance policies, if any, shall be divided by the Board of Directors as Insurance Trustee among all unit owners in proportion to their respective

percentage interests, after first paying out of the share of each unit owner, to the extent sufficient therefore, the amount of any unpaid liens on his unit in order of priority of such liens.

ARTICLE XI

ADMINISTRATION OF THE CONDOMINIUM BY SUNDUNE VILLAGE HOMEOWNERS ASSOCIATION, INC.,

Section 11.1 Administration.

The Association shall administer the operation and management of SVAC, and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and By-laws. A true copy of these Articles of Incorporation and By-laws is annexed hereto and expressly made a part hereof as Exhibit B, which documents are incorporated herein by reference as if fully set out word for word.

The unit owners of each condominium unit shall automatically become members of said Association upon his, their or its acquisition of a unit ownership interest in title to any condominium unit and its appurtenant undivided interest in common property, and the membership of unit owners shall terminate automatically upon unit owners being divested of such unit ownership interest and the title to such unit ownership shall be divested. The person, firm or corporation holding the lien, mortgage or other encumbrance upon any condominium unit shall be entitled by virtue of such lien, mortgage or other encumbrance to membership in said Association or to any of the rights or privileges of such membership. The Association shall

have and is hereby granted the authority and power to enforce provisions of this declaration and specifically to levy and to collect assessments in the manner and provisions as stated under "Common Expenses, Assessments and Liens" in Article VIII of the By-laws as stated in Exhibit B and to adopt, promulgate and enforce such rules and regulations governing the use of the condominium units and common property as the Board of Directors of said Association may deem to be in the best interest of the Association.

ARTICLE XII

RIGHTS OF FIRST MORTGAGEES; VA, FNMA AND FHLMC PROVISIONS

The following provisions shall take precedence over all other provisions of this Declaration and the By-laws:

Section 12.1 Amendments During the Declarant Control Period.

Any amendments to this Declaration or to the By-laws during the Declarant Control Period excepting that supplementary declaration for the purpose of adding Phase II shall be subject to the prior approval of the elected representative of a majority of the holders of first mortgage position FNMA/FHLMC secured loans provided, however, that if said representative or such lender(s) fails to respond to a written request for approval within thirty (30) days of said request, approval shall be deemed to have been given.

Section 12.2 Availability of Condominium Documents, Books, Records and Financial Statements

The Association shall, upon request and during normal business hours, make available for inspection by unit owners and the first mortgagees and the insurers and guarantors of a first mortgage on any unit, current copies of the declaration, the by-laws, other rules and regulations governing the condominium and the books, records and financial statements of the Association. The Association shall provide an audited financial statement for the preceding fiscal year if requested in writing by a first mortgagee or insurer or guarantor of a first mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of units, current copies of the declaration, by-laws and other rules and regulations governing the condominium, and the most recent annual audited financial statement (if one is prepared).

Section 12.3 Successors Personal Obligation for Delinquent Assessments.

The personal obligation for assessments which are delinquent at the time of transfer of a unit shall not pass to the successors in title or interest to said unit unless said delinquent assessments are expressly assumed by them.

Section 12.4 Rights of Action.

The Association and any aggrieved unit owner shall have a right of action against the Association for failure to comply with regulations, and decisions of the Association made pursuant to authority granted to the Association in this declaration and the by-laws.

Section 12.5 Management and Other Agreements.

-Any management agreement between the Declarant or the Association and a professional manager or any other agreement providing for services of the developer, sponsor, builder or the Declarant shall be terminable by either party thereto without cause and without payment of a termination fee upon not more than thirty (30) days prior written notice and shall not exceed a term of three (3) years, subject to renewal by the consent of both parties.

Section 12.6 Right of First Refusal.

The right of a unit owner to sell, transfer, mortgage or otherwise convey his interest in his unit shall not be subject to any right of first refusal.

Section 12.7 Consent of First Mortgagees.

This Section 12.7 shall be effective only if, at the time this Section would apply, at least one unit is subject to financing. Any decision to terminate the condominium for reasons other than substantial destruction or condemnation of the property shall require the prior written consent of eligible mortgage holders, as defined in Section 12.9 hereof, representing at least 67% of the votes allocated to units subject to first mortgages held by eligible mortgage holders, or such greater requirements specified by the Act. Except for any amendment to the declaration made for the purpose of adding any of the additional real estate to the condominium in accordance with the provisions hereof, any amendment to the declaration or by-laws which changes any of the following shall require the prior written consent of unit owners holding at least 67% of the total votes in the Association

and of eligible mortgage holders representing at least 51% of the votes allocated to units subject to first mortgages held by eligible mortgage holders, or such greater requirements specified by the Act or hereunder:

- (a) Voting rights;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of common elements;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the common elements or limited common elements or rights to their use;
- (f) Boundaries of any unit;
- (g) Convertibility of units into common elements or common elements into units;
- (h) Expansion or contraction of the condominium or the addition, annexation or withdrawal of property to or from the condominium;
- (i) Insurance or fidelity bonds;
- (j) Leasing of units;
- (k) Imposition of any restrictions on a unit owner's right to sell, transfer or otherwise convey the unit;
- (l) A decision by the Association to establish self-management when professional management had been required previously by any eligible mortgage holder;
- (m) Restoration or repair of the condominium (after damage or destruction or partial condemnation) in a manner other than that specified in this Declaration or the by-laws;

(n) Any action to terminate the legal status of the condominium after substantial damage or destruction or condemnation; or

(o) Any provisions that expressly benefit first mortgagees or insurers or guarantors of first mortgages.

Section 12.8 Consent of First Mortgagees or Unit Owners.

This Section 12.8 shall be effective only if, at the time this Section would apply, at least one unit is subject to FNMA/FHLMC financing. Unless first mortgagees holding at least 67% of the votes allocated to the first mortgagees (except first mortgagees having one vote per unit financed), or such higher percentage as is required by law, of the first mortgagees (based upon one vote for each first mortgage owned) and unit owners (other than the Declarant) holding at least 67% of the total votes in the Association have given their prior written approval, or such greater requirements specified in the Act or hereunder have been satisfied, the Association shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the condominium;

(b) Except in the case of adding the real estate of Attachment 2, change the pro-rata interest or obligations of any unit for the purpose of:

(i) Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(ii) Determining the pro-rata share of unit ownership of each unit in the common elements;

(c) Partition or subdivide any unit;

(d) Except in the case of adding the real estate of Attachment 2, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities for other public purposes consistent with the intended use of the common elements shall not be deemed a transfer within the meaning of this clause);

(e) Use hazard insurance proceeds for losses to any part of the condominium (whether to units or to common elements) for other than repair, replacement or reconstruction thereof.

Section 12.9 Notice.

Each first mortgage and each insurer or guarantor of a first mortgage, upon written request stating its name and address and describing the unit encumbered by the first mortgage, held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any proposed action which requires consent of a specified percentage of first mortgagees; (ii) any condemnation or casualty loss that affects either a material portion of the condominium or the unit securing its first mortgage; (iii) any 60-day delinquency in the payment of assessments or charges owed by the unit owner of the unit on which the first mortgagee held its first mortgage or in the performance of any obligation under this declaration or by-laws by said unit owner; or (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each first mortgagee who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of eligible mortgage holders shall be considered an "eligible

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mortgage holder.' With respect only to non material amendments (which excludes items (a) to (o) of Section 12.7, such as for the correction of technical errors or for clarification, any first mortgagee who receives a written request by the Association, or any unit owner, to approve an addition or amendment to the declaration or by-laws who does not deliver or post to the requesting part a negative response within THIRTY (30) days shall be deemed to have approved such request.

Section 12.10 Rights of First Mortgagee; Insurance Proceeds or
Condemnation Awards

With respect to first mortgages held by or for the benefit of FNMA/FHLMC, no provision of this declaration or the by-laws shall be deemed to give a unit owner, or any other party, priority over any rights of a first mortgage pursuant to its first mortgage on said unit owner's unit, in the case of a distribution to said unit owner of insurance proceeds or condemnation awards for losses to or a taking of units and/or common elements.

ARTICLE XIII

CONDEMNATION

Section 13.1 Condemnation

In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the property, the same shall be repaired or restored, and the awards paid on account thereof shall be used and applied in accordance with Section 47C-1-107 of the Act.

ARTICLE XIV

~~AMENDMENT~~

Section 14.1 Amendment

This declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47C-2-108 and 47C-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant. The Declarant has the right to file a supplementary declaration for the purposes set forth in Section 1.9 which Amendment may be filed within the time allowed therein without any necessary joinder.

ARTICLE XV

TERMINATION

Section 15.1 Termination

The condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act.

ARTICLE XVI

GENERAL PROVISIONS

Section 16.1 Covenants Running with the Land

All provisions of this Declaration shall be construed to be covenants

running with the land, and with every part thereof and interest therein including, but not limited to, every unit and the appurtenances thereto; and each and every provision of this declaration shall bind and inure to the benefit of all unit owners and claimants of the land or any part thereof or interest therein and their heirs, executors, administrators, successors and assigns, including the Declarant herein.

Section 16.2 Duration.

So long as North Carolina law limits the period during which covenants restricting lands to certain uses may run, it shall be the duty of the Board of Directors of the Association to enforce the covenants contained herein, as amended from time to time, to be extended when necessary by filing a document bearing the signature of a majority of the unit owners reaffirming and newly adopting the declaration and covenants running with the land. Such adoption by a majority shall be binding on all, and each unit owner, by acceptance of a deed therefore, is deemed to agree that the declaration and covenants may be extended as provided in this Section 16.2.

Section 16.3 Articles of Incorporation and By-Laws of Sundune Village Condominium Association, Inc.

A true copy of the articles of incorporation and by-laws of the Association, which together with this declaration shall govern the administration of the condominium, is attached hereto as Exhibit B, and by reference, is made a part hereof as if fully set out word for word.

Section 16.4 Interpretation.

The provisions of this declaration and by-laws shall be liberally construed to effectuate its purpose in creating a uniform plan for the development and operation of the condominium property.

Section 16.5 Law Controlling.

This declaration and the by-laws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina, provided, however, that if there are conflicts or inconsistencies between the Act and this declaration (in that order), the Act shall prevail and the unit owners covenants to vote in favor of such amendments as will remove such conflict or inconsistencies, except that where the Act, the declaration, or the by-laws conflict and the provisions of the Act are merely enabling and not mandatory, the provisions of the declaration or the by-laws shall control.

Section 16.6 Gender and Grammar.

The singular, whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereto apply to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 16.7 Captions.

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

Section 16.8 Non-Waiver.

The failure of the Declarant, Board of Directors, or any unit owner, or their respective legal representatives, heirs, successors and assigns, to enforce any restriction contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.


Section 16.9 Severability.

All of the covenants, conditions and by-laws, restrictions and reservations contained in this declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof is void, unlawful or unenforceable shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations or clause or phrase thereof.

IN WITNESS WHEREOF, the Declarant has caused this declaration to be signed and sealed by its duly authorized General Partner on behalf of the Declarant the day and year first written above.

SUNDUNE ASSOCIATES

a Virginia general partnership (SEAL)

By:  (SEAL)
General Partner

NORTH CAROLINA
DARE COUNTY

I, a Notary Public of the County and State of foresaid, certify that Alan C. Jensen, a General Partner, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this the 8th day of July 1988.

SEAL-STAMP

Use Black Ink NORTH CAROLINA, DARE County.
I, a Notary Public of the County and state aforesaid, certify that ALAN C. JENSEN, a General Partner
of Sundune Associates, a Virginia General Partnership Grantor
personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and
official stamp or seal, this 8th day of July, 19 88
My Commission expires: 01-30-90 *Paula A. Kay, Notary Public*

SEAL-STAMP

Use Black Ink NORTH CAROLINA, _____ County.
I, a Notary Public of the County and state aforesaid, certify that _____
personally appeared before me this day and acknowledged that he is _____ Secretary of
_____ a North Carolina corporation, and that by authority duly
given and as an act of the corporation, the foregoing instrument was signed in its name by its
President, sealed with its corporate seal and attested by _____ as its Secretary.
Witness my hand and official stamp or seal, this _____ day of _____, 19 ____.
My Commission expires: _____ Notary Public

The foregoing Certificate(s) of _____

is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

By _____ REGISTER OF DEEDS FOR _____ COUNT
Deputy/Assistant-Register of Deeds.

ATTACHMENT 1

DESCRIPTION OF PHASE I

All that certain lot or parcel of land situated in the Town of Kill Devil Hills, Atlantic Township, Dare County, North Carolina and more particularly described as follows:

Being Lots No. 6, 7, 8, 9, 10, 11, 12, 13, and 14, Block 15, of the subdivision of Kill Devil Hills as shown on the map or plat recorded in Map Book 1, page 175, of the Dare County Public Registry.

ATTACHMENT 2

DESCRIPTION OF PHASE II

All that certain lot or parcel of land situated in the Town of Kill Devil Hills, Atlantic Township, Dare County, North Carolina and more particularly described as follows:

Being Lots No. 1, 2, 3, 4, and 5, Block 15, of the subdivision of Kill Devil Hills, as shown on that map or plat recorded in Map Book 1, page 175, of The Dare County Public Registry.