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NEW HAMPSHIRE CO. INC  
DEC 19 3 16 PM '84

SEA DUNES II CONDOMINIUM

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DECLARATION

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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

DECLARATION OF CONDOMINIUM

SEA DUNES II CONDOMINIUM

T.L.S. PARTNERSHIP, a South Carolina Partnership, hereinafter called "DECLARANT", being the owner in fee simple of the property hereinafter described, hereby submits said property to condominium ownership pursuant to Chapter 47A of the General Statutes of North Carolina as amended, known as the "Unit Ownership Act", and to that end does hereby publish and declare that all of the said property to be known as SEA DUNES II CONDOMINIUM is and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following conditions, covenants, restrictions, uses, limitations and objections, all of which shall be deemed to run with the land and shall be a burden and benefit to Declarant, their successors and assigns, and any person acquiring or owning an interest in the property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. DEFINITIONS. Unless it is plainly evident from the context that a different meaning is intended, as used herein:

A. "Act" or "Unit Ownership Act" means the statutory provisions set forth in Chapter 47A of the North Carolina General Statutes under which the condominium is established.

B. "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner by the Association.

C. "Association" means the entity responsible for the operation of the condominium pursuant to the Act, which entity includes all of the unit owners acting as a group in accordance with the By-Laws and Declaration.

D. "Board of Directors" or "Board" means the Board of Directors of the Association, and "Director" means a member of the Board.

E. "By-Laws" means the By-Laws for the government of the condominium as they exist from time to time. A copy of the initial By-Laws are hereto attached as Exhibit "E" and made a part hereof by reference.

F. "Building" or "Buildings" shall mean all structures and improvements now or hereafter erected upon the property.

G. "Common Areas and Facilities" means the portion of the condominium property owned, in undivided interest, by all of the owners, as more specifically set forth herein in Paragraph 5.

H. "Common Expenses" include the expenses of administration, maintenance, operation, repair and replacement (including a capital reserve for repair maintenance and replacement), of the common area and facilities, and other expenses declared by the Association to be common expenses, as further defined in the Act.

I. "Common Profits" means the balance of all revenue of the Association remaining after deduction of common expenses.

J. "Condominium Documents" means this Declaration, the By-Laws, the Rules and Regulations and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

K. "Declarant" means T.L.S. PARTNERSHIP, their successors and assigns.

L. "Declaration" means this instrument as it may be from time to time amended or supplemented.

M. "Eligible Mortgage Holder" or "Eligible Holders" is defined as a holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.

N. "Limited Common Areas and Facilities" means and includes those common areas and facilities which are reserved for the use of a certain unit or units, to the exclusion of other units, as more specifically defined herein.

O. "Mortgagee" shall mean a beneficiary under a mortgage or Deed of Trust.

P. "Plans" shall mean and refer to the plans and specifications of the condominium prepared by a licensed engineer or registered architect and recorded under the name of the condominium in the Unit Ownership file in the Office of the Register of Deeds of New Hanover County, and attached hereto as Exhibit "B", sheets 1 thru 5 and incorporated herein by reference.

Q. "Property" means and includes the land described in Article 2 of this Declaration together with any buildings and improvements located thereon.

R. "Unit" or "Condominium Unit" means a part of the property which is to be subject to private ownership, as designated on the exhibits attached to this Declaration and as further defined in the Act.

S. "Unit Owner" or "Owner" means a person or entity, or any combination thereof, who owns a unit.

2. DESCRIPTION OF PROPERTY. All that certain tract or parcel of land with the buildings and improvements thereon erected or to be erected, situate, lying and being in the Town of Carolina Beach, New Hanover County, State of North Carolina, and more particularly described as: Being all of Lot 6 in Block 11 of the Town of Carolina Beach as the same is shown on a map of a portion of said town of Carolina Beach recorded in Map Book 3 at Page 67 in the New Hanover County Registry.

3. DESCRIPTION OF BUILDINGS. The Declarant has constructed, or will construct upon the above mentioned property a multi-unit building to be used for residential and lodging accomodation purposes as herein provided. A plat of survey of the aforementioned property showing the location of said buildings is attached hereto and made a part hereof, as Exhibit "A". The buildings are more particularly described in the plans thereof, a copy of which plans are attached hereto as Exhibit "B" and made a part hereof, showing all particulars of the building as required by law.

In general, the building has three stories built on piling with parking area beneath and is constructed primarily of wood frame on treated timber piles. The building has approximately 5,790 square feet of enclosed area, divided into six dwelling units, each unit having one floor. All units contain approximately 965 square feet per unit. Each unit contains two bedrooms, a great room, a kitchen and two bathrooms.

In addition, the buildings have common outside parking areas, walkways, stairs, landscape areas, and other appurtenances and facilities.

4. UNIT DESIGNATION AND DESCRIPTION.

A. DESIGNATION. The unit designation of each unit, its location and dimensions, is set forth in Exhibit "B" hereto attached and made a part hereof. Each unit is identified by a number designating the

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floor of the unit followed by a letter designated the location of the unit on the floor.

B. DESCRIPTION. The legal description of each unit shall consist of the number and letter combination which identifies such unit as shown on the plat hereto attached as Exhibit "B". Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings and floors which are shown on said plans, subject to such encroachments as are contained in the buildings, whether the same now exist or may be caused or created by construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration.

Each unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the unit owner of each unit shall also own, as an appurtenance to the ownership of each said unit conveyed, an undivided interest in the common areas and facilities. The percentage of undivided interest in the common areas and facilities appurtenant to each unit shall be as set forth in Exhibit "C" attached hereto and made a part hereof. The percentage of undivided interest in the common areas and facilities that is appurtenant to each unit has been determined by a ratio formulated upon the approximate relation that the fair market value of each unit at the date of the Declaration bears to the then aggregate fair market value of all the units having an interest in the common areas and facilities. The fair market value of each unit and the aggregate fair market value of all of the units has been determined by the Declarant, and its determination shall be binding upon all units and unit owners. Except as provided in Paragraph 26 below, the percentage of undivided interest in the common areas and facilities assigned to each unit shall not be changed without the unanimous consent of the owners of all the units.

5. COMMON AREAS AND FACILITIES.

A. The common areas and facilities generally shall mean and refer to all of the real property, described in Article 2, and all of the improvements and facilities thereon which are not units, as hereinabove defined, and which are not items of personal property owned, held and maintained by unit owners. Without in any way limiting the generality of the foregoing, the common areas shall include, but not be limited to, the following:

(1) All of the real property more particularly described in Article 2 of this Declaration.

(2) All foundations, columns, girders, beams, supports, roofs, ventilation fans and vents, load bearing walls, including all exterior walls and all interior walls (Except non load bearing partition walls wholly within a unit) of the buildings.

(3) All stairways, stairwells and stairs and their components, if any, which give access to more than one unit.

(4) All yard and garden areas, parking and drive areas, sidewalks, and any other amenities.

(5) All installations of and facilities, apparatus, conduits, and equipment for the provisions of all utility services, including, but not limited to, all water and sewer service, electricity, heating, air conditioning, telephone, irrigation, trash disposal, if any, and cable TV, if any, supplied for the common use and convenience of the unit owners, and which are not defined as part of the units, hereinbelow.

(6) All other portions of the real property and the improvements thereon which are not specifically part of the units themselves, as hereinabove defined, or owned by unit owners as personal property, shall be common areas and facilities intended for the common and necessary or convenient use and enjoyment, existence, maintenance or safety of the condominium project.

B. (1) The undivided share in the common elements or common areas which are appurtenant to a unit shall not be separated therefrom and shall pass with the title to the unit, whether or not separately described.

(2) A share in the common areas appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common areas appurtenant to units shall remain undivided, and no action for partition of the common elements shall lie.

C. The undivided interest of each unit owner in such common areas and facilities is set forth in Exhibit "C" and is attached hereto and made a part hereof.

6. LIMITED COMMON AREAS AND FACILITIES. The limited common areas and facilities appurtenant to each unit are as follows:

A. Decks accessible only from a particular unit, outside stairways and outside entry at ground level.

B. All non-load bearing walls located entirely within the unit.

C. All materials, including but not limited to, studs, sheetrock, plywood, carpet, paint, paneling, tile, vinyl or brick, attached to, or on the inside surfaces of perimeter walls, floors and ceilings of the unit.

D. All doors, windows, screens, ventilation fans and vents located entirely within the unit or extending into the unit from the perimeter walls, floors or ceilings thereof.

E. All air handling units, ducts and components and all water, power, telephone, television and cable television, electricity, plumbing, gas and sewage lines located in the unit; provided, however, that the portion of said lines located in a common compartment for, or installation of, such lines shall be general common areas and facilities as described above.

F. The limited common areas and facilities which are appurtenant to any unit(s) shall not be separated therefrom and shall pass with title to any unit(s), whether or not separately described.

7. USE. The buildings and each of the units shall be used for residential and lodging accomodation purposes, which shall include the rental of any units by the owner(s) thereof for residential and lodging accomodations pursuant to rules and regulations established by the Association and other uses reasonably incidental thereto, including meetings and by persons owning or occupying such units. Each unit owner shall have the right to use the common areas and facilities in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his or her unit and such right shall be appurtenant to and run with his or her unit;

provided, however, that no person shall use the common areas and facilities or any part thereof in such manner as to interfere with or restrict or impair the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the By-Laws, and such Rules and Regulations as may be established from time to time by the Board of Directors. The uses contemplated by this paragraph cannot be changed, amended or modified without the written consent of the owners of all units, so long as the Declarant shall retain ownership of any units, it may utilize any such unit or units for sales or rentals offices, models or other usage for the purpose of selling or renting units within said project. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all units have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease.

8. PROCESS AGENT. Robert Calder, Jr., 411 Chestnut Street, Wilmington, North Carolina, 28401, is hereby designated as the person to receive service of process in any action provided for in the Act. The Board of Directors may change the process agent by filing a Declaration of Change in the Office of the Register of Deeds of New Hanover County.

9. MAINTENANCE.

A. All plumbing, air conditioning, floor and wall covering, heating, electrical, telephone, cabinetry, partition walls, suspended ceilings and other fixtures and equipment located within the unit, and all windows or doors opening into the unit, shall be maintained (and, if owner desires, insured) by the owner. Any replacement or substitution of such fixtures and equipment shall be compatible with any common areas and facilities effected thereby. The Association shall not be responsible for repairing, maintaining, or insuring such fixtures and equipment.

B. All parts of a condominium unit shall be kept in good condition and repair by and at the expense of the owner. The unit shall be maintained by the owner in a clean and safe condition, free of nuisance. Each unit owner will promptly comply with any requirements of the insurance underwriters of the insurance for the common areas and facilities when so requested in writing by the Board or its designated agent. Any failure of an owner to repair, maintain or replace as may be required pursuant to the Condominium Documents or a determination by the Board of its designated agent that such failure will endanger or impair the value of the common areas and facilities or any unit, or the limited common areas and facilities belonging to another owner, may be, upon written notice to the owner of the nature of the required repair, maintenance or replacement, repaired or replaced by the Association at the expense of the unit owner, to be collected by special assessment as provided herein and in the By-Laws. Such assessment may include the cost to the Association incurred in the abatement of any nuisance maintained by the unit owner therein.

10. EASEMENTS.

A. Each unit owner shall have an easement in common with the other owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Association shall have the right to be exercised by the Board of Directors or its agents, to enter each unit from time to time at reasonable hours as may be necessary for the operation of the condominium to inspect the same, to remove violations therefrom and to maintain, repair or replace the common facilities, if any, contained therein or elsewhere in the building.

B. Each unit and all common areas and facilities and limited common areas and facilities are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal,

relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage or other lines or other common areas and facilities, whether or not the cause of any or all of those activities originates in the unit in which the work must be performed.

C. Easements are hereby declared and granted, and the Board may hereafter declare, grant or assume easements for utility purposes for the benefit of the property, 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 common areas; each unit owner hereby grants to the Board, or its designee, an irrevocable power of attorney to execute, acknowledge, and record, for and in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

D. In the event that by reason of the construction, reconstruction, settlement or shifting of the building, any portion of the common areas and facilities encroaches upon any unit, or any unit encroaches upon any other unit, or any unit encroaches upon the common areas and facilities, (whether the same now exists or may be caused or created by existing construction, settlement or movement of the buildings, or by permissible repairs, construction or alteration), valid cross-easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit or common elements so encroaching so long as all or any part of the building containing such unit or common elements so encroaching shall remain standing, provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any unit or in favor of the owners of the common elements if such encroachment occurred due to the willful conduct of said owner or owners.

E. 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 such portions of the common areas and facilities as from time to time may be paved and intended for such purposes, for all unit owners or units in SEA DUNES II CONDOMINIUM, their guests, families, invitees, lessees, the Association, the Declarant, its successors and assigns.

F. In case of any emergency originating in or threatening any unit or the common areas and facilities, regardless whether the unit owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

G. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, their successors and assigns, and any other owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

11. PARTITIONING. The common area and facilities shall remain undivided, and no unit owner or any other person shall have the right to bring any action to partition any part thereof, unless the property has been removed from the provisions of the Act. Nothing herein contained, however, shall be deemed to prevent ownership of a dwelling unit by the entireties, jointly, or in common, or in any other form permitted by law.

12. COMMON EXPENSES, COMMON PROFITS. The unit owners are bound to contribute pro rata, in the percentages computed according to Chapter 47A of North Carolina General Statute which percentages are set forth in Exhibit "C" hereto attached, toward the expenses of administration and of maintenance and repair of the general and limited common areas and facilities, and toward any other expenses lawfully assessed by the Association. No unit owner may exempt himself from contributing toward such expense by waiver of the use or enjoyment of the common area and facilities or by the abandonment of the unit belonging to him.

The common profits of the property, if any, after payment of all expenses of operation and maintenance of the property and the establishment of a sinking fund or other reserve funds or any other matters reasonably necessary and appropriate for the maintenance of the property as determined by the Board of Directors in accordance with the Condominium Documents, shall be distributed among the unit owners according to the percentages for each unit set forth in Exhibit "C".

13. TAXES. Each condominium unit and its percentages of undivided interest in the common areas and facilities set forth in Exhibit "C" hereto attached, shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including but not limited to, special ad valorem levies and special assessments. Each unit holder shall be liable solely for the amount of taxes against his individual unit and shall not be affected by the consequence resulting from the tax delinquency of any other unit holders. Neither the building, the property, nor any of the common areas and facilities shall be deemed to be a separate parcel for purposes of taxation.

14. LIENS.

A. With the exception of liens which may result from the initial construction of this condominium, no liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole (as distinguished from an individual unit, together with its undivided common interest in the common areas and facilities) except with the unanimous consent of the unit owners and the holders, if any, of prior liens thereon.

B. No labor performed or materials furnished to the common areas and facilities shall be the basis for a lien thereon unless authorized by the Condominium Documents or expressly authorized by the Board, in which event, same might be the basis for the filing of a lien against all condominium units in the proportions for which the owners thereof are liable for common expenses.

C. Unless otherwise provided by law, in the event a lien against one or more condominium units becomes effective, each owner thereof may relieve his condominium unit of the lien by paying the proportionate amount attributable to his condominium unit. Upon such payment, it shall be the duty of the lienor to release the lien of record for such condominium unit.

D. Assessments against unit owners by the Association made pursuant to the By-Laws shall, if not paid when due, bear interest at such rate as is determined by the Board, not to exceed the maximum rate allowed by law, and shall create a lien to the extent of such assess-

