

1213 0083
STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DEC. 1982
**DECLARATION CREATING UNIT
OWNERSHIP OF PROPERTY**

THIS DECLARATION made this the 2 day of December 1982, by OCEAN DUNES, a North Carolina General Partnership, with its principal place of business located in Cumberland County, North Carolina, hereinafter referred to as Declarant.

WITNESSETH:

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

WHEREAS, Declarant is the owner of multi-unit buildings and all other improvements heretofore constructed or hereinafter constructed upon the above described property and intends by the filing of this DECLARATION to submit said property, buildings and improvements, whether heretofore or hereafter constructed, together with all appurtenances thereto, to a plan of condominium unit ownership pursuant to the provisions of Chapter 47A of the North Carolina General Statutes, and

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

NOW, THEREFORE, Declarant does hereby declare that all of the real property described herein together with all improvements heretofore constructed or hereafter constructed thereon, is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth hereinafter, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning any interest in the real property and improvements described herein, or any subdivision thereof, their grantees, successors, heirs, executors, administrators, devisees, and assigns.

**ARTICLE I
SUBMISSION OF PROPERTY**

1.0 Pursuant to the provisions of Chapter 47A of the North Carolina General Statutes, Section 47A-2, Declarant does hereby submit all of the real property described in **Exhibit A**, attached hereto and made a part hereof by reference, together with all improvements thereon and described herein to the provisions of the Unit ownership Act as set out in Chapter 47A of the North Carolina General Statutes.

**ARTICLE II
DESCRIPTION OF LAND AND PLAN OF DEVELOPMENT**

2.0 The subject real property is the same as set out in **Exhibit A** attached hereto and incorporated herein by reference.

2.1 Plan of Development. The name by which this condominium project shall henceforth be known is OCEAN DUNES CONDOMINIUMS. The Declarant has caused to be constructed upon the real property described in Exhibit A the multi-unit buildings containing the 36 condominium units, as well as the common areas and facilities of the buildings and the real property, all as defined and described herein and as shown upon the plans contained in Exhibits C-E, inclusive, attached hereto and made a part hereof by reference. The units of the building, together with their privileges and appurtenances, shall be offered for sale to the public by the Declarant as condominium units pursuant to the provisions of Chapter 47A of the General Statutes of the State of North Carolina, subject to the covenants, conditions, restrictions, and obligations stated in the Articles of this Declaration, the Articles of Incorporation of the Association, its duly adopted By-Laws and its Rules and Regulations.

2.2 The Declarant, by this Declaration, submits only the real property described in **Exhibit A** together with the improvements thereon and hereafter this submission shall be referred to as OCEAN DUNES, PHASE I. It is the plan of the Declarant, and the Declarant reserves the right at its option and without the further consent of the unit owners or the Homeowners Association (see **Article X** herein), but without obligation, as hereinafter set forth, to construct additional condominium units in one or more additional phases on the real property described in **Exhibit B** attached hereto and incorporated herein by reference.

2.3 In the event the Declarant adds to the real property subject to this Declaration all or part of the real property described in **Exhibit B**, the Declarant covenants and agrees that no more than a total of 320 units will be added to the thirty-six (36) units in OCEAN DUNES, PHASE I.

2.4 The Declarant covenant and agrees that all buildings containing units built upon real property which may be subjected to this Declarant under this Article shall be constructed of such materials and in such manner and design as to compliment the appearance of the entire condominium development.

ARTICLE III DESCRIPTION OF BUILDINGS

3.0 The multi-unit buildings constituting OCEAN DUNES condominium units, Phase I, is, or is to be six (6) two story structures, with no basement, but with a garage or carport area underneath the structure, the total number of units in said Phase I to be 36 in number.

3.1 The principal materials to be used in construction of the condominium units are set out in detail in Exhibit D attached hereto and incorporated herein by reference.

ARTICLE IV UNIT DESIGNATION

4.0 The unit designation of each unit and its location are as shown on the maps or plats of the condominium development attached hereto as **Exhibit E** and incorporated herein by reference. The approximate area and number of rooms in each unit is as shown on **Exhibit E**, attached hereto and incorporated herein by reference.

4.1 In general, reference should be made to **Exhibit D** for a more complete and accurate description of each unit and any conflict between said **Exhibit D** and the generalized description hereinafter shall be resolved by reference to said **Exhibit D**, which shall control each of the 36 units in Phase I unit designations which are 101 through 104, inclusive, 201 through 206, inclusive, 301 through 306, inclusive, 401 through 406, inclusive, 501 through 508, inclusive, and 601 through 606, inclusive. These units and their designations are shown upon the plans of buildings attached hereto as **Exhibit E**. If and when this Declaration is amended to add additional phases, additional surveys and description of improvements will be filed as part of said amendment.

4.2 Each unit is bounded both as to horizontal and vertical boundaries by the interior unfinished surfaces of the unit's perimeter walls, ceilings, and floors; of the interior perimeter walls, ceilings, and floors of the additional areas conveyed as part of each unit as defined hereinbelow, all of which are shown on **Exhibits D** and **E**, subject to easements reserved herein for such encroachments as are contained in the building, whether the same exist or may be caused or created by existing construction, settlement or movement of the building, or by permissible repairs, construction or alteration.

4.3 Each unit shall be constructed in substantial conformity to one of seven designs as shown on **Exhibits D** and **E**. Depending on the design of the unit, each unit shall be wholly contained within one of the two levels or stories or shall include both of the two levels or stories; there being 4 units in Building One, 6 units in Building Two, 6 units in Building Three, 6 units in Building Four, 8 units in Building Five and 6 units in Building Six. See **Exhibits D** and **E** for a more exact description of each unit.

4.4 Depending on the design of the unit, each unit shall have either one bedroom, two bedrooms or three bedrooms with either one, two or three bathrooms, a combined great room/kitchen area, a linen closet, a clothes storage closet, a closet housing the unit's indoor section of the heating and air conditioning equipment, and a utility closet with a connection for a washer and dryer. See **Exhibits D** and **E** for more exact description of each unit.

4.5 Each unit is hereby designed to include the open air deck(s) (either one or two depending on the design of the unit), said decks being more accurately described in **Exhibits D** and **E**. All open air decks are subject to restrictions on use and decoration as set out hereinafter and in the Association By-Laws. The decks are bounded horizontally by the interior finished surface of the floor and ceiling overhangs of the deck and are bounded vertically by the interior finished surface of interior plans of either the deck railing or the perimeter walls of the decks.

4.6 Units 103, 104, 401, 501, 508 (end units) shall each have approximately 689 gross square feet. Units 201, 202, 205, 206, 405, 406 (end units) shall each have approximately 901 gross square feet. Units 302, 303, 402, 403, 505, 506 shall each have approximately 893 gross square feet. Units 305, 306 (end units) shall each have approximately 1045 gross square feet. Units 502, 503 shall each have approximately 1037 gross square feet. Unit 301 (end unit) shall have approximately 983 gross square feet. Units 102, 203, 504, 507 shall each have approximately 968 gross square feet. Unit 101 (end unit) shall have approximately 1070 gross square feet. Units 204, 304, 404 shall each have approximately 1070 gross square feet. Units 601, 606 (end units)

shall each have approximately 1331 gross square feet. Units 602, 603, 604, 605 shall each have approximately 1100 gross square feet.

Each unit is hereby defined to include:

- (a) All non-load bearing partitioned walls located entirely within the unit.
- (b) All materials, including, but not limited to, carpet, paint, and vinyl attached to, or on, the interior finished surfaces of said walls, floors, ceilings of the unit' and all windows, windowpanes, frames, exterior doors.
- (c) All air handling and condensing units, ducts, and components, in all water, telephone, television, cable television, electricity, water and sewage lines located within the unit; provided, however, that the portion of said lines located within a common compartment for, or installation of, such lines shall be common areas and facilities as described herein.

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

4.8 The definition stated hereinabove for unit is complete and all other aspects of the condominium not hereinabove defined as a part of the unit is defined hereby as a part of the common area and facilities of the condominium.

ARTICLE V DESCRIPTION OF GENERAL COMMON AREAS

5.0 The general common areas of OCEAN DUNES CONDOMINIUM units shall be as follows.

- (a) All land as more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference, including the land on which the units are located, subject to Declarant's right and option to construct up to 320 additional units on property described in **Exhibit B**.
- (b) All parts of the multi-unit buildings situated on the land described in **Exhibit A**, other than the individual dwelling units described in **Article IV** above, including, without limitation, all foundations, columns, girders, beams, supports, load-bearing walls, including all exterior walls and all interior walls (except non-load-bearing partition walls wholly within a unit), roofs, ventilation fans and vents, of the building.
- (c) All stairways, stairwells, and stairs and their components which give access to the units; and all halls or passageways, and their entrances;

(d) All yard and garden areas, parking and drive areas, with the exception of the assigned parking areas described herein, bulkheads, swimming pool and pool deck, and all recreational or community facilities.

(e) All central or appurtenant installations for services such as, without limitation, power, light, telephone, gas, hot and cold water, heating, air conditioning, incinerating and all other mechanical equipment spaces (including all pipes, ducts, wires, cables, tanks, pumps, motors, fans, conduits and compressors in connection therewith), to include all installations and facilities, apparatus, conduits, and equipment for the provision of any of the herein named utility services supplied for the common use and convenience of the unit owners and which are not defined as part of the units hereinabove.

(f) 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 units.

ARTICLE VI LIMITED COMMON AREAS

6.0 Each unit shall have reserved for its exclusive use as a limited common area those stairways appurtenant to and designed for the exclusive use of each specific individual unit. However, all limited common areas are subject to restrictions on use and decorations as set out herein and in the Association By-Laws.

6.1 Each of the units designated as Units 101-606 shall have reserved for their individual exclusive use as a limited common area the assigned garage space as shown on **Exhibit E**. Garage spaces 103G and 104G shall be subject to a permanent easement for ingress and egress to the stairwell in favor of the unit owners, their families, guests and invitees of Units 103 and 104. Garage spaces 201G and 202G shall be subject to a permanent easement for ingress and egress to the stairwell in favor of the unit owners, their families, guests and invitees of units 201 and 202. Garage spaces 205G and 206G shall be subject to a permanent easement for ingress and egress to the stairwell in favor of the unit owners, their families, guests and invitees of units 205 and 206. Garage spaces 302G and 303G shall be subject to a permanent easement for ingress and egress to the stairwell in favor of the unit owners, their families, guests and invitees of Units 302 and 303. Garage spaces 305G and 306G shall be subject to a permanent easement for ingress and egress to the stairwell in favor of the unit owners, their families, guests and invitees of Units 305 and 306. Garage spaces 402G and 403G shall be subject to a permanent easement for ingress and egress to the stairwell in favor of the unit owners, their families, guests and invitees of Units 402 and 403. Garage spaces 405G and 406G shall be subject to a permanent easement for ingress and egress to the stairwell in favor of the unit owners, their families, guests and invitees of Units 405 and 406. Garage spaces 502G and 503G shall be subject to a permanent easement for ingress and egress to the stairwell in favor of the unit owners, their families, guests and invitees of Units 502 and 503. Garage spaces 505G and 506G shall be subject to a permanent easement

for ingress and egress to the stairwell in favor of the unit owners, their families, guests and invitees of Units 505 and 506.

**ARTICLE VII
NATURE AND INCIDENTS OF UNIT OWNERSHIP**

7.0 Each unit shall be conveyed and treated as a separate individual unit of real property capable of independent use and fee simple ownership, and the owner of each unit shall also own, as an appurtenance to the ownership of each said unit, an undivided interest in the common areas and facilities of OCEAN DUNES and future phases, if any. The undivided interest in the common areas and facilities of OCEAN DUNES appurtenant to each of the 36 units of Phase 1 of OCEAN DUNES is as set out in **Exhibit F** attached hereto and made a part hereof. The proportional interest in the common area and facilities of OCEAN DUNES 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 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 units have been determined by Declarant in a manner consistent with North Carolina General Statute 47A, Unit Ownership Act and are binding upon all unit owners, subject to amendments as provided herein regarding development of future phases.

7.1 Declarant reserves the irrevocable right, power and authority for a period of five (5) years from the recording of this DECLARATION to amend this DECLARATION to reflect the addition of any future phases of construction and the changes necessitated thereby to include changes in the ownership interest, expense responsibilities of each unit owner in and for said common elements and facilities and voting rights in the Association of each unit owner. Upon the filing of the Amendment to Declaration to bring future phases under this Declaration, the appurtenant undivided interest of each unit owner in the common areas and facilities of OCEAN DUNES, all phases, shall necessarily decrease from the percentage set out in **Exhibit F**. The Declarant covenants and agrees to establish such appurtenant undivided interests for all units at such times as may be necessary pursuant to this Article in the proportions that the then fair market value of each unit, new and existing, as shall be determined solely by the Declarant, bears to the then aggregate fair market value of all units on the date of the supplemental declaration, or declarations. In determining such fair market value for any additional unit added to or made subject to this Declaration, Declarant may use the offering or purchase price of such unit or the fair market value as established by any independent Appraiser. In determining the fair market value of units previously subjected to the Declaration, the Declarant may use the value as then established for tax purposes by the appropriate authorities or the value established by any independent appraiser.

7.2 Nothing herein shall be deemed to limit or alter the Declarant's right, hereby reserved, to vary the internal layout, size, configurations of any units hereafter constructed as long as the Declarant substantially conforms with the provisions of this Article.

7.3 Each unit owner in Ocean Dunes, any phase, by the acceptance of the deed for his unit shall be deemed to have specifically agreed for himself, his heirs, devisees, successors and/or assigns that the Declarant shall have the exclusive right and power, as attorney-in-fact for every unit owner, to effect such amendment without his further consent, and also thereby agrees to

execute any such writing as may be required by Declarant to effectuate this purpose.

7.4 No unit may be divided or subdivided into a smaller unit or units other than as shown on **Exhibit E** hereto, nor shall any unit or portion thereof be added to or incorporated into any other unit. The undivided interest in the common areas and facilities declared to be an appurtenance to each unit shall not be conveyed, devised, encumbered, or otherwise dealt with separately from said unit, and the undivided interest in common areas and facilities appurtenant to each unit shall be deemed conveyed, devised, encumbered or otherwise included with the unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest, or lien in, to or upon a unit, shall be null, void and of no effect insofar as the same purports to effect any interest in a unit and its appurtenant undivided interest in common areas and facilities, unless the same purports to convey, devise, encumber, or otherwise trade or deal with the entire unit. Any instrument conveying, devising, encumbering, or otherwise dealing with any unit, which describes said unit by the letter/numerical designation assigned thereto in **Exhibit E** without limitation or exception, shall be deemed and construed to affect the entire unit and its appurtenant undivided interest in the common areas and facilities. Nothing herein contained shall be construed as limiting or preventing ownership of any unit and its appurtenant undivided interest in the common areas and facilities by more than one person or entirety as tenants in common, joint tenants or as tenants by the entirety.

7.5 Common areas and facilities shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the owners of units in OCEAN DUNES, for their use and the use of their immediate families, guests or invitees, for all proper and normal purposes, and the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said owners of units. Notwithstanding anything above provided in this Article, the Association, as is more particularly described in **Article X** hereinbelow, shall have the exclusive right to establish the rules and regulations pursuant to which the owner of any unit, his family, guests and invitees, may be entitled to use the common areas and facilities, including the right to establish regulations concerning their use.

7.6 Recognizing that the proper use of a unit by an owner or owners is dependent upon the use and enjoyment of the common areas and facilities in common with the owners of all other units, and that it is in the interest of all owners that the ownership of the common areas and facilities be retained in common by the owners, it is hereby declared that the proportional undivided interest in the common areas and facilities appurtenant to each unit shall remain undivided and no unit owner shall bring or have any right to bring any action for partition or division.

**ARTICLE VIII
USE AND RESTRICTIONS ON USE**

8.0 Restrictions on Use:

(a) Each unit is hereby restricted to single-family residential use by the owner thereof, his immediate family, guests, invitees and lessees.

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

(c) The use of common areas, limited common areas and facilities, by the owner of a unit or units or owners of all units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use or which may be hereafter prescribed and established by the Association, said Association being more particularly described in **Article X** below, provided, however, that the designation of garage spaces as limited common areas appurtenant to certain specified units shall not be re-designated or altered without the unanimous vote of the Homeowners Association as more particularly described in **Article X** below.

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

(e) No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the property, including but not limited to the individual units or common or limited common areas, nor shall the property of any part of it be used in any way or for any purpose which may endanger the health of or unreasonably disturb the owner of any residence or any resident thereof. No business

activity of any kind whatever shall be conducted at any building or on any portion of the property; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards of the Declarant, its agents or assigns, during the construction and sale period and thereafter for such periods of time as Declarant, its agents or assigns shall desire to maintain a sales or rental office.

(f) No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the property. This prohibition shall not include common domesticated animals, each unit owner being permitted one dog or cat so long as all animals are leashed when outside the owner's unit, subject to the Rules and Regulations of the OCEAN DUNES HOMEOWNERS ASSOCIATION governing such pets.

(g) The exterior of the units shall not be decorated by the individual unit owners in any manner without the prior written consent of the Board of Directors of OCEAN DUNES HOMEOWNERS ASSOCIATION.

(h) No trailer of any sort, tent, barn, storage camper, shed, garage or other similar out building or structure shall be placed on the property at any time, either temporarily or permanently, with the exception that boat trailers may be kept on the property, provided they are kept in such manner as to not block or cause obstruction of the roadway.

(i) No structure of a temporary character shall be placed upon the property at any time, provided, however, that this provision shall not apply to shelters and shed used by the Contractor during the construction of the multi-unit buildings or common area improvements or other necessary construction, it being clearly understood that these latter temporary structures may not, at any time, be used as residences or permitted to remain on the building site after completion of construction.

(j) All garbage and refuse from the individual units shall be deposited with care in garbage containers or receptacles intended for such purpose, said containers or receptacles to be kept at all times in the space provided therefore.

(k) No refuse, rubbish, trash or waste of any sort shall be thrown into the water surrounding the condominium project nor shall any objects or materials be placed therein which would constitute a hazard to the health or safety of those using said waters for boating, swimming, or other water related sports and activities.

(l) It shall be the responsibility of each unit owner, and the Board of Directors of OCEAN DUNES HOMEOWNERS ASSOCIATION, to prevent the development of any unclean, unsightly or unkempt conditions of the limited and general common areas.

(m) So long as the Declarant shall retain ownership of any units, it may utilize any such unit or units for sales or rental 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.

(n) The use of the condominium or any units therein may be further restricted under the By-Laws of the Association, its Rules and Regulations.

8.1 All restrictions and affirmative obligations set forth in this DECLARATION shall run with the land and shall be binding on all parties and persons claiming under them for a period of twenty (20) years from the date of recordation of this DECLARATION, after which time said restrictions and obligations will be automatically extended for successive periods of ten (10) years, unless an instrument signed by the then owners of condominium units entitled to vote at least ninety (90%) percent of the votes of the Association affected by such restrictions and obligations has been recorded agreeing to change such restrictions and obligations in whole or in part.

8.2 In the event of a violation or breach of any of these restrictions, or of any other covenants of this DECLARATION, by any property owner, or agent thereof, the owners of other units or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel the compliance of the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Board of Directors of OCEAN DUNES HOMEOWNERS ASSOCIATION shall have the right whenever there shall have been any violation of these restrictions to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation it shall not have been corrected or removed by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation or conditions contained in this DECLARATION, however long continued, shall not be deemed a waiver of the right to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The remedies set out herein for such violation or breach are cumulative with any other legal or equitable rights available to any entity or person. The invalidation by any court of any restrictions or obligations in this DECLARATION shall in no way affect any of the other restrictions, which shall remain in full force and effect.

8.3 All present and future owners, tenants and occupants of units now in existence or to be constructed shall be subject to, and shall comply with the provisions of this DECLARATION, the By-Laws and any Rules and regulations as may be adopted in accordance with the By-Laws; said DECLARATION, By-Laws, Rules and Regulations may be amended from time to time. The acceptance of a deed of conveyance, or the entering into of a lease, or the entering into occupancy of any unit shall constitute an agreement that the provisions of this DECLARATION, By-Laws, and any Rules and Regulations which may be adopted are accepted and ratified by such owner, tenant or occupant and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were made a part of each and every deed of conveyance or lease.

ARTICLE IX EASEMENTS

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

(a) In case of any emergency originating in or threatening any unit, regardless of whether the owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the managing agent shall have the right to enter such unit for the purpose of remedying or abating the cause of such emergency, and such right shall be immediate.

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

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

(d) 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 of units in all phases of construction or future construction of OCEAN DUNES, their guests, families, invitees, lessees, the Association, the Declarant, its successors and assigns.

(e) The Declarant hereby reserves unto itself the right to grant easement over any of the common areas and limited common areas and facilities of OCEAN DUNES to be used for, by, or in connection with any other future construction of or at OCEAN DUNES; which may hereafter be erected on the property described in **Exhibit B** pursuant to this DECLARATION, or as may become necessary for the purpose of the Declarant, its grantee, lessee, successor or assigns, servicing such future construction with utility services, drainage, and easements for ingress and egress and regress.

(f) In the event that any unit shall encroach upon any of the common areas and facilities, or any other unit or units, for any reason not caused by the purposeful or negligent act of the unit owner, or agents or such owner, then an easement appurtenant to such unit shall exist for the continuance of such encroachment so long as it naturally exist;

and, in the event that any portion of the common areas and facilities shall encroach upon any unit, then an easement shall exist for the continuance of such encroachment of the common areas and facilities upon any unit for so long as such encroachment shall naturally exist. If any unit or common areas and facilities shall be partially or totally destroyed as a result of fire and/or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such use and/or common areas and facilities in accordance with this DECLARATION, there exist encroachments of portions of the common areas and facilities upon any unit, or of any unit upon any other unit or upon any portion of the common areas and facilities, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

**ARTICLE X
THE ASSOCIATION**

10.0 To provide for the administration and maintenance of OCEAN DUNES, and future construction, if any, by the unit owners, a nonprofit North Carolina Corporation known and designated as OCEAN DUNES HOMEOWNERS ASSOCIATION, INC. (hereinafter the "Association", has been organized, a true copy of its Articles of Incorporation having been recorded in Book 1213, at Page 0073 , in the Office of the Register of Deeds of New Hanover county, North Carolina, and the provisions thereof are incorporated herein by reference. The Association shall administer the operation and management of the condominium, OCEAN DUNES, as well as any units which are constructed in the future, if any, and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and its duly adopted By-Laws. A true copy of the original By-Laws are attached hereto as **Exhibit G** and incorporated herein by reference.

10.1 Management of Association.

(a) Declarant shall be solely responsible and have all rights and control of the management of the Association, as herein described, for a period of time not to exceed one hundred twenty (120) days after seventy (70%) percent of the unit estates in the condominium project, including those in Phase I and all future phases, if any, which have been conveyed to the unit estate purchasers. Within one hundred twenty (120) days after conveyance of seventy (70%) percent of the unit estates of the condominium project, including those in Phase I and all future phases, if any, to the unit estate purchasers, or by the 2 day of December 1982, whichever first occurs, Declarant shall transfer the right and responsibility for management of the association to the unit owners to be exercised through the Association. Such transfer of the rights and responsibility for management of the Association will not preclude or prevent Declarant from exercising continued influence in the management of the Association through such votes as are allocated to Declarant through the ownership of unit estates.

(b) Until transfer of the rights and responsibility for management of the Association occurs, as set forth in the above paragraph, the Board of Directors of the Association shall consist of those three individuals as are appointed by the Declarant to the initial Board of Directors of the Association as stated in the Articles of Incorporation for the Association or the successors or replacements for such

Directors as named by Declarant. The Board of Directors as described herein shall have the exclusive control and responsibility for the operation and management of the Association exercising all powers, duties and obligations, free from interference or control of the purchasers of the unit estates.

10.2. Membership and Voting Rights. Membership and voting rights in the Association shall be as provided in **Article VI** of the Articles of Incorporation referred to and incorporated herein as stated hereinabove subject to the Declarant's rights of management control of the Association as set out above. Membership shall be mandatory for all unit owners of all units at OCEAN DUNES, including units constructed at a future date.

10.3 Powers. The Association shall have all powers granted to it as stated in **Article V** of said Articles of Incorporation.

10.4 Common Expenses. The common expenses of the Association shall be shared by the unit owners in amounts determined by applying each unit owner's proportionate share of ownership in the common areas and facilities to the total common expenses of the Association, and as assessed against the unit owners, and their units as provided for hereinafter.

10.5 Management and Maintenance

(a) The Association, as a common expense, shall be responsible for the maintenance, repair, and replacement of all of the common areas and facilities, including those portions thereof which contribute to the support of the building or buildings, and all conduits, ducts, plumbing, wiring, and other facilities located in the common areas and facilities for the furnishing of utility and other services to the units and said common areas and facilities, and should any incidental damage be caused to any unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any common areas and facilities, the Association shall, at its expense, repair such incidental damage. Whenever the Association incurs expenses in the maintenance, replacement or repair of common areas or facilities and such expense is occasioned by any act of a unit owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the unit owner who is responsible for the act causing the damage (whether done by himself or by his family, guests, or invitees) shall be required to pay such portion of the cost of such maintenance, repair; and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the available insurance proceeds.

(b) The Association shall have the right to make or cause to be made such alterations or improvements to the common areas and facilities which do not prejudice the rights of the owner if any unit in the use and enjoyment of his unit, provided the making of such alterations or improvements are approved by the Board of Directors of the Association, and the cost of such alterations or improvements shall be common expenses to be assessed and collected from all of the owners of units. However, where any alterations and improvements are exclusively or substantially for the benefit of the owner or owners of a certain unit

and certain unit or units requested the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the owner or owners of the unit or units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

(c) The Declarant shall enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Except, however, any such contract shall contain a provision allowing the Association to terminate such contract, without justification or penalty after transfer of management by Declarant to the Association.

10.6 Unit Owners Maintenance:

(a) Every owner shall perform promptly all maintenance and repair work within his unit, which, if omitted, would affect the condominium, either in its entirety or in a part belonging to other owners; every owner being expressly responsible for the damages and liability which his failure to do so may engender. The owner of each unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, and other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his unit. Such owner shall further be responsible and liable for the maintenance, repair and replacement of the surfaces of any and all walls, ceilings, and floors which are a part of his unit, including painting, decorating, and furnishings, and all other accessories which such owner may desire to place or maintain in his unit. Whenever the maintenance, repair and replacement of any item for which the owner of a unit is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair, or replacement except that the owner of such unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

(b) All parts of a 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 this Declaration, or a determination by the Board or its designated agent that such failure will endanger or impair the value of the common areas and facilities of any unit 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 by the unit owner therein.

10.7 Limitation of Liability: Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to unit owners, their families, guests and invitees for injury or damage caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

10.8 Insurance.

(a) Acquisition: Insurance policies upon the condominium (other than title insurance) shall be purchased by the Association in the name of the Board of Directors of the Association, as Trustee for the unit owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the units or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its right of subrogation as to any claims against the unit owners, the Association and their respective servants, agents and guests. Each unit owner may obtain insurance, at his own expense, affording coverage upon his unit, his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

(b) Coverage: All buildings and improvements upon the land and all personal property included in the common areas and facilities shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs. Such coverage shall afford protection against (a) loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and (b) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the real property, including but not limited to, vandalism and malicious mischief.

(c) Public Liability Insurance: Public liability insurance shall be secured by the Association in such amount and with such coverage as shall be deemed necessary by the Board of Directors, but in no event in an amount less than One Million Dollars, including, but not limited to, an endorsement to cover liability of the unit owners as a group or to a single unit owner. There shall also be obtained such other insurance coverage as the Board of Directors or manager shall determine from time to time be desirable or necessary.

(d) Fidelity Coverage. The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one half

times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The fidelity insurance policy shall also provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days' prior written notice to the insurance and all the Mortgagees. Provided, however, if professional management is obtained by Association and it has this type of coverage and it handles the Association's funds, then this requirement shall be deemed satisfied.

(e) Premiums: Premiums upon insurance policies purchased by the Association shall be paid by the Association and chargeable to the Association as a common expense.

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

(g) Distribution of Insurance Proceeds: Proceeds of insurance policies shall be payable to the Board of Directors of OCEAN DUNES HOMEOWNERS ASSOCIATION, INC. as insurance trustee and shall be distributed to or for the benefit of the beneficial owners in the following manner:

(i) Expense of the Trust: All expenses of the insurance trustee shall be first paid or provision made therefore, if any;

(ii) Reconstruction or Repair: If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as determined in Paragraph 10.9 hereof. Any proceeds remaining after defraying such cost shall be distributed as surpluses to the beneficial owners of the damaged units pursuant to Paragraph 10.11 hereof;

(iii) Failure to Reconstruct or Repair: If it is determined, as provided in Paragraph 10.9 hereof that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed as surpluses to the beneficial owners of the damaged units thereof pursuant to Paragraph 10.11 hereof;

(iv) Mortgages: In the event a mortgagee endorsement has been issued to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interest may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired.

10.9 Damage and Destruction:

(a) Determination to Reconstruct or Repair: If any part of the condominium property shall be damaged by casualty, whether it shall be reconstructed or repaired shall be determined in the following manner:

(i) Common Areas and Facilities: If the damaged improvement is a common area or facility, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium shall be terminated;

(ii) Units:

(1) Partial Destruction: If the damaged improvement is a unit, and if termination as provided in subparagraph (2) below does not take place, the damaged property shall be reconstructed or repaired unless within sixty (60) days after the casualty it is determined by agreement in the manner elsewhere provided that the condominium shall be terminated;

(2) Total Destruction: If more than two-thirds (2/3) of the units are destroyed and owners of three-fourths (3/4) of the units in the entire condominium should determine not to proceed with the repair or restoration, then the procedure set forth in Section 47A-25 of the North Carolina Statutes, and any amendments thereto, shall take place.

(b) Plans and Specifications: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached hereto as exhibits; or if not, then according to plans and specifications approved by the Board of Directors of the Association, and if damaged property is a unit, by the owners of all damaged units therein which approvals shall not be unreasonably withheld.

(a) Estimate of Costs: Immediately after a determination to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the costs to rebuild or repair.

(b) Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the unit owners who own the damaged units and against all unit owners in the case of damage to common areas and facilities, in sufficient amounts to provide funds for the payment of such costs. Such assessments against unit owners for damage to units shall be in a

proportion to the cost of reconstruction and repair of their respective units. Such assessments on account of damage to common areas and facilities shall be in proportion to the unit owner's share in the common areas and facilities.

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

10.11 Assessments.

(a) Each owner of any unit and the Declarant as owner of any unsold units or units purchased by Declarant, by acceptance of the deed thereto, whether or not it shall be so expressed in such deed, is deemed to, and does thereby, covenant and agree to pay assessments for the common expenses of the upkeep, maintenance and improvement of the common areas and for expressly designated services provided to all unit owners in the condominium project.

(b) All assessments levied against the unit owners and their units shall be uniform and, unless specifically otherwise provided for in this Declaration, all assessments made by the Association shall be in such an amount that any assessment levied against each unit owner and each unit shall bear the same ration to the total assessment made against all unit owners and their units as the undivided interest in common areas and facilities appurtenant to all units.

(c) Assessments provided for herein shall be payable in monthly installments, such assessments shall commence for each unit on the first day of the first month following the recordation of the deed for such unit in the New Hanover County, North Carolina Registry, from the Declarant to the first unit owner.

(d) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of OCEAN DUNES and, in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and relating to the exterior maintenance of the buildings and units, excluding glass surfaces, all for the use and enjoyment of the common areas and facilities, including, but not limited to, the cost~ of water and sewer services; garbage collection; electricity for the common areas; repairs, replacements and additions to the common areas and facilities; the costs of labor, equipment and materials expended on the common areas and facilities' management and supervision; the

payment of taxes assessed against the common areas and facilities; the procurement and maintenance of liability and hazard insurance coverage on the common areas; the employment of attorneys, accountants, and professional management personnel when deemed necessary or advisable by the Association; and such other needs as may arise.

(e) The Board of Directors of the Association shall establish an annual budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the condominium, the fiscal year shall commence with the closing of the sale of the first condominium unit). Such budget shall project all expenses for the coming year which may be required for the proper operation, management and maintenance of the condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such annual budget by the Board of Directors of the Association, copies of said budget shall be delivered to each owner of a unit and the assessment for said year shall be established based upon such budget, although the delivery of a copy of said budget to each owner shall not affect the liability of any owner for such assessment. Should the Board of Directors at any time determine in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the condominium, or in the event of emergencies, including such emergencies as are contemplated in **Article X**, Section 10.9(e) hereinabove, the Board of Directors shall have the authority to levy such additional assessment or assessments it may deem to be necessary; provided that assessments shall have the assent of members, who are voting in person or by proxy, entitled to cast two-thirds or more votes at a meeting called for this purpose.

(f) Reserve Fund: The Board of Directors of the Association, in establishing the annual budget for operation, management, and maintenance of the condominium, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the common areas and facilities, which capital improvement and replacement fund (capital improvement fund) shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment. Constituting a part of the common areas and facilities, as well as the replacement of personal property which may constitute a portion of the common areas and facilities held for the joint use and benefit of the owners of units. The amount to be allocated to the capital improvement fund may be established by said Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of common areas and facilities. The amount collected for the replacement of common areas and facilities shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to common areas and facilities. Any interest earned on monies in the capital improvement fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance.

(g) Working Capital: In addition to the aforementioned Reserve Fund, the Board of Directors of the Association shall establish a fund to be designated as a Working Capital Fund. The purpose of such fund is to insure that the Association Board will have cash available to meet unforeseen expenditures, or to establish additional equipment or services deemed necessary or desirable by the Board. The fund shall be maintained as a segregated account for the use and benefit of the Association. The Board of Directors shall establish as an allocation to the said fund a minimum of two (2) months estimated common area charge for each unit estate. Each unit estates' share of said fund must be collected and transferred to the Association at the time of closing of the sale of each unit estate. The contribution to the said fund for each unsold unit estate shall be paid to the Association within sixty (60) days after the date of the conveyance of the first unit estate in the legal phase or project. Contributions for units built in future phases shall commence within sixty (60) days after the date of the conveyance of the first unit estate in each such phase.

(h) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the condominium, or to the proper undertaking of all acts or duties imposed upon it by virtue of this Declaration, The Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid into the Association by any owner of a unit, the same may be comingled with monies paid to the Association by the other owners of units except as hereinabove specified regarding Reserve and Working Capital Funds. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leaning or use of the common areas and facilities, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his unit. When the owner of a unit shall cease to be a member of the Association by reason of his divestment of ownership of such unit, by whatever means, the Association shall not be required to account to such owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such owner, as all monies which any owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the condominium.

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

(j) The owner or owners of each unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such unit while such party or parties are owner or owners of a unit. In the

event that any unit owner or owners are in default in payment of any assessment or installment thereof owed to the Association, such unit owner or owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit be brought or not.

(k) No owner of a unit may exempt himself from liability for any assessment levied against him or his unit by waiver of the use of enjoyment of any of the common areas and facilities, or by abandonment of the unit or in any other way.

(l) The Association is hereby granted a lien upon each unit and its appurtenant undivided interest in common areas and facilities which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the owner of each such unit, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable Attorney's fees, which may be incurred by the Association in enforcing this lien upon said unit, and its appurtenant undivided interest in common areas and facilities. The lien granted to the Association may be foreclosed in the manner provided by North Carolina General Statute 47A-22 and in any suit for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the owner of any unit from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a receiver for said unit. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the highest rate allowed by law on any such advances made for such purposes. All persons, firms, or corporations who shall acquire, by whatever means, any interest in the ownership of any unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any unit expressly subject to such lien rights.

(m) The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the public records of New Hanover County, North Carolina, which claim shall state the description of the unit encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien provided for herein shall be subordinated to the lien of any first mortgage or deed of trust and/or

any person, firm or corporation acquiring title to any unit and its appurtenant undivided interest in common areas and facilities subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a unit by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all owners of all units as a part of the common expenses, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

(n) Whenever any unit may be leased, sold, or mortgaged by the unit owner thereof, the Association, upon written request of the unit owner, shall furnish to the proposed lessee, purchaser, or mortgagee, a statement verifying the status of payment or of any assessment which shall be due and payable to the Association by such unit. Such statement shall be prepared by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase, or mortgage transaction, and the Association shall be bound by such statement.

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

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

(q) Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association.

(r) Common Surplus: Common Surplus, meaning all funds and other assets of the Association (including excess of receipts of the Association from, without limitation, assessments, rents, profits, and revenues from whatever source over amount of the common expense), shall be owned by the owners of all units in the same proportion that the undivided interest in common areas and facilities appurtenant to each owner's unit bears to the total of all undivided interest in common areas and

facilities appurtenant to all units provided, however, that said common surplus shall be held by the Association in the manner, and subject to the terms, provisions, and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance indemnity herein provided, or upon termination of the condominium, any attribution or distribution of common surplus which may be made from time to time shall be made to the then owners of units in accordance with their percentage interest in common surplus as declared herein.

10.12 Exterior Maintenance:

(a) In addition to maintenance upon the common areas and facilities, the Association shall provide exterior maintenance upon each unit which is subject to assessment hereunder, as follows:

Paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

(b) In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association, as well as the Declarant until such time as the Association takes over such duties and responsibilities, the right to unobstructed access over and upon each unit at all reasonable times to perform maintenance and repair as provided herein.

(c) In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act of the owner or owners of a unit or units, or the family, guests or invitees thereof, or results from causes excluded from coverage in North Carolina Standard Fire and Extended Coverage Insurance policies, the costs of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which the unit or units of such owner or owners is subject.

10.13 Future Construction by Declarant: Future construction of additional condominium or dwelling units or a convenience and retail center on the real property described in **Exhibit B** shall not require the consent of the Homeowners Association or the individual unit owners. All such future construction shall be free from the interference, direction, management or control of any sort of the Homeowners Association and/or the individual unit owners.

**ARTICLE XI
MORTGAGE OF UNITS**

11.0 Any unit owner may give a deed of trust or mortgage on his unit without prior notice to or authorization by the Declarant or the Board of Directors of the Association provided, however, that should foreclosure proceeding be instituted under the terms of same mortgage or deed of trust, the unit owner shall notify the Declarant and the Board of Directors of the Association simultaneously by registered mail, return receipt requested, of the pending foreclosure sale, said notice to be given not less than fifteen (15) days prior to the date of such foreclosure sale. Said notice shall contain the

date, time and place of such sale and shall specify the amount of the outstanding indebtedness remaining on the unit.

**ARTICLE XII
PARTITIONING**

12.0 The common areas and facilities shall not be divided nor shall any right to partition any thereof exist. Nothing herein contained, however, shall be deemed to prevent ownership of a condominium unit by the entireties, jointly or in common, or in any other form by law permitted.

**ARTICLE XIII
AMENDMENT OF DECLARATION**

13.0 This Declaration may be amended by the vote of at least 90% in common interest of all unit owners, cast in person or by proxy, at a meeting duly held in accordance with the provisions of the By-Laws; provided, however, that the Declarant shall have the right to amend this Declaration in accordance with the provisions set forth herein pertaining to future construction of the condominium project. No such amendment shall be effective until duly and properly recorded in the Office of the Register of Deeds wherein this initial Declaration is recorded.

**ARTICLE XIV
TERMINATION**

14.0 The condominium shall be terminated, if at all, in the following manner:

(a) By the unanimous agreement of all unit owners of all units of all phases of OCEAN DUNES expressed in a instrument to that effect duly recorded, and provided, that the holders of all liens affecting any of the units, consent thereunto, or agree, in either case by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property as provided herein. The termination shall become effective when such agreement has been recorded in the public records of New Hanover County, North Carolina.

(b) If it is determined in the manner elsewhere provided that the condominium shall not be reconstructed after causality, the condominium plan of ownership shall be terminated and this Declaration revoked. The determination not to reconstruct after casualty shall be evidenced by a certificate of the Association certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the public records of New Hanover County, North Carolina.

(c) After termination of the condominium, the unit owners shall own the property as tenants in common in undivided shares and the holders of mortgage and liens against the unit or units formerly owned by such unit owners shall have mortgages and liens upon the respective undivided shares of the unit owners. The undivided share or interest owned as tenants in common shall be that percentage of the undivided interest in the common areas and facilities previously owned by each unit owner. All funds held by the Association and insurance proceeds, if any, shall be and continue to be held for the unit owners in the same proportion. The costs incurred by the Association in connection with the termination shall be a common expense.

(d) Following termination, the property may be partitioned and sold upon the application of any unit owner. Following a termination, if the Board of Directors determines by not less than a three-fourths (3/4) vote to accept an offer for the sale of the property, each unit owner shall be bound to execute such deeds and other documents reasonably required to effect such sale at such times and in such forms as the Board of Directors directs, In such event, any action for partition or other division of the property shall be held in abeyance pending such sale, and upon the consummation thereof shall be discontinued by all parties thereto.

(e) The members of the Board of Directors acting collectively as agent for all unit owners, shall continue to have such powers as in this Article are granted, notwithstanding the fact that the Association itself may be dissolved upon a termination.

14.1 Except as provided for herein, no alteration in the percentage of ownership in common areas and facilities appurtenant to each unit, or alteration of the basis for sharing common expenses and other apportionment of assessments which may be levied by the Association in accordance with the provisions hereof, or alteration of basis of ownership of common surplus, shall be made without the prior written consent of all of the owners of all units and all of the institutional lenders holding first mortgages or first deeds of trust on the units.

14.2 No alteration, amendment, or modification of the rights and privileges granted and reserved hereunder in favor of an institutional lender or institutional lenders shall be made without prior written consent of all institutional lenders holding mortgages on units in the condominium being first had and obtained.

14.3 No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of the Declarant shall be made without the written consent of said party being first had and obtained.

ARTICLE XV REMEDIES IN EVENT OF DEFAULT

15.0 The owner or owners of each unit shall be governed by and shall comply with the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association, as any of the same are now constituted or as they may be amended or supplemented from time to time. A default by the owner of any unit shall entitle the Declarant, the Association, or the owner of other units to such relief as is available at law or equity, including:

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

(b) Each unit owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness, or by that of any member of his family, or his or their guests, employees, agent, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of a unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

(c) In any proceedings arising because of alleged default by a unit owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the Court, but in no event shall any unit owner be entitled to such attorney's fees.

(d) The failure of the Association or any unit owner to enforce any right, provision, covenant, or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association or of the unit owner to enforce such right, provision, covenant, or condition in the future.

(e) All rights, remedies and privileges granted to the Association or the owner or owners of a unit pursuant to any terms, provisions, covenants, or conditions of this Declaration or other above-mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be available to such party at law or in equity.

(f) The failure of the Declarant to enforce any right, privilege, covenant, or condition which may be granted to it by this Declaration or other above-mentioned documents, shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

(g) The failure of an institutional lender or institutional lenders to enforce any right, provision, privilege, covenant, or condition which may be granted to it or them by the Declaration or other above-mentioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

ARTICLE XVI
RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

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

(a) To examine, at reasonable times and upon reasonable notice, the books and records of the Association and to be furnished, upon request, at least one copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Association, such financial statement and report to be furnished by April 15 of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment, other than as provided for herein to provide for future phases of construction by Declarant, to this Declaration, or the Articles of Incorporation and By-Laws of the Association, which notice shall state the nature of the amendment being proposed.

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

ARTICLE XVII SEVERABILITY

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

ARTICLE XVIII LIBERAL CONSTRUCTION

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

ARTICLE XIX DECLARATION OF CONDOMINIUM BINDING ON ASSIGNS AND SUBSEQUENT OWNERS

19.0 The restrictions and burdens imposed by the Articles of this Declaration are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each unit and its appurtenant undivided interest in common areas and facilities, this Declaration shall be binding upon the Declarant, its successors and assigns, and upon all parties

who may subsequently become owners of units in the condominium, and their respective heirs, devisees, legal representatives, successors and assigns. This Declaration and the exhibits attached hereto and amendments hereof shall be construed and controlled by and under the laws of the State of North Carolina.

**ARTICLE XX
EMINENT DOMAIN**

20.0 In the event of a taking by eminent domain (or condemnation or a conveyance in lieu of condemnation) of part or all of the common areas and facilities, the award of such taking shall be payable to the Association, which shall represent the owners named in the proceedings. Said award shall be utilized to the extent possible for the repair, restoration, replacement or improvement of the remaining common areas and facilities, if only part are taken. If all or more than two-thirds (2/3) of all of the general common areas and facilities are taken, it shall be deemed a destruction of more than two-thirds (2/3) of all of the general common areas and facilities and the condominium shall be terminated as hereinbefore provided. Any funds not utilized (in the case of a partial taking) shall be applied in payment of common expenses otherwise assessable. In the event of a taking of all or part of a unit, the award shall be made payable to the owner of such unit and his mortgagee, if any, as their interests may appear.

ARTICLE XXI

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

H. Terry Hutchens
HUTCHENS & WAPLE, P.A.
230 Donaldson Street, Suite 500
P. o. Box 650
Fayetteville, North Carolina 28302

**ARTICLE XXII
WARRANTIES AND REPRESENTATIONS**

22.0 The Declarant specifically disclaims any intent to have made any warranty or representation in connection with the condominium, except as specifically set forth herein, and no person shall rely upon any warranty or representation not so specifically made therein. Any estimates of common expenses, taxes, or other charges are deemed accurate, but no warranty or guaranty is made or intended, nor may one be relied upon. This disclaimer is not to be construed as relieving Declarant from complying with any VA Regulation, specifically VAR 4360.1(d), requiring warranties against defects in construction for any units sold and guaranteed by the Veterans Administration. .

**ARTICLE XXIII
FHA/VA APPROVAL**

23.0 As long as the Declarant retains management and control of the Association as set out in **Article X** herein, the following actions will require the prior approval of the Federal Housing Authority or the Veterans Administration: Annexation of additional property not described in **Exhibits A** and **B** herein; merger and/or consolidation, mortgaging of the common area, dedication of common area, dissolution and/or amendment of this Declaration.

IN WITNESS WHEREOF, The Declarant, OCEAN DUNES, a North Carolina Partnership has caused this Declaration of Condominium to be signed for and on behalf of the Partnership by the Managing Partners, the day and year first above written.

MURRAY O. DUGGINS, Managing Partner
JACKSON R. NEWTON, Managing Partner

NORTH CAROLINA
CUMBERLAND COUNTY

I, Virginia B. Kiker, a Notary Public of Cumberland County, North Carolina, do hereby certify that MURRAY O. DUGGINS and JACKSON R. NEWTON, Managing Partners of OCEAN DUNES, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. ~

WITNESS my hand and notarial seal, this 2nd day of December, 1982.

My Commission Expires: May 30, 1984

JOINDER AND CONSENT OF TRUSTEE AND BENEFICIARY/MORTGAGEE

BRANCH BANKING AND TRUST COMPANY and JACK M. SLAPPEY, as Trustee, join in the execution of this "DECLARATION CREATING UNIT OWNERSHIP OF PROPERTY UNDER THE PROVISIONS OF CHAPTER 47A OF THE GENERAL STATUTES OF THE STATE OF NORTH CAROLINA" for the sole purpose of subjecting, submitting and subordinating any and all right, title and interest in the property described in **Exhibits A and B**, attached hereto, that they have, or either of them has, or may have, by virtue of that Deed of Trust recorded in Book 1198, at Page 1420, New Hanover County Registry, said DECLARATION and every provision hereof, and to the jurisdiction of OCEAN DUNES HOMEOWNERS ASSOCIATION, INC., as the same may be amended or supplemented from time to time.

IN WITNESS WHEREOF, BRANCH BANKING AND TRUST COMPANY has caused this JOINDER AND CONSENT to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, this 29th day of November, 1982; and JACK H. SLAPPEY, as Trustee, has hereunto set his hand and seal, this the 29th day of November, 1982.

BRANCH BANKING AND TRUST COMPANY

NORTH CAROLINA
COUNTY OF Cumberland

I, Louise S. Francisco, a Notary Public of Cumberland County, North Carolina, do hereby certify that Jack M. Slappey, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 29th day of November, 1982.
My Commission Expires: January 25, 1983

NORTH CAROLINA
COUNTY OF Cumberland

I, Louise S. Francisco, a Notary Public of Cumberland County, North Carolina certify that Carl T, McFarland personally came before me this day and acknowledged that he is Assistant Cashier of BRANCH BANKING AND TRUST COMPANY, a North Carolina Banking Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by himself as its Assistant Cashier.

WITNESS my hand and notarial seal, 29th day of November, 1982.
My Commission Expires: January 25, 1983