

BOOK PAGE

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RECORDED AND VERIFIED
REBECCA P. TUCKER
REGISTER OF DEEDS
NEW HANOVER CO. NC

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

Nov 26 4 19 PM '85

DECLARATION OF CONDOMINIUM
PIPER'S POINT TOWNHOUSES
PHASE I

THIS DECLARATION, made this, the 31st day of October, 1985, by S.D.K. & SON, INC., a North Carolina corporation, with its principal place of business located in the County of Mecklenburg, State of North Carolina, hereinafter referred to as "DECLARANT";

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, the Declarant is the owner of record of the fee simple title of certain real property in Federal Point Township, New Hanover County, North Carolina, which is more particularly described in an Exhibit "A" attached hereto, and made a part hereof by reference; and

WHEREAS, the Declarant has constructed a multi-unit building and certain other improvements upon the aforesaid property; and

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

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

NOW, THEREFORE, THE DECLARANT DOES HEREBY DECLARE THAT ALL OF THE REAL PROPERTY DESCRIBED IN EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, AS WELL AS ALL THE IMPROVEMENTS CONSTRUCTED THEREON, IS HELD AND SHALL BE HELD, CONVEYED, HYPOTHECATED, ENCUMBERED, USED, OCCUPIED, AND IMPROVED

RETURNED TO
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H. Kenneth Stegman

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LARRICK & MASON
ATTORNEYS AT LAW
23 NORTH THIRD STREET
P. O. BOX 169
WILMINGTON,
NORTH CAROLINA 28402
919-763-2673

SUBJECT TO THE FOLLOWING ARTICLES OF COVENANTS, CONDITIONS, RESTRICTIONS, USES, LIMITATIONS AND OBLIGATIONS, ALL OF WHICH ARE DECLARED TO BE IN FURTHERANCE OF A PLAN FOR THE IMPROVEMENT OF SAID PROPERTY AND THE DIVISION THEREOF INTO CONDOMINIUM UNITS AND SHALL BE DEEMED TO RUN WITH THE LAND AND SHALL BE A BURDEN AND A BENEFIT TO THE DECLARANT, ITS SUCCESSORS AND ASSIGNS, AND ANY PERSON OR ENTITY ACQUIRING OR OWNING AN INTEREST IN THE REAL PROPERTY AND IMPROVEMENTS, OR ANY SUBDIVISION THEREOF, THEIR GRANTEEES, SUCCESSORS, HEIRS, EXECUTORS, ADMINISTRATORS, DEVISEES AND ASSIGNS.

ARTICLE I

Submission of Property

Pursuant to the provisions of Chapter 47A of the North Carolina General Statutes, Section 47A-2, the 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" of the State of North Carolina, which is codified as Chapter 47A of the General Statutes of the State of North Carolina.

ARTICLE II

Definitions

Unless it is plainly evident from the context that a different meaning is intended, the following terms shall be used as follows:

A. ACT shall mean and refer to the Unit Ownership Act, Chapter 47A of the General Statutes of the State of North Carolina, as such may be supplemented, or amended, from time to time.

B. ASSOCIATION shall mean and refer to Piper's Point Homeowner's Association, a non-profit corporation, organized under the Laws of the State of North Carolina, and shall include

all unit owners, and shall act in accordance with its Articles of Incorporation, By-Laws, and this Declaration.

C. ASSESSMENT shall be the share of funds assessed against the unit owners by the Association for the payment of common expenses as herein provided.

D. BOARD shall mean the Board of Directors of the Piper's Point Homeowner's Association.

E. BY-LAWS shall mean and refer to the By-Laws of Piper's Point Homeowner's Association. A copy of the initial By-Laws of said Association are attached hereto as Exhibit "C", and incorporated by reference herein.

F. BUILDING shall mean and refer to the multi-unit building which the Declarant has constructed, or will construct, upon the real property described in Exhibit "A", to be used for such purposes as are hereinafter provided. Attached hereto and made a part hereof by reference is Exhibit "D", which consists of a full and exact copy of the plans of the building, as well as a survey of the real property, drawn by Jack G. Stocks, RLS, showing the location of the building thereon. Said building is more particularly described in the plans of said building, showing all particulars, as required by Law. In general, the building has three (3) stories, and is constructed on a concrete slab at ground level. The building has approximately 5104 square feet of heated area, with approximately 1276 square feet of heated area in each unit. The ground level, or first story of each unit is a garage with an area of approximately 616 square feet. The building has been subdivided into four (4) units, hereinafter defined. The building has been constructed principally of wood, and the roofing is constructed of asphalt shingles.

G. COMMON AREAS AND FACILITIES generally shall mean and refer to the portion of the condominium property owned by all of the owners, as more specifically set forth herein.

H. EXPENSES shall mean the expenses of administration, maintenance, operation, repair and replacement, including the funding of any capital reserve fund established for such maintenance, repair and replacement of the common areas and facilities, and other expenses declared by the Association to be common expenses, as further defined in the Unit Ownership Act.

I. COMMON SURPLUS shall mean the balance of all revenues of the Association remaining after deducting the common expenses.

J. CONDOMINIUM shall mean and refer to the entire proposed development consisting of all the real property and the building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for a common use in connection therewith, which are intended to be submitted to the provisions of the act by this Declaration, and the supplements and amendments thereto, as are provided for hereinbelow.

K. DECLARANT shall mean and refer to S.D.K. & SON, INC., a North Carolina corporation, its successors and assigns.

L. DECLARATION shall mean and refer to this instrument as it may from time-to-time be lawfully amended, or supplemented.

M. MAJORITY OR MAJORITY OF UNIT OWNERS shall mean and refer to the owners of fifty-one (51%) per cent of the aggregate interest in the common areas and facilities, as established by this Declaration hereinbelow, assembled at a duly-called meeting of the unit owners.

N. PERSON shall mean and refer to an individual, corporation, partnership, association, trustee, or other legal entity.

O. REAL PROPERTY shall mean and refer to all of the real property described in Exhibit "A" attached hereto and made a part hereof.

P. SINGULAR, PLURAL GENDER whenever the context so

permits, the use of the plural shall include the singular, the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

Q. UNIT OR CONDOMINIUM UNIT shall mean that portion of the property which is subject to unit ownership as defined in the Act and in this Declaration.

R. UNIT OWNER OR OWNER means the person or entity who owns the unit.

S. LIMITED COMMON AREAS AND FACILITIES shall mean those common areas and facilities which are reserved for the use of a certain unit, or units, to the exclusion of other units, as more specifically hereinafter defined.

ARTICLE III

Description Of The Property

This Declaration shall be applicable to all that tract or parcel of land, together with the buildings and improvements located thereon, or hereinafter located thereon, situate, lying and being in the Town of Carolina Beach, County of New Hanover, State of North Carolina, more particularly described in Exhibit "A", attached hereto and incorporated by reference herein. The Declarant has, or may, acquire additional adjacent property described in Exhibit "B", attached hereto and incorporated by reference herein, and upon the obtaining of said property and submission of said property to the terms and conditions of this Declaration, as hereinafter provided, said property shall also be subject to the terms and conditions contained herein. The Declarant shall have no obligation to submit any additional property to this Declaration, but in the event said property is submitted, Declarant covenants and agrees that no more than sixteen (16) additional units will be subjected to this Declaration, making a total of twenty (20) units subject to the Declaration. All additional submissions to this Declaration shall be made, if at all, on or before December 31, 1990.

In the event the Declarant does subject additional lands and units to the provisions of this Declaration, the construction of improvements shall be consistent with the design and quality of those units initially governed by the provisions of this Declaration. The Declarant acknowledges that the Act makes no specific provision for the submission of additional units to the Declaration of unit ownership, and provides that the ratio of the undivided interests in the common area shall have a permanent character and shall not be altered, except by the unanimous consent of all unit owners expressed in an Amended Declaration. To this end, it is specifically provided that all unit owners, by acceptance of a conveyance from the Declarant, and their heirs, successors and assigns, shall be deemed to have irrevocably nominated and appointed the Declarant, or its assignee, as said owners' duly appointed attorney-in-fact solely for the purpose of consenting to the amendment of this Declaration to subject additional property described in Exhibit "B" to its provisions, consistent with the limitations stated above, and to modify the undivided interests in the common areas, provided that such undivided interests of each unit owner at the time of such amendment, shall be the approximate relation that the fair market value of the unit at the date of the amendment bears to the then aggregate fair market value of all units then subjected to the Declaration, as amended. This Power of Attorney shall continue despite any incompetence or other disability of the part of the unit owner.

ARTICLE IV

Unit Designation And Description

1. The unit designation, their location and dimensions are as set forth in Exhibit "D", attached hereto. Each unit is identified by a letter followed by a number designating the unit location in the building.

2. The legal description of each unit shall consist of the letter and number combinations described in Paragraph 1

above. Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings, and floors, which are shown on said plans, subject to such encroachments as are contained in the buildings, whether the same now exists or may be caused or created by the construction, settlement, or movement of the buildings, or by permissible repairs, construction, or alteration.

3. Each unit shall be conveyed and treated as an individual property, capable of independent use in fee simple ownership, and the unit owner of each unit shall also own as appurtenant to the ownership of said unit conveyed, a point two-five (.25) undivided interest in the common areas and facilities, said undivided interest being the approximate ratio of the fair market value of each unit to the aggregate fair market value of all units as determined by the Declarant.

The percentage of undivided interests in the common areas and facilities assigned to each unit shall be modified only as provided in Article III above.

ARTICLE V

Common Areas And Facilities

1. The common areas and facilities shall refer to all the real property described in Exhibit "A" and all the improvements and facilities thereon, which are not units, as defined above, which are not limited common areas as hereinafter defined, and which are not personal property owned, held or maintained by the unit owners. Without in any way limiting the generality of the foregoing, the common areas shall include, but not be limited to, the following:

- a. All of the real property more particularly described in Exhibit "A", attached hereto and incorporated by reference herein.
- b. All foundations, columns, girders,

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beams, supports, roof ventilation fans and vents, elevator and elevator shafts, load-bearing walls, including exterior walls and all interior walls (except non-load-bearing partition walls located wholly within a unit).

- c. All stairways, stairwells and stairs, and their components which give access to the units, saving and excepting those which are contained wholly within the unit, as hereinafter described.
- d. All yard and garden areas, parking and drive areas, and sidewalks, saving and excepting those wholly contained within the units as hereinafter described.
- e. All installations of and facilities, apparatus, conduits, and equipment for the provision of all utility services, including, but not limited to, all water and sewer service, electricity and heating, air conditioning, telephone, irrigation, trash disposal, if any, supplied for the common use and convenience of the unit owners, and which were not defined as part of the units hereinbelow.
- f. All other portions of the real property and the improvements thereon which are not specifically part of the units themselves, as

hereinafter defined, or owned by unit owners as personal property, shall be common areas and facilities intended for the common and necessary convenient use, existence, maintenance, or safety of the condominium project.

2. The undivided share in the common areas and facilities which are appurtenant to a unit:

- a. Shall not be separated therefrom and will pass with title to the unit, whether or not separately described.
- b. Cannot be conveyed or encumbered, except together with the unit.
- c. Shall remain undivided, and no action for partition of the common areas, or elements, shall lie.

3. Each unit owner shall own the undivided percentage interest in the common areas and facilities set forth in Article IV above, subject to the provisions of Article III.

ARTICLE VI

Limited Common Areas

Limited Common Areas shall be described as follows:

1. Those areas shown on Exhibit "D", attached hereto and incorporated by reference herein, as limited common areas.
2. All non-load-bearing walls located entirely within the unit.
3. All materials, including but not limited to, studs, sheetrock, ply-

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wood, carpet, paint, tile, paneling, vinyl or brick, attached to, or on the inside surface of the perimeter walls, floors and ceilings of the unit.

4. All doors, windows, screens, ventilation fans and vents located entirely within the unit, or extending into the unit from the perimeter walls, floors or ceilings thereof.
5. All air-handling units, ducts and components, and all water, power, telephone, cable television, electricity, and plumbing, gas, and sewerage lines located in the unit, provided, however, that the portion of said lines located in the common compartment for the use by all owners of units shall be general common areas and facilities described above.
6. The limited common areas or facilities which are appurtenant to any unit shall not be separated therefrom and shall pass with title to any units, whether or not separately described.

- ARTICLE VII

Use

Buildings in each of the units shall be used for residential purposes which shall include the rental of any units for residential and lodging accommodations pursuant to the rules and regulations established by the Association. Each unit owner shall have the right to use the common areas and facilities in

accordance with the purposes for which they were intended and for all purposes incidental to the use and occupancy of said unit. No person shall use the common areas and facilities or any part thereof in such a manner as will restrict or impair the use of said areas by others or in any manner contrary to the condominium documents and such rules and regulations as may be established from time-to-time by the Board of Directors. For so long as the Declarant shall retain ownership of any units, it may utilize any such unit or units for sales offices, models or other uses for the purpose of selling units within the project. The Declarant may assign this limited commercial usage right to any person or entity as it may choose.

ARTICLE VIII

Maintenance And Repair

1. All painting, maintenance, repairs and replacements to the common areas shall be made by the Board of Directors and shall be charged to all unit owners as a common expense, except to the extent that any required work is necessitated by the negligence, misuse and neglect of a unit owner, in which case the expense shall be charged to such unit owner.

2. All painting, decorating, maintenance, repairs and replacements to any unit, other than to the common elements contained therein, whether structural or nonstructural, ordinary or extraordinary, shall be the responsibility of the unit owner and at the unit owner's expense, except that whenever the maintenance, repair and replacement of any item for which the unit owner is obligated to maintain, replace or repair is occasioned by any loss or damage which is covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for such maintenance, repair or replacement. The unit owner shall be required to pay the portion of the cost of such maintenance, repair and replacement which exceeds the amount of the insurance coverage applicable thereto or is subject to a deductible clause in such insurance.

3. All parts of the condominium unit shall be kept in good condition and repair by and at the expense of the owner. The unit shall be maintained by the owner in a clean and safe condition, free of nuisance. Each unit owner will promptly comply with any requirements of the insurance company which insures the common areas and facilities when so requested in writing by the Board or its designated agent. Upon the failure of an owner to repair, replace or maintain as may be required pursuant to the condominium documents, the Association may give written notice to the owner stating the repairs that must be made and a date not less than twenty (20) days from the date of mailing in which they must be completed. If such repairs, replacement or maintenance are not made within the time allotted, the Association may cause appropriate repairs and maintenance to be made and may recover the costs of such actions by special assessment against the unit owner as provided herein and in the By-Laws. Such assessment may include the cost incurred by the Association and the abatement of any nuisance maintained by the unit owner.

ARTICLE IX

Easements

1. Each of the unit owners shall have an easement in common with the other unit owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities, including but not limited to, all sewer, water, gas, electricity, telephone and cable television lines located in the other units and serving said owner's unit. Each unit shall be subject to an easement in favor of the owner of the other units to use all pipes, ducts, cables, wires, conduits, public utility lines, and other common facilities serving such other units and located in such unit.

2. The Association shall have the right, to be exercised by the Board of Directors or its designee, to enter into each unit from time-to-time, at reasonable hours, as may be

necessary to inspect the unit, to remove violations therefrom, and to maintain, repair or replace common facilities, if any, contained therein.

3. The Declarant hereby reserves and subjects the lands which are subject to this Declaration to an easement for the use and enjoyment by the owners and occupants of the respective units for ingress and egress to and from all of the common areas and facilities pertaining to the condominium. Easements are also hereby created for the installation, use, maintenance, repair and replacement of all necessary public utilities, including, but not limited to, sewer, water lines, gas, electricity, telephone and cable television for the use of the above described property.

4. In the event that by reason of the construction, reconstruction, settlement or shifting of the building, any portion of the common areas and facilities encroaches upon any unit, or any unit encroaches upon another unit, or any unit encroaches upon the common areas and facilities, (whether the same now exists or may be caused or created by existing construction, settlement or movement of the building, or by the permissible repairs, construction or alteration of the building), easements for the maintenance of such encroachments are hereby established and shall continue to exist for so long as any part of the building containing such unit or common elements shall remain standing.

5. The Board of Directors, or any person authorized by it, shall have the right to enter into any unit for the purpose of remedying or abating causes of an emergency originating in or threatening any unit, common area or limited common area and for the making of any other necessary repairs not performed by the unit owners.

6. All easements and rights described herein are easements appurtenant, running with the land and shall inure to the benefit of and be binding upon the Declarant, its successors

and assigns, and any other owner, purchaser, mortgagee, or other person having an interest in said lands or any portion thereof.

ARTICLE X

Common Expenses

The unit owners are bound to contribute toward the expenses of administration, maintenance and repair and toward any other expenses lawfully assessed by the Association in accordance with their percentage interest in the common areas set forth in Article IV above. No unit owner is exempt from contributing towards such expense by waiver of the use or enjoyment of the common areas or facilities or by the abandonment of the unit.

ARTICLE XI

Common Profits

Common profits of the Association, if any, after payment of all expenses of operation and maintenance of the property and the establishment of any reserve funds deemed necessary and appropriate by the Board of Directors in accordance with the condominium documents shall be distributed among the unit owners according to their percentage of unit ownership set forth in Article IV above.

ARTICLE XII

Taxes

Each individual unit and its undivided interest in the common areas and facilities described above shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including, but not limited to, ad valorem taxes and assessments. Each unit owner shall be liable solely for the amount of taxes against said owner's unit and undivided interest in the common areas, limited common areas and facilities and shall not be affected by the consequences resulting from the tax delinquency of any other unit owner. Neither the building, nor the property, nor any of the common

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areas, limited common areas and facilities, shall be deemed to be a separate parcel for the purposes of taxation.

ARTICLE XIII

Liens

1. No liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole except with the unanimous consent of the unit owners and the holders, if any, of prior liens thereon.

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

3. Assessments against the unit owners by the Association made pursuant to the By-Laws shall, if not paid when due, bear interest at such rate as is determined by the Board, not to exceed the maximum rate allowed by law, and shall create a lien to the extent of such assessment, together with interest thereon in favor of the Association against the unit of the defaulting owner and shall be enforced as provided by the Unit Ownership Act. All assessments against a unit owner shall be also the personal obligation of the unit owner at the time the assessment becomes due. The personal obligations for assessments shall not pass to successors in title unless expressly assumed by them or required to be assumed by local law.

4. Any and all liens provided for herein shall be subordinate to the lien of any first mortgage given to any lender to secure a loan, unless any such lien provided for herein shall have been recorded in the Office of the Clerk of Superior Court of New Hanover County, North Carolina, prior to the recordation of said mortgage in the Office of the Register of Deeds of New Hanover County, North Carolina. A lien for common assessments shall not be affected by any sale or transfer of the unit, except