

**DECLARATION OF INTENTION TO SUBMIT PROPERTY
TO THE PROVISIONS OF CHAPTER 47
OF THE NORTH CAROLINA GENERAL STATUTES**

PINE VALLEY CONDOMINIUM

THIS DECLARATION, made this 10th day of August, 1972, by PINEHURST, INCORPORATED, a North Carolina Corporation, hereinafter called the "Declarant", pursuant to the provisions of Chapter 47A of the North Carolina General Statutes, entitled the "Unit Ownership Act",

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property in Moore County, State of North Carolina, and more particularly described in Exhibit A attached hereto, and

WHEREAS, the Declarant is the owner of certain condominium-type multi-unit buildings and certain other improvements heretofore constructed or hereafter to be constructed upon the aforesaid property and it is the desire and the intention of the Declarant to divide the project into "condominium units" or "units" as those terms are defined under the provisions of the North Carolina unit Ownership Act, and to sell and convey the same to the various purchasers subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and

WHEREAS, Declarant desires and intends, by the filing of this Declaration, to submit the above described property and the multi-unit buildings located thereon and all other improvements constructed or to be constructed thereon, together with all appurtenances thereto, to the provisions of the North Carolina Unit Ownership Act (Chapter 47A, North Carolina General Statutes);

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the property described above and as described in Paragraph I below is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed 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 Declarant, its successors and assigns, and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. Description of Property. All that certain parcel of land with the buildings and improvements thereon erected and to be erected lying and being in Mineral Springs Township, County of Moore, State of North Carolina, and more particularly described in Exhibit "A" attached hereto and made a part hereof.

2. Description of Buildings. The Declarant has constructed upon the above-described property, fourteen (14) multi-unit buildings to be used for residential purposes only. A plat of survey of the property dated May 20, 1972 by C. H. Blue, Registered Land Surveyor, showing the location of said buildings thereon, is attached hereto and made a part hereof as Exhibit "A." Said multi-unit buildings are more particularly described in the plans and specifications of said buildings, a copy of which plans and specifications are attached hereto and made a part hereof as Exhibit "B," showing all particulars of the buildings, including the lay-out, locations, ceiling and floor elevations, unit numbers and dimensions of the units, and location of the common areas, and facilities affording access to each unit. Such plans bear the verified statement of E. J. Austin, A. I. A., certifying that said plans are an accurate copy of the plans of said multi-unit buildings.

The foundations of the buildings are constructed of brick and block on concrete footings. The buildings are principally wood frame construction with gypsum dry walls, cedar shingle roofs and exterior walls which are stained wood siding. Floors are constructed of wood and concrete and carpets. For a more particular description of the principal materials of which said buildings are to be constructed, reference is hereby made to the plans and specifications filed herewith as Exhibit "B."

3. Unit Designations. The unit designation of each condominium unit, approximate area, number of rooms and other data concerning its proper identification are set forth in Exhibit "C" attached hereto and made a part hereof. Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter, walls and ceilings and floors or crawl space and decks and porches which are shown on said plans subject to such encroachments as are contained in the building, whether the same now may exist or may be caused or created by construction, settlement or movement of the building or by permissible repairs, construction or alteration.

4. Common Areas and Facilities. The common areas and facilities consist of all parts of the multi-unit buildings situated on the property described hereinabove, other than the individual dwelling units therein and described in Paragraph 3 above, including, without limitation, the following (except such portions of the following as may be included within an individual unit):

- (a) The land on which the buildings are erected and all lands surrounding the buildings as is more fully described in Paragraph 1 above.
- (b) All foundations, columns, girders, beams, supports, and other structural members.
- (c) The yards, roads, driveways and parking areas.
- (d) All roofs, exterior walls, and interior walls except those partitioned walls wholly owned within a unit.
- (e) All central and appurtenant installations for services such as power, light, water, TV antenna and cables, laundry facilities, tanks, pumps, motors, fans, conduits, and compressors in connection therewith, whether located in common areas or in units
- (f) All sewer pipes.
- (g) All exterior walkways.

(h) All other parts of the property and all apparatus and installations existing in the buildings or upon the property for common use or necessary or convenient to the existence, maintenance, or safety of the property.

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

5. **Use.** The buildings and each of the units shall be used for residential purposes only.

6. **Persons to Receive Service of Process.** Don G. Warner is hereby designated to receive service of process in any action which may be brought against or in relation to the condominium. Said person's residence or place of business is Pinehurst, Incorporated, Moore County, North Carolina, which is located within the county in which the buildings are located.

7. **Easements.** Each Unit Owner shall have an easement in common with the other owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities 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 Administrators 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 buildings.

The Board of Administrators may hereafter grant easements for utility purposes for the benefit of the property including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone wires and equipment and electrical conduits, and wires over, under, along, and on any portion of the common areas; and each unit owner hereby grants the Board of Administrators an irrevocable power of attorney to execute, acknowledge and record for and in the name of each unit owner such instruments as may be necessary to effectuate the foregoing.

8. **Partitioning.** 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.

9. **Liens.** While the property remains subject to this Declaration and the provisions of the North Carolina Unit Ownership Act, no liens of any nature shall arise or be created against the common areas and facilities except with the unanimous consent in writing of all the condominium unit owners and the holders of first liens thereon except such liens as may arise or be created against the several units and their respective common interest under the provisions of the North Carolina Unit Ownership Act. Every agreement for the performance of labor, or the furnishing of materials to the common areas and facilities, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and the right to file a mechanics' lien or other similar lien by reason of labor performed or materials furnished is waived.

10. **Nature of Interest in Units.** Every condominium unit, together with its undivided common interest in the common areas and facilities, shall for all purposes be, and it is hereby declared to be and to constitute a separate parcel of real property and the unit owner thereof shall be entitled to the exclusive ownership and possession of his condominium unit subject only to the covenants, restrictions, easements, by-laws, rules, regulations, resolutions and decisions adopted

pursuant hereto and as may be contained herein and in the accompanying by-laws and in the minutes of the Board of Administrators.

11. Assessments.

- (a) **Taxes.** Every condominium unit, together with its undivided common interest in the common areas and facilities, shall constitute a separate parcel of real property and shall be separately assessed and taxed by each assessing unit for all types of taxes authorized by law. Each unit owner shall be liable solely for the amount taxed against his individual unit.
- (b) **Assessment by Declarant.**
 - (1) Each unit owner shall by acceptance of a deed to such unit or by signing of a contract or agreement to purchase the same, whether from Declarant or a subsequent owner or purchaser of such unit, covenants, agrees and binds himself, his heirs, successors and assigns to pay Declarant, its successors or assigns an annual assessment in an amount not to exceed, in the absolute and sole discretion of Declarant; a sum equal to one and one-half percent (1 1/2%) of the taxable value of the unit as determined from time to time by the constituted authorities for County and State taxation in Moore County, North Carolina, for the maintenance and care of roads, streets, sidewalks, parks, common areas and common facilities in and around Pinehurst, North Carolina, to which unit owners have a right of use or access, and for fire and police protection, and for such other services as may be made available to unit owners or purchasers by Declarant.
 - (2) The one and one-half percent (1 1/2%) limitation shall be subject to increase in increments of one-fourth (1/4) of one percent (1%) for every five percent (5%) percentage increase, if any, of the Consumer's Price Index, U. S. New Series, U. S. Average for All Items for Urban Wage Earners and Clerical Workers, Revised 1953, or any successor index thereto, as published by the Bureau of Labor Statistics of the U. S. Department of Labor.
 - (3) The statement or bill for the aforesaid assessment shall be rendered by Declarant in September of each year and is payable at any time thereafter and shall be due by January 31 of the following year. The obligation to pay the aforesaid assessment shall constitute a lien on such unit in the same manner as provided for unpaid common expenses under the provisions of the North Carolina Unit Ownership Act.
- (c) **Common Expenses.** Each Unit Owner shall contribute prorata, in proportion to their undivided interest as set forth in Exhibit "C" hereto, toward the expenses and administration and of maintenance and repair of the common areas and facilities, in accordance with the By-Laws of the Condominium and under the provisions of the North Carolina Unit Ownership Act.

12. Insurance. Insurance coverage on the property shall be governed by the following provisions.

- (a) **Ownership of Policies.** All insurance policies upon the condominium property shall be purchased by the Board of Administrators for the benefit of the Board and the unit

owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of the unit owners. Unit owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

(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 as determined annually by the Board of Administrators with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

- (1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and
- (2) 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 land.
- (3) Said policies shall contain clauses providing for waiver of subrogation. Public liability insurance shall be secured by the Board of Administrators in such amount and with such coverage as shall be deemed necessary by the Board of Administrators, including, but not limited to, an endorsement to cover liability of the unit owners as a group to a single unit owner. There shall also be obtained such other insurance coverage as the Board of Administrators shall determine from time to time to be desirable and necessary.

(c) **Premiums.** Premiums upon insurance policies purchased by the Board of Administrators shall be paid by the Board of Administrators as a common expense.

(d) **Proceeds.** All insurance policies purchased by the Board of Administrators shall be for the benefit of the Board of Administrators and the unit owners and their mortgagees as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Board as insurance trustees under this Declaration. The sole duty of the Board of Administrators as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the by-laws and for the benefit of the unit owners and their mortgagees in the following shares:

- (1) Proceeds on account of damage to common areas and facilities - an undivided share for each unit owners, such share being the same as each unit owner's undivided interest in the common areas and facilities (as set forth in Exhibit "C" attached hereto).
- (2) Proceeds on account of damage to units shall be held in the following undivided shares:
 - A. When a building is to be restored - for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Administrators.

B. When a building is not to be restored – an undivided share for each unit owner's proportionate interest in the building based upon the total fair market value of the building.

(3) 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.

13. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Board of Administrators as insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

- (a) **Expense of the Trust.** All expenses of the insurance trustee shall be first paid or provisions made therefor.
- (b) **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 provided by Paragraph 3 hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners.
- (c) **Failure to Reconstruct or Repair.** If it is determined, as provided in the Paragraph 13 hereof, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners thereof.

14. Damage and Destruction. Except as hereinafter provided, damage to or destruction of a building shall be promptly repaired and restored by the Board of Administrators using the proceeds of insurance on the building for that purpose and unit owners shall be liable for assessment of any deficiency, provided, however, if a building be so damaged or destroyed by fire or other casualty that the same is untenable, the building shall be reconstructed.

Any reconstruction or repair shall be in accordance with the plans and specifications of the original building, portions of which are attached hereto as exhibits and, if not, then according to plans and specifications approved by the Board of Administrators and Pinehurst, Incorporated, a North Carolina Corporation with offices in Pinehurst, North Carolina.

15. Transfer of Units. In the event that any person, firm or corporation who owns a unit shall desire to sell such unit, then the said unit which such owner shall desire to sell shall first be offered for sale to the Board of Administrators at the same price and on the same terms under which the highest acceptable bona fide offer has been made to the owner for the said unit. The owner desiring to sell a unit shall give the Board of Administrators written notice by registered mail, return receipt requested, of the owner's desire to sell such unit and shall further advise the Board in said offer of the name and address of the person, firm or corporation making said highest acceptable bona fide offer as well as the amount and terms of said offer. The Board of Administrators shall have a period of thirty days after receipt of said written notice within which to exercise its option to purchase such unit at the same price and on the same terms as the highest acceptable bona fide offer and shall have an additional period of not less than thirty days within which to close the said transaction. The Board of Administrators may elect to purchase such unit on behalf of all of the remaining unit owners as a group or, if the remaining unit owners as a group do not wish to purchase such unit, then on behalf of any one or more individual unit owners. In the event the Board of Administrators shall elect to purchase a unit offered for sale on behalf of the remaining unit owners, the cost thereof shall be shared by the remaining unit

owners in the same proportion as common area expenses, adjusted, however, to reflect the exclusion of the unit purchased; and any profit or loss realized upon the sale by the Board of a unit so acquired shall likewise be shared by the remaining unit owners. In the event that the Board of Administrators shall elect to purchase a unit offered for sale on behalf of any one or more individual unit owners, then the cost thereof shall be shared by such purchasing unit owners in such proportions as they shall agree upon.

A unit owner may lease or rent his unit subject to such rules and regulations as may be adopted from time to time by the Board of Administrators.

The Board of Administrators, upon the request of a selling unit owner shall execute in recordable form an instrument indicating compliance with the terms and provisions of this Declaration by the selling owner.

No unit owner may mortgage his unit or any interest therein without the prior written approval of the Board of Administrators, except as to a first mortgage lien made to a bank, life insurance company or savings and loan association. The Board may, and it is hereby authorized to impose reasonable conditions upon which approval as to any other mortgage shall be given. No unit owner may mortgage or otherwise encumber his unit or any interest therein unless such mortgage or encumbrance shall provide for written notice to the Board of Administrators in the event of a default under such mortgage or other encumbrance and shall further provide for not less than ten (10) days written notice to the Board of Administrators prior to any foreclosure under any such mortgage or other encumbrance. Each unit owner who shall mortgage or otherwise encumber his unit or any interest therein shall furnish to the Board of Administrators a copy of all such mortgages, deeds of trust or other instruments creating such encumbrance.

Any sale, voluntary transfer, conveyance, lease or mortgage which is not authorized by the terms of this Declaration or for which authorization has not been obtained pursuant to the terms hereof is voidable and may be voided by certificates of the Board of Administrators duly recorded in the recording office where this Declaration is recorded.

16. Units Subject to Declaration, By-Laws, Rules and Regulations. All present and future owners, tenants and occupants of units 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, as said Declaration, By-Laws, Rules and Regulations may be amended from time to time. The acceptance of a deed or 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 or conveyance or lease.

17. Amendment to Declaration. This Declaration may be amended by the vote of at least 66 2/3% 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 such amendment shall have been approved in writing by Declarant. No such amendment shall be effective until recorded in the Office of the Register of Deeds, Moore County, North Carolina.

18 Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity and enforce-ability or effect of the remainder of this Declaration, and in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

19 Waiver. No provisions contained in the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

20. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of this Declaration nor the intent of any provisions hereof.

21. Law Controlling. This Declaration and the By-Laws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina.

IN WITNESS WHEREOF, Pinchurst, Incorporated has caused this Declaration to be executed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 10th day of August 1972.

**DECLARANT:
PINEHURST, INCORPORATED**

(CORPORATE SEAL)

Don Collett

President

ATTEST:

Secretary

STATE OF NORTH CAROLINA

COUNTY OF MOORE

This 10th day of August, A.D., 1972, personally came before me Don Collett, who being by me duly sworn says that he is the President of **PINEHURST, INCORPORATED** and that the seal affixed to the foregoing instrument in writing is the Corporate Seal of the Company, and that said writing was signed and sealed by him, in behalf of said Corporation by its authority duly given. And the said Don Collett acknowledged the said writing to be the act and deed of said Corporation.

WITNESS my hand and notarial seal as of the 10th day of August, 1972.

Mary W. Horner

Notary Public

My Commission Expires: _____