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DUNVEGAN WOODS CONDOMINIUMS
HIGH STREET
HAMPTON, NEW HAMPSHIRE

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DECLARATION OF CONDOMINIUM

DUNVEGAN WOODS CONDOMINIUM

High Street

Hampton, New Hampshire

WHEREAS, Dunvegan Woods Inc., a New Hampshire Corporation with a place of business at 166 Portsmouth Avenue, Stratham, Rockingham County, New Hampshire, desires to establish a twelve (12) unit condominium to be called "DUNVEGAN WOODS CONDOMINIUM" with provisions for a convertible condominium with a maximum of one hundred ten (110) units, including the said twelve (12) units declared hereunder;

NOW, THEREFORE, the following is hereby declared:

1. This Declaration shall become effective on the date it shall be recorded in the Rockingham County Registry of Deeds.

2. Dunvegan Woods, Inc. is the sole owner of the land submitted herein and the improvements thereon, or to be placed thereon, by virtue of a deed dated

Nov 10, 1993 and recorded at the Rockingham County Registry of Deeds at Book 2468 and Page 1665.

3. The Declarant hereby submits the above land and buildings to the condominium form of ownership and use, in the manner provided by RSA Chapter 356-B.

I. DEFINITIONS

A. Association means the Association of the Unit Owners of Dunvegan Woods Condominiums.

B. Common Area means the areas, facilities and all portions of the Condominium other than the Units.

C. Common Expenses include, expenses of administration, expenses of maintenance, operation, repair or replacement of the Common Areas and facilities and

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and the portions of the Units to be maintained by the Association (if any), expenses assessed for reserves and such future common expenses for which assessments are not yet due and payable. The term Common Expenses shall include any valid charge against the Condominium as a whole.

D. Declarant means Dunvegan Woods, Inc. and is synonymous and interchangeable with the term "developer". The term Declarant shall also mean any person or entity which shall own any of the convertible lands as described herein, and shall create any additional units within the said convertible lands.

E. The Condominium consists of two (2) buildings with eight (8) units in Building #1 and four (4) units in Building #2.

F. Unit means a single residential unit.

G. Owner shall mean the record title holder of a unit.

II. DEVELOPMENT PLAN

A. This Condominium consists of two (2) buildings with eight (8) units in Building #1 and four (4) Units in Building #2, and the utilities, a roadway, unenclosed parking, all servicing the buildings and the units. AS of the date of the recording of the Declaration, the Developer shall have begun construction of the above buildings and the units and facilities described above will be substantially completed by June 1, 1983.

The description of the land containing the above improvements is as follows:

A certain tract or parcel of land situated in the Town of Hampton, County of Rockingham and State of New Hampshire, bounded and described as follows:

BEGINNING at a drill hole, at the NORTHWEST corner of the within described parcel; THENCE North 84° 19' 45" East for a distance of 110.34 feet to a drill hole; THENCE North 85° 40' 15" East for a distance of 114.34 feet to a point; THENCE North 87° 47' 55" East for a distance of 154.20 feet to a drill hole; THENCE South 00° 20' 18" West for a distance of 188.31 feet to a point; THENCE South 26° 28' 02" West for a distance of 70 feet to a point; THENCE 26° 04' 14" West for a distance of 60.69 feet to a point; THENCE

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North 89° 17' 25" West for a distance of 460.91 feet to a point; THENCE North 22° 14' 05" East for a distance of 132.97 feet to a point; THENCE North 19° 02' 35" East for a distance of 158.36 feet to the point of beginning.

Also included are all rights of access and egress from High Street, along Dunvegan Woods Drive, so-called, for the purposes of pedestrian or vehicular traffic and all rights to establish the said roadway and all utilities necessary to the use of the above premises for multi-family development; all with respect to land owned by Home Tech, Inc. as described in a deed recorded in Rockingham County Registry of Deeds at Book 2384 at Page 0030.

(Conveyancing Note: The site plan shows an area labeled "Old Nook Lane" which was discontinued by the Town of Hampton at the March, 1982 Town Meeting. Old Nook Lane therefore reverted to Home Tech, Inc. by operation of law).

The above premises are the premises described in a deed recorded in the Rockingham County Registry of Deeds in Book 2468, Page 1655.

The above premises are shown on a Site Plan dated August 4, 1983, entitled "Dunvegan Woods Condominiums" which Plan is recorded at the Rockingham County Registry of Deeds as Plan #D-11787.

EXCEPTING from this description are the rights retained by Margaret Miller, Harold Mace and Robert Mace, as described in a Partial Release instrument recorded at the Rockingham County Registry of Deeds, which rights are as follows:

"It is understood and agreed that the foregoing release of access and egress rights from High Street, along Dunvegan Woods Drive, applies solely to those portions thereof within the bounds of the released premises, and are granted for use in common with grantors, their heirs, devisees and assigns for all such purposes, including installation of utilities and grantors reserve and except to themselves, their heirs and assigns all such access, egress and utilities rights in and to said Dunvegan Woods Drive rights, as well as to and from High Street over such ways, for use and benefit of the remainder of the mortgaged premises."

Also included in the above description, in favor of the Declarant, are the following rights:

The right to install, construct, maintain and service a water and sewer line within an area of twenty-five feet (25') in width and extending from the boundary of the adjoining property now or formerly of Mace and Miller to the street (Birch Road), which bounds

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the easterly side of the grantor's premises. The said twenty-five foot (25') wide area shall be located on the Southerly portion of the lot or parcel of land, upon which the existing dwelling of the grantors is located.

The above rights are described in an Easement Deed of Pellegrino, et al. to Home Tech, Inc. dated May 18, 1981 and recorded in Book 2390, Page 0233 of the Rockingham County Registry of Deeds.

B. The said Site Plan shows the proposed location of all of the improvements relating to Buildings #1 and 2 and the units contained therein at the time when the buildings and improvements have been constructed, and prior to any conveyance of the units within the said buildings, the Declarant shall record the certificate of a registered surveyor, in accordance with RSA Chapter 356-B:20(I).

C. As of the time of the recording of the Declaration, the Declarant shall also record floor plans of the units which have, as of that time, been substantially completed. In the event that not all of the said twelve (12) units shall be completed, and prior to the conveyance of any such unit, the Declarant shall record floor plans of the units then constructed. All floor plans shall be certified by an architect or registered engineer in accordance with RSA Chapter 356-B:2(II).

D. Access to the condominium shall be by way of Dunvegan Woods Drive, which

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shall be a private road. Public water and sewer facilities are provided to the condominium, as shown on the site plan.

E. The Convertible Land aspects of this condominium are described in Appendix B to this Declaration.

III. DESCRIPTION OF THE BUILDINGS, NUMBER OF STORIES, NUMBER OF UNITS, DESCRIPTION OF UNITS AND STATEMENT OF LOCATION, ALL WITH RESPECT TO THE TWELVE UNITS DECLARED HEREUNDER.

A. The Condominium consists of two buildings; Building #1 contains 1, 2, 3, 4, 5, 6, 7 and 8 and Building #2 consists of units 9, 10, 11 and 12. The Site Plan designates the location of the unit within the building.

The buildings will be of wood frame construction and shall be two stories in height.

B. The units will be constructed in the following manner. Unit #1 and Unit #9 shall be identical in layout and size with each unit having a basement, kitchen living room, dining area, bedrooms, and bath. Each unit shall have a deck on the first floor. The total square feet of living space shall be as shown on Floor Plans for each unit.

Units #8 and 12 shall be identical in layout and size with each unit having a basement living area, kitchen, dining area, two bedrooms, and each shall have a deck on the first floor. The total square feet of living space for each unit shall be as shown on Floor Plans.

Units # 3, 5, 7, and 11 shall be identical in layout and size, with each unit having a basement, living area, kitchen, dining area and two bedrooms, and each unit shall have a deck on the first floor. The total square feet of living area for each unit shall be as shown on Floor Plans.

Units #2, 4, 6, and 10 shall be identical in layout and size, with each unit having a basement, living area, kitchen, dining area and two bedrooms,

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and each unit shall have a deck on the first floor. The total square feet of living space for each unit is as shown on said Floor Plans.

C. The following provisions shall determine the boundaries of each unit:

- a) The walls, floors and ceilings shall be the boundaries of the Units. All doors, windows, wallboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof shall be deemed a part of such Units. All other portions of such walls, floors and ceilings shall be part of the Common Area.
- b) If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lie partially within and partially outside of the boundaries of a Unit, any portions thereof serving only that Unit shall be deemed part of that Unit, while any portions thereof serving more than one Unit or any portion of the common area shall be deemed a part of the Common Area.
- c) Subject to the provisions of Paragraph (b) above, all space, interior partitions, and other fixtures and improvements within the boundaries of a Unit shall be deemed a part of that Unit.
- d) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, and any other apparatus designed to serve a single Unit, but located outside the boundaries thereof, shall be deemed a limited common area appertaining to that unit exclusively.

IV. DESCRIPTION OF THE COMMON AREAS AND LIMITED COMMON AREAS

A. The Common Areas and facilities shall include all parts of the Condominium, including the buildings that are not included within the boundaries of the Units and facilities as provided in this Declaration.

B. The Limited Common Areas, i.e. those areas reserved exclusively for use by individual Unit Owners shall consist of the parking spaces to be allocated by the number of bedrooms in each unit.

V. THE PERCENTAGE OF UNDIVIDED INTEREST IN THE COMMON AREAS AND FACILITIES PERTAINING TO EACH UNIT.

Each of the twelve (12) units declared hereunder shall have a one-twelfth

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(1/12) undivided interest in the Common Areas and facilities. In the event that, pursuant to the Convertible Land provisions of this Declaration, additional units shall be declared within any portion of the Convertible Land, the undivided interest of the twelve (12) units declared hereunder shall be proportionately reduced such that the undivided interest of the said twelve (12) units and the undivided interests of any other declared units shall be a percentage equal to one (1) over the total number of declared units.

VI. STATEMENT OF PURPOSES, USE AND RESTRICTIONS.

The Units and the Common Areas shall be occupied subject to the following restrictions:

A. An Owner shall not occupy or use his Unit or permit the same, or any part thereof, to be occupied or used for any purpose other than as a private residence for the Owners and the Owner's family or the Owner's lessees or guests. Occupancy of each Unit shall be limited to the following number of persons: Four (4). An Owner shall not lease or rent his unit to any third party, except for periods not less than six (6) months per lessee. The above provisions of paragraph A. shall be enforceable by the Developer or the Association of Unit Owners.

B. The Developer shall have the right to transact any business on the Condominium property necessary to consummate sales of Condominium Units, including, but not limited to, the right to maintain models, having signs identifying Units, maintaining employees in the offices, use of the Common Areas and facilities on the Condominium property, and to show Units for sale. All furniture and furnishings and equipment in the model units, signs and all items pertaining to sales shall not be considered Common Areas and facilities and shall remain the property of the Developer. In the event there are completed but unsold Condominium Units, the Developer as the Owner of the Condominium Units, shall contribute to the common expenses in the same manner as

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other Condominium Unit Owners and shall have a vote in the Association for each unsold Condominium Unit.

C. There shall be no obstructions of the Common Areas, except in the case of designated storage areas, if any, and parking areas, nothing shall be stored in the Common Area without the prior consent of the Board of Directors.

D. Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance in the Common Areas without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in his Unit or in the Common Areas which will result in the cancellation of insurance on any Unit or any part of the Common Areas or which would be in violation of any law. No waste will be permitted in the Common Areas.

E. No sign of any kind shall be displayed in the public view on or from any Unit without the prior consent of the Board of Directors.

F. No animals, livestock or poultry of any kind including cats, dogs or other household pets shall be kept in any Unit or in the Common Area without the express written permission of the Developer, the Board of Directors or Manager, as the case may be.

G. No noxious or offensive activities shall be carried on in any Unit or in the Common Areas, nor shall anything be done therein which may become an annoyance or nuisance to the other Unit Owners.

H. Nothing shall be altered or constructed or removed from the Common Area except upon the written consent of the Board of Directors.

I. There shall be no violation of the rules of the use of the Units or Common Areas, as adopted by the Developer or the Board of Directors and furnished in writing to the Owners, and the Developer or the Board of Directors are authorized to adopt such rules.

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J. Insofar as may be necessary, the Developer and persons that he may select shall have the right of ingress and egress over, upon, across and through the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary and incident to the construction, and development of the said Condominium, but the Developer and the persons to whom he has granted this permission shall not unduly interfere with the Unit Owners or persons living in the Units and their rights to use the Common Areas and facilities.

K. An Owner shall not paint or otherwise decorate or change the appearance of any portion of the exterior of any of the buildings.

L. Entire Units may be rented, provided the occupancy is only by the Lessee and his family and guests; and, provided that the occupancy of each unit shall not exceed the number stated in Paragraph VI above, and the provisions of the By-Laws relating to rental of Units are complied with.

VII. AGENT FOR SERVICE OF PROCESS.

Until such time as the Developer transfers the right and responsibility to elect a Board of Directors to the Owners as provided in the By-Laws, the name and address of the person in Rockingham County, State of New Hampshire, for the service of process in matters pertaining to the property is John J. Ryan, Attorney at Law, 459 Lafayette Road, Hampton, New Hampshire; thereafter, the person to receive service of process shall be any member of the Board of Directors or Manager residing in Rockingham County, State of New Hampshire. If no member of the Board of Directors or Manager resides in Rockingham County, the person to receive service or process shall be designated by formal amendment to this Declaration as herein provided.

VIII. EASEMENTS ARE RESERVED TO THE CONDOMINIUM AS MAY BE REQUIRED FOR UTILITY SERVICES IN ORDER TO ADEQUATELY SERVE THE PROPERTY.

Provided, however, such easements through a Unit shall be according to the

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plans and specifications for the building or as the building is constructed, unless approved in writing by the Unit Owner. None of the rights and obligations of the Unit Owners created herein, or by the deed creating the Condominium, shall be altered in any way by encroachments due to a settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for an encroachment be created in favor of an Owner or Owners if said encroachment occurred during the willful conduct of said Owner or Owners.

LX. CHANGES IN PRICE - ALTERATION OF UNIT PLANS

To meet the particular requirements of prospective purchasers or to allow for the changes in price of labor and material and for other reasons, the Developer reserves the right, so long as it is the Owner of any unsold Units, to change the price of any such Units. No change in price of a Unit, however, will vary the estimated annual common charges for the Unit or its percentage of interest in the Common Areas and facilities or its membership in the Association.

The Developer also reserve the right to change the design and arrangement within any Unit, so long as it owns the Unit so altered. Such change shall neither increase the number of Units, nor alter the boundaries of the Common Areas and facilities. Any such change shall be reflected by an amendment to this Declaration which may be executed by the Developer alone; provided that such amendment and change shall occur within two (2) years from the date of this Declaration, or upon the conveyance of three-quarters (3/4) of the undivided interests in the Common Areas, whichever occurs first. This paragraph shall apply to the twelve (12) unit condominium declared hereunder.

X. AMENDMENTS

This Declaration of Condominium and By-Laws of the Dunvegan condominium Association, except as otherwise provided herein, may be amended by a vote in

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accordance with the By-Laws of seventy-five percent (75%) of the Unit Owners, and by an instrument in writing signed, acknowledged and recorded, and such amendment shall be effective upon recording in the office of the Registry of Deeds of Rockingham County, State of New Hampshire, subject to the following:

A. Notice - Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

B. Pro Viso - Provided, however, that no amendment shall discriminate against any Unit Owner or against any Unit or class or group of Units unless the Unit Owners affected shall consent; and no amendment shall change any Unit or the share of the Common Areas appurtenant to it, or increase an Owner's share in the Common Areas unless all the record Owners of the Units concerned, and all the record Owners of mortgages thereon, shall join in the execution of the amendment; however, anyone dealing with the Association or attempting to establish title to a particular Unit, in the absence of actual knowledge of discrimination on the part of the Association of Unit Owners, may conclusively rely upon the validity and legality of any amendment to this Declaration recorded in the Rockingham County Registry of Deeds if said amendment is signed, acknowledged and recorded. Neither shall the amendment of this Declaration make any change in the section entitled "Insurance" or in the section entitled "Reconstruction or Repair after Casualty and Voting Requirements in the Event of Damage or Destruction" unless all the Owners and all the record Owners of mortgages on Units in the Condominium shall join in the execution of the amendment.

C. This Paragraph X shall not apply to the convertible lands and shall not affect the right and options of the Declarant to expand the Condominium as provided herein, and to amend the Declaration as part of the said expansion of the Condominium.

XI. UNIT ALTERATION AND IMPROVEMENT

Except as elsewhere reserved to the Developer, neither a Unit Owner nor the

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Association shall make any alterations in the portions of a building which are to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do anything which may jeopardize the safety or the soundness of a building, or impair any easement, without first obtaining approval in writing of Owners of all other Units and guests in the same building, and the approval of the Board of Directors of the Association. A copy of plans for all such work prepared by an architect licensed to practice in this State shall be filed with the Association prior to the start of the work.

A. COMMON AREAS, ALTERATION AND IMPROVEMENT. After completion of the improvements included in the Common areas which are submitted under this Declaration, there shall be no alteration nor further improvement of the Common Areas without prior approval in writing by the record Owners of all of the Units; provided, however, that any alteration or improvement of the Common Areas bearing the approval in writing of fifty percent (50%) or more of the Unit Owners, which does not interfere with the rights of any non-approving Owners, may be done if the Owners who do not approve are relieved from the cost thereof. Such costs shall be assessed to the consenting Unit Owners in the shares which their share in the Common Areas bear to each other.

XII. ASSOCIATION

The operation of a Condominium shall be by an unincorporated Association, or by an incorporated association, and the association shall, at any annual meeting, vote as to which type of organization they prefer.

The Association shall have all of the powers and duties as set forth in the Condominium Act, except as limited by this Declaration and By-Laws, and all of the powers and duties reasonably necessary to operate the Condominium as set forth in this Declaration and By-Laws and as they may be amended from time to time.

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XIII. NO REVOCATION OR PARTITION

The Common Area shall remain undivided and no Unit Owner nor any other person shall bring any action for partition or division thereof, nor shall the Common Area be abandoned by act or omission, unless the Condominium is terminated pursuant to Section 34 of the Condominium Act.

A. CONSENT OF FIRST MORTGAGES. Notwithstanding any other provision of this Declaration, the By-Laws or the rules, unless at least seventy-five percent (75%) of the mortgagees holding mortgages recorded at the Rockingham County Registry of Deeds constituting first liens on the Units subject to such mortgages have given their prior written approval, the Unit Owners' Association and the Board of Directors shall not be entitled to:

- a) By act or omission seek to abandon or terminate the Condominium;
- b) Change the pro rata interest or obligations of any Unit (i) for the purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) for determining the undivided percentage interest of each Unit in the Common Area;
- c) Partition or subdivide any Unit;
- d) Seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the use of the Common Area by the Condominium shall not be deemed a transfer within the meaning of this clause); or
- e) Use hazard insurance proceeds for losses to the Property (whether to Units or to Common Area) for other than repair, replacement,

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or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or Common Area.

The provisions of this paragraph shall not apply to or adversely affect the right and option of the Declarant to expand the Condominium, in accordance with the provisions of this Declaration.

XIV. PRIORITY OF FIRST MORTGAGEES

No provision of this Declaration, the By-Laws, or the rules shall be construed to grant to any Unit Owner, or to any other party, any priority over any rights of first mortgagees of the Condominium Units pursuant to their first mortgages in the case of the distribution to Unit Owners of insurance proceeds or condemnation awards for losses to, or a taking of, Units and/or the Common Area or any portions thereof. Any first mortgagee who obtains title to a Condominium Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage, shall not be liable or responsible for such Unit's unpaid dues, charges or assessments which accrue prior to the acquisition of title to such Unit by the mortgagee. In addition, the holder, insurer or guarantor of the mortgage on any unit in the Condominium shall be entitled to timely notice of any condemnation or casualty loss that affects either a material portion of the Condominium, or the units securing the mortgage; any sixty (60) day delinquency in the payment of assessments or charges owed by the Owners of any Unit on which it holds the mortgage; a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Owners' Association and any proposed action which requires the consent of a specific percentage of eligible mortgage holders. The said mortgagee shall request the above in writing.

XV. INVALIDITY

It is the intention of the Declarant that the provisions of this Declaration

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are severable so that if any provision, condition, covenant, or restriction hereof shall be invalid or void under any applicable federal, state or local law or ordinance, the remainder shall be unaffected thereby. In the event that any provision, condition covenant or restriction hereof is, at the time of recording this Declaration, void, voidable or unenforceable as being contrary to any applicable law or ordinance, the Declarant, its successors and assigns and all persons claiming by, through, or under this Declaration covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability, or unenforceability, shall be deemed to apply retrospectively to this Declaration thereby operating to validate the provisions of this instrument which otherwise might be invalid and it is covenanted and agreed that any such amendments and supplements to the said laws shall have the effect herein declared as fully as if they had been in effect at the time of this instrument.

XVI. WAIVER

No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same irrespective of the number of prior violations which may have occurred.

XVII. GENDER AND NUMBER

The use of the masculine gender herein shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural and vice versa, whenever the context so requires.

XVIII. EFFECTIVE DATE

This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned have placed its seal on this 16th
day of December 1983.

J. L. J. Rye

DUNVEGAN WOODS INC

By

Its:

duly authorized

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STATE OF NEW HAMPSHIRE)

COUNTY OF ROCKINGHAM) ss.

Dec 16 1983

Personally appeared the above-named office of Dunvegan Woods Inc., and acknowledged the foregoing as her voluntary act and deed and that of the Corporation.

Before me,

John J. Wynn
Justice of the Peace, Notary Public