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DECLARATION OF TRUST

SOUTHCAPE RESORT & CLUB CONDOMINIUM I

THIS DECLARATION OF TRUST, made this 23rd day of July, 1982, in the County of Barnstable and Commonwealth of Massachusetts, by:

AURIN PRIMACK  
ELIZABETH J. LANDERS  
EDWARD H. CONFORTI

(hereinafter "Trustee(s)", which term and any pronoun referring thereto shall be deemed to include successors in trust hereunder and to mean the Trustee or the Trustees for the time being hereunder wherever the context so permits).

ARTICLE I

Name of Trust

The trust hereby created shall be known as SOUTHCAPE RESORT & CLUB CONDOMINIUM I TRUST, and under that name, so far as legal, convenient and practicable, shall all business carried on by the Trustees be conducted and shall all instruments in writing by the Trustees be executed.

ARTICLE II

The Trust and Its Purpose

Section 2.1. All of the rights and powers in and with respect to the common areas and facilities of the SOUTHCAPE RESORT & CLUB CONDOMINIUM I (hereinafter "CONDOMINIUM"), established by a Master Deed of even date and record herewith which are by virtue of provisions of Chapter 183A of the Massachusetts General Laws conferred upon or exercisable by the organization of unit owners of the CONDOMINIUM, and all property, real and personal, tangible and intangible, conveyed to the Trustees hereunder shall vest in the Trustees of this trust, in trust to exercise, manage, administer and dispose of the same and to receive the income thereof for the benefit of the owners of record from time to time of the units (hereinafter "Units") of the CONDOMINIUM (hereinafter "Unit Owners") which term, as to units committed to Interval Ownership, or where the context requires, shall include the owners of Intervals, as defined in the Master Deed, according to the schedule of undivided beneficial interests set forth in Article IV hereof and in accordance with the provisions of said Chapter 183A, this Trust being

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the organization of the Unit Owners established pursuant to the provisions of Section 10 of said Chapter 183A for the purposes therein set forth.

Section 2.2. The Master Deed of the CONDOMINIUM and the Time Share Supplement incorporated therein provide for the establishment of an Interval Ownership Program, the management and administration of which is vested in the Trustees hereunder. The Trustees herein are specifically invested with the rights and powers to manage and administer said Interval Ownership Program, all in accordance with the "Time Share Supplement to Declaration of Trust of SOUTHCAPE RESORT & CLUB CONDOMINIUM I" which is annexed hereto and made a part hereof.

Section 2.3. It is hereby expressly declared that a Trust and not partnership has been created and that the Unit Owners are cestuis que trustent, and not partners or associates nor in any other relationship whatever between themselves with respect to the trust property, and hold no relation to the Trustees other than cestuis que trustent, with only such rights as are conferred upon them as such cestuis que trustent hereunder pursuant to the provisions of said Chapter 183A of the General Laws.

### ARTICLE III

#### The Trustees

Section 3.1. There shall be at all times Trustees as shall be determined from time to time by vote of the Unit Owners entitled to not less than fifty-one percent (51%) of the beneficial interest hereunder. Provided that: (a) so long as the Declarant of the Master Deed recorded herewith, or its successor, owns fifty-one percent (51%) or more of the beneficial interest hereunder, the number of trustees shall be three (3), and it shall be entitled to appoint two (2) of said trustees; (b) so long as the Declarant or its successor owns ten percent (10%) or more of said beneficial interest, it shall be entitled to select at least one trustee; and (c) when unit owners other than the Declarant or its successor own fifteen percent (15%) or more of the beneficial interest, they shall be entitled to elect at least one trustee. If and whenever the number of trustees shall become less than the number of trustees last determined aforesaid, a vacancy or vacancies in said office shall be deemed to exist. A vacancy in the Board of Trustees occurring between

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annual meetings of unit owners which is not filled by said unit owners within sixty (60) days, shall be filled by a majority vote of the remaining trustees, subject to the rights reserved by Declarant hereinabove. Such appointment shall become effective upon the recording with the Barnstable County Registry of Deeds of a certificate of such appointment signed by a majority of the then-remaining Trustee or Trustees, together with acceptance, and such person shall then be and become such Trustee and shall be vested with the title to the trust property jointly with the remaining or surviving Trustee or Trustees without the necessity of any act of transfer or conveyance. If for any reason any vacancy in the office of Trustee shall continue for more than thirty (30) days and if such vacancy shall not be filled in the manner above provided, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by a court of competent jurisdiction. The foregoing provisions of this section notwithstanding, despite any vacancy in the office of Trustees, however caused and for whatever duration, the remaining or surviving Trustees, subject to the provisions of the immediately following Section, shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees.

Section 3.2. In any matters relating to the administration of the trust hereunder and the exercise of the powers hereby conferred, the Trustees may act by majority votes at any duly called meeting at which a quorum is present, as provided in Paragraph A of Section 5.8 of Article V. The Trustees may also act without a meeting by instrument signed by a majority of their number.

Section 3.3. Any Trustee may resign at any time by instrument in writing, signed and acknowledged in the manner required in Massachusetts for the acknowledgment of deeds and such resignation shall take effect upon the registration of such instrument with said Registry of Deeds. After reasonable notice and opportunity to be heard before the Trustees, a Trustee, excepting only Trustees appointed by the Declarant or its successor as provided hereinabove in 3.1, may be removed from office with or without cause by an instrument in writing signed by Unit Owners entitled to not less than fifty-one percent (51%) of the beneficial interest, such instrument to take effect upon the registration thereof with Barnstable Registry of Deeds.

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Section 3.4. No Trustee named or appointed as hereinbefore provided, whether as original Trustee or as successor to or as substitute for another, shall be obliged to give any bond or surety or other security for the performance of any of his duties hereunder, provided, however, that a Unit Owner when requested by his mortgagee, may at any time by instrument in writing signed by him and delivered to the Trustee or Trustees affected require that any one or more of the Trustees shall give bond in such amount and with sureties as shall be specified in such instrument. All expenses incident to any such bond shall be charged as a common expense of the CONDOMINIUM.

Section 3.5. Excepting only Trustees appointed by Declarant or its successor pursuant to 3.1 each Trustee shall be entitled to such reasonable remuneration for his services and also additional reasonable remuneration for extraordinary or unusual services, legal or otherwise, rendered by him in connection with the trusts hereof, all as shall be from time to time fixed and determined by vote of the Unit Owners entitled to not less than fifty-one percent (51%) of the beneficial interest, and such remuneration shall be a common expense of the CONDOMINIUM.

Section 3.6. No Trustee hereinbefore named or appointed as hereinbefore provided shall, under any circumstances or in any event, be held liable or accountable out of his personal assets or be deprived of compensation by reason of any action taken, suffered or omitted in good faith or be so liable or accountable for more money or other property than he actually receives, or for allowing one or more of the other Trustees to have possession of the Trust books or property, or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal or adverse interest or by reason of anything except his own personal willful malfeasance and defaults.

Section 3.7. No Trustee shall be disqualified by his office from contracting or dealing with the Trustees or with one or more Unit Owners (whether directly or indirectly because of his interest individually or the Trustees' interest or any Unit Owner's interest in any corporation, firm, trust or other organization connected with such contracting or dealing or because of any other reason), as vendor, purchaser or otherwise, nor shall any such dealing, contract or arrangement entered into in respect of this trust in which any Trustee shall be interested be avoided nor shall any Trustee so dealing or contracting or being so interested

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be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relation hereby established, provided the Trustee shall act in good faith and shall disclose the nature of his interest before the dealing, contract or arrangement is entered into.

Section 3.8. It is specifically recognized that some of the persons comprising the original Board of Trustees of the Trust, are or may be stockholders, officers and directors of the Declarant, its sales organization or the Management Firm retained by the Trustees, and that such circumstances shall not and cannot be construed or considered as a breach of their duties and obligations to the Trust, nor as possible grounds to invalidate such Management Agreement, in whole or in part.

Section 3.9. The Trustees and each of them shall be entitled to indemnity both out of the trust property and by the Unit Owners against any liability incurred by them or any one of them in the execution hereof, including, without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties and fines. Each Unit Owner shall be personally liable for all sums lawfully assessed for his share of the common expenses of the CONDOMINIUM and for his proportionate share of any claims involving the trust property in excess thereof, all as provided in Section 6 and 13 of said Chapter 183A. Nothing in this paragraph contained shall be deemed, however, to limit in any respect the powers granted to the Trustee in this instrument.

#### ARTICLE IV

##### Beneficiaries and the Beneficial Interest in the Trust

Section 4.1. The cestuis que trustent shall be the Unit Owners of the SOUTHCAPE RESORT & CLUB CONDOMINIUM I at Mashpee, Massachusetts. The beneficial interest in the trust hereunder shall be divided among the Unit Owners in the percentages of undivided beneficial interest appertaining to the Units of the CONDOMINIUM as follows:

EXHIBIT "C"

(SOUTHCAPE RESORT & CLUB CONDOMINIUM I)

UNIT	PHASE I	PHASE II	PHASE III	PHASE IV	PHASE V
1	3.225	1.785	1.298	.961	.613
2	3.225	1.785	1.298	.961	.613
3	3.225	1.785	1.298	.961	.613
4	3.225	1.785	1.298	.961	.613
5	3.225	1.785	1.298	.961	.613
6	3.225	1.785	1.298	.961	.613
7	3.225	1.785	1.298	.961	.613
8	3.225	1.785	1.298	.961	.613
9	3.225	1.785	1.298	.961	.613
10	3.225	1.785	1.298	.961	.613
11	3.225	1.785	1.298	.961	.613
12	3.225	1.785	1.298	.961	.613
13	3.225	1.785	1.298	.961	.613
14	3.225	1.785	1.298	.961	.613
15	3.225	1.785	1.298	.961	.613
16	3.225	1.785	1.298	.961	.613
17	3.225	1.785	1.298	.961	.613
18	3.225	1.785	1.298	.961	.613
19	3.225	1.785	1.298	.961	.613
20	3.225	1.785	1.298	.961	.613
21	3.225	1.785	1.298	.961	.613
22	3.225	1.785	1.298	.961	.613
23	3.225	1.785	1.298	.961	.613
24	3.225	1.785	1.298	.961	.613
25	3.225	1.785	1.298	.961	.613
26	3.225	1.785	1.298	.961	.613
27	3.225	1.785	1.298	.961	.613
28	3.225	1.785	1.298	.961	.613
29	3.225	1.785	1.298	.961	.613
30	3.225	1.785	1.298	.961	.613
31	3.250	1.785	1.298	.961	.613
32		1.785	1.298	.961	.613
33		1.785	1.298	.961	.613
34		1.785	1.298	.961	.613
35		1.785	1.298	.961	.613
36		1.785	1.298	.961	.613

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EXHIBIT "C"  
 (SOUTHCAPE RESORT & CLUB CONDOMINIUM I)

UNIT	PHASE I	PHASE II	PHASE III	PHASE IV	PHASE V
37	1.785	1.298	.961	.613	
38	1.785	1.298	.961	.613	
39	1.785	1.298	.961	.613	
40	1.785	1.298	.961	.613	
41	1.785	1.298	.961	.613	
42	1.785	1.298	.961	.613	
43	1.785	1.298	.961	.613	
44	1.785	1.298	.961	.613	
45	1.785	1.298	.961	.613	
46	1.785	1.298	.961	.613	
47	1.785	1.298	.961	.613	
48	1.785	1.298	.961	.613	
49	1.785	1.298	.961	.613	
50	1.785	1.298	.961	.613	
51	1.785	1.298	.961	.613	
52	1.785	1.298	.961	.613	
53	1.785	1.298	.961	.613	
54	1.785	1.298	.961	.613	
55	1.785	1.298	.961	.613	
56	1.825	1.298	.961	.613	
57	1.785	1.298	.961	.613	
58	1.785	1.298	.961	.613	
59	1.785	1.298	.961	.613	
60	1.785	1.298	.961	.613	
61	1.785	1.298	.961	.613	
62	1.785	1.298	.961	.613	
63	1.785	1.298	.961	.613	
64	1.785	1.298	.961	.613	
65	1.785	1.298	.961	.613	
66	1.785	1.298	.961	.613	
67	1.785	1.298	.961	.613	
68	1.785	1.298	.961	.613	
69	1.785	1.298	.961	.613	
70	1.785	1.298	.961	.613	
71	1.785	1.298	.961	.613	
72	1.785	1.298	.961	.613	

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UNIT	PHASE I	PHASE II	PHASE III	PHASE IV	PHASE V
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77			1.352	.961	.613
76			1.298	.961	.613
75			1.298	.961	.613
74			1.298	.961	.613
73			1.298	.961	.613
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In the case of a unit committed to Interval Ownership, each owner of undivided interest in said unit shall own a share of the percentage assigned to said unit hereinabove according to the following schedule:

<u>Unit Week Numbers</u>	<u>Percentage Share for Each Unit</u>
1 through and including 52	1/52nd

In the event additional phases are added to the condominium, the percentage of interest shall be changed in accordance with paragraph 11(c) and Exhibit "C" to the Master Deed.

Section 4.2. The beneficial interest of each Unit of the CONDOMINIUM shall be held and exercised as a Unit and shall not be divided among several owners of any such Unit. To that end, whenever any of said Units are owned of record by more than one person, the several owners of each Unit shall:

(a) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such unit hereunder, and

(b) notify the Trustees of such designation by a notice in writing signed by all of the record owners of such Unit.

Any such designation shall take effect upon receipt by the Trustees and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustees may designate any one such owner for such purposes.

#### ARTICLE V

##### Bylaws

The Provisions of this Article V shall constitute the Bylaws of this Trust and the organization of Unit Owners established hereby, to wit:

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Section 5.1. Powers of the Trustees

The Trustees shall, subject to and in accordance with all applicable provisions of said Chapter 183A, have the absolute control, management and disposition of the trust property (which term as herein used shall insofar as applicable be deemed to include the common areas and facilities of the CONDOMINIUM) as if they were the absolute owners thereof, free from the control of the Unit Owners (except as limited in this trust instrument) and, without by the following enumeration limiting the generality of the foregoing or of any item in the enumeration, with full power and uncontrolled discretion, subject only to the limitations and conditions herein and in the provisions of said Chapter 183A, at any time and from time to time and without the necessity of applying to any court for leave so to do:

(i) To retain the trust property, or any part or parts thereof, in the same form or forms of investment in which received or acquired by them so far and so long as they shall think fit, without liability for any loss resulting therefrom;

(ii) To sell, assign, convey, transfer, change and otherwise deal with or dispose of, the trust property, but not the whole thereof, free and discharged of any and all trusts, at public or private sale, to any person or persons, for cash or on credit, and in such manner, on such restrictions, stipulations, agreements and reservations as they shall deem proper, including the power to take back mortgages to secure the whole or any part of the purchase price of any of the trust property sold or transferred by them, and to execute and deliver any deed or other instrument in connection with the foregoing;

(iii) To purchase or otherwise acquire title to, and to rent, lease or hire from others for terms which may extend beyond the termination of this trust and property or rights to property, real or personal, and to own, manage, use and hold such property and such rights;

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(iv) To borrow or in any other manner raise such sum or sums of money or other property as they shall deem advisable in any manner and on any terms, and to evidence the same by notes, bonds, securities or other evidences of indebtedness, which may mature at a time or times, even beyond the possible duration of this trust and to execute and deliver any mortgage, pledge or other instrument to secure any such borrowings;

(v) To enter into any arrangement for the use or occupation of the trust property, or any part or parts thereof, including, without limiting the generality of the foregoing, leases, subleases, easements, licenses or concessions, upon such terms and conditions and with such stipulations and agreements as they shall deem desirable, even if the same extend beyond the possible duration of this trust;

(vi) To invest and reinvest the trust property, or any part or parts thereof and from time to time and as often as they shall see fit to change investments, including power to invest in all types of securities and other property, of whatsoever nature and however denominated, all to such extent as to them shall seem proper and without liability for loss, even though such property or such investments shall be of a character or in an amount not customarily considered proper for the investment of trust funds or which does or does not produce income;

(vii) To incur such liabilities, obligations and expenses, and to pay from the principal or the income of the trust property in their hands all such sums as they shall deem necessary or proper for the furtherance of the purposes of the trust;

(viii) To determine whether receipt by them constitutes principal or income or surplus and to allocate between principal and income and to designate as capital or surplus any of the funds or the trust;

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(ix) To vote in such manner as they shall think fit any or all shares in any corporation or trust which shall be held as trust property, and for that purpose to give proxies to any person or persons or to one or more of their number, to vote, waive any notice or otherwise act in respect of any such shares;

(x) To deposit any funds of the trust in any bank or trust company, and to delegate to any one or more of their number, or to any other person or persons, the power to deposit, withdraw and draw checks on any funds of the trust;

(xi) To maintain such offices and other places of business as they shall deem necessary or proper and to engage in business in Massachusetts or elsewhere.

(xii) To employ, appoint and remove such agents, manager, officers, board of managers, brokers, engineers, architects, employees, servants, assistants and counsel (which counsel may be a firm of which one or more of the Trustees are members) as they shall deem proper for the purchase, sale or management of the trust property, or any part or parts thereof, or for conducting the business of the trust, and may define their respective duties and fix and pay their compensation, and the Trustees shall not be answerable for the acts and defaults of any such person. The Trustees may delegate to any such agent, manager, officer, board, broker, engineer, architect, employee, servant, assistant or counsel any or all of their powers (including discretionary powers, except that the power to join in amending, altering, adding to, terminating or changing this Declaration of Trust and the trust hereby created shall not be delegated) all for such times and purposes as they shall deem proper. Without hereby limiting the generality of the foregoing, the Trustees may designate from their number a Chairman, a Treasurer, a Secretary and such other officers as they deem fit, and may from time to time designate one or more of their own number to be the Managing Trustee or Managing Trustees, for the management and administration of the trust property and the business of the trust, or any part or parts thereof; and

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(xiii) Generally, in all matters not herein otherwise specified, to control, do each and every thing necessary, suitable, convenient or proper for the accomplishment of any of the purposes of the trust or incidental to the powers herein or in said Chapter 183A, to manage and dispose of the trust property as if the Trustees were the absolute owners thereof and to do any and all acts, including the execution of any instruments, which by their performance thereof shall be shown to be in their judgment for the best interest of the Unit Owners.

Section 5.2. Maintenance and Repair of Units

The Unit Owners shall be responsible for the proper maintenance and repair of their respective Units, as defined in the Master Deed. If the Trustees shall at any time in their reasonable judgment determine that the interior of a Unit is in such need of maintenance or repair that the market value of one or more other Units is being adversely affected or that the condition of a Unit or any fixtures, furnishings, facility or equipment therein is hazardous to any Unit or the occupants thereof, the Trustees shall request the Unit Owner to perform the needed maintenance, repair or replacement or to correct the hazardous condition, and in case such work shall not have commenced within fifteen (15) days (or such reasonable shorter period in case of emergency as the Trustees shall determine) of such request and thereafter diligently brought to completion, the Trustees shall be entitled to have the work performed for the account of such Unit Owners whose Unit is in need of work and to enter upon and have access to such Unit for the purpose, and the cost of such work as is reasonably necessary therefor shall constitute a lien upon such Unit and the Unit Owner thereof shall be personally liable therefor.

Section 5.3. Maintenance, Repair and Replacement of Common Areas and Facilities and Assessment of Common Expenses Thereof

The Trustees shall be responsible for the proper maintenance, repair and replacement of the common areas and facilities of the CONDOMINIUM (see Section 5.5 for specific provisions dealing with repairs and replacement necessitated because of casualty loss) and such may be done through the Managing Agent, as hereinafter provided, and any two trustees or the Managing Agent or any others who may be so desig-

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nated by the Trustees, may approve payment of vouchers for such work, and the expenses of such maintenance, repair and replacement shall be assessed to the Unit Owners as common expenses of the CONDOMINIUM at such times, and in such amounts as provided in Section 5.4.

Section 5.4. Common Expenses, Profits and Funds

A. The Unit Owners shall be liable for common expenses and entitled to common profits of the CONDOMINIUM in proportion to their respective percentages of beneficial interest as determined in Article IV hereof.

The Trustees may at any time or times distribute common profits among the Unit Owners in such proportions. The Trustees may, to such extent as they deem advisable, set aside common funds of the CONDOMINIUM as reserve or contingent funds, and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or subject to the provisions of the following Paragraphs B and C of this Section 5.4 for repair, rebuilding or restoration of the trust property or for improvement thereto, and the funds so set aside shall not be deemed to be common profits available for distribution.

B. At least sixty (60) days prior to the commencement of each fiscal year of this trust the Trustees shall estimate the common expenses expected to be incurred during such fiscal year, together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed common profits from prior years, shall determine the assessment to be made for such fiscal year. The Trustees shall by January 15th render statements to the Unit Owners for their respective shares of such assessment, according to their percentages of interest in the common areas and facilities and such statements shall, unless otherwise provided therein, be due and payable on or before March 1st of each year. In the event that the Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, such statements shall be payable and take effect as aforesaid. The Trustees may, in their discretion, provide for payments of statements in monthly or other installments. The amount of each such statement shall be a personal liability of the Unit Owner and if not paid when due shall carry a late charge at a rate equal to the prime interest rate in effect at the First National Bank



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of Boston, Boston (Suffolk County), Massachusetts, at the time such payments were due and shall constitute a lien on the Unit of the Unit Owner assessed, pursuant to provisions of Section 6 of said Chapter 183A.

C. No Unit Owner shall file an application for abatement of real estate taxes without the approval of the Trustees.

D. The Trustees shall expend common funds only for common expenses and lawful purposes permitted hereby and by provisions of said Chapter 183A.

Section 5.5. Rebuilding and Restoration, Improvements

A. In the event of any loss or damage to the Buildings containing the Units as a result of fire or other casualty, the Trustees shall proceed with the necessary repairs, rebuilding or restoration, provided such casualty loss does not exceed ten percent (10%) of the value of the CONDOMINIUM prior to the casualty, all in the manner provided in Paragraph (a) of Section 17 of said Chapter 183A. If such loss does exceed ten percent (10%) of the value of the CONDOMINIUM prior to the casualty, the Trustees shall forthwith submit to all Unit Owners:

(a) a form of agreement (which may be in several counterparts) by the Unit Owners authorizing the Trustees to proceed with the necessary repair, rebuilding or restoration, and

(b) a copy of the provisions of said Section 17; and the Trustees shall thereafter proceed in accordance with, and take such further action as they may in their discretion deem advisable in order to implement the provisions of Paragraph (b) of said Section 17.

B. If and whenever the Trustees shall propose to make any improvement to the common areas and facilities of the CONDOMINIUM, or shall be requested in writing by twenty-five percent (25%) of the Unit Owners to make any such improvement, the Trustees shall submit to all Unit Owners:

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(a) a form of agreement (which may be in several counterparts) specifying the improvement or improvements proposed to be made and the estimated cost thereof, and authorizing the Trustees to proceed to make the same, and

(b) a copy of the provisions of Section 18 of said Chapter 183A.

Upon (a) the receipt by the Trustees of such agreement signed by seventy-five percent (75%) of the Unit Owners, or (b) the expiration of ninety (90) days after such agreement was first submitted to the Unit Owners, whichever of said (a) and (b) shall first occur, the Trustees shall notify all Unit Owners of the aggregate percentage of Unit Owners who have then signed such agreement. If such percentage exceeds seventy-five percent (75%), the Trustees shall proceed to make the improvement or improvements specified in such agreement and, in accordance with said Section 18 of Chapter 183A, shall charge the cost of improvement to all the Unit Owners. The agreement so circulated may also provide for separate agreement by the Unit Owners that if more than fifty percent (50%), but less than seventy-five percent (75%), of the Unit Owners so consent, the Trustees shall proceed to make such improvement or improvements and shall charge the same to the Unit Owners so consenting.

C. Notwithstanding anything in the preceding Paragraph A and B contained,

(a) in the event that any Unit Owner or Owners shall by notice in writing to the Trustees dissent from any determination of the Trustees with respect to the value of the CONDOMINIUM or any other determination or action of the Trustees under this Section 5.5, and such dispute shall not be resolved within thirty (30) days after such notice, then either the Trustees or the dissenting Unit Owner or Owners may submit the matter to arbitration, and for that purpose one arbitrator shall be designated by the Trustees, one shall be designated by the dissenting Unit Owner or Owners, and a third shall be designated by the two arbitrators so designated, and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association, and

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(b) the Trustees shall not, in any event, be obligated to proceed with any repair, rebuilding or restoration, or any improvement, unless and until they have received funds in an amount equal to the estimate of the Trustees of all costs thereof.

Section 5.6. Rules, Regulations, Restrictions and Requirements

The Trustees may, at any time and from time to time, adopt, amend and rescind administrative rules and regulations governing the details of the operation and use of the common areas and facilities and such restrictions on and requirements respecting the use and maintenance of the Units and the use of the common areas and facilities as are consistent with provisions of the Master Deed and are designated to prevent unreasonable interference with the use by the Unit Owners of their Units and the common areas and facilities.

Section 5.7. Insurance

The Trustees shall obtain and maintain, to the extent available, master policies of insurance of the following kinds, naming the trust, the Trustees, all of the Unit Owners and their mortgagees as insured as their interests appear:

A. Casualty or physical damage insurance on the Buildings and all other insurable improvements forming parts of the CONDOMINIUM (including all of the Units but not including the furniture, furnishings and other personal property of the Unit Owners therein), together with the service machinery, apparatus, equipment and installations located in the CONDOMINIUM, and existing for the provision of central services or for common use, in an amount not less than one hundred percent (100%) of their full replacement value (exclusive of foundations) as determined by the Trustees in their judgment, against:

(1) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, together with coverage for the payment of common expenses with respect to damaged Units during the period of reconstruction, and

(2) such other hazards and risks as the Trustees from time to time in their discretion

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shall determine to be appropriate, including but not limited to vandalism, malicious mischief, windstorms and water damage, boiler and machinery explosion or damage and plate glass damage.

All policies of casualty or physical damage insurance shall provide:

(1) that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the insureds, including each Unit mortgagee, and

(2) that the coverage thereof shall not be terminated for nonpayment of premiums without twenty (20) days' notice to all of the insureds, including each Unit Mortgagee.

Certificates of such insurance and all renewals thereof, together with proof of payment of premiums, shall be delivered by the Trustees to all Unit Owners and their mortgagees upon request, at least ten (10) days prior to their expiration of the then-current policies.

B. Comprehensive public liability insurance in such amounts and forms as shall be determined by the Trustees covering the trust, the Trustees, all of the Unit Owners and any manager or managing agent of the CONDOMINIUM, with limits of not less than a single limit of \$1,000,000 for claims for bodily injury or property damage arising out of one occurrence and a limit of \$100,000 for each occurrence for water damage, legal liability and with cross liability endorsement to cover liability of any insured to other insureds.

C. Workmen's Compensation and Employer's Liability Insurance covering any employees of the Trust.

D. Such other insurance as the Trustees shall determine to be appropriate, including insurance for any art collection loaned to the CONDOMINIUM for display therein.

Such master policies shall provide that all casualty loss proceeds thereunder shall be paid to the Trustees as insurance trustees under these Bylaws. The sole duty of the Trustees as the insurance trustees shall be to hold,

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use and disburse any amounts so paid for the purposes stated in this Section and Section 5.5. If repair or restoration of the damaged portion of the CONDOMINIUM is to be made, all insurance loss proceeds shall be held in shares for the Trust and the Unit Owners of damaged Units in proportion to the respective costs of repair or restoration of the damaged portions of the common areas and facilities and of each damaged Unit, respectively, with each share to be disbursed to defray the respective costs of repair or restoration of the damaged common areas and facilities and damaged Units, and with any excess of any such share of proceeds above such costs of repair or restoration to be paid to the Trust or Unit Owner, as the case may be. If, pursuant to Section 5.5, restoration or repair is not to be made, all insurance loss proceeds shall be held as common funds of the Trust and applied for the benefit of Unit Owners in proportion to their percentage interest as listed in Section 5.1 if the CONDOMINIUM is totally destroyed and, in the event of a partial destruction, to those Unit Owners who have suffered damage in proportion to the damaged suffered by them. Such application for the benefit of Unit Owners shall include payment directly to a Unit Owner's mortgagee if the mortgage with respect to such Unit so requires. Such master policies shall contain:

- (1) waivers of subrogation as to any claims against the trust, the Trustees and their agents and employees, and against the Unit Owners and their respective employees, agents and guests,
- (2) waivers of any defense based on the conduct of any insured, and
- (3) provisions to the effect that the insurer shall not be entitled to contribution as against casualty insurance which may be purchased by individual Unit Owner as hereinafter permitted.

Each Unit Owner or his mortgagee may obtain additional insurance at his own expense, provided that all such insurance shall contain provisions similar to those required to be contained in the Trust's master policies waiving the insurer's rights to subrogation and contribution. If the proceeds from the master policies on account of any casualty loss are reduced due to the proration with insurance individually purchased by a Unit Owner, such Unit Owner agrees to assign the proceeds to such individual insurance,

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to the extent of the amount of such reduction, to the Trustees to be distributed as herein provided. Each Unit Owner shall promptly notify the Trustees of all improvements made by him to his Unit, the value of which exceeds \$1,000 and such Unit Owner shall pay to the Trustees as an addition to his share of the common expenses of the CONDOMINIUM otherwise payable by him any increase in insurance premium incurred by the Trust which results from such improvements.

E. The cost of such insurance shall be deemed a common expense assessable and payable as provided in Section 5.4.

Section 5.8. Meetings

A. The Trustees shall meet annually on the date of the annual meeting of the Unit Owners and at such meeting may elect the Chairman, Treasurer, Secretary and any other officers they deem expedient. Other meetings may be called by any Trustee and in such other manner as the Trustees may establish, provided, however, that written notice of each meeting stating the place, day and hour thereof shall be given at least seven (7) days before such meeting to each Trustee. A majority of the number of Trustees then in office shall constitute a quorum at all meetings, and such meetings shall be conducted in accordance with such rules as the Trustees may adopt.

B. There shall be an annual meeting of the Unit Owners on the 31st day of July in each year at such reasonable place and time as may be designated by the Trustees by written notice given to the Unit Owners at least seven (7) days prior to the date so designated. Special meetings (including a meeting in lieu of a passed annual meeting) of the Unit Owners may be called at any time by the Trustees and shall be called by them upon the written request of Unit Owners entitled to more than fifteen percent (15%) of the beneficial interest hereunder. Written notice of any such meeting designating the place, day and hour thereof shall be given by the Trustees to the Unit Owners at least fourteen (14) days prior to the date so designated. The presence at any annual or special meeting in person or by proxy of Unit Owners entitled to one-fourth (1/4) or more of the beneficial interest hereunder shall constitute a quorum for any action. When a quorum is present, unless otherwise provided herein, a majority of the total voting power present in person or by proxy shall decide any business brought before the meeting. If the required quorum is not present

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at any such meeting, another meeting may be called, subject to the notice requirements set forth above, and the required quorum at such subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. The presence of a quorum shall be determined at the commencement of the meeting.

Section 5.9. Notices to Unit Owners

Every notice to any Unit Owner required under the provisions hereof, or which may be deemed by the Trustees necessary or desirable in connection with the execution of the trust created hereby or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to such Unit Owner by mailing it, postage prepaid, and addressed to such Unit Owner at his address as it appears upon the records of the Trustees, if other than at his Unit or by delivery or mailing the same to such Unit, if no address appears, or, if such Unit appears as the Unit Owner's address, in any case, at least seven (7) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given.

Section 5.10. Inspection of Books; Reports to Unit Owners

Books, accounts and records of the Trustees shall be open to inspection to any one or more of the Trustees and Unit Owners at all reasonable times. The Trustees shall, as soon as reasonably possible after the close of each fiscal year, submit to the Unit Owners a report of the operations of the Trustees for such year. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees given by registered mail within a period of one (1) month of the date of the receipt by him shall be deemed to have assented thereto.

Section 5.11 Checks, Notes, Drafts and other Instruments

Checks, Notes, Drafts and other Instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any Trustees (or by one Trustee, if there is only one), or by any person or persons to whom such power may at any time or from time to time be delegated by not less than a majority of the Trustees.

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Section 5.12. Seal

The seal of the Trustees shall be circular in form, bearing the inscription SOUTHCAPE RESORT & CLUB CONDOMINIUM I TRUST but such seal may be altered by the Trustees at pleasure, and the Trustees may, at any time or from time to time, at their option, adopt a common wafer seal which shall be valid for all purposes or they may sign any instrument under seal without being required to affix a formal, common or wafer seal.

Section 5.13. Fiscal Year

The fiscal year of the Trust shall be the year ending with the last day of December, or such other date as may from time to time be determined by the Trustees.

ARTICLE VI

Rights and Obligations of Third Parties  
Dealing with the Trustees

Section 6.1. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in said Registry of Deeds shall be bound to ascertain or inquire further as to the persons who are then Trustees hereunder, or be affected by any notice, implied or actual, otherwise than by a certificate thereof; and such record or certificate shall be conclusive evidence of the personnel of said Trustees and of any changes therein. The receipts of the Trustees, or any one or more of them, for moneys or things paid or delivered to them or him shall be effectual discharges therefrom to the persons paying or delivering the same and no person from whom the Trustees, or any one or more of them, shall receive any money, property, or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees or with any real or personal property which then is or formerly was trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose of regularity or any of the acts of the Trustees, or any one or more of them, purporting to be done in pursuance of any of the provisions or powers herein contained, or as to the regularity of the resignation or appointment of any Trustee, and any instrument of appoint-



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ment of a new Trustee or resignation of an old Trustee purporting to be executed by the Trustee, Unit Owners or other persons herein required to execute the same, shall be conclusive evidence in favor of any such purchaser or other person dealing with the Trustees of the matters therein recited relating to such discharge, resignation or appointment or the occasion thereof. Certificates of No Assessment and Certificates regarding changes in Trustees shall be effective if signed by any one Trustee then in office.

Section 6.2. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees, or by reason of anything done or omitted to be done by or on behalf of them or any of them, against the Trustees individually, or against any such agent or employee, or against any beneficiary, either directly or indirectly, by legal or equitable proceedings, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with or having any claim against the Trustees, shall look only to the trust property for payment under such contract or claim or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustees so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Unit Owners under provisions of Section 9 of Article III hereof, or under provisions of Chapter 183A.

Section 6.3. Every note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees, or by any agent or employee of the Trustees, shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whether or not express reference shall have been made to this instrument.

Section 6.4. This Declaration of Trust and any amendments hereto and any certificate herein required to be recorded and any other certificate or paper signed by said Trustees or any of them which it may be deemed desirable to record shall be recorded with said Registry of Deeds and such record shall be deemed conclusive evidence of the contents and

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and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the trust property or any beneficiary thereunder shall be held to have notice of any alteration of amendment of this Declaration of Trust, or changes of Trustee or Trustees, when the same shall be recorded with said Registry of Deeds. Any certificate signed by two (2) Trustees in office at the time (only one (1) Trustee if there is only one at the time), setting forth as facts any matters affecting the trust, including statements as to who are the beneficiaries, as to what action has been taken by the beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Registry of Deeds shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees acting in reliance thereon. Any certificate executed by any Trustee hereunder, or by a majority of the Trustees hereunder setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustee or majority, as the case may be, shall, as to all persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statements made in such certificate and of the existence of the facts therein set forth.

#### ARTICLE VII

##### Amendments and Termination

Section 7.1. Amendments to this Declaration of Trust shall be in accordance with the following:

An amendment may be proposed either by a Trustee or by any owner and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the Bylaws. Passage shall be evidenced by a certificate executed in recordable form signed by any Trustee of the Trust that it has been enacted by a majority of the Trustees and by a majority of the total voting power present in person or by proxy at any meeting of the unit owners at which a quorum exists and which majority represents not less than twenty (20%) of the total beneficial interest hereunder (which vote shall include the separate written joinder of mortgagees where required); shall include the recording data identifying the location of the Declaration of Trust as originally recorded and which shall become effec-

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tive when recorded in the public records. No amendment may change the rights of the Declarant of the Master Deed without said Declarant's written joinder. Further, if an amendment to the Master Deed is deemed necessary or desirable by said Declarant in connection with its exercise of its rights to amend the Master Deed, as set forth in Paragraph 11 thereof, the Trustees shall so amend this Declaration of Trust within three (3) days of being instructed to do so, the consent of no Unit Owner being required. Said amendment shall be evidenced by a Certificate executed in recordable form signed by any Trustee.

Section 7.2. The Trust hereby created shall terminate only upon the removal of the SOUTHCAPE RESORT & CLUB CONDOMINIUM I at Mashpee, Massachusetts from the provisions of said Chapter 183A in accordance with the procedure therefor set forth in Section 19 of said Chapter.

Section 7.3. Upon the termination of this trust, the Trustees may, subject to and in accordance with the provisions of said Chapter 183A, sell and convert into money the whole of the trust property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, at valuations made by them which shall be conclusive, all other property then held by them in trust hereunder, to the Unit Owners according to their respective percentages of beneficial interest hereunder. And in making any sale under this provision the Trustees shall have power to sell by public auction or private contract of sale and to resell without being answerable for loss and, for said purposes, to do all things, including the execution and delivery of instruments, as may be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of trust property may have passed.

Section 7.4. Consent of Mortgagees: Notwithstanding the foregoing provisions of this Article VII but subject to the rights reserved by Declarant in Paragraph 11(a), (b) and (c) of the Master Deed, unless at least sixty-seven percent (67%) of the first mortgagees (based upon one vote for each mortgage owned) have given their prior written approval,

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neither the Trustees nor the Unit Owners shall: (1) by act or omission seek to abandon or terminate the condominium (except for abandonment or termination provided by statute in case of substantial loss to the Units and common areas and facilities); (2) change the beneficial interest of any unit for (i) purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro-rata share of ownership of each unit in the Common Areas and Facilities; (3) partition or subdivide any Unit; (4) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common elements (but the granting of easements for public utilities or for other public purposes consistent with the intended use of the common areas and facilities shall not be deemed a transfer within the meaning of this clause); (5) use hazard insurance proceeds for losses to any CONDOMINIUM property (whether to Units or to common elements) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or common elements of the CONDOMINIUM; (6) add to, amend, alter or change the CONDOMINIUM documents, relative to voting, assessments, reserve funds, insurance, fidelity bonds, rights to use common areas, responsibility for maintenance and repair, boundaries of any unit, interests in the common areas, convertibility of units into common areas or vice-versa, leasing of units, imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her unit, and provisions which are for the express benefit of eligible mortgage holders or eligible insurers or guarantors of first mortgages on the Units. An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved said request.

#### ARTICLE VIII

##### Construction and Interpretation

In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include both the plural and singular, words denoting males, include females, and words denoting persons include individuals, firms, associates, companies (joint stock or otherwise), trusts and corporations unless a contrary intention is to

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be inferred or required by the subject matter or context. The cover, title, headings of different parts thereof, the table of contents and the marginal notes, if any, are inserted only for convenience of reference and not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation or effect hereof. All the trusts, powers and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts. Unless the context otherwise indicates, words defined in said Chapter 183A shall have the same meaning herein.

EXECUTED as a sealed instrument this 23rd, day of July, 1982.

*Aurin Primack*  
Aurin Primack, Trustee  
*Elizabeth J. Landers*  
Elizabeth J. Landers, Trustee  
*Edward H. Conforti*  
Edward H. Conforti, Trustee

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

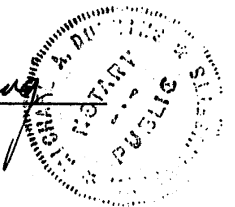
July 23, 1982

Then personally appeared the above-named Aurin Primack and acknowledged the foregoing instrument to be his free act and deed, before me.

*Michael H. Manning*  
NOTARY PUBLIC

My Commission Expires:

March 14, 1985



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TIME SHARE SUPPLEMENT  
TO DECLARATION OF TRUST  
OF

SOUTHCAPE RESORT & CLUB CONDOMINIUM I TRUST

The undersigned Trustees of the SOUTHCAPE RESORT & CLUB CONDOMINIUM I TRUST, for purposes of implementing the "Time Share Supplement" of the Master Deed of SOUTHCAPE RESORT & CLUB CONDOMINIUM I recorded herewith, which Time Share Supplement establishes a common scheme and plan for the use, possession, enjoyment, repair, maintenance, restoration, remodeling and improvement of certain condominium units, as well as the payment of taxes, common expenses, utilities and other expenses pertaining thereto, do hereby provide as follows:

1. Interval Ownership: All the rights and powers in and with respect to Units (and furnishings therein) committed to Interval Ownership and the Owners of same, which are by virtue of the Master Deed and Time Share Supplement of SOUTHCAPE RESORT & CLUB CONDOMINIUM I conferred upon or exercisable by the Trustees hereof, shall vest in the Trustees as joint tenants with right of survivorship as Trustees of this Trust, in trust to exercise, manage, administer and dispose of same for the benefit of the owners of record of the Intervals, it being the purpose herein that the Trustees shall have full power and authority to manage and administer the common scheme set forth in the Time Share Supplement.

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2. Definitions: As used in this instrument, unless the context otherwise requires, definitions of words as set forth in the Master Deed and Time Share Supplement thereto shall prevail.

3. Management of Interval Ownership Program: The Trustees herein are invested with the rights and powers to administer and manage the Interval Ownership program, and are specifically empowered to do any and all of the functions committed to them in the Time Share Supplement to the Master Deed, including, without limitation, those set forth in Paragraphs 5 and 6 thereof.

4. Management Firm: The Trustees are specifically empowered to delegate some or all of their rights and powers referred to in Paragraph 3, supra, to a Management Firm, and, by agreement of this date have entered into a management contract with Southcape Management, Inc., a Massachusetts corporation, ("Management Firm" herein) and, in accordance therewith, do hereby delegate their management functions hereunder to said Management Firm.

5. Maintenance Fees Associated with Interval Ownership Program: As to units committed to the Interval Ownership Program, the Trustees, and by delegation, the Management Firm, are empowered to prepare budgets, assess and collect sums necessary to meet the expenses of each unit committed to Interval Ownership, as more fully set forth in

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Paragraph 8 of the Time Share Supplement to the Master Deed. Sums so collected shall be maintained in accounts separate from those in which common funds of the condominium are maintained.

6. Insurance: The Trustees shall obtain and maintain, to the extent available, policies of insurance as enumerated in Paragraph 6(e) of the Time Share Supplement to the Master Deed, which said policies shall name the Trust, the Trustees and the Interval Owners and their mortgagees as insured as their interests may appear.

7. Units Committed to Interval Ownership; Percentages of Beneficial Interest: At such time as a unit is committed to Interval Ownership, each owner of undivided interest in said unit shall own a share of the beneficial interest assigned to said unit according to the following schedule:

<u>Use Period Numbers</u>	<u>Percentage Share for Each Unit</u>
1 through & including 52	1/52nd

8. Maintenance and Repair of Units: The Trustees and, by delegation, the Management Firm, are empowered to maintain and repair those units committed to Interval Ownership, which maintenance and repair shall occur during Ser-



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vice Hours or Maintenance Weeks; the cost of same is to be borne by the Interval Owners of the unit so maintained or repaired.

9. Rules, Regulations, Restrictions and Requirements:

With respect to units committed to Interval Ownership, the Trustees may adopt, amend and rescind rules and regulations regarding the operation, maintenance and use of such units as they, in their sole discretion, deem necessary, desirable or convenient and may delegate powers to do same to a Management Firm.

10. Notices to Interval Owners: Every notice to any Interval Owner required hereunder shall be deemed sufficient if it complies with the notice requirements set forth in Section 5.9 of the Trust.

11. Inspection of Books: Reports to Interval Owners:

Books, accounts and records pertaining to the Interval Ownership program shall be open to inspection to any one or more of the Trustees, Management Firm and Interval Owners at all reasonable times. The Trustees shall, as soon as reasonably possible after the close of each fiscal year, submit to the Interval Owners a report for such year. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees or the Management Firm given by registered mail within a period

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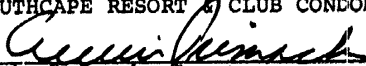
of one (1) month of the date of the receipt by him shall be deemed to have assented thereto.

12. Voting: The beneficial interest pertaining to each Interval shall be held and exercised as a whole and shall not be divided among several owners of any such Interval. For that reason, the provisions governing voting of owners of units set forth in Section 4.2 of the Trust shall also govern voting of Interval Owners. Provided, however, voting may be done by written proxy.

13. Termination: The rights and powers herein set forth shall terminate at such time as the Interval Ownership program terminates, as set forth in Paragraph 14 of the Time Share Supplement to the Master Deed, provided only that the Trustees shall have a reasonable time to wind up the affairs of the Interval Ownership Program.

EXECUTED as a sealed instrument this 23rd day of July, 1982.

SOUTHCAPE RESORT & CLUB CONDOMINIUM I TRUST

  
Aurin Primack, Trustee

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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

July 23 , 1982

Before me appeared the above-named Aurin Primack,  
Trustee of SOUTHCAPE RESORT & CLUB CONDOMINIUM I TRUST and  
acknowledged the foregoing instrument to be his free act and  
deed.

*Richard A. Manning*  
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NOTARY PUBLIC

My Commission Expires:

March 14, 1985

