BOOK PAGE

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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

BEACHWALK
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF BEACHWALK, A PLANNED UNIT DEVELOPMENT

THIS DECLARATION, made this 7th day of March, 1997, by BEACHWALK DEVELOPMENT, INC., a North Carolina corporation, hereinafter referred to as the "Developer":

WITNESSETH:

WHEREAS, the Developer is developing certain real estate located in New Hanover County, North Carolina, which is more particularly described as follows:

C00042 All of Lots 1 through 80, Beachwalk, as shown on a map thereof recorded in Map Book 36, at Pages 284 and 285, of the New Hanover County Registry.

WHEREAS, the Developer desires to impose the following uniform covenants, conditions and restrictions upon said real estate and the future phases, if any, brought within the development of Beachwalk;

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the real estate and which shall run with the real estate and be binding on all parties having or acquiring any right, title or interest in the real estate or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "ASSOCIATION" shall mean and refer to the BEACHWALK HOMEOWNERS ASSOCIATION, INC., a non-profit North Carolina corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to all real property owned or acquired by the Association for the common use and enjoyment of the Owners, together with any common area designated on the map recorded for Beachwalk. Common area may be conveyed to the Association as additional phases are added to Beachwalk or otherwise. Common area shall not include any property

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acquired by the Association as a result of foreclosure or deed in lieu of foreclosure of an Owner's property for nonpayment of assessments, taxes or any security interest against the property or acquired in any other way, unless the Association elects to retain such property and use it as common area.

Section 3. "Declarant" or "Developer" shall mean and refer to BEACHWALK DEVELOPMENT, INC., a North Carolina corporation, its successors and assigns.

Section 4. "Development" shall mean and refer to the whole of the planned residential development to be known as Beachwalk which shall consist of all the real property, which has been subdivided into lots shown on maps of Beachwalk referred to hereinabove, the common elements, plus the improvements to the common elements, as described hereinabove; plus any additional phases which may be made a part of this development at a later time with the express stipulation that any additional phase be contiguous to the herein described planned development, and said additional phase be for residential (single family) purposes only and developed in a manner not inconsistent in value to the herein described development. Developer/Declarant reserves the right to construct duplexes/townhomes on certain lots in Beachwalk, this right is reserved only by Declarant.

Section 5. "Lot" shall mean and refer to any of the numbered lots on each map of property within Beachwalk as is recorded in the New Hanover County Registry, with the exception of the common areas.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Properties" shall mean and refer to that certain real property hereinabove described, and such phases or additions thereto as may hereafter be brought within the jurisdiction of the Association by Declarant. It is contemplated by Developer/

Declarant that Beachwalk may have more than one phase, in which event separate maps may be recorded to reflect the various stages of development of this project both in the initial phase and any subsequent phases.

ARTICLE II

PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OR ENJOYMENT: Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area;

B. The right of the Association to limit the number of guests of members;

C. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;

D. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. Except for the grant or conveyance of a standard utility easement in order to obtain utility service to the common area, no such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded, provided, however, that the Association has the authority to dedicate the streets to the public. With respect to a standard utility easement permitting utility service to the common area, the Board of Governors may authorize the officers to execute such a grant or conveyance of the standard utility easements to the utility company without a vote of the membership of the association;

E. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;

Section 2. DELEGATION OF USE: Any Owner may delegate, in accordance with the By-Laws but subject to the provisions of this document, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

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ARTICLE III

HOMEOWNERS ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Beachwalk Homeowners Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to assessment. Each owner has the duty to comply with and obey these Articles, the Bylaws of the Association and the Rules and Regulations of the Association.

Section 2. The Association shall have two classes of voting membership and one class of nonvoting membership. Class "A" and Class "B" shall be limited to 90 members.

CLASS "A". Class A members shall be all owners with the exception of the Declarant. There shall be one Class "A" vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

CLASS "B". The Class "B" member(s) shall be the Developer/Declarant (as defined in the declaration) who shall be entitled to three (3) votes for each lot owned. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:

(1) When ninety percent (90%) of the lots, including lots in future phases which have been platted and at the time the 90% is determined, are conveyed; or

(2) On January 1, 2000.

CLASS "C". The Class "C" member(s) shall be limited to 60 noncontiguous "offsite" members; that shall have nonvoting rights but shall be allowed use of the common areas and facilities of Beachwalk. Class "C" members shall pay a monthly or yearly social dues fee to the Homeowners Association to be determined by Declarant.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT: Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

A. Annual assessments or charges; and

B. Special assessments for capital improvements, exterior maintenance and insurance in connection with common area property, such assessments to be established and collected as hereinafter provided; and a pro rata share of ad valorem taxes levied against the common area.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the persons who were the Owner of such property at the time when the installment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them; provided, however, such assessment shall always be a lien upon the land until paid, and no sale shall extinguish such assessment, except a foreclosure sale mentioned below in Section 11 of this Article IV.

It is expressly provided, however, that in consideration of the Declarant's prior construction of the amenities and improvements on the real estate which is to constitute the common area in this planned unit development, that the Declarant/Developer shall be exempt from and shall not have to pay assessments on any lots owned by it within this development or any subsequent phases.

Section 2. PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties, for the improvements and maintenance of the common area, and to obtain and pay for insurance where authorized or required by this document, the corporate charter, the Bylaws, Action of the Board of Governors or members of the association.

Section 3. The Board of Governors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Governors and the Board of Governors shall have the authority to require the assessments to be paid in annual installments or to divide the

annual assessment and have it paid in periodic installments throughout the year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid and for what period.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS: In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. SPECIAL ASSESSMENTS FOR INSURANCE: As an additional annual assessment, the Association shall levy against the owners equally an amount sufficient to pay the annual cost of all public liability and common area insurance premiums for the Association and its members, officers, Governors and employees. The Board of Governors (or its designee) shall, on behalf of the Association, as its common expense and at all times, keep the common property insured against loss or damage by fire or other hazards normally insured against at 100% of replacement costs and other risks including public liability insurance, in such terms and in such amounts as may be reasonably necessary from time to time to protect the common property on behalf of the Association. As a part of the annual assessments the Association shall also obtain and pay for such insurance policies and bonds that the Governors of the Association deem necessary or advisable including, but not limited to, officers' and Governors' liability coverage, fidelity bonds, casualty or hazard insurance or any other insurance for the Governors and officers of the Association or otherwise.

Section 6. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER ARTICLE IV FOR MEMBERSHIP: Written notice of any meeting called

for the purpose of taking an action authorized under Article IV for the membership shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. UNIFORM RATE OF ASSESSMENT: Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, annual or other basis as the Homeowners Association determines, save special assessments levied against any lot for casualty insurance as above required. Should Developer/Declarant construct duplexes/townhouses on any lots in Beachwalk as hereinabove referred, said duplexes/townhouses shall be assessed an additional sum, be it yearly, monthly or quarterly for the regular exterior maintenance of said duplexes/townhouses.

Section 8. EFFECT OF NON-PAYMENT OF ASSESSMENTS-REMEDIES OF THE ASSOCIATION: Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of fourteen percent (14%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

Section 9. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION: Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of three (3) months, each Owner of a Lot in the development shall become

personally obligated to pay to the taxing or assessing government authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

Section 10. SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage upon the property. Sale or transfer of any Lot shall not effect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure of a deed of trust or mortgage, a deed in lieu of foreclosure, or any other proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

USE RESTRICTIONS

Section 1. All lots within the development shall be used for single family residential purposes only, except for those lots owned by the Homeowners Association and used for the amenities package or otherwise held as common area and save and except any duplex/townhouse constructed by Developer/Declarant. All construction shall be subject to the zoning and land use ordinances of the Town of Kure Beach.

Section 2. No building, fence, wall or other structure shall be commenced or erected or maintained upon any Lot nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape,

height, materials and location of the same, including any requirements for landscaping, sod or seed, shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Developer/Declarant. In the event said Developer/Declarant, or its designated assigns fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. All residences shall have landscaping (approved by the Developer/Declarant) in place within thirty (30) days of the issuance of a certificate of occupancy.

Without limiting the authority of the Developer/Declarant as set forth above, the following specific restrictions shall apply to each lot notwithstanding the failure of the Developer/Declarant to act within thirty (30) days after plans or specifications have been submitted to it:

A. No single family residence smaller than 1,400 heated square feet, when measured by exterior surface, which square footage shall be exclusive of porches, steps, walks, garages, carports, storage areas, etc., shall be constructed or located in said subdivision. No structure shall be erected, altered, placed or permitted to remain in said subdivision exceeding two and one-half (2 1/2) stories in height above ground level, and one or more small accessory buildings (which may include a detached private garage but not garage apartments), provided, that such buildings are not used for any activity normally conducted as a business, and provided further that any such buildings shall be constructed of similar materials and design as the main structure upon such lot. No accessory buildings shall be constructed prior to the construction of the main building on any lot. All homes must be built on a crawl space, or on pilings, save and except any duplex/townhouse that should be constructed by Developer/Declarant.

B. No concrete block, aluminum siding, concrete brick, asbestos siding, or cinder block shall be used for the exterior of any residence constructed on any lot nor shall composition tar paper exterior be permitted, it being intended that only conventional frame, wood siding, brick or stucco exteriors may be constructed on the lots subject to these covenants. All residences must have a minimum double wide concrete driveway.

Section 3. No house trailer, mobile home, tent, shack or temporary structure of any nature shall be used at any time as a residence.

Section 4. No advertising signs or billboards shall be erected on any lot or displayed to the public on any lot, subject to these restrictions, except that one sign of not more than five (5) square feet in area may be used to advertise a complete dwelling for sale or a dwelling under construction. No "For Sale" signs are allowed on any vacant property. This covenant shall not apply to signs erected by the Declarant/Developer, its agents or assigns.

Section 5. No fence, wall, or hedge in excess of four (4) feet in height shall be erected or permitted on any lot. No fence, wall or hedge, or any portion of a fence erected shall be closer to the front line of any lot than the rear corner of any dwelling erected upon said lot. All fences shall be wood and shall be stained in a color to match the house. No brick, stucco, chain link or wire fence shall be allowed.

Section 6. No animals, livestock, pigs or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed.

Section 7. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within the main dwelling house, within any accessory building, within a screened area, or buried underground. Satellite dishes and other large antennae are prohibited. However, what are commonly known as "Direct T.V." dishes of a diameter no larger than 18" may be installed, but only after the design and location are approved in writing by Developer/Declarant.

Section 8. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, or unkept conditions of buildings or grounds on such lot which would tend to

substantially decrease the beauty of the neighborhood as a whole or the specific area. The Homeowners Association shall be entitled and is empowered to mow vacant lots up to and until such time as residences is commenced on said lots.

Section 9. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof. No yard sales or garage sales shall be allowed on any lot in said Subdivision. In addition, no boat, motor boat, dune buggies, campers, trailers, recreational vehicles, automobiles on cinder blocks, tractor-trailer trucks or cabs or similar type vehicles to any of the foregoing items shall be permitted to remain on any lot at any time, unless by written consent of the Homeowners Association.

Section 10. No lot may be subdivided, or its boundary lines changed except with the prior written consent of the developer. However, the developer hereby expressly reserves to itself, its successors and assigns, the right to replat any two (2) or more lots in order to create a modified building lot or lots, and to take such steps as are reasonably necessary to make such replatted lot suitable and fit as a building site, said steps to include but not be limited to, the relocation of easements, walkways, and right of ways to conform to the new boundaries of the replatted lots.

Section 11. Each lot owner shall provide receptacles for garbage and all cans, carts and bags must be kept in a screened area, accessory building or other storage facility, and not visible from the street, except on garbage pick-up days.

Section 12. (a) Construction activity on a lot shall be confined within the boundaries of said lot. Each lot owner shall have the obligation to collect and dispose of all rubbish and trash resulting from the construction on his lot. Upon a lot owner's

failure to collect and dispose of such trash within thirty (30) days after receipt of a written notice from the Homeowners Association, the Homeowners Association may collect and dispose of such rubbish and trash at the lot owner's expense. Any expense incurred by the Homeowner's Association pursuant to this paragraph shall constitute an assessment of the Homeowner's Association against said lot owners and the lot involved in the clean up, and said assessment shall be enforceable pursuant to the provisions of Article IV hereinabove, expressly including the right of the Homeowners Association to create a lien upon the lot to enforce collection of said assessment.

(b) The exterior of any structure under construction on any lot must be completed with six (6) months after the beginning of construction, acts of God notwithstanding.

(c) In addition, no large trees or natural foliage may be removed from a lot without the prior written approval of the developer.

Section 13. Water and sewer to all lots will be provided by public utility service. Shallow wells for the purpose of watering lawns and not for human use, may be permitted in accordance with applicable regulations. Any such well and pump house must be located no closer to the front lot line than the front of the residence constructed on said lot.

Section 14. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown and designated on the plat of the said property. The developer shall have no responsibility for maintaining drainage easements in connection with any lots sold. All maintenance within said easements shall be the responsibility of the purchaser of a lot, his heirs, successors and assigns. No structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. The easements area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except

of those improvements for which a public authority or utility company is responsible.

Section 15. No residential unit may be leased except in accordance with rules and regulations promulgated by the Association. Any lease or rental (written or oral) on any residence for a rental or lease period less than twelve (12) consecutive months is prohibited.

Section 16. Invalidation of any one of these covenants by judgments or court order shall in no way effect any of the other covenants herein, which shall remain in full force and effect.

Section 17. If the parties thereto, or any of them or their heirs and assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person or person, owning any real property situated in said Beachwalk to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, and either to prevent him or them from so doing or to recover damages or other dues for such violations.

Section 18. All covenants, restrictions and affirmative obligations set forth in these Restrictions shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of the developer, for a period of twenty-five (25) years from the date hereof after which time all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the owners of a majority of the lots (not including mortgagees or trustees under deeds of trust) substantially affected by such changes in covenants, has been recorded, agreeing to change said covenants in whole or in part.

ARTICLE VI

AMENDMENTS

At any time prior to January 1, 2001, these Restrictions may be amended by the developer at its discretion, but not to impair the property value of the lot owners. Thereafter, these restrictions may be amended by vote of the owners of two-thirds

(2/3) of the members of the Homeowners Association, provided, however, no amendment shall be made to the last paragraph of Article IV Section 1 without unanimous consent of the Homeowners Association and the Declarant/Developer.

IN TESTIMONY WHEREOF, BEACHWALK DEVELOPMENT, INC. and has caused this instrument to be executed on this 7th day of March, 1997.

BEACHWALK DEVELOPMENT, INC.

By: _____ (SEAL)
President

ATTEST:

By: Stephanie L. Brewer
Secretary, Assistant

CORPORATE SEAL
BEACHWALK DEVELOPMENT, INC.
CORPORATE SEAL
N.C.

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that Stephanie L. Brewer personally came before me this day and acknowledged that she is Asst Secretary of BEACHWALK DEVELOPMENT, INC., a North Carolina Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed it its corporate name by its President, sealed with its corporate seal and attested by her as its Asst. Secretary.

Witness my hand and notarial seal or stamp this 7th day of March, 1997.

Va Beury-Helms
NOTARY PUBLIC

My commission expires:
8/5/99

V. A. BEURY-HELMS
NOTARY PUBLIC
NEW HANOVER COUNTY, N. C.

STATE OF NORTH CAROLINA
New Hanover County
The Foregoing/ Annexed Certificate(s) of
Va Beury-Helms
Notary (Notaries) Public is/ are certified to be correct.
This the 7 day of Mar 19 97
Mary Sue Oots, Register of Deeds
by Patricia Barnes
Deputy/Assistant