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AMENDED AND RESTATED

BOOK PAGE BY-LAWS OF \*97 OCT 13 PM 2 85

BEACHWALK HOMEOWNERS ASSOCIATION, INCORPORATED & VERIFIED (A NON-PROFIT CORPORATION) MARY SUE OOTS H REGISTER OF DEEDS NEW HANOVER CO. NC

ARTICLE I

GENERAL

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Section 1. TITLE TO LOTS. Title to Lots may be taken in the name of an individual or in the names of two or more persons, as tenants in common or as joint tenants, or as tenants by the entirety, or in the name of a corporation or partnership, or in the name of a fiduciary.

Section 2. APPLICABILITY OF BY-LAWS. The provisions of these By-Laws are applicable to BEACHWALK, and its common elements and to the use and occupancy thereof. The term "BEACHWALK" and its common elements as used herein shall include the land, the building and all other improvements thereon, all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith.

Section 3. APPLICATION. All present and future owners, mortgagees, lessees and occupants of Lots and their employees and any other persons who may use the facilities in any manner are subject to these By-Laws, the Declaration and Rules and Regulations pertaining to the use and operation of the Lots. The act of occupancy of a lot shall constitute an acceptance of the provisions of these instruments and an agreement to comply therewith.

Section 4. OFFICE. The Office of the Owner's Association and the Board of Governors shall be located at: A-4 Pleasure Island Plaza, Carolina Beach, North Carolina 28428.

ARTICLE II

BOARD OF GOVERNORS

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 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

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RETURN TO NED M. BARNES

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. POWERS AND DUTIES. The Board of Governors shall have the powers and duties necessary for the administration of the affairs of the Lots and Common Elements except such powers and duties as by law or by these By-Laws may not be delegated to the Board of Governors by the lot owners. The powers and duties to be exercised by the Board of Governors shall include, but not be limited to, the following:

- A. Operation, care, upkeep and maintenance of the common elements;
- B. Determination of the amounts required for operation, maintenance and other affairs of the Lots and Common Elements;
- C. Collection of the common charges from the lot owners;
- D. Employment and dismissal of personnel as necessary for efficient maintenance and operation;
- E. Adoption and amendment of rules and regulations covering the details of the operation and use of the Lots and Common Elements;
- F. Opening of bank accounts on behalf of the Owners Association and designating the signatures required therefor;
- G. Obtaining insurance for the Lots and Common Elements pursuant to the provisions of Article V, Section 2 hereof; and
- H. Making repairs, additions and improvements to, or alterations of, the property and repairs to and restoration of the property in accordance with the provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

Section 3. ELECTION AND TERM OF OFFICE. The Board of Governors shall be elected at the first annual meeting of the lot owners, the term of office of the members of the Board of Governors shall be fixed at three (3) years. At the expiration of the initial term of office of each respective member of the Board of Governors, his successor shall be elected to serve for a term of three (3) years. The members of the Board of Governors shall hold

office until their respective successors shall have been elected by the lot owners.

Section 4. VACANCIES. Vacancies in the Board of Governors caused by any reason shall be filled by vote of a majority of the owners at a special meeting of the lot owners held for that purpose promptly after the occurrence of any such vacancy. Each person so elected shall be a member of the Board of Governors for the remainder of the term of the member so removed.

Section 5. REGULAR MEETINGS. Regular meetings of the Board of Governors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Governors, but at least one such meeting shall be held during each fiscal year. Notice of regular meetings of the Board of Governors shall be given to each member of the Board of Governors, by mail or telegraph, at least three (3) business days prior to the day named for such meeting.

Section 6. SPECIAL MEETINGS. Special meetings of the Board of Governors may be called by any Board member on three (3) business days' notice to each member of the Board of Governors given by mail or telegraph, which notice shall state the time, place and purpose of the meetings.

Section 7. WAIVER OF NOTICE. Any member of the Board of Governors may, at any time, waive notice of any meeting of the Board of Governors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Governors at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Governors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 8. QUORUM OF BOARD OF GOVERNORS. At all meetings of the Board of Governors, all members thereof must attend to constitute a quorum for the transaction of business and the votes of all of the members of the Board of Governors shall constitute the decision of the Board of Governors. If at any meeting of the Board of Governors there shall be less than a quorum present, the Board members present may conduct any business which might have been transacted at the meeting originally called and any action consented to by the absent manager in writing within ten (10) days of said meeting, shall be deemed valid.

Section 9. COMPENSATION. No member of the Board of Governors shall receive any compensation from the Association for acting as such.

Section 10. DEADLOCK. Any deadlock in voting shall be resolved by submitting the matter to arbitration in accordance with the Uniform Arbitration Act as set forth in the North Carolina General Statutes, Section 1-567.1 et seq.

### ARTICLE III

#### MEETINGS OF OWNERS

Section 1. PLACE. All meetings of the owners shall be held at the office of the Association or such other place as may be stated in the notice.

Section 2. ANNUAL MEETINGS.

a. The annual meeting of the lot owners shall be held at a site designated in New Hanover County, North Carolina, in each year commencing in 1997; provided, however, that the first annual meeting will be held on the second Saturday in October, 1997.

Regular annual meetings subsequent to 1997 shall be held on the first Saturday in October of each succeeding year unless otherwise determined by the Board of Governors.

b. All annual meetings shall be held at such hour as is determined by the Board of Governors.

c. At the annual meeting, the members shall elect the new members of the Board of Governors and transact such other business as may properly come before the meeting.

Section 3. SPECIAL MEETINGS. It shall be the duty of the President to call a special meeting of the owners if so directed by resolution of the Board of Governors or upon a petition signed and presented to the Secretary by owners owning a total of at least fifty percent (50%) of the common interest. The notice of any special meeting shall state the time, place and purpose of the meeting. The business transacted at all special meetings shall be confined to the objects stated in the notice unless the Board of Governors unanimously consents to the transaction of business not stated in the notice.

Section 4. NOTICE OF MEETINGS. The Secretary shall mail to each owner of record a notice of each annual or special meeting of the owners at least ten (10) days but not more than twenty (20) days prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, at the building or at such other address as owner shall have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this section shall be considered service of notice.

Section 5. ADJOURNMENT OF MEETINGS. If any meeting of owners cannot be held because a quorum has not attended, a majority in common interest of the owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not more than forty-eight (48) hours from the time the original meeting was called.

Section 6. ORDER OF BUSINESS. The order of business at all meetings of the Owners shall be as follows:

- a. Roll call;
- b. Proof of notice of meeting;
- c. Reading of minutes of preceding meeting;
- d. Reports of Officers;
- e. Report of Board of Governors;
- f. Reports of Committees;
- g. Election of members of the Board of Governors (when so required);
- h. Unfinished business;
- i. New business; and
- j. Adjournment.

Robert's Rules of Order shall be applicable to the conduct of all meetings of lot owners.

Section 7. VOTING. The owner or owners of each lot, or some person designated by such owner or owners to act as proxy on his or their behalf and who need not be an owner, shall be entitled to cast the votes appurtenant to such lot at all meetings of owners. The designation of any such proxy shall be made in writing to the Secretary and shall be revocable at any time by written notice to the Secretary by the Owner or Owners so designating. Each lot shall be entitled to cast one (1) vote at all meetings of the owners. A fiduciary shall be the voting member with respect to any Lot owned in a fiduciary capacity.

Section 8. MAJORITY OF OWNERS. As used in this By-Laws the term "majority of owners" shall mean those owners having one

hundred percent (100%) of the total authorized votes of all owners in person or by proxy and voting at any meeting of the owners, determined in accordance with the provisions of Section 7 of this Article.

Section 9. QUORUM. Except as otherwise provided in these By-Laws, the presence in person or by proxy of owners having sixty percent (60%) of the total authorized votes of all owners shall constitute a quorum at all meetings of the owners.

Section 10. MAJORITY VOTE. The vote of a majority of owners at a meeting at which a quorum shall be present shall be binding upon all owners for all purposes.

Section 11. DEADLOCK. Any deadlock in voting shall be resolved by submitting the matter to arbitration in accordance with the Uniform Arbitration Act as set forth in the North Carolina General Statutes, Section 1-567.1 et seq.

#### ARTICLE IV

##### OFFICERS

Section 1. DESIGNATION. The principal officers of the Owners Association shall be the President and Secretary and Treasurer, all of whom shall be elected by the Board of Governors. The Board of Governors may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment may be necessary. The President and Secretary and Treasurer must be members of the Board of Governors.

Section 2. ELECTION OF OFFICERS. Officers shall be elected annually by the Board of Governors.

Section 3. REMOVAL OF OFFICERS. Upon the affirmative vote of a majority of the members of the Board of Governors, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Governors called for such purpose.

Section 4. PRESIDENT. The President shall be the chief executive officer of the Owners Association. He shall preside at all meetings of the owners and Board of Governors. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the Business Corporation Law of the State of North Carolina including, but not limited to, the power to appoint from among the owners any committee which he decides is appropriate to assist in the conduct of the affairs of the Owners Association.

Section 5. SECRETARY. The Secretary shall keep the minutes of all meetings of the owners and of the Board of Governors; he shall have charge of such books and papers as the Board of Governors may direct; and he shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the Business Corporation Law of the State of North Carolina.

Section 6. TREASURER. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall be responsible for the deposit of all monies and other valuable effects in the name of the Board of Governors, and he shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the Business Corporation Law of the State of North Carolina.

Section 7. AGREEMENTS, CONTRACTS, DEEDS, CHECKS, ETC. All agreements, contracts, deeds, leases and other instruments of the Association shall be executed by the President and Secretary of the Association and checks are to be executed by such person or persons as may be designated by the Board of Governors.

Section 8. COMPENSATION OF OFFICERS. No officer shall receive any compensation from the Association for acting as such.

#### ARTICLE V

##### OPERATION OF THE PROPERTY

Section 1. DETERMINATION OF COMMON EXPENSES AND COMMON CHARGES. The Board of Governors shall have from time to time and at least annually, prepare a budget for the Association, determine the amount of the common charges required to meet the common expenses of the Association and allocate and assess such common charges against the owners according to their respective common interests. The common expenses shall include, among other things, all insurance premiums and expenses related thereto required to be maintained by the Board of Governors pursuant to the provisions of Section 9 of this Article V. The common expenses may also include such amounts as the Board of Governors may deem proper for the operation, maintenance, repair or replacement of the Common Elements including, without limitation, an amount for working capital of the Association, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the common expenses for any prior year, and any other expenses designated by the Board of Governors as common expenses. In addition thereto, each owner shall be liable for and pay the annual assessment to the Beachwalk Homeowners Association for maintenance and upkeep of the common area of Beachwalk.

Section 2. LIABILITY FOR COMMON CHARGES. All owners shall be obligated to pay the common charges assessed by the Board of Governors pursuant to the provisions of Section 1 above at such times and in such manner as may be directed by the Board.

A. SELLER'S LIABILITY. No owner shall be liable for the payment of any part of the common charges assessed against his lot from and after the date of closing of the sale, transfer, or other conveyance by him of such lot.

B. PURCHASER'S LIABILITY. A purchaser of a lot shall be liable for payment of any common charges assessed against such lot prior to its acquisition by him, except that a mortgagee or a purchaser of a lot at a foreclosure sale shall not be liable for and shall not be subject to a lien for the payment of common charges assessed prior to the foreclosure sale.

Section 3. COLLECTION OF ASSESSMENTS. The Board of Governors shall at least annually take prompt action to collect from an owner any assessment for common charges which remains unpaid by him for more than thirty (30) days from the due date for its payment.

Section 4. DEFAULT IN PAYMENT OF COMMON CHARGES. In the event of default by any owner in paying to the Board of Governors the assessed common charges, such owner shall be obligated to pay interest at the legal rate on such common charges from the due date thereof, together with all expenses, including attorney's fees, incurred by the Board of Governors in any proceeding brought to collect such unpaid common charges. The Board of Governors shall have the right and duty to attempt to recover such common charges, together with interest thereon, and the expenses of the proceeding, including attorney's fees, in an action brought against such owner, or by foreclosure of the lien on such lot which is hereby granted

by all owners in favor of the Association for the enforcement of payment of delinquent common charges.

Section 5. FORECLOSURE OF LIENS FOR UNPAID COMMON CHARGES. In any action brought by the Board of Governors to foreclose a lien on a Lot because of unpaid common charges, the owner shall be required to pay a reasonable rental for the use of his Lot and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect such rental. A suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same.

Section 6. STATEMENT OF COMMON CHARGES. The Board of Governors shall promptly provide any owner who makes a request in writing with a written statement of his unpaid common charges.

Section 7. ABATEMENT AND ENJOINING OF VIOLATIONS. The violation of any rule or regulation adopted by the Board of Governors or the breach of any By-Law contained herein shall give the Board of Governors the right, in addition to any other rights, the Board of Governors to enter the owners lot to remedy the violation and they shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

Section 8. MAINTENANCE AND REPAIR.

A. INDIVIDUAL LOTS. All maintenance of and repairs to each individual lots, structural or non-structural, ordinary or extraordinary, (other than maintenance of and repairs to any common elements contained therein not necessitated by the negligence, misuse, or neglect of the owner of such lot) shall be made by the owner. Each owner shall be responsible for all damages to any other lot and to the common elements resulting from his failure to effect such maintenance and repairs.

B. COMMON ELEMENTS. All maintenance, repairs and replacements to the common elements, whether located inside or outside of the lots (unless necessitated by the negligence, misuse, or neglect of an owner, in which case such expense shall be charged to such owner), shall be made by the Board of Governors and be charged to all the owners as a common expense.

Section 9. INSURANCE. The Board of Governors on behalf of the Association, at its common expense, shall at all times keep THE COMMON AREAS of Beachwalk insured against loss or damage by fire, flood or other hazards normally insured against at one hundred percent (100%) of replacement cost, and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the property; any insurance shall be payable in case of loss to the Board or It's Designee as Trustee for all owners. The Trustee so named shall have the authority on behalf of the association and owners to deal with the insurer in the settlement of claims.

Each owner shall keep his lot insured against loss and damage by fire, tornado, wind storm and flood and against such other hazards as the Board of Governors may require in an amount equal to the replacement cost for said lot and structure located thereon. Each owner agrees upon request of the Board, to provide the Board with satisfactory proof of said insurance. If the owner fails or refuses to keep said premises so insured the Board of Governors may obtain such insurance and the cost of said insurance shall be a lien against said lot as hereinabove set out.

Section 10. DAMAGE OR DESTRUCTION. Except as hereinafter provided, damage to or destruction of a lot shall be promptly

repaired and restored by the owner using the proceeds of any insurance for that purpose.

Section 11. USE OF LOTS. In order to provide for congenial occupancy of the lots and for the protection of their values the use of the lots shall be subject to the following limitations:

- A. The lots shall be used for residential purposes only.
- B. No portion of the lot other than the entire lot may be rented, and rentals shorter in length than twelve (12) continuous months are prohibited.

Section 12. ADDITIONS, ALTERATIONS, OR IMPROVEMENTS BY Board of Governors. Whenever in the judgment of the Board of Governors the common elements shall require additions, alterations, or improvements costing in excess of \$5,000.00, and the making of such additions, alterations, or improvements shall have been approved by the owners, the Board of Governors shall proceed with such additions, alterations, or improvements and shall assess all owners for the cost thereof as a common charge. Any additions, alterations, or improvements costing \$5,000.00 or less may be made by the Board of Governors without special approval of the owners.

Section 13. ADDITIONS, ALTERATIONS, OR IMPROVEMENTS BY OWNERS. No owner shall make any structural addition, alteration, or improvement in or to his lot without prior written consent thereto of the Board of Governors. The Board of Governors shall have the obligation to answer any written request by an owner for approval of a proposed structural addition, alteration, or improvement in such owner's lot within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board of Governors to the proposed addition, alteration, or improvement. Any application to any governmental authority for a permit to make an addition, alteration, or improvement in or to any lot shall be executed by the Board of Governors. The Board of Governors shall not be liable to any contractor, subcontractor, or materialman or to any person sustaining personal injury or property damage, for any claim arising in connection with such addition, alteration, or improvement.

Section 14. DESCRIPTION OF COMMON ELEMENTS. The Common Elements consist of the entire property not located within any lot. They include, without limitation, the following:

- A. All land, lawns, gardens, roads, parking and other improved or unimproved areas not within or directly under the lots.
- B. All installations or power, lights and water existing for common use and all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use;
- C. All common sewer and drainage pipes;
- D. All other apparatus, equipment and installations existing without the lots for common use or necessary or convenient to the existence, maintenance, or safety of the building and/or common elements.

Section 15. RIGHT OF ACCESS. An owner shall grant a right of access to his lot to any person authorized by the Board of Governors, to make inspections; to correct any condition originating in his lot and threatening another lot or a common element; to install, alter or repair mechanical or electrical services or other common elements in his lot or elsewhere in the building; and to correct any condition which violates the provisions of any mortgage covering another lot. Requests for such



entry shall be made in advance and such entry shall be scheduled for a time reasonably convenient to the owner. However, in case of an emergency, such right of entry shall be immediate whether the owner is present at the time or not.

ARTICLE VI.

SALES AND LEASES OF LOTS

Section 1. PAYMENT OF ASSESSMENTS. No owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his lot unless and until he shall have paid in full to the Board of Governors all unpaid common charges theretofore assessed by the Board of Governors against his lot and until he shall have satisfied all unpaid liens against such lot, except permitted mortgages.

ARTICLE VII.

CONDEMNATION

Section 1. CONDEMNATION. In the event of a taking in condemnation or by eminent domain of part or all of the common elements, the award made for such taking shall be payable to the Board of Governors who shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of damage, as provided in Section 10 of Article V of these By-Laws.

ARTICLE VIII.

MISCELLANEOUS

Section 1. NOTICES. All notices to the Board of Governors shall be sent by registered or certified mail, to the office of the Board of Governors, c/o ROBERT WEINBACH at A-4 Pleasure Island Plaza, Carolina Beach, North Carolina 28428, or to such other address as may have been designated by him from time to time, in writing, to the Board of Governors. All notices to mortgagees of lots shall be sent by registered or certified mail to their respective addresses, as designated by them from time to time, in writing, to the Board of Governors. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 2. INVALIDITY. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability, or effect the balance of these By-Laws.

Section 3. CAPTIONS. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

Section 4. GENDER. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. WAIVER. No restrictions, conditions, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

ARTICLE IX.

RECORDS

Section 1. RECORDS AND AUDITS. The Board of Governors shall keep detailed records of the actions of the Board of Governors, minutes of the meetings of the Board of Governors, minutes of the meetings of the owners, and financial records and books of account of the Association, including a chronological listing of receipts and expenditures, as well as a separate account for each lot which, among other things, shall contain the amount of each assessment of common charges against such lot, the date when due, the amounts paid thereon and the balance remaining unpaid. A written report summarizing all receipts and expenditures of the Association shall be rendered by the Board of Governors to all owners at least annually. All of the above records and information shall be made available to either owner at any time upon reasonable notice.

ARTICLE X.

AMENDMENT TO BY-LAWS

Section 1. AMENDMENT TO BY-LAWS. At any time prior to December 31, 1999, these By-Laws may be amended by the developer/declarant at its discretion, but not to impair the property value of the 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.

The foregoing were adopted as the By-Laws of BEACHWALK HOMEOWNERS ASSOCIATION at the meeting of its Board of Governors held on the 1<sup>st</sup> day of August, 1997.

Certified to be correct, this the 1<sup>st</sup> day of August, 1997.

Stephanie L. Brewer  
Secretary of First Meeting of  
Board of Governors of  
BEACHWALK HOMEOWNERS ASSOCIATION

NORTH CAROLINA

NEW HANOVER

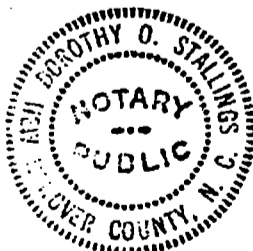
I, DOROTHY O. STALLINGS, a Notary Public for said County and State, do hereby certify that Stephanie L. Brewer, Secretary of Board of Governors of Beachwalk Homeowners Association, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the 1st day of August, 1997.

Dorothy O. Stallings  
Notary Public

My commission expires:

4-03-99



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STATE OF NORTH CAROLINA  
New Hanover County

The Foregoing/Annexed Certificate(s) of  
Dorothy O. Stallings

Notary (Notaries) Public is/ are certified to be correct.

This the 13 day of Oct, 1997

Mary Sue Qots, Register of Deeds

by Thomas A. [Signature]  
Deputy/Assistant