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AMENDED AND RESTATED BYLAWS  
FOR  
BEACHWALK HOMEOWNERS ASSOCIATION, INC

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**AMENDED AND RESTATED BYLAWS  
FOR  
BEACHWALK HOMEOWNERS ASSOCIATION, INC.**

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**AMENDED AND RESTATED BYLAWS  
FOR  
BEACHWALK HOMEOWNERS ASSOCIATION, INC.**

This Amended and Restated Bylaws for the Beachwalk Homeowners Association, Inc , (herein referred to as the "Bylaws") a North Carolina nonprofit corporation (herein referred to as the "Association"), is made and entered into as of the 5<sup>th</sup> day of June, 2014

Whereas, Beachwalk Homeowners Association, Inc recorded the original Bylaws of the Association on October 13, 1997, in Book 2253, at Pages 177-189, with the Register of Deeds, New Hanover County, North Carolina, and

Whereas, pursuant to Article X of the original Bylaws, the Association may amend the Bylaws with the affirmative vote of the owners of two-thirds (2/3) of all lots located within Beachwalk, as defined in the Declaration, and

Whereas, the Association and the requisite number of owners as provided in the original Bylaws desire to amend and restate the Bylaws as described herein, and

Whereas, the Association has obtained the affirmative vote of the owners of two-thirds of all lots located within Beachwalk to amend and restate the Bylaws,

Now, therefore, the Association hereby covenants and declares on behalf of itself and its successors and assigns that the Bylaws and Schedules A and B thereto are hereby amended and restated in its entirety

**ARTICLE 1. NAME AND DEFINITIONS**

Section 1 1 Name The name of the Association shall be the Beachwalk Homeowners Association, Inc (the "Association")

Section 1 2 Definitions

(a) Terms specifically defined in the Amended and Restated Declaration of Covenants and Restrictions for Beachwalk Homeowners Association, Inc and including all attachments thereto (hereafter referred to as the "Declaration") as may be amended, shall have the same meaning in these Bylaws unless the context shall otherwise prohibit. In addition, any capitalized word not defined in the Declaration, unless it is plainly evident from the context of these Bylaws that a different meaning is intended, shall, as used herein, have the meaning as set forth in North Carolina General Statute Section 47F-1-103

(b) "North Carolina Nonprofit Corporation Act" refers to Chapter 55A of the General Statutes of North Carolina

(c) "North Carolina Planned Community Act" refers to Chapter 47F of the General Statutes of North Carolina

## ARTICLE 2. MEMBERSHIP VOTING

### Section 2 1 Voting Rights

(a) Members shall each be entitled to one (1) vote for each lot owned, provided, however, when more than one person holds an interest in any lot, then all such persons collectively shall be entitled to one (1) vote for each lot collectively owned. The vote of such multiple owners of a lot shall be exercised as they, among themselves, shall determine (subject to the provisions of Section 2 2 (b) below), but in no event shall any fractional vote be counted or more than one vote be cast with respect to any lot.

(b) Members shall be entitled to vote on all matters as to which members may be entitled to vote under the North Carolina Nonprofit Corporation Act and the North Carolina Planned Community Act, unless specifically provided otherwise in these Bylaws, the Articles of Incorporation, or the Declaration.

### Section 2 2 Additional Provisions Governing Voting

(a) Association Votes If the Association is an owner of a lot, the Association shall not cast the vote appurtenant to such lot, nor shall any such vote be counted for the purpose of establishing a quorum.

(b) Multiple-Person Owners If there is more than one (1) owner of a particular lot, the vote for such lot shall be exercised as such co-owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such notice to the Association, the lot vote shall be suspended if more than one person seeks to exercise it. If more than one owner casts a vote for a lot either in person, by ballot or by proxy, the vote for that lot shall be suspended. If, after a reasonable period of time during the meeting, the co-owners are unable to agree on how the vote should be cast, the lot vote will be disregarded.

(c) Voting Certificate If a member is not a natural person, the vote by such member may be cast by any natural person authorized by such member. Such natural person must be named and a certificate signed by an authorized officer, partner, member, or trustee of such person and filed with the Secretary, provided, however, that any vote cast by a natural person on behalf of such member shall be deemed valid unless successfully challenged prior to the adjournment of the meeting at which the vote is cast. Such certificate shall be valid until revoked by a subsequent certificate similarly executed and filed with the Secretary. Whenever the approval or disapproval of a member is required by any of the Association Documents, such approval or disapproval may be made by any person who would be entitled to cast the vote of such member at any meeting of the Association.

(d) Delinquency No member may vote at any meeting of the Association, be elected to serve on the Board of Directors or be appointed to serve on any committee if payment by such member of any financial obligation to the Association is delinquent more than thirty (30) days and the amount necessary to bring the account current has not been paid by the Record Date set pursuant to Section 3 9 herein for the applicable members meeting (in the case of a member voting or being elected to serve on the Board of Directors) or has not been paid by the date of appointment, in the case of appointment to serve on any committee.

Section 2 3 Manner of Voting Voting by members at a meeting shall be by ballot, voice vote or a show of hands unless any member present at the meeting requests, and by an affirmative vote of a majority of the votes cast the members consent to, a vote by written ballots Except in the election of Directors as provided in Article 4 herein, if a quorum is present, action on a matter at a meeting of members shall be deemed approved if approved by the affirmative vote of a majority of the votes cast, unless a greater vote is required by the North Carolina Nonprofit Corporation Act, the North Carolina Planned Community Act, the Articles of Incorporation, these Bylaws, or the Declaration

Section 2 4. Proxies

(a) Members may vote either

(1) In person, or

(2) By written ballot, or

(3) By an agent authorized by a written proxy that is dated and signed by the owner of a lot, or

(4) By a proxy that is dated and is submitted electronically in accordance with rules established by the Board Electronically submitted proxies shall bear the member's electronic signature in accordance with the provisions of North Carolina Statute § 55A-7-24

(b) A proxy shall be valid for a specific meeting All proxies must be filed with the Secretary of the Association and may be revoked by such member by giving actual oral or written notice of its revocation to the person presiding over a meeting of the Association

Section 2 5 Action by Written Ballot Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the Association delivers a written ballot to every member entitled to vote on the matter Approval of a matter by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast A ballot may be delivered and submitted by electronic means Electronically submitted ballots shall bear the member's electronic signature in accordance with the provisions of North Carolina Statute § 55A-7-24 A written ballot may not be revoked A written ballot shall

(a) Set forth each proposed action,

(b) Provide an opportunity to vote for or against each proposed action individually, and

(c) Indicate the date by which a ballot shall be received by the Association in order to be counted

### **ARTICLE 3. MEETING OF MEMBERS**

Section 3 1 Place and Time of Meetings All meetings of members shall be held in New Hanover County, North Carolina on the date and at the time designated by the President and stated in the notice of the meeting

**Section 3 2. Annual Meetings** The annual meeting of members of the Association shall be held at least once a year for the purpose of electing Directors of the Association and for such other purposes as may be included in the notice of such meeting

**Section 3 3 Special Meetings**

(a) Special meetings of the members may be called at any time by the President, the Board, or by petition of the holders of at least ten percent (10%) of all votes entitled to be cast on any issue proposed in such request to be considered at the meeting, and in which case shall be noticed by the Secretary of the Association and the meeting shall be held within thirty (30) days of receipt of the petition by the Secretary and the remainder of this Article 3 shall apply

(b) If the special meeting is initiated by petition, the signatures on a petition requesting a special meeting shall be valid for a period of ninety (90) days after the date of the first signature. The petition for a special meeting must

- (1) Specify the purposes for which the meeting is to be held,
- (2) The purposes listed must be items upon which the members have the right to vote, and
- (3) Be delivered to the Secretary in writing

**Section 3 4 Notice of Meetings**

(a) Notice Notice of meetings of members shall be given by the President by written or printed notice stating the date, time, and place of the meeting

(b) Delivery of Notice The notice may be delivered by hand-delivery, United States mail (postage prepaid) or, if elected by the owner, by electronic mail to the address on file with the Secretary. Such notice must be sent not less than twenty (20) nor more than sixty (60) days before the meeting date to each member of record entitled to vote at such meeting

(1) If notice is sent by United States mail, such notice shall be deemed to be effective when deposited in the United States mail, correctly addressed to the member at the member's address as it appears on the current record of members of the Association, with postage thereon prepaid. For this purpose, a member's address shall be the mailing address of each lot or to any other mailing address designated in writing by the owner to the Secretary of the Association

(2) If by electronic mail, such notice shall be deemed to be effectively transmitted when correctly addressed to the member at the member's address as it appears on the current record of members of the Association. For this purpose, a member's address shall be the electronic mail address of each lot or to any other address designated in writing by the owner to the Secretary of the Association

(c) Notice Appropriate to Circumstances Notwithstanding the foregoing, if providing the notice as stipulated above clearly would not be fair and reasonable under the circumstances then existing, then notice appropriate for the circumstances shall be

given, provided, however, that notice of a meeting where any of the following actions are to be voted on in all events shall be given as provided in Section 3 4 (b)

- (1) Director conflict of interest or indemnification,
- (2) Amendment to the Association's Articles of Incorporation, Bylaws, or Declaration, provided, however, that the Declaration shall only be amended pursuant to the Declaration,
- (3) Plan of merger or dissolution, or
- (4) A sale of assets other than in the regular course of the Association's activities, and
- (5) Provided, further however, that any special notice procedure set forth in the Declaration for any of the foregoing or any other matter shall be followed in addition to the notice provisions set forth herein

(d) Notice Content The notice of any meeting shall state the items on the agenda, including a summary or copy of any proposed amendment to the Declaration, these Bylaws or Articles of Incorporation, any budget changes, and any proposal to remove a Director or officer. The notice also shall include any other matters and a copy or summary of any proposed action that expressly is required by the provisions of the North Carolina Nonprofit Corporation Act or the North Carolina Planned Community Act. Notices of meetings where election of officers is on the agenda shall include a list of nominees for each office. Only those matters which are stated in the notice may be acted upon at a meeting of members. Notice of an annual, regular, or special meeting of members also shall give notice of any matter a member intends to raise at the meeting if the Association receives a written request of any matter the members intend to raise by the members entitled to call a special meeting pursuant to Section 3 3 ("Special Meetings") of this Article, and such written request is received by the Secretary or President of the Association at least ten (10) days before the Association delivers the notice of such meeting.

**Section 3 5 Waiver of Notice of Meetings** Any member may waive notice of any meeting before or after the meeting. The waiver must be in writing, signed by the member, and delivered to the Association for inclusion in the minutes or filing with the corporate records. A member's attendance, in person or by proxy, at a meeting waives objection to lack of notice or defective notice of the meeting, unless the member or the member's proxy at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member or the member's proxy objects to considering the matter before it is voted upon.

**Section 3 6 Quorum**

(a) Unless provided otherwise by the Articles of Incorporation, Bylaws, Declaration, or by law, fifty percent (50%) of all members entitled to vote who are represented in person or by proxy or by ballot, shall constitute a quorum at the opening of a meeting of members. Once a member is present or represented by proxy for any purpose at a meeting, such member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date (set

forth in Section 3 9 below) is or must be set for that adjourned meeting under the North Carolina Nonprofit Corporation Act

(b) If business cannot be conducted at any meeting of members because a quorum is not present, the meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. If any meeting of members is adjourned by the vote of a majority of votes cast on the motion to adjourn to a different date, time, or place, notice must be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment and if a new record date (defined in Section 3 9) is not fixed for the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed pursuant to North Carolina law, notice of the adjourned meeting must be given as provided in this section to the members of record entitled to vote at the meeting as of the new record date. The quorum requirement at the next meeting of members, in the event of an adjournment because a quorum is not present, shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision will continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, until such time as a quorum is present and business can be conducted. The original notice of the meeting may set forth an alternative date for resumption of the meeting if the meeting is adjourned for lack of a quorum at which resumed meeting the reduced quorum requirement shall apply.

#### Section 3 7 Order of Business

(a) Unless otherwise specified in the notice of the meeting, the order of business at all meetings of the Association shall be as follows:

- (1) Roll call and proof of quorum,
- (2) Proof of notice of meeting,
- (3) Reading of the minutes of the preceding meeting,
- (4) Reports of officers and management,
- (5) Report of Board of Directors,
- (6) Reports of committees,
- (7) Election of Directors,
- (8) Unfinished business, and
- (9) New business.

(b) The voting for election of Directors may commence at any time at the direction of the presiding officer.

Section 3 8 Conduct of Meetings The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record all resolutions adopted at the meetings and proceedings occurring at such meetings. The President may appoint a parliamentarian at any meeting of the Association. The most current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Association Documents.

Section 3 9 Record Date to Determine Members and List of Members The record date is the date for determining which persons are members and therefore are entitled to vote. The record date shall be the close of business on the date the notice of the meeting is mailed,



unless the Board of Directors shall set a record date closer to the meeting date. The Board of Directors is not permitted to set a record date retroactively. The membership list shall be current as of the record date. Before each meeting of members, the Association shall prepare an alphabetical list of the members entitled to notice of the meeting and entitled to vote at the meeting, showing each such member's address and the number of votes each such member is entitled to cast at the meeting. As a part of the aforementioned membership list and prepared on the same basis, the Association shall list, current through the time of the membership meeting, a list of members, if any, who are entitled to notice but not entitled to vote at the meeting. The list shall be kept on file at the principal office of the Association for the period beginning two (2) business days after notice of the meeting is given and continuing through the meeting, and shall be available for inspection by any member, personally or by or with such member's representative, at any time prior to the meeting. A determination of members entitled to notice of, or to vote at, a membership meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new date for determining the right to notice or the right to vote, which the Board of Directors shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

#### **ARTICLE 4. Board OF Directors**

##### **Section 4 1 Number, Election of Directors, Terms of Office of Directors, and Compensation**

- (a) Board of Directors The number of Directors of the Association shall be five (5), and the term of office of the members of the Board shall be three (3) years. The initial and all subsequent Directors of the Association shall serve as Directors until their successors shall be elected and qualified.
- (b) Staggered terms A process shall be defined for effectively managing the terms of officers such that there is a balance of continuity and turnover. That process is defined in Exhibit A of this document.
- (c) Election of Directors The Board shall be elected solely by the members of the Association voting in person, by proxy, or written ballot. Except as provided in subsection (a) of this section and Section 4 4, Directors shall be elected at the annual meeting of owners. The nominee(s) who receive(s) the highest number of votes by the members entitled to vote in the election at a meeting at which a quorum is present shall be deemed to have been elected.
- (d) Compensation No member of the Board of Directors shall receive any compensation from the Association for acting as such, but this shall not preclude the payment of salary or other compensation for the performance by any person serving as a Director for services provided to the Association in a capacity other than that of Director nor shall it preclude the reimbursement of reasonable, ordinary and necessary expenses incurred in serving or acting as a Director.

##### **Section 4 2 Election Procedures and Qualifications**

- (a) Nominations Committee Nominations for election to the Board of the Directors may be made by a nominations committee appointed by the Board and/or by any member who shall then be in good standing. Members appointed to the committee must be in good standing in the Association and shall serve from the date of their appointments through the close of the annual meeting or, where appropriate, the special meeting, at

which the election for members of the Board is to be held

**(b) Nominations**

(1) The names of persons nominated shall be submitted in writing to the President of the Association and the Board not more than ninety (90) days before the meeting at which the election is to be held. Any written nominations presented shall be accompanied by a statement signed by the nominee indicating his/her willingness to serve as a Director.

(2) If no nominations committee is appointed, nominations for Directors may be made by the Board acting as the nominations committee, as specified herein.

(3) Nominations from the floor shall be permitted at the meeting at which the election is to be held provided that the nominee is physically present and such nominee indicates the willingness to serve as a Director.

**(c) Qualifications** No person shall be eligible for election as a Director unless such person is an owner or is the individual nominee of an owner which is other than an individual. No owner or representative of such owner shall be elected as a Director or continue to serve as a Director if

(1) The member is more than thirty (30) days delinquent in meeting any financial obligation owed to the Association, if such delinquency is not cured by the record date set pursuant to Section 3.9 herein for such members' meeting in the case of an election of Directors, or

(2) The member otherwise is in violation of any provision of the Association Documents.

**Section 4.3 Board Voting, Quorum, and Manner of Acting**

**(a) Voting** Each Director shall be entitled to one (1) vote on all matters that come before the Board.

**(b) Quorum** A majority of the Directors in office immediately before a meeting begins shall constitute a quorum for the transaction of business at any meeting of the Board.

**(c) Manner of Acting** Unless a vote of greater percentage is required by the Association's Articles of Incorporation, Bylaws, Declaration, the North Carolina Nonprofit Corporation Act, or the North Carolina Planned Community Act, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board. A Director who participates in a meeting by any means of communication by which all Directors may simultaneously hear each other during the meeting shall be deemed present at a meeting for all purposes.

**Section 4.4 Removal or Resignation of Directors and Filling of Vacancies**

**(a) Removal of a Director** A Director may be removed from office at any time with or without cause by a majority vote of all members present and entitled to vote at any meeting of members at which a quorum is present. A Director may not be removed by the members at a meeting unless the notice of the meeting states that the purpose, or one of the purposes, of the meeting is the removal of the Director so stated to be removed. If any Directors are so removed, new Directors may be elected at the same meeting. In addition, any Director not in attendance at three (3) consecutive regular meetings of the Board shall be deemed automatically removed.

**(b) Vacancy on the Board** A vacancy in the Board shall be filled by a vote of the

members at a special meeting held for such purpose promptly after the occurrence of such vacancy. The term of a Director elected to fill a vacancy in a Directorship elected by members expires at the next election of Directors by members, and the term of the Director filling any other vacancy expires at the end of the unexpired term that such Director is filling.

(c) Resignation of a Director A Director may resign at any time by giving notice to the Board, the President or the Secretary. Unless otherwise specified, such resignation shall take effect upon the receipt thereof and the acceptance of such resignation shall not be necessary to make it effective. A Director shall be deemed conclusively to have resigned upon disposition by the owner of the lot which made such individual eligible to be a Director or upon any other event of disqualification set forth in these Bylaws.

#### Section 4.5 Powers and Duties of the Board

(a) Extent and Limit of Powers The business and affairs of the Association shall be managed and directed by the Board of Directors. Except as provided below, the Board shall have all of the powers and duties necessary for the administration of the affairs of the Association, including, but not by way of limitation, all powers as set forth in Article 3 of Chapter 55A of the North Carolina General Statutes (North Carolina Nonprofit Corporation Act) and Section 47F-3-102 of the North Carolina Planned Community Act. The Board may not exercise any powers or duties or do any such acts and things which are required by the Declaration, these Bylaws, or the Articles of Incorporation to be exercised and done by the members, provided, however, that all such powers, duties, acts, and things shall be exercised consistent with the provisions of the Declaration, these Bylaws, and the Articles of Incorporation.

(b) Delegation of Authority The Board may delegate to one of its members or to a person employed for such purpose the authority to act on behalf of the Board on such matters relating to the duties of the managing agent (as defined in Section 5.3 hereof), if any, which may arise between the meetings of the Board as the Board deems appropriate. In addition to the duties imposed by any other provision of the Declaration or by any resolution of the Board that hereafter may be adopted, the Board shall perform the following duties and take the following actions on behalf of the Association, subject to any voting rights of the members provided by the Association's governing documents, or by law:

- (1) Provide goods and services to the members in accordance with the Declaration.
- (2) Designate, hire, dismiss and, where appropriate, compensate the personnel necessary to provide goods and services to the owners, as provided for in the Declaration, as well as purchase equipment, supplies and materials to be used by such personnel in the performance of his/her duties.
- (3) Collect the assessments, specified in the Declaration, deposit the proceeds thereof in depositories designated by the Board and use the proceeds to carry out the purposes of the Association, as provided in the Declaration.
- (4) Adopt, amend and repeal any reasonable rules and regulations not inconsistent with the Declaration and these Bylaws.
- (5) Open bank accounts on behalf of the Association and designate the signatories thereon.

- (6) Enforce by legal means the provisions of the Association Documents as are in effect
- (7) Act with respect to all matters arising out of any eminent domain proceeding affecting the common areas and/or property of the Association
- (8) Notify the members of any litigation by or against the Association
- (9) Obtain and carry insurance pursuant to applicable provisions of the Declaration and pay the premiums thereof and adjust and settle any claims thereunder
- (10) Pay the cost of all authorized goods and services rendered to the Association and not billed to owners of lots or otherwise billed to another entity as provided for in the Declaration
- (11) Acquire, hold and dispose of lots and mortgage the same without the prior approval of the Association if such expenditures and hypothecations are included in the budget
- (12) Establish and charge reasonable fees for the use of the common areas, limited common areas, and for services
- (13) Suspend the right of any owner or other user of a lot, and the right of such person's household, guests, employees, customers, tenants, agents and invitees to use any recreational facilities, areas or amenities located in the common areas and/or limited common areas, subject to the hearing procedures provided in the Declaration
- (14) Borrow money on behalf of the Association when required for any valid purpose
- (15) Grant easements, rights-of-ways or licenses over and through the common areas and limited common areas pursuant to North Carolina General Statute Section 47F-3-102 (9)
- (16) Enter into contracts to carry out the business and activities of the Association

#### Section 4.6 Types of Board of Directors Meetings

- (a) Organizational Meetings The organizational meeting of the Board following an annual meeting of the Association shall be held within ten (10) days thereafter at such time and place as shall be determined by a majority of the Directors to elect officers and establish the manner of operation of the Board for the ensuing year
- (b) Regular Meetings Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors, provided, however, such meetings shall be held at least quarterly during each fiscal year
- (c) Special Meetings Special meetings of the Board may be called by the President, and shall be called by the President or Secretary upon the written request of at least two (2) Directors, or when required by the Association Documents
- (d) Executive Meetings The President may call the Board into executive session on sensitive matters such as personnel, litigation strategy or hearings under Article 17 of the Declaration. Any final action taken by the Board in executive session shall be recorded in the minutes

#### Section 4 7 Notice of Directors' Meetings

(a) Regular Meeting The President, or any two (2) Directors, may call a meeting of the Board. The person or persons calling a meeting of the Board shall give notice thereof at least five (5) days before the meeting to the Board members and owners by any usual means of communication. Such notice need not specify the purpose for which the meeting is called. Any duly convened regular or special meeting may be adjourned by the Directors to a later time without further notice.

(b) Waiver of Notice Any Director may waive receiving notice of any meeting before or after the meeting. The waiver must be in writing, signed by the Director entitled to the notice, and delivered to the Association for inclusion in the minutes or filing with the corporate records. The attendance by a Director at, or the participation of a Director in, a meeting shall constitute a waiver of any required notice of such meeting, unless the Director, at the beginning of the meeting or promptly upon the Director's arrival at the meeting, objects to holding the meeting or to transacting any business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

(c) Conduct of Meetings The President shall preside over meetings of the Board and the Secretary shall keep the meeting minutes and record all resolutions adopted at the meetings and proceedings occurring at the meetings. Meeting minutes shall be made available to the owners upon request. The most current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Directors when not in conflict with the Association Documents.

(d) Member Attendance at Board Meetings The Board shall provide the owners an opportunity to attend a portion of a Board meeting and to address the Board at such meeting. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

Section 4 8 Action by Directors Without Meeting Action required or permitted to be taken at a meeting of the Board may be taken without a meeting if the action is taken by all members of the Board and evidenced by one or more written consents signed by each Director before or after such action, describing the action taken, and delivered to the Secretary of the Association for inclusion in the minutes or filing with the corporate records.

### ARTICLE 5. MANAGING AGENT

Section 5 1 Compensation. The Board may employ, for the purpose of managing its required activities pursuant to the Association Documents, a managing agent at compensation to be established by the Board. The managing agent shall be a bona fide business enterprise or individual which manages common interest communities.

Section 5 2 Requirements The managing agent must be able to advise and assist the Board regarding the administrative operation of the Association and shall employ personnel knowledgeable in the areas of insurance, accounting, contract negotiation, and property management. Otherwise, the managing agent may be a full-time employee of the Association who shall organize, staff, train and administer the in-house personnel solely to perform the managing agent duties set forth below.

**Section 5.3 Duties** The managing agent shall perform such duties and services as the Board shall direct. Such duties and services may include, without limitation, the duties listed in Section 4.5 (b) (1), (2), (3), (6), and (10). However, the Board may not delegate to the managing agent the powers and duties set forth in Section 4.5 (b) (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (16). In addition, the managing agent shall perform the obligations, duties and services relating to the management of the property in compliance with the provisions of the Association Documents.

**Section 5.4. Standards** The Board shall impose appropriate standards of performance upon the managing agent. Unless the managing agent is instructed otherwise by the Board:

- (a) The accrual method, or the cash method, or the modified cash method of accounting shall be employed and expenses required by these Bylaws to be charged to one (1) or more but less than all owners shall be accounted for and reported separately,
- (b) Two (2) or more individuals shall be responsible for handling cash and signing checks to maintain adequate financial control procedures,
- (c) Cash accounts of the Association shall not be commingled with any other entity's accounts,
- (d) No remuneration shall be accepted by the managing agent from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finders fees, service fees or otherwise, and any discounts received shall benefit the Association,
- (e) Any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board,
- (f) A monthly financial report shall be prepared for the Association containing
  - (1) An "income and expense statement" reflecting all income and expense activity for the preceding month and year to date on an accrual basis reflecting "actual versus budgeted",
  - (2) An "account activity statement" reflecting all receipt and disbursement activity for the preceding period on a cash basis,
  - (3) A "balance sheet" reflecting the financial condition of the Association on an unaudited and accrual basis,
  - (4) A "budget report" reflecting any actual or pending obligations which are in excess of budgeted amounts,
  - (5) A "delinquency report" listing all owners who are delinquent and describing the status of any actions to collect such assessments, and
  - (6) Copies of all bank account statements reconciled to the balance sheet reserve
- (g) The managing agent shall, upon termination of such agent's contract with the Association by either party, turn over all books and records of the Association held by such managing agent to the President or Secretary of the Association within five (5) business days of such termination.

## ARTICLE 6. OFFICERS

### Section 6 1 Designation and Duties of Officers

(a) The principal officers of the Association shall be the President (who shall also serve as Chairman of the Board), Vice President, the Secretary and the Treasurer. The President, Vice President and Secretary shall be members of the Board and elected by the Board. The Treasurer is appointed by the Board and does not have to be a member of the Board. Principal officers may not hold more than one office simultaneously.

(b) The Board may elect an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. These officers shall be owners, officers of corporate owners, partners of partnership owners, or members of limited liability company owners.

(c) Association officers shall perform such duties as are normally associated with such office in parliamentary organizations, except to the extent, if any, inconsistent with the Articles of Incorporation, the Declaration or these Bylaws, and shall perform such other duties as may be assigned to such office by resolution of the Board. If any officer is unable for any reason to perform the duties of his/her office, the President (or the Board if the President is unable to do so) may appoint another qualified individual to act in such officer's stead on an interim basis.

Section 6 2 Election of Officers The officers of the Association shall be elected annually by the Board at the Board's organizational meeting pursuant to Section 4 6 (a) of these Bylaws, and shall hold office at the pleasure of the Board. Each officer shall hold office for a term of one (1) year or until such officer's death, resignation, retirement, removal or disqualification, or until the election and qualification of such officer's successor.

Section 6 3 Removal and Resignation Any officer or agent may be removed by the Board at any time with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. An officer may resign at any time by notifying the Association in writing of such resignation. A resignation shall be effective upon receipt by the Association unless it specifies in writing a later effective date. In the event a resignation so specifies a later effective date, the Board may fill the pending vacancy prior to such date, however, the successor to the resigning officer may not take office until the effective resignation date. An officer's resignation does not affect the Association's contract rights, if any, with such officer.

Section 6 4 Vacancies A vacancy in any office may be filled by appointment by the Board. The individual appointed by the Board to fill a vacancy shall serve for the remainder of the term of the officer such individual replaces.

Section 6 5. President The President shall be the principal executive officer of the Association and, subject to the control of the Board, shall supervise and control the management of the Association in accordance with these Bylaws. The President, when present, shall preside at all meetings of members. The President, with any other proper officer, may sign any deeds, leases, mortgages, bonds, contracts or other instruments which lawfully may be executed on behalf of the Association, except where required or permitted by law otherwise to be signed.

and executed and except where the signing and execution thereof shall be delegated by the Board to some other officer or agent. In addition, the President shall prepare, execute, certify, and record amendments to the Declaration on behalf of the Association. In general, the President shall perform all duties incident to the office of President and such other duties as may be assigned by the Board.

**Section 6.6 Vice President** In the absence of the President or in the event of the President's death, inability or refusal to act, the Vice President, unless otherwise determined by the Board, shall perform the duties of the President, and when so acting shall have all the power of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties as may be assigned by the President or by the Board of Directors.

**Section 6.7 Secretary**

(a) **Specific Duties** The Secretary shall have the following specific duties:

- (1) Keep the minutes of all meetings of the Association and of the Board,
- (2) Have charge of such books and papers as the Board may direct and as may be required by Article 16 of the North Carolina Nonprofit Corporation Act and Article 3 of the North Carolina Planned Community Act,
- (3) Give or cause to be given all notices required to be given by the Association,
- (4) Give each owner notice of each assessment against such owner's lot as soon as practicable after assessment is made,
- (5) Provide for each owner, upon request, a copy of the Rules and Regulations of the Association,
- (6) Maintain a register setting forth the place to which all notices to members shall be delivered, and
- (7) Make it possible for any member to inspect and copy at reasonable times and by appointment the records of the Association in accordance with and as required by Article 16 of the North Carolina Nonprofit Corporation Act and Article 3 of the North Carolina Planned Community Act.

(b) **General Duties** In addition to the Secretary's specific duties, the Secretary shall perform all the duties incident to the office of Secretary assigned by the President or the Board.

**Section 6.8 Assistant Secretary** If elected, the Assistant Secretary, in the absence of the Secretary or in the event of the Secretary's death, inability or refusal to act, and unless otherwise determined by the Board, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. The Assistant Secretary shall perform such other duties as may be assigned by the Secretary, by the President, or by the Board.



Section 6 9 Treasurer The Treasurer shall have custody of all funds and securities belonging to the Association and shall receive, deposit or disburse the same under the direction of the Board The Treasurer shall maintain appropriate accounting records as may be required by law and, in general, perform all the duties incident to the office of Treasurer and such other duties as from may be assigned by the President or by the Board

Section 6 10 Assistant Treasurer In the absence of the Treasurer or in the event of the Treasurer's death, inability or refusal to act, the Assistant Treasurer, unless otherwise determined by the Board, shall perform the duties of the Treasurer, and when so acting shall have all the powers of and be subject to all the restrictions upon the Treasurer The Assistant Treasurer shall perform such other duties as may be assigned by the Treasurer, by the President, or by the Board

Section 6 11 Compensation No officer shall receive any compensation from the Association for acting as such, but this shall not preclude the payment of salary or other compensation for the performance by any person serving as an officer for services provided to the Association in a capacity other than that of officer nor shall it preclude the reimbursement of reasonable, ordinary and necessary expenses incurred in serving or acting as an officer

#### **ARTICLE 7. COMMITTEES**

Section 7.1 Nominations Committee The Board may establish a Nominations Committee, pursuant to Section 7 4 below, as set forth in Section 4 2 (a) of these Bylaws

Section 7 2 Architectural Control Committee The Board may establish an Architectural Control Committee pursuant to Section 7 4 of these Bylaws

Section 7 3. Committees of the Board Committees may be designated by resolution adopted by a majority of the Board members at a Board meeting at which a quorum is present Such committees shall have the duties and responsibilities set forth in the resolution designating the committee The resolution shall include but is not limited to

- (a) the extent to which the committee may act,
- (b) the funds, if any, the committee may expend in the fulfillment of their duties and responsibilities, and
- (c) Record keeping and reporting requirements

The provisions of these Bylaws governing meetings, action without meeting, notice and waiver of notice, and quorum and voting requirements of the Board shall apply to the committees The authority of any committee shall not exceed the power granted to the Association in the Declaration, Bylaws or the Planned Community Act No committee shall exercise the authority of the Board in the management of the Association

## **ARTICLE 8. EXECUTION OF DOCUMENTS AND INDEMNIFICATION OF DIRECTORS AND OFFICERS**

**Section 8 1 Execution of Documents** Unless as may otherwise be provided in a resolution of the Board, all agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations for common expenses and all checks drawn upon reserve accounts shall be executed by any two (2) individuals designated by the Board. Any officer of the Association may be designated by Board resolution to sign a statement of common expenses on behalf of the Association.

### **Section 8 2 Indemnification**

(a) The Association shall indemnify, to the fullest extent permitted by law and this article, any person who is or was a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding (and any appeal therein), whether civil, criminal, administrative, arbitrative, or investigative and whether or not brought by or on behalf of the Association, by reason of the fact that such person is or was a Director or officer of the Association, or is or was serving at the request of the Association as a director, officer, partner, trustee, employee, or agent of another Association, partnership, joint venture, trust, or other enterprise or as a trustee or administrator under an employee benefit plan, or arising out of such party's activities in any of the foregoing capacities, against all liability and litigation expense, including reasonable attorneys' fees, provided, however, that the Association shall not indemnify any such person against liability or expense incurred on account of such person's activities which were at the time taken known or believed by such person to be clearly in conflict with the best interests of the Association or if such person received an improper personal benefit from such activities. The Association likewise shall indemnify any such persons for all reasonable cost and expenses (including attorneys' fees) incurred by such person in connection with the enforcement of such person's right to indemnification granted herein.

(b) The Association shall pay all expenses incurred by any claimant hereunder in defending a civil or criminal action, suit, or proceeding as set forth above in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such claimant to repay such amount unless it ultimately shall be determined that such claimant is entitled to be indemnified by the Association against such expenses.

(c) The Board of Directors of the Association shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by these Bylaws, including without limitation

(1) A determination by a majority vote of disinterested Directors

(i) That the activities giving rise to the liability or expense for which indemnification is requested were not, at the time taken, known or believed by the person requesting indemnification to be clearly in conflict with the best interests of the Association and

(ii) That the person requesting indemnification did not receive an improper personal benefit from the activities giving rise to the liability or expense for which indemnification is requested, and

(2) To the extent needed, giving notice to the members of the Association

(d) Any person who at any time after the adoption of these bylaw serves or has served in any of the aforesaid capacities for or on behalf of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of these Bylaws

## **ARTICLE 9. BOOKS AND RECORDS**

Section 9 1 Maintenance of Books and Records and Financial Review The Association shall keep books and records as required by Article 16 of the North Carolina Nonprofit Corporation Act and Article 3 of the North Carolina Planned Community Act. The Association may cause to be adopted procedures for such level of financial review and compilation of the Association as the Board may determine appropriate, which may include an audit or some lesser level of review. The cost of any such financial review shall be a common expense.

Section 9 2 Availability The books and records of the Association shall be available for inspection by the members and their attorneys and accountants to the extent required by Article 16 of the North Carolina Nonprofit Corporation Act and Article 3 of the North Carolina Planned Community Act.

Section 9 3 Accounting Report and Audit Within one hundred twenty (120) days after the end of each fiscal year, the Board shall make available to members an itemized accounting of the common expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. In addition, the Board, in its sole discretion, may authorize an audit of the Association or any other level of financial review of the books and records of the Association, and if authorized, such service shall be a common expense of the Association. In the event that an owner or owners request an audit of the Association and the Board does not authorize an audit, an audit may be conducted and paid for by the requesting owner or owners.

Section 9 4 Fiscal Year The fiscal year of the Association shall be the calendar year, January 1 to December 31.

Section 9.5 Seal The corporate seal of the Association shall consist of two concentric circles between which is the name of the Association and in the center of which is inscribed "SEAL", and such seal, in the form approved by the Board, shall be adopted by the Board as the corporate seal of the Association.

## **ARTICLE 10. GIVING NOTICE AND DELIVERING COMMUNICATIONS**

Section 10 1 Giving Notice Except as specifically provided otherwise in the Association Documents, the North Carolina Nonprofit Corporation Act, or the North Carolina Planned

Community Act, a notice, demand, bill, statement or other communication to or by the Association shall be deemed to have been duly given if it is in writing and if delivered personally or sent by United States mail, postage prepaid, or when authorized by the Association Documents, sent by electronic mail. However, if a notice is of a default or lien, the notice shall be sent by registered or certified United States mail, return receipt requested, postage prepaid.

#### Section 10 2 Addressing Communications

- (a) Notices and Communications from the Association Notices and communications from the Association shall be sent to an owner, at the address which the owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the lot of such owner. If a lot is owned by more than one person, each such person who so designates an address in writing to the Secretary shall be entitled to receive all notices hereunder otherwise the person receiving the notice shall have the responsibility for notifying the other persons comprising the owner.
- (b) Notices and Communications to the Association Notices and communications to the Association shall be sent to the managing agent at the principal office of the managing agent or at such other address as shall be designated by notice in writing to the Association.

### ARTICLE 11. AMENDMENTS

The members of the Board may propose to change these Bylaws by repealing or amending or adding to these Bylaws at any time in accordance with the following provisions:

- (a) Special Meeting of Directors A special meeting of the Board of Directors must be called in accordance with Section 4 6 of these Bylaws. Written notice of such meeting must be given to each Director at least five (5) days prior to the time at which the meeting will take place. In addition, the notice must state that the purpose of the meeting is to consider a proposed change to these Bylaws. The notice must set forth the date, time, and place of such meeting as well as contain a copy or summary of the change to these Bylaws. If a majority of the Board of Directors approves the proposed change to these Bylaws, the Board of Directors must submit the proposed change to a vote of the Association members. If the Board of Directors fails to adopt the proposed change to these Bylaws, the meeting minutes and a copy of the proposed change(s) shall be sent to the members. Change(s) to these Bylaws then shall be submitted to a vote of the Association membership only if ten percent (10%) of the membership makes such a request to the Board of Directors in writing pursuant to Section 3 3.
- (b) Special Meeting of Members When changes to these Bylaws are approved by the Board or when ten percent (10%) of the membership makes a request to the Board of Directors for a membership vote on the proposed changes, a special meeting of the membership must be called in accordance with Section 3 3 of these Bylaws. Written notice of such meeting must be given to all the members in accordance with Section 3 4 of these Bylaws. The notice must state that the purpose of meeting is to consider a proposed change to these Bylaws. The notice must set forth the date, time, and place of such meeting as well as include a copy or summary of the changes to these

Bylaws

(c) Adoption of Amendments For such amendment(s) to be adopted at a meeting of the membership, at least two-thirds (2/3) of the membership either in person or by proxy or by written ballot must vote affirmatively to adopt the proposed bylaw amendment(s)

**ARTICLE 12. PRIORITY**

In the event that any of the provisions of these Bylaws conflict with the provisions of the North Carolina Nonprofit Corporation Act, the provisions of the North Carolina Nonprofit Corporation Act shall control. In the event of any inconsistency between these Bylaws and the Declaration, the Declaration shall control, in the event of any inconsistency between these Bylaws and the Articles of Incorporation, the Articles of Incorporation shall control, and in the event of any inconsistency between the Articles of Incorporation and the Declaration the Declaration shall control.

IN TESTIMONY WHEREOF, Beachwalk Homeowners Association, Inc has caused this Amended and Restated Bylaws to be executed this the 5 day of June, 2014

BEACHWALK HOMEOWNERS  
ASSOCIATION, INC

By Patricia J. Bressan (SEAL)

President

+++ CORPORATE SEAL +++

ATTEST

By Thomas F. Moffitt

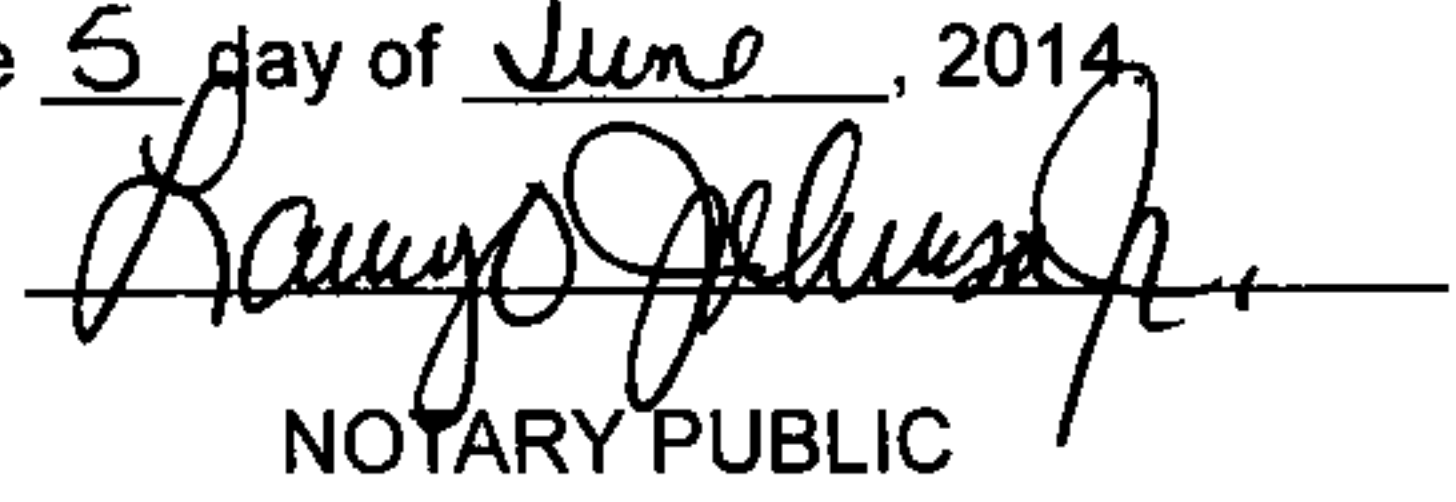
Secretary

STATE OF NORTH CAROLINA

NEW HANOVER COUNTY

I, a Notary Public of the County and State aforesaid, certify that Thomas F. Moffitt personally came before me this day and acknowledged that he/she is the Secretary of Beachwalk Homeowners Association, Inc, a North Carolina Corporation, and that by authority duly given and that as an act of the corporation, the foregoing instrument was signed in its corporate name by its President, sealed with its corporate seal and attested to by him/her as its Secretary

Witness my hand and notarial seal or stamp, this the 5 day of June, 2014.

  
NOTARY PUBLIC

My commission expires July 28, 2017

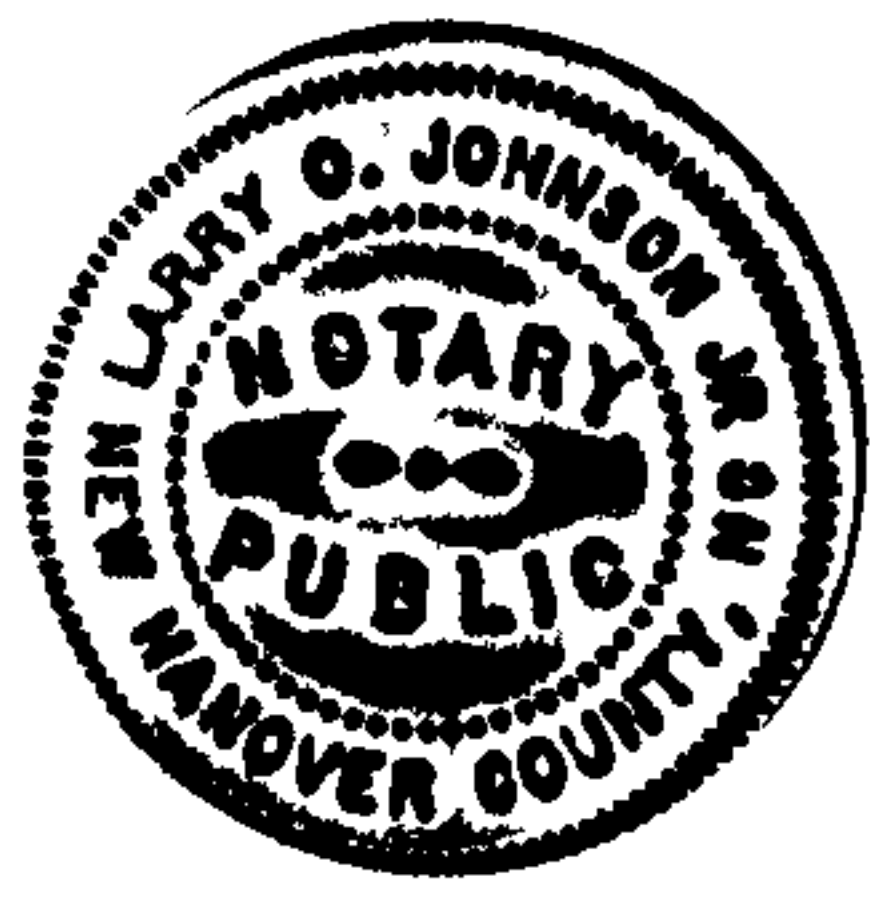


EXHIBIT A

The three Board members in office on the effective date of this Declaration shall continue in office until their respective three (3) years term expires or they resign or are removed from office. At the first annual owners' meeting after the effective date of this Declaration, the number of Board members to be elected shall bring the Board to five (5) members as shown in the following table, provided sufficient nominees stand for election.

The initial term for the fourth and fifth Board members elected at the first annual homeowner meeting after the effective date of this Declaration shall be one (1) year. In subsequent annual elections Board members shall be elected to a three (3) years term.

When insufficient nominees stand for election to fill the fourth or fifth Board member positions, the Board shall consist of three or four members. A Special Meeting of homeowners may be called at any time to fill unoccupied Board positions.

The following chart defines the process for maintaining the staggered Board member terms. There will be at least two members continuing their term every year and no more than two being elected every year. If needed, the chart can be adjusted to meet any combination of terms after implementation.

	MEMBER	A	B	C	D	E	
ANNUAL MEETING AFTER DECLARATION EFFECTIVE DATE		E = ELECTED & 1ST YR IN OFFICE 2 OR 3 = NR YEARS IN OFFICE					
Year Declaration Effective		3	3	E	-	-	Current members continue in office
1		E	E	2	E-1YR	E-1YR	A & B elected for 3 years, D & E elected for 1 year
2		2	2	3	E	E	D & E elected for 3 years,
3		3	3	E	2	2	C & E elected for 3 years,
4		E	E	2	3	3	A & B elected for 3 years,
5		2	2	3	E	E	D & E elected for 3 years,
6		3	3	E	2	2	
7		E	E	2	3	3	
8		2	2	3	E	E	
9		3	3	E	2	2	The sequence continues ad infinitum



TAMMY THEUSCH BEASLEY  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

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24 PGS \$58.00

Recorder: JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

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