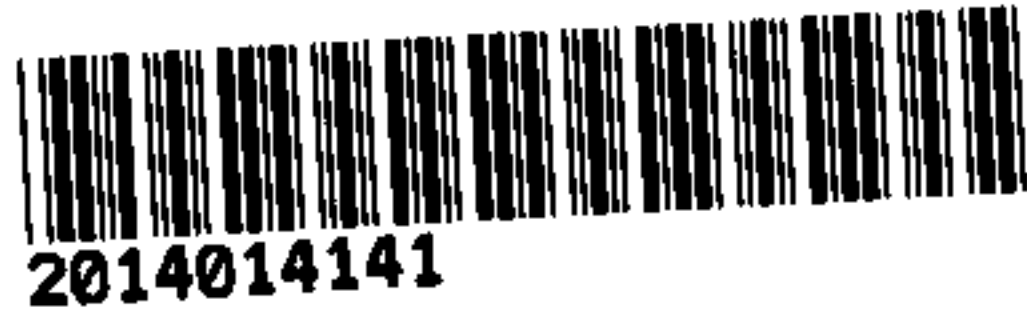


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AMENDED AND RESTATED  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
BEACHWALK HOMEOWNERS ASSOCIATION, INC.

Prepared by & returned to  
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P.O. Box 7068  
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**AMENDED AND RESTATED DECLARATION OF COVENANTS AND  
RESTRICTIONS  
FOR  
BEACHWALK HOMEOWNERS ASSOCIATION, INC.**

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**AMENDED AND RESTATED DECLARATION OF COVENANTS AND  
RESTRICTIONS  
FOR  
BEACHWALK HOMEOWNERS ASSOCIATION, INC.**

This amended and restated declaration of restrictions for the Beachwalk Homeowners Association, Inc., a North Carolina nonprofit corporation (herein referred to as the "Association"), is made and entered into as of the 5 day of June, 2014

Whereas, Beachwalk Development, Inc. recorded the original Declaration of Restrictions of the Association on March 7, 1997, in Book 2149, at Pages 710-723, with the office of the Register of Deeds of New Hanover County, North Carolina, and

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

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

Whereas, the Association has obtained the affirmative vote of the owners of two-thirds (2/3) of all lots located within Beachwalk to amend and restate the Declaration

Now, therefore, the Association hereby covenants and declares on behalf of itself and its successors and assigns that the Declaration is hereby amended and restated in its entirety. The real estate previously made subject to the original Declaration from the date this Declaration is recorded in the office of the Register of Deeds of New Hanover County shall be held, conveyed, acquired and encumbered subject to the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all current owners and perspective purchasers and parties who have or may acquire any right, title, estate or interest in or to any such real estate or who have or may acquire any right or occupancy of or interest upon any portion thereof, all subject to the right of the Association to amend this Declaration according to its terms

**ARTICLE 1. AMENDMENT AND RESTATEMENT OF ORIGINAL DECLARATION**

Two amendments were made to the original Declaration. The first amendment established a use restriction required by the Division of Water Quality of the North Carolina Department of Environment and Natural Resources and is recorded in Book 2311, at Pages 441-442 in the office of the Register of Deeds of New Hanover County, North Carolina. This amendment has been incorporated in this Amended and Restated Declaration in Article 7, Section 7.4. The second amendment established a use restriction relating to advertising signs or billboards, and is recorded in Book 2397, at Pages 833-834. The original Declaration is hereby amended to delete and rescind the original Declaration in its entirety, subject to Article 4 herein, and adopt in its place this amended and restated Declaration, subject to the two amendments referred to in this Article, which are not rescinded by this amendment and restatement of the original Declaration.

## **ARTICLE 2. THE NORTH CAROLINA PLANNED COMMUNITY ACT.**

The provisions of the North Carolina Planned Community Act (N C G S Sections 47F-1-101, et seq ) shall apply to Beachwalk only to the extent required by law or incorporated in this Amended and Restated Declaration or Amended and Restated Bylaws

## **ARTICLE 3. DEFINITIONS**

The terms used in this Declaration shall be defined as set forth below

- (1) "Act" Chapter 47F of the General Statutes of North Carolina (N C G.S Sections 47F-1-101, et seq ), entitled the North Carolina Planned Community Act
- (2) "Articles" The Articles of Incorporation of Beachwalk Homeowners Association, Inc , as filed with the North Carolina Secretary of State
- (3) "Assessment" Assessments levied on all lots to fund the common expenses
- (4) "Association" Beachwalk Homeowners Association, Inc , a North Carolina nonprofit corporation, its successors and assigns
- (5) "Association Documents" Collectively the Articles of Incorporation, the Bylaws, this Declaration, the rules and regulations, the Design Guidelines adopted by the Association, if any, and any resolutions adopted by the Board, all as may be amended, restated and revised Any exhibit, schedule or amendments to an Association Document shall be considered a part of that document
- (6) "Benefited Assessment" Assessments levied under Section 11 3 (e), herein
- (7) "Board of Directors" The body responsible for administration of the Association selected as provided in the bylaws
- (8) "Business and Trade" Shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required
- (9) "Bylaws" The bylaws of the Association as they may be amended
- (10) "Capital Improvement" shall mean a non-recurring expenditure or any expenditure for physical improvements, including costs for land, or interests in land, construction of new buildings or other structures, including additions and major alterations, acquisition of fixed equipment, landscaping, any change, alteration, rearrangement or addition to existing facilities, new construction, acquisition or improvements to common element land, buildings, or service systems
- (11) "Common Elements" shall mean and refer to all real and personal property in which the Association now or hereafter owns, leases or otherwise holds possessory or use rights for the common use and enjoyment of the owners, including easements held by the Association for those purposes The term shall include, without limitation, all drainage easements and ponds depicted on the plat recorded in Map Book 36, at Pages 284-285 in the office of the Register of Deeds, Stormwater Management Facilities, signage and/or landscape easements, landscape medians, drainage easements, lakes, ponds, rivers, streams, wetlands,

preservation areas, and other areas identified as such on recorded plats of Beachwalk. The term shall include any and all stormwater drainage, canals, swales and other properties that are subject to the stormwater management system. Common elements shall not include any property 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 a common element. To the extent that the provisions of the North Carolina Planned Community Act apply to "common elements," including without limitation the provisions of N.C. Gen. Stat. Chapter 47F-3-112, those provisions shall only apply to common elements as defined in the Act.

(12) "Common Expenses" Any and all expenditures made by or financial liabilities and obligations of the Association, together with any allocations to reserves.

(13) "Community-Wide Standard" The standard of conduct, maintenance, or other activity generally prevailing throughout Beachwalk. The standard shall be determined by the Board of Directors and the Architectural Committee (as defined in Article 13 herein), if an Architectural Control Committee is established by the Board of Directors. The standards may contain both objective and subjective elements, and may evolve and change as development progresses and as the needs and desires within Beachwalk change.

(14) "Declaration" This "Amended and Restated Declaration of Covenants and Restrictions for Beachwalk Homeowners Association, Inc." and any exhibit, schedule or amendment thereto, all as may be amended, restated and revised.

(15) "Design Guidelines" The architectural, design, development, and other guidelines, standards, controls, and procedures including but not limited to application and review procedures adopted pursuant to Article 13 and applicable to Beachwalk.

(16) "Director(s)" One or more members of the Board of Directors.

(17) "Dwelling Unit" Any building or structure or portion of a building or structure situated upon a lot which is intended for use and occupancy as an attached or detached residence for a single family.

(18) "Landscaping" Living plants, shrubs, trees, vegetation, ground coverings (including grass and sod) and appurtenant live/growing vegetative materials, straw, mulches, composting materials, pools (other than swimming pools), ornamental ponds, ornamental structures and any other living or non-living material or structure reasonably constituting a part of any or all of the foregoing installed upon a lot.

(19) "Lease" for the purpose of this Declaration is synonymous with "rental" and is defined as a contract for the regular, exclusive occupancy of a dwelling unit by any person other than the owner, or the immediate family of the owner, for which the owner receives, or the tenant provides, any consideration or benefit, including but not limited to, a fee, service, gratuity, or emolument. As used herein, the term "Immediate Family" shall mean the parents, grandparents and children of such owner.

(20) "Lot" A portion of Beachwalk, whether improved or unimproved, other than common elements and property dedicated to the public, which may be independently owned and conveyed and which is separately identified on a map of all or any portion of Beachwalk recorded in the Register of Deeds. The term shall refer to the land, if any, which is part of the lot as well as any improvements thereon, including but not limited to the dwelling unit.

- (21) "Maintenance" Care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction
- (22) "Member" A person having membership in the Association consistent with Article 6 of this Declaration
- (23) "Mortgage" A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed
- (24) "Mortgagee" A beneficiary or holder of a mortgage
- (25) "Owner(s)" One or more persons who hold the record title to any lot, except persons holding an interest merely as security for the performance of an obligation in which case the equitable owner will be considered the owner
- (26) "Person" A natural person, corporation, limited liability company, partnership, trust, or any other legal entity
- (27) "Property" or "Beachwalk" The real property described in Exhibit "A"
- (28) "Register of Deeds" The office of the Register of Deeds of New Hanover County, North Carolina
- (29) "Stormwater Management Facilities" All areas consisting of drainage easements, ditches, swales, retention ponds and other improvements which are managed pursuant to, or regulated by, any government entity for the purposes of stormwater drainage
- (30) "Use Restrictions": The rules and use restrictions are defined in Article 14 herein and Exhibit B attached hereto.
- (31) "Utility Company" A public or private company or entity duly licensed and authorized by the North Carolina Utilities Commission to provide utility services within a specified franchise area and any entity providing utility services on behalf of a body politic, municipality or other governmental body or entity

#### **ARTICLE 4. PROPERTY RIGHTS**

Section 4 1 Owners Right and Easement of Enjoyment to Common Elements Every owner shall have a right of enjoyment, use and access to the common elements which shall be appurtenant to and shall pass with the title to every lot, subject to the provisions of the Association Documents

##### **Section 4 2 Delegation of Use**

- (a) Any owner may delegate, subject to the provisions of the Association Documents, the owner's right of enjoyment in and to the common elements and facilities to immediate family members residing on Beachwalk and to house guests
- (b) Owners forfeit their rights to use common elements and the right to enjoyment, use, and access shall belong to their tenants who reside in the dwelling unit and the tenant's house guests

Section 4 3 Easements in Original Declaration Notwithstanding the replacement of the original Declaration with this amended and restated Declaration, all easements created and described in the original Declaration shall be easements appurtenant to, and shall run with, the land by whomsoever owned, whether or not the same shall be contained or referred to in any future deed or conveyance, and shall at all times inure to the benefit and be binding upon



the Association and the owners, all their grantees and their respective heirs, successors, personal representatives or assigns

#### **Section 4 4 Stormwater Easements**

The Association hereby is granted and conveyed an easement over, under and upon each Lot for the purpose of access to and maintenance and repair of all Stormwater Management Facilities and to enforce all requirements of any government entity

**Section 4 5 Common Elements** Every owner shall have a right and nonexclusive easement, in common with all other owners, of use, access, and enjoyment in and to the common elements, subject to

- (a) The Association Documents and any other applicable covenants,
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association,
- (c) All applicable provisions of the North Carolina Planned Community Act including, but not limited to, the following
  - (1) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the common elements,
  - (2) The right of the Association to dedicate or transfer all or any part of the common elements to governmental entities pursuant to Section 5 1 (e),
  - (3) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred by the Association, and
  - (4) The right of the Association to convey or encumber portions of the common elements as provided in the North Carolina Planned Community Act
- (d) The right of the Board to suspend the privilege of an owner to use the common elements

### **ARTICLE 5. RIGHTS, OBLIGATIONS AND RESPONSIBILITIES OF THE ASSOCIATION**

**Section 5 1 Association Rights** The Association shall have the right to

- (a) Charge reasonable admission and other fees for the use of common element recreational facilities,
- (b) Limit the number of members' guests to use any common element recreational facility,
- (c) Suspend the privilege of an owner to use or access one or more of the common elements for violation of the Declaration, Bylaws, Articles of Incorporation, or Rules and Regulations,
- (d) Suspend an owner's right to use of the recreational facilities for any period during which any assessment against the owner's lot remains unpaid,
- (e) Dedicate or transfer all or part of the common elements 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 element, no such dedication or transfer

shall be effective unless an instrument signed by two-thirds (2/3) of Association members has been executed and recorded with the Register of Deeds, New Hanover County. With respect to a standard utility easement permitting utility service to the common area, the Board 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,

(f) Impose use restrictions for the use and enjoyment of the common elements and improvements thereon, which may further restrict the use of the common elements, and

(g) Suspend owners' privileges or services provided by the Association (except rights of access to the owner's lot). Suspension of privileges shall be in accordance with the procedure defined in Article 17 herein.

**Section 5.2 Personal Property and Real Property for Common Use** The Association may acquire, hold, and dispose of tangible and intangible personal property and real property.

**Section 5.3 Implied Rights Board Authority** The Association may exercise any right or privilege given to it expressly by the Association Documents or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in the Association Documents or by law, all rights and powers of the Association shall be exercised by the Board.

**Section 5.4 Dedication of Common Elements** The Association may dedicate or grant easements over portions of the common elements to any local, state, or federal governmental entity or any utility company.

**Section 5.5 Disclaimer of Liability** Notwithstanding anything contained herein or in the Association Documents or the North Carolina Planned Community Act, neither the Association, the Board, nor the management company of the Association shall be liable or responsible for, or in any manner a guarantor or insurer of the health, safety or welfare of any owner or occupant of any lot or any tenant, guest, or invitee of any owner or occupant or for any property of any such persons.

**Section 5.6 Safety** The Association may maintain or support certain activities within Beachwalk designed to provide an improved level of safety within Beachwalk. Neither the Association nor the Association's management company shall in any way be considered insurers or guarantors of safety within Beachwalk, nor shall they be held liable for any loss or damage for failure to provide adequate safety or ineffectiveness of safety measures undertaken.

**Section 5.7 Change of Use of Common Elements** Changes to the use of any common elements and, in connection therewith, construction, reconstruction, alteration or change to the building, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use shall be approved by a majority of owners at a meeting of owners where a quorum is present, provided that

(a) The new use or change shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the common elements, and

(b) Any expenditures associated with the new use or change shall be subject to the provisions of Article 11 and 12 herein and any other applicable provisions of the



## Association Documents

Section 5 8 View Impairment Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed

### ARTICLE 6. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

#### Section 6 1 Membership

(a) Every owner of a lot which is subject to assessment shall be a member of the Association membership shall be appurtenant to and shall not be separated from ownership of any lot which is subject to assessment A person having an interest in a lot solely by virtue of a contract for purchase or as security for an obligation shall not be a member of the Association If a lot is owned by more than one person, all co-owners shall be members and share the privileges of such membership, subject to reasonable Board regulations and the restrictions on voting set forth in Article 2 in the Bylaws, and all such co-owners shall be jointly and severally obligated to perform the responsibilities of owners The membership rights of an owner which is a corporation, limited liability company, partnership or other legal entity may be exercised by an officer, director, partner, or trustee, or by another individual designated by the owner in a written instrument provided to the Secretary of the Association Each owner has the duty to comply with and obey the requirements set forth in the Association's documents

(b) Upon acquiring title to a lot, each new owner immediately shall give written notice to the Secretary of the Association stating the name and address of such new owner and the lot acquired by such new owner If the new owner fails to give the Secretary such notice within thirty (30) days of acquiring title to such lot, then the cost of locating such new owner and reasonable record keeping costs incurred by the Association may be assessed against such owner

(c) Memberships are not transferable Membership occurs only upon the occurrence of those events set out in this Article

(d) The membership of a member in the Association shall terminate automatically upon such member being divested of such person's ownership interest in a lot, regardless of the means by which such ownership interest may be divested (other than by means of a security interest, such as a deed of trust)

Section 6 2 Voting Voting rights for Association members shall be in accordance with the provisions set forth in the Bylaws

### ARTICLE 7. MAINTENANCE

#### Section 7 1 Association's Responsibilities

(a) 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 Association and charged to all owners as a common expense, and shall include, but need not be limited to landscaping, signage, and improvements, including any entrances, structures, walls, bike paths, pathways and trails, situated upon the common elements

(b) No structure, planting or other material may be placed or permitted to remain which may damage or interfere with the installation, maintenance or upkeep of the Stormwater Management Facilities, or which may damage or interfere with the flow of stormwater, or change the direction of drainage in the system. Such damage or interference shall be repaired by the lot owner at his expense.

#### **Section 7.2 Owners' Responsibilities**

(a) All maintenance of and repair to each individual lot, whether structural or non-structural, *ordinary or extraordinary*, (other than maintenance of or 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 or to the common elements resulting from his failure to effect such maintenance and repairs.

(b) Each owner shall provide for the maintenance of his or her lot and dwelling unit and all other structures, parking areas, landscaping, and other improvements upon the lot in a manner consistent with the community-wide standard and all applicable covenants, unless such responsibility for maintenance is otherwise assumed by or assigned to the Association.

(c) In addition to any other enforcement rights, the Association may enter the owner's lot and perform work for maintenance on the lot or the exterior of the dwelling unit if an owner fails to properly perform his or her maintenance responsibilities. The Association shall assess all costs incurred by the Association against the lot and the owner in accordance with Section 11.3 (e) herein for such maintenance work. The Association shall give the owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

#### **Section 7.3 Standard of Performance**

(a) All maintenance shall be performed in a manner consistent with the community-wide standard and all applicable covenants, as determined by the Board. Maintenance may include irrigation as the Board may determine necessary or appropriate to satisfy the community-wide standard.

(b) Some portions of Beachwalk may be environmentally sensitive and/or may provide greater aesthetic value than other portions of Beachwalk. The Board may establish, with the approval of a majority of owners, a higher community-wide standard for such areas and require additional maintenance for such areas to reflect the nature of such property.

(c) Neither the Association, nor any owner shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

**Section 7.4 Compliance With Stormwater Management System Requirements** Pursuant to and in compliance with a directive from the Department of Environment and Natural Resources, Division of Water Quality, No more than 4,000 square feet of any lot, including that portion of the right-of-way between the edge of the pavement and the front lot line, shall be covered by impervious structures, including asphalt, gravel, concrete, brick, stone, slate or

similar material, not including wood decking or the water surface of swimming pools. This covenant is intended to insure continued compliance with the stormwater permit issued by the State of North Carolina. This covenant may not be changed or deleted without the consent of the State of North Carolina. No one may fill in or pipe any roadside or lot-line swale, except as necessary to provide a minimum driveway crossing. For curb and gutter projects, no one may pipe, fill in or alter any lot line swale used to meet North Carolina Stormwater Management Permit requirements.

## **ARTICLE 8. INSURANCE AND CASUALTY LOSSES**

**Section 8.1 Association Insurance** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, if reasonably available, the following types of insurance.

- (a) Blanket property insurance covering risks of physical loss on an "all risk" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the common elements to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at a reasonable cost, then "broad form named perils" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property. This provision for blanket property insurance shall not be construed to require the Association to obtain coverage for any structure owned by any party other than the Association. The Association may elect to provide insurance for said structures with the approval of a majority of the owners or if such individual coverage is not available,
- (b) Commercial general liability insurance on the common elements insuring the Association and its members for damage or injury caused by the negligence of the Association or any of its members, employees, agents, or contractors while acting on behalf of the Association and including coverage for non-owned automobile liability. If generally available at reasonable cost, the commercial general liability insurance shall have a limit of at least One Million Dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage,
- (c) Directors' and officers' liability insurance or equivalent association liability insurance, and
- (d) Such additional insurance, including but not limited to workers compensation, flood, earthquake and hurricane insurance, as the Board in its best business judgment determines advisable.

**Section 8.2 Owner Notification** If the insurance described in Subsection 8.1(a) of this Section is not reasonably available, the Association promptly shall cause notice of that fact to be sent to all owners.

**Section 8.3 Association Policy Requirements** Prior to the renewal of any insurance policy, the Association shall arrange for a review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the beach communities located in the vicinity of New Hanover County, North Carolina.

**Section 8.4 Premiums as Common Expense** Premiums for all insurance on the common

elements shall be common expenses and shall be included in the common operating assessment. In the event that insurance costs increase during the fiscal year, the Board may levy a special assessment for the increased costs pursuant to Section 11.3 (c)(1) herein, and such assessments shall become effective upon approval by the Board and written notification sent to the owners.

**Section 8.5 Deductible** The policies may contain a reasonable deductible as determined by the Board and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a common expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice to the affected owner(s) and an opportunity to be heard by the Board, that the loss is the result of the negligence or willful conduct of one or more owners, their family members, guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such owner(s) and their lots in accordance with Section 11.3 (e) herein.

**Section 8.6 Owners Insurance** The Association shall have no responsibility to provide insurance for any portion of any lot except as stated in Section 8.1 (a) herein. Owners may carry property insurance covering risks of physical damage or loss for both the dwelling unit and for any other insurable improvements on their lot. Each owner covenants and agrees that in the event of damage to or destruction of the dwelling unit or other structures on or comprising his or her lot, he or she shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 13 of this Declaration. Alternatively, the owner shall clear the lot of all debris and ruins and maintain the lot in a neat and attractive, landscaped condition consistent with the community-wide standard. The owner shall pay any costs which are not covered by insurance proceeds.

**Section 8.7 Loss Adjustment, Repair and Proceeds** With respect to any loss covered by the policy (or policies) of the Association, it shall be adjusted by the Association and matters pertaining to the disbursement of proceeds of such insurance and the repair or replacement, including termination of the planned community, shall be governed by the provision of 47F-3-113 (d) and (g) of the North Carolina Planned Community Act.

## **ARTICLE 9. NO PARTITION**

Except as permitted in this Declaration, the common elements shall remain undivided, and no person shall bring any action for partition of the whole or any part thereof without the written consent of all owners and mortgagees. No lot may be subdivided except with the prior written consent of the Board, the Town of Kure Beach, and all adjacent property owners. Assessments and homeowner dues which are applicable to all lots on the recorded plat of this subdivision shall not be affected by a partition or subdivision of any one individual lot.



## **ARTICLE 10. ANNEXATION OF PROPERTY**

Section 10 1 Annexation by the Association The Association may subject any contiguous property that is not subject to any other planned community's governing documents to the provisions of this Declaration and other Association Documents with the consent of the owner of such property and the affirmative vote of two-thirds (2/3) of the owners

Section 10 2 Requirement for Supplemental Declaration Such annexation shall be accomplished by recording a supplemental declaration in the Office of the Register of Deeds describing the property to be annexed and specifically subjecting it to the terms of this Declaration Any such supplemental declaration shall be signed by the President of the Association, and by the owner of the annexed property Any such annexation shall be effective upon the recording unless otherwise provided therein

## **ARTICLE 11. COVENANTS FOR ASSESSMENTS**

Section 11 1 Creation of a Lien and Personal Obligation of Assessments

(a) Each lot owner by acceptance of a deed for the lot, whether or not it shall be so expressed in the lot's deed, is deemed to covenant and agree to pay the Association assessments as well as charges and fees established by the Board of Directors

(b) The assessments, together with interest, late fees, costs, and reasonable attorney's fees, shall be a charge against the lot 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 person(s) who was/were the owner of such property at the time when the payment 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 property until paid, and no sale shall extinguish such assessment except a foreclosure sale mentioned in Section 11 5, herein

(c) All assessments shall be paid in such manner and by such dates as the Board may establish Unless the Board otherwise provides, an assessment for each lot shall be due and payable in advance each year on the first day of the fiscal year of the Association Common operating assessments and reserve assessments shall be paid in installments not more often than monthly nor less often than quarterly Benefited assessments and special assessments shall be paid according to a schedule established by the Board

(d) The Association shall, upon request by an owner, furnish to any owner a certificate in writing signed by an officer or agent of the Association setting forth whether assessments for such owner's lot have been paid and any delinquent amount Such certificate shall be conclusive evidence of payment The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate

(e) No owner may exempt himself or herself from liability for assessments by non-use of common elements, abandonment of his or her lot or dwelling unit, or any other means The obligation to pay assessments is a separate and independent covenant on the part of each owner No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some



action or perform some function required of it or for inconvenience or discomfort arising from repairs or improvement or other action taken by the Association or Board

Section 11 2 Equal Levy Except as provided otherwise in this Article 11, assessments shall be levied equally against all lot owners

Section 11 3 Types of Assessments The Board shall have the authority to levy five (5) types of assessments in accordance with the provisions of this Article 11 and Article 12 below

(a) Common Operating Assessments Common operating assessments shall be levied to cover the budgeted amounts in the common operating expense section of the Association's annual budget

(b) Assessments for Capital Improvements

(1) Assessments shall be levied to cover the budgeted amounts in the capital improvements section of the Association's annual budget

(2) Assessments for capital improvement projects may be established and disestablished by

(i) a resolution adopted by the Board and approved by a vote of two-thirds (2/3) of owners at a meeting of owners where a quorum is present, or

(ii) a written proposal submitted by an owner and approved by a vote of two-thirds (2/3) of owners at a meeting of owners where a quorum is present

(3) Each capital improvement project shall be authorized, uniquely designated and accounted for in the capital improvement section of the annual budget. A reserve may be established and assessed for each capital improvement project.

(4) Upon disestablishment of such a reserve, the unexpended funds in the capital improvement reserve account shall be either paid to the lot owners in proportion to their common expense liabilities or credited to the owners to reduce their future assessments as determined by the Board.

(c) Special Assessments

(1) Special assessments to cover emergency expenses, including, but not limited to any increase in insurance costs and any government mandated charges may be levied by the Board when a majority of the Board by a resolution declares that an emergency situation exists. The resolution shall state the nature of the emergency and list the expenses to be covered.

(2) Special assessments shall be levied to cover unforeseen, exigent and unbudgeted expenses in excess of those budgeted. Such special assessments shall be approved at a meeting of the Board and shall become effective upon approval by the Board and approval by a vote of two-thirds (2/3) of the members present in person or by proxy at a meeting called for such purpose and for which a quorum is present.

(3) Special assessments shall be payable in such a manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the special assessment is approved.

(d) Reserve Assessments

(1) Reserve assessments for establishing and maintaining an escrow account mandated by a government entity shall be levied to cover the budgeted amounts in the reserve section of the Association's annual budget

(2) Reserve assessments for general purposes shall be levied to cover the budgeted amounts in the reserve section of the Association's annual budget

(a) Reserve assessments for general purposes may be established and disestablished by a resolution adopted by the Board and approved by a vote of two-thirds (2/3) of owners at a meeting where a quorum is present

(b) Reserve assessments for general purposes shall be authorized, uniquely designated and accounted for separately in the reserve section of the annual budget and shall be levied to cover the budgeted amount

(3) Upon disestablishment of a reserve, the unexpended funds in the reserve account shall be refunded to or credited to the owners in a manner determined by the Board

(e) Benefited Assessments Benefited assessments shall be levied against a particular lot or lots for expenses incurred or to be incurred by the Association, as follows

(1) To cover costs incurred in bringing the lot(s) into compliance with the terms of the Association Documents and the North Carolina Planned Community Act or costs incurred as a result of the conduct of the owner or occupants of the lot, their family members, tenants, invitees, or guests, or

(2) To cover the amount of any insurance deductible for which the owner is responsible pursuant to Section 8 6

Section 11 4 Assessment Timing The Board of Directors shall fix the amount of the total annual assessments, (including the common expense assessment, the capital improvement assessment(s), and reserve assessment(s)) concurrently with the annual budget preparation

Section 11 5 Lien for Assessments

(a) All assessments authorized in this Article shall constitute a lien on the lot against which they are levied, as provided in Section 47F-3-116 of the North Carolina Planned Community Act, as amended, until paid unless otherwise specifically precluded in this Declaration

(b) The Association may bid for the lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the lot While a lot is owned by the Association following foreclosure

(1) No right to vote shall be exercised on its behalf,

(2) No assessment shall be levied on it, and

(3) Each other lot shall be charged, in addition to other assessments, its equal pro rata share of the assessment that would have been charged such lot had it not been acquired by the Association

(c) The Association may sue for unpaid common expenses and costs without foreclosing or waiving the lien securing the same

(d) The sale or transfer of any lot shall not affect the assessment lien or relieve such lot from the lien for any subsequent assessments. However, a mortgagee holding a first mortgage of record or other purchaser of a lot who obtains title pursuant to foreclosure of the mortgage shall not be personally liable for assessments on such lot due prior to such acquisition of title. If approved by the Board, such unpaid assessments shall be deemed to be common expenses collectible from owners of all lots, including such acquirer, its successors and assigns

**Section 11.6 Acceleration** In any case where an assessment or other charge is payable in installments, upon a default by an owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment or other charge may be accelerated at the option of the Board, and the entire balance of the assessment or other charge may be declared due and payable in full by the service of a notice to such effect upon the defaulting owner

**Section 11.7 Failure to Assess** Failure of the Board to fix assessment amounts or rates or to deliver or send to each owner an assessment notice shall not be deemed a waiver, modification, or a release of any owner from the obligation to pay assessments. In such event, each owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections

**Section 11.8 Exempt Property** The following property shall be exempt from payment of assessments

(a) All common elements, and

(b) All property dedicated to and accepted by any governmental authority or utility company

## **ARTICLE 12 BUDGET**

**Section 12.1 Budget Preparation** Not less than sixty (60) days prior to the annual homeowners meeting, the Board shall prepare a budget for the expenses and assessments estimated to be incurred during the coming fiscal year

**Section 12.2 Budget Organization** The budget shall be organized into sections with each section having a separate line item for each discrete expense item or assessment. The Budget sections must include

Section 1 - Common Operating Expenses

Section 2 - Capital Improvements

Sub-section 2.1 - Previously Approved Projects

Sub-section 2.2 - New Projects

Section 3 - Reserves

**Section 12.3 Budget Notice** Within thirty (30) days after adoption of the proposed budget, the Board shall provide to all owners a summary of the annual budget and any proposed revised budget with the notice of the owners meeting at which consideration of the budget or

proposed revised budget shall be an agenda item

**Section 12 4 Approval of Common Operating Expense Budget** The common operating expense section of the Budget must be approved by a majority vote of the owners at the annual meeting where a quorum is present. In the event that the proposed common operating expense budget is rejected, the periodic operating expense budget last approved by the owners shall be continued until such time as the owners approve a subsequent common operating expense budget proposed by the Board. The common operating expense assessment for the fiscal year shall be determined based upon the common operating expense budget adopted by the Board and approved by the owners.

**Section 12 5 Budget Approval** Except for the common operating expense section of the budget, all other sections of the proposed budget must be approved as provided for in the following subsections in order to be effective:

- (a) Each budget section may be approved separately and in total by vote of two-thirds (2/3) of owners voting at a meeting where a quorum is present, unless prior to the vote ten percent (10%) or more owners eligible to vote at the meeting object.
- (b) When ten percent (10%) or more owners eligible to vote at the meeting object to approval of a budget section in total, each line item in that section of the budget shall be approved separately by vote of two-thirds (2/3) of owners at a meeting of owners where a quorum is present.
- (c) In the event one or more section(s) or line item(s) of the proposed budget is/are rejected, the Board may propose a revised budget for each rejected section or line-item. The revised budget section(s) or line-item(s) shall be subject to approval in accordance with the provisions of Section 12 4 and 12 5.

### **ARTICLE 13 . ARCHITECTURAL STANDARDS AND DESIGN GUIDELINES**

#### **Section 13 1 Architectural Control Committee**

- (a) The Board shall create an Architectural Control Committee (ACC) and appoint a minimum of three (3) and a maximum of five (5) members. All members of the ACC must be owners of a lot in Beachwalk. At least one (1), but no more than two (2), members of the ACC must also be a member(s) of the Board.
- (b) Members of the ACC shall be appointed for a term of three (3) years and may be reappointed to additional terms by the Board. ACC members shall serve and may be removed at the Board's discretion.

#### **Section 13 2 Architectural Control Committee Review and Approval**

- (a) Any construction, improvements, and alterations of existing improvements on any lot or the exterior of any structure (other than landscaping in previously approved and established plots) must be made in compliance with this Declaration, the Use Restrictions (Exhibit B), and the Design Guidelines. Before such activities may be undertaken, a lot owner must receive the approval for plans and specifications by the Architectural Control Committee as provided in this Article.
- (b) The Architectural Control Committee shall use the design guidelines as the community-wide standard, as defined in Article 3, Sections 13 and 15 of this Declaration, to assess compliance, to provide oversight and guidance, and to insure

consistency and fairness

(c) Construction, improvements and alterations include, but are not limited to, all excavation, grading, construction activities, placing or posting of objects or things on an owner's lot and painting of the exterior of a dwelling. The posting or placement of an object or thing includes, but is not limited to, signs, accessory buildings, clotheslines, playground equipment, temporary or permanent basketball goals, swimming pools, lighting and other similar temporary structures.

(d) An owner may remodel, paint, modify or redecorate the interior of structures on his lot and dwelling unit, including the interior of screened porches, without prior approval.

### **Section 13.3 Guidelines and Procedures**

(a) The Board shall propose design guidelines which must be approved by a majority vote of lot owners at a meeting where a quorum is present to become effective. The design guidelines shall apply to all construction, improvement and alteration activities that are within the scope of Article 13.

(b) The owners must be given not less than thirty (30) nor more than sixty (60) days notice of a meeting to vote on adoption of the initial design guidelines and any subsequent amendment to them after the initial design guidelines are approved. The notice shall include a summary of the proposed design guidelines or proposed amendments. If any proposed/amended guidelines are rejected, the design guidelines in effect immediately prior to the proposed amendments shall remain in effect.

(c) The design guidelines shall contain general provisions applicable to all of Beachwalk so that they will be uniformly and consistently applied, provided that the design guidelines may contain more specific guidelines that vary from the general guidelines based on the unique location, characteristics, intended use, applicable zoning ordinances or other circumstances that make the more specific guideline reasonable and equitable under the circumstances involved.

(d) All construction, improvement and alteration activities within the scope of Article 13 shall be made in compliance with the design guidelines in effect at the time a lot owner's plans and specifications for such activities were approved by the ACC. Amendments to the design guidelines shall not apply to activities undertaken to carry out plans and specifications approved by the ACC that were commenced before the amendments became effective. The design guidelines are not the exclusive basis for a decision by the ACC and compliance with the design guidelines does not guarantee approval of any application.

(e) The Association shall make the design guidelines available to owners, builders and contractors who seek to engage in development or construction activities within Beachwalk and all such persons shall conduct their activities in accordance with such design guidelines.

(f) Decisions made by the ACC may be appealed to the Board by the lot owner giving written notice to the Board within thirty (30) days after receipt of the ACC's decision. The Board shall conduct a hearing to review the application and the ACC decision within thirty (30) days of a receipt of the appeal. The decision of the Board shall be final.



#### **Section 13 4 Submission of Plans and Specifications**

(a) No activities within the scope of Article 13 shall commence on any lot until a written application for approval of the proposed work has been submitted to and approved by the ACC. Such application shall be in the form required by the ACC and shall include the purpose and/or intended use of the completed project, plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, facilities layout, screening and other features of proposed construction, as applicable. The design guidelines shall set forth the procedure and any additional information required for submission of the plans and specifications.

(b) In reviewing each application, the ACC may consider the owner's purpose for and/or intended use of the completed project, quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures, environment, and location in relation to surrounding structures and plant life.

(c) The ACC shall, within thirty (30) days, respond in writing to the party seeking approval and inform him of its decision: (1) that the plans have been approved, or (2) that the plans have been disapproved, in whole or in part. If the plans have not been approved in whole, the ACC's decision must include the following: (a) the details of the plans or specifications that were deemed to be inconsistent or not in conformity with the design guidelines, (b) the reasons for such findings, (c) recommendations for the curing the deficiencies, and (d) a statement that the decision may be appealed by the owner to the Board by written notice within thirty (30) days after receipt of the ACC's decision.

If outside consultation is deemed necessary, the ACC response can be extended an additional 60 days. The homeowners will be advised accordingly.

(d) The ACC approval shall be deemed withdrawn if construction on an approved project has not been commenced within sixty (60) days of Plan approval. If construction is not completed within six (6) months after the approval, the approval shall be deemed withdrawn and unfinished construction shall be deemed to be in violation of this Article. The ACC may extend these deadlines for good cause.

(e) An owner may resubmit a disapproved or expired application if circumstances that resulted in disapproval or expiration have sufficiently changed and/or the ACC's suggested remedy has been accommodated.

**Section 13 5 Future Approvals** Each owner acknowledges that the members of the ACC will change with the passage of time and that interpretation, application and enforcement of the design guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval by any owner. In carrying out its duties under this Section, the ACC shall strive to make its decisions reasonable and equitable to the Beachwalk.

community and the lot owner

**Section 13 6 Variances** The ACC, with Board approval, may authorize variances in writing from its design guidelines or deadlines, for an individual application, under the following circumstances

- (a) There are unique circumstances, such as unusual topography, natural obstructions, hardship, or aesthetic or environmental considerations that make a variance reasonable and equitable under the circumstances involved, and
- (b) Construction in accordance with the variance would be consistent with the overall purposes of the Declaration and design guidelines and compatible with existing and anticipated uses of adjoining properties. Inability to obtain or meet the terms of any governmental approval or the terms of any financing shall not be considered a hardship warranting a variance

**Section 13 7 Limitation of Liability** Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Association, the Board, nor the ACC nor any member of any of the foregoing shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with codes, governmental requirements, and any other restrictions. Neither the Association, the Board, nor the ACC, nor any member of any of the foregoing shall be held liable for damages or loss arising out of the manner or quality of approved construction on or any modifications to any lot. In all matters, the ACC and their members shall be defended and indemnified by the Association as provided in the Bylaws

**Section 13 8 Enforcement**

- (a) Any construction, alterations or other activities within the scope of Article 13 that are carried out after the adoption of this Declaration and design guidelines and that are in violation of this Article or the design guidelines shall be deemed to be nonconforming. Upon written notice from the Board, any owner engaged in such non-conforming activities shall, at their own cost and expense, cure such nonconformance or restore the property, lot and/or dwelling unit involved to substantially the same condition as it existed before the nonconforming activity was undertaken. All costs may be assessed, with interest, against the benefited lot and collected as a benefited assessment
- (b) All approvals made under Article 13 are deemed conditioned upon completion of all elements of the approved Plan and all work previously approved. If a lot owner commences but fails to diligently perform all of the work necessary to complete the approved Plan, the Association shall be authorized, after notice to the owner and an opportunity to be heard in accordance with the Article 17 of this Declaration, to enter upon the lot and remove or complete any incomplete work and to assess all costs incurred, with interest, against the lot and the owner as a benefited assessment
- (c) All acts by any contractor, subcontractor, agent, employee, or invitee of an owner shall be deemed to have been acts done by or on behalf of such owner. Any contractor, subcontractor agent, employee, or other invitee of an owner who fails to comply with the terms and provisions of this Article and the design guidelines may be excluded from Beachwalk, subject to the notice and hearing procedures contained in Article 17 of this Declaration. In such event, the Association, its officers, or directors

shall not be held liable to any person for exercising the rights granted by this section

(d) In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Board

#### **ARTICLE 14. USE RESTRICTIONS**

##### **Section 14 1 Applicability and Effect**

(a) Property in Beachwalk is subject to design guidelines as set forth in Article 13 herein and other restrictions governing land development, architectural and design control, individual conduct and uses of or actions in Beachwalk This Declaration, including the Use Restrictions attached hereto as Exhibit B and the rules and resolutions adopted by the Board or the members establish affirmative and negative covenants, easements, and restrictions on property in Beachwalk All provisions of this Declaration and any rules shall apply to all owners, their contractors, family members, occupants, tenants, guests and invitees of any lot

(b) A violation of the use restrictions, architectural and design guidelines and/or rules and regulations provisions shall be considered approved by the Board if it is in place at the time of the recording of this Declaration with the New Hanover County Register of Deeds The Board will document those violations as approved by the Board by documenting them in the permanent records of the Association However, the condition(s) causing such violation, upon its removal, modification or destruction by any cause or means, must be brought into compliance with the use restrictions, architectural and design guidelines and/or rules and regulations provisions established in accordance with this Declaration

##### **Section 14 2 Authority to Promulgate Rules**

(a) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its members, the Board may adopt rules not inconsistent with the Use Restrictions set forth in Section 14 4 herein, and other such rules and regulations permitted by, and not inconsistent with, the North Carolina Planned Community Act

(b) Such rules shall be published and provided to all owners and residents at least thirty (30) calendar days prior to the effective date

(c) The owners, at a meeting duly called for such purpose, may adopt rules which modify, cancel, limit, or create exceptions to Board-adopted rules by a majority vote of all lot owners in Beachwalk

(d) The Board shall send a copy of the rule to each owner specifying the effective date of such rule within a reasonable period of time, as determined by the Board prior to the effective date of the rule The Association shall provide, without cost, a copy of the rules then in effect to any requesting member or mortgagee

(e) Nothing in this article shall authorize the Board or the owners to modify, repeal or expand the Declaration, the Bylaws, the Articles, or the design guidelines Such documents may be amended only as provided therein

### **Section 14 3 Owners Acknowledgment**

- (a) All owners are subject to the Use Restrictions and are given notice that
  - (1) Their ability to use their privately owned property is limited thereby, and
  - (2) The Board and/or the owners may adopt, delete, modify, create exceptions to, or amend the rules
- (b) Each owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by the provisions in this Article and that the Use Restrictions and rules may change

**Section 14 4 Property Use Restrictions** Except for those lots owned by the Association and used for amenities for the Beachwalk community (which may include, without limitation, offices for any property manager retained by the Association or business offices of the Association consistent with this Declaration) or otherwise held as a common element the property described in Exhibit A shall be used only for residential, recreational, and related purposes, subject to applicable laws and the Use Restrictions described in Exhibit B

**Section 14 5 Rights of Owners** Except as may be specifically set forth in the Use Restrictions, neither the Board nor the owners may adopt any rule in violation of the following provisions

- (a) Similarly situated owners and occupants shall be treated similarly
- (b) Flags/Speech The rights of owners and occupants to display on their lots flags, political signs, signs and symbols of the kinds normally displayed on or outside of residences located in single-family residential neighborhoods in individually owned property shall not be abridged, provided, however, the Board may adopt reasonable time, place, size and manner of display restrictions regulating flags, political signs, signs (including "For Sale" signs) and symbols which are visible from outside the lots. Notwithstanding any provision of this Declaration, including without limitation the provisions of this Article 13, owners shall be permitted to display the flag of the United States of America and/or the flag of the State of North Carolina on their lots and no rule or regulation adopted by the Board nor any amendment to the Declaration adopted by the Association shall regulate or prohibit the display of the flag of the United States of America and/or the flag of the State of North Carolina, of a size no greater than four (4) feet by six (6) feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U S C §§ 5-10, as amended
- (c) Religious and Holiday Displays The rights of owners and occupants to display religious and holiday signs, symbols, and decorations on their lots of the kinds normally displayed in residences located in residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions regulating displays which are visible from outside the lot
- (d) Activities Within Dwelling Units No rule shall interfere with the activities carried on within the confines of dwelling units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other owners, that create a danger to the health or safety of occupants of other dwelling units, that

generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling unit, or that create an unreasonable source of annoyance

(e) Allocation of Burdens and Benefits The initial allocation of financial burdens and rights to use common elements among the various lots shall not be changed to the detriment of any owner over that owner's objection communicated to the Association in writing. Nothing in this provision shall prevent the Association from changing the use of the common elements as provided in Section 5.7, from adopting generally applicable rules for use of common elements, or from denying use privileges to those who abuse the common elements, violate rules or the Declaration, Bylaws, Articles, or rules, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments levied pursuant to the provisions of Article 11.

(f) Abridging Existing Rights Any rule which would require owners to dispose of personal property being kept on their property shall apply prospectively only and shall not require the removal of any property which was being kept on the property prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law. The limitations in this Section 14.5 shall apply to rules only, they shall not apply to amendments to this Declaration adopted in accordance with Section 18.2.

## **ARTICLE 15. EASEMENTS**

### **Section 15.1 Easements for Utilities, Etc**

(a) The Association shall have perpetual easements for the purpose of access and maintenance upon, across, over, and under all of Beachwalk to the extent reasonably necessary to install and provide maintenance for cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. The Association may assign these easements and rights to any utility company providing a service or utility to Beachwalk subject to the limitations herein.

(b) This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any dwelling unit on a lot. Any damage to a lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any lot and, except in an emergency, entry onto any lot shall be made only after reasonable notice by any means to the owner or occupant.

(c) The utility companies shall have easements in Beachwalk for ingress, egress, installation, reading, and providing maintenance of meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling units on any lot, nor shall any utilities be installed or relocated on Beachwalk, except as approved by the Board.

**Section 15.2 Easements for Cross-Drainage** Every lot and the common elements shall be burdened with easements for natural drainage of stormwater runoff from other portions of Beachwalk, provided, no person shall alter the natural drainage on any lot to increase materially the drainage of stormwater onto adjacent portions of Beachwalk without the



consent of the owner(s) of the affected property and the Board

**Section 15 3 Right of Entry** The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of Beachwalk, including each lot, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers or committees, and by all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a lot shall be only during reasonable hours and after notice to the owner and permission from the owner is obtained. This easement includes the right to enter any lot to cure any condition which increases the risk of fire or other hazard if an owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any dwelling unit without permission of the owner, except by emergency personnel acting in their official capacities.

**Section 15 4 Easements for Maintenance and Enforcement**

(a) Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of Beachwalk, including each lot to perform its maintenance responsibilities under Article 7 of this Declaration, and to make inspections to ensure compliance with the Association Documents. Except in emergencies, entry onto a lot shall be only during reasonable hours and after notice to and permission from the owner pursuant to Section 15 3 above. This easement shall be exercised with a minimum of interference to the quiet enjoyment of lot owners of their property, and any damage shall be repaired by the Association at its expense.

(b) The Association may enter a lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, the design guidelines, or the Association rules. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a benefited assessment.

(c) The Property is hereby burdened with perpetual, non-exclusive easements in favor of the Association for overspray of water from any irrigation system serving the common elements. The Association may use treated effluent in the irrigation of any common elements. Under no circumstances shall the Association be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

**ARTICLE 16. MORTGAGE PROVISIONS**

**Section 16 1 First Mortgages** The following provisions are for the benefit of holders, insurers and guarantors of first mortgages on lots in Beachwalk. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**Section 16 2 Notices of Action** An institutional holder, insurer, or guarantor of a first mortgage which provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the lot to which its mortgage relates, thereby becoming an "eligible holder"), will be entitled to timely written notice of

(a) Any condemnation loss or any casualty loss which affects a material portion of

Beachwalk or which affects any lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder,

(b) Any delinquency in the payment of assessments or charges owed by a lot subject to the mortgage of such eligible holders, where such delinquency has continued for a period of ninety (90) days, or any other violation of the Declaration or Bylaws relating to such lot or the owner or occupant which is not cured within ninety (90) days. Notwithstanding this provision, any holder of a first mortgage is entitled to written notice upon request from the Association of any default in the performance by an owner of a lot of any obligation under the Declaration or Bylaws which is not cured within ninety (90) days, or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association

**Section 16 3 No Priority** No provision of this Declaration or the Bylaws gives or shall be construed as giving any owner or other party priority over any rights of the first mortgagee of any lot in the case of distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of the common elements

**Section 16 4 Notices to Association** Upon request, each owner shall be obligated to furnish to the Association or the Association's agent the name and address of the holder of any mortgage encumbering such owner's lot

## **ARTICLE 17. COMPLIANCE AND ENFORCEMENT**

**Section 17 1 General Remedies** Every owner and occupant of any lot shall comply with the Association Documents and any applicable provisions of the North Carolina Planned Community Act. Failure to comply shall be grounds for an action by the Association to recover sums due, for damages, injunctive relief or any other remedy available at law and equity or under the Act

**Section 17 2 Enforcement Sanctions** The Board or such other Association agent authorized in writing by the Board may impose sanctions for violations of Association Documents after notice sent to the owner and a hearing conducted in accordance with the procedures set forth in Section 17 3. Such sanctions may include, without limitation

(a) Suspending an owner's right to vote. Suspension of an owner's right to vote shall be automatic when an owner is more than thirty (30) days delinquent in the payment of any assessment owed to the Association,

(b) Suspending any person's right to use the common elements, provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the person's lot,

(c) Suspending any services provided by the Association to an owner or the owner's lot, and

(d) The Board shall not have the power to impose fines upon homeowners for any enforcement or penalty purposes

**Section 17 3 Hearing Procedures** Except as may be otherwise specifically authorized by the Association Documents, the Board shall not undertake permitted remedial action or suspend voting or infringe upon other rights of a member or other occupant of a lot or dwelling unit for violations of the Association Documents unless the following procedure has been followed

(a) Cease and Desist Order Written demand to cease and desist from an alleged violation shall be served upon the person alleged to be responsible for the violation (hereinafter referred to as the "Responsible Person," including any member, owner, or occupant of a lot or dwelling unit) specifying

- (1) The alleged violation,
- (2) The action required to abate the violation, and
- (3) A time period, not less than five (5) days, during which the violation may be abated without further sanction, if such violation is a continuing one, and
- (4) That any further violation may result in the imposition of a sanction after notice has been given and a hearing is held

(b) Notice At any time within twelve (12) months following receipt of notice of the alleged violation, the Board, or an agent of the Association shall serve the responsible person with a written notice of a hearing to be held by the Board in executive session. The notice shall contain

- (1) The nature of the alleged violation,
- (2) The time and place of the hearing, which shall not be less than ten (10) days from the giving of the notice,
- (3) An invitation to attend the hearing and produce any statements, evidence and witnesses on his or her behalf, and
- (4) The possible sanction to be imposed

(c) Hearing The hearing shall be held in executive session of the Board pursuant to the notice affording the member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice, the invitation to be heard, and service of the notice on the responsible person shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of service, is entered by the officer, director, or agent who served such notice. The notice requirement shall be deemed satisfied if the responsible person appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. In addition, a written statement of the results of the hearing and the sanction, if any, imposed shall be mailed by United States mail, postage prepaid, by the Association to the responsible person.

(d) If it is decided pursuant to the provisions of this Section that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

**Section 17.4. Self-Help Remedies** The Board or such other Association agent with the Board's approval, may elect to enforce any provision of the Association Documents by self-help (specifically including, but not limited to the towing of vehicles that are in violation of parking rules and regulations in accordance with any applicable ordinance(s) of Kure Beach, North Carolina) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in Article 17 or in the Bylaws.

#### Section 17 5 Association's Right Not to Take Action

(a) The Association shall not be obligated to pursue enforcement action in any particular case. Such decisions shall be within the discretion of the Board, provided that the Board shall not be arbitrary or capricious in deciding to take or not to take enforcement action. The Board shall have the discretion to decline to take action on a particular case if it determines that

- (1) The Association's position is not strong enough to justify taking any or further action,
- (2) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law,
- (3) Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or justify expending Association funds, or
- (4) It is not in the best interest of the Association, based upon hardship, expense or other reasonable criteria, to pursue enforcement action

(b) Decisions made pursuant to Subsection 17 5 (a) shall not be construed as a waiver of the right of the Association to enforce such covenant, restriction, rule or provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, rule or provision, nor shall it preclude any owner from taking action at law or in equity to enforce the Association Documents, pursuant to Section 17 6

Section 17 6 Enforcement by Owner Nothing set forth in this Article 17 shall prevent any aggrieved owner from instituting any available remedy in law or in equity for a violation of the Association Documents

### ARTICLE 18. GENERAL PROVISIONS

Section 18 1 Term This Declaration shall run with and bind Beachwalk, and shall inure to the benefit of and shall be enforceable by the Association or any owner, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of ten (10) years, unless the owners of lots to which at least eighty percent (80%) of the votes in the Association are allocated agree to terminate this Declaration pursuant to the provisions of Section 47F-2-118 of the Act

#### Section 18 2 Amendments

(a) Approval By Owners Except as otherwise specifically provided in other provisions of this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of two-thirds (2/3) of all of the owners

#### (b) Validity and Effective Date of Amendments

- (1) Amendments to this Declaration shall become effective upon recording such amendments in the office of the Register of Deeds for New Hanover County unless a later effective date is specified therein
- (2) If an owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such owner has the authority so to consent,

and no contrary provision in any mortgage or contract between the owner and a third party will affect the validity of such amendment

(3) In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration

Section 18 3 Severability Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications

Section 18 4 Notice of Sale or Transfer of Title Any owner desiring to sell or otherwise transfer title to his or her lot shall give the Board or the Association's managing agent at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as may be reasonably required by the Board. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the owner of the lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. The Association may require the payment of a reasonable administration or registration fee by the transferee.

Section 18 5 Notices and other written communications that are required to be made by provisions in the Association Documents or the North Carolina Planned Community Act shall be served as authorized in Article 10 of the Bylaws on a responsible person or to any person who may be served on the responsible person's behalf.

Section 18 6 Cumulative Remedies/Attorneys' Fees The Association shall have the standing and authority to pursue all legal and equitable remedies to enforce the provisions of the Association governing documents and the decisions of the Board. In any action to enforce the provisions of the Association Documents, if the Association prevails, it shall be entitled to recover all costs, including without limitation, attorneys fees and court costs, reasonably incurred in such action.

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

BEACHWALK HOMEOWNERS  
ASSOCIATION, INC.

By Adrian T. Brennan (SEAL)

President

+++ CORPORATE SEAL +++

ATTEST

By Thomas F. Moffett

Secretary

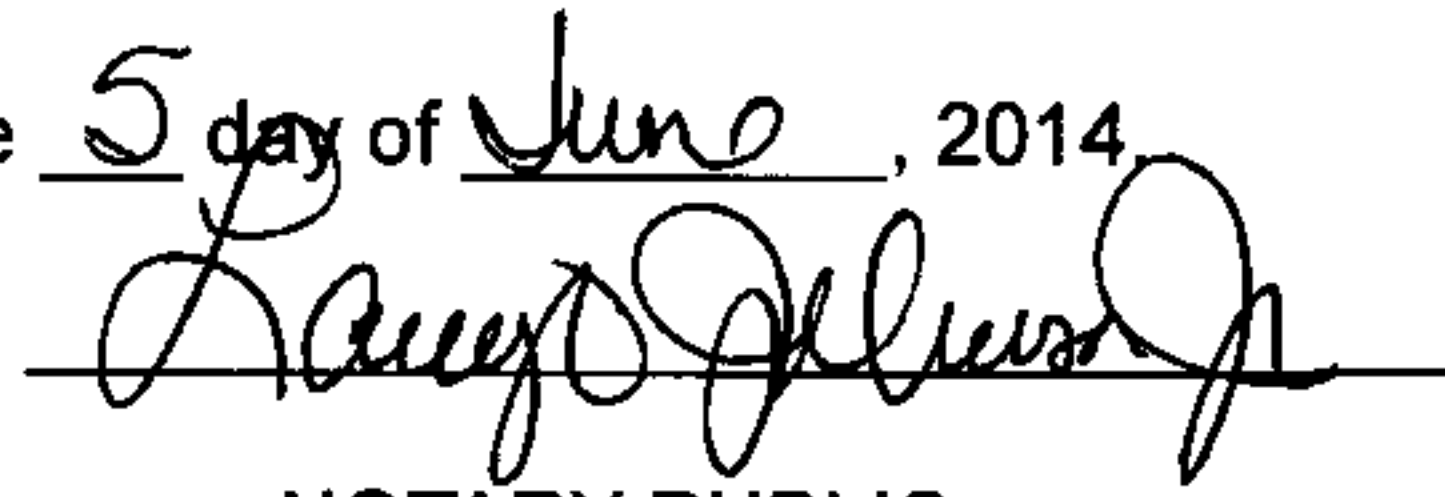


STATE OF NORTH CAROLINA

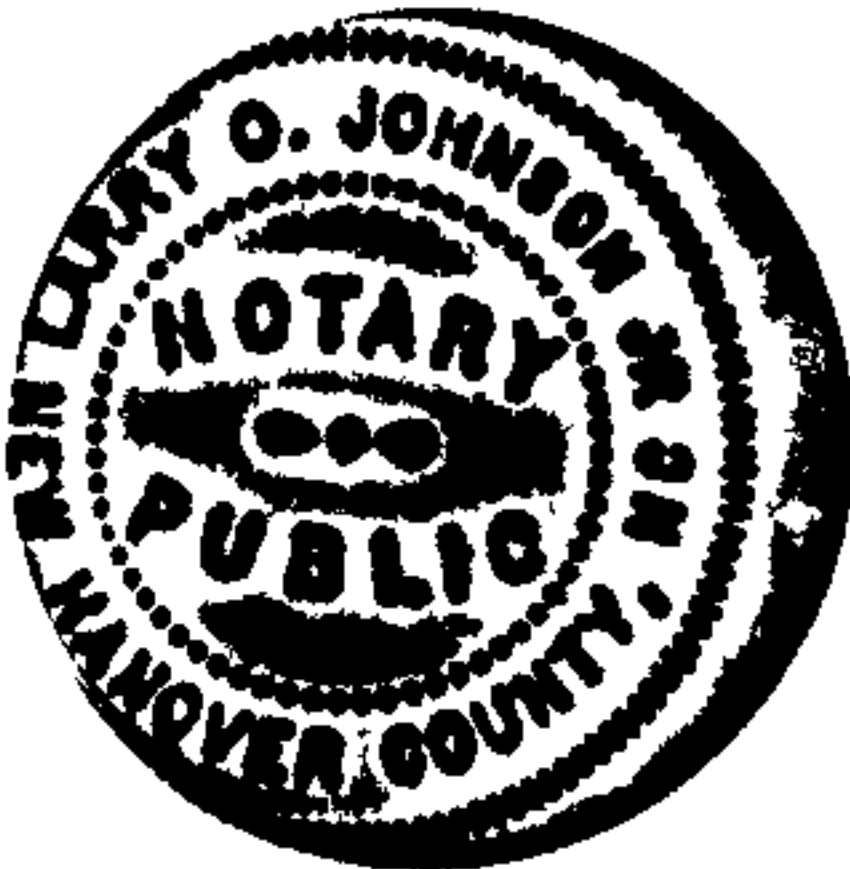
NEW HANOVER COUNTY

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 – BEACHWALK PROPERTY

The planned residential development known as Beachwalk consists of all the real property, which has been subdivided into lots shown on maps of Beachwalk, in the Office of the Register of Deeds of New Hanover County, Map Book 36 at Pages 284 and 285, Map Book 38 at Page 51, and Map Book 38 at page 156

## EXHIBIT B – PROPERTY USE RESTRICTIONS

Section 1 No Violation of Law in Common Elements Nothing shall be done or kept in or on any of Beachwalk's common elements that would be in violation of any laws or ordinances

### Section 2 Lots for Single Family Residential Purposes

- (a) Only detached single family dwellings shall be constructed on lots not previously built upon
- (b) Detached single family dwellings on a previously built upon lot shall be replaced only with a detached single family dwelling of a design approved in accordance with the provisions of the Declaration, Articles 13 and 14
- (c) Duplex dwellings existing on the date of recording of this document may be replaced only with either a duplex dwelling of the same dimensions and exterior design, or, if the two lots are legally combined into a single lot, a detached single family dwelling
- (d) No house trailer, mobile home, tent, shack or temporary structure of any nature shall be used at any time as a residence in Beachwalk
- (e) No home/lot shall be used for commercial purposes or for any activity normally conducted as a business that causes traffic or disturbance to other residents

Section 3 Activity in Common Elements Adversely Affecting Insurance Coverage Nothing shall be done or kept in any of Beachwalk's common elements that could cause cancellation or an increase in the Association's cost of insurance without the prior written consent of the Board of Directors (the "Board")

### Section 4 Construction Activities

- (a) All construction shall be subject to the zoning and land use ordinances of the Town of Kure Beach
- (b) No construction of any building, fence, wall or other structure, and no additions,

changes or alterations to any exterior thereof, shall be commenced, continued or retained on any lot until design 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 by the Board or, if established, the Architectural Control Committee ("ACC") The approval process is prescribed in the Declaration Additionally, the following specific restrictions shall apply

(1) 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 the Beachwalk

(2) No structure shall be erected, altered, or placed in Beachwalk exceeding thirty five (35) feet in height above ground level

(3) Approved small accessory structures (which may include a detached private garage, but not a garage apartment) shall be constructed of similar materials and design as the main structure upon such lot No accessory buildings may be constructed prior to the construction of the main building on any lot

(4) No concrete block, concrete brick, aluminum siding, 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, vinyl siding, brick or stucco exteriors may be constructed on the lots

(5) All residences must have a concrete driveway

(c) 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/her lot If a lot owner fails to collect and dispose of such trash within thirty (30) days after receipt of a written notice from the Board, the Board may cause the trash to be collected and disposed of at the lot owner's expense Such expense shall be paid and a benefited assessment assessed against the lot and lot owner that is enforceable by lien and collection as provided in the Declaration

(d) The exterior of any structure under construction on any lot must be completed within six (6) months after the beginning of construction

(e) All newly constructed residences shall have landscaping approved by the Board in

place within thirty (30) days of the issuance of a certificate of occupancy

(f) Construction must be in compliance with applicable North Carolina State water quality laws and administrative rules and

(1) No more than 4,000 square feet of any lot, including that portion of the right-of-way between the edge of pavement and the front lot line, shall be covered by impervious structures, including asphalt, gravel, concrete, brick, stone, slate or similar material, not including wood decking or the water surface of swimming pools

(2) No one may fill in or pipe any roadside or lot-line swale except as necessary to provide a minimum driveway crossing, and for curb and gutter projects, no one may pipe, fill in, or alter any lot line swale used to meet North Carolina Stormwater Management Permit requirements

(g) As an exception to Section 4 (b) above, construction vehicles, equipment and temporary structures placed by a contractor and required for construction, including sanitary facilities, shall be permitted to remain on a lot for the duration of the construction activity

Section 5 Landscape Care Lawn care, cutting, trimming, and fertilizing shall be performed for the whole Beachwalk development, including vacant lots and common elements, by a professional lawn care company hired by the Board and paid as a common expense. Owners electing to not use the service provided by the Association shall not be relieved from paying all or part of the common assessment for landscaping expenses, and any additional landscaping services procured by an individual owner for his lot will be at the individual owner's expense

Section 6 Signs and Advertisements.

(a) No advertising signs or billboards, including signs of vendors or contractors working on the property, shall be erected on any lot or displayed to the public on any lot, except that one sign of not more than five (5) square feet in area may be used to advertise a lot or residence for sale

(b) Political signs may be displayed on private lots no more than forty-five (45) days prior to or seven (7) days after an election day

(c) No advertising, announcements or political signs may be erected on or displayed on or in the common elements

(d) The display of all signs shall comply with applicable Town of Kure Beach ordinance or regulations, including minimum set back requirements

Section 7 Fences and Walls No fence or wall shall be erected or permitted on any lot closer to the front line than the front corner of the dwelling erected upon said lot, and no chain link or wire fence shall be allowed

Section 8 Mailboxes and Newspaper Boxes No mailboxes or newspaper boxes shall be permitted on any lot The Association shall provide and maintain a central mailbox for all residences as a common element Maintenance of individual mail slots shall be the owner's responsibility

Section 9 Construction, Alteration or Removal In Or On Common Element Nothing shall be constructed, altered or removed from the common elements, except upon the written consent of the Board

Section 10 Animals and Pets No animals, livestock, pigs or poultry of any kind shall be kept or maintained on any lot or in any dwelling, with the exception of dogs, cats or other common household pets provided that they

(a) Are not allowed to run free and are at all times properly leashed, and

(b) Are not kept or maintained for commercial purposes

Section 11 Fuel Tanks, Garbage Containers and Other Receptacles Other than when placed for curbside collection, garbage, recycling and other such bins shall be stowed either 1) in a place not forward of the front line of the dwelling, or 2) a place where the bin is obstructed from view

Fuel tanks, permanently installed emergency generators and similar permanently installed utilities shall be installed in a place not forward of the front line of the dwelling

Section 12 Unclean, Unsightly or Unkept Conditions It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on such lot which, in the Board's judgment, substantially adversely affects the aesthetic qualities of the Beachwalk community as a whole or the specific area near the lot

Section 13 Noxious or Offensive Activities 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 Beachwalk community There shall not be maintained any plants or animals or devices or things of any sort whose normal activities or existence are, in the Board's judgment, noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property owners in the Beachwalk community

Section 14 Yard or Garage Sales No yard sales or garage sales will be allowed on any lot in Beachwalk without the approval in writing of the Board

Section 15 Storage of Boats, Trailers, etc

(a) No storage of goods, boats, motor boats, dune-buggies, campers, trailers, recreational vehicles, unregistered vehicles, tractor trailer trucks or cabs or similar type vehicles shall be permitted to remain on any lot at any time, unless by prior written consent of the Board, and then only for a specified temporary period of time not to exceed thirty (30) days within any three (3) month period, provided that the Board may extend this period of time if there are unique or unusual circumstances that would make such an extension reasonable and equitable

(b) Notwithstanding (a), owners who have guests visiting and staying in such a vehicle designed for habitation may secure prior written permission from the Board for such guests to park their vehicle on the owner's lot for a maximum period of thirty (30) days

(c) The provisions of this section shall not prohibit vehicles required for maintenance or construction authorized pursuant to Section 4 herein from remaining on a lot for the duration of the maintenance or construction

16 Leases and Rentals

(a) Any lease or rental of any lot must be for the entire lot or residence and for a rental or lease period of not less than twelve (12) consecutive months

(b) No lot or dwelling may be rented or leased more than twice in any twelve (12) consecutive months period

(b) The Board must be given a copy of all leases prior to homes being occupied by tenants



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

WILMINGTON, NC 28401

\*\*\*\*\*

**Filed For Registration:** 06/06/2014 10:40.26 AM

**Book:** RE 5818 Page: 1323-1357

**Document No.:** 2014014141

35 PGS \$102.00

**Recorder:** JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2014014141\***

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