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**AMENDED, CONSOLIDATED AND RESTATED  
DECLARATION OF COVENANTS FOR  
THE KEYS AT KURE BEACH**

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NORTH CAROLINA

NEW HANOVER COUNTY

**RETURNED TO MTG**

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**AMENDED, CONSOLIDATED AND RESTATED DECLARATION OF COVENANTS FOR  
THE KEYS AT KURE BEACH**

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**THIS AMENDED, CONSOLIDATED AND RESTATED DECLARATION OF COVENANTS FOR THE KEYS AT KURE BEACH** (this "Declaration") is made this 4<sup>th</sup> day of November, 2011, by **THE KEYS AT KURE BEACH HOMEOWNERS ASSOCIATION, INC.**, a North Carolina non-profit corporation (the "Association")

WITNESSETH.

WHEREAS, the Association is the homeowners association for all owners in fee simple of certain real property located in New Hanover County, North Carolina, which property is more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (collectively, the "Property");

WHEREAS, the Property is located within a master planned development known as Kure Beach Village and the Owners of the Property are also members of the Kure Beach Village Homeowners Association, Inc. (the "Master Association"); and

WHEREAS, the Property was originally subdivided into lots and sold by Gulf Stream Developers, Inc., as Declarant, and it has previously been subjected by Declarant to the following covenants: Declaration of the Keys at Kure Beach Phase 1-A recorded in Book 1783, Page 221, Declaration of the Keys at Kure Beach Phase I-B recorded in Book 1824, Page 480, Declaration of the Keys at Kure Beach Phase I-C recorded in Book 1872, Page 404; the Declaration of the Keys at Kure Beach Phase 2-A recorded in Book 1879, Page 484; the Amended Declaration of the Keys at Kure Beach Phase I-B recorded in Book 1892, Page 762; the Declaration of the Keys at Kure Beach Phase 2-B recorded in Book 1901, Page 299; the Declaration of the Keys at Kure Beach Phase 2-C recorded in Book 1934, Page 877; and the Amended Declaration of the Keys at Kure Beach Phase 1A, Phase 1B, Phase 1C, Phase 2A, Phase 2B, Phase 2C recorded in Book 1941, Page 1101, all in the New Hanover County Registry (collectively, the "Prior Declarations").

WHEREAS, the Declarant's Prior Declarations were inconsistent in various respects, most specifically, the Declarant attempted to subject the Property to a non-existent "North Carolina Townhouse Act";

WHEREAS, Declarant turned over all control of the Property and the Association to the Owners in approximately 1994 and Gulf Stream Developers, Inc. has been administratively dissolved by the North Carolina Secretary of State, therefore the Association has full control over the governance of the Property,

WHEREAS, the Association has determined that is in the best interest of the Owners to amend, consolidate and restate the Prior Declarations to correct the aforementioned inconsistencies and clarify that the Property was intended to be and has always been operated as a planned community townhouse development rather than a condominium development or any other regime,

WHEREAS, to further clarify the intentions and historical practice of the Association and the Property, the Association has determined that it is in the best interest of the Owners to subject the Property to the North Carolina Planned Community Act (N C G S. §47F-1-101 et seq.);

WHEREAS, pursuant to the amendment authority in the Prior Declarations and pursuant to N C G S §47F-1-102(d), this Amended, Consolidated and Restated Declaration was submitted to a vote of the Members at a duly called meeting of the Association at which a quorum was present and said Amended, Consolidated and Restated Declaration was approved by a vote of more than sixty-seven percent (67%) of the Owners, with each Unit having one vote as provided in the Association's Bylaws, and

NOW, THEREFORE, the Association hereby amends, consolidates, restates, replaces and supersedes the Prior Declarations with this Amended, Consolidated and Restated Declaration of Covenants for The Keys at Kure Beach; the Association hereby submits the Property, including all improvements, easements, rights, and appurtenances thereunto belonging, to the provisions of the North Carolina Planned Community Act and to the provisions of this Declaration, and hereby creates with respect to said Property a planned community to be known as "**THE KEYS AT KURE BEACH**"; and hereby declares that the Property shall be held, sold, leased, used, occupied, improved and conveyed subject to the following covenants, conditions, restrictions, uses, limitations, and obligations, all of which shall be deemed to run with the real property subjected to the Declaration and shall be binding upon and inure to the benefit of all parties having any right, title or interest in said property, and their heirs, successor, and assigns

## **ARTICLE I** **Definitions**

The following words, when used in this Declaration or any supplement or amendment thereto, shall have the following meanings (unless the context shall prohibit).

1.1 Articles of Incorporation or Articles: the Articles of Incorporation of the Association, as filed with the North Carolina Secretary of State, and as may be amended from time to time

1.2 Association: The Keys at Kure Beach Homeowners Association, Inc., a North Carolina non-profit corporation formed primarily as a property owners association for the Owners, all of whom shall be Members of the Association.

1.3 Board of Directors or Board: whether composed of one or more directors, the board governing the Association and managing the affairs of the Association

1.4 Bylaws: the Bylaws of the Association, as they may be modified or amended from time to time.

1.5 Common Area: all real and personal property and facilities owned or enjoyed by the Association, other than a Unit.

1.6 Common Expenses: the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, together with any allocations to reserves, and the actual and estimated expenses of maintaining and operating the Common Area.

1.7 Declarant: Gulf Stream Developers, Inc., a corporation formerly existing under the laws of the state of North Carolina. Gulf Stream Developers, Inc. turned over all rights and control of the Property and the Association to the Owners in approximately 1994 and Gulf Stream Developers, Inc. has been administratively dissolved by the North Carolina Secretary of State, therefore the Declarant is not a necessary party to this Declaration

1.8 Governing Documents: consists of the following, as they may be amended or modified from time to time: the Declaration, the Articles of Incorporation and Bylaws of the Association, any Rules and Regulations adopted by the Association, Board resolutions, and recorded plats of the Property.

1.9 Limited Common Area: portions of the Common Area which are designated for the common use or enjoyment of one or more but less than all of the Units. The Limited Common Areas within the Keys consist only of the paved driveways and walkways serving specific Units

1.10 Limited Common Expenses: the actual and estimated expenses of maintaining, operating, repairing, and replacing the Limited Common Area, including insurance, reasonable reserves and utilities, as the Board may find necessary and appropriate pursuant to the Declaration, the Bylaws and the Articles of Incorporation of the Association for the benefit of the Limited Common Area.

1.11 Lot: any numbered plot of land appearing on any recorded plat of the Property, as such plats are described in **Exhibit A**, attached hereto and incorporated herein by reference.

1.12 Maintenance Guidelines: the guidelines and standards for maintenance, repair and replacement of Common Area, Limited Common Area and Units, as said guidelines and standards may be amended from time to time. The initial Maintenance Guidelines shall be prepared by the Board, and thereafter, the Association may amend the Maintenance Guidelines if sixty-seven percent (67%) of the then Owners agree. The Association shall make the Maintenance Guidelines available to Owners but shall not be required to record the same

1.13 Master Association: Kure Beach Village Homeowners Association, Inc

1.14 Master Governing Documents: any Master Declaration for Kure Beach Village and any supplements and amendments thereto, the Articles of Incorporation and Bylaws of the Master Association, any rules and regulations adopted by the Master Association, and all amendments and additions thereto.

1.15 Member: a Person who is entitled to membership in the Association, as provided in Section 3.2

1.16 Owner: the record owner, whether one or more persons or entities, of a fee simple title to any Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.17 Planned Community Act: the North Carolina Planned Community Act (N.C.G.S. §47F-1-101 et seq.), as the same may be amended from time to time

1 18 Property or Properties: the real property described in **Exhibit A** attached hereto and incorporated herein by reference that has been submitted to the provisions of this Declaration

1 19 Rules and Regulations. the rules and regulations adopted by the Board governing land use, individual conduct and uses or actions upon the Property, as the same may be amended or supplemented from time to time

1.20 Unit. any Lot, together with any attached or semi-attached residential townhouse situated thereon and all improvements and appurtenances thereto, including but not limited to all front and rear decks, handrails, steps and roofs attached to such townhouse

## **ARTICLE 2** **Property Rights**

2 1 Rights of Owners Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, and for ingress and egress to and from the Common Area, which shall be appurtenant to and pass with the title to every Unit, subject to the following provisions.

- (a) The Governing Documents;
- (b) Any restrictions or limitations contained in any deed or other instrument conveying any portion of the Common Area to the Association,
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area and improvements thereon, including rules restricting use of the recreational facilities within the Common Area to Owners and occupants of Units and their guests, and rules limiting the number of guests who may use the Common Area; and the right of the Board to establish penalties for any infractions thereof;
- (d) The right of the Board to impose reasonable charges and fines for late payment of assessments, and after notice and opportunity for a hearing, to suspend the voting rights and the right to use the Common Areas and the recreational facilities within the Common Area by an Owner as more particularly described in this Declaration;
- (f) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth herein and the rights of such Mortgagees in said Property shall be subordinate to the rights of the Owners hereunder; and
- (g) Easements as provided in ARTICLE 10.

**ARTICLE 3**  
**Association**

3 1 Function of Association The Association shall be the entity responsible for the management, maintenance, ownership, operation and control of the Common Area and Limited Common Areas within the Properties. The Association shall be the primary entity responsible for enforcement of the Declaration and such reasonable rules regulating use of the Common Areas and the use of the Property as the Board may adopt. The Association shall perform its functions in accordance with the Governing Documents, the Planned Community Act and other applicable North Carolina law.

3 2 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of that membership. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association, provided that only one person (and such person's immediate family members with respect to membership rights other than voting) may be designated to act in such capacity for such an Owner at any particular time.

3 3 Voting. The Association shall have one class of membership. The Class "A" Members shall be all Owners of Units in the Property. Class "A" Members shall have one vote for each Unit in which they hold the interest required for membership under Section 3 2 and there shall be only one vote per Unit. In any situation in which a Member is entitled personally to exercise the vote for his or her Unit and there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such Co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

**ARTICLE 4**  
**Rights and Obligations of the Association**

- 4 1 Rights. The Association shall have the following rights to:
- a. Adopt and amend Bylaws and Rules and Regulations,
  - b. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from Owners;
  - c. Hire and discharge managing agents and other employees, agents, and independent contractors;
  - d. Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community, subject however to the provisions of the Bylaws,
  - e. Make contracts and incur liabilities;
  - f. Regulate the use, maintenance, repair, replacement and modification of the Common Area,

- g Cause additional improvements to be made as a part of the Common Area;
- h. Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, provided that Common Area may be conveyed or subjected to a security interest only pursuant to applicable law,
- i. Grant easements, leases, licenses, and concessions through or over the Common Area;
- j. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Area and for services provided to Unit Owners,
- k Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Units) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer,
- l. After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to Units) for reasonable periods for violations of the Declaration, Bylaws, and Rules and Regulations of the Association,
- m Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the Declaration or statements of unpaid assessments;
- n Provide for the indemnification of and maintain liability insurance for its officers, Board, directors, employees and agents,
- o Assign its right to future income, including the right to receive Common Expense assessments;
- p Exercise all other powers authorized under the Planned Community Act, or that may be exercised in this State by legal entities of the same type as the Association,
- q Exercise any other powers necessary and proper for the governance and operation of the Association

4.2 Common Area The Association, subject to the rights of the Owners set forth in the Declaration, shall manage and control the Common Area and all improvements thereon (as defined in other sections herein including, without limitation, roads, road rights of way, recreation pathways, stormwater facilities, stormwater ponds, gazebos, lighting, irrigation, furnishings, equipment, and common landscaped areas) The Association shall keep such areas and improvements in good repair and in a clean, attractive, and sanitary condition consistent with the Declaration.

4.3 Enforcement Subject to the requirements of the Planned Community Act, the Association may impose sanctions for violations of any of the Governing Documents, including reasonable monetary fines, suspension of the right to vote, and/or suspension of the right to use any recreational facilities within the Common Area In addition, the Association may exercise self-help



to cure violations; and, after notice and an opportunity to be heard, may suspend any services it provides to the Owner of any Unit who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. The Board may assess the reasonable monetary fines authorized by this Section as an Individual Assessment authorized by Article 8 of the Declaration. The remedies set forth in this Section are cumulative and not exclusive.

4.4 Implied Rights; Board Authority. The Association may exercise any and all other rights or privileges given to it expressly by, the Declaration, the Bylaws, the Planned Community Act, or Chapter 55A of the North Carolina General Statutes, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Declaration, the Bylaws, or the Articles, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Indemnification. To the maximum extent allowed by North Carolina law, the Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board incumbent at the time of such settlement) to which he or she may be party by reason of being or having been an officer, director or committee member. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.6 Dedication of Common Areas. The Association may dedicate portions of the Common Areas to any local, state, or federal governmental entity, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association.

4.7 Management and Administration. The management and administration of the Common Areas shall be the sole right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of the Governing Documents, but they may be delegated to a manager(s) or management service(s).

## **ARTICLE 5**

### **Maintenance, Repair and Replacement**

5.1 Responsibility of the Association – Common Area and Limited Common Area. The Association will maintain, repair and replace all of the Common Area, except for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner. The actual and estimated expenses of maintaining, operating, repairing, and replacing the Common Area, including insurance, reasonable reserves, and utilities, as the Board may find necessary and appropriate pursuant to the Declaration, for the benefit of the Common Area shall be assessed at a uniform rate to all Units.

The exterior maintenance obligations described in the preceding paragraph shall also apply to the Limited Common Area(s) hereinabove defined and shall include, in addition, maintenance of any driveways and walkways as may be directed by the Board, which may be located in Limited Common Area. Notwithstanding anything to the contrary contained in this Declaration, routine maintenance and repair to driveways and walkways located within or constituting Limited Common Elements will be assessed against the Unit or Units to which the Limited Common Area is assigned. If any such

Limited Common Area serves more than one Unit, the expenses attributable to the Limited Common Area will be assessed equally among the Units which it serves. This expense against fewer than all the Units will be collected as an assessment against only those Units and is due at the time the expense is incurred.

*In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, invitees, or licenses, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject.*

5.2 Responsibility of the Association – Units The Association shall provide certain scheduled exterior maintenance upon each Unit in accordance with the Maintenance Guidelines, which maintenance may generally include paint exterior building surfaces, brick walls and other exterior improvements, and replace shingles. Such exterior maintenance shall not include roofs (other than shingles), glass surfaces, exterior doors, and window frames (i.e. entire window unit) unless approved by the Board, except the Association shall be responsible for painting exterior doors. All such exterior maintenance of Units will be provided by the Association on a schedule and to a scope of work appropriate to meet the standards in the Maintenance Guidelines and as determined by the Board, in its discretion, and not on a schedule or to a scope as directed, requested or specified by any specific Owner. The cost of the exterior maintenance upon each Unit will be included in the Base Assessments and shall be levied at a uniform rate against all Units. No Owner may exempt himself or herself from liability for assessments for exterior maintenance provided by the Association. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, invitees, or licenses, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject. No assurance or guarantee is made that the Association will continue to provide exterior maintenance to the Units as set forth herein. Exterior maintenance services may be modified by the Board as it deems reasonable and appropriate.

5.3 Responsibility of the Owner. Except for the maintenance provided by the Association as described in Sections 5.1 and 5.2, each Owner will be responsible for all other required maintenance of the exterior and interior of his or her Lot and Unit, including the fixtures and utilities located in the Unit to the extent current repair shall be necessary in order to avoid damaging other Persons, Units, the Common Area, or the Limited Common Areas. All fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit shall be maintained and kept in repair by the Owner. The Owner at the Owner's expense shall maintain, repair or replace the heating and air conditioning units (HVAC), air handling units, heat exchanger, heat outlet, enclosures and mechanical attachments. The Owner shall not allow any action of work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of any townhome building, or impair any easement or hereditament. An Owner is responsible for a repair resulting from a casualty occurring within, or affecting the inside of the Unit. Each Owner shall be responsible for removing all snow, leaves and debris from all doorsteps or stoops appurtenant to his Unit. All exterior maintenance of the Units required of the Owners will be performed in accordance with the Maintenance Guidelines.

5.4 Association's Right to Maintain Units. If an Owner of any Unit fails to maintain that Unit and the improvements thereon in accordance with this Article or the Maintenance Guidelines in a manner reasonably satisfactory to the Board, in its sole discretion, the Board shall give written notice to such Owner and, if the necessary maintenance is not completed within thirty (30) days, the

Association shall have the right, through its agents, contractors, and employees to enter upon the Unit of the defaulting Owner and to repair, maintain and restore the Unit and the exterior of the building and other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a Special Assessment levied by the Association against such Owner and such Owner's Unit, shall become the personal obligation of such Owner and shall become a lien against such Unit enforceable in accordance with Article 8. In the event of an emergency (as so deemed by the Board in its reasonable discretion), the Association shall have the right, with or without prior notice to the Owner, to enter any Lot and Unit to make emergency repairs necessary for the proper maintenance and operation of the Property.

## **ARTICLE 6**

### **Insurance and Reconstruction**

6.1 **Required Coverage – Owners** Each Owner shall obtain and keep his Unit insured against loss and damage by fire, tornado, wind storm or other hazards normally insured against at one hundred percent (100%) of replacement cost, and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the property. Each Owner agrees to provide the Board with satisfactory proof of said insurance upon request of the Board. If the Owner fails or refuses to keep said premises so insured, the Board may obtain such insurance and levy against the non-paying Owner an Individual Assessment as set forth in Section 8.6, which shall be an amount due of the cost of such insurance, and shall be a lien upon the Unit until paid in full.

6.2 **Required Coverage - Association.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as are reasonably available.

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes,

(b) Commercial general liability insurance on the Common Areas, 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 its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) 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; provided, if additional coverage and higher limits are available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits; and

(c) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, including without limitation, directors and officers liability insurance, fidelity insurance, performance bonds, payment on labor and material bonds, and maintenance bonds

6.3 Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as an expense of the Association. In the event any Owner fails or refuses to pay assessments needed to pay insurance premiums or deductibles when due, the Association may pay said premium or deductible and levy against the non-paying Owner an Individual Assessment as set forth in Section 8.6, which shall be an amount due of those amounts, and shall be a lien upon the Unit until paid in full. The amount of the said assessment may include not only the actual cost of the premiums, and any late payment fees, the cost of the deductibles, but also an administrative charge payable to the Association, interest, and any and all attorney's fees incurred in connection with the collection of such assessments, penalties and fees.

## **ARTICLE 7**

### **Party Walls**

7.1 General Rules of Law to Apply. Each wall that is built as a part of the original construction of the Units upon the Properties and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto. If any portion of the original structures constructed on each Lot, including any party wall, any extension of a party wall, or any common fence, protrudes over an adjoining Lot, or into the Common Area, such structure, wall or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall or fence, nor any action for damages. If there is a protrusion as described in the immediately preceding sentence, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the encroaching structure, wall, or fence. The foregoing provision also shall apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant. The provisions of this Section 7.1 shall be perpetual in duration and shall not be affected by an amendment of this Declaration.

7.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

7.3 Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

7.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

7.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

7.6 Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

## **ARTICLE 8** **Assessments**

8.1 Creation of the Lien and Personal Obligation of Assessments. The Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. Each Owner, by accepting a deed or by entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay the following assessments to the Association, as more specifically provided herein. (1) General Assessments to fund Common Expenses for the general benefit of all Units within the Properties, (2) Special Assessments, (3) Individual Assessments and (4) Service Assessments, and each Owner is also deemed to covenant and agree to pay to the Master Association any Master Association assessments and any other applicable assessments, fees, or working capital contributions as may be levied by the Master Association in accordance with the Master Governing Documents.

All assessments, together with interest from the due date of such assessment at a rate determined by the Board (but not to exceed the highest interest rate allowed by North Carolina law), late charges, costs, fees, fines, reasonable attorney's fees shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made until paid. Each such assessment, together with interest, costs, late fees and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due.

No Owner may exempt himself from liability for assessments, by non-use of Common Area, abandonment of his Unit, or any other means. 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 the making of repairs or improvements, or from any other action it takes.

8.2 General Assessments. The initial General Assessment, due and payable to the Association, shall be prorated and paid at the time of closing of the purchase of a Unit by an Owner, so that all payments thereafter shall be due on January 1 of each year or the due date(s) which may be set by the Board as is more fully set forth in Section 8.9. All General Assessments shall be fixed to a uniform rate for all Units. The General Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents in the Properties, for the improvements and maintenance of the Common Area and Limited Common Area; for payment of deductibles and insurance premiums described in Article 6; the maintenance of reserves for the repair and replacement of improvements located on the Common Area and for such other purposes as the Board may determine, and to pay the taxes and other municipal charges or fees of the Common Area and Limited Common Area.

8.3 Computation of General Assessment; Budget

a. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare and distribute to the Members a budget covering the estimated Common Expenses during the coming year (including, without limitation, any contributions to be made any reserve funds as described in Section 8.4). The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against Units, and the amount to be generated through the levy of all applicable assessments against Units.

b. The General Assessments shall be levied at a uniform rate against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year. This Section 8.3 shall apply to the determination of all General Assessments for fiscal years beginning after the date of the recording of this Declaration.

c. The Board shall send a summary of the final budget, together with a notice of the amount of the General Assessments to be levied pursuant to such budget, to each Owner within thirty (30) days after the Board adopts such budget. With such summary, the Board shall provide to each Owner a written notice of the meeting of the Members at which the Member's ratification of the budget will be considered. Such notice shall include a statement that the budget may be ratified at such meeting without a quorum. The meeting of the Members to consider ratification of the budget shall be held not less than ten (10) nor more than sixty (60) days after the mailing of the summary and notice referenced in this paragraph. Notwithstanding any other provisions of the Governing Documents, there shall be no requirement that a quorum be present at such meeting. Notwithstanding any other provision of the Governing Documents, the proposed budget shall automatically be deemed ratified and become effective unless disapproved at such meeting by Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

d. The Board may revise the budget and adjust the assessments from time to time during the year, subject to the notice requirements and the right of Members to disapprove the revised budget as set forth above.

8.4 Reserve Budget. The Board shall annually prepare a reserve budget and establish reserve funds from its General Assessments for (i) maintenance and replacement of capital improvements which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost, (ii) major rehabilitation or major repairs, (iii) emergency or other repairs required as a result of storm, fire, natural disaster or other casualty loss, and (iv) recurring periodic maintenance including but not limited to re-shingling or repainting Units in accordance with the Maintenance Guidelines.

8.5 Special Assessments. In addition to other authorized assessments, the Master Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all of the Units, if such Special Assessment is for Common Expenses, or against specific Units assigned to a Limited Common Area.

if such Special Assessment is for Limited Common Expenses. The Board may establish the amount of the Special Assessment if it is One Hundred Dollars (\$100.00) or less in any assessment year for each Member. Except as otherwise specifically provided herein, any Special Assessment greater than \$100.00 shall require the affirmative vote or written consent of ½ of the Members to be subject to such Special Assessment. Special Assessments shall be payable in such 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.

#### 8.6 Individual Assessments

a. The Board shall have the power to levy Individual Assessments against a particular Unit or Units constituting less than all Units within the Properties, as follows.

(i) To cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(ii) To cover costs including overhead and administrative costs and reserves incurred for maintenance, repair and replacement of private roads, signs, mail boxes, fences and berms, if any, which are constructed for the benefit of certain specified Units, as the same may be more specifically set forth in a Supplemental Declaration.

(iii) To cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, including, without limitation, Article 14, any applicable Supplemental Declaration, the Articles, the Bylaws, Rules and Regulations or costs incurred as a consequence of the conduct of the Owner or occupant of the Unit, their lessees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing before levying an Individual Assessment under this subsection (a)

8.7 Service Assessments. The Board shall have the power to levy Service Assessments against a particular Unit or Units constituting less than all Units within the Properties to cover the costs, including overhead and administrative costs, of providing specialized maintenance and/or landscaping services to such Unit(s) and the occupants thereof. Such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner. Notwithstanding the foregoing to the contrary, the fact that the Association levies a Service Assessment shall not be deemed to impose any obligation upon the Association to (i) monitor the quality of work or services being provided, (ii) assume any responsibility for the quality of work or services provided, (iii) ensure the structural integrity or soundness of any construction or modifications provided or (iv) ensure compliance with building codes and other governmental requirements relating to the work or services provided.

8.8 Due Dates. The due dates for General Assessments shall be established by the Board. The Board shall require the General Assessments to be paid at least annually, but may require the General Assessments to be paid more often. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid.

## 8.9 Lien for Assessments

a. All assessments authorized in this Article, together with interest and expenses, including reasonable attorney's fees (as permitted by law) shall constitute a charge on and a continuing lien upon the Unit against which the assessment is levied, which lien shall be superior to all other liens and encumbrances on the Unit, except the liens of all ad valorem taxes or assessments and any other liens which by law would be superior. Such lien shall become effective when a notice thereof ("Claim of Lien") is filed of record in the Office of Clerk of Superior Court of New Hanover County, North Carolina, provided such Claim of Lien shall not be filed until such sums assessed remain unpaid for a period of more than thirty (30) days after the same shall become due. Such Claim of Lien shall also secure all assessments against the Unit becoming due thereafter until the lien has been satisfied.

b. In the event of any transfer of title to a Unit, the lien of the assessments shall not be extinguished nor shall the Unit be relieved from the lien for any subsequent assessments. Each assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage or any individual obtaining title by or through a foreclosure shall be personally liable for unpaid assessments which accrued prior to such acquisition of title.

## 8.10 Default in Payment of Assessments: Remedies of the Association

a. Any assessments or portions thereof that are not paid when due shall be delinquent. If the assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the due date at a rate set by the Board, not to exceed the maximum legal rate allowed in the State of North Carolina per annum, together with all expenses, including reasonable attorney's fees (if permitted by law), incurred by the Board in any proceeding brought to collect such unpaid Assessments; and in addition, a late fee shall be assessed in such amount as may be determined by the Board of Directors.

b. The Association may record notice of the claim of lien in the Office of the Clerk of Superior Court of New Hanover County, North Carolina and/or file a suit to collect such delinquent assessments and charges. The Association may also file Notice of *Lis Pendens*, bring an action of law against the Owner personally obligated to pay the same; bring an action to foreclose the lien against the property, and utilize any other remedy provided under North Carolina law. In any event, a judgment, decree, or order in any action brought under this Article 8 shall include costs and reasonable attorney's fees for the prevailing party, subject to the limitations of N.C.G.S. §47F-3-116, and the same shall be added to the amount of any such assessment. The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. Provided however, no fewer than 15 days prior to filing the lien prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the Unit and the Unit Owner's address of record with the Association, and, if different, to the address for the Unit Owner shown on the county tax records and the county real property records for the lot. If the Unit Owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation.



8.11 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail 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 General 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.

8.12 Exempt Property. The following property shall be exempt from payment of General Assessments, Service Assessments and Special Assessments:

- a. All Common Areas and Limited Common Areas;
- b. Any property dedicated to and accepted by any governmental authority or public utility; and
- c. Any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Unit which is subject to assessment hereunder (in which case the Unit shall not be exempted from assessment).

8.13 Surplus Funds. Notwithstanding the provisions of N.C.G.S. §47F-3-114, any excess of Association income over Common Expenses (as defined in Article 1 and which shall include reasonable reserves) shall be applied to reserves or other future expenses as the Board deems appropriate.

## **ARTICLE 9** **Use Restrictions**

9.1 Use and Occupancy Restrictions. The following Use Restrictions apply to all Units and to the Common Area:

- a. Except as specifically set out in Section 9.2, each Unit is restricted to residential use as a single-family residence.
- b. The use of Units and Common Area is subject to any additional use restrictions set forth in the Bylaws and the Rules and Regulations. These use restrictions will have the same force and effect as the restrictions contained herein.

9.2 Leasing. No Unit or any portion of a Unit may be leased or rented unless in accordance with Rules and Regulations adopted by the Association. **No Unit may be rented for a period of less than twelve (12) months.** All leases of a Unit or any portion of a Unit shall be deemed to include a provision that the tenant will recognize and abide by the Governing Documents, and that the Association has the power to enforce a violation of the provisions of the Governing Documents against the tenant and the Owner for any violation by such tenant. The Owner will be given a reasonable opportunity to cure any violation prior to the commencement of an enforcement action. The Association is not required to deal first with the tenant but may take all actions necessary under this provision directly with the Owner. The Owner shall be liable for any violation of the Governing Documents committed by the Owner's tenant, without prejudice to the Owner's right to

collect any sums paid by the Owner on behalf of the tenant. Any lease of a Unit or a portion of the Unit must be in writing and all leases are subject to the requirements of the Governing Documents.

9.3 Commercial Use Prohibited. No Unit will be used for transient hotel, commercial or business purposes, except that the Owner of a Unit may maintain a home office which is merely incidental to the principal business activities of the Owner.

9.4 Offensive and Illegal Activities. No immoral, improper, offensive, noxious or unlawful use shall be made of any Unit or of the Common Area, and all applicable laws, zoning ordinances and regulations of all governmental authorities shall be observed. No Owner shall permit or allow anything to be done or kept in his Unit, or on the Common Area, which will increase the rate of insurance on the Unit, or which will obstruct or interfere with the rights of other occupants of the other Units or annoy or embarrass them, nor shall any Owner undertake any use or practice which shall constitute a nuisance to any other Owner, or which interferes with the peaceful possession and proper use of any other Unit or the Common Area. No Owner and/or tenant shall play, operate, or permit to be played or operated, any musical instrument or electronic device in his Unit or on the Common Area in such a manner as to disturb or annoy other Owners.

9.5 Structural Alterations and Exterior Appearance. No Owner shall permit any structural modification or alteration to be made to any Unit, nor alter or cause any changes to be made to or alter the appearance of the exterior of any building (including painting, installing television, satellite dish, radio antenna, or signs), without first complying with the provisions of Article 10. No Owner shall fix any object to the Common Area (including fences, flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the Common Area or Limited Common Area without first complying with the provisions of Article 10.

9.6 Signs. The Board is authorized to regulate signs by adopting the Rules and Regulations relating thereto. No signs may be displayed unless such display is in accordance with the Rules and Regulations.

9.7 Stormwater Runoff Regulations. All Units are subject to the State of North Carolina rules and regulations concerning stormwater runoff as these rules and regulations are amended from time to time. The State of North Carolina, the Town of Kure Beach and the County of New Hanover, to the extent of their respective interests therein, are hereby made a beneficiary of this Declaration, to the extent necessary to enforce any stormwater runoff regulations as the same may be amended from time to time. The Property, including the Common Area, is subject to the provisions of the Master Governing Documents concerning storm water management.

9.8 Removal of Nonconforming Condition. Any use, condition, structure or improvement placed, allowed to exist or made of or upon any Unit in violation of this Declaration, including but not limited to this Article 9, shall be deemed to be nonconforming. Upon written request from the Board, the Owner responsible for said nonconforming condition shall, at its own cost and expense, correct such nonconforming use, structure or improvement in accordance with the instructions of the Board. Should an Owner fail to act as required, the Board, or its designees shall have the right to enter the property and correct the nonconforming condition. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Owner of the Unit and collected as an Individual Assessment as provided in Article 8.

**ARTICLE 10**  
**Architectural Review**

An architectural review process is hereby established in accordance with this Article 10. The Board is authorized from time to time publish and promulgate architectural standards which shall be fair, reasonable and uniformly applied in regard to the Units. These standards shall carry forward the spirit and intention of the covenants, conditions and restrictions of this Declaration.

10.1 Building Restrictions No structures or buildings other than one (1) single family townhouse shall be constructed on any Lot. No structures of a temporary character, such as a trailer, tent, shack, barn, shed or other outbuilding shall be constructed or used on any portion of the Property at any time. No heat pump, propane tank, hot tub pump or other similarly exposed mechanical equipment other than those originally installed by the Declarant shall be placed on any Lot without the express approval of the Board. No window air conditioning unit shall be installed in any Unit.

No building, fence, wall or other structure shall be constructed, erected or maintained on, or removed from, the Property until the plans and specifications for such work have been approved by the Board as provided below. The plans and specifications (the "Plans") shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Board shall review and approve or disapprove the plans as to harmony of external design, color and location in relation to surrounding structures and topography. The Board may also consider (but is not required to consider or limited to considering) the following: visual aesthetics, natural platforms and finish grade elevations, the suitability of the proposed building, improvements, structure, or landscaping and the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony of external design with surrounding structures and environment, the location in relation to surrounding structures and plant life, and the effect thereof on the adjacent or neighboring property. The Association shall have the right to charge a reasonable fee for reviewing each such application.

Upon receipt of a submission of said Plans, the Board shall advise the party submitting the same in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with this Declaration, the reasons for such finding, and suggestions for the curing of such objections. The Board shall use good faith, diligent efforts to respond to a Plan submittal within thirty (30) days after receipt of same, although matters not within the reasonable control of the Board may prevent this from occurring in certain cases. In the event the Board fails to advise the submitting party by written notice within sixty (60) days of either the approval or disapproval of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery. If construction does not commence on a project for which Plans have been approved within nine (9) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans for reconsideration.

10.2 Exterior Alterations. No Owner shall make structural alterations or exterior modifications to the improvements on his Unit or to any of the Common Areas, including but not limited to a change in exterior paint colors, the erection of awnings, the installation of storm doors,

storm windows or window screens or the decoration of porches or balconies, without the written approval of the Board. The Board shall not approve any alterations or exterior modifications which, as determined by the Board in its reasonable judgment, would jeopardize or impair the soundness, safety or appearance of the Property.

10.3 Interior Alterations. Any Owner may remodel, paint, or redecorate the interior of structures on his Unit without approval of the Board. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications

10.4 Architectural Review Committee The Board shall have the option, but not the obligation, to establish an Architectural Review Committee (the "ARC") to administer the architectural design standards and review process promulgated hereunder. If the Board elects to establish such an Architectural Review Committee, the Board shall establish guidelines regarding the operation and jurisdiction of such committee and shall appoint its members, each of whom shall serve and may be removed in the Board's discretion.

10.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board (or if applicable, the ARC) will change from time to time and that interpretation, application and enforcement of this Article 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

10.6 Variance. The Board (or if applicable, the ARC) may authorize in its discretion reasonable variances or adjustments from compliance with any of its guidelines and procedures in order to alleviate practical difficulties and hardship in their enforcement and operation. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing or (b) prevent the Board (or ARC) from denying a variance in other different or even identical circumstances. Any such variances shall not violate the spirit or the intent of this document to create a subdivision of Units owned in fee by various persons with each such Owner having an easement upon areas owned by the Association.

10.7 Limitation of Liability. Neither the Association, the Board nor the ARC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board, nor the ARC shall be held liable for any injury, damages, or loss arising out of the review and approval of any application, including, but not limited to, the grant or denial of a variance, the manner or quality of construction, defects in any plans or specifications, or deficiencies in kind or quality of materials used, or for compliance or non-compliance with building codes and other governmental requirements

## **ARTICLE 11** **Easements**

### 11.1 Easement for Utility Installation

a All of the Property, including Lots and Common Area, shall be subject to a perpetual non-exclusive easement for water lines, sanitary sewers, storm drainage facilities, telephone and electric power lines, television antenna lines, and other public utilities within the Property whether the same be within the boundaries of any Lots(s).

b. Easements and rights of way over and upon the rear, front and side ten (10) feet of each Lot for drainage and the installation and maintenance of utilities and services, including, without limitation, water, sewer, drainage and stormwater runoff facilities, are reserved the Association and its successors and assigns for such purposes as the Association may deem incident and appropriate to its overall development plan. If the side setback is less than ten (10) feet, then the reserved easement shall be the width of the setback. The easements and right of way areas reserved by the Association on each Lot pursuant hereto shall be maintained continuously by the Owner, but no structures or plantings or other material shall be placed or permitted or remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Improvements within such areas also shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

#### 11.2 Easements for Cross-Drainage.

a Every Unit and the Common Area shall be burdened with easements for drainage of water runoff from other portions of the Properties; provided, no Owner shall alter the drainage on any Unit so as to materially increase the drainage of water onto adjacent portions of the Properties without the consent of the Owner of the affected property.

b. The Properties are burdened with a permanent easement for the benefit of the Declarant and its successors and assigns, for all stormwater runoff and drainage facilities located on or to be located on the Properties, including, without limitation, any stormwater retention ponds or ditches. This easement includes the right to drill, install, locate, maintain and use pipes, conduits and pumps running to the stormwater retention ponds and other related facilities located on the Properties.

11.3 Power to Grant Easements. Subject to the requirements of the Planned Community Act, the Association shall have the power and authority to grant and to establish in, over, upon and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the property.

11.4 Easement for Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article 5 hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.5 Easements for Owner's Ingress and Egress Every Owner, and his or her heirs, successors, assigns, guests and licensees, shall have a perpetual, non-exclusive easement and right of ingress and egress over and across any of the roads and sidewalks located or to be located within the Properties, as shown on any recorded plats of the Property, for the respective purposes of providing vehicular and pedestrian access to and from the Properties

11.6 Easements for Exterior Maintenance by the Association. The Association, and its successors and assigns, hereby reserve the right to perform repairs and construction work, and to store materials in secure areas, on Units and Common Area, and the further right to control all such work and repairs, and the right of access thereto, until its completion. The Association, acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all Properties as may be reasonably necessary to perform the exterior maintenance called for in Article 5 of the Declaration

11.7 Easements Run with the Land. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on all undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the benefit of and be binding on the undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and any other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any Mortgage or deed of trust or other evidence of obligation, to the easements and rights described in the Declaration.

## ARTICLE 12

### Compliance with the Governing Documents

In the case of failure of an Owner or occupant to comply with the terms and provisions contained in the Governing Documents, the following relief shall be available:

12.1 Enforcement The Association and any aggrieved Owner within the Properties, shall have the right to enforce by any proceeding at law or in equity, all of the conditions, covenants and restrictions of the Governing Documents and any and all laws hereinafter imposed pursuant to the terms of the Declaration. The prevailing party shall be entitled to collect all costs thereof, including reasonable attorney's fees (which shall be determined using reasonable hourly rates).

12.2 Remedies. The Association shall have the right to remedy the violation and assess the costs of remedying same against the offending Owner as an Individual Assessment as provided in Article 8 herein

#### 12.3 Suspension of Rights and Fines

a Suspension of Rights. For any violation by an Owner of the conditions, covenants and restrictions of this Declaration or any provisions of the other Governing Documents (including, but not limited to, the nonpayment of any assessment), the Association shall, after providing the Owner with any notice and any opportunity to be heard as may be provided in the Bylaws, have the right to suspend: (a) the offending Owner's voting rights, (b) the use by such Owner, his agents, lessees, employees, licensees and invitees of the Common Areas and recreational

facilities within the Properties , and (c) any other privileges or services provided by the Association (subsections “a”, “b”, and “c”, collectively herein called “Village Privileges”) for any period during which a violation continues

b Fines. For any violation by an Owner of the conditions, covenants and restrictions of this Declaration or any provisions of the other Governing Documents (including, but not limited to, the nonpayment of any general, special or individual assessment), the Association shall, after providing the Owner with any notice and any opportunity to be heard as may be provided in the Bylaws, have the right to impose reasonable fines for any period during which a violation continues. Notwithstanding the foregoing, the Association shall not be required to provide any Owner with notice and an opportunity to be heard in order to impose reasonable fines for the late payment or nonpayment of any assessment which has remained unpaid for a period of thirty (30) days or longer. The Association may establish a schedule of fines for the violation of this Declaration or any provisions of the other Governing Documents. If an Owner does not pay the imposed fine within fifteen (15) days of its imposition, the fine shall be an Individual Assessment against the property and may be enforced by the Association in accordance with Article 8 herein and with applicable law.

12.4 Remedies Cumulative. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided in the Governing Documents and/or by law.

12.5 Waiver. The failure of the Association or any person or Owner to enforce any restriction contained in the Governing Documents shall not be deemed a waiver of the right to do so thereafter.

### **ARTICLE 13** **Duration, Amendment & Termination**

13.1 Units, Persons and Entities Subject to the Declaration. All present and future Owners, tenants, and occupants of Units and their guests or invitees, licensees, employees or agents, shall be subject to, and shall comply with the covenants, conditions, restrictions and affirmative obligations set forth in the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration are accepted and ratified by such Owner, tenant or occupant and that they will fully comply with the terms and conditions of said Declaration.

13.2 Duration and Termination. The covenants, conditions, restrictions, and affirmative obligations of the Declaration shall inure to the benefit of and be enforceable by the Association or the Owner of any Unit, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date the Declaration is recorded in the New Hanover County Registry, after which date the Declaration shall be extended automatically for successive periods of twenty (20) years, unless eighty percent (80%) of the then Owners agree to revoke the Declaration, in which case, for such revocation to be effective, an instrument must be recorded declaring the same at the New Hanover County Registry. The covenants, restrictions, conditions, and affirmative obligations of the Declaration shall run with and bind the land and shall bind any person having at any time any interest or estate in any of the Properties as though such provision were made a part of each and every deed of conveyance or lease.

13.3 Amendment. The Declaration may be amended by vote of not less than sixty-seven percent (67%) of the Class "A" Members, and an instrument must be recorded at the New Hanover County Registry for such an amendment to be effective. A certificate of the Secretary of the Association documenting votes held and voting rights exercised will be evidence of ownership and voting representation for the purposes of any such amendment.

#### **ARTICLE 14** **General Provisions**

14.1 Captions and Construction. The captions contained in the Declaration are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Declaration or the intent of any provision thereof. In interpreting words in the Declaration, the singular will include the plural, the plural will include the singular, and the use of any gender will include all genders. Where there is more than one Owner of a Unit, said Owners are jointly and severally liable for the obligations herein imposed.

14.2 Common Area and Amenities. Unless otherwise provided in the Governing Documents, all of the Common Area and any other park, recreation area, recreation facility, dedicated access and other amenities appurtenant to the Subdivision, whether or not shown and delineated on any recorded plat of the Properties, shall be considered private and for the sole and exclusive use of the Owners of Units within the Properties.

14.3 Waiver No provision contained in the Governing Documents shall be deemed to be abrogated, abandoned, or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

14.4 Invalidity. The invalidity of any provision of the Governing Documents does not impair or affect in any manner the validity, enforceability or effect of the other provision, and in such event, all of the other provisions of the Governing Documents shall continue in full force and effect.

14.5 Conflict The Governing Documents are intended to comply with the requirements of the Planned Community Act, except in the event that the Planned Community Act allows the Declaration to vary or to specify alternative provisions and in the event that this Declaration has varied or specified alternate provisions, in which case this Declaration shall control. Subject to the foregoing and to the extent any provision(s) of the Governing Documents are inconsistent with and cannot be reconciled with the terms of the Planned Community Act, the terms of the Planned Community Act shall be controlling with regard to such term. In the event of any conflict between this Declaration and any other Governing Document, this Declaration shall control.

14.6 Limitation of Liability. Neither the Association nor any officer or member of the Executive Board will be liable to any party for any act or for any failure to act with respect to any matter arising by, through, or under the Governing Documents, so long as the action or failure to act was made in good faith. The Association will indemnify all of the officers and the Board with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.



14.7 Governing Law The laws of the State of North Carolina shall apply in interpreting the Governing Documents

14.8 Exhibits Any exhibit, schedule, or certification accompanying this Declaration or any other Governing Document is hereby made a part of that document and incorporated therein by reference

**CERTIFICATION**

I, the undersigned, do hereby certify

That I am the duly elected and acting Secretary of The Keys at Kure Beach Homeowners Association, Inc, a North Carolina non-profit corporation, that the foregoing Amended, Consolidated and Restated Declaration was submitted to a vote of the Members at a duly called special meeting of the Association on the 3<sup>rd</sup> day of NOVEMBER, 2011 at which a quorum was present and said Amended, Consolidated and Restated Declaration was approved and adopted by a vote of 63 Members, which represented more than sixty-seven percent (67%) of the Owners

THE KEYS AT KURE BEACH HOMEOWNERS ASSOCIATION, INC

By [Signature]  
Print Name MICHALANN HOBSON  
Title Secretary

STATE OF NORTH CAROLINA

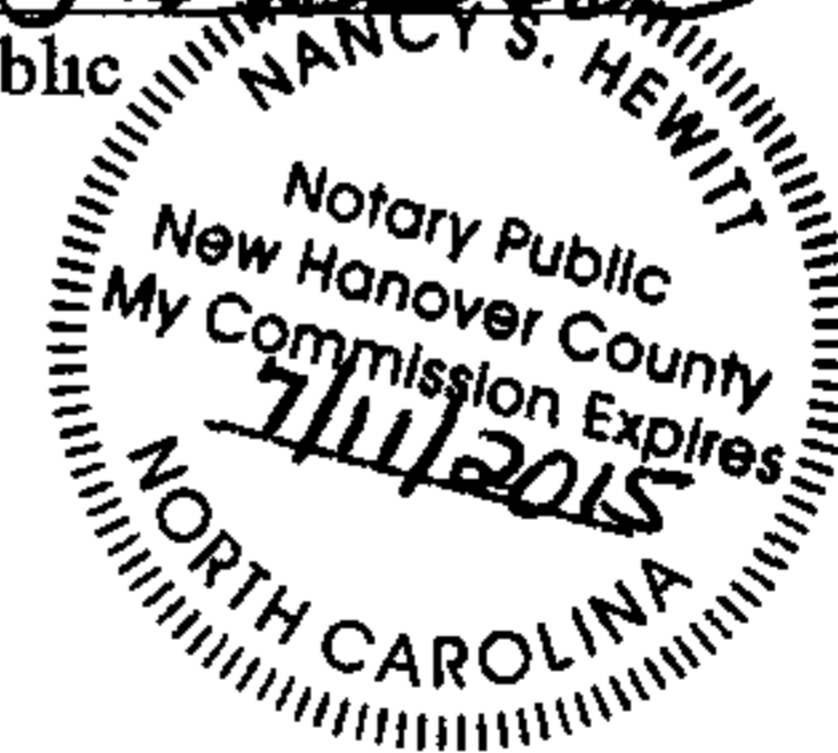
COUNTY OF New Hanover  
(County where acknowledgment taken)

I, Nancy S. Hewitt, a Notary Public in and for New Hanover County, North Carolina, certify that Michalann Hobson personally came before me this day and acknowledged that she is Secretary of THE KEYS AT KURE BEACH HOMEOWNERS ASSOCIATION, INC, a North Carolina corporation, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Secretary

WITNESS my hand and official seal this 4 day of November, 2011

[Signature]  
Notary Public

My commission expires 7/11/2015



**EXHIBIT A**

BEING all of those certain tracts or parcel of land lying shown in Map Book 34, Page 23; Map Book 34, Page 165, Map Book 34, Page 284; Map Book 34, Page 278, Map Book 34, Page 324; Map Book 34, Page 364, Map Book 35, Page 17; Map Book 35, Page 44 and Map Book 35, Page 103 of the New Hanover County Registry.



JENNIFER H. MACNEISH  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

**Filed For Registration: 11/15/2011 12:02:05 PM**

**Book: RE 5598 Page: 1447-1473**

**Document No.: 2011031318**

**27 PGS \$70.00**

**Recorder: CARTER, CAROLYN**

**State of North Carolina, County of New Hanover**

**PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.**

**\*2011031318\***

**2011031318**