



FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
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PREPARED BY: J. M. Baker, Attorney at Law
RETURN TO: 720 North Third Street, Suite 202
Wilmington, NC 28401

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

DECLARATION OF CONDOMINIUM

205 N. THIRD AVENUE, A CONDOMINIUM

THIS DECLARATION, made this 1st day of July, 2005, by **Kure Beach Holdings, LLC** hereinafter called "Declarant" - being the owner in fee simple of the property hereinafter described

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the Town of Kure Beach, New Hanover County, North Carolina, which is more particularly described as follows:

BEGINNING at a point in the Western line of Third Street, said point being 50 feet in a northwardly direction along Third Street from the intersection of the western line of Third Street within the northern line of Avenue L; running thence from said beginning point Westwardly and at right angles to Third Street 100 feet to the center line of Block 35; runs thence northwardly along said center line and parallel with Third Street 50 feet to a point; runs thence eastwardly and parallel with Avenue L, 100 feet to a point in the western line of Third Street; runs thence with said Western line of Third Street 50 feet to the point of beginning, the same being the northern one-half of Lots 1 and 2 of Block 35 as shown on the map of Fort Fisher Sea Beach as recorded in Book 73, Page 236, New Hanover County Registry.

NOW, THEREFORE, Declarant hereby submits The Property to condominium ownership pursuant to Chapter 47C of the General Statutes of North Carolina as amended, known as the "North Carolina Condominium Act", and to that end does hereby publish and declare that all of the said property to be known as "205 N. Third Avenue, a Condominium" shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, uses and

obligations which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.
DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following words and terms shall have the following meanings:

- Section 1.** **Act.** The North Carolina Condominium Act, which is codified as Chapter 47C of the North Carolina General Statutes.
- Section 2.** **Allocated Interests.** The undivided interests in the Common Elements, the common expense liability, and in the Association allocated to each unit.
- Section 3.** **Assessment.** A share of the funds required for the payment of common expenses which, from time to time, is assessed against the unit owner by the Association.
- Section 4.** **Association.** The unincorporated association to be known as 205 N. THIRD AVENUE HOMEOWNER'S ASSOCIATION the entity responsible for the operation of the condominium pursuant to the Act, which entity includes all of the unit owners acting as a group in accordance with the By-Laws and Declaration.
- Section 5.** **Board of Managers or Board.** The Board of Managers of the Association.
- Section 6.** **Building.** The "building" means that certain three-story building of wood frame construction containing two side by side condominium units, designated as Units #1 and #2 upon the survey prepared by Arnold W. Carson, PLS, PC, dated 5/20/2005, together with the layout of the building shown diagrammatically upon the plans thereof all hereto referenced in Exhibit B and recorded in the Condominium Plat Book in the New Hanover County Registry, showing all particulars of the units as required by law.
- Section 7.** **By-laws.** The By-laws for the government of the Condominium as they exist from time to time.
- Section 8.** **Common Elements or Common Areas.** These terms shall be used interchangeably to mean and refer to all portions of the condominium other than the units.
- Section 9.** **Common Expenses.** Expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- Section 10.** **Common Expense Liability.** The liability for common expenses allocated to each unit pursuant to the Act and this Declaration.

- Section 11. Condominium.** The Condominium consists of the land shown upon the survey plat prepared by Arnold W. Carson, PLS, PC, and includes that certain three-story, building located on three levels located at 205 N. Third Avenue, according to the plats and plans thereof hereto referenced in Exhibit B and also recorded in the Condominium Plat Book in the New Hanover County Registry, the same to be known as “205 N. Third Avenue”, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions, all of which is submitted to condominium ownership by this Declaration.
- Section 12. Condominium Documents.** This Declaration, the By-laws, the Rules and Regulations, if any, and all other exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents may be amended from time to time.
- Section 13. Declarant** means Kure Beach Holdings, LLC, its successors and assigns.
- Section 14. Declaration.** This Declaration of Condominium as it may be from time to time amended or supplemented.
- Section 15. Eligible Mortgage Holder or Eligible Holders** means the holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.
- Section 16. Limited Common Elements or Limited Common Areas.** These terms shall be used interchangeably to mean and refer to those portions of the common elements which are allocated by the Declaration for the exclusive use of a particular unit.
- Section 17. Member.** Every person or entity that holds membership in the Association.
- Section 18. Owner or Unit Owner.** The record owner, whether one or more persons or entities, of a fee simple title to a unit which is a part of the Condominium, together with an undivided interest in the common elements as hereinafter set forth, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- Section 19. Plat or Recorded Plat.** The plat or plats of the condominium recorded or to be recorded in the Office of the Register of Deeds of New Hanover County.
- Section 20. Property.** The real estate described in Exhibit “A”, attached hereto and incorporated herein by reference, together with the building and improvements thereon.
- Section 21. Unit or Condominium Unit.** These terms shall be used interchangeably to mean and refer to a physical portion of the condominium designated for separate ownership or occupancy.

ARTICLE II.
DESCRIPTION OF BUILDING

The Declarant has constructed or will construct upon the property described in Exhibit "A" hereto attached, one three-story building of wood frame construction on raised wood pilings, containing two condominium units for residential purposes as herein provided. A plat of survey of the property by Arnold W. Carson, PLS, PC, showing the location of said building and all particulars of the units described in the plans thereof that are referenced in Exhibit B and made a part hereof and also recorded in the Condominium Plat Book in the New Hanover County Registry as required by law. The two units shall also be shown and designated on the recorded plat as Units #1 and #2. Each unit contains eight rooms, with approximately one thousand five hundred eighty six square feet of heated area and has access to all of the general common areas designated on the above referenced Plat. The two condominium units share a common interior wall (a party wall) which separates the two units. Each unit is three stories in height and is bounded as to horizontal and vertical boundaries as follows: by the exterior surfaces of its perimeter walls, the party wall which separates them and the land lying beneath the units as shown on the above referenced plat.

The general and common areas, common elements and facilities are shown upon the plat of the property referred to above recorded or to be recorded in the New Hanover County Registry. Each unit owner will receive with the conveyance of his unit an undivided one-half ownership interest in the general common elements and facilities.

The limited common elements/common areas and facilities are also shown on the aforesaid recorded plat of the property as recorded in the New Hanover County Registry. Each unit owner will receive a one-half undivided interest in the limited common elements or limited common areas and facilities, and the exclusive right to possession of the limited common elements designated for use by each unit.

ARTICLE III.
USE RESTRICTIONS

The use of the property shall be in accordance with the following provisions:

A. Each of the units shall be occupied only by a family, its servants, and guests, as a residence and for no other purposes. No unit may be divided or subdivided into a smaller unit nor any portion thereof sold or otherwise transferred.

B. The common elements/common areas and facilities shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the units.

C. No use or practice shall be permitted on the Property which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No Unit Owner shall permit any use of his Unit or of the Common Elements which will increase the rate of insurance upon the Property or any part thereof. All valid laws, zoning ordinances and regulations of

all governmental bodies having jurisdiction thereof shall be observed. No single rooms may be rented.

D. Reasonable regulations concerning the use of the Condominium Property may be made and amended from time to time by 205 N. Third Avenue HOMEOWNER'S ASSOCIATION (herein referred to as the "ASSOCIATION") in the manner provided by its by-Laws, Rules and Regulations as the same may be amended from time to time.

ARTICLE IV. **EASEMENTS**

A. Each unit shall be subject to an easement in favor of the other unit to use the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving such other unit and located in such unit. The Association shall have the right to be exercised by the Board of Managers or its agents, to enter each unit from time to time at reasonable hours as may be necessary for the operation of the Condominium to inspect the same, to remove violations therefrom and to maintain, repair or replace the common elements, if any, contained therein or elsewhere in the buildings.

B. Each unit and all common elements and limited common elements are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage or other lines or other common elements, whether or not the cause of any or all of those activities originates in the unit in which the work must be performed.

C. Easements are hereby declared and granted, and the Board may hereafter declare, grant or assume easements for utility purposes for the benefit of the Condominium Property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits, and wires over, under, along and on any portion of the common elements; each unit owner hereby grants to the Board, or its designee, an irrevocable power of attorney to execute, acknowledge and record for and in the name of the Association or each unit owner such instruments as may be necessary to effectuate the foregoing.

D. Easements are hereby declared and granted over common walkways, as shown upon the plats of the Condominium for access egress and regress through the common areas by the Unit Owners, their agents, guests, invitees and assigns, under such rules and regulations as may be prescribed by the Board.

E. In case of emergency originating in or threatening any unit or the common elements, regardless whether the unit owner is present at the time of such emergency, the Board of Managers or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

F. All easements and rights described herein are easements appurtenant, and shall run with the land by whomsoever owned, and shall inure to the benefit of and be binding on the

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 whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

ARTICLE V.
TAXES

Each individual unit and its one-half undivided interest in the common elements and facilities shall be deemed to be a separate parcel and shall be separately assessed and taxed for all types of taxes authorized by law, including but not limited to special ad valorem levies and special assessments. Each unit holder shall be liable solely for the amount of taxes against his individual unit and undivided interest in the common elements and facilities and shall not be affected by the consequence resulting from the tax delinquency of any other unit holder. Neither shall the building, the Condominium Property, nor any of the common elements and facilities be deemed to be a separate parcel for the purposes of taxation.

ARTICLE VI.
ASSESSMENTS

Assessments against unit owners by the Board of Managers made pursuant to the By-Laws shall, if not paid when due, create a lien in favor of the Association against the unit of the defaulting owner as provided in Chapter 47C of the North Carolina General Statutes, and shall be collected as provided therein and in the By-Laws as they may be amended from time to time.

ARTICLE VII.
PARTY WALLS

A. The wall connecting adjacent units is a "party wall" and is situated in or about the boundary line separating such units. The Party Wall shall be a part of the common elements.

B. All exterior and interior walls, floors, ceilings, roof structure, pilings, decks, porches, patios, balconies, structural members, shutters, awnings, window boxes, doorsteps and stoops are common elements, except that any decks, porches, balconies, patios and exterior doors and windows or other fixtures designated to serve a single unit but located outside the unit's boundaries are limited common elements allocated exclusively to that unit, pursuant to G.S. 47C-2-1-2(4).

C. To the extent any duct, wire, conduit, or any other fixtures lie partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated exclusively to that unit, and any portion thereof serving more than one unit or portion of the common elements is a part of the common elements, pursuant to G.S. 47C-2-102(2).

D. Each wall which is built as a part of the original construction of a unit and placed on the dividing line between the units shall constitute a party wall, and to the extent not inconsistent

with the provisions of the Article, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

E. 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.

F. Notwithstanding any other provisions of the Article, an owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

G. 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.

H. If any owner desires to sell his unit, such owner may, in order to assure a prospective purchaser that no adjoining unit owner has a right of contribution as provided in this Article, request of the adjoining owner a certification that no right of contribution exists, whereupon it shall be the duty of the adjoining owner to make such certification immediately upon request and without charges; provided, however, that where the adjoining unit owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

I. In the event of any dispute arising concerning a party wall, or under the provision of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina as then existing.

ARTICLE VIII. **LIENS**

All liens provided for herein shall be subordinate, and are hereby subordinated, to the lien of any first mortgage or deed of trust given to any lender to secure a loan, the proceeds of which are used to finance the purchase of any unit or units, unless any such lien provided for herein shall have been recorded in the Office of the Clerk of Superior Court of New Hanover County prior to recordation to the said first lien mortgage or deed of trust in the Office of the Register of Deeds of New Hanover County, North Carolina.

ARTICLE IX. **ARCHITECTURAL CONTROL**

A. No building, fence, wall or other structure or improvement shall be commenced, erected or maintained upon the condominium, nor shall any exterior addition or change therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board.

B. The exterior color of a unit cannot be changed unless the color scheme of the entire condominium is similarly changed. Any such change requires unanimous approval of unit owners at a duly called meeting of the Association at which a quorum is present.

C. The owner of either unit shall have no right to change the exterior color scheme of his unit without the consent and approval of the other unit owner.

ARTICLE X.
ENFORCEMENT

The ASSOCIATION or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

ARTICLE XI.
NOTICES

The name and address of the process agent to receive service of process in any matters affecting the property is as follows:

205 N. THIRD AVENUE HOMEOWNER'S ASSOCIATION
205 N. THIRD AVENUE
KURE BEACH, NC, 28428

ARTICLE XII.
BINDING EFFECT

The covenants and restrictions of this Declaration shall run with and bind the land, and shall insure to the benefit of and be enforceable by the Association, or the owner of any unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

ARTICLE XIII.
AMENDMENT

This Declaration may be amended at any time by an instrument in writing executed by the owners of both units #1 and #2 of 205 N. Third Avenue and shall be effective upon the recording of such amendment in the Office of the Register of Deeds of New Hanover County.

IN TESTIMONY WHEREOF, the Declarant has caused this Declaration to be executed in its company name by its duly authorized member/manager, all as of the first above written.

DECLARANT:

Kure Beach Holdings, LLC

[Signature]
Timothy D. Samuels, Member/Manager

STATE OF NC

COUNTY OF NEW HANOVER

I, a notary public of the County and State aforesaid, certify that Timothy D. Samuels personally came before me this day and acknowledged that he is Member/Manager of Kure Beach Holdings, LLC and that he as Member/Manager, being authorized to do so, executed the foregoing instrument on behalf of said Corporation.

Witness my hand and official stamp or seal, this the 1ST day of July, 2005.

[Signature]
Notary Public
My commission Expires: 3/4/07



CONSENT OF LIENHOLDERS

Southland Associates, Inc., TRUSTEE and Suntrust Bank, successor by merger to Central Carolina Bank, BENEFICIARY under the deed(s) of trust recorded in Book 4589 at Page 470, encumbering the property hereby execute this instrument to consent to the imposition of the condominium regime on the property described in Exhibit A to the Declaration of 205 N. Third Avenue, A Condominium.

IN TESTIMONY WHEREOF, the parties have properly executed and sealed this Consent, this the 1st day of July, 2005.

SOUTHLAND ASSOCIATES, INC.

[Signature] (SEAL)
Charles Davis, Vice President

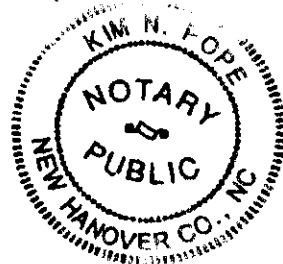
STATE OF NORTH CAROLINA
COUNTY OF New Hanover

I, Kim N. Pope, a Notary Public for New Hanover County, North Carolina, hereby certify that Charles Davis personally appeared before me this day and acknowledged that he is the Vice President of SOUTHLAND ASSOCIATES, INC., a corporation, and that he as Vice President, being authorized to do so, executed the foregoing instrument on behalf of said corporation.

WITNESS my hand and seal this 1st day of July, 2005.

Kim N. Pope
Notary Public
My Commission Expires: 03-16-09

(NOTARIAL SEAL)



SUNTRUST BANK, SUCCESSOR BY MERGER TO
CENTRAL CAROLINA BANK

By: [Signature]
Charles Davis, 1st Vice President

STATE OF NORTH CAROLINA
COUNTY OF New Hanover

I, Kim N. Pope, a Notary Public for New Hanover County, North Carolina, hereby certify that Charles Davis personally appeared before me this day and acknowledged that he is the 1st Vice President of SUNTRUST BANK, SUCCESSOR BY MERGER TO CENTRAL CAROLINA BANK, a North Carolina Corporation, and that he as 1st Vice President, being authorized to do so, executed the foregoing instrument on behalf of said corporation.

WITNESS my hand and seal this 1st day of July, 2005

Kim N. Pope
Notary Public
My Commission Expires: 03-16-09

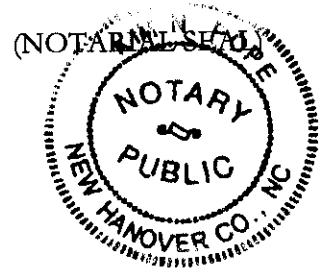


EXHIBIT A

**DECLARATION OF CONDOMINIUM
205 N. Third Avenue**

DESCRIPTION OF CONDOMINIUM PROPERTY

BEGINNING at a point in the Western line of Third Street, said point being 50 feet in a northwardly direction along Third Street from the intersection of the western line of Third Street within the northern line of Avenue L; running thence from said beginning point Westwardly and at right angles to Third Street 100 feet to the center line of Block 35; runs thence northwardly along said center line and parallel with Third Street 50 feet to a point; runs thence eastwardly and parallel with Avenue L, 100 feet to a point in the western line of Third Street; runs thence with said Western line of Third Street 50 feet to the point of beginning, the same being the northern one-half of Lots 1 and 2 of Block 35 as shown on the map of Fort Fisher Sea Beach as recorded in Book 73, Page 236, New Hanover County Registry.

EXHIBIT B

**DECLARATION OF CONDOMINIUM
205 N. Third Avenue**

COMBINED SURVEY AND SITE PLAN AND FLOOR PLANS OF
CONDOMINIUM RECORDED IN CONDO PLAT BOOK 14 AT PAGE
326 OF THE NEW HANOVER COUNTY REGISTRY.

B Y - L A W S
OF

205 N. THIRD AVENUE

ARTICLE I.
PLAN OF CONDOMINIUM OWNERSHIP

Section 1. Condominium Unit Ownership. The property located at 205 N. Third Avenue, hereinafter called "205 N. Third Avenue, a Condominium" has been platted and a plat thereof is recorded or shall be recorded in the Condominium Plat Book in the Office of the Register of Deeds of New Hanover County, North Carolina.

Section 2. Title to Units. Title to Condominium Units may be taken in the name of an individual or in the names of two or more persons, as tenants in common or as joint tenants, or as tenants by the entirety, or in the name of a corporation or partnership, or in the name of a fiduciary.

Section 3. Applicability of By-Laws. The provisions of these By-Laws are applicable to 205 N. Third Avenue and its common elements and to the use and occupancy thereof. The term "205 N. Third Avenue and its common elements" as used herein shall include the land, the building and all other improvements thereon, all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith.

Section 4. Application. All present and future owners, mortgagees, lessees, and occupants of Condominium Units and their employees and any other persons who may use the facilities in any manner are subject to these By-Laws, the Declaration and Rules and Regulations pertaining to the use and operation of the Condominium Property. The acceptance of a deed or conveyance, or the entering into of a lease, or the act of occupancy of a unit shall constitute an acceptance of the provisions of these instruments and an agreement to comply therewith.

Section 5. Office. The office of the Owners Association and of the Board of Managers shall be located at 205 N. Third Avenue, KURE BEACH, NC, 28428.

ARTICLE II.
BOARD OF MANAGERS

Section 1. Number and Qualification. The affairs of the Condominium Property and the Owners Association shall be managed by a Board of Managers. The Board of Managers shall be composed of two persons, each of whom shall be an owner or spouse of an owner of a separate Condominium unit, or in the case of partnership owners or mortgagees, shall be members or employees of such partnership, or in the case of corporate owners or mortgagees, shall be officers, shareholders, or employees of such corporations or in the case of fiduciary owners or mortgagees shall be the fiduciaries, or officers or employees of such fiduciaries.

Section 2. Powers and Duties. The Board of Managers shall have the powers and duties necessary for the administration of the affairs of the Condominium and Common Elements except such powers and duties as by law or by these By-Laws may not be delegated to the Board of Managers by the unit owners. The powers and duties to be exercised by the Board of Managers shall include, but not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the common elements;
- (b) Determination of the amounts required for operation, maintenance and other affairs of the Condominium and its Common Elements;
- (c) Collection of the common charges from the unit owners;
- (d) Employment and dismissal of personnel as necessary for efficient maintenance and operation;
- (e) Adoption and amendment of rules and regulations covering the details of the operation and use of the Condominium and Common Elements;
- (f) Opening of bank accounts on behalf of the Owners Association and designating the signatures required therefore;
- (g) Obtaining insurance for the Condominium Units, and Common Elements pursuant to the provisions of Article V. Section 9 hereof; and
- (h) Making repairs, additions, and improvement to, or alterations of, the property and repairs to and restoration of the property in accordance with the provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

Section 3. Election and Term of Office. The Board of Managers shall be elected at the first annual meeting of the unit owners; the term of office of the members of the Board of Managers shall be fixed at three years. At the expiration of the initial term of office of each respective member of the Board of managers, his successor shall be elected to serve for a term of three years. The members of the Board of Managers shall hold office until their respective successors shall have been elected by the unit owners.

Section 4. Vacancies. Vacancies in the Board of Managers caused by any reason shall be filled by vote of a majority of the owners of the unit to be represented at a special meeting of that unit's owners held for that purpose promptly after the occurrence of any such vacancy. Each person so elected shall be a member of the Board of Managers for the remainder of the term vacated by the member so removed or retired.

Section 5. Organization Meeting. The first meeting of the members of the Board of managers following the annual meeting of the unit owners shall be held within ten (10) days thereafter, at such time and place as shall be fixed by the unit owners at the meeting at which such Board of Managers shall have been elected and no notice shall be necessary to the newly elected