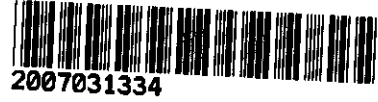


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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2007 JUN 21 09:12:21 AM
BK: 5197 PG: 2800-2818 FEE: \$65.00

INSTRUMENT # 2007031334

**DECLARATION OF
310 NORTH 3rd AVENUE CONDOMINIUM**

This Declaration is made on June 12th, 2007, by BRC Kure Beach, LLC, hereinafter referred to as "Declarant." Declarant hereby states and declares as follows:

- (a) Declarant is the owner of that tract of real estate located in New Hanover County, North Carolina, described as being duly made of record at Book 4746, Pages 317-319, New Hanover County Registry and being known as Lot 20, Block 13, of the Town of Kure Beach, according to a Map thereof recorded in Map Book 4 at Pages 90 & 91 of the New Hanover County Registry, and more particularly described in Exhibit A. The tract of real estate and all rights and privileges appurtenant thereto are hereinafter collectively referred to as "the Property."
- (b) Declarant hereby submits the Property to condominium ownership pursuant to N.C.G.S. Chapter 47C.
- (c) Declarant does further publish and declare that the Property is and shall be held subject to certain covenants, conditions, and restrictions to be binding upon all owners of any interest in the condominium and their lessees, guests, mortgagees, heirs, executors, administrators, successors, and assigns.

THEREFORE, pursuant to N.C.G.S. § 47C-2-101, Declarant hereby executes this Declaration to publish and declare that the Property shall be known as 310 NORTH 3rd AVENUE CONDOMINIUM, and declares that henceforth the condominium and all units thereof shall be held and owned subject to the following terms, provisions, covenants, conditions, and restrictions, which shall be binding upon all owners of any unit of the condominium and their lessees, guests, mortgagees, heirs, executors, administrators, successors, and assigns:

RETURN TO Eric Braun

ARTICLE I DEFINITIONS

The definitions set forth in N.C.G.S. § 47C-1-103 shall apply to this Declaration and are incorporated herein, except that the terms listed below shall have the specific meanings stated:

- (a) "Assessment" shall mean a share of the funds required for the payment of Common Expenses that from time to time are assessed against the unit owner by the Association.
- (b) "Association" shall mean 310 NORTH 3rd AVENUE UNIT OWNERS ASSOCIATION, its successors, and assigns.
- (c) "Board" shall mean the Officers of the Association, as defined by the Bylaws.
- (d) "Common Elements or Common Areas" shall mean all portions of the condominium other than the units.
- (e) "Common Expenses" shall mean expenditures or financial liabilities of the Association and allocations to reserves.
- (f) "Common Expense Liability" shall mean the liability for Common Expenses allocated to each unit.
- (g) "Condominium Documents" shall mean the Declaration, Bylaws, and Rules and Regulations, if any.
- (h) "Declarant" shall mean BRC Kure Beach, LLC, its successors, and assigns.
- (i) "Declaration" shall mean this Declaration of 310 NORTH 3rd AVENUE CONDOMINIUM.
- (j) "Limited Common Elements or Limited Common Areas" shall mean those portions of the Common Areas that are allocated for the exclusive use of a particular unit.
- (k) "Unit or Condominium Unit" shall mean a part of the Condominium that is subject to private ownership. The boundaries of each unit are as shown on the plats and plans as numbered units and are more particularly described as follows:
 - 1. The boundaries of each unit shall consist of the unfinished perimeter walls, floors, and ceilings as shown on the plats and plans. All interior surfacing materials, including all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and other materials constituting any part of the finished surfaces of the interior walls, floors, or ceilings of each

unit shall be a part of that respective unit. All other portions of such walls, floors, or ceilings are part of the Common Areas. In addition, all spaces, interior partitions, fixtures, appliances, cabinets, and other such facilities or improvements lying completely within the boundaries of a unit and serving only such unit shall be part of such unit.

2. Each unit will include the spaces and improvements lying within the boundaries described in subsection 1. above, and will also include the spaces and improvements within such spaces containing any space heating, water heating, and air conditioning apparatus, smoke detector systems, and all electrical switches, wiring, pipes, ducts, conduits, and television, telephone, and electrical receptacles and light fixtures and boxers serving the unit exclusively, the surface of the foregoing being the boundaries of such unit, whether or not such spaces are contiguous.
3. Except when specifically included by other provisions of this Article I, Section (k), the following are excluded from each unit: the spaces and improvements lying outside of the boundaries described in subsections 1. and 2. above; and all chutes, pipes, flues, ducts, wires, conduits, and other facilities running through or within any interior wall or partition for the purpose of furnishing utility or similar services to other units and Common Elements or both.
4. Except as specifically set out herein, the provisions of N.C. Gen. Stat. Sec. 47C-2-102 will apply. If the description of a unit is inconsistent with the said statutory provisions, then the description contained in this Article I, Section (k), will control.

ARTICLE II DESCRIPTION OF BUILDING

- (a) Name. The name of the condominium created by this Declaration is "310 NORTH 3rd AVENUE CONDOMINIUM."
- (b) Maximum Number of Units. The maximum number of units of 310 NORTH 3rd AVENUE CONDOMINIUM that the Declarant may create at any time is two (2). The number of presently existing units is two (2).
- (c) Description of Units. The presently existing two (2) units are contained in the one (1) three-story, wood-frame building on pilings located on the Property. The building contains two (2) units located side-by-side to each other. The buildings and the units within each building are more fully described and depicted by those plans entitled, "Condominium Plat, 310 North 3rd Avenue Condominium," of

record at Book 17, Pages 68-69, New Hanover County Registry, which plans are incorporated herein and are hereinafter referred to as "the Plans." The identifying number for each unit is as shown on the Plans.

- (d) Boundaries of Units. The horizontal boundaries of each unit are the interior surfaces of its perimeter walls. The vertical boundaries of each unit are the interior surfaces of its ceilings and floors. In determining whether materials or items are Common Elements, Limited Common Elements, or parts of a unit, the terms and provisions as defined in this document shall prevail. The two units share a common interior wall (a party wall), which separates the two units. Each unit is three levels 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.
- (e) Limited Common Areas. In determining whether materials or items are Limited Common Elements and how they should be allocated, the terms and provisions as defined above shall apply, and are incorporated herein. All property outside of the building shall be considered Limited Common Area and shall include decks accessible only from a particular unit, and outside stairways, outside entries, driveway, yards, parking areas and carports serving only one unit. Each Limited Common Area is allocated to the Unit served by that Limited Common Area, as shown on the Plans. Limited Common Area shall also include water, power, telephone, television, electricity, plumbing, gas, sewage, heat and air lines or ducts serving only a particular Unit but located with the Common Area or facilities.
- (f) Special Declarant Rights. The Declarant reserves the following special Declarant rights, which shall apply to all of the Property and which must be exercised within five (5) years of the date of recording of this Declaration:
1. to complete all improvements shown on the Plans;
 2. to maintain signs on the Common Elements advertising the condominium;
 3. to use easements through the Common Elements for the purpose of making improvements to the Property and to the real estate described in Exhibit 1;
 4. to appoint or remove any officer/member of the Board of Directors of the Association, subject to the limitations stated in N.C.G.S. § 47C-3-103(d) and (e), which are incorporated herein; and
 5. to appoint the Board of Directors of the Association until one day after it no longer holds title to either unit.

Declarant's rights expire when it no longer holds title to either unit.

- (g) Allocated Interests. The undivided interests in the Common Elements, the Common expense Liability, and votes in the Association (collectively, "the Allocated Interests") are to be allocated among all units equally on a per unit basis. The allocation of interests and obligations among the presently existing units is one-half (1/2) per unit.

ARTICLE III UNIT-OWNERS ASSOCIATION

- (a) 310 North 3rd Avenue Unit-Owners. Every unit owner shall be a member of the Association. Ownership of a fee interest in a unit shall be the sole qualification for membership, and membership shall be appurtenant to, and shall not be separated from, such ownership. The basic purposes and duties of the Association shall be to manage the condominium pursuant to the terms and provisions of Article 3 of Chapter 47C of the North Carolina General Statutes, this Declaration, any Bylaws promulgated by the Association, and any Rules and Regulations promulgated by the Association or its Board of Directors; and to promote and protect the enjoyment and beneficial use and ownership of the units. The Association shall be formed as an unincorporated association and shall have all of the powers stated in N.C.G.S. § 47C-3-102, the terms and provisions of which are incorporated herein. The Association shall also have the power to enforce in its own name the terms and provisions of this Declaration, any Bylaws promulgated by the Association, and any Rules and Regulations promulgated by the Association. In addition, the Association shall have the power to:

1. Adopt and amend Bylaws and Rules and Regulations;
2. Adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;
3. Regulate the use, maintenance, repair, replacement, modification, and preservation of the Common Elements;
4. Cause additional improvements to be made as a part of the Common Elements;
5. Hire and terminate managing agents and other employees, agents, and independent contractors;
6. Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;
7. Make contracts and incur liabilities;

8. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that the Common Elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112;
9. Grant easements, leases, licenses, and concessions through or over the Common Elements;
10. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to unit owners;
11. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed One Hundred Dollars (\$100.00) per occurrence, in accordance with G.S. 47C-3-102, *et. Seq.*, for violations of the Declaration, Bylaws, and Rules and Regulations of the Association. Such fines shall be in addition to any costs incurred or to be incurred by the Association as a result of the violation of the Rule, Regulation, Bylaw, or provision;
12. Terminate any written or oral lease or rental agreement and remove from a unit any lessee, renter, or guest who fails to comply with the terms of the Declaration, Bylaws, and Rules and Regulations of the Association;
13. Impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates, or statements of unpaid assessments;
14. Provide for the indemnification of and maintain liability insurance for the Association's officers, Board of Directors, directors, employees, and agents;
15. Open and maintain bank account(s) on behalf of the Association and designate the signatures required therefore;
16. Exercise all other powers that may be exercised in North Carolina by an unincorporated association; and
17. Exercise any other powers necessary and proper for the governance and operation of the Association.

(b) Transfer of Membership. A unit owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of the unit, and then only to the purchaser of his condominium unit.

**ARTICLE IV
RESTRICTIONS ON USE**

All units shall be subject to the following restrictions on use:

- (a) Each unit shall be used for residential purposes only. No commercial activities shall be conducted in or from any unit, except home occupations that do not involve physical access or visitation to the unit by any member of the general public and that do not involve any increased use whatsoever, by any person, of any of the Common Elements of the condominium or any general services provided to the condominium (such as trash removal).
- (b) The maximum number of occupants of any one unit shall be that number that is the product of the number of bedrooms in a unit, as originally designed, times two, regardless of the age of any of the occupants.
- (c) Noxious, offensive, or loud activities shall not be conducted within any unit. Each unit owner shall refrain from any use of his unit that could reasonably cause embarrassment, discomfort, annoyance, or nuisance to any other unit owner or occupant.
- (d) All governmental codes, regulations, and ordinances applicable to a unit shall be observed.
- (e) No unit may be subdivided and no portion shall be rented separately from the whole unit.
- (f) Every lease relating to any unit must be in writing and must provide that the tenant is obligated to observe all applicable terms and provisions of this Declaration, the Bylaws of the Association, and any Rules and Regulations promulgated by the Association or its Board of Directors.
- (g) No sign shall be exhibited on or from any unit, except "For Sale" signs.
- (h) The 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 unit.
- (i) No use or practice shall be permitted on the condominium property that reasonable could be considered the source of annoyance to residents or of interfering with the peaceful possession and proper use of the property by its residents. All parts of the Limited Common Areas shall be kept in a clean and sanitary condition and no fire hazard shall be allowed to exist. No unit owner shall permit any use of his unit or the Limited Common Area that will increase the insurance rate of the condominium. All laws, zoning ordinances, and regulations shall be observed.

- (j) No unit owner shall by any means block access of the other unit owner to its Limited Common Areas.

ARTICLE V MAINTENANCE AND ASSESSMENTS

The Association shall maintain all of the Common Elements of the condominium, including the Limited Common Elements, and assess all of the units for the costs thereof, pursuant to N.C.G.S. §§ 47C-3-107 and 113, the terms and provisions of which are incorporated herein. The Association shall have the power to assess the units as set forth in those statutes, and as follows:

- (a) Regular Assessments. The Association shall establish an adequate reserve fund for the periodic maintenance, repair, and replacement of the Common Elements. The Association shall charge each unit on a quarterly or monthly basis (as determined by its Board of Directors) a Regular Assessment as its share of the common expenses and its contribution to the reserve fund.
- (b) Special Assessments. In addition to the Regular Assessments authorized in subsection (a) above, the Association may charge each unit, in any fiscal year of the Association, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement upon and to any part of the Common Elements, including fixtures and personal property related thereto; provided that any such Special Assessment must be approved by the affirmative vote of at least a majority of all units existing at the time of the vote, cast in person or by proxy at a meeting duly held in accordance with the Bylaws of the Association. If authorized by the Association, Special Assessments may be paid by unit owners in monthly or quarterly installments, as determined by the Board of Directors of the Association.
- (c) Rates of Regular and Special Assessments. Regular and Special Assessments shall be assessed against all units equally on a per unit basis.
- (d) Commencement of Regular and Special Assessments. Each unit shall be and become subject to Regular and Special Assessments from and after the date of recording of this Declaration.
- (e) Maintenance of Limited Common Elements. Any common expense associated with the maintenance, repair, or replacement of a Limited Common Element must be assessed only against the unit to which that Limited Common Element is allocated.
- (f) Assessments for Fines. The Association may assess individual units for any fines owed to the Association by the owner(s) of the unit for violations of this Declaration or any Bylaws or Rules and Regulations promulgated by the

Association. Any such fine shall not exceed One Hundred Dollars (\$100.00) per occurrence.

- (g) Certificates of Assessments. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether all assessments against a specified unit have been paid. A properly executed certificate of the Association as to the status of assessments against a unit shall be binding upon the Association as of the date of its issuance.

- (h) Payment and Collection of Assessments. Each of the applicable assessments described above, together with interest thereon and the costs of collection thereof, including reasonable attorney's fees, and together with late fees, if any, shall be a lien upon each unit and the personal obligation of all of the owners of such unit. Assessments shall be paid in such manner and on such dates as the Board of Directors of the Association may establish, which may include discounts for early payment, reasonable late fees for late payment, and special requirements for unit owners with a history of late payment. No unit owner may exempt himself from liability for assessments by nonuse of Common Elements, abandonment of his unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each unit owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association 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 taken by the Association. Any assessment against any unit that remains unpaid for a period of thirty (30) days after delivery of a request for payment thereof shall be past due, and interest shall accrue on any unpaid amount from the date that it became past due at the rate of eighteen percent (18%) per annum of any assessment installment unpaid. The Association shall have the power to take whatever action is necessary, at law or in equity, to collect any past due assessment, together with interest, late fees, and costs of collection, including reasonable attorney's fees. When an assessment becomes past due, the lien created hereunder may be filed by the Association against the delinquent unit owner in the office of the Clerk of Superior Court of New Hanover County. The lien may be foreclosed by the Association in like manner as a mortgage on real estate under power of sale pursuant to Article 2A of Chapter 45 of the North Carolina General Statutes.

- (i) Subordination of Lien to First Mortgages. The lien created by subsection (h) above shall be subordinate to the lien of any first mortgage. Sale or transfer of any unit shall not affect the lien of any assessment, except that the sale or transfer of any unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of any assessment against the unit that first became due prior to such sale or transfer.

ARTICLE VI TAXES

Each individual unit and its 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 owner shall be liable solely for the amount of taxes against his individual unit and undivided interest in the Common Elements and facilities, as determined by the New Hanover County Tax Office, and shall not be affected by the consequence resulting from the tax delinquency of any other unit owner. Neither shall the Building, the Condominium Property, nor any of the Common Elements and facilities be deemed to be a separate parcel for the purpose of taxation.

ARTICLE VII INSURANCE

The Association shall purchase, maintain in force, and administer insurance coverage as provided by N.C.G.S. § 47C-3-113, the terms and provisions of which are incorporated herein. In addition, the Association shall meet the following requirements regarding insurance:

- (a) Property Insurance. All Common Elements of the Condominium (including all Limited Common Elements), except land, excavations, foundations, and other items normally excluded by property insurance policies, shall be insured by the Association in an amount equal to at least one hundred percent (100%) of their insurable replacement value, as determined annually by the Association, with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards or risks covered by a standard extended coverage endorsement.
- (b) Liability Insurance. The Association shall acquire and maintain in full force and effect a policy of insurance that insures the Association against any liability arising out of the use, ownership, maintenance, and control of the Common Elements, any commercial space leased or owned by the Association, and any public rights-of-way within the Property, with limits of liability therefor of not less than One Million Dollars (\$1,000,000.00) per occurrence, which policy shall include an endorsement to cover liability of the Association to a single unit owner.
- (c) Other Insurance. There shall also be obtained such other insurance coverage as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Administration, Veterans Administration, or Federal National Mortgage Association.
- (d) Waiver of Subrogation. All policies of insurance required to be carried hereunder shall contain waivers of subrogation.

- (e) Qualifications of Insurance Carriers. The Association shall obtain the insurance coverages specified herein only from carriers licensed and admitted to transact business in North Carolina and which have received an A- or better rating by the latest edition of A.M. Best's Insurance Rating Service.
- (f) Proceeds. All contracts of property insurance purchased by the Association shall be for the benefit of all of the unit owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association or its authorized representative as insurance trustee under this Declaration. Each unit owner and his mortgagee, if any, shall be beneficiaries of each insurance policy in the percentage of the unit owner's undivided interest in the condominium. The sole duty of the Association or its authorized representative as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein. Subject to the provisions of N.C.G.S. § 47C-3-113, proceeds of insurance received by the insurance trustee shall be distributed to, or for the benefit of, the beneficiaries in the following manner:
1. Proceeds shall first be paid to cover the cost of reconstruction and repair of any damage covered;
 2. Proceeds shall then be paid to the trustee to reimburse it for costs reasonably incurred in discharging its duties as trustee; and
 3. Any remaining proceeds shall then be distributed to the beneficiary or beneficiaries of the trust, as their interests may appear.
- (h) Insurance Obtained by Unit Owners. It shall be the responsibility of each unit owner, at such unit owner's option and expense, to maintain fire and extended property damage insurance on such unit owner's unit and any personal property and furnishings, and to maintain public liability insurance covering such unit owner's unit. In addition, a unit owner may obtain such other and additional insurance coverage on and in relation to the unit owner's unit as the unit owner, in the unit owner's sole discretion, shall conclude to be desirable. However, no such insurance coverage obtained by the unit owner shall operate to decrease the amount that the Association may realize under any policy maintained by the Association or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. A unit owner shall be liable to the Association for the amount of such diminution of insurance proceeds to the Association resulting from insurance coverage maintained by the unit owner, and the Association shall be entitled to collect the amount of the diminution from the unit owner as if the amount were a Default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by a unit owner shall include a provision waiving the particular insurance company's right to subrogation against the Association and other unit owners, including Declarant.

**ARTICLE VIII
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 its Board or its agents, to enter each unit from time to time at reasonable hours as may be necessary to inspect, maintain, repair, and replace any Common Elements.
- (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 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 Area.
- (d) In case of emergency originating in or threatening any unit or the Common Elements, regardless of whether the unit owner is present at the time of such emergency, a member of the Board of the Association, or any other person authorized by it, shall have the right to enter any unit, if reasonably required for the purpose of remedying or abating the causes of such emergency, and such right of entry shall be immediate.
- (e) 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, their 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 IX
AVAILABILITY OF DOCUMENTS AND RECORDS**

The Association shall make reasonably available for examination true copies of this Declaration and of all Bylaws, Rules and Regulations, books, records, and current financial statements of the Association to the following: (a) unit owners and their agents and mortgagees, and (b) contract purchasers of units and their agents and prospective mortgagees. Upon written request from any governmental agency holding, insuring, or guaranteeing any mortgage against

any unit of the condominium, the Association shall provide a copy of an audited financial statement of the Association for the immediately preceding fiscal year to the requesting agency within a reasonable period of time.

ARTICLE X NOTICE TO LENDERS

Upon written request from any entity holding, insuring, or guaranteeing a mortgage against any unit of the condominium, the Association shall provide the requesting entity with timely written notice of:

- (a) any proposed amendment to this Declaration;
- (b) any proposed termination of the condominium;
- (c) any condemnation of, or loss, destruction, or damage to, the condominium that affects a material portion of the condominium or any unit against which there is a mortgage held, insured, or guaranteed by the requesting entity;
- (d) any delinquency of sixty (60) days or more in payment of any assessments due from the owner(s) of any unit against which there is a mortgage held, insured, or guaranteed by the requesting entity; and
- (e) any lapse, cancellation, or material modification of any insurance coverage held by the Association.

ARTICLE XI 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 scheme 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.

ARTICLE XII GENERAL PROVISIONS

- (a) Parties Bound. All persons and entities acquiring any interest in any of the units,

including but not limited to lessees, shall be bound by the provisions of this Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the units, shall likewise be bound.

- (b) Duration. The provisions of this Declaration shall run with and bind the Property perpetually, unless rescinded pursuant to subsection (c) below.
- (c) Amendment or Rescission. Except as provided herein, this Declaration may be amended or rescinded only by a written instrument executed by the Association and authorized by the affirmative vote of all units existing at that time, cast in person or by proxy at a meeting duly held in accordance with the Bylaws of the Association, provided that the terms and provisions of this Declaration may be amended by the Declarant at any time until it no longer holds title to either unit. Any amendment or rescission must be recorded at the New Hanover County Registry to be effective.
- (d) Enforcement. The Declarant, any unit owner, and/or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, and obligations imposed by this Declaration. The Declarant, the Association, or any unit owner may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration, and/or to recover damages therefor. The Declarant, the Association, and/or any unit owner shall be entitled to recover reasonable attorney's fees incurred in bringing and prosecuting such action from the breaching or violating unit owner(s).
- (e) Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant, or restriction contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.
- (f) Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.
- (g) Captions. The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit, or describe the scope of any provision of this Declaration.
- (h) Law Controlling. This Declaration shall be construed and governed pursuant to the laws of North Carolina.
- (i) References to Statutes. All references herein to any statutory provision shall be construed to include and apply to any subsequent amendments to, or replacements of, such provision.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed.

DECLARANT
BRC Kure Beach, LLC

CLT PLT J. Dunbar
By: Christopher T. Dunbar
Its: Member/Manager

BANK OF AMERICA, N.A., as the holder of an existing loan secured by the Deed of Trust recorded in Book 4623, at Page 072, and amended in Book 4746 at Page 320-324, in the office of the Register of Deeds of New Hanover County, North Carolina and PRLAP, Inc., f/k/a TIM, INC., as Trustee under the Deed of Trust, join in the execution of this instrument for the purpose of subjecting the aforesaid Deed of Trust to the terms and provisions of this DECLARATION OF CONDOMINIUM for 310 North 3rd Avenue .

Bank of America, N.A.

By: [Signature]
Senior Vice President

Date: 6/4/07

Trustee: [Signature] (SEAL),

Date: 6/4/07