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EDS CLERAY
REGISTER
NEW HANOVER CO., N.C.

STATE OF NORTH CAROLINA .

COUNTY OF NEW HANOVER

DECLARATION OF RESTRICTIVE COVENANTS
THE FIGURE EIGHT ISLAND COMPANY

KNOW ALL MEN BY THESE PRESENTS

That the Figure Eight Island Company (the successor to Island Development Company), a North Carolina corporation with its principal office and place of business in New Hanover County, State of North Carolina, in connection with development of Figure Eight Island, New Hanover County, North Carolina, does hereby amend completely and in full those certain restrictions recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, May 18, 1966, in Book 789, at Page 358, as amended, in accordance with Paragraph 31 thereof, so as to substitute therefor the following restrictions and covenants, which shall be placed upon all residential lots sold after the date hereof by the Figure Eight Island Company at the property known as Figure Eight Island:

1. Definitions: As used in this Declaration of Restrictive Covenants, the following terms shall mean:

(a) "The Figure Eight Island Company" (sometimes referred to herein as the "Company") means (i) the successor to the Island Development Company according to articles of merger filed and approved by the Secretary of State of North Carolina and duly recorded and (ii) the Company's successors and assigns.

(b) "Record or Recording" refers to record or recording with the Register of Deeds for New Hanover County or Pender County, North Carolina.

(c) "Property" generally means the lands known as Figure Eight Island, New Hanover County, North Carolina. Said

lands are also known as Figure "8" Beach.

(d) "Residential lots" or "lots" means those portions of the property specifically allocated, platted and/or recorded as lots for sale and/or use as single family residences.

(e) "Association" shall mean the Figure Eight Beach Homeowners' Association, Inc., its successors and assigns.

(f) "Restrictions" shall mean the restrictions and covenants set forth in this Declaration of Restrictive Covenants.

2. Applicability: These Restrictions shall apply to all residential lots sold by the Company after the date hereof.

3. Reservations: The Company reserves the right absolutely to change, alter or redesignate the allocated, planned, platted or recorded use or designation of any property (so long as the Company retains title to said property) on any of the lands known as Figure Eight Island including, but not limited to, the right to change, alter or redesignate lands for condominium or single-family residential use, to change, alter or redesignate roads, utility and drainage facilities, and to change, alter or redesignate such other present and proposed amenities or facilities as may, in the sole judgment of the Company, be necessary or desirable.

4. Building and Site Improvements: (a) No building, fence, wall, bulkheading or other structure shall be erected, placed or altered on any residential lot, nor shall the grade or elevation or physical characteristics, including, but not limited to, dunes and ridges, of any such lot, or portion thereof, be altered in any way whatsoever, until the proposed building plans, specifications, exterior colors and finishes, site and grading plans (showing the proposed location of such building or structure, drives, parking areas and proposed alterations to the grade, elevation or physical characteristics of the site), and construction schedule shall have been approved in writing by the Company.

Refusal of approval of any such plans, location or specifications may be based by the Company upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Company shall seem sufficient. Without the prior written consent of the Company, no changes or deviations in or from such plans or specifications as approved shall be made. No alterations in the exterior appearance of any building or structure, or in the grade, elevation, or physical characteristics of any lot shall be made without like approval by the Company. One (1) copy of all plans and related data shall be furnished the Company for its records. The Company shall not be responsible for any structural or other defects in plans or specifications submitted to it or in any structure erected according to such plans and specifications.

5. Approval of Plans: (a) No house plans will be approved unless the proposed house will have the minimum required square footage of enclosed dwelling area. Such minimum requirements for each lot will normally be specified in each deed. The term "enclosed dwelling area" as used in these minimum size requirements shall mean the total enclosed area within a dwelling; provided, however, that such term does not include garages, boat sheds, terraces, decks, open porches, and like areas; provided further, that shed type porches, even though attached to the house, are specifically excluded from the definition of the aforesaid term "enclosed dwelling area." If for any reason any deed recorded might not specify the minimum required square footage of enclosed dwelling area, the minimum for said house will be 1,400 square feet. However, if the footage in the deed specifies otherwise, such amount shall be controlling.

(b) Since the establishment of standard inflexible building setback lines for location of houses on lots tends to force construction of houses both directly behind and directly

to the side of other homes with detrimental effects on privacy, view of the ocean, preservation of dunes, important trees and other vegetation, ecological and related considerations, no specific setback lines are established by these Restrictions. In order to assure, however, that the foregoing considerations are given maximum effect, the Company reserves the right to control and approve absolutely the site and location of any house or dwelling or other structure upon any lot.

(c) The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergency or natural calamities.

(d) Each lot owner shall provide receptacles for garbage, in a screened area not generally visible from the road, or provide underground garbage receptacles or similar facility in accordance with reasonable standards established by the Company.

(e) Each lot owner shall provide space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on said lot in accordance with reasonable standards established by the Company.

(f) No trees, bushes, shrubs, beach or marsh grasses or other vegetation whatever, may be removed, planted or installed from or on any lot without prior written approval of the Company, based upon a site plan, landscaping plan or planting plan submitted to the Company.

(g) No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any lot other than a detached single family dwelling not to exceed two (2) stories in height, unless the Company approves in writing a structure of more than two stories pursuant to paragraphs 4(a)

and 5 (a) hereof, and one or more small accessory buildings (which may include a detached private garage, cabana, servants' quarters, or guest facilities) provided the use of such dwelling or accessory buildings does not in the opinion of the Company overcrowd the site, and provided further, that such buildings are not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building.

6. Residential Use: (a) All lots shall be used for residential purposes exclusively.

(b) No trailer, tent or other structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the lot after completion of construction.

(c) No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within the main dwelling house, within an accessory building, within a screened area, or buried underground; provided, however, that nothing contained herein shall prevent the Company from erecting, placing or permitting the placing of tanks, or other apparatus, on the property for uses related to the provision of utility or other service.

(d) A guest suite or like facility may be included as a part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling, and provided, however, that such guest suite would not result in over-crowding the site.

(e) Prior to the occupancy of a residence on any lot, proper and suitable provision shall be made for the disposal of

sewage by means of a septic tank or other method, provided that any such method must be approved by the Company and the appropriate State or County health authorities.

7. Maintenance: (a) It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

(b) No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the neighborhood. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof.

8. Assessments: (a) The owner of each residential lot shall, by the acceptance of a deed or other conveyance for such lot, be deemed obligated to pay to the Company an annual assessment or charge to be fixed, established and collected on a lot by lot basis as hereinafter provided. Said annual assessment or charge shall be due on January 1 of the year for which it is assessed, provided that the Company may make provision for payment thereof in installments. Each annual assessment or charge (or installment thereof) shall, when due, become a lien against the lot against which such assessment or charge is made. Upon demand, the Company shall furnish to any owner or mortgagee a certificate showing the assessments or charges, or installments thereof, due as of any given date. Each lot subject to these restrictions is hereby made subject to a continuing lien to secure the payment of each assessment or charge (or installment thereof) when due.

(b) Such assessment or charge shall be in an amount to be fixed from year to year by the Company, which may establish different rates from year to year as it may deem necessary and may establish different rates for various general classifications of lots according to the use or location of said lots. The Company may levy additional assessments if necessary to meet the needs of the entire Island or portion thereof.

(c) The funds arising from said assessment or charge or additional assessment may be used for any or all of the following purposes: Maintaining, operating and improving the bridges; protection of the property from erosion; collecting and disposing of garbage, ashes, rubbish and the like; maintenance and improvement of the streets, roads, drives, rights of way, community land and facilities, tennis courts, marsh and waterways; employing watchmen; enforcing these restrictions; and, in addition, doing any other things necessary or desirable in the opinion of the Company to keep the property in neat and good order and to provide for the health, welfare and safety of owners and residents of Figure Eight Island.

(d) Upon the failure of the owner of any lot to pay any such assessment or charge, additional assessment, or installment thereof when due, the Company shall have the right to collect the amount thereof by an action at law against the owners as for a debt, and may bring and maintain such other suits and proceedings at law or at equity as may be available. Such rights and powers shall continue in the Company and the lien of such charge shall be deemed to run with the land and the successive owners of each lot, by the acceptance of deeds therefor, shall be deemed personally to assume and agree to pay all unpaid assessments or charges or additional assessments which have been previously levied against the property, and all assessments or charges or additional assessments as shall become a

lien thereon during their ownership. Unpaid assessments or charges, additional assessments, or installments thereof, shall bear interest at six percent (6%) from the due date thereof, until paid.

(e) The monies collected by virtue of the assessments or charges or additional assessments, or the lien provided by this section, shall be paid to the Company to be used in such manner and to the extent as the Company may determine, in accordance with paragraph 8(c) hereof, for the benefit of the residents of Figure Eight Island. The judgment of the Company in the making of assessments or charges or additional assessments and the expenditure of funds shall be final.

(f) The Company shall not be obligated to spend in any one calendar year all of the sums collected during said year by way of assessments or charges or additional assessments and may carry forward to surplus any balance remaining. The Company shall not be obliged to apply any such surplus to the reduction of charges in the succeeding year.

(g) The Company shall have authority, in its discretion, to borrow money to expend for the purposes set forth in paragraph 8(c) hereof upon such terms and security and for such periods as it may determine, and to repay said borrowings and the interest thereon from the assessments or charges or additional assessments provided for in this paragraph 8.

(h) It is contemplated that the Company may, in its discretion, assign to the Figure Eight Island Homeowners' Association, its successors or assigns, the right to make and collect assessments, to expend such funds as may be collected, and to otherwise be substituted for the Company under this paragraph.

9. Entry: The Company reserves for itself, its successors and assigns, and its agents the right to enter upon any residential lot, such entry to be made by personnel with tractors or other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, or for the purpose of building or repairing dunes or other earthwork, which in the opinion of the Company detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed a trespass. The Company and its agents may likewise enter upon any lot to remove any trash which has collected without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Company to undertake any of the foregoing.

10. Sales and Rentals: (a) In the event an owner desires to sell property (including improvements, if any) within Figure Eight Island, then said owner shall, if the Company so elects, in consideration of the benefit to the owner of expenditures by the Company in advertising and public relations, appoint the Company as the exclusive sales agent for the owner, at price and terms set by the owner, for a period of six (6) months (said six (6) month period to begin anew, at the election of the Company, for a like period each time the owner changes the price or terms at which the property [including improvements, if any] is offered, whether or not such change is made during the initial six month period or subsequently). Upon sale by the Company, the owner shall pay the Company a real estate commission equivalent to that charged by licensed real estate agents in the area and such other charges and fees as are normal and customary.

(b) Prior to the acceptance of any offer for the purchase of any property (including improvements, if any), the owner thereof shall first offer said property for sale to the Company for the same price at which the highest bona fide offer has been made for such property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at such price; should the Company fail or refuse, within thirty (30) days after receipt of written notice of the price and terms of the offer, to exercise its option to purchase said property, then the owner thereof shall have the right to sell said property subject, however, to all covenants, restrictions and limitations contained herein.

(c) In the event an owner desires to lease property (including improvements, if any) within Figure Eight Island, then said owner shall, if the Company so elects, in consideration of the benefit to the owner of expenditures by the Company in advertising and public relations, appoint the Company as exclusive agent for leasing such property, at price and terms set by the owner; provided, however, that leasing of such property shall be subject to rules and regulations established therefor from time to time by the Company. Upon lease by the Company, the owner shall pay the Company a commission not inconsistent with those charged by licensed real estate agents upon lease of property of comparable nature and such other charges and fees as are normal and customary.

11. Signs: Without the prior written permission of the Company, no sign of any character shall be displayed except a property identification sign not exceeding a combined total of more than two (2) square feet. Nothing herein shall be construed to prevent the Company from erecting, placing or maintaining such signs as may be deemed necessary by it for carrying out its business.

12. Miscellaneous Easements: The Company reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over the rear ten (10) feet of each lot and ten (10) feet along one (1) side of each lot and such other areas as are shown on the applicable plat; provided further, that the Company may cut drainways for surface water whenever action may appear to the Company to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. It further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or on any residential lot now or subsequently designated for such use or to locate same upon any lot with the permission of the owner of such lot. Such rights may be exercised by any licensee of the Company, but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.

14. Wells: No private water wells may be drilled or maintained on any residential lot without the prior written consent of the Company.

15. Subdividing: (a) No lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Company. However, the Company hereby expressly reserves

to itself, its successors or assigns, the right to replat any two (2) or more lots shown on the plat of any subdivision in order to create a modified building lot or lots; and to take such steps as are reasonably necessary to make such replatted lot suitable and fit as a building site, said steps to include, but not be limited to, the relocation of easements, walkways and rights of way to conform to the new boundaries of the said replatted lots, provided that no lot originally shown on a recorded plat is reduced by more than twenty (20) per cent from its original size, and provided further that this provision shall be subject to Section Three (3) hereof.

(b) No lot shall be increased in size by filling in the waters on which it abuts without the prior written approval of the Company and state and federal agencies.

16. Docks, etc.: (a) No private docks, piers, moorings, boat houses, slips or similar structure may be erected on, placed on or connected to any lot, unless specifically authorized in the deed to said lot. In the event of such authorization, the following terms and conditions must be complied with:

(i) Complete plans and specifications including site, material, color and finish must be submitted to the Company in writing;

(ii) Written approval by the Company of such plans and specifications must be secured, the Company reserving the right in its uncontrolled discretion to disapprove such plans and specifications on any grounds, including purely aesthetic reasons;

(iii) Any alterations of the plans and specifications or of the completed structure must also be submitted to the Company in writing, and the Company's approval in writing must be similarly secured prior to construction, the Company reserving the same rights to disapprove alterations as it retains for disapproving the original structures;

(iv) The Company shall not be responsible for any structural or other defects in plans or specifications submitted to it or in any structure erected according to such plans or specifications.

(b) All lot owners who construct or cause to be constructed private docks, piers, moorings, boat houses, slips or similar structure pursuant to paragraph 16(a) hereof must maintain said structures in good repair and keep the same clean and orderly in appearance at all times, and further agree to paint or otherwise treat with preservatives all wood or metal located above the high water mark, exclusive of pilings, and to maintain such paint or preservatives in an attractive manner. The Company shall be the judge as to whether such structures are clean, orderly in appearance, and properly painted or preserved in accordance with reasonable standards, and where the Company notifies the particular lot owner in writing that such structures fail to meet acceptable standards, said lot owner shall thereupon remedy such conditions within thirty (30) days to the satisfaction of the Company, and that failing to so remedy such conditions, the lot owners hereby covenant and agree that the Company may make the necessary repairs, but is not obligated to make such repairs or take such action as will bring such structures up to acceptable standards, all such repairs and actions to be at the expense, solely, of the lot owner in question.

17. Approval: Prior to purchasing any lot, the purchaser must be approved as a member of the Association and by the recording of the deed to the lot purchased becomes and agrees to continue to be a member of the Association and agrees to abide by, and be subject to, the charter and by-laws of the Association and these Restrictions. Any purchaser, his heirs or assigns, who purchases residential property on Figure Eight Island at a sale held pursuant to foreclosure of, or sale under a power of sale contained in, a deed of trust or mortgage executed to

secure an indebtedness to a bank, savings and loan association or insurance company, shall be automatically approved as a member of the Association, provided the following conditions have been fully complied with: (i) That upon default in the payment of the indebtedness secured by said deed of trust or mortgage the party secured by said deed of trust or mortgage has offered in writing to assign said indebtedness, all notes evidencing same, and the deed of trust or mortgage securing same, to the Company for the amount due thereon, which said offer shall have remained open for thirty (30) days and (ii) the Company shall have refused to accept said offer.

18. Covenants run with the land: All covenants, restrictions and affirmative obligations set forth in these Restrictions shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of the Company, for a period of ten (10) years from the date hereof after which time all said covenants shall be automatically extended for successive periods of ten years, unless an instrument signed by a majority of the then owners of lots substantially affected by such changes in covenants, has been recorded, agreeing to change said covenants in whole or in part.

19. Violations: In the event of a violation or breach of any of these Restrictions by any lot owner, or agent of such owner, the Company or owners of any other property on Figure Eight Island, or any of them jointly or severally shall have the right to proceed at law or equity to compel a compliance to the terms hereof or to prevent the violation or breach. In addition to the foregoing, the Company shall have the right, whenever there shall have been built on any lot any structure which is in violation of these Restrictions, to enter upon such property where such violation exists, and summarily abate or remove the

same at the expense of the owner, if after thirty (30) days written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservations, restrictions, or condition contained in these Restrictions, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach, or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

20. Invalidation: The invalidation by any Court, agency or legislation of any provision of these Restrictions shall in no way affect any of the other provisions of these Restrictions, but they shall remain in full force and effect.

21. Modifications: The Company specifically reserves the right to amend or change any part or all of the restrictions, covenants and conditions herein set out by the filing in the Office of the Register of Deeds of New Hanover County and/or Pender County a declaration of amended restrictive covenants, which such amendments, modifications or additions to the restrictive covenants contained in this Declaration shall be made applicable to the conveyance of lots made subsequent to the recording of such declaration of amended restrictive covenants.

22. Dedication to Public Use: Nothing in these Restrictions, nor in the recording of any plat or deed pursuant hereto, shall dedicate (or be deemed to dedicate) to public use any of the streets, bridges, common lands or other grounds within Figure Eight Island.

23. Easements of access and open space: (a) Each and every lot owner is hereby granted an easement to pass over, use and enjoy open spaces now or subsequently designated on recorded plats as community open space, and all roads, bridges, and rights of way, provided, however, that the Company, its successors or assigns shall, in its sole discretion, retain the right to

establish rules and regulations for the use and enjoyment of all such property.

(b) The Company reserves the right to erect and maintain utilities, drainways and other public conveniences in common lands, including the right to cut any trees, bushes or shrubbery, make any gradings of the soil, build buildings or take any similar action reasonably necessary or desirable to provide economical and safe installation and service, to establish reasonable fees, and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by a licensee of the Company.

(c) The Company expressly reserves to itself, its officers, directors, shareholders and their successors and assigns, every reasonable use and enjoyment of said common lands, facilities, roads and bridges, in a manner not inconsistent with the provisions of this Declaration.

(d) The Company further expressly reserves to itself, its successors and assigns, the right to construct, lease, operate and manage any club, marina or other like facility with associated amenities, on the common lands for the mutual enjoyment of the owners and to establish reasonable fees, rules and regulations for the use thereof.

(e) It is expressly understood and agreed that the granting of these easements in no way places a burden of affirmative action on the Company, that the Company is not bound to make any of the improvements noted herein, or extend to the grantee any service of any kind.

24. Miscellaneous: (a) Where the Company is permitted by these covenants to correct, repair, clean, preserve, clear out or do any action on the restricted property, entering the property and taking such action shall not be deemed a breach of these covenants.

(b) Hunting on the property shall be restricted to residents (and their guests) subject to such rules and regulations as are reasonable and enacted by the Company, including but not limited to type of weapon, places and hours of hunting, and similar matters.

(c) No change of condition or circumstances shall operate to extinguish, terminate or modify any of the provisions of these restrictions, but they shall be extinguished, terminated or modified only by their action and in the manner provided in this Declaration.

(d) In all cases the restrictions set forth or provided for in these restrictions shall be construed together and shall be given that interpretation or construction which will best tend toward their strict enforcement, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

IN WITNESS WHEREOF, The Figure Eight Island Company, has caused this instrument to be signed in its corporate name by its President, attested by its Secretary and its corporate seal hereto affixed, all the day and year first above written.

THE FIGURE EIGHT ISLAND COMPANY

Young M. Smith, Jr., President

ATTEST:

Agnes J. Tolack, Secretary



(Drafted by Patton, Blow, Verrill, Brand, & Boggs, Attys.,
Washington, D. C.)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This is to certify that on this 22nd day of 19 72, before me personally came Young M. Smith, Jr. with whom I am personally acquainted, who being by me duly sworn, says that Young M. Smith, Jr. is the

is the president and Linda J. Polack secretary of The Figure Eight Island Company, Inc.

the corporation described in, and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by said Young M. Smith, Jr. president, and that said Young M. Smith, Jr. president, and Linda J. Polack secretary subscribed their names thereto, and the common seal was affixed, all by order of the board of directors of said corporation, and that said instrument is the act and deed of said corporation.

Witness my hand and Notarial Seal, this 22nd day of March, 19 72.



Patricia H. Helms
Notary Public

My Commission expires November 1, 1975

STATE OF NORTH CAROLINA

COUNTY OF

The foregoing certificate of Patricia H. Helms a Notary Public of the designated County and State, duly authenticated by his Notarial Seal thereto attached, is ~~is~~ ^{certified} ~~is~~ ~~judged~~ to be correct. ~~Let the instrument and the certificate be~~

~~recorded~~

This the 31 day of March, 1972
Lois C. Le Ray - Register of Deeds Ass't.

Lois C. Le Ray
Clerk Superior Court
Wake County, N.C.

Received and Recorded
March 31, 1972 at 9:18 AM.

Lois C. Le Ray
Register of Deeds