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FILE NO. \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

AUG 2 10 12 AM '78  
LOIS CLERAY  
REGISTRAR  
NEW HANOVER CO., N.C.

DECLARATION OF RESTRICTIVE COVENANTS  
FIGURE EIGHT ISLAND

KNOW ALL MEN BY THESE PRESENTS

That Continental Illinois Realty (the successor to Figure Eight Island Company), a real estate investment trust, with its principal office and place of business in Los Angeles County, State of California, 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 by instrument recorded in Book 839, at Page 607 and by instrument recorded on March 31, 1972 in Book 933, at Page 286, in accordance with Paragraph 21 of the restrictions, as amended, so as to substitute therefore the following restrictions and covenants, which shall be placed upon all residential lots sold after the date hereof by Continental Illinois Realty at the property known as Figure Eight Island:

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

(a) "Continental Illinois Realty" (sometimes referred to herein as "CIR") means (i) the successor to Figure Eight Island Company pursuant to foreclosure of deeds of trust made by Figure Eight Island Company and assignment of development rights to CIR by the Trustee in Bankruptcy of Figure Eight Island Company.

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

RETURNED TO

*Bob Cherry*

(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 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 by instrument recorded in Book 839, at Page 607 and by instrument recorded on March 31, 1972 in Book 933, at Page 286, as amended by this Declaration of Restrictive Covenants.

2. Applicability. These Restrictions shall apply to all residential lots sold by CIR after the date hereof, except that the terms and provisions of paragraphs 10 and 11 shall apply to all the lots and not just the lots sold by CIR after the date hereof.

3. Reservations. CIR reserves the right absolutely to change, alter or redesignate the allocated, planned, platted or recorded use or designation of any property (so long as CIR 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 CIR, 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 Association. Refusal of approval of any such plans, location or specifications may be based by the Association upon any ground, including environmental considerations, that in the sole and uncontrolled discretion of the Association shall seem sufficient. Without the prior written consent of the Association, 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 Association. One (1) copy of all plans and related data shall be furnished the Association for its records. The Association 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 prepared by an architect and bear an

architect's seal, and unless the proposed house has the minimum required square footage of enclosed dwelling area. Such minimum requirements for each lot is frequently 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 minimum square 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 Association 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 six (6) 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 Association.

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

(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 Association, based upon a site plan, landscaping plan or planting plan submitted to the Association.

(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 Association 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 Association 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 CIR from erecting, maintaining, placing or permitting the placing of tanks, or other apparatus, on the property for uses related to the provisions 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 Association 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 unkept 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 Association an annual assessment or charge to be fixed, established and collected on a lot by lot basis as herein-after provided. Said annual assessment or charge shall be due on January 1 of the year for which it is assessed, provided that the Association 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 Association 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 Association, 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 Association 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, improving and replacing the bridges; protection of the property from erosion; collecting and disposing of garbage, ashes, rubbish and the like; maintenance, improvement and lighting of the streets, roads, drives, rights of way, community land and facilities, tennis courts, marsh and waterways; employing watchmen; enforcing these restrictions; paying taxes, indebtedness of the Association, insurance premiums, governmental charges of all kinds and descriptions and, in addition, doing any other things necessary or desirable

in the opinion of the Association 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 Association 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 Association 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 the rate of one and one-half (1-1/2%) percent per month, or at the maximum legal rate, whichever is less, from the due date thereof, until paid. Annual assessments shall be delinquent on March 1. All costs and reasonable attorney's fees incurred in collection of delinquent assessments together with accrued interest shall become a lien against the lot.

(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 Association

to be used in such manner and to the extent as the Association may determine, in accordance with paragraph 8(c) hereof, for the benefit of the residents of Figure Eight Island. The judgment of the Association in the making of assessments or charges or additional assessments and the expenditure of funds shall be final.

(f) The Association 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 Association shall not be obliged to apply any such surplus to the reduction of charges in the succeeding year.

(g) The Association 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.

9. Entry. The Association, its successors and assigns, and its agents are granted the right to enter upon any residential lot, such entry to be made by personnel with suitable devices and equipment, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, repairing or maintaining exteriors of structures, or for the purpose of building or repairing dunes or other earthwork, which in the opinion of the Association detracts from or is necessary to maintain the over-

all beauty, ecology, setting and safety of the property. Such entrance shall not be deemed a trespass. The Association 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 Association is authorized to make reasonable charges to the owner for such services, which shall become a lien upon the lot. The provisions of this paragraph shall not be construed as an obligation on the part of the Association to undertake any of the foregoing.

10. Right of First Refusal. 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 CIR for the same price at which the highest bona fide offer has been made for such property, by providing a copy of the contract, and CIR shall have thirty (30) days within which to exercise its option to purchase said property at such price; should CIR 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. Provided, this provision shall apply only for a period of twenty years from the date of the deed conveying the property to said owner, at which time this provision shall terminate.

11. Waiver. The terms and provisions of paragraph 10(a) and (c) of the Restrictions which were the subject of

the Recording made on March 31, 1972, as they apply to lots sold prior to the date of Recording of this Declaration of Restrictive Covenants, are hereby waived and relinquished by CIR.

12. Signs. Without the prior written permission of CIR, no sign of any character shall be displayed except a property identification sign showing the lot number and a telephone number, not exceeding a combined total of more than two (2) square feet.

13. Miscellaneous Easements. CIR reserves unto itself, its successors and assigns, a perpetual, alienable, assignable 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 CIR may cut drainways for surface water whenever action may appear to CIR 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 residen-

tial 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 CIR, but this reservation shall not be considered an obligation of CIR 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 Association.

15. Subdividing. (a) No lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Association. However, CIR 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) percent 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 Association 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 Association in writing;

(ii) Written approval by the Association of such plans and specifications must be secured, the Association being granted the right in its uncontrolled discretion to disapprove such plans and specifications on any grounds;

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

(iv) The Association 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 preser-

vatives in an attractive manner. The Association 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 Association 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 Association, and that failing to so remedy such conditions, the lot owners hereby covenant and agree that the Association 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, and same shall become a lien upon the lot.

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.

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 CIR, 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 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 Association 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 Association 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. CIR 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 lots which are conveyed by CIR 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 CIR, 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) CIR 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 CIR.

(c) CIR expressly reserves to itself, its officers, trustees, 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) CIR 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 land which has not been subdivided into residential lots.

(e) It is expressly understood and agreed that the granting of these easements in no way places a burden of affirmative action on CIR, that CIR 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 Association or CIR 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 not be allowed.

(c) No change of condition or circumstances shall operate to extinguish, terminate or modify any of the

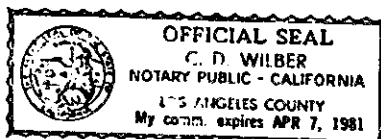


\_\_\_\_\_ personally came before me this day and acknowledged that they are an Assistant Secretary and an Assistant Treasurer, respectively, of Continental Illinois Realty, and that, by authority duly given them and as the act of Continental Illinois Realty, the foregoing instrument was signed in its name by its Assistant Secretary and Assistant Treasurer.

WITNESS my hand and official seal, this 16<sup>th</sup> day of June, 1978.

C. D. Wilber  
Notary Public

My commission expires: 4/7/81



STATE OF NORTH CAROLINA  
New Hanover County  
The Foregoing Certificate of \_\_\_\_\_  
C. D. Wilber, a  
Notary Public  
is certified to be correct.  
This the 2 day of August 1978  
Drawn By MWG&B

Lois C. LeRay, Register of Deeds  
By Dorlene J. Clark, Deputy

Received and Recorded  
8/2/78 at 10:12 A.M  
Lois C. LeRay  
Register of Deeds