

37

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF RESTRICTIONS, CONDITIONS, EASEMENTS,  
COVENANTS, AGREEMENTS, LIENS AND CHARGES  
(OR RESTRICTIVE COVENANTS)

000192

KURE DUNES

THIS DECLARATION made this the 19<sup>th</sup> day of February, 1999, by  
KURE BEACH ASSOCIATES, a North Carolina General Partnership (see Certifi-  
cate filed in Book 1305 at Page 1007 and First Amendment thereto filed in  
Book 1311 at Page 1816 both of the New Hanover County Registry) with an  
address of P. O. Box 19944, Raleigh, NC 27619, hereinafter called  
"Declarant";

W I T N E S S E T H :

WHEREAS, Declarant is the owner of that certain real property  
located in the Town of Kure Beach, New Hanover County, North Carolina, as  
set forth on that certain survey map or plat entitled:

"KURE DUNES PHASE IV" hereinafter sometimes referred to as "map",  
which map or plat is recorded in Map Book 38 at  
Page 261 in the Office of the Register of Deeds of New Hanover  
County, North Carolina, said property being more particularly de-  
scribed on said map or plat.

WHEREAS, it is the desire and intention of Declarant to sell the  
lots set out and described below and to impose upon those lots mutually,  
beneficial restrictions, conditions, easements, covenants and agreements  
under a general plan or scheme of improvements for the benefit of all  
said lands and the future owners of lands in KURE DUNES SUBDIVISION ALL  
PHASES;

NOW, THEREFORE, Declarant hereby declares that Lots 1 through 40,  
KURE DUNES, PHASE IV, as the same are shown on Map Book 38 at Page 261 in  
the Office of the Register of Deeds of New Hanover County, North  
Carolina, are held and shall be held, conveyed, hypothecated or encum-  
bered, leased, rented, used, occupied, and improved subject to the  
following provisions, restrictions, conditions, easements, covenants and  
agreements all of which are declared and agreed to be in furtherance of a  
plan for the subdivision, improvement and sale of the said real property  
and are established and agreed upon for the purpose of enhancing and  
protecting the value, desirability, and attractiveness of said real

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Returned To  
*thomas h. h. h.*

property and every part thereof, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the above named lots or any part thereof.

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

(a) "Declarant" (sometimes referred to as the "Company" as used herein shall mean KURE BEACH ASSOCIATES, its successors and assigns.

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

(c) "Property" generally means the lands known as KURE DUNES, ALL PHASES, in the Town of Kure Beach, New Hanover County, North Carolina and described on Exhibit "A" to the Declaration for Phase I recorded in Book 1499 at Page 0524 of the New Hanover County Registry.

(d) "Residential Lots" or "Lots" means lots specifically set forth above, to-wit: Lots 1 through 40 specifically allocated, platted, restricted and/or recorded as lots for sale and/or use as a single family residence.

(e) "Association" shall mean the KURE DUNES OWNERS' 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 of Lots 1 through 40 as shown on the above referred to map of KURE DUNES, PHASE IV.

3. (a) RESERVATIONS. The Company reserves the right 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. Provided, however, no such changes shall adversely affect any lots already conveyed by the Declarant.

(b) VARIANCES. The Company and/or the Architectural Committee appointed by the Company shall have power to and may allow adjustments of the conditions and restrictions herein in order to overcome practical difficulties and prevent unnecessary hardships in the application of the

regulations contained herein, provided, however, that such is done in conformity with the intent and purposes hereof, and provided, also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood. Variances and adjustment of height, size and setback requirements may be granted hereunder.

(c) BUILDING AND SITE IMPROVEMENTS. 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, slopes, dunes, and tree growth, of any such lot, or portion thereof, be altered in any way whatsoever, until the proposed building plans, specifications, exterior colors and finishes, including brick siding, etc., site and landscaping plans (showing the proposed location, height and orientation of such buildings 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, locations or specifications may be based by the Company upon any grounds 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 alteration 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.

(d) No more than the allowable built-upon area (sq.ft) of any lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials. The allowable built-upon area for each of Lots 1 through 40 is set forth in

subparagraph (e) below. This covenants is intended to insure continued compliance with stormwater runoff rules adopted by the State of North Carolina and therefore benefits and may be enforced by the State of North Carolina.

This covenant is to run with the land and shall be binding on all parties and all persons under them.

(e) Allowable Built-Upon Area Requirement.

| <u>Lot Number</u> | <u>Allowable built-upon area (sq.ft)</u> |
|-------------------|--|
| 1                 | 4,046                                    |
| 2                 | 3,444                                    |
| 3                 | 3,181                                    |
| 4                 | 3,443                                    |
| 5                 | 3,409                                    |
| 6                 | 4,019                                    |
| 7                 | 3,538                                    |
| 8                 | 3,188                                    |
| 9                 | 3,439                                    |
| 10                | 3,320                                    |
| 11                | 3,951                                    |
| 12                | 4,595                                    |
| 13                | 5,408                                    |
| 14                | 6,795                                    |
| 15                | 3,404                                    |
| 16                | 3,318                                    |
| 17                | 4,112                                    |
| 18                | 4,293                                    |
| 19                | 4,583                                    |
| 20                | 4,099                                    |
| 21                | 5,461                                    |
| 22                | 3,910                                    |
| 23                | 3,286                                    |
| 24                | 4,147                                    |
| 25                | 3,882                                    |

|    |       | BOOK | PAGE |
|----|-------|------|------|
| 26 | 4,682 | 2525 | 0051 |
| 27 | 3,106 |      |      |
| 28 | 3,896 |      |      |
| 29 | 3,012 |      |      |
| 30 | 3,000 |      |      |
| 31 | 3,000 |      |      |
| 32 | 3,000 |      |      |
| 33 | 3,000 |      |      |
| 34 | 3,000 |      |      |
| 35 | 3,000 |      |      |
| 36 | 3,123 |      |      |
| 37 | 3,111 |      |      |
| 38 | 3,029 |      |      |
| 39 | 3,258 |      |      |
| 40 | 3,253 |      |      |

4. 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. The term "enclosed dwelling area" as used in the minimum size requirements shall mean the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas. The minimum enclosed dwelling area shall be 1450 square feet.

(b) KURE DUNES BUILDING SETBACK GUIDELINE REQUIREMENTS. 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 land contour, important trees and other vegetation, ecological and related considerations, variances for these specific setback guidelines are permitted under these Restrictions in Paragraph 3 (b) hereinabove. 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,

location, orientation and floor elevations of any house or dwelling or other structure upon any lot. Planting in areas outside the designated building site is limited to grass, flowers, and shrubs having a height of not more than 8 feet, unless approved by Declarant or Association.

(c) The exterior of all houses and other structures must be completed within six (6) months after the construction of same shall be 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) Service rooms, garages and shower facilities may be placed below the first living floor provided suitable screening is provided.

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

(f) Subject to any other limitations imposed by the zoning ordinance of the Town of Kure Beach, no structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any residential lot other than a detached single family dwelling not to exceed two and one-half (2-1/2) stories in height, unless the Company approves in writing a structure of more than two and one-half (2-1/2) pursuant to Paragraphs 3(b) and 4(a) hereof. No building or other structure, or part thereof, at any time situate on such residential lots shall be used as a professional office or charitable or religious institution, or for business or manufacturing purposes, or for any use whatsoever other than residential and dwelling purposes as aforesaid; and no duplex residence or apartment house shall be erected or placed on or allowed to occupy such residential lots and no building shall be altered or converted into a duplex residence or apartment house thereon. In addition, no residence shall be converted to or marketed under a time-share plan as defined by the General Statutes of North Carolina.

(g) If the finished building or other structure does not comply with the approved plans and specifications, the Company retains the right

to make the necessary changes at owner's expense, and the further right to file under the North Carolina lien laws notice of liens for any costs incurred.

5. RESIDENTIAL USE. (a) All of the above described lots shall be used for residential purposes exclusively.

(b) No trailer, tent, mobile home, 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 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.

6. 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 KURE DUNES PHASE IV.

(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.

7. 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 purposes of mowing, removing, clearing, cutting or pruning

underbrush, hedges (to enforce height limitations), weeds or other unsightly growth, or for the purpose of building or repairing any land contour or other dune work, 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.

8. 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 wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity and telephone equipment, gas, sewer, water or public conveniences of utilities on, in or over the front twenty (20) feet of each lot and ten (10) feet along the side of corner lots as shown on the recorded plat. This easement and right expressly includes 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 economic and safe utility installation and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any assignee of the Company, but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.

9. SUBDIVIDING. 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 and assigns, the right to replat any two (2) or more lots set forth above 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 to be limited to, the

relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted lots.

10. MEMBERSHIP IN ASSOCIATION. By the recording of the deed to his or her lot, each lot purchaser agrees to become a member of the Kure Dunes Owners Association, a Homeowners Association to be formed to maintain and administer the common areas and amenities, if any, of Kure Dunes, all Phases, and agrees to abide by, and be subject to, the charter and by-laws of the Association and these Restrictions including those provisions with respect to payment of annual assessments.

11. 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 Declarant, 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 (10) years, unless an instrument signed by a majority of the then owners of the above numbered lots has been recorded, agreeing to change said covenants in whole or in part.

12. 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 in KURE DUNES PHASE IV, or any of them jointly or severally shall have the right to proceed at law or equity to compel a compliance with the terms hereof or to prevent a 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 the lot on which said violation exists and summarily abate or remove the same at the expense of the owner, if thirty (30) days after written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement for 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.

13. 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 common lands or other grounds within KURE DUNES PHASE IV.

14. No mail box or paper box or other receptacle of any kind for use in the delivery of mail or newspaper or magazines or similar material shall be erected or located on any building lot unless and until the size, location, design and type of material for said box or receptacle shall have been approved by the Declarant.

15. Exterior radio and television aerials for reception of commercial broadcasts shall not be permitted in KURE DUNES PHASE IV; and no other aerials (for example, without limitation, amateur short wave or ship to shore) shall be permitted in KURE DUNES PHASE IV without permission of the Declarant as to design, appearance and location.

16. During construction all vehicles involved including those delivering supplies must enter the building lot on the driveway only as approved by the Declarant so as not to damage unnecessarily natural vegetation and dunes. During construction builder must procure a dumpster for trash disposal and keep the homes, garages, and building sites clean. All building debris, stumps, bushes, etc., must be removed from each building lot by builder as often as necessary to keep the house and lot attractive. Such debris will not be dumped in any area of the Subdivision.

17. No property owner will do or permit to be done any act upon his property which may be or is or may become a nuisance to any other property owner or resident. There shall be no discharging of firearms, guns or pistols, of any kind, caliber, type, or method of propulsion.

18. No personal sign of any character shall be displayed upon any part of the property without the Declarant's prior approval, however under no circumstances shall a personal "for sale" sign be permitted on any vacant lot. The Declarant, however reserves the right to display its

"for sale" or "for rent" signs without limitation for so long as it is involved in developing and marketing the KURE DUNES project.

19. No animals, birds, or fowl shall be kept or maintained on any part of the property except dogs, cats and pet birds, which may be kept thereon in reasonable numbers as pets for the pleasure and use of the occupants but not for any commercial use of purpose.

20. Clothesline shall be located as not to be visible from the street.

21. No trailers or habitable motor vehicles of any nature, boats or canoes on or off trailers, may be parked on any part of the property unless under the residence or inside an enclosed garage. These prohibitions also apply to the common easement area.

22. No individual water supply system shall be permitted except a non-potable lawn irrigation system not connected to any building. A shallow well may be permitted for such water supply. The pump, pressure tank, and pump house, if any, shall be considered structures.

23. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

24. The Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not lower the standards of the covenants and restrictions set forth herein.

25. If the Declarant shall transfer or assign the development of such Subdivision or if it shall be succeeded by another in the development of such Subdivision, then such transferee, assignee, or successor shall be vested with the several rights, powers, privileges, or authorities given the Declarant by any part or paragraph hereof. The foregoing provisions of this Paragraph shall be automatic, but the Declarant may execute such instrument as it shall desire to evidence the vesting of the

several rights, powers, privileges, and authorities in such transferee, assignee, or successor.

26. The covenants and restrictions herein shall be deemed to be covenants running with the land. If any person claiming under the Declarant shall violate or attempt to violate any of such restrictions or covenants, it shall be lawful for the Declarant, or any person or persons owning property in KURE DUNES ALL PHASES, and damaged by said violation:

(A) To prosecute proceedings at law for the recovery of damages against the person or persons so violating or attempting to violate any such covenant or restriction, or (B) to maintain a proceeding in equity against the person or persons so violating or attempting to violate any such covenant or restriction for the purpose of preventing such violation, provided however, that the remedies in this Paragraph contained shall be construed as cumulative of all other remedies now or hereafter provided by law. Without limiting the foregoing provisions of this Paragraph, enforcement of these covenants and restrictions may be by the KURE DUNES PROPERTY OWNERS ASSOCIATION, INC.

27. And the said Declarant hereby covenants and agrees that every contract of sale or deed made by the Declarant wherein is described any of the above residential lots of said land, to-wit: Lots 1 through 40 shall include or be subject to, by reference or otherwise, to each and every covenant and restriction herein written, or the substance thereof, and, subject to the reservation herein, the Declarant shall conform with and abide by the foregoing covenants as to all of said lots.

28. The Declarant reserves for itself, its successors and/or assigns a 10 foot easement along the front of Lots 1 through 40 for the purpose of installing and maintaining utilities.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed in its name by its Partners, all on the day and year first hereinabove written.

KURE BEACH ASSOCIATES (SEAL)

BY: [Signature] (SEAL)  
JOHN B. HARRIS, JR., Partner

BY: [Signature] (SEAL)  
ARTHUR SANDMAN, Partner

BY: [Signature] (SEAL)  
CHARLES M. WINSTON, Partner

STATE OF NORTH CAROLINA

COUNTY OF Wake

PERSONALLY APPEARED before me, Brenda G. Burns, a Notary Public in and for the County of Wake and State of North Carolina, JOHN B. HARRIS, JR. and CHARLES M. WINSTON, PARTNERS OF KURE BEACH ASSOCIATES, a North Carolina General Partnership, who acknowledged the due execution of the foregoing instrument for the uses and purposes therein expressed for and in behalf of the Partnership.

WITNESS my hand and notarial seal, this 16<sup>th</sup> day of February, 1999.

[Signature]  
Notary Public

My commission expires:

April 8, 2002

(SEAL)



STATE OF NORTH CAROLINA

COUNTY OF WAKE

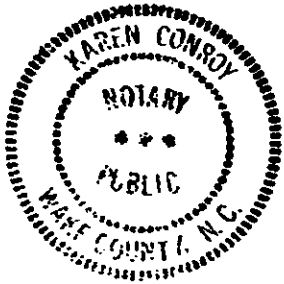
PERSONALLY APPEARED before me, Karen Conroy, a Notary Public in and for the County of Wake and State of North Carolina, H. Arthur Sandman, Partner of Kure Beach Associates, a North Carolina General Partnership, who acknowledged the due execution of the foregoing instrument for the uses and purposes therein expressed for and in behalf of the Partnership.

WITNESS my hand and notarial seal this 16th day of February, 1999.

Karen Conroy  
Notary Public

My Commission Expires: 6/22/03

(SEAL)



STATE OF NORTH CAROLINA  
New Hanover County

The Foregoing/ Annexed Certificate(s) of  
Brenda G. Burns  
Karen Conroy

Notary (Notaries) Public is/ are certified  
to be correct.

This the 19 day of Feb 1999  
Mary Sue Oots, Register of Deeds

by Maurin Ann Stone  
Deputy/Assistant

'99 FEB 19 PM 3 51

RECORDED & VERIFIED  
MARY SUE OOTS  
REGISTER OF DEEDS  
NEW HANOVER CO. NC